

DIRECTORATE GENERAL OF DEMOCRACY

DIRECTORATE OF HUMAN RIGHTS AND
ANTIDISCRIMINATION

MIGRATION CO-ORDINATION DIVISION



The European NPM Newsletter

Issue No. 46 / 47

November - December 2013

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under the aegis of the
Migration Co-ordination Division of the Directorate of Human Rights and Antidiscrimination,
Directorate General of Democracy (DG II),
Council of Europe

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INTRODUCTION

The European NPM Newsletter is a review of information deemed relevant for National Preventive Mechanisms against torture (NPMs)¹ in the Council of Europe region.

The publication of the European NPM Newsletter was part of the “European NPM Project” (2010-2012), which was funded by a joint European Union - Council of Europe Project entitled the “Peer-to-Peer II Project”, with co-funding from the Human Rights Trust Fund².

Its continuation is now ensured by the Migration Co-ordination Division of the Directorate of Human Rights and Antidiscrimination, Directorate General of Democracy (DG II), of the Council of Europe.

The European NPM Newsletters are prepared by Francesca Gordon of Silvia Casale Consultants, London, under the aegis of the above-mentioned Council of Europe entity.

The purpose of the Newsletter is to keep the NPMs aware on an on-going basis of developments regarding their community and thus to nurture an active network of European NPMs.

Each Newsletter issue covers retrospective news and information about the NPMs of the European NPM Network, including updates regarding the establishment, the legislative bases and the functioning of NPMs in the Council of Europe region. In addition, each Newsletter issue presents a thematic discussion considered to be of topical concern for the European NPM Network.

NPMs are cordially invited to give **input** in the European NPM Newsletter by sending information they wish to see circulated or by contributing to the discussions in it. To do so, please **contact Francesca Gordon**, author of the NPM Newsletter, at fgordon@cescaonline.com.

The Newsletter is sent to subscribers electronically by **Déborah Lefebvre** of the Migration Coordination Division in Strasbourg. Should you wish to **subscribe or unsubscribe** please send an email to deborah.lefebvre@coe.int.

The Migration Coordination is responsible for the selection of news items and drafting of case summaries presented in the Newsletter. Other contributors are responsible for materials sent in for inclusion in the Newsletter from the European NPM Network. The compilers of the Newsletter retain the discretion to make linguistic changes for clarity if necessary.

Observations and proposals as to the format of the Newsletter are very welcome.

We hope that you will find this European NPM Newsletter to be of use and interest.

Markus Jaeger

Head of the Migration Co-ordination Division
Directorate of Human Rights and Antidiscrimination
Directorate General of Democracy (DG II)
Council of Europe

¹ As foreseen by the Optional Protocol of the UN Convention Against Torture (OPCAT). OPCAT obliges State parties to set up an NPM within one year of ratification.

² The Human Rights Trust Fund (HRTF) was established in March 2008 as an agreement between the Ministry of Foreign Affairs of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Five countries joined Norway in the fund: Germany and the Netherlands from the start, Finland, Switzerland, and recently the United Kingdom (Déborah please put address of web site here, in brackets)

1. European NPM Network

1.1. News from the NPMs

1.1.1. NPM of the United Kingdom

‘On 3 December 2013, three new members were formally designated to the UK NPM. These are:

- * Lay Observers (England and Wales);
 - * Social Care and Social Work Improvement Scotland (formerly known as the Care Inspectorate);
- and
- * Independent Custody Visitors Scotland.

With these new designations the UK NPM now has 20 institutional members.

In April 2014 the UK will mark five years since its establishment in a one-day conference organised in partnership with the Human Rights Implementation Centre (HRIC) at the University of Bristol. The conference will bring together NPM members, inspected institutions, international human rights bodies and representatives of other NPMs to exchange ideas, learning and best practice. The event aims to raise awareness of how the UK NPM works, assess its achievements so far and the extent to which it is fulfilling its mandate, and to share ideas and identify ways the UK NPM can strengthen its work over the next five years.’

For more details please contact: Louise Finer at Louise.Finer@HMIPrisons.gsi.gov.uk

1.1.2. NPM of “the former Yugoslav Republic of Macedonia”

News from the NPM:

‘24-25 October 2013

“The role of the doctor in conducting preventive visits with aim to protect persons deprived of liberty” was one of the topics at the two days meeting of the Balkan NPM Network held in Belgrade, Republic of Serbia. A representative of the National preventive mechanism from Macedonia took participation as well as an external collaborator – psychiatric from the Association of psychiatrics of the Republic of Macedonia.

29 October 2013

In organization of the Technical Assistance Information Exchange Instrument –TAIEX and in cooperation with the NPM Macedonia a workshop on “The role of judge in overseeing the rights of persons deprived of liberty” took place where judges and other experts in this field exchanged experience in respect to this question.

06 December 2013

Workshop “Protection of juveniles in police detention” was organized by TAIEX and Macedonian NPM. The aim of the workshop was through discussions and experiences to contribute towards improving the conditions for detention of juveniles as well as to strengthen their rights.

10 December 2013

In honor of the International Human Rights Day, 10 December, the National Preventive Mechanism (NPM) held a lecture at the Faculty of Security named as “The rights of persons deprived of liberty”. Special attention was paid to the rights of children deprived of liberty, the conditions of in the penitentiary correctional facilities, as well as the need for respect of the rights of persons deprived of liberty.’

For more details please contact: Anica Tomshic Stojkovska at ATStojkovska@ombudsman.mk

2. United Nations

2.1. UN Sub-Committee on Prevention of Torture (SPT) and OPCAT news

2.1.1. SPT Visits

2.1.1.1. SPT Announcement of 2014 visits

Key UN group on prevention of torture announces countries to be visited in 2014

'Azerbaijan, Nicaragua and Nigeria are among the countries the United Nations Subcommittee on Prevention of Torture (SPT) plans to visit in 2014, the rights body has announced.

The SPT's role is to prevent and eliminate torture and cruel, inhuman or degrading treatment and punishment of detainees. It works with national governments that have ratified the Optional Protocol to the UN Convention against Torture (OPCAT).

The SPT will also conduct missions next year to Ecuador, Malta, Netherlands and Togo, and plans a follow-up to a previously visited country. Following previous practice, some of the SPT's visits will focus on providing advice and assistance to national preventive mechanisms, which are bodies that themselves monitor places of detention.

In addition, the SPT will also conduct a broad range of visits to places of detention, as well as short missions that will focus on advising the national authorities on how to best to comply with their OPCAT obligations.

"For the SPT, the key to preventing torture and ill-treatment lies in building constructive relations between national and international bodies within the OPCAT framework," said Chairperson Malcolm Evans after the SPT's latest session held in Geneva from 11 to 15 November.

"We have seen many real, positive developments as a result of this approach, and we are committed to bringing the benefits of becoming partners in prevention to all States parties as soon as we can," he said.

This is why, Mr Evans explained, the SPT is devising more ways of fulfilling its convention mandate, which not only grants it unrestricted access to all kinds of places of detention in countries that have ratified the OPCAT, but also calls on it to work closely with national, regional and other international mechanisms involved in the prevention of torture.

"As a result of the OPCAT and the work of the SPT, systems for regular visits to places of detention as part of international efforts to prevent torture are now a reality in more than 50 states," he added.

"The SPT is at the centre of this international framework of independent torture prevention mechanisms and we need to become ever more closely involved in encouraging and supporting all those involved in this work, at whatever level," Mr Evans said.'

2.1.1.2. SPT Visit to Cambodia

UN torture prevention group urges Cambodia to set up independent body to monitor treatment of prisoners:

December 2013, 'SPT has urged Cambodia to set up an independent national body to monitor the treatment of people in detention, in line with its treaty obligations.

The SPT members issued their call at the end of a five-day follow-up visit to Cambodia, during which they made various unannounced visits to places of detention, including prisons, police stations and drug rehabilitation centres.

Cambodia ratified the Optional Protocol to the Convention against Torture (OPCAT) in 2007 and should have established what is known as a National Preventive Mechanism within one year.

"Cambodia has now had several years to gain experience of what is needed, and the time has come for the country to fulfill its international commitments by establishing an independent National

Preventive Mechanism,” said SPT Chairperson Malcolm Evans. “This is a vital first step on the road towards preventing torture and ill-treatment in detention.”

During their mission, from 9-13 December, the SPT delegation met government officials and members of an inter-ministerial body currently in charge of monitoring detention centres, as well as non-governmental organizations. The SPT delegation was able to meet Deputy Prime Minister Sar Kheng and welcomed this as an indication of how seriously the Cambodian Government takes its obligations under OPCAT.

The visit was aimed at determining whether the situation of detainees had improved since the SPT’s last visit in 2009. The delegation presented their confidential preliminary observations to the Cambodian authorities at the end of this visit.

“Our findings must remain confidential until the Cambodian Government decides to publish them. We have found the visit very enlightening and believe it lays the groundwork for future progress in improving the treatment of detainees in Cambodia,” said Mr Evans.

The SPT’s role is to prevent and eliminate torture and cruel, inhuman or degrading treatment and punishment of detainees. It has a mandate to visit all States that are parties to OPCAT and to make recommendations to the authorities to provide for effective safeguards against torture and ill-treatment of persons deprived of their liberty. For the SPT, the key to preventing torture and ill-treatment lies in building constructive relations with the State concerned, and its guiding principles are cooperation and confidentiality.

The SPT delegation was composed of: Chairperson Malcolm Evans, Lowell Patria Goddard, June Lopez and Milos Jankovic.

Places of detention visited:

Correctional Center 3 (Kompong Cham)
Correctional Center 2 for women and juveniles (Phnom Penh)
Posenchey District Police Inspectorate (Phnom Penh)
Cham Chao Police Post (Phnom Penh)
Khan Daun Administrative Police Post (Phnom Penh)
Chamkamon District Police inspectorate (Phnom Penh)
Orgkas Khnom Drug Rehabilitation Center (Phnom Penh)
Former Social Welfare Centre Prey Speu
Immigration Centre of Phnom Penh.’

2.1.1.3. SPT Visit to Gabon

SPT delegation visited Gabon 3- 12 December 2013.

2.1.2.Recent OPCAT events

Burundi acceded to the OPCAT on 18 October 2013

The SPT’s 21st session took place on 11-15 November 2013

2.1.3. SPT and Special Rapporteur

‘The Committee against Torture this morning discussed the issue of reprisals with the Special Rapporteur on Torture and the Subcommittee on the Prevention of Torture. Earlier in the morning, the Committee held a meeting on follow-up to Articles 19 and 22 of the Convention against Torture. Claudio Grossman, Committee Chairperson, said that the most effective way of dealing with reprisals was to work towards creating an environment which did not allow reprisals to occur. In that regard, training was extremely important, as was general and individual accountability. The identification of principles on which to act, such as the principle of legality and the principle of adopting a victim-centre approach, was essential. [...]’

For further details please see:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13994&LangID=E>

2.2. UN Committee against Torture (CAT)

2.2.1. Recent events

2.2.1.1. CAT Committee & SPT meet

13 November 2013: 'The Committee against Torture today met with the Subcommittee on the Prevention of Torture to discuss ways of collaborating in their work to eliminate torture, addressing the challenge of reprisals against human rights defenders, as well as obligations under the Optional Protocol to the Convention against Torture such as the establishment of national preventative mechanisms. Malcolm Evans, Chairperson of the Subcommittee on the Prevention of Torture, said a key issue emerging across the human rights system concerned the issue of reprisals, and the increasing concern and realization they imposed on many human rights defenders, as well as people in places of detention being visited by members of civil society. The issue was increasingly in the spotlight, and the Subcommittee sought to collaborate with as broad a range of people as possible in order to find the most effective way of addressing the problem of reprisals. One recent change was that the Subcommittee tried to provide more advance notice of their visits, within a framework of one year, after which specific notice was given to a State approximately two months in advance.

Regarding the Optional Protocol to the Convention against Torture, Mr. Evans said that as membership included countries from the smallest, by population, Nauru (10,000) to the fifth largest, Brazil (200 million), there were national preventative mechanisms against torture dealing with a huge variety of population sizes, and he hoped in future to have States parties that had populations numbering billions as well. Mr. Evans noted that several countries that were not party to the Optional Protocol were starting to establish bodies that looked like national preventative mechanisms, which was a positive step. Speaking about ratifications of the Optional Protocol to the Convention against Torture, Mr. Evans said the highest number of ratifications of the Optional Protocol came from States that were party to the European Convention against Torture (35 States – 50 per cent of the total) and the Council of Europe area. A frequent question asked was why the United Nations bodies should replicate work in Europe when the European Convention already carried out similar work. The reason was that much of the Subcommittee's work was in advising and assisting national preventative mechanisms. The Subcommittee may be carrying out fewer visits to European States, but had intense engagement with those States in other ways, which put together amounted to a fairly uniform level of attention to all States worldwide. The Subcommittee tried to give equal focus to all regions in the world, as per the universality of the treaty. A representative of a non-governmental organization, the International Rehabilitation Council for Torture Victims, took the floor to ask how the Subcommittee, the Committee and the Special Rapporteur on Torture could improve the sequencing of country visits and country views. In recent years there had been a lot of overlap. The representative asked what was being done to support human rights defenders in the process of submitting their reports on reprisals. Claudio Grossman, Chairperson of the Committee against Torture, responded to points raised about reprisals. He welcomed the views of non-governmental organizations on what the Committee and the Subcommittee could do to support human rights defenders facing reprisals. Of course if a State party engaged in reprisals it was violating the Convention, while another important principle was the confidentiality of the victim. The question about sequencing of visits and the need for coordination was an important one, and an issue that was often discussed. He also noted that ratification of the Optional Protocol was promoted at all country reviews. A Committee Expert commented that national preventative mechanisms in some countries were in serious danger, particularly at times of a change in political leadership or to the institutions to which they were attached. Another Expert said that the fear of reprisals was another important factor that should be discussed, especially where the complainant was about to be expelled or deported to their country of origin, as that was a time when the threat of reprisal was manifest.

The next public meeting of the Committee against Torture will be at 3 p.m. this afternoon, when it will meet in public at the Palais Wilson to complete its consideration of the second periodic report of Kyrgyzstan ([CAT/C/KGZ/2](#)).

2.2.2. Recent CAT Committee examination of country reports

2.2.2.1. Kyrgyzstan

13 November 2013; 'The Committee against Torture today concluded its consideration of the second periodic report of Kyrgyzstan on its implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Presenting the report, Ulanbek Khaldarov, Deputy Prosecutor General of Kyrgyzstan, said the existence of the practice of

torture in Kyrgyzstan had been acknowledged at the highest political and governmental levels, which demonstrated the political will to eliminate it in all its manifestations. Over the past two years the High Commissioner for Human Rights, the Subcommittee on the Prevention of Torture and the Special Rapporteur on Torture had visited Kyrgyzstan and their recommendations were being implemented via a national action plan. Kyrgyzstan had taken significant steps towards the elimination and prevention of torture at the legislative and institutional levels, and in practice, including by new legislation, prison reform, training and work with civil society. [...]’.

For more info please see: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13985&LangID=E>

2.3. UN Special Rapporteur against torture

Special Rapporteur’s on Torture submission to CoE’s NPM Newsletter

January 2014

From November 8 – 15, 2013, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (SRT), visited the Republic of Ghana in his first mission to sub-Saharan Africa. During the eight-day mission, the SRT visited several detention facilities, prayer camps, and psychiatric hospitals. The SRT also held meetings with government authorities, members of local civil society, international and regional organizations, and victims and their families. In a press conference held in Accra at the end of the visit, the SRT expressed serious concern about poor conditions detected in detention facilities, including overcrowding, which give rise to human rights violations and in themselves amount to forms of cruel, inhuman and degrading treatment or punishment.

The SRT will present a comprehensive country report with his observations and recommendations at the next UN Human Rights Council session in Geneva in March 2014.

More information about the SRT’s visit to Ghana is available at: <http://antitorture.org/ghana-country-visit/>

In December, the SRT participated in a roundtable discussion organized by Democracy Now!, during which he addressed the practice of solitary confinement in the United States and the findings of his 2011 thematic report on solitary confinement. In late December and early January, the SRT continued to issue press releases on recent topical developments related to his mandate alongside other UN independent human rights experts.

For a video of the Democracy Now! roundtable and for more information on the SRT’s latest activities, please visit: <http://antitorture.org/>

From February 10 – 12, 2014, the SRT will conduct a follow-up visit to the Republic of Tajikistan to assess the level of implementation of the recommendations issued by his mandate after the visit to Tajikistan in 2012. This constitutes the second follow-up visit of the SRT during his time as Special Rapporteur and it is a very positive step towards strengthening the collaboration of the Government and civil society of Tajikistan with the SRT in advancing the eradication of torture.

For more information on the SRT’s follow-up visit to Tajikistan, please visit: <http://antitorture.org/tajikistan-country-visit/>

2.4. UN Jurisprudence

Latest Jurisprudence of UN Treaty Bodies is now available:

The cases law adopted at the last session of the HRC, CERD, CEDAW and CRPD are available online in the six UN official languages. In order to ease access to the jurisprudence on individual cases, additional information is now available, such as the articles invoked, the subject matter, the procedural issues and the outcome.

- Latest jurisprudence adopted by the treaty bodies:

Human Rights Committee: <http://www2.ohchr.org/english/bodies/hrc/HRCommitteeCaseLaw.htm>

Committee on the Elimination of Racial Discrimination:
<http://www2.ohchr.org/english/bodies/cerd/jurisprudence.htm>
Committee on the Elimination of Discrimination against Women:
<http://www2.ohchr.org/english/law/jurisprudence.htm>
Committee on the Rights of Persons with Disabilities:
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>
Committee against Torture (soon in the new format):
<http://www2.ohchr.org/english/bodies/cat/jurisprudence.htm>

3. Council of Europe

3.1. *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

Council of Europe anti-torture Committee holds high-level talks in [Ukraine](#)

20.12.2013 – Representatives of the CPT held high-level talks with the Ukrainian authorities on 13 and 19 December 2013 in Kyiv.

The talks were organised in the aftermath of police interventions on 30 November 2013 at Independence Square and on 1 December 2013 on Bankova Street in Kyiv. According to various reports, supported by public video footage, excessive force had been used by police officers when dispersing demonstrators and taking a number of them into custody.

Representatives of the Government publicly apologised for the police action of 30 November 2013. They also indicated that inquiries had been initiated by the relevant authorities regarding the manner in which the above-mentioned interventions had been carried out.

The main objective of the high-level talks was to obtain details about all the persons deprived of their liberty in the context of the ongoing demonstrations in Kyiv and the investigations which had been initiated following complaints of detained demonstrators about ill-treatment by law enforcement officials. In addition, discussions were held on the action taken by the relevant authorities to prevent future instances of ill-treatment and/or excessive use of force during police interventions. [...]

For more information please see: <http://www.cpt.coe.int/documents/ukr/2013-12-20-eng.htm>

Council of Europe anti-torture Committee publishes report on the [Russian Federation](#)

Strasbourg, 17.12.2013 – At the request of the Russian authorities, the CPT has published today the report on its periodic visit to the Russian Federation, carried out in May and June 2012, together with the response of the Russian authorities. During the visit, the CPT's delegation visited places of deprivation of liberty in Moscow, Leningrad and Vladimir Regions, as well as in the Republics of Bashkortostan, Tatarstan and Udmurtia.

In Moscow and Saint Petersburg, most of the detained persons had no complaints about the manner in which they were treated by law enforcement officials; however, the CPT's delegation did receive some allegations of recent physical ill-treatment by members of law enforcement agencies. The delegation also received several accounts of recent physical ill-treatment in the Republic of Udmurtia, mainly referring to the time of initial interviews by operational officers. Numerous allegations of recent physical ill-treatment of persons, including juveniles, held by law enforcement officials were heard in the Republics of Bashkortostan and Tatarstan, as well as in the Vladimir Region. In a number of instances, the alleged ill-treatment was of such a severity as to amount to torture. In its report on the previous periodic visit in 2008, the CPT indicated that, if police ill-treatment remained unchallenged, it could easily become an almost accepted feature of operating police practice. A little less than four years later, notwithstanding the efforts to reform Internal Affairs structures, the frequency and consistency of the allegations suggested that methods of severe ill-treatment/torture continue to be used on a frequent basis by police and other law enforcement officials, in particular outside Moscow city and Saint Petersburg.

The CPT has called upon the Russian authorities to strengthen action to prevent ill-treatment by the police and members of other agencies (including the Federal Drug Control Service and the Federal Security Service) and reiterated the importance of effective action by the investigating authorities

when information indicative of possible ill-treatment comes to light. Concerning the formal safeguards against ill-treatment (in particular, notification of custody, access to a lawyer and access to a doctor), they still only became available from the moment of the first official interview by the investigator, i.e. several hours (and sometimes much longer) after the de facto apprehension and initial questioning by operational officers. The CPT was also concerned by the fact that holding cells in police divisions were still frequently used for overnight stays (on occasion, for up to 48 hours). As observed on all the previous visits to the Russian Federation, none of such holding cells was suitable for holding persons for longer than a few hours. By contrast, most of the temporary detention centres (IVS) visited offered decent conditions of detention.

Turning to prisons, the CPT's delegation received no allegations of ill-treatment of prisoners by staff at Federal-purpose pre-trial establishment (SIZO) No. 3 in Saint Petersburg and SIZO No. 1 in Kazan. In addition, no credible allegations of ill-treatment were heard at SIZO No. 4 in Moscow or at SIZO No. 1 ("Kresty") in Saint Petersburg. As regards SIZO No. 1 in Ufa, most of the inmates interviewed made no complaints about staff attitudes. In contrast, at Closed-Type Prison No. 2 ("Vladimirskiy Tsentral") in Vladimir, the delegation received several consistent allegations of physical ill-treatment of inmates by staff. As for Strict-Regime Colony No. 1 in Yagul, many inmates interviewed stressed that there had been a clear improvement as regards the attitude of staff towards them since the CPT's previous visit to that establishment, in 2008. However, the delegation did hear a number of graphic and consistent accounts of deliberate and routine physical ill-treatment of newly admitted sentenced prisoners, as well as several credible allegations of physical ill-treatment by staff, including senior officials, of inmates on disciplinary segregation.

The CPT has acknowledged that for many years, the Russian authorities had made continued attempts to combat overcrowding and improve material conditions in pre-trial establishments. Encouraging results were observed during the 2012 visit and the Committee recommended that the Russian authorities pursue their efforts in this regard. The Committee was also pleased to note that steps were being taken to move away from the system of large-capacity dormitories/cells found in current establishments for sentenced prisoners towards a system of smaller living units. In this context, the CPT reiterated its long-standing recommendation that the Russian authorities formally amend the legislation in order to align the minimum standard of living space for sentenced prisoners with that for remand prisoners. The Committee has also called upon the Russian authorities to ensure that efforts aimed at reducing overcrowding and improving material conditions in SIZOs and establishments for sentenced prisoners go hand-in-hand with the introduction of programmes of structured out-of-cell activities.

As concerns prison health-care services, the delegation was informed of a pilot project, the main feature of which was that prison health-care staff were no longer administratively dependent on the directors of the establishments in which they were working. In this context, the Committee has reiterated that a greater involvement of the Ministry of Health in the provision of health-care services in prison would help to ensure optimal health care for prisoners. In their response, the Russian authorities refer to various issues raised in the CPT's report and provide detailed updates on the legislative and organisational reforms of the law enforcement agencies, the investigative authorities and the prison system (including on the implementation of plans to construct new pre-trial establishments/units, relocate SIZO No. 1 in Ufa and on the improvement of prison health-care services). They also inform the Committee of steps taken to prevent further ill-treatment of prisoners and persons in police custody.

The CPT's visit [report](#) and the [responses](#) of the Russian authorities are available in English on the Committee's website: www.cpt.coe.int.

Council of Europe anti-torture Committee publishes report on [Monaco](#)

Strasbourg, 12.12.2013 – The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the [report](#) on its second periodic visit to the Principality of Monaco, carried out in December 2012, together with the [response](#) of the Monegasque authorities. No allegations of deliberate physical ill-treatment were heard from persons detained by the police. In its report, the CPT highlights the efforts by the Monegasque authorities to implement essential CPT recommendations in respect of safeguards against police ill-treatment. It notes the inclusion in the Code of Criminal Procedure of the electronic recording (audio and video) of police interviews, as well as of access to a doctor of persons in police custody in the relevant legislation. The Committee also envisages in its report the possibility of systematic medical examination of persons before their placement in police custody cells (or sobering-up cells), with a view to preventing any kind of incident. Nevertheless, efforts still remain to be done, for instance, in respect of juveniles in police custody. More generally, the CPT considers that certain aspects of the

police custody procedure should be reinforced by basing it on a legal text providing sufficient detail and safeguards (it is currently governed by the General Prosecutor's instructions). In their response, the Monegasque authorities enumerate the main adopted texts in this respect, as well as the distribution of a memo setting up a medical examination prior to placing a person in detention in the Central Directorate of Public Security of Monaco. The CPT did not hear of any allegations of deliberate physical ill-treatment from persons detained at the Monaco Remand Prison either. On the contrary, it observed a relaxed atmosphere based on mutual respect between staff and prisoners. [...]

The CPT's visit [report](#) and the [response](#) have been made public at the request of the Monegasque authorities and are available on the CPT's website: <http://www.cpt.coe.int/>.

For more information please see: <http://www.cpt.coe.int/documents/mco/2013-12-12-eng.htm>

Council of Europe anti-torture Committee visits Germany

Strasbourg, 06.12.13 - A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to Germany from 25 November to 2 December 2013. The main focus of the visit was to examine the treatment and conditions of detention of persons held in preventive detention (*Sicherungsverwahrung*). For this purpose, the delegation visited the following prisons: - Diez Prison (Rhineland-Palatinate) - Frankfurt Prison III for Women (Hessen) - Freiburg Prison (Baden-Württemberg) - Hohenasperg Sociotherapeutic Institution (a specialised prison establishment for violent and/or sexual offenders in Baden-Württemberg) Another objective of the visit was to review the procedures for the imposition of special security measures and in particular the mechanical restraint (*Fixierung*) of agitated inmates in prison. This issue was examined in detail in all the above-mentioned prisons and during targeted visits to Berlin-Tegel Prison and Berlin-Plötzensee and Hohenasperg Prison Hospitals. Moreover, the delegation monitored the situation of a prisoner sentenced to life imprisonment by the International Criminal Tribunal for the former Yugoslavia (ICTY) who is serving his sentence in Germany^[1]. In the course of the visit, the delegation held consultations with Mr Jochen HARTLOFF, Minister of Justice and Consumer Protection of Rhineland-Palatinate, and Ms Bettina LIMPERG, Permanent Representative of the Minister of Justice of Baden-Württemberg, as well as with senior officials from the Federal Ministry of Justice, the Ministries of Justice of Baden-Württemberg and Rhineland-Palatinate and the Senate of Justice of Berlin. In addition, the delegation met representatives of the National Agency for the Prevention of Torture. At the end of the visit, the delegation presented its preliminary observations to the German authorities.[...]

For more information please see: <http://www.cpt.coe.int/documents/deu/2013-12-06-eng.htm>

Council of Europe anti-torture Committee publishes report on Iceland

Strasbourg, 05.12.2013 – At the request of the Icelandic authorities, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the [report](#) on its visit to Iceland, carried out in September 2012, together with the [response](#) of the Icelandic authorities. Both the report and the response have already been made public by the Icelandic authorities, on 19 November 2013. Most of the persons with recent experience of police custody who were interviewed by the CPT's delegation stated that they had been treated in a correct manner. The conclusion reached by the Committee after its previous visits – namely that persons detained by the police in Iceland run little risk of being ill-treated – remains valid. As for conditions of detention in the police establishments visited, they were generally adequate. As regards prisons, the CPT received hardly any allegations of deliberate physical ill-treatment of prisoners by staff. That said, the Committee highlights in its report a number of principles and minimum standards which should be complied with on those rare occasions when means of restraint have to be applied to a prisoner. The delegation found evidence of inter-prisoner violence and intimidation at Litla-Hraun Prison and, to a lesser extent, at Akureyri and Kópavogur Prisons. A Litla-Hraun, prisoners from certain categories were afraid of their fellow inmates, and several of them refused to leave their wing in order to take outdoor exercise or participate in organised activities. The CPT has made recommendations aimed at addressing this problem. The CPT strongly encourages the Icelandic authorities to pursue the project to build a new remand prison in Reykjavík; this would allow all remand prisoners from the capital area to be accommodated closer to their families, and make it possible to offer them an appropriate range of activities. The CPT has also noted with interest the plans to set up a centre specifically designed for persons detained under aliens legislation, thereby avoiding the current situation of such persons being held in prison. The Committee has stressed that the future centre should offer material

conditions and a regime of activities which reflect the legal status of the detainees and should be staffed by suitably qualified personnel.[...]

For more information please see: <http://www.cpt.coe.int/documents/isl/2013-12-05-eng.htm>

Council of Europe anti-torture committee announces visits to ten states in 2014

Strasbourg, 03.12.2013 - The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) announced today its 2014 programme of periodic visits. The Committee intends to examine the treatment of persons deprived of their liberty in the following ten countries: [Albania](#), [Austria](#), [Bulgaria](#), [the Czech Republic](#), [Denmark](#), [Finland](#), [Georgia](#), [Ireland](#), [Romania](#) and “[the former Yugoslav Republic of Macedonia](#)”. Persons in possession of information concerning deprivation of liberty in any of these countries which they believe could assist the CPT are invited to bring it to the Committee’s attention. The CPT will also organise ad hoc visits in 2014 whenever it considers this is required by the circumstances.

Council of Europe anti-torture Committee visits [Azerbaijan](#)

Strasbourg, 28.11.2013 – A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recently carried out an eight-day visit to Azerbaijan, starting on 19 November 2013. The main objective of the visit was to review the implementation of recommendations made after previous CPT visits concerning the treatment of persons deprived of their liberty in psychiatric hospitals and social care homes. The delegation held consultations with Oktay SHIRALIYEV, Minister of Health, and Salim MÜSLÜMOV, Minister of Labour and Social Protection, as well as with other senior officials from these ministries. At the end of the visit, the delegation presented its preliminary observations to the Azerbaijani authorities.

The visit was carried out by the following members of the CPT: - Mykola GNATOVSKYY (Ukrainian), 2nd Vice-President of the CPT, Head of delegation - Vytautas RAŠKAUSKAS (Lithuanian), - Olivera VULIĆ (Montenegrin). They were supported by Fabrice KELLENS, Deputy Executive Secretary of the CPT, and Isabelle SERVOZ-GALLUCCI from the CPT’s Secretariat, and assisted by Clive MEUX, forensic psychiatrist, Oxford, United Kingdom. The delegation visited the following places of deprivation of liberty: Establishments under the authority of the Ministry of Health - Psychiatric hospital, Ganja - Salyan interregional psychiatric hospital, Shorshulu Establishments under the authority of the Ministry of Labour and Social Protection - Göygöl Psychoneurological Boarding Home No. 8, Qırıqlı - Psychoneurological Boarding Home No. 1, Shamaxi.’

Council of Europe anti-torture Committee publishes report on [Portugal](#)

Strasbourg, 26.11.2013 – The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published today the [report](#) on its ad hoc visit to Portugal, carried out in May 2013, together with the [response](#) of the Portuguese authorities. In the 15 months since the February 2012 periodic visit to Portugal, overcrowding within the prison system had increased further. Lisbon Central Prison, the main focus of the visit, continued to be affected by chronic overcrowding of almost 150% and very poor material conditions. Damp cells, crumbling plaster, broken windows, a lack of artificial lighting, decrepit mattresses were found in most of the basement areas of the prison. The CPT comments that such conditions could be considered as amounting to inhuman and degrading treatment. The report also refers to a number of credible allegations of ill-treatment of inmates by prison officers and the CPT reiterates the importance of effective investigations into such allegations. Recommendations are made to improve the recording of physical injuries observed upon admission to the establishment or following a violent incident inside the prison and to increase staffing levels. Further, as regards the small numbers of juveniles held at Lisbon central Prison, the CPT found that their safety was at risk and recommended that they be transferred to another establishment offering both an appropriate environment and a tailor-made regime. The report also recommends several measures to improve the disciplinary process and reduce resort to prolonged provisional isolation. As regards Monsanto High Security Prison, where prisoners were confined alone in their cells for some 21 hours a day, recommendations are made to develop the range of purposeful activities in place for each inmate and to promote better contacts between staff and prisoners. Further, the authorities are again requested to institute rigorous safeguards concerning the placement of prisoners, and any extension thereof, in the high-security estate. The Portuguese authorities are invited to phase out the carrying of truncheons by custodial staff in detention areas at both Lisbon Central and Monsanto

Prisons. In their response, the Portuguese authorities refer to the steps being taken to expand the application of alternative measures to imprisonment and to the ongoing investment to improve prison conditions at Lisbon Central Prison. [...]

The visit [report](#) and government [response](#) have been made public at the request of the Portuguese authorities and are available on the CPT's website (<http://www.cpt.coe.int/>).

For more information please see: <http://www.cpt.coe.int/documents/prt/2013-11-26-eng.htm>

Council of Europe anti-torture Committee publishes two reports on Italy

Strasbourg, 19.11.2013 – The CPT has published today the [report](#) on its most recent periodic visit to Italy, which took place in May 2012, together with the Italian Government's [response](#). The Committee has also published the [report](#) and [response](#) concerning its ad hoc visit to Italy in June 2010. In the course of the [2012 visit](#), the CPT received a number of allegations of physical ill-treatment by State Police and *Carabinieri* officers, in particular in the Milan area and mostly concerning foreign nationals. Consequently, several recommendations are made in the report concerning the reinforcement of safeguards against ill-treatment. The conditions of detention observed by the Committee in law enforcement establishments were on the whole acceptable. However, material conditions were poor in the cells at the Florence and Palermo State Police Headquarters (*Questura*). In their response, the Italian authorities state that the above-mentioned cells have been taken out of service and that alternative - more suitable - places of detention have been found. As regards the detention of foreign nationals under aliens legislation, some allegations of excessive use of force by *Carabinieri* and State Police officers during search operations were received at the Bologna Identification and Expulsion Centre (CIE). Material conditions of detention were adequate in terms of living space; however, the male unit of the centre was in a poor state of repair, apparently due to repeated acts of vandalism by detainees. The CPT was favourably impressed by the health-care services and the work performed by the cultural mediators at the centre, but expressed concern about possible staff reductions in these areas in the context of announced budgetary cuts. In their response, the Italian authorities inform the Committee about the temporary closure of the CIE in Bologna in order to carry out renovation work and state that the health-care staffing levels would be maintained when the centre reopened. [...]

The visit reports and government responses have been made public at the request of the Italian authorities and are available on the CPT's website (<http://www.cpt.coe.int/>).

For more information please see: <http://www.cpt.coe.int/documents/ita/2013-11-19-eng.htm>

Council of Europe anti-torture Committee: preliminary observations concerning police issues after visit to Ukraine in October 2013

Strasbourg, 15.11.2013 – The most recent visit to Ukraine by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) took place from 9 to 21 October 2013. One of the objectives of the visit was to re-examine the situation of persons held by law enforcement officials, in particular in the light of the provisions of the new Code of Criminal Procedure which entered into force in November 2012. Today's publication concerns the [preliminary observations](#) presented by the CPT's delegation during the meeting held at the Ministry of Internal Affairs in Kyiv on 21 October 2013. An account of the delegation's observations published on the same day by that Ministry was incomplete and, in particular, did not reflect the comments made concerning the treatment of detained persons by law enforcement officials. Consequently, and in application of paragraph 5 of Rule 39 of the CPT's Rules of Procedure,^[1] the Committee decided at its November 2013 plenary meeting to make public the full text of the preliminary observations.

Council of Europe anti-torture Committee urges European states to improve reporting of evidence of ill-treatment

Strasbourg, 06.11.2013; 'The CPT has urged the 47 Council of Europe member States to ensure the accurate and timely reporting of medical evidence of ill-treatment of detained persons, in order to facilitate investigations.

In its [annual report published today](#), the Committee points out that the documenting and reporting of medical evidence of ill-treatment is unsatisfactory in many European States. The procedures in place do not always guarantee that injuries borne by detained persons will be recorded appropriately and reported to the relevant authorities.

The CPT stresses that when persons enter prisons, they should be properly interviewed and physically examined by a health-care professional within 24 hours. This procedure should also be followed when a prisoner who has been returned to police custody for investigative reasons is brought back to prison. As a matter of principle, the CPT argues in favour of ending the practice of returning prisoners to police custody, as it entails a high risk of ill-treatment; instead, any further questioning should take place on prison premises.

"The documenting and reporting of medical evidence is essential for investigating cases of possible ill-treatment and holding perpetrators to account, which is the strongest deterrent against future abuse. It is crucial that health-care professionals working in prisons or other places of deprivation of liberty automatically report injuries indicative of ill-treatment to an independent authority. This is often not happening in practice", said Lətif Hüseynov, the CPT President.

The annual report provides information on the 21 visits which the CPT has carried out between August 2012 and July 2013. The Committee also welcomes the continuing trend of States lifting the veil of confidentiality and making public its findings. 18 visit reports were published during the period covered by the annual report, including the report on the CPT's visit in 2011 to the North Caucasian region of the Russian Federation.'

3.2. Council of Europe Commissioner on Human Rights

'Police misconduct in Turkey raises serious human rights concerns

26 November 2013; "The police's handling of demonstrations in Turkey exposes once again the long-standing, serious human rights problem of the misconduct of law enforcement officials in the country. It is time for the Turkish police to improve their record of compliance with human rights standards", said today Nils Muižnieks, Council of Europe Commissioner for Human Rights, releasing a report on his visit to Turkey, carried out from 1 to 5 July 2013.

Although Turkey has made important progress in the fight against torture and ill-treatment, the Gezi events in May-June 2013 drew the focus of attention to the Turkish police's systemic problem of insufficient respect for binding human rights standards, an issue that has been repeatedly condemned by international bodies, in particular by the European Court of Human Rights in the past decade. "There are serious, consistent and credible allegations of excessive use of force, in particular excessive and improper use of tear gas and ill-treatment during and after apprehensions. These raise very serious concerns, requiring a determined response from the Turkish authorities, such as clearer rules about the proportionate use of force by law enforcement officials in the context of demonstrations. Safeguards against ill-treatment should be strengthened and the right to free assembly better upheld." The Commissioner underlined that this would also require a review of the current legal framework concerning demonstrations, which he considered too restrictive in a democratic society. [...]

For more information please see: http://www.coe.int/en/web/commissioner/-/police-misconduct-in-turkey-raises-serious-human-rights-concerns?redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fnews-2013%3Fp_p_id%3D101_INSTANCE_Xlv41K37yewf%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1#Xlv41K37yewf

Press contact in the Commissioner's Office: Stefano Montanari: stefano.montanari@coe.int

Serbia should end degrading reception conditions for asylum seekers

"Serbia needs to strengthen its asylum system and reception capacities in order to cope with the ever increasing number of arrivals, in particular from war-torn Syria. I could witness signs of the current strains on the Serbian asylum system during my November visit in the reception centre of Bogovadja, one of the two asylum centres in the country. Additional efforts are needed in order to ensure that the human rights of every person in need of international protection are fully respected and protected" said today Nils Muižnieks, the Council of Europe Commissioner for Human Rights, releasing a letter addressed to Prime Minister Dačić.

During his visit in Bogovadja, the Commissioner witnessed that all 160 places were full and, as a consequence, about 230 asylum seekers were living in the nearby forest, in basic shelters such as wooden shacks or tents, with no access to sanitation services. He stresses in his letter that this situation is very serious and requires urgent action by the Serbian authorities. "A first step is to ensure that every asylum seekers in Serbia is accommodated in a place which meets international standards." [...]]

For more information please see: http://www.coe.int/en/web/commissioner/-/serbia-should-end-degrading-reception-conditions-for-asylum-seekers?redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fnews-2013%3Fp_p_id%3D101_INSTANCE_Xlv41K37yewf%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1#Xlv41K37yewf

Press contact in the Commissioner's Office: Stefano Montanari: stefano.montanari@coe.int

3.3. Summaries of selected Article 3 cases before the European Court of Human Rights: November and December 2013

[Fedosejevs – Latvia](#) - 37546/06 Decision 19.11.2013

Lack of antiretroviral therapy for prisoner whose HIV infection had not reached the threshold for such treatment under WHO guidelines: inadmissible

[N.K. – France](#) - 7974/11 Judgment 19.12.2013

Risk of ill-treatment in Pakistan owing to applicant's conversion to Ahmadism: deportation would constitute a violation

[Benzer and Others – Turkey](#) - 23502/06 Judgment 12.11.2013

Inhuman treatment

Anguish and distress as a result of bombing of civilian villages: violation

[Bouyid – Belgium](#) - 23380/09 Judgment 21.11.2013

Degrading treatment

Alleged administration of a slap by a police officer to an individual during police interview: no violation

4. European Union and associated bodies

4.1. European Union Agency for Fundamental Rights (FRA)

Fundamental rights-based police training – A manual for police trainers

December 2013; 'Police officers who ensure that people are able to exercise their fundamental rights and freedoms earn the respect and trust of the public. With this in mind, this manual sets out to foster such human rights-based police work by integrating human rights training into the heart of police training, in line with the European Union's goals in the field of justice and home affairs.

Downloads:

[Fundamental rights-based police training – A manual for police trainers \[pdf\] en \(1.8 MB\)](#)

[Fundamental rights-based police training – A manual for police trainers - Annex 4 - Compilation of practices; \[pdf\] en \(1018.6 KB\)](#)

The manual translates 'high' principles into specific practical exercises that facilitate police work, and supports police officers in internalising the concepts that drive human rights-based policing – helping to ensure that they are equipped to make the right choices in their daily work. The manual focuses on crucial police-related issues, such as diversity and non-discrimination, the absolute prohibition of torture, and also the human rights of police officers. Tried and tested with different police academies in the EU, the manual is intended as a practical tool for implementing fundamental rights-based policing in the EU.

Download the individual modules of the manual:

[Module 1: Basics of human rights \(pdf 509KB\)](#)

Module 2: Policing from a human rights perspective (pdf 451KB)
Module 3: Human rights analysis - The obligations to respect and to protect (pdf 573KB)
Module 4: The prohibition of torture and inhuman or degrading treatment or punishment (pdf 441KB)
Module 5: Diversity, equality and non-discrimination (pdf 454KB)
Module 6: Module 6: Human rights of police officers (pdf 360KB)

5. News from NGOs & general updates

5.1. *The Association for the Prevention of Torture, Geneva (APT)*

APT launches key publication for Russian-speaking world

Tuesday, December 10, 2013

'To mark United Nations Human Rights Day 2013 the APT is launching the Russian version of its recent publication, [Monitoring Police Custody: a practical guide](#), in Dushanbe, Tajikistan. In doing so, we are also seeking to further engage with Tajik law enforcement officials to combat torture in the country.

The launch takes place at a time when there is a move in Tajikistan to finally open up places of detention to external scrutiny and to consider the ratification of the OPCAT. By making this key publication available in Russian, we hope that national actors will be better equipped to undertake this critically important task of monitoring police detention facilities in future. The launch of *Monitoring Police Custody: a practical guide* will take place on 11 December at an event being co-sponsored by the APT, Ombudsperson's Office, Federal Department of Foreign Affairs, OSCE Office in Tajikistan, OHCHR's Central Asia Regional Office, Open Society Foundations and the UK FCO. The much anticipated monitoring of places of detention in Tajikistan is set to commence in the very near future, a development positively encouraged by various UN human rights mechanisms in recent years. Representatives of the Ombudsperson's Office and civil society are expected to jointly visit the country's detention settings with this aim in mind. [...]

Please see: http://www.apr.ch/en/news_on_prevention/apr-launches-key-publication-for-russian-speaking-world/#.UtVr_yhU-5w for more details.'

Need for joined-up implementation of EU anti-torture tools

Monday, December 9, 2013

In a [joint statement](#) to Members of the European Parliament, the APT and fellow anti-torture groups are calling for a renewed impetus on the implementation of the Action Plan, which was adopted in June 2012, and runs until end 2014.

"17 months after the adoption of the Action Plan, the implementation of paragraph 17, which is dedicated to the fight against torture, leaves much to be desired. Unlike some other sections of the Action Plan, the lack of diligent updates on the implementation of this section of the Action Plan has demonstrated a "business as usual" EU approach to combating torture."

One of the ways to prioritise implementation of the Plan is to reactivate the EU Council taskforce on torture and to engage it in "a regular and meaningful dialogue with civil society".

A draft resolution on eradication of torture, which is currently being negotiated in the European Parliament, provides an opportunity to put the spotlight on EU pledges, and call to realise them. In addition to the joint statement on this draft resolution, the APT has written to the Rapporteur and key Members of the European Parliament. We have provided further suggestions and ideas for the implementation of the EU Action Plan sections dedicated to torture, as well as other important EU tools such as the Guidelines on torture. Read APT's [suggestions](#) and [comments](#) on the draft resolution.'

For more information please see the APT's website at: <http://www.apr.ch/>

APT E-Bulletin NO. 31, November 2013

Tunisia: first torture prevention body in the MENA region

MIDDLE EAST-NORTH AFRICA. Tunisia became the first country in the Middle East - North Africa region to create a National Preventive Mechanism. The National Constituent Assembly of Tunisia, the transitory parliament, adopted on 9 October 2013 the law to establish a National Authority for the Prevention of Torture, mandated to visit all places of deprivation of liberty to prevent torture and ill-

treatment. The law has been drafted in a participatory process, involving experts from civil society and the public administration. Read more

Statement "The adoption of the NPM law in Tunisia brings hope for a torture-free future" (in French and Arabic)

5.2. Penal Reform International (PRI)

Launch event of PRI/ APT Detention Monitoring Tool: Addressing risk factors to prevent torture and ill-treatment

In November, PRI and its partner the Association for the Prevention of Torture (APT) launched a [Detention Monitoring Tool](#) at the Palais Wilson, Headquarters of the UN Office of the High Commissioner for Human Rights in Geneva.

The Detention Monitoring Tool intends to provide analysis and practical guidance to support monitoring bodies, including National Preventive Mechanisms (NPMs), to fulfil their preventive mandate as effectively as possible when visiting police facilities or prisons.

The Tool was launched over a social lunch for members of the UN Subcommittee for Prevention of Torture (SPT), the UN Committee against Torture (CAT), and the UN Special Rapporteur on Torture, all meeting for a joint session.

Over 60 guests were welcomed by Mark Thomson, Secretary General of the APT, and the Tool was introduced by PRI's Regional Director in the South Caucasus, Tsira Chanturia, who explained how the Tool had been developed, piloted and refined with members of the Georgian National Preventive Mechanism earlier in the year.



Short interventions followed from the Chair of the SPT, Malcolm Evans, the Chair of CAT, Claudio Grossman and the UN Special Rapporteur Juan Mendez, who welcomed the Tool in particular in the light of the growing need for practical tools to build the capacity of civil society monitoring mechanisms.

The Tool includes 4 thematic papers and 5 fact sheets and are available online at www.penalreform.org and www.appt.ch in English. The Russian version of the tool will be available in February 2014.

Revision of the UN Standard Minimum Rules – 3rd Expert Group Meeting

The 3rd Intergovernmental Expert Group Meeting (IEGM) on the revision process of the UN Standard Minimum Rules to be hosted by the Government of Brazil in Brasília on 28-31 January 2014.

To facilitate the work of the third expert group meeting, and as requested in E/RES/2013/35, the Secretariat has prepared a working paper (UNODC/CCPC/EG.6/2014/CRP.1) integrating all submissions from Member States received until 30 September 2013:

http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM_Brazil_Jan_2014/UNODCCCPCJEG62014-CRP1-E-V1388548.pdf

All submissions and meeting documentation is available on the UNODC website at <http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings6.html>, including a submission by the Subcommittee for the Prevention of Torture.

A second submission will soon be finalised and posted summarising further recommendations of the Essex Group of Experts. This group of independent experts had been convened by Essex University and PRI in 2012, resulting in what has become known as the « Essex paper » and was reconvened in September 2013 to discuss specific points that had either not been addressed in sufficient detail or gave rise to debate on the content of international law at the IEGM in Buenos Aires in December 2012 and/or at subsequent meetings. The outcome paper will shortly be available at PRI's website, news section and at the following link: <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/>

5.3. APT & PRI

A new Detention Monitoring Tool jointly published by the APT (Association for the Prevention of Torture) and PRI (Penal Reform International) is available:

<http://www.apr.ch/en/resources/detention-monitoring-tool-addressing-risk-factors-to-prevent-torture-and-ill-treatment/?cat=62>

The tool aims to provide analysis and practical guidance to help monitoring bodies, especially NPMs, to fulfill their preventive mandate when visiting police facilities or prisons. It includes both “Thematic papers” and practical “factsheets” on the following issues:

Thematic papers:

- Balancing security and dignity in prisons: a framework for preventive monitoring
- Institutional culture in detention: a framework for preventive monitoring
- LGBTI persons deprived of their liberty: a framework for preventive monitoring
- Women in detention: a guide to gender-sensitive monitoring

Factsheets:

- Body searches
- Instruments of restraint
- Pre-trial detention
- Staff working conditions
- Video-recording in police custody

5.4. Promoting Pre-trial Justice in Africa (PPJA): Detention Survey

Survey on Detention Visiting Mechanisms in Africa: <http://ppja.org/regional-information/africa/survey-of-detention-visiting-mechanisms-in-africa/view>

5.5. International Rehabilitation Council for Torture Victims

The full contents of TORTURE Journal, Volume 23, Number 2, 2013, are now available online. Access all contents free of charge at www.irct.org/torture-journal

Volume 23, No. 2, 2013 - Thematic Issue on Music in Detention

For more information please contact: Fábio Pereira, Communications Officer: fp@irct.org

6. Immigration detention and monitoring: updates

6.1. Council of Europe: Immigration Issues

6.1.1. Migration Co-ordination Division update on work in the field of asylum and immigration

Recent editions of the Migration Co-ordination Newsletter were published in **November and December 2013**. The Newsletter provides a glance at some of the relevant Council of Europe activities on migration, asylum and integration. It will be published monthly and sent electronically to interested parties. As we all know, migration constitutes an ever-growing concern within the field of human rights and different aspects of migration profoundly affect social well-being. In the foreseeable future, these issues will only grow in importance and relevance across Europe. Here, the Council of Europe has a lot to offer. The Migration Co-ordination Division hopes that this newsletter can give readers an insight into some of the debates and migration related activities as they unfolded at the Council in the months of November and December. The Newsletters are available at: http://www.coe.int/t/democracy/migration/newsletter/newsletter_en.asp

You can subscribe to future newsletters by sending an email to migration-newsletter@coe.int and you can search the archives for previous newsletters at http://www.coe.int/t/democracy/migration/newsletter/newsletter_en.asp.

'The need for European Immigration Detention Rules reiterated

Strasbourg, 13 January 2014; 'Her Majesty's Chief Inspector of Prisons in England and Wales, Mr. Nick Hardwick, in a letter sent to the Secretary General of the Council of Europe, Mr. Thorbjorn Jagland, draws special attention to the joint call of European National Preventive Mechanisms against torture for the codification of European Immigration Detention Rules. At a conference held in Strasbourg in November, representatives from virtually all National Preventive Mechanisms (NPMs) against torture of Council of Europe Member States expressed a need for a set of European Immigration Detention Rules to ensure that people detained for immigration purposes are treated in accordance with human rights norms and principles. Such rules, according to the NPMs, could be of equivalent status to the European Prison Rules and provide clear guidance to detention authorities and persons working with immigration detainees, with the overall aim of preventing ill treatment and torture. The NPMs consider that the Council of Europe is the organization that is best placed to realize this endeavor. In his letter to the Secretary General, Mr. Hardwick points out that the development of such minimum standards in the field of immigration detention is consistent with, and therefore supportive of, the initiative proposed in the Secretary General's Framework for Council of Europe Work on Migration Issues 2012-2013. The hope is expressed that the work to codify immigration detention standards can continue as soon as possible.'

- [Letter to the Secretary General](#)
- [Strasbourg Declaration](#)

Support for Council of Europe standards on immigration detention

Strasbourg, 21-22 November 2013; 'Representatives from virtually all National Preventive Mechanisms (NPMs) against torture of Council of Europe Member States express a need for a set of European Immigration Detention Rules to ensure that people detained for immigration purposes are treated in accordance with human rights norms and principles. At a Conference on Immigration Detention in Europe held in Strasbourg 21-22 November, the fundamental distinction between criminal and administrative detention was discussed and NPMs voiced unequivocal support for the Council of Europe to develop minimum standards in the field of immigration detention. Such rules could be of equivalent status to the European Prison Rules and provide clear guidance to detention authorities and persons working with immigration detainees across Europe, with the overall aim of preventing ill treatment. There is great concern that people detained for immigration purposes are often in a particularly vulnerable position, some having survived trauma in their country of origin, exploitation and long periods of detention with uncertainty about the future.

The Conference was organized jointly by the Council of Europe's Migration Co-ordination Division, Her Majesty's Inspectorate of Prisons (HMIP), part of the UK National Preventive Mechanism against torture and the Sub-Committee on Detention of the Parliamentary Assembly. It brought together

delegates from NPMs across Europe, academics and international bodies including the Sub-Committee for the Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT) as well as the Sub-Committee on Detention of the Committee on Migration of the Parliamentary Assembly of the Council of Europe.

The conference resulted in a Declaration wherein "the European NPMs gathered in Strasbourg support work to develop the codification of a set of Immigration Detention Rules applicable to Council of Europe member States, which are based on the precedent of the European Prison Rules". [...]

Conference documents:

Programme

Conference Briefing Paper

Speaker Biographies

Selective Bibliography

Compilation of existing standards

Immigration detention: draft standards framework

Strasbourg Declaration

List of participants

Alberto Achermann - PPT Presentation

Mary Bosworth - PPT Presentation

Sarah Cutler & Hindpal Singh Bhui - PPT Presentation

Edouard Delaplace - Speech (in French only)

Michael Flynn - Speech

Annette Groth - Introductory remarks

Nick Hardwick - PPT Presentation

Latif Hüseyinov - Speech

Sandra Imhof - PPT Presentation

Eleni Koutroumpa - Speech

Cédric de Torçy - PPT Presentation

6.2. Council of Europe Parliamentary Assembly (PACE) Migration Committee

Rapporteur deplores 'no lessons learned' on lives lost in the Mediterranean

Strasbourg, 29.11.2013; "I am shocked to read the results of an investigation into the 11 October boat tragedy in the waters between Lampedusa and Malta, reported in today's L'Espresso magazine, which reveals that over 200 people fleeing Syria died when they could have been saved," said Tineke Strik (Netherlands, SOC), rapporteur for the Parliamentary Assembly of the Council of Europe (PACE) on lives lost in the Mediterranean.

"It is clear that many of the failures I identified after my own investigation into an incident in 2011, in which 63 migrants died when their distress calls were ignored, have been repeated.

What particularly concerns me are the alleged delays in going to the assistance of this boat. It would appear that these were caused by, firstly, a ping-pong disagreement between Italy and Malta over who should take responsibility for the rescue and, secondly, that the rescue signals sent out did not have the urgency needed to trigger immediate assistance. Today's fresh revelations also appear to show that, once again, ships were close by and could have gone to the rescue more quickly. All these issues urgently need further investigation. What is clear is that crucial hours leaked away that could have been used to save lives.

When the situation of the boat became dramatic, both Italian and Maltese Search and Rescue sent help to the sinking boat, and by so doing saved 212 lives. This is to be applauded, as are the stepped-up measures of "Operation Mare Nostrum" subsequently launched by the Italian authorities. But I ask the question: what about the 200 persons who drowned? Could not their lives have been saved if lessons had been learned from the 2011 incident that I investigated?"

Mrs Strik is currently preparing a follow-up report to her earlier inquiry, due in the spring of 2014.'

For more details please see: <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4779&lang=2&cat=134>

Common standards for forced returns of irregular migrants and failed asylum seekers

22/11/2013; 'Europe urgently needs to draw up common standards for treating the estimated 300,000 irregular migrants and failed asylum seekers who are forced to return to their home countries every year by land, sea or air, according to PACE's Standing Committee. Approving a report by Anne-Mari Virolainen (Finland, EPP/CD) today in Vienna, the committee said these should cover appropriate training for escorting staff, including on medical matters and restraint or coercive techniques, as well as standardised information provided to those being returned. Member states should also co-operate with the EU's border agency Frontex to monitor such returns, the committee said.'

7. NPM discussion topic No. 2: “Medical confidentiality and enforced deportations” (Con’t)

7.1. Introduction

‘As monitoring body of forced return flights, the Swiss NPM is currently facing important difficulties related to the applicability of the medical secret. While some prison doctors accept to share their concerns regarding the health status of their patients when learning about an imminent return operation, others on the contrary refrain from sharing any information on the grounds that this would violate the medical secret. However, by refusing to share key information with the accompanying doctor, they put the lives of the deportees at severe risk and jeopardize the entire return operation.

The CNPT [Swiss NPM] has monitored numerous cases where deportees suffered from severe physical problems and/or psychological disorders. One deportee had even been on a hunger strike for several days prior to departure. In all these cases, the accompanying doctor had received no prior information regarding the health status of the deportees on behalf of the prison doctor and had to decide ad hoc whether the person could be safely returned to her home country. In other cases, due to the lack of communication, the accompanying doctor had received no information about special medication needed by the deportee, which then was not available on the flight.

In Switzerland, the problem seems to be clearly related to the federalist structure and the splitting of competences at different levels. We have raised the issue with the authorities and are currently working to find a suitable solution with the support and authority of the Swiss Medical Association and other key actors in that field.

The Swiss NPM would therefore be very grateful to learn more about the legal situation and the practical handling with respect to the medical secret in your countries and therefore submits the following questions:

- How is the question being dealt with in the legislation of your country?
- How is the medical secret being applied to detention and/or deportation?
- To what extent the medical secret is considered applicable in the field of detention and/or deportation?
- Have you been confronted with any such difficulties as the ones mentioned above in the field of detention and/or monitoring of return flights?’

7.2. SPT members’ views

‘Medical care is intended to offer the best attainable health of a person through general and focused advise, protection from harmful exposures and treatment of diseases based on the person’s history a clinical examination and additional para-clinical examinations. Without access to this relevant information health professionals shall not be in a position to take responsibility for the persons health in the most suitable manner.

In principle, the person must be informed about and give consent to all steps in the collection and sharing of data, incl. the appropriate examinations, and the treatment.

In the case of deportation there are some preconditions:

It should not be the accompanying doctor who decides whether the person’s medical condition allows for deportation except in acute unpredicted situations arising during the transport; that responsibility would lie with the health professional who normally cares for the person.

The information shared between the caring and the accompanying health professional should be 1: void of all irrelevant data not related to the care of the person during the deportation procedure, 2: handed over to the deportee when the responsibility of the departing authorities ends, and kept confidential between the involved health professionals and the deportee.

Given these two preconditions it is hard to see that the deportee during the deportation in any way can benefit from having health care which is not based on relevant existing data.

There are exceptions to the rule of an informed consent as a prerequisite to any examination or treatment, e.g. if the person suffers from a psychosis treatment may be given under certain circumstances as defined in the legislation; or if the person is suspected of having committed a

crime; in such case the legislation may allow e.g. that blood is taken without consent, e.g. after road accidents where alcohol ingestion is suspected.

In the first example health professionals act in the best interest of the person. In the second example they act in the interest of the society.

In the example of deportation there are elements of interests of the person and interests of the society.

Deportation is (supposed to be) a legal and legitimate procedure implemented by the society against the will of the person.

Normally health care consists a cooperation between the patient and the health care providers. The responsibility of the providers is to offer the best access to a diagnosis (data collection incl. para clinical examinations) and to offer the best available treatment, all based on informed consent. The responsibility of the patient is to decide whether or not to accept.

In the deportation situation the balance of responsibility is somewhat altered, the free choice of the person being reduced. Thereby the responsibility of the authorities, incl. health professionals involved, is augmented.

Self harm, which normally is the responsibility of the person who is not psychotic, is also a matter of the authorities in certain situations; e.g. authorities must protect against it in places of detention. All steps in the deportation procedure have similarities with being held in a place of detention.

Having access to the persons medical record may help the health professional, e.g. to prevent allergic shock or may suit him/her to bring on the relevant medication for the treatment of an epileptic fit or diagnose hypoglycemia in a diabetic. Many other examples could be given.

Depriving the health professional the relevant information may seem as an intention of the person to harm him /herself "passively", and /or to jeopardize the flight transfer, which supposedly is legitimate. Given the two preconditions for information sharing, it is hard to see that the health professional's access to relevant information can harm the deportee. The denial, on the other hand, may harm the person. The deportee should give a valid argument why he /she would want to hinder access of the health professional in charge of his /her care during the deportation to the relevant data. If no such argument exists the relevant information should be accessible for the accompanying doctor.

In conclusion: We support the view that doctors accompanying deportees must have access to the deportee's relevant health data.'

Hans Draminsky Petersen, M.D. & Mari Amos, focal point for the NPMs in Europe

Members of the SPT

7.3. Overview of NPM responses

Response from the NPM of Estonia

'More precisely, as we understand, the problem has occurred in the process of deportation where the accompanying doctor has not received sufficient information from the prison doctor if the person could be safely returned to the country or if there is urgent need of special medication etc.

First of all, a distinction should be made, if the lack of communication has occurred due to the: A) legal barriers to transfer of information between medical staff (medical secret) or B) administrative procedures and practical arrangements that should guarantee that the information actually reaches the target.

A) There are no legal barriers in Estonia to processing or exchanging personal medical data between competent medical staff (as the prison doctor and the accompanying doctor) without the consent of data subject. In 2007 with an amendment of the Data Protection Act also the Health Services Organisation Act was amended and the following special regulation on the exchange of personal data of medical professionals was added into the Act:

§ 4¹ Processing of personal data

(1) Health care providers, who have the obligation to maintain confidentiality arising from law, have the right to process personal data required for the provision of a health service, including sensitive personal data, without the permission of the data subject.
[...]

For further information please see Health Services Organisation Act (in English): <http://www.legaltext.ee/text/en/X40058K11.htm> and Data Protection Act §§ 4, 14 (in English): <http://www.legaltext.ee/text/en/XXXX041K1.htm>.

B) In practice, the Estonian medical doctors dealing with detention and deportation do exchange medical information of inmates/deportees and there have been no issues similar to those addressed in your request. Health data exchanged between medical professionals is by default inaccessible for the administration. The doctor in the Deportation Centre collects the medical information (i.e. requests information from the prison doctor) and files a report for the person in order to assist him/her obtaining medical aid after deportation. There is also possible to postpone the deportation temporarily, if the medical assessment suggests it. Medication is provided for the journey in case of medical need.

The Chancellor of Justice has suggested that the health related information should follow the patient in his/her deportation.

Additionally, it should be mentioned, that in Estonia there are currently no medical doctors assigned to routinely accompanying deportations. The reason is that in practice there has been no deportation in groups with special flights.'

Response from the NPM of Georgia

'In Georgia the protection of medical confidentiality is defined by the "Law of Georgia on the Rights of Patient". In practice this requirement is often not met. For example in the prison the administration is often aware about the patient's health condition. The reports of the national preventive mechanism repeatedly highlighted that this violation shall be eliminated, however the problem remains.'

Response from the NPM of Germany

'Here's the situation in Germany.

1. Like Switzerland, Germany is a federal state. While the states (Länder) are responsible for prisons and facilities for persons pending deportation, return operations are executed by the Federal Police. There are only very general legal rules on returns, but the Federal Ministry of the Interior has drawn up more detailed internal rules on the practical execution of such operations. According to these rules, the Land authority that wants to return a person to a third country (usually the authority for foreigners) has to announce this to the Federal Police together with all information relevant to determine whether the returnee has to be accompanied. This information comprehends medical data. In addition, prior to returning the person the Land authority has to undertake a medical examination of the returnee to determine his or her fitness to fly.

2. The confidentiality of medical data of prisoners is ruled by Section 182 of the federal Prison Act (similar rules are contained in the prison acts of the Länder that are gradually replacing the federal Prison Act) and may be disclosed to other institutions under the terms of subsection 3. **Section 182 Protection of Special Data** (1) The religious or philosophical confession of a prisoner and personal data collected on the occasion of medical examinations may not be made general knowledge within the institution. Other personal data on the prisoner may be made general knowledge within the prison if this is necessary for ordered co-existence in the prison; Section 180 (8) to (10) shall remain unaffected. (2) Personal data which have been entrusted to the persons named in Section 203 (1) Nos. 1, 2 and 5 of the Criminal Code by a prisoner as a secret, or which have otherwise become known about a prisoner, shall also be subject to confidentiality as against the prison authority. The persons named in Section 203 (1) Nos. 1, 2 and 5 of the Criminal Code shall disclose themselves to the Head of the Institution where this is necessary for undertaking the tasks of the prison authority or to avert considerable dangers to the life and limb of the prisoner or of third parties. The physician shall be entitled to disclose secrets which became known to him in the context of general healthcare where this is indispensable to carry out tasks of the prison authority or to avert considerable dangers to the life and limb of the prisoner or of third parties. Other powers to disclose shall remain unaffected. The prisoner shall be informed prior to data collection of the powers to disclose in accordance with the second and third sentences. (3) The data disclosed in accordance with subsection (2) may only be processed or used for the purpose for which they were

disclosed or for which it would have been permissible for them to be disclosed, and only under the same preconditions under which a person named in Section 203 (1) Nos. 1, 2 and 5 of the Criminal Code would himself have been entitled. Under these preconditions, the Head of the Institution may generally permit direct disclosure to certain prison staff in general terms. (4) Subsection (2) shall apply mutatis mutandis where physicians or psychologists are commissioned outside prison with examining or treating a prisoner, with the proviso that the commissioned physician or psychologist is also entitled to inform the prison doctor or the psychologist in the institution entrusted with treating the prisoner. Under this rule, medical doctors may disclose medical information to the prison authorities who may then pass them on to the Federal Police for the purpose of the execution of the return decision. However, only such data may be passed on that is relevant to the health of the returnee or other persons (accompanying police officers, other returnees).

3. See 2)

4. The Federal Agency has, until now, accompanied two collective return operations. Such operations are generally accompanied by a medical doctor. Furthermore, at the operations we had accompanied, the Land authorities had employed medical doctors to survey the collection of returnees from their homes or from detention pending deportation facilities. These doctors briefed the medical doctor employed by the Federal Police to accompany the return operation and handed over to him the medicine sick returnees would need during four weeks following their arrival to the receiving country. As several Länder detain persons pending deportation in prisons or in facilities that are managed by the prison administration, there is reason to believe that medical information on people deported upon having served a prison sentence would be shared with the Federal Police doctor in the same way as we observed concerning other returnees. In case a Land is unwilling for whatever reason to provide medical information to the Federal Police, the Federal Police can object to returning the persons concerned and they have to be taken back by the Land authorities and be allocated at the Land's expenses until a renewed return trial can be undertaken. There should hence be a proper interest by the Länder to provide the Federal Police with the required information to facilitate return operations.'

Response from the NPM of Luxembourg

The luxemburgish NPM does not monitor return flights. In Luxemburg, those flights (only the FRONTEX-flights) are monitored by the National Red Cross, the others are occasionally monitored by the OIM.

We monitor closely the entire procedure during detention, transportation to the airport and our mission ends at the entrance of the aircraft.

We normally require from the accompanying police officers an extensive report.

Concerning the medical secret, we never had any problems regarding immigration detention.

At the beginning of our mission in 2010, we encountered very important problems, we have been often refused medical data, mainly from independent doctors and paramedics.

As we consider that these information is in some cases absolutely required, we arranged meetings with the Ministry of Health, the National medical society, the corporate authority of medical professions (Collège medical) as well as with the general directors of all national hospitals.

These operations took roughly about one year and needed a very important effort from our part in explaining, lobbying, and reassuring the medical staff.

Since the last two years we never again faced the slightest problem with any medic regarding the medical secret. The right of the NPM requesting such information is no more contested. We even often observe that medics are contacting us to share information in cases where they suspect themselves a possible violation of human rights. (e.g. suspect corporal injuries on a prisoner recently arrested and transferred to a detention facility, complex problems often with several public health care institutions at the same time regarding psychiatric patients etc).

As an example, we had a suicide in a detention facility last night. My colleague and I were on the spot. We returned to the center this morning and requested an entire copy of both medical files, the somatic and the psychiatric one.

Both files were immediately handed out without any problem.

So, no problems for us in this matter, but I have to repeat, it was a long and difficult way to reach this point.'

Response from the NPM of Slovenia

'Regarding Your query on medical secret(s), I wish to explain that Slovenian NPM has yet to encounter situations like the ones You describe, so we have no such first-hand experience. According to the Head of the Aliens Centre, however, in such cases deportee would be accompanied by one of the doctors from the centre (working there on contract basis), i.e. the one who was already treating the individual anyway.'

8. NPM discussion topic No. 2: “monitoring facilities that provide long-term care for people with dementia”

8.1. Introduction

The Czech NPM has contacted the European NPM Network with the below:

“Since February 2013 the Czech NPM has conducted visits of facilities where care for people with dementia is provided (nursery homes, homes for elderly...). We would like to ask you to share your experience so that we can compare our findings and topics of our inspections.

Our questions are:

- Do you carry out visits (inspections) of facilities which provide long-term care for people with dementia? Or have you done so already?
- If the first answer is yes, what are the most important topics that you check during your visits?
- What rights are violated/endangered most frequently?”

The overview of the full set of responses to these questions from the European NPM Network members is below.

8.2. Overview of responses from the European NPMs

Response from the NPM of Slovenia

1. Do you carry out visits (inspections) of facilities which provide long-term care for people with dementia? Or have you done so already?

‘Ever since the launch of the national preventive mechanism (NPM), the Human Rights Ombudsman of the Republic of Slovenia, within the framework of its duties entrusted under the NPM, and selected NGOs have been carrying out visits to the social care institutions providing care to persons with dementia (as a rule, residential homes for the elderly). These persons are in long-term accommodation, generally lasting until their death. Within NPM framework, usually up to ten such visits are carried out per year. Last year, we started with verification visits to those institutions with the most frequent violations of the rules and/or with the worst living conditions. These visits are proportionately distributed over the whole country and are carried out regardless of the size or the ownership structure of the institution in question. The choice of the institution(s) to be visited in a particular year depends on the initiatives received by the Human Rights Ombudsman following the establishment of inadequate conditions and on recommendations given by the NGOs. Particular visits are carried out in the presence of an external expert – a psychiatrist.

2. If the first answer is yes, what are the most important topics that you check during your visits?

We check the following:

- the living conditions of residents (the size of rooms and the number of beds in them, the existence and placing of emergency beds, the availability of sufficient space for the residents’ belongings, the existence of night lamps and of emergency call buttons, the staff response time, the number of toilet facilities and bathrooms, the frequency of provision of care, the living room, the room where occupational therapy is provided, how this room is adapted for persons in wheel-chairs, and so on);
- the procedure for the placement of a resident in a secure section/ward (the existence of the resident’s consent and the resident’s ability to give such consent, notification to the court and the course of judicial proceedings, the timeliness of requests for the renewal of such placement, etc.);
- the use of special security measures (their method of implementation, the ordering authority, providing information to the director and the resident’s relatives, filling in records, implementation inspections, etc.);
- the presence of personnel during particular hours of the day and at weekends and during holidays;
- the activities that secure section residents can take part in and their integration into the way of life at the institution level;

- care provided to residents (access to a general practitioner and psychiatrist, care provided to patients with incontinence, access to a hairdresser and the cleaning of premises);
- the possibilities for spending time outdoors (the frequency of such outdoor time, persons allowed outdoor time and keeping the corresponding records);
- the situation concerning complaints (rules regulating the complaint procedure, access to boxes for filing complaints, access to writing materials, and records of received complaints and commendations);
- the provision of religious care (for various religions).

3. What rights are violated/endangered most frequently?

During our visits, we constantly note that homes for the elderly fail to notify the competent courts of the placement of persons in secure sections. Such placements are made on the basis of a resident's consent; however, given such residents' psychological state, their ability to give such consent is too rarely subject to the opinion of a psychiatrist. The consent is often given by the person's guardian; this, however, is not sufficient with respect to the Mental Health Act (unless that person has been deprived of the capacity to enter into contracts). Even though the homes for the elderly may eventually notify the competent court, they usually fail to take active part in the proceedings; as a result, such submissions are usually dismissed by the court.

Some of the inspected institutions resort to special security measures such as restraining particular persons in their beds at night. Quite often, such measures are taken without a relevant order from an authorised person, the restrained person is not provided with constant supervision, records may be deficient, there is non-compliance with the legally prescribed period of restraining and there is failure in the part of staff to inform relevant persons of the measure taken.

We also constantly draw attention to the lack of necessary personnel during the night. During the night, institutions of this type, as a rule, employ only two members of staff for the whole institution. This means that ensuring permanent presence of personnel in secure sections is not feasible, which is worrying from the point of view of residents' safety.

Very often, these sections have no boxes for collecting complaints. This prevents people with dementia from submitting anonymous complaints. In response to the institutions' view that people with dementia are unable to formulate complaints, we consider that it is very important to give them a chance. Finally, whether such residents (or all of them) would indeed be able to write a complaint (or have someone else do this for them) we do not consider relevant.'

Response from the NPM of France

CGLPL [the French NPM] does visits of psychiatric hospitals. You can find in our Web Address some information that could be interesting: <http://www.cgpl.fr/en/>

Response from the NPM of Estonia

- Do you carry out visits (inspections) of facilities which provide long-term care for people with dementia? Or have you done so already?

Yes, the Chancellor of Justice inspects the facilities which provide short- and long-term care for people with dementia since 2007 when the Chancellor of Justice became the NPM in Estonia. In 2013, we visited 9 nursing homes and 1 care home. In addition, some of the people with dementia are also living in special care homes together with people with mental disorders. In 2013, we visited 12 such care homes.

In Estonia, a nursing home is an institution, where people who need short- or long-term care are looked after (including people with dementia). Nursing homes must have carers and nurses at the premises and a medical doctor must regularly visit the patients. Also care homes provide care services, but they do not have to provide a professional nurse service or regular medical doctor's visits. These are usually the places which provide long-term care. We do not have special institutions for people with dementia, so they are looked after in ordinary care homes or sometimes in special care homes meant for people with mental disorders.

- If the first answer is yes, what are the most important topics that you check during your visits?

The primary aspects that have been checked during the inspections are as follows:

- Ensuring humane treatment: whether the client receives adequate care services (including living conditions, food and beverage, information about their rights, how the care is provided, how client/patient can call for help, overcrowding etc.). The Chancellor also inspects how employees of care institution treat clients, whether there has been ill-treatment and mental or physical abuse incidents.

- Ensuring fundamental right to freedom: how is arranged client's leaving from the care institution, whether clients' freedom of movement has been restricted by locking the rooms/wards, giving medicines or by other means.
- Protection of privacy: whether the person has consented to provision of care services and is still willing to receive the services (which is also strongly linked to the right to freedom).
- Ensuring right to protection of health: how is guaranteed access to medical aid, how quickly clients get to a competent medical specialist if a new medical symptom occurs; whether a nurse emergency calling system is available and properly used (f. ex. whether buttons are reachable and easily used (i.e. patient does not need strength to push the button), whether clients are informed about the system, etc.).

• What rights are violated/endangered most frequently?

Most frequently noticed violations:

- lack of a nurse emergency calling system;
- locking means on the clients' ward and room doors, that could be opened only from the outside (latches, hooks, door handles which are located just outside the door), which means that restrictions of movement could be regularly used;
- unlawful usage of fixation means;
- lack of clients' consent to provision of care services.'

Response from the NPM of Switzerland

'The Swiss NPM has not yet visited such places. For the time being, we definitely lack the resources in terms of personnel and the know-how to do so.

However, we intend to conduct two field visits next year, the aim of which is first, to assess the methodological challenges of these types of institutions, especially the fact that our primary source of information is not accessible for interviews. Second, we hope to come to grips with the institutional functioning and specific problems encountered in these places, in particular the application of physical and medical restraints.

Last but not least, we will need to think about the added value of our visits in a field where many other actors are already involved...'

Response from the NPM of Spain

1. Do you carry out visits (inspections) of facilities which provide long-term care for people with dementia? Or have you done so already?

The NPM of Spain started carrying out visits to psychiatric hospitals and social centres for persons with dementia and mentally disabled people. We've done 3 visits of this kind so far: one in 2012 and two in 2013. The NPM plans to increase each year the number of visits to these places.

2. If the first answer is yes, what are the most important topics that you check during your visits?

The visit team is composed by two members of the NPM (lawyers) and two or three external experts (psychiatric doctors, medical doctors and psychologists).

The lawyers check the proceedings for accepting a patient in the centre: the existence of the patient's consent and his/her ability to give such consent, the authorisation of the court in case there is not consent nor ability to give it, the renewal of the placement, etc.

The external experts check the medical treatment, psychological rehabilitation, medication, use of means of restraints, the adequacy in quantitative and qualitative terms of the staff, etc.

As well, from both perspectives (legal and medical) we examine the facilities, the internal functioning and rules of the centre, the living conditions, the leisure activities, the participation of patients and their families in the centre, the outings, the complaints procedure, etc.

3. What rights are violated/endangered most frequently?

All 3 centres visited were completely different from each other, so it's not easy to draw general conclusions at this point. However, we could say all centres offered a good residential attention in

terms of comfort, care... while the weak spots are mostly the rehabilitation activities and treatment.

As well, the legal proceedings for accepting a patient in the centre are often not suitably fulfilled: usually the centres don't require the court authorisation in case of lack of ability to give consent, being the consent often given by the person's guardian. In those cases where it does exist a court authorisation, the reports informing about the state of the patient which are sent every 6 months are usually identical copies, only changing the dates.

We didn't find special irregularities relating means of restraint. The doctors considered that their use was appropriate and only when it was necessary. However, the main problem is the absence of an State regulations of the use of means of restraints in these kind of social-health centres.