

COMPREHENSIVE REPORT
BY THE COMMISSIONER
FOR FUNDAMENTAL RIGHTS
ON THE ACTIVITIES OF THE OPCAT
NATIONAL PREVENTIVE MECHANISM
IN 2021

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THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY
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Table of Contents

Introduction	7
Abbreviations	8
1. The legal background of the operation of the National Preventive Mechanism	9
1.1. The Fundamental Law of Hungary	9
1.2. International treaties	9
1.2.1. UN instruments	9
1.2.2. Instruments of the Council of Europe	11
1.3. Preventive activities of the National Preventive Mechanism	11
1.4. Special international and national requirements that have governing effect for the Covid-19 pandemic	11
1.4.1. International human rights guidelines regarding the Covid-19 pandemic	11
1.4.2. Extraordinary statutory and official provisions issued with regard to places of detention	13
1.4.2.1. The option to use the vaccine against the coronavirus and mandatory vaccination	13
1.4.2.2. Immunity certificates	14
1.4.2.3. Extraordinary regulations affecting penitentiary institutions	14
1.4.2.4. Provisions related to social care and child protection institutions	14
2. Staff members participating in performing tasks related to the NPM and the costs related to performing the tasks of the NPM	17
2.1. Public servants in the Office of the Commissioner for Fundamental Rights	17
2.2. Costs related to performing the tasks of the NPM in 2021	17
3. The NPM's cooperation with civil society organizations	19
3.1. The tasks of the Civil Consultative Body	19
3.2. The meetings of the CCB	19
3.3. Further cooperation with civil society organizations	20
4. Register of domestic places of detention and the NPM's annual schedule of visits	21
4.1. Register of places of detention	21
4.2. Places to visit selected by the NPM	22
4.3. The 2021 schedule of visits of the NPM	23
5. The NPM's visits	25
6. Focal points of the NPM's visits	27
6.1. Focal points of general visits	27
6.1.1. Admission	27
6.1.2. Material conditions of detention	27
6.1.3. Vulnerable groups	27
6.1.4. Medical care	28
6.1.5. Nutrition	28
6.1.6. Activities, free time	28
6.1.7. Coercive, disciplinary, and restrictive measures	28
6.1.8. Relations between persons deprived of their liberty and their relations with the personnel of the place of detention	28
6.1.9. Complaints mechanism	29
6.2. Special types of visits	29
6.2.1. Visits with a Covid-19 focus	29
6.2.2. Follow-up visit	30
7. The report of the NPM	33
7.1. Preparation of the report	33
7.2. Introduction	33
7.3. Prohibition of sanctions	33
7.4. Facts and findings of the case	33
7.5. Measures taken by the NPM	34
7.5.1. Initiative	34
7.5.2. Recommendation	35
7.5.3. Initiation of proceedings by the prosecution	35
7.5.4. Reporting to the National Authority for Data Protection and Freedom of Information	36
7.5.5. Legislative initiative	36
7.6. Publishing the NPM's reports	36

8. Persons deprived of their liberty at the places of detention visited by the NPM	37
8.1. Detainees in penal institutions	37
8.1.1. Headcount and occupancy, placement of detainees	37
8.1.2. Measures taken with a view to preventing coronavirus infections	38
8.1.3. Personnel	38
8.1.4. Education and employment	38
8.1.5. Communication	39
8.2. Police custody	40
8.3. Residents of social care institutions	41
8.4. Residents living in child protection institutions	42
8.4.1. Measures taken with a view to preventing infections	43
8.4.2. Material conditions	43
8.4.3. Personal conditions	44
8.4.4. Participation in education	44
8.4.5. Keeping contact during the state of danger	45
8.4.6. Right to complain	46
9. Dialogue about the measures taken by the NPM	47
9.1. Responses to the measures taken after visits to prison establishments	47
9.2. Responses to the measures taken by the NPM following its visits to police detention facilities	48
9.3. Responses to the measures taken by the NPM following its visits to social care institutions	49
9.4. Responses to the measures initiated by the NPM following its visits to child protection institutions	49
10. Legislation-related activities of the NPM	51
10.1. Proposals in the NPM's reports	51
10.2. Ex-post review of norms	51
10.3. Powers related to draft legislation	51
11. The NPM's international relations	53
11.1. Relations between the NPM and the Subcommittee on Prevention of Torture	53
11.2. The NPM's relations with the national preventive mechanisms of other countries and international organizations	56
11.2.1. South-East Europe NPM Network	56
11.2.2. Conferences	57
12. Media and dissemination	61
12.1. Media	61
12.2. Dissemination	61
12.2.1. Educational activities	62
12.2.2. Publications	62
12.2.3. Participation of the staff members of the OPCAT Department in training sessions and professional events	62
Summary	63

INTRODUCTION

As of 1 January 2015, the Commissioner for Fundamental Rights has performed the tasks of the National Preventive Mechanism (hereinafter referred to as: NPM) besides his general competence to protect fundamental rights prescribed by Article 30 of the Fundamental Law of Hungary. The NPM's task is to regularly examine the treatment of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment, even in lack of petitions or detected improprieties.^[1]

In his activity pursued since 2015, it was in 2020 that the NPM first encountered the extraordinary difficulty that was caused by the coronavirus pandemic in the lives of persons deprived of their liberty. The process that began in 2020 completely determined 2021, as in 2021, the NPM paid all his visits with a key focus on examining how the protection of detainees from the epidemic, who are vulnerable as they are, could be implemented, and how the balance between the restrictive measures that are unavoidable in this situation, and ensuring fundamental human rights could be reached at the institutions subject to inquiry.

At the same time as the state of danger declared by Government Decree No. 478/ 2020 (November 3) was terminated by Government Decree No. 26/2021 (January 29), the state of danger ordered by Government Decree No. 27/2021 (January 29), with effect from 8 February 2021, existed all through 2021. In the constant state of danger, a key role was

assigned to the NPM's monitoring task, this is why this activity was determined by the endeavour to visit as many places as possible, for a short duration, in line with the international human rights guidelines and taking the "do no harm" principle into account. In 2021, the NPM visited a total 23 places of detention, namely 14 penitentiary institutions, 3 police headquarters and 1 police station, 2 children's homes and 1 reformatory, 1 old-age home and 1 residential care home for persons with disabilities. He issued as many as 11 reports on his experience of these visits.

In general, it can be stated that the places of detention have placed great emphasis on keeping coronavirus out of the institutions by the preventive measures that they had applied. As the reports issued in 2021 suggest, this endeavour could be called successful in this phase of the epidemic as well, the virus could be localised in most places. However, there was such an institution where even death occurred in 2021, due to the coronavirus infection.

The comprehensive 2021 NPM report is the account of a very hard period. I am publishing this report in the hope that the activities and experience of the NPM help the places of detention achieve even more efficient protection against the coronavirus pandemic and improve the living conditions of persons deprived of their liberty.

2022, Budapest
Dr. Ákos Kozma

ABBREVIATIONS

Ombudsman Act (CFR Act)	Act CXI of 2011 on the Commissioner for Fundamental Rights
CCB	Civil Consultative Body
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRPD	Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007
SEE-NPM Network	South-East Europe National Preventive Mechanism Network South-East Europe NPM Network
MoHC	Ministry of Human Capacities
UN	United Nations
UN Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Legislative Decree 3 of 1988
Department	OPCAT National Preventive Mechanism Department
Office	Office of the Commissioner for Fundamental Rights
UN Committee against Torture (CAT)	Committee Against Torture
Subcommittee on Prevention of Torture (SPT)	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Act CXLIII of 2011

1. THE LEGAL BACKGROUND OF THE OPERATION OF THE NATIONAL PREVENTIVE MECHANISM

The State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.^[1]

1.1. THE FUNDAMENTAL LAW OF HUNGARY

Pursuant to Article III (1) of the Fundamental Law of Hungary, “No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude.” Based on Article 53(1) of the Fundamental Law of Hungary, “in the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate the consequences thereof, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act.”^[2] Pursuant to the common rules for special legal orders specified in Article 54 of the Fundamental Law of Hungary, the exercise of the fundamental right to human dignity provided for in Article II of the Fundamental Law of Hungary and the prohibition of torture provided for in Article III (1) shall not even be suspended under a special legal order, and it can only be restricted in order to ensure the enforcement of another fundamental right or the protection of a constitutional value, to the extent absolutely necessary, proportionately with the goal to be achieved, by respecting the relevant content of the fundamental right.

In the consistent opinion of the Constitutional Court, the prohibition of torture and cruel, inhuman, and degrading treatment or punishment is an absolute prohibition, “thus no other constitutional right or task may be weighed against it”.^[3]

1.2. INTERNATIONAL TREATIES

According to the Fundamental Law, in Hungary, the “rules for fundamental rights and obligations shall be laid down in an Act”.^[4] Acts shall be adopted by the Parliament.^[5] International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.^[6]

1.2.1. UN INSTRUMENTS

Pursuant to Article 7 of the **International Covenant on Civil and Political Rights**^[7], “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, while Article 10(1) requires, with a general effect, that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Based on Article 4 of the Covenant, no derogation from Article 7, which declares the prohibition of torture, may be made, even in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.^[8]

Pursuant to Article 1 of the **UN Convention against Torture**, the term “**torture**” means any act

- by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person,
- for such purposes as obtaining from him or from a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,
- - - - when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

1 Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988

2 Text of Section 53(1) of the Fundamental Law of Hungary in effect until 24 May 2022

3 Chapter IV, Clause 2.4 of Constitutional Court Decision 36/2000 (X. 27.)

4 Article I (3) of the Fundamental Law

5 Article 1(2) b) of the Fundamental Law

6 Section 9(1) of Act L of 2005 on the procedure related to international treaties

Before January 1988, in the field of legislation, the Presidium of the People’s Republic (hereinafter referred to as: the “PPP”) had the power of substitution as regards the Parliament, with the exceptions that it could not amend the Constitution or adopt any source of law named “act”. Statutory-level legal sources adopted by the PPP were called law-decrees. No law-decree may be adopted since the abolishment of the PPP. Prevailing law-decrees may be amended or repealed only by an act [Clause IV/2 of Constitutional Court Decision 20/1994 (IV. 16.)].

7 International Covenant on Civil and Political Rights, adopted by the 21st Session of the UN General Assembly on 16 December 1966, promulgated in Hungary by Law-decree 8 of 1976

8 In the Hungarian translation of the Covenant, the word “szükségállapot” (“state of emergency”) is used, while the English says “time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”.

Pursuant to Article 2.1 of the UN Convention against Torture, “each State shall take measures to prevent acts of torture in any territory under its jurisdiction”. Furthermore, pursuant to Article 16 of the UN Convention against Torture, each State Party “shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

Pursuant to Article 2(2) of the UN Convention against Torture, “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Pursuant to General Comment 2 of the UN Committee against Torture,^[9] the prohibition of torture stipulated in Article 2 of the Covenant is an absolute prohibition whose application shall not be disregarded in the existence of any exceptional circumstances, and the prohibition of cruel, inhuman or degrading treatment or punishment as set out in Article 16 is another provision that should be taken into account in all circumstances.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ^[10] (hereinafter referred to as: OPCAT) may be joined by any state that has ratified or joined the UN Convention against Torture.^[11]

According to OPCAT, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment may be strengthened not through judicial means but via regular, preventive visits to the various places of detention. In the system established by OPCAT, regular visits are undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.^[12]

Pursuant to Article 4(2) of the Protocol, “deprivation of liberty means any form of detention or imprisonment or the placement of

a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.

OPCAT has established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to: Subcommittee on Prevention of Torture) is to inspect places where persons are deprived of their liberty; on the other hand, it advises and assists States Parties, when necessary, in establishing and operating their independent national bodies conducting regular visits to places of detention.^[13] From the aspect of the operation of the National Preventive Mechanisms and in addition to the general directives^[14] of the Subcommittee on Prevention of Torture, the conclusions, specific directives and recommendations^[15] made in its reports on the Subcommittee’s visits to the States Parties are also applicable.

Following the visit of the Subcommittee on Prevention of Torture to Hungary from 21 to 30 March 2017, the conclusions and recommendations put forth by the SPT for the NPM have served as a guideline during the performance of the NPM’s duties.^[16]

According to Article 37 of the **Convention on the Rights of the Child, signed in New York on 20 November 1989**,^[17] promulgated by Act LXIV of 1991, the States Parties shall ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

Pursuant to Article 15 of the **Convention on the Rights of Persons with Disabilities**^[18], “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The “States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or treatment or punishment”.

9 UN Committee Against Torture (CAT) *General Comment No. 2 Notes 5 and 6 of CAT/C/GC/2*

10 Promulgated by Act CXLIII of 2011

11 Article 27(3) of OPCAT

12 Article 1 of OPCAT

13 Article 11 of OPCAT

14 SPT: *Guidelines on national preventive mechanisms* (CAT/OP/12/5); SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (CAT/OP/1/Rev.1); *Compilation of SPT Advices to NPMs* (Annex to CAT/C/57/4)

15 See: SPT: *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, (26 February 2009) (Clause 72/c of CAT/OP/MDV/1)

16 SPT Visit to Hungary, 21–30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2) <https://www.ajbh.hu/documents/10180/1787026/CAT-OP-HUN-R2+HUN.pdf>

17 Promulgated by Act LXIV of 1991

18 Promulgated by Act XCII of 2007

1.2.2. INSTRUMENTS OF THE COUNCIL OF EUROPE

Hungary acceded to the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, on 4 November 1993; provisions are to be observed as of 1 March 1994.^[19]

The provisions of OPCAT “do not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention”^[20] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: “CPT”) has been established by the European Convention for the Prevention of Torture. The CPT shall, by means of regular visits to the territories of the States Parties, “examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment”. Following every visit, the CPT prepares a report containing, in addition to the facts discovered in the course of the visit, the comments of the body and its recommendations to the authorities concerned. The CPT’s reports on its visits to Hungary are of major importance for the National Preventive Mechanism.

The comprehensive standards^[21] of treating persons deprived of their liberty, elaborated by the CPT, interpret the prohibition of torture, inhuman or degrading treatment, stipulated in Article 3 of the European Convention on Human Rights, from the aspects of the practical operation of various places of detention (e.g. prisons, police lock-ups, psychiatric institutions, detention centres for refugees) and various vulnerable groups, such as women and juveniles.

The CPT met with the Parliamentary Commissioner for Civil Rights for the first time on its 1999 periodic visit;^[22] since then, the CPT has visited the Office of the Commissioner for Fundamental Rights during every visit paid to Hungary (the last visit took place on 19 November 2018).^[23] The National Preventive Mechanism takes into account the conclusions of the CPT’s reports on its visits to Hungary, its recommendations made to the Government, as well as the latter’s response thereto during his activities.

1.3. PREVENTIVE ACTIVITIES OF THE NATIONAL PREVENTIVE MECHANISM

“The Commissioner for Fundamental Rights shall perform fundamental rights protection activities”^[24] which also cover the enforcement of the prohibition of torture, inhuman or degrading treatment or punishment.

Pursuant to Article 11 of the UN Convention against Torture, “each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture”, and this obligation also includes the prevention of ill-treatment.^[25]

In order to perform his tasks related to the National Preventive Mechanism, the Commissioner for Fundamental Rights regularly examines the treatment of persons deprived of their liberty held at various places of detention specified in Article 4 of OPCAT, also in the absence of any petition or alleged impropriety. During the on-site inspection, the NPM may enter without any restriction the places of detention and other premises of the authority under inspection, may inspect all documents concerning the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents, and may hear any person present on the site, including the personnel of the authority under inspection and any persons deprived of their liberty. At the hearing, in addition to the staff members authorised to perform the NPM’s tasks and the person heard, any other persons may only take part if the NPM’s staff members have approved of this.^[26]

1.4. SPECIAL INTERNATIONAL AND NATIONAL REQUIREMENTS THAT HAVE GOVERNING EFFECT FOR THE COVID-19 PANDEMIC

1.4.1. INTERNATIONAL HUMAN RIGHTS GUIDELINES REGARDING THE COVID-19 PANDEMIC

The NPM’s activities pursued in 2021 were determined by the coronavirus pandemic and during his visits, he took into account the following guidelines issued by the international organisations.

19 See Section 3 of Act III of 1995 promulgating the Convention.

20 Article 31 of OPCAT

21 CPT standards <https://www.coe.int/en/web/cpt/standards>

22 The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on 1 July 1995.

23 Information related to the CPT’s visits to Hungary are available at: <https://www.coe.int/en/web/cpt/hungary>

24 Article 30(1) of the Fundamental Law

25 CAT *General Comment No. 2* Clause 3 of CAT//C/GC/2)

26 Section 39/B of the Ombudsman Act (CFR Act)

The new guidelines issued by the World Health Organisation (WHO) on 8 February 2021 (as the updated version of the guidance issued on 15 March 2020)^[27] pointed out the correlations between the prevention of infection at places of detention and general health care, which suggest that places of detention, due to the close proximity of the detainees to each other, may become hotbeds of the infection, this is why efficient action against Covid-19 at places of detention is a key interest of society as a whole.^[28] Those persons who live at places of detention and who are deprived of their liberty as they are may respond to any further restrictions more sensitively.^[29] Health care providers and places of detention should cooperate with each other, public health measures shall not discriminate e.g. against detainees at penitentiary institutions.^[30] It is also pointed out by the guidance that the Covid-19 pandemic shall not hinder the visits paid by independent monitoring bodies, such as national preventive mechanisms, on the basis of the “do no harm” principle.^[31]

According to the guidelines on the coronavirus pandemic issued by the Subcommittee on Prevention on 7 April 2020 (hereinafter referred to as: SPT Advice)^[32], persons deprived of their liberty constitute an especially vulnerable group, due to the restrictions that already exist on account of their situation, and the limited possibilities for taking preventive measures.^[33] On 18 June 2021, the Subcommittee on Prevention issued Follow-up Advice to the national preventive mechanisms on the basis of the activities and experience of the first period of the pandemic^[34], in which the measures already taken and those to be taken by the state parties in the future with regard to the pandemic situation, as well as the impact of these measures on the persons deprived of their liberty were summed up. On 10 June 2021, the Subcommittee on Prevention issued a protocol to the national preventive mechanisms with regard to the

fast spread of the coronavirus pandemic^[35] about the visits to be paid in the period of the pandemic. The protocol proposes that the national preventive mechanisms carry on their visits to the places of detention, by applying a new methodology and measures, as well as by taking the “do no harm” principle into account.^[36] The visits should be planned with a view to minimising the time spent at the institutions, in this way, also the risk of infection for each person concerned.^[37]

The Statement relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic issued by the CPT on 20 March 2020^[38] draws attention to the absolute nature of the prohibition of torture and inhuman or degrading treatment: the protective measures shall never result in the inhuman or degrading treatment of persons deprived of their liberty. According to the Statement, special attention should be paid to the special needs of persons deprived of their liberty, with special regard to those of the vulnerable groups such as the elderly or persons with concomitant diseases.^[39] The continuous monitoring activities of the national preventive mechanisms, ensuring access to the places of detention are important guarantees for preventing ill-treatment in this period as well.^[40] After the issuance of the Statement, the CPT issued a Follow-up Statement on 9 July 2020, by taking the measures related to places of detention into account.^[41]

In her statement made on 17 March 2020, the UN Special Rapporteur on the rights of persons with disabilities^[42] drew attention to the fact that the persons with disabilities placed in institutions were especially exposed to the risk of infection. The Chair of the CRPD Committee and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility issued a joint statement on the protection of persons with

27 *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance*, 8 February 2021 Copenhagen: WHO Regional Office for Europe; 2021 (hereinafter referred to as: Interim Guidance).

28 Clause 1, Introduction and Clause 6, Introduction, Interim Guidance

29 Clause 1.4, Interim Guidance

30 Clause 3, Introduction, Clause (12), as well as Clause 6.2, Interim Guidance

31 Clauses 3(16) and (19), Interim Guidance

32 *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic* (CAT/OP/10)

33 Clause 2 of CAT/OP/10.2

34 *Follow-up advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic* (CAT/OP/12)

35 *Protocol for national preventive mechanisms undertaking on-site visits during the coronavirus disease (COVID-19) pandemic* (CAT/OP/11), (hereinafter referred to as: the Protocol)

36 Clauses 2, 3 and 9 of the Protocol

37 Clauses 12 and 38 of the Protocol

38 *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the (Covid-19) pandemic* (CPT/Inf (2020) 13)

39 Clause 6 of CPT/Inf (2020)13

40 Clause 10 of CPT/Inf (2020)13

41 *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing Covid-19 pandemic* (CPT/Inf (2020) 21)

42 *COVID-19: Who is protecting the people with disabilities?* – UN rights expert Geneva, 17 March 2020 <https://www.ohchr.org/en/press-releases/2020/03/covid-19-who-protecting-people-disabilities-un-rights-expert>

disabilities with regard to the Covid-19 pandemic ^[43] on 1 April 2020, in which they stressed that the protection of persons with disabilities should be ensured in situations of risk and humanitarian emergencies as well. In the joint statement, attention was also called to the fact that the persons residing in institutions were especially exposed to the risk of infection, this is why the process of de-institutionalisation should be speeded up.^[44] In the statement issued by the CRPD on 20 June 2020,^[45] the special vulnerability of persons with disabilities with regard to the coronavirus pandemic was stressed as well.

1.4.2. EXTRAORDINARY STATUTORY AND OFFICIAL PROVISIONS ISSUED WITH REGARD TO PLACES OF DETENTION

Pursuant to Section 53(2) of the Fundamental Law of Hungary, *“in a state of danger the Government may adopt decrees by means of which it may, as provided for by a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.”* Pursuant to Section 53(3) of the Fundamental Law of Hungary, *“the decrees of the Government referred to in Paragraph (2) shall remain in force for fifteen days, unless the Government, on the basis of authorisation by the National Assembly, extends those decrees.”*

Government Decree No. 27/2021 (January 29), at the same time as the state of danger declared by Government Decree No. 478/2020 (November 3) was terminated by Government Decree No. 26/2021 (January 29) declared another state of danger from 8 February 2021 in order to avert the consequences of the coronavirus pandemic. The state of danger affected the entire period of 2021, without interruption.

The extraordinary measures adopted due to the state of danger affected both the penitentiary institutions and the social and child protection institutions.

1.4.2.1. THE OPTION TO USE THE VACCINE AGAINST THE CORONAVIRUS AND MANDATORY VACCINATION

In Hungary, the first who could be administered the coronavirus vaccine, which was initially available in a limited amount, were those who belong to high-risk groups of the population with regard to the infection or the consequences thereof. First, health care workers could be vaccinated from 27 December 2020.^[46] From 7 January 2021, vaccines were first administered to the residents and staff members of the four largest old-age homes of the country,^[47] then during the rest of January, to those of other old-age homes^[48] and residential social care institutions^[49], finally from 4 February, to those senior citizens who do not live ^[50] in institutions. Furthermore, from the critically endangered groups, February saw the beginning of the vaccination of chronically ill persons under the age of sixty,^[51] then that of law enforcement officers,^[52] school, preschool and crèche staff members,^[53] as well as expectant ^[54] women. Mass-scale vaccination covering the entire population of the country was ordered by the Chief Medical Officer of Hungary from 26 April 2021. The vaccination of detainees living in penitentiary institutions began on 28 April 2021, the vaccines were administered by the health care staff of the prison organisation.^[55] Children were vaccinated gradually after 10 May 2021, the opportunity first opened for the generation between 16-18 years of age,^[56] then from June, for those aged 12-15,^[57] and finally, from December, for 5-11 year-old^[58] children as well.

Government Decree No. 449/2021 (29 July) prescribed mandatory coronavirus vaccination for the health care staff members employed by residential social care institutions providing health care services and child protection institutions with effect from 15 August 2021. Government Decree No. 599/2021 (28 October) on the mandatory vaccination against coronavirus by the employees of state and municipality institutions

43 *Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility*, 1 April 2020 <https://www.ohchr.org/en/statements/2020/04/joint-statement-persons-disabilities-and-covid-19-chair-United-nations-committee>

44 Clause 5, Joint Statement

45 *Statement on COVID-19 and the human rights of persons with disabilities*

46 <https://koronavirus.gov.hu/cikkek/orszagos-tisztifoorvos-december-27-en-kezdodik-az-egeszsegugyi-dolgozok-oltasa>

47 <https://koronavirus.gov.hu/cikkek/az-idosotthonokban-elkezdodott-koronavirus-elleni-vedooltasok-beadasa>

48 <https://koronavirus.gov.hu/cikkek/hetvegen-folytatodik-nagyobb-idosotthonok-bentlakoinak-es-dolgozoinak-oltasa>

49 <https://koronavirus.gov.hu/cikkek/operativ-torzsz-megkezdodott-az-idosotthonokban-es-mas-bentlakasos-intezmenyekben-elok>

50 <https://koronavirus.gov.hu/cikkek/operativ-torzsz-mar-oltjak-regisztralt-legidosebbeket>

51 <https://koronavirus.gov.hu/cikkek/kormanyinfo-vedettseget-igazolo-okmany-bevezeteserol-dontott-kormany>

52 <https://koronavirus.gov.hu/cikkek/hol-tartunk-az-oltasban>

53 <https://koronavirus.gov.hu/cikkek/ovodai-iskolai-es-bolcsodei-dolgozok-figyelem-regisztracio-marcius-29-hetfo-efjelleg>

54 <https://koronavirus.gov.hu/cikkek/novak-katalin-elindult-varandosok-onkentes-beoltasa>

55 <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4131>

56 <https://koronavirus.gov.hu/cikkek/mar-16-18-eves-fiatlokat-lehet-regisztralni-oltasa>

57 <https://koronavirus.gov.hu/cikkek/12-15-evesek-oltasara-lehet-idopontot-foglalni-regisztracio-ervenyesitese-utan>

58 <https://koronavirus.gov.hu/cikkek/megnyilt-az-idopontfoglalo-az-5-11-eves-gyermekek-oltasahoz>

rendered the vaccination mandatory until 15 December 2021 for all the employees of social care and child protection institutions, as well as the employees of law enforcement bodies, including the police, aliens policing organs and penitentiary institutions^[59], as long as their job involved meeting clients on a regular basis.^[60] If the person concerned failed to fulfil their obligation despite instruction from their respective employer and has had no such medical expert opinion that would have suggested that the administration of the vaccine was contraindicated for them for a medical reason, such person had to be ordered by their employer to take unpaid leave on the basis of the government decree.

1.4.2.2. IMMUNITY CERTIFICATES

The Government introduced the so-called “immunity certificates” by Government Decree No. 60/2021 (12 February) on certifying immunity from coronavirus with effect from 13 February 2021. Pursuant to the government decree, immunity from the coronavirus could be certified with the fact of recovery from the disease caused by the coronavirus infection within a certain period of time,^[61] or the fact of having been vaccinated with a vaccine of a dose predefined by the manufacturer authorised in the European Union or Hungary and used for the vaccination of the population. Pursuant to the decree, official certificates or an application could be used for certifying immunity. In the period of easing the restrictions that had become necessary due to the pandemic, in the case of those who live in children’s homes and social care institutions, as well as the detainees in penitentiary institutions, the possession of immunity certificates by visitors to the places of detention was a precondition to keeping personal contact.

1.4.2.3. EXTRAORDINARY REGULATIONS AFFECTING PENITENTIARY INSTITUTIONS

The amended Section 236(1) of Act LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the state of epidemiological preparedness that was introduced during the state of epidemiological preparedness^[62]

after the state of danger that was declared from 11 March ended on 18 June^[63] 2020^[64] provided on that the provisions of the Prison Code (Bv. tv.)^[65] should be applied with the derogations set out in this Act until the state of danger defined in Government Decree No. 27/2021 (29 January) on the declaration of the state of danger and the taking effect of emergency measures ends. With regard to the continued state of danger, the provisions of the Prison Code (Bv. tv.) had to be applied with the derogations set out in Sections 236-245 of Act LVIII of 2020 all through 2021. These special rules affected the provisions concerning the admission, communication, placement, employment, education and leisure time activities of the detainees.

Besides the special areas that had been assigned to his decision-making authority by the law, the National Commander of the Hungarian Prison Service also regulated, in his action plan on the prevention of the infection with regard to the prison organisation, the rules of admission, wearing masks, keeping distance, disinfection, as well as the rules to be applied in the case of a suspicion of coronavirus infection.^[66]

1.4.2.4. PROVISIONS RELATED TO SOCIAL CARE AND CHILD PROTECTION INSTITUTIONS

The general obligation to wear masks required by Government Decree No. 484/2020 (10 November) on the second phase of protective measures applicable at the time of a state of danger, which existed in the first half of 2021, was terminated on 3 July 2021 and the government decree authorised the Minister responsible for Health Care and the Minister for Social Affairs and Pension Policy to establish the rules of the mandatory wearing of masks with regard to the health care and social care institutions in a decree. EMMI (Ministry of Human Capacities) decree No. 31/2021 (7 July) on the rules of wearing masks on the territory of health care and social care institutions rendered the wearing of masks mandatory in health care institutions (it also provided on exceptions) with effect from 8 July 2021 and it also defined the conditions of wearing masks with regard to social care institutions.

59 Pursuant to Sections 1 a), d) and f) of Act XLII of 2015 on the legal relationship of the professional personnel of the law enforcement organs quoted in the Government Decree

60 The deadline for the fulfilment of the vaccination obligation for the further employees is 31 January 2022. The Government Decree took effect on 1 November 2021.

61 Pursuant to Section 2(2) of the Government Decree, in a case when a person has recovered from coronavirus infection, which is certified by a positive PCR test or an antigen rapid test registered in the National eHealth Infrastructure, the certificate will be valid for six months. According to Section 2(4) of the Government Decree, in the case of those persons who have undergone subsequent antibody testing, the result of which certifies that they have recovered from the infection, the certificate will be valid for four months.

62 Government Decree No. 40/2020 (11 March) on the declaration of the state of danger

63 Government Decree No. 282/2020 (17 June) on the termination of the state of danger declared on 11 March 2020

64 Government Decree No. 283/2020 (17 June) on the introduction of the state of epidemiological preparedness

65 Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour

66 The National Commander of the Hungarian Prison Service regularly updated the action plan in sync with the evolution of the epidemiological situation. In 2021, at the time of the beginning of the visits, Action Plan IV No. 30500/11866-128/2020/2020.ált. on the execution of tasks related to the coronavirus pandemic, amended with effect from 04 November 2020 was in effect, while at the time of the last visit, Action Plan VIII No. 30500-16/492-178/2021.bizt. on the execution of tasks related to the coronavirus pandemic, 2020 was in effect.

Extraordinary regulations for the emergency situation were introduced through the decisions and proposals of the Chief Medical Officer adopted in her official health care competence concerning social care and child protection institutions^[67] with regard to the health crisis^[68], as well as through the rules issued by the National Public Health Centre and the Ministry of Human Capacities.

On 18 December 2020, the Chief Medical Officer imposed a ban on visiting and leaving the institutions with regard to^[69] specialised social care institutions. As regards the contact of patients with their relatives, the Chief Medical Officer issued special proposals regarding the establishment^[70] of the conditions of keeping contact, and personal visits adjusted to the characteristics of the institution in question were possible under the conditions defined in this document. The ban on visiting and leaving the institutions was partially lifted and partially modified on 19 April 2021 (those who possessed immunity cards were allowed to pay visits to the institutions and those patients who possessed such cards could also leave the institutions).^[71] The ban on visiting and leaving the institutions was fully withdrawn by the Chief Medical Officer on 25 May 2021,^[72] by modifying the responsibilities defined for residential social care institutions as set out in Annex 2 of^[73] the protocol issued by the National Public Health Centre on 31 March 2021. It became possible to leave the institutions without possessing immunity cards as well but in the case of an absence exceeding 72 hours, a rapid test had to be done on return, while personal visits to the institutions could only be paid in possession of immunity certificates (and also, with special protective measures as defined in the above proposals). These restrictions were withdrawn by the Chief Medical Officer in her decision dated

on^[74] 16 July 2021. In her decision on specialised social care institutions, the Chief Medical Officer ordered, with effect from 1 November 2021,^[75] that, as long as the number of the infected residents exceeds 5 % of the total number of patients in the institution in question, and isolation from the other patients and their visitors cannot be ensured, a temporary ban on visiting and leaving the institutions should come into effect. On 28 October 2021, the National Public Health Centre published a new protocol^[76] in a circular letter dated on 9 December 2021 sent to residential social care institutions and the heads of such institutions^[77], in which provisions were set out on the detailed rules applicable for the admission of patients to these institutions, as well as their discharge from them, or their return from hospital treatment.

In her decision, the Chief Medical Officer ordered a ban on visiting and leaving the child protection institutions^[78] from 8 March to 7 April 2021, which she prolonged until 19 April.^[79]

The Ministry for Human Capacities issued a protocol that has governing effect for both specialised social care institutions and child protection institutions^[80], in which, with a view to efficient protection from the epidemic, it made possible, among others, to define a 24-hour work schedule^[81], derogation from the availability of physical conditions and the requirements of professional qualification, furthermore, it defined the epidemiological requirements to be kept during exceptional visits to the institutions and leaving the institutions, as well as other measures related to the state of danger.

67 Clauses h) and i) of Section 230(4) of Act CLIV of 1997 on Health Care

68 Pursuant to Section 11(5) of Act XI of 1991 on Health Governance and Administration Activity

69 Decision Reg. No. 42935- 3/2020/EÜIG

70 Proposals for keeping contact with those living in specialised social care institutions (01 December 2020)

71 Decision Reg. No. 25710- 1/2021/EÜIG

72 Decision Reg. No. 25710- 2/2021/EÜIG

73 Protocol Reg. No. 5561-51/2020/JIF on the new coronavirus identified in 2020 (applicable epidemiological and infection control rules) 31 March 2021 (Published in issue 22 of 2021 of the Official Notices annexed to the Hungarian Official Gazette)

74 Decision Reg. No. 25710- 3/2021/EÜIG

75 66340-2/2021/EÜIG

76 Statement Reg. No. 61529-1/2021/JIF on the protocol issued by the Chief Medical Officer on the epidemiological and infection control rules related to the new coronavirus identified in 2020 (Published in issue 52 of 2021 of the Official Notices annexed to the Hungarian Official Gazette)

77 67883-2/2021/JIF

78 Decision Reg. No. 15717- 3/2021/EÜIG

79 Decision Reg. No. 15717- 5/2021/EÜIG

80 Protocol on the prevention of the spread of coronavirus and the mitigation of risks for specialised social care institutions, children's homes providing temporary care, child protection institutions, as well as reformatories

81 The option to order 24-hour shifts was already offered in Act XCIX of 2021 (Section 102) on the transitional rules related to the state of danger, which came into effect by Act CXV of 2021 on 1 December 2021.

2. STAFF MEMBERS PARTICIPATING IN PERFORMING TASKS RELATED TO THE NPM AND THE COSTS RELATED TO PERFORMING THE TASKS OF THE NPM

2.1. PUBLIC SERVANTS IN THE OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS

Pursuant to Article 18(2) of OPCAT, the States Parties “shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country”.

In the performance of his tasks, the NPM may act in person, or by way of the members of his staff authorised by him. Staff members authorised by the NPM shall have the investigative powers of the NPM^[1], and the obligation for cooperation of the authorities concerned as well as their management and staff pursuant to Section 25 of the Ombudsman Act shall be complied with also in their respect.^[2]

For performing the tasks of the NPM, at least eleven staff members of the public servants of the Office of the Commissioner for Fundamental Rights (hereinafter referred to as: the Office) should be authorised on a permanent basis. The “authorised public servant staff members shall have outstanding theoretical knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience”.^[3] Among them, “there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary and at least two persons each with a degree in law, medicine and psychology respectively. Among the authorized public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.”^[4]

The staff members of the Office permanently authorised to perform tasks related to the NPM^[5] carry out their activities within an independent organizational unit, the OPCAT National Preventive Mechanism Department^[6] (hereinafter: the “Department”). In order to ensure a multidisciplinary approach, lawyers and psychologists took part in the visits paid by the NPM, while education specialists participated in the visits paid to child protection institutions. In the composition of the visiting delegations, the NPM also strove to ensure a gender balance.

2.2. COSTS RELATED TO PERFORMING THE TASKS OF THE NPM IN 2021

The Office performing the administrative and preparatory tasks related to the tasks of the NPM constitutes an independent chapter in the structure of the central budget, established by the Parliament in an act. The 2021 budget of the Office was planned in consideration of the financial coverage necessary for the performance of the tasks of the NPM. The resources at the NPM’s disposal covered the costs of the performance of the tasks in connection with his mandate.^[7]

Expenditure for 2021	Amount
Personal allowances	55,870,441
Contributions	9,089,844
Professional and administrative materials	744,483
IT and communication expenses	2,312,887
Services supporting professional activities	1,124,945
Delegation expenses*	2,728,855
Promotion, propaganda, international membership fees	553,343
Maintenance and repair costs	1,907,079
Public utility fees	2,017,347
Operational services	6,590,297
VAT	3,984,920
Total in HUF:	86,924,441.**

* Delegation expenses include a part of the travel and accommodation costs of the guests invited to the international event organised by the NPM in 2021 (see in detail on Clause 11.1), which were covered by the Office.

** Personal allowances, contributions and delegation expenses indicate amounts allocated to the Department separately.

The NPM’s annual budget was HUF **69,647,352** in 2015, HUF **63,760,490** in 2016, HUF **76,217,024** in 2017, HUF **82,789,143** in 2018, and HUF **87,469,230** in 2019.

1 See Sections 21, 22 and 26 of the Ombudsman Act, Subsections (1) and (2) of Section 27 of this Act, as well as Section 39/B of the same Act.

2 Section 39/D (1) of the CFR Act

3 Section 39/D (3) of the CFR Act

4 Section 39/D (4) of the Ombudsman Act

5 Sections 39/D (3) and (4) of the Ombudsman Act

6 SPT: *Guidelines on national preventive mechanisms* (Clause 32 of CAT/OP/12/5). See also Section 23 of CFR instruction No. 1/2012 (6 January) on the Operational and Organisational Rules of the Office of the Commissioner for Fundamental Rights.

7 SPT Visit to Hungary, 21–30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), in line with the recommendation set out in Clause 24. <https://www.ajbh.hu/documents/10180/1787026/CAT-OP-HUN-R2+HUN.pdf>

3. THE NPM'S COOPERATION WITH CIVIL SOCIETY ORGANIZATIONS

Pursuant to Article 3 of OPCAT, the Commissioner for Fundamental Rights has to perform the tasks related to the NPM independently.^[1] However, in its activities aimed at facilitating the enforcement and protection of human rights, the NPM has to cooperate with “*organisations and national institutions aiming at the promotion of the protection of fundamental rights*”.^[2]

3.1. THE TASKS OF THE CIVIL CONSULTATIVE BODY

The Civil Consultative Body (hereinafter referred to as: the CCB), whose members are various organizations registered and operating in Hungary, which supports the NPM, was set up in order to help the work of the NPM with its proposals and comments based on the members’ outstanding practical and/or high-level theoretical knowledge relative to the treatment of persons deprived of their liberty. The CCB’s mandate is for three years.^[3]

The first CCB (2014-2017) held its inaugural session on 19 November 2014, with eight members. The members included: Association of Hungarian Dietitians, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Mental Disability Advocacy Centre – MDAC, MENEDÉK – Hungarian Association for Migrants.

The second CCB (2018-2021), which also had eight members, started its operation on 16 May 2018. The members included: Association of Hungarian Dietitians, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Validity Foundation (earlier: MDAC), Cordelia Foundation for the Rehabilitation of Torture Victims.

The mandate of the second CCB expired on 16 May 2021. In March 2021, the Commissioner for Fundamental Rights invited a tender for those Hungarian civil society organisations that would like to help the performance of the tasks of the national preventive mechanism as CCB members selected in a tender

procedure. After the assessment of the applications and the feedback given by the members requested by the Commissioner for Fundamental Rights to participate, the third CBB held its inaugural session on 22 September 2021. The members included: Association of Hungarian Dietitians, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary, Reformed Church in Hungary, Federation of Hungarian Jewish Communities, Alliance for Fundamental Rights Foundation, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Association for Persons with Intellectual Disability, Mental Disability Advocacy Forum – Association for Human Rights and the Reform of Mental Health Services, Pressley Ridge Hungary – NoBadKid Foundation, Streetlawyer Association.

The CCB operates as a body. In the course of the CCB’s operation, its members may make recommendations relative to the contents of the annual schedule of visits of the NPM and the inspection priorities; initiate visits to certain places of detention; recommend the involvement of experts with special knowledge who may be affiliated with the organization they represent. The CCB may review the NPM’s working methods, reports, information materials, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorized to perform the tasks related to the NPM; furthermore, it may participate in conferences, workshops, exhibitions, and other events organized by the NPM.^[4]

3.2. THE MEETINGS OF THE CCB

The CCB held its meetings on 22 September 2021 and 17 December 2021. At the first, inaugural session the members introduced themselves and discussed the possible ways of cooperation. At the second meeting, the members presented the problems that have occurred in their practice in relation to custody and confinement for an infraction and they drew attention to the difficulties of conducting academic research at places of detention. The second meeting was organised in the form of an online videoconference due to the coronavirus pandemic.

1 Section 2(6) of the Ombudsman Act

2 Section 2(5) of the Ombudsman Act

3 Instruction 3/ 2014 (11 September) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body as the organ supporting the performance of the tasks of the national preventive mechanism, Section 1(6)

4 Instruction 3/ 2014 (11 September) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body as the organ supporting the performance of the tasks of the national preventive mechanism, Section 6

3.3. FURTHER COOPERATION WITH CIVIL SOCIETY ORGANIZATIONS

<i>Name of the civil society organization</i>	<i>Form of cooperation</i>
The Victimology Section of the Hungarian Criminological Association and the Faculty of Law Enforcement of the National University of Public Service	Participation in the event organised for the Day of Crime Victims - Crimes and Victimisation during the Covid Pandemic (22 February 2021)
ELTE (Eötvös Loránd University) Faculty of Law, Departments of Criminology, Criminal Procedures and Law Enforcement, as well as the Hungarian Helsinki Committee as a member of the Support Network for Detainees and their Families (FECSKE)	Participation and giving a talk at the conference entitled The Ombudsman's experience gained from prison visits, with special regard to the reintegration and keeping contact of detainees at the conference called A New Start? - Liaising and reintegration in law enforcement – experience and research findings of the past three years (19 November 2021)

4. REGISTER OF DOMESTIC PLACES OF DETENTION AND THE NPM'S ANNUAL SCHEDULE OF VISITS

4.1. REGISTER OF PLACES OF DETENTION

Pursuant to Article 20(a) of OPCAT, the States Parties, in order to enable the national preventive mechanisms to fulfil their mandates, grant them “*access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4, as well as the number of places and their location*”.

With reference to Section 20(a) of OPCAT, the NPM sent letters to the heads of the governmental organs concerned, requesting them to provide him with the data, as of 31 December 2020, of all places of detention as defined in Article 4 of OPCAT.^[1] All the requested organs complied with his data request.

According to the data provided to him, on **31 December 2020**, in the **2823** places of detention under Hungarian jurisdiction with a total capacity of **147,466** detainees, there were **115,727** persons being detained.^[2]

The aggregate list of places of detention under Hungarian jurisdiction For 2020 and as of 31 December 2020			
Type	Number of places	Holding capacity/ number of beds	Number of detainees/ patients
Social care institutions^[3]	1,376	81,434	69,741
Child protection services	464	28,229	20,787 ^[4]
Juvenile correctional institutions	5	564	281
Unaccompanied minors	1	N/A	13
Total in child protection	470	28,793	21,081
Penitentiary institutions	39	17,402	16,490
Medical institutions of the penitentiary system	4	580	448
Total in penitentiary system	43	17,982	16,938
Healthcare	110	16,003	7,706
Police	695	2,735	255 ^[5]
Airport Police Directorate	1	75	3 ^[6]
Total for police	696	2,810	258
Guarded refugee reception centres	1	105	3^[7]
Judiciary	127	339	N/A^[8]
Aggregated data	2,823	147,466	115,727

1 The letters requesting data provision are registered under file number AJB-590/2022 in the Office.

2 The data provided to the Office are registered under file number AJB-149/2020 in the Office.

3 Without institutions providing temporary, day and night care for the homeless, and other institutions providing only day care.

4 The number of minors receiving care from child protection services (exclusive of those receiving aftercare).

5 In 2020, there were altogether 88,306 detainees (of whom, 11,309 women, 5,766 minors and 8,998 foreign nationals) held in places of detention operated by the police.

6 In 2020, there were altogether 563 persons (of whom 99 women, 32 minors and 289 foreign nationals) detained on the premises under the authority of the Airport Police Directorate.

7 In 2020, a total of 31 persons (15 asylum-seekers, as well as 16 persons under the Dublin procedure) were held at guarded refugee reception centres for an average duration of 77 days.

8 In 2020, the National Office for the Judiciary did not collect such data to the missed data request. No data are available on the last work day of the year, or on the persons detained during the year, the numbers of premises and beds are estimated figures based on the data supplies of 2019 and 2021.

In 2020, there was a significant change in child protection services with regard to the operators. In 2019, 57% of the beds were maintained by the state, 39% were operated by churches, and 4% were in the care of civil society organisations, where the latter figure has not changed, however, by the end of 2020, the proportion of church operators considerably increased, as 63% of the beds came to be managed by churches. The number of child protection institutions is exclusive of foster care homes.

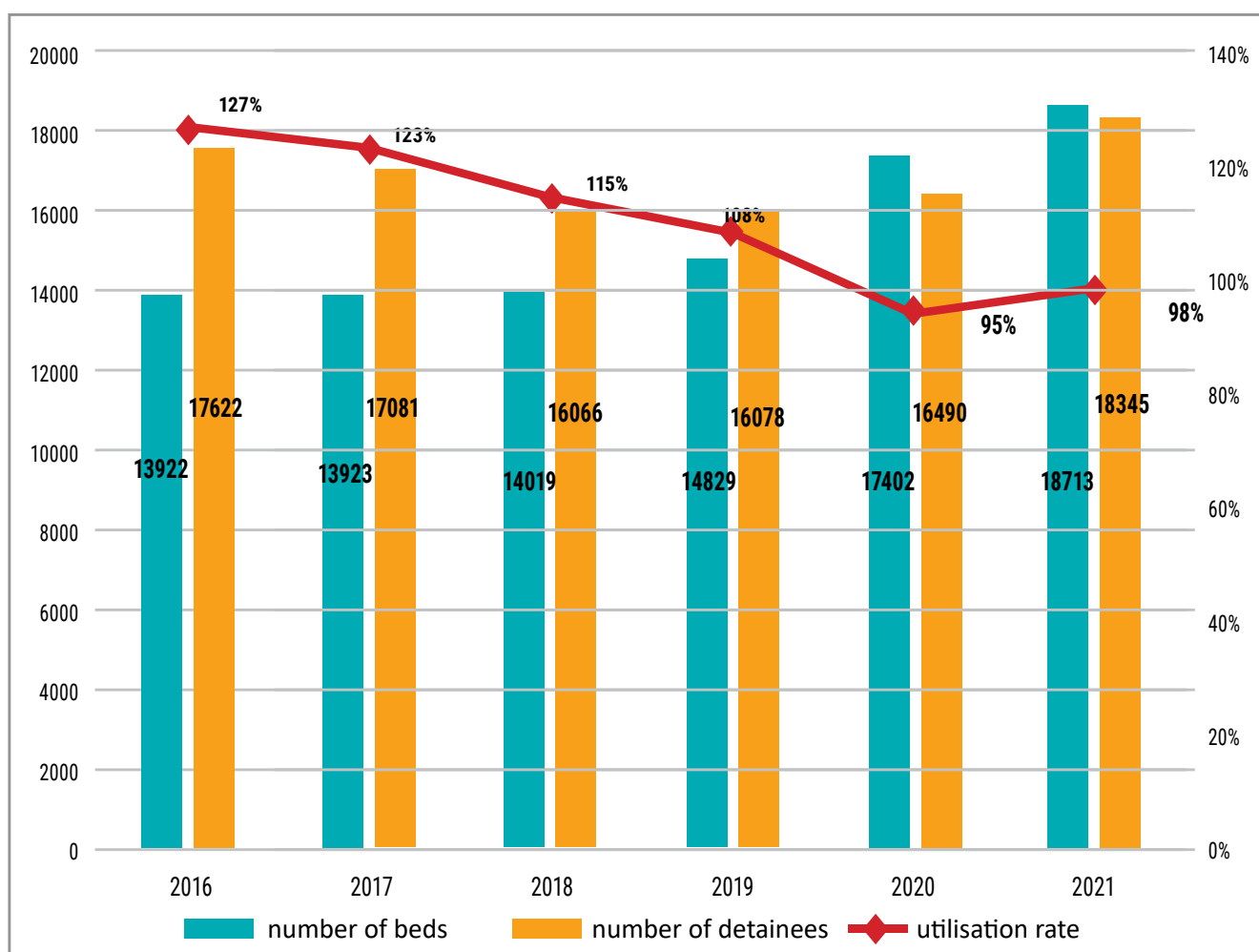
The data indicated in the table reflect the result of the capacity extension programme mentioned in Clause 12.1 of the 2020 comprehensive report with regard to penitentiary institutions, in the context of which as many as 2,573 new places were built in the penitentiary institutions between June and August 2020, as a result of which overcrowding has substantially decreased, almost ended. Based on the data sent to the NPM by the prison organisation with regard to Clause a), Article 20 of OPCAT, the evolution of the number of beds is shown in the following figure.

Figures relative to the child, adolescent and adult psychiatric and addictology; as well as gerontology and infectology wards of the hospitals, including Covid wards.

4.2. PLACES TO VISIT SELECTED BY THE NPM

In selecting the places to be visited, the NPM took it into account in 2021 as well that he should visit institutions of different geographical locations and types alike. In selecting the places to be visited, it was also an important criterion that the vulnerable groups according to age, gender, or disability should be represented among the persons deprived of their liberty.

The places inspected and visited by the NPM are indicated in the tables below, broken down by counties and types of institutions.



The number of beds in penitentiary institutions, the number of detainees in penitentiary institutions and the utilisation rate of places on 31 December of the year under review

5. THE NPM'S VISITS

In order to perform his tasks related to the NPM, the Commissioner for Fundamental Rights has to regularly examine the treatment of persons deprived of their liberty and held at various places of detention specified in Article 4 of OPCAT also in the absence of any petition or alleged impropriety.^[1]

In 2021, the NPM inspected **5695** detention units in **23** locations. The table below shows the date of the visits, the names of the places of detention, as well as the number of detention units visited, along with the number of persons residing or held there.

Locations visited by the NPM in 2021

Number	Date of the visit	Name of the place of detention	At the time of the visit:		
			Authorized capacity (persons) Number	Utilization rate %	Number of detainees (heads)
1.	14/01/2021	Baracska Facility of the Central Transdanubian National Prison	927	94	872
2.	14/01/2021	Bács-Kiskun County Remand Prison, Facility II	109	64.2	70
3.	15/01/2021	Állampuszta Remand Prison	1186	92.2	1093
4.	20/01/2021	Kékmadár Children's Home, Child Protection Centre and Territorial Child Protection Service of Somogy County	36	92	33
5.	21/01/2021	Ajka Police Department	8	0	0
6.	21/01/2020	Devecser Police Station	4	0	0
7.	21/01/2021	Keszthely Police Department	2	0	0
8.	26/01/2021	Baranya County Remand Prison	177	89	159
9.	02/02/2021	Márianosztra Strict and Medium Regime Prison	505	97.4	492
10.	10/02/2021	County Remand Prison	847	96.8	820
11.	18/02/2021	Somogy County II. Rákóczi Ferenc Children's Home	48	58.3	28
12.	02/06/2021	Szarvas Police Department	8	0	0
13.	24/06/2021	Budapest Correctional Facility of EMMI (Ministry of Human Capacities)	100	23	23
14.	14/07/2021	Hajdú-Bihar County Remand Prison	200	86.5	173
15.	22/07/2021	Békés County Remand Prison	107	86.9	93
16.	29/07/2021	Szabolcs-Szatmár-Bereg County Remand Prison	195	95.4	184
17.	05/08/2021	Győr-Moson-Sopron County Gondoskodás Social Care Institution, Old-Age Home	50	100	50
18.	13/10/2021	Tolna County Remand Prison	100	97	97
19.	14/10/2021	Zala County Remand Prison	102	94.1	96
20.	19/10/2021	Somogy County Remand Prison	138	92.8	128
21.	23/11/2021	Zala County Szivárvány Integrated Care Centre, Napsugár Home	32	96.9	31
22.	02/12/2021	Szeged Strict and Medium Regime Prison, Facility III	641	97	622
23.	09/12/2021	Győr-Moson-Sopron County Remand Prison	173	95.4	165
Aggregated data		Number of inspected places:	5695		5229

¹ Section 39/B (1) of the CFR Act

It is clear from the table that none of the institutions visited in 2021 were overcrowded, at the places visited by the NPM, there were no detainees or patients whose number would have exceeded the authorised capacity.

The primary objective of the NPM's visits is to establish which elements of the treatment of persons deprived of their liberty may lead to torture or other cruel, inhuman, and degrading treatment or punishment, and how to prevent them. Another important task of the NPM is to make recommendations in order to prevent these from happening or recurring.^[2]

As a general rule, the staff members of the Department do not inquire into complaints lodged with the Office. The only exceptions are submissions containing data or information indicative of the violation of the provisions on the prohibition of reprisals, stipulated in Article 21(1) of the OPCAT, which are investigated by the staff members of the Department authorized to perform the tasks related to the NPM. The Department forwarded all individual complaints submitted to the e-mail address displayed on the NPM's homepage or to the members of the visiting groups to the competent organizational unit of the Office. Individual complaints submitted to the Office may serve as a compass for the selection of the locations of visits and the inspection criteria.

2 SPT: *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives* (26 February 2009), (Clause 5 of CAT/OP/MDV/1)

6. FOCAL POINTS OF THE NPM'S VISITS

To prevent ill-treatment, each State Party “shall keep under systematic review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction”.^[1]

The goal of the NPM’s visits is to encourage the respective authorities and institutions to improve the effectiveness of their measures aimed at the prevention of ill-treatment.^[2] “The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment”.^[3]

In the course of the inspection of places of detention, the NPM examines the conditions of placement of persons deprived of their liberty and their treatment. The visiting delegations examined those aspects of placement and treatment which presented the highest risk of the insufficient enforcement of the fundamental rights of persons deprived of their liberty.

A special feature of the visits conducted in connection with performing tasks related to the NPM is that the detection and identification of signs of torture and other cruel, inhuman or degrading treatment or punishment, physical and psychological abuse, in particular, are carried out with the use of medical and psychological methods.

In addition to his general visits, the NPM has also conducted follow-up inquiries and Covid-focused inquiries since the appearance of the coronavirus pandemic. The focal points of both the general and the special visits were determined on the basis of the CPT’s reports on visiting places of detention in the territory of Hungary, the reports of the UN Committee against Torture, the reports of the Subcommittee on Prevention of Torture on its country visits, the decisions of the European Court of Human Rights, as well as the conclusions of the on-site inspections conducted as part of the Ombudsman’s general activities aimed at protecting fundamental rights, and the CCB’s recommendations.

6.1. FOCAL POINTS OF GENERAL VISITS

6.1.1. ADMISSION

Since persons deprived of their liberty are extremely vulnerable in the early stages of their detention, the NPM conducts an examination of the admission procedure in every place of detention. The legal grounds of deprivation of liberty, as well as the admission of a person to a place of detention and information provided to him/her on his/her rights must be documented according to the relevant legal regulations. In addition to the procedural acts of admission, e.g. medical examination, designation of the detainee’s bed, providing them with clothing, bedding, toiletry, the inspection also covers the in-house rules of the given place of detention, the contents of the briefing on the rules of behaviour, and the ways and conditions of keeping in touch with his/her legal representative, his/her relatives, and the security personnel.^[4]

6.1.2. MATERIAL CONDITIONS OF DETENTION

The members of the visiting delegations inspect the premises, equipment, and furnishing of the places of detention, as well as the vehicles used for transporting the detainees. They examine the dimensions of the rooms and vehicles used by the detainees, the size of the per capita living space, the conditions of natural lighting and ventilation, the furnishing, access to drinking water and restrooms, the conditions of spending time in the open air, the washing facilities, the condition of the sanitary units and community rooms, as well as catering.

6.1.3. VULNERABLE GROUPS

In all his activities, thus also during the performance of his tasks as National Preventive Mechanism, the Commissioner for Fundamental Rights has to pay special attention to protecting the rights of children, nationalities living in Hungary, other most vulnerable groups of society, and persons living with disabilities, as well as to facilitating, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities.^[5]

1 See Article 11 of the UN Convention against Torture.

2 See: SPT: *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives* (26 February 2009), (Clause 5 of CAT/OP/MDV/1)

3 See: SPT: *First annual report*, (Clause 12 of CAT/C/40/2)

4 CAT General Comment No. 2, Clause 13 of CAT/C/GC/2

5 Subsections (2) and (3) of Section 1 of the CFR Act

The definition of the term “torture”, as set out in Article 1 of the United Nations Convention Against Torture, means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person “for any reason based on discrimination of any kind”. In its General Comment, the Committee points out that States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, age, religious belief or affiliation, gender, sexual orientation, transgender identity, health status, mental or other disability, political opinion, nationality, etc.^[6]

As the protection of vulnerable minorities that are especially exposed to the threat of torture, as well as marginalised persons or groups are part of the state’s obligation with regard to prevention, the NPM also pays increased attention to them.

6.1.4. MEDICAL CARE

In Hungary, “everyone shall have the right to physical and mental health”.^[7] All “patients have the right, within the frameworks specified by the law, to proper medical care that is corresponding to their state of health, continuously accessible, and meeting the requirement of equal treatment”^[8]

Medical services available to persons deprived of their liberty, such as medical treatment, nursing, providing an appropriate diet, therapeutic appliances and equipment, rehabilitation or any other special treatment, shall be provided in a way that is generally accessible to the members of society. The barrier-free access to the furnishing and equipment of healthcare institutions involved in providing care to persons deprived of their liberty, as well as the medical, nursing, and technical staff thereof should also meet the aforementioned requirements.

6.1.5. NUTRITION

A proper diet is an immanent element of the detainees’ right to health, guaranteed by Article XX of the Fundamental Law of Hungary. Unhealthy diets, overweight and obesity caused by sedentary lifestyle contribute to a large proportion of cardiovascular diseases, type 2 diabetes, and some cancers, which, according to the WHO’s data, together are the main causes of death in Europe.^[9] According to the visits’ findings, the places of detention usually provide the detainees with nutrition meeting the statutory requirements; however, the inadequate composition of the meals and the sedentary lifestyle resulting from detention often lead to obesity and diseases caused by being

overweight. The NPM examines the detainees’ nutrition with the assistance of a gastroenterologist or a dietitian.

6.1.6. ACTIVITIES, FREE TIME

Measures aimed at counterbalancing isolation and meaningless activities caused by the deprivation of liberty are of major importance in all detention sectors. The NPM’s inspections pay special attention to the community, cultural, educational, and open-air programmes organized by the places of detention for the persons deprived of their liberty.

6.1.7. COERCIVE, DISCIPLINARY, AND RESTRICTIVE MEASURES

Deprivation of liberty and the application of coercive and restrictive measures in themselves affect the enforcement of fundamental rights. The risks emerging therefrom may be mitigated through the adoption of adequate legal regulations and their appropriate implementation.

The visiting delegations also inquire into incidents that have occurred at the given place of detention and the conflict management methods used by its personnel. They examine the types of coercive and disciplinary measures applied by the personnel against persons deprived of their liberty violating the house rules of the given place of detention and the restrictive measures applied in health- and social care institutions, and how they are documented. The inspection of the available documents related to the application of coercive, disciplinary, and restrictive measures, in addition to the notes of the health care personnel, is also aimed at finding out who checks the justification and legality of such measures and in what manner, and if the extent of these measures is in compliance with the prevailing legislation.

6.1.8. RELATIONS BETWEEN PERSONS DEPRIVED OF THEIR LIBERTY AND THEIR RELATIONS WITH THE PERSONNEL OF THE PLACE OF DETENTION

Balanced personal relations between persons deprived of their liberty and between detainees and the personnel of the given place of detention are one of the most efficient ways to prevent ill-treatment. The visiting delegations inquire into the relations of persons deprived of their liberty using the same premises, paying special attention to gathering information indicative of peer-to-peer abuse among the detainees.

6 CAT General Comment No. 2, Clause 21 of CAT/C/GC/2

7 Article XX(1) of the Fundamental Law of Hungary

8 Section 7 (1) of Act CLIV of 1997 on Health

9 <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/nutrition>

“Mixed-gender staffing is another safeguard against ill in places of detention.”^[10] As persons deprived of their liberty should only be searched by staff of the same gender and any search which requires a detainee to undress should be conducted out of the sight of custodial staff of the opposite gender^[11], the NPM examines the gender composition of the persons deprived of their liberty, guards, nurses, etc. during every visit.

The findings of the on-site inspections show that the staff of the places of detention, if they are frustrated with the hierarchical structure or continuously dissatisfied with the circumstances and/or conditions of their work, may vent their frustration on their subordinates or on persons deprived of their liberty, being otherwise at their mercy. In order to recognize and/or prevent such situations, the visiting delegations examine whether the staff members of the given place of detention have the proper skills and if they have access to professional training necessary for the prevention of torture and ill-treatment^[12], and how accessible and efficient supervision is. When examining the premises, furnishing, and equipment of the places of detention, the NPM’s staff members also inspect the rooms designated for the personnel, including locker rooms, bathrooms, dining rooms, recreational rooms and restrooms.

6.1.9. COMPLAINTS MECHANISM

According to Article 12 of the UN Convention against Torture, *“each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”*.

In Hungary, everyone has *“the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power”*.^[13]

Keeping in mind Article 4(2) of OPCAT, stipulating that deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is *“not permitted to leave at will by order of any judicial, administrative or other authority”*, the NPM considers places of detention as organs having public power.

One of the most efficient ways of preventing ill-treatment is if the competent authorities, the personnel of the place of detention in particular, learns about the placement- or treatment-related complaints of the persons deprived of their lib-

erty as soon as possible, investigates those grievances within a reasonable period of time and takes the measures necessary to remedy them.^[14]

The visiting delegations gather information as to whether the detainees have received adequate information about the possibility and manner of submitting their complaints. The NPM pays particular attention to ensuring the right to complain for illiterate or non-Hungarian speaking detainees as well as for those with limited communicative skills due to their age or some kind of disability. The NPM examines whether the complaint mechanism available for such detainees and their relatives is suitable for effectively counterbalancing the drawbacks resulting from their limited communicative skills. In consideration of the vulnerable situation of persons living in institutional care and in particular, of their concerns regarding any potential retaliations, it is a basic requirement set by the NPM that the complaint mechanism available at the individual places of detention should also ensure the conditions for submitting anonymous petitions.

On the one hand, the visiting delegations review the complaint handling mechanism, including the registration of complaints, the duration of their administration, the manner of remedying them and of providing information about them to the complainants. On the other hand, they also check at each place of detention whether or not the detainees or their relatives who exercise their right to complain have to fear retaliation.

6.2. SPECIAL TYPES OF VISITS

6.2.1. VISITS WITH A COVID-19 FOCUS

The focal points of the NPM’s visits were determined by investigating into the consequences of the coronavirus pandemic all through 2021. According to the interim guidance of the World Health Organization (WHO) on the prevention and control of the Covid-19 pandemic in prisons and other places of detention issued on 15 March 2020, places of detention may act as starting points of the infection due to the close proximity of the detainees to each other, this is why preserving the health of the persons living there is a key priority for public health as well.^[15]

10 Clause 26 of the 9th General Report on the CPT’s activities [CPT/Inf (99) 12]

11 Clause 23 of the 10th General Report on the CPT’s activities [CPT/Inf (2000) 13].

12 See also Articles 10 and 16 of the UN Convention against Torture.

13 Article XXV of the Fundamental Law of Hungary

14 See also Articles 13 and 16 of the UN Convention against Torture.

15 WHO: *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance, 15 March 2020*. p. 1

The NPM's visits primarily examined to what extent the pandemic situation and the restrictions applied at the places of detention affected the living conditions of the detainees and how the institutions could fulfil their obligations regarding the prevention of the coronavirus infection. The focal points were determined by taking into account the guidelines set out by the Subcommittee on Prevention and the CPT already outlined in Subchapter 1.3 of this comprehensive report.

In the SPT Advice issued on 7 April 2020, the Subcommittee on Prevention^[16] points out that the prohibition of torture and cruel, inhuman or degrading treatment or punishment should also be ensured in extraordinary circumstances and in states of emergency.^[17] According to the Advice, the national preventive mechanisms operating in the individual countries may decide themselves on the measures that they find the most suitable in the pandemic situation.^[18] The national preventive mechanisms shall exercise their mandates by reckoning with the restrictions of social contacts during the coronavirus pandemic.^[19] On 10 June 2021, the Subcommittee on Prevention issued a protocol to the national preventive mechanisms with regard to the fast spread of the coronavirus pandemic^[20] about the visits to be paid in the period of the pandemic.

In its Statement on the principles of the treatment of persons deprived of their liberty during the coronavirus pandemic, the CPT^[21] also pointed out that independent monitoring performed by the NPMs continues to be a critical guarantee against ill treatment, in addition to reckoning with the “do no harm” principle. After the issuance of the Statement, CPT also published a Follow-up Statement on 9 June 2020^[22], in which it also stressed that the measures introduced on account of the pandemic, especially those that restrict the keeping of contact, should be lifted as soon as possible.

In his COVID-focused visits, the NPM paid special attention to the following criteria:

- number and placement of the detainees and patients;
- measures taken for the prevention of the infection;

- healthcare services;
- availability of a psychologist;
- daily routines, with special regard to access to education and resuming work, to ensuring leisure time and staying outdoors;
- possibilities of keeping contact, compensating for the restrictions of keeping personal contact;
- information provided on pandemic-related measures.

All the visits of the NPM in 2021, namely to 14 penitentiary institutions, 4 police facilities, 2 social care homes and 3 children's homes, were Covid-focused.

The NPM announced most of his Covid-focused visits in advance, with a view to protecting the detainees, the staff members of the places of detention, as well as the members of the visiting group from the infection, furthermore, in order to ensure the protective measures necessary with regard to the pandemic situation. The members of the visiting groups wore protective equipment during the visits, respecting the “do no harm” principle and kept appropriate distance during the personal interviews.

6.2.2. FOLLOW-UP VISIT

The follow-up visit is part of the NPM's activities aimed at preventing the ill-treatment of persons deprived of their liberty. The primary objective of the follow-up visit is to get information about the measures aimed at the implementation of the NPM's recommendations.^[23] A further objective is to encourage the personnel of the places of detention and the authorities to implement the NPM's recommendations.^[24] Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of the NPM's measures with the personnel of the places of detention.

In 2021, the NPM paid a follow-up visit to the Somogy County Remand Prison. The visit was meant to control the implementation of the recommendations made in the report on the

16 SPT: *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic* (CAT/OP/10)

17 Clause 5 of CAT/OP/10

18 Clause 6 of CAT/OP/10

19 Clause 11 of CAT/OP/10

20 *Protocol for national preventive mechanisms undertaking on-site visits during the coronavirus disease (COVID-19) pandemic* (CAT/OP/10)

21 CPT: *Statement of principles relating to the treatment of persons deprived of their liberty during the coronavirus (COVID-19) pandemic* [CPT/Inf(2020)13] and CPT: *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing Covid-19 pandemic* [CPT/Inf (2020) 21]

22 *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing Covid-19 pandemic* (CPT/Inf (2020) 21)

23 SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 33 of CAT/OP/1/Rev.1).

24 See: BIRK Moriz, ZACH Gerrit, LONG Debra, MURRAY Rachel, SUNTINGER Walter: *Enhancing impact of National Preventive Mechanisms – Strengthening the follow-up on NPM recommendations in the EU: Strategic development, current practices and the way forward*. Ludwig Boltzmann Institute & University of Bristol, May 2015, p. 10 Available at: http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study_final.pdf

NPM's visit on 24-25 June 2015^[25] and it also took the consequences of the coronavirus pandemic into account. The follow-up visit inspected the condition of the disciplinary cells, the headcount of the personnel, their working conditions and circumstances, the placement of juvenile offenders, the hy-

gienic conditions, the treatment of detainees, the engagement of the detainees in meaningful activities, as well as the available medical and psychological services, by taking the findings of the previous report into account.

25 See report No. AJB-3865/2016.

7. THE REPORT OF THE NPM

The NPM makes reports on the visits that he has conducted; *“it shall contain the uncovered facts and the findings and conclusions based on those facts”*.^[1] In addition to indicating the location of the visit, the cover of the reports also states that the report is published by the Commissioner for Fundamental Rights while performing his tasks related to the NPM and not as part of his general fundamental rights protection activities.

7.1. PREPARATION OF THE REPORT

Pursuant to Article 21(2) of OPCAT, *“confidential information collected by the National Preventive Mechanism shall be privileged”*.

The Commissioner for Fundamental Rights, *“in the course of his proceedings, may process – to the extent necessary for those proceedings – all those personal data and data qualifying as secrets protected by an Act or as secrets restricted to the exercise of a profession which are related to the inquiry or the processing of which is necessary for the successful conduct of the proceedings”*.^[2]

The members of the visiting delegations forward their partial reports, summarizing their observations, the results of the measurements they have taken and the interviews they have conducted, the photos taken on site, and the documents obtained in the course of the visit to the head of the visiting delegation; the external experts also submit their opinions. Neither the partial reports nor the expert opinions contain any data suitable for personal identification.

As *“the documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights are not public”*,^[3] third persons may not have access, either prior to or following the proceedings, to notes taken and the documents obtained during the preparation or the conduct of the visit.

7.2. INTRODUCTION

This part of the report gives a short introduction of the competence of the NPM, the reasons for and the circumstances of selecting the location, as well as the criteria based on which, pursuant to Article 4(2) of OPCAT, persons are deprived of their liberty there. It contains the date of the visit, the names and qualifications of the members of the visiting delegation, and the method of the inspection. Since the preventive monitoring visits of the NPM also cover the practice-oriented review of the legal regulations relevant for the operation of the place of detention, the introduction also specifies the applied domestic and international sources of law, as well as the list of fundamental rights touched upon by the report.

7.3. PROHIBITION OF SANCTIONS

The report calls attention to the fact that *“no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way”*.^[4]

7.4. FACTS AND FINDINGS OF THE CASE

From the aspect of performing the tasks related to the NPM, the detailed description of the treatment and conditions observed is of major importance.

The facts of the case include the basic data of the place of detention, as well as the detailed description of the observations, interviews, and documents obtained, on which the NPM bases his findings and measures.^[5] The head of the visiting delegation drafts the report using the partial reports prepared by the members of the visiting delegation and the opinions of the external experts. The application of the method of triangulation, i.e. cross-checking information (allegations), provided by various persons, as well as documents, facilitates objectivity.^[6]

1 Section 28(1) of the CFR Act

2 Section 27(1) of the CFR Act

3 Section 27(3) of the CFR Act

4 Article 21(1) of OPCAT

5 See Article 32(1) of Instruction No. 3/2015 (30 November) of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries (hereinafter referred to as: CFR Instruction No. 3/2015 on the professional rules and methods of his/her inquiries (hereinafter referred to as:

6 SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 26 of CAT/OP/1/Rev.1)

The findings of the report shall include those aspects of placement conditions and treatment which may lead to an impropriety related to a fundamental right or the threat thereof.^[7] Under findings, the NPM also has to elaborate whether the fundamental-rights-related impropriety, uncovered during the visit, is the result of the wrong interpretations of the law, a redundant, unclear, or inadequate provision of a piece of legislation, or the absence or the deficiency of the legal regulation on the given issue.^[8]

Pursuant to Article 16(1) of the UN Convention against Torture, each State Party “shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The UN Convention against Torture does not give a definition of “other acts” of ill-treatment which do not qualify as torture as defined in Article 1. The prohibition of “other acts” compels the national preventive mechanism to take action against various types of treatment that fall outside the concept of torture but cause suffering to the persons deprived of their liberty.

The experience gathered from the visits shows that, in the case of detainees, enduring not only treatment and/or placement conditions violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment but also, treatment and/or placement conditions resulting in an impropriety related to fundamental rights may cause serious physical or psychological ordeal. Since the “full respect for the human rights of persons deprived of their liberty” is a common responsibility shared by all^[9], the reports published within the activities of the NPM, in addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, also call the attention of those concerned to other fundamental-rights-related improprieties and the threat thereof.

When establishing a fundamental-rights-related impropriety or the threat thereof, the report of the NPM refers, in particular, to the interpretation of the law by the European Court of Human Rights, the CPT, the Committee on the Rights of Persons with Disabilities^[10], the other organs of the UN and the Council of Europe, as well as by the Constitutional Court.

In addition to critical remarks regarding placement and treatment, positive practices observed during the visit are also to be commented on and evaluated in this part of the report.^[11]

7.5. MEASURES TAKEN BY THE NPM

Pursuant to Article 19(b) of OPCAT, the national preventive mechanisms shall be granted the power to make recommendations to the “relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations”.

This part of the report shall detail those measures that are necessary for remedying fundamental-rights-related improprieties related to the treatment and placement of the detainees, as well as for eliminating circumstances threatening the enforcement of fundamental rights.^[12] In every case, the provision of the CFR Act giving grounds to a particular measure has to be indicated.^[13]

In addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, the NPM’s recommendations are also aimed at improving the treatment and the conditions of placement of persons deprived of their liberty. Through the measures specified in the reports on the NPM’s visits, the NPM does not only try to prevent torture and other cruel, inhuman or degrading treatment or punishment, but also to prevent and eliminate improprieties related to other fundamental rights of persons deprived of their liberty, as well as treatments and circumstances potentially resulting in the threat thereof.

The report must clearly indicate the fundamental-rights-related impropriety or the circumstance threatening the enforcement of a fundamental right to which the given measure is related.^[14] The measures with different addressees and the different measures to the same addressee must be clearly separated.^[15]

7.5.1. INITIATIVE

If the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, the NPM may initiate its redress by the head of the authority

7 Section 33 (1) of CFR Instruction No. 3/2015 (30 November)

8 See Article 11 of the UN Convention against Torture in this context.

9 Preamble of OPCAT

10 See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated into law by Act XCII of 2007

11 See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 30 of CAT/OP/1/Rev.1).

12 Section 34 (1) of CFR Instruction No. 3/2015 (30 November)

13 Section 34 (3) of CFR Instruction No. 3/2015 (30 November)

14 Section 34 (2) of CFR Instruction No. 3/2015 (30 November)

15 Section 34 (4) of CFR Instruction No. 3/2015 (30 November)

subject to inquiry. Such an initiative may be made directly by phone, orally or by e-mail. In such cases, the date, method, and substance of the initiative shall be recorded in the case file. Within thirty days of receipt of the initiative, the authority subject to inquiry shall inform the NPM of its position on the merits of the initiative and on the measures taken.^[16] If the authority subject to inquiry does not agree with the initiative, it shall, within thirty days of receipt of the initiative, submit the initiative to its supervisory organ together with its opinion thereon. Within thirty days of receipt of the submission, the supervisory organ shall inform the NPM of its position and on the measures taken.^[17] The addressees of the 39 recommendations formulated in the reports published by the NPM in 2021 responded on the substance within the time limit prescribed by the law.

7.5.2. RECOMMENDATION

If, on the basis of an inquiry conducted, the NPM comes to the conclusion that the impropriety in relation to a fundamental right does exist and the authority subject to inquiry cannot eliminate it in its own competence, in order to redress it he/she may – by simultaneously informing the authority subject to inquiry – address a recommendation to the supervisory organ of the authority subject to inquiry. Within thirty days of the receipt of the recommendation, the supervisory organ shall inform the NPM of its position on the recommendation and on the measures taken.^[18] If there is no supervisory organ, the NPM makes a recommendation to the authority inspected.^[19] The addressees of the 7 recommendations formulated in the reports on the NPM's visits published in 2021 responded on the substance within the time limit prescribed by the law.

The NPM's reports published in 2021, including the number of measures taken

Number	Name of the place of detention	Measures			
		total number	addressees		
			institution subject to inquiry ^[20]	supervisory organ ^[21]	law-making ^[22]
1.	Hódmezővásárhely Group Home of the Saint Agatha Child Protection Service	6	3	1	2
2.	Ajka Police Department and Devecser Police Station	3	3	-	-
3.	Somogy County II. Rákóczi Ferenc Children's Home	9	7	2	-
4.	Keszthely Police Department	2	2	-	-
5.	Márianosztra Strict and Medium Regime Prison	4	4	-	-
6.	Borsod-Abaúj-Zemplén County Remand Prison	2	2	-	-
7.	Sopronkőhida Strict and Medium Regime Prison	1	1	-	-
8.	Csanádpalota Group Home of the Saint Agatha Child Protection Service	4	2	1	1
9.	Kékmadár Children's Home, Child Protection Centre and Territorial Child Protection Service of Somogy County	4	2	1	1
10.	Szarvas Police Department	2	2	-	-
11.	Győr-Moson-Sopron County Gondoskodás Social Care Institution, Old-Age Home	13	11	2	-
Total		50	39	7	4

7.5.3. INITIATION OF PROCEEDINGS BY THE PROSECUTION

In order to redress an impropriety related to a fundamental right, the NPM may initiate proceedings by the prosecutor

through the Prosecutor General. In such a case, the competent prosecutor shall notify the NPM of his/her position on the initiation of proceedings and his/her measure, if any, within sixty days.^[23] The NPM did not exercise this power in 2021.

16 Sections 32 (1) and (2) of the CFR Act

17 Section 32 (3) of the CFR Act

18 Section 31 (1) of the CFR Act

19 Section 31 (4) of the CFR Act

20 Section 32 of the CFR Act

21 Section 31 (1) of the CFR Act

22 Section 37 of the CFR Act

23 Section 33 (1) of the CFR Act

7.5.4. REPORTING TO THE NATIONAL AUTHORITY FOR DATA PROTECTION AND FREEDOM OF INFORMATION

If, in the course of the inquiry, the NPM notices an impropriety related to the protection of personal data, to the right of access to data of public interest, or to data public on grounds of public interest, he may report it to the National Authority for Data Protection and Freedom of Information.^[24] The NPM did not exercise this power in 2021.

7.5.5. LEGISLATIVE INITIATIVE

If, in the interest of eliminating ill-treatment or the threat thereof, the NPM suggests to modify, repeal a piece of legislation or issue a new one, the requested organ shall inform the NPM of its position and of any measure taken within sixty days.^[25] The NPM made 4 legislative initiatives in 2021.

7.6. PUBLISHING THE NPM'S REPORTS

“The reports of the Commissioner for Fundamental Rights shall be public. Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession.”^[26]

In every case, the NPM sends the report on its visit to the head of the place of detention concerned and the addressees of the recommendations.

The reports of the NPM have to be published on the Office's homepage in digital format, accessible without restriction, free of charge to anyone.^[27] Within a few days after sending the NPM's reports, in Hungarian, to the addressees, the NPM's staff members make them accessible to the public^[28] as well.^[29] The NPM's reports shall also be published in the electronic archives within 30 days of their disclosure.^[30]

24 Section 36 of the CFR Act

25 Section 37 of the CFR Act

26 Section 28(2) of the CFR Act

27 Section 39 (1) of CFR Instruction No. 3/2015 (30 November)

28 Section 39 (2) of CFR Instruction No. 3/2015 (30 November)

29 <https://www.ajbh.hu/hu/opcat-jelentesek>

30 Section 39 (3) of CFR Instruction No. 3/2015 (30 November)

8. PERSONS DEPRIVED OF THEIR LIBERTY AT THE PLACES OF DETENTION VISITED BY THE NPM

8.1. DETAINEES IN PENAL INSTITUTIONS

In 2021, the NPM issued reports on its visits to 3 penitentiary institutions (the Sopronkőhida Strict and Medium Regime Prison,^[1] the Márianosztra Strict and Medium Regime Prison,^[2] and the Borsod-Abaúj-Zemplén County Remand^[3] Prison).

In 2021, the focus of the visits to penitentiary institutions remained the prevention of the coronavirus epidemic, as well as the control of the measures taken to avert the consequences of the pandemic, and the examination of how the restrictions that had been implemented affected the everyday lives of the detainees and what measures were taken to compensate for these effects. The NPM already visited the Márianosztra Strict and Medium Regime Prison in 2017,^[4] however, the inquiry was not of a follow-up nature with regard to the actual status of the epidemic, and the NPM examined the implementation of the recommendations made in the previous report only to the extent that they were related to the investigation criteria of the thematic visit.

8.1.1. HEADCOUNT AND OCCUPANCY, PLACEMENT OF DETAINEES

On the day of the visit, the Sopronkőhida Strict and Medium Regime Prison had 577 detainees. As part of the national capacity expansion programme, the building of a 110-bed new wing was in progress, after the delivery of which the occupancy of the Institution was expected to decrease below 100%. During 2019, a section of the building over the kitchen was transformed into an educational and health care section in which there used to be a library before, and in the section that was emptied as a result of the move, cells, dayrooms and showers were built.

At the 505-capacity Márianosztra Strict and Medium Regime Prison, there were as many as 492 adult male detainees on the day of the visit, which meant a 97.43% occupancy. The detainees were placed in 5 dormitories. Although the detainees' placement conditions improved as compared to the NPM's visit in 2017, some of the cells were still in poor condition.



Márianosztra Strict and Medium Regime Prison, renovated release preparation cell



Márianosztra Strict and Medium Regime Prison, poor condition disciplinary cell (right)



Lightweight construction buildings at the satellite unit of the Borsod-Abaúj-Zemplén County Remand Prison

1 NPM Report No. AJB-750/2021. Date of the visit: 13.05.2020

2 NPM Report No. AJB-874/2021. Date of the visit: 02/02/2021

3 NPM Report No. AJB-1190/2021. Date of the visit: 10/02/2021

4 NPM Report No. AJB-747/2018 Date of the visit: March 13- 14, 2017

The Borsod-Abaúj-Zemplén County Remand Prison consists of two building units, one of the facilities is in central Miskolc, while the other one is on the outskirts of Miskolc, in Szirmabesenyő. At the Institution with a total admission capacity of 874, there were as many as 820 detainees on the day of the visit, which means a 96.81% occupancy. After the delivery of the new lightweight construction buildings that were erected in 2020 as part of the national capacity expansion programme at the Szirmabesenyő satellite unit, the number of places in the Institution increased and although many new detainees arrived, the earlier overcrowding ended. The poor conditions of the bathroom jeopardised the availability of appropriate personal hygienic conditions at this institution as well.

8.1.2. MEASURES TAKEN WITH A VIEW TO PREVENTING CORONAVIRUS INFECTIONS

At the Sopronkőhida Strict and Medium Regime Prison, the commander took measures to ensure the necessary protective equipment and disinfectants, as well as to prevent infections. By the time of the visit, no infected person had been registered at the Institution.

At the Márianosztra Strict and Medium Regime Prison, no coronavirus infection among the detainees had been confirmed by the day of the visit. As many as eleven staff members tested positive. At the time of the visit, the vaccination of the health care staff of the Institution against Covid-19 was still in progress, in the case of the other members of the personnel (law enforcement staff), the vaccination needs were being registered. The vaccination needs of elderly and sick detainees under care were also assessed but on the day of the visit, there was no information yet on when exactly and in what way the detainees would be vaccinated.

At the Borsod-Abaúj-Zemplén County Remand Prison, 20 detainees and 65 staff members had already tested positive for coronavirus by the day of the visit. By the time of the visit, all the health care staff members of the Institution who had applied for it had already been administered the two doses of the vaccine against Covid-19. The other members of the personnel (law enforcement staff) were asked to give a statement on their vaccination needs but their vaccination process had not yet begun. The needs of the detainees over sixty years of age were also assessed, and about half of them indicated their intention to be vaccinated. At the time of the visit, there was no information on the date of the vaccination of the detainees yet.

According to the statement of the National Headquarters of the Hungarian Prison Service, the vaccination of the detainees against Covid-19 began on 28 April 2021.^[5]

8.1.3. PERSONNEL

The NPM detected that both the Sopronkőhida Strict and Medium Regime Prison and the Márianosztra Strict and Medium Regime Prison were understaffed, which, in the opinion of the NPM, especially because of the increased psychological burden due to the pandemic situation, which affected both the detainees and the members of the personnel, was suitable for exerting a negative effect on the treatment of detainees and consequently, jeopardised the enforcement of the prohibition of inhuman or degrading treatment or punishment.

The training of new colleagues who recently joined the staff of the Borsod-Abaúj-Zemplén County Remand Prison due to the expansion of prison capacities put a considerable burden on the officers who had served there for a longer time and the pandemic has also increased the workload of the staff. The NPM exposed improprieties with regard to fundamental rights in this Institution as well, related to the excessive workload of the personnel.

8.1.4. EDUCATION AND EMPLOYMENT

In the education of the detainees, it was the evolution of the pandemic that determined in which period the classes were held with the personal attendance of the teachers, by taking the required measures.

The participation in education of the detainees held at the Sopronkőhida Strict and Medium Regime Prison was ensured by the Institution without the personal attendance of the teachers, while free time and outdoors activities were organised in smaller than usual groups. At time of the visit, the employment of detainees with external companies was suspended, as the orders decreased during the pandemic, the procurement of raw materials was also faltering, this is why maintenance jobs were ordered. However, work with the Sopronkőhida Ipari és Szolgáltató Kft, which is operated by the prison organisation, could be carried on, thus more than half of the detainees could be employed despite the pandemic situation.

At the Márianosztra Strict and Medium Regime Prison, participation in education was primarily ensured without the personal attendance of the teachers, due to the pandemic situation, however, during the practical training of trades, face-to-face education was also provided, by applying the protective measures aimed at the prevention of infections. Free time activities were organised in smaller groups. Since the detainees were employed on the territory of the Institution and on the premises of the company Nostra Kft, which is in its close proximity, in the period preceding the pandemic as well, the range of employment options did not have to be narrowed down but the required protective measures were implemented at the workshops too.

⁵ <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4131>

Some of the leisure time activities that used to be organised earlier were temporarily suspended at the Borsod-Abaúj-Zemplén County Remand Prison with regard to the pandemic situation but they were replaced by some new activities which could be organised with the participation of a maximum of 3-4 persons, by keeping the required physical distance. The evolution of education and employment was also influenced not only by the pandemic but also, by the significant number of new detainees who arrived in the second half of 2020. Participation in education was primarily ensured without the personal attendance of the teachers, it was only during the practical training of trades that face-to-face education was provided, by applying the necessary protective measures. The option to take up employment outside the Institution was not offered any more but according to the information provided by the management, this would have happened without the outbreak of the pandemic as well.

8.1.5. COMMUNICATION

From July 2021, the National Commander of the Hungarian Prison Service allowed the reception of visitors again, by maintaining some of the restrictions. During July 2021, those detainees who had been vaccinated or had survived the infection were allowed to receive one adult relative possessing an immunity card once a month for 30 minutes, from 1 August to 7 November 2021, they could receive one adult and one person over 12 years of age with an immunity card once a month, for a maximum duration of 60 minutes, by taking the measures required against the infection such as wearing a mask, keeping the required social distance, avoiding direct bodily contact.^[6]

It was in 2020 that the prison organisation introduced the practice of ensuring a prolonged phoning and Skype communication possibility for the detainees in order to compensate for the ban on receiving visitors imposed due to the pandemic. The NPM experienced during 2021 as well that both the prison personnel and the detainees highly appreciated the opportunity to use Skype. As a result of the favourable experience gained about the mode of communication that was widely introduced in 2020, the legislator regulated in detail the keeping of contact via telecommunications devices in such a way that it should also be possible to use it outside the period of the special legal order, with effect from 1 January 2021. As a general rule, the number of monthly occasions that can be permitted from now on depends on the incarceration rate and the type of penitentiary institution.^[7] However, at the time of a health care crisis or an emergency situation affecting the prison organisation, this form of keeping contact became permissible without regard to the regime rules as long as it is applied for the replacement of receiving visitors.



Room for keeping contact electronically at the Márianosztra Strict and Medium Regime Prison



Room for keeping contact electronically at the Borsod-Abaúj-Zemplén County Remand Prison

In the case of the NPM's reports issued in 2021, the visitation ban was in effect in each penitentiary institution at the time of the inquiry.

At the Sopronkőhida Strict and Medium Regime Prison, a special room was established for keeping contact via Skype, which method had been introduced for the compensation of personal visits, and 4 computers were set up in this room. Although at the time of the visit, this possibility had only been used for a short period of time, it was highly appreciated by both the prison personnel and the interviewed detainees.

Video calls via the Skype application was a new form of keeping contact at the Márianosztra Strict and Medium Regime Prison as well, which had not been possible before the pandemic situation. In one of the dayrooms, 4 end points were established.

Keeping contact electronically was introduced at the Borsod-Abaúj-Zemplén County Remand Prison only due to the pandemic situation as well. The conditions for using the Skype connection were established both at the headquarters of the Institution and at the Szirmabesenyő satellite unit (in the earlier building of the Regional Juvenile Detention Centre and in the new, lightweight construction building too).

⁶ <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4268>, <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4322>, as well as <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4565>

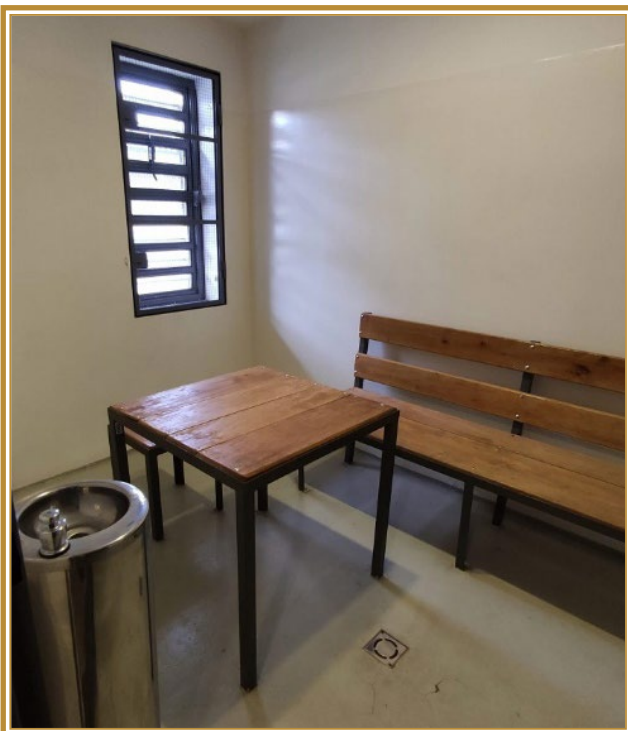
⁷ See IM (Ministry of Justice) decree No. 16/ 2014 (19 December) Section (2) h) (strict regime prison, general regime – monthly 1), 39 Section (3) h) (strict regime prison, lighter regime – monthly 2), 40 Section (2) h) (medium regime prison, general regime – monthly 2), 40 Section (3) h) (medium regime prison, lighter regime – monthly 3), 41 Section (2) h) (jail, general regime –monthly 3), 41 Section (3) h) (medium regime prison, general regime – monthly 4).

The NPM experienced, in all three penitentiary institutions, that the opportunity ensured by the law was used and, in line with the instruction of the National Commander of the Hungarian Prison Service, the time limit of the phone calls initiated by the detainees at their own cost was raised uniformly by 15 minutes, irrespective of the regime category, while those detainees who did not have phone sets were provided, at request, with a monthly 3x5 minute calling opportunity at the cost of the prison organisation.

8.2. POLICE CUSTODY

In 2021, the NPM issued COVID-specific reports on the visits to the Ajka Police Department, the Devecser Police Station,⁸ as well as the Keszthely Police Department and Szarvas Police Department⁹.

At the Ajka Police Department, there are offices also used as custody units and rooms used for different procedural actions. At the Devecser Police Station, there is a modern custody unit and some offices that are used for performing different police tasks but escorting also happened on the official premises. At the Keszthely Police Department, in addition to the custody unit, one can also find some offices that are used for the different police procedures. At the Szarvas Police Department, there is a custody unit, some offices used for escorting, as well as some rooms used for the performance of investigative actions.



Custody unit, Devecser Police Station

At the time of the visits, there were no detainees in the Police facilities.

The NPM established an impropriety with regard to fundamental rights on account of the poor conditions and unsuitable furnishings of the custody unit of the Ajka Police Department. In the two, neat and appropriate quality custody units of the Keszthely Police Department, fixed benches of an acceptable condition were placed as furniture suitable for relaxation. The unsuitable furniture in the custody unit of the Szarvas Police Department also jeopardised the enforcement of fundamental rights.

The established entry regime, the taking of temperature, the possibility to sanitise hands, the provision of face masks to the new arrivals, as well as the measures taken by the management for the health protection of the staff members met the requirements of the protocol on the police tasks related to health preservation and public health issued as professional guidance by the National Police Headquarters for the senior police staff in all the visited police facilities.

The rights of the detainees to keeping contact were ensured during the state of danger as well. The relatives of the escorted persons were primarily notified by the acting police officers on mobile phones, if there was no phone access, they acted in person, by paying attention to keeping the physical distance and the use of protective equipment required by the epidemiological regulations.

The NPM exposed improprieties with regard to fundamental rights on account of the medical examinations of the escorted persons at the Ajka Police Department, the Keszthely Police Department and the Szarvas Police Department, as the escorting police officer was allowed to be present at the confidential appointment between the medical doctor and the detainee.



*Tools for protection against the epidemic:
Protective equipment at the Szarvas Police Department*

⁸ NPM Report No. AJB-634/2021. Date of the visit: 21/01/2021

⁹ NPM Report No. AJB-3825/2021. Date of the visit: 02/06/2021



Tools for protection against the epidemic:
Sanitiser at the Keszthely Police Department



Tools for protection against the epidemic:
Information leaflet at the entrance of the Ajka Police Department

The visiting group formulated further requirements for all the police facilities with regard to the administration of the measures restricting personal liberty.

8.3. RESIDENTS OF SOCIAL CARE INSTITUTIONS

The NPM issued a Covid-focused report on its visit to the Győr-Moson-Sopron County Assisted Living Centre for the Elderly of the “Gondoskodás” Social Care Centre in Csáfordjánosfa^[10] (hereinafter referred to as: the Elderly Home).



A room of the Elderly Home

At the time of the visit, there were 50 residents, i.e. 24 women and 26 men at the 50 places of the Home. The residents were isolated from the outside world for a long time, due to the ban on visitation and leaving the institution introduced due to the coronavirus pandemic. The NPM, considering the “do no harm” principle, visited the Elderly Home only after the slowdown of the third wave of the epidemic. The aim of the visit was to inspect the living circumstances of the residents, and whether their protection against the Covid-19 infection was ensured. The aspects of the inspection covered the health and psychological condition of the residents, their activities, catering, and also the number and working conditions of the staff caring for them. From the residents, 15 persons lived with dementia, 3 of them with a serious condition, 1 person in mid-stage dementia, as indicated by the medical expert opinion. Another 5 persons had visual impairment, 1 person had hearing impairment, 11 residents lived with motoric disabilities, while 8 residents had intellectual disabilities. The rooms of the Elderly Home are in two buildings surrounded by a big park.



The Elderly Home's courtyard and park

Pursuant to Annex 2 of Decree 1 of 2000 (7 January) of the Ministry of Social and Family Affairs (SzCsM) on the professional duties of social institutions providing personal care and on the conditions of their operation (hereinafter referred to as: SzCsM decree), in all the institutions that provide care and nursing to elderly persons, the required care and nursing staff for 50 residents shall include 12 members, and 1 social or therapeutic expert. The number of nurses and carers did not reach the number prescribed by Annex 2 of SzCsM. The employment of one social worker was in compliance with the headcount required by the provisions of the SzCsM Decree but this staff member also performed the tasks of the head of unit. With regard to the number of residents with reduced mobility who need to be lifted and the male residents who require constant care, the NPM deemed it necessary to employ a male carer at the Elderly Home as well.

At the time of the visit, the majority of the staff and all the residents had already been administered two vaccinations against the coronavirus infection and many of the residents applied for the third shot. Two residents died of a disease caused by the coronavirus infection. One of them was hospitalised for another reason, due to the necessity of radiotherapy in December 2020, where he was infected and died in hospital in January 2021. The other resident's first coronavirus test turned positive, this person was isolated in a special room at the Elderly Home and was cared for by the nurses in the necessary protective equipment, coveralls, masks and gloves. Her symptoms included fever and weak physical condition but she did not have any other symptoms of the coronavirus disease such as coughing or difficulty breathing. The records taken suggest that she was cared for with utmost care and caution. The patient's second coronavirus test turned negative but by the time the test result arrived, the resident had already passed away despite careful nursing.

During the visitation ban ordered on account of the coronavirus pandemic, those residents who were not confined to bed could see their relatives through the fence. There were many residents who had mobile phones and the Elderly Home had wifi but the signals were not received in the area due to the thick walls, especially in the castle building. 3-4 residents could correspond with their relatives electronically (on Messenger). At the time of the visit, it was already possible to keep personal contact. Appointments on the phone had to be made for the visits and in the case of one resident, a visit could last for thirty minutes. 3 adult visitors could come to visit a resident at one time and they could also bring children. The temperature of the visiting relatives was taken and the use of face masks was mandatory during the visits.

After the third wave of the pandemic, the community activities meant to support mental health did not yet resume at the time of the visit and the majority of the residents were staying at the Elderly Home without any meaningful activities.

8.4. RESIDENTS LIVING IN CHILD PROTECTION INSTITUTIONS

In 2021, the NPM issued four reports on child protection. The Kékmadár Children's Home of the Child Protection Centre and Territorial Child Protection Service of Somogy County ^[11] and the Somogy County II. Rákóczi Ferenc Children's Home ^[12] were operated by the state, under the management of the General Directorate of Social Affairs and Child Protection. The Hódmezővásárhely Group Home and Csanádpalota group homes of the Saint Agatha Child Protection Service ^[13] were maintained by ^[14] the church.

¹¹ NPM Report No. AJB-643/2021. Date of the visit: 20/01/2021

¹² NPM Report No. AJB-1463/2021. Date of the visit: 18/02/2021

¹³ NPM Report No. AJB-1327/2021. Date of the visit: 13/10/2020

¹⁴ NPM Report No. AJB-1328/2021. Date of the visit: 13/10/2020

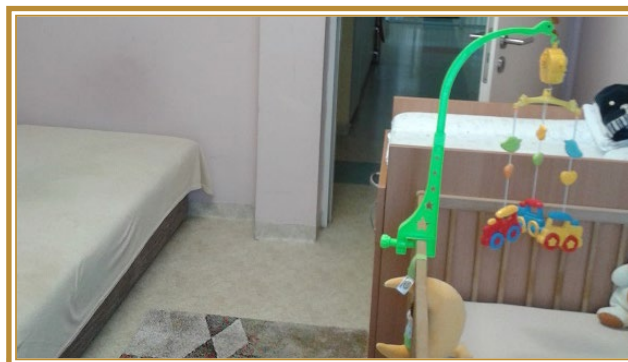
During the Covid-focused visits, the members of the visiting group wore protective equipment, which meant masks or rubber gloves, depending on the evolution of the pandemic situation and also, coveralls.

8.4.1. MEASURES TAKEN WITH A VIEW TO PREVENTING INFECTIONS

As the common experience of all the inquiries, it can be established that at each visited institution, there was cleanliness, there were sufficient disinfectants and cleaning supplies, as well as protective equipment, and the hygienic requirements were kept everywhere. The children were well-informed about the pandemic situation and its prevention, they understood the point of the restrictions. There were no confirmed cases of Covid infection among the children residing at the visited institutions. It happened that a hospitalised patient was infected with coronavirus, due to someone else's condition but the infection was not brought to the home.

All the visited institutions had strategies in place about how the necessary isolation could be ensured in the case of a larger number of infections. The methods of solution varied depending on the local characteristics and the decisions of the operators. At the two institutions in Somogy County, a meeting room or a dayroom within the home was transformed for this purpose. The Saint Agatha Child Protection Service operated an external isolation house in the Szeged-Csanád Diocese. In the case of an infection, it was at this location that care was provided to those children who were fully isolated from the children in the other care institutions for two weeks. In the isolation house, in addition to the child protection experts, the children were cared for by the health care expert staff of Alföld Ambulance Kft.

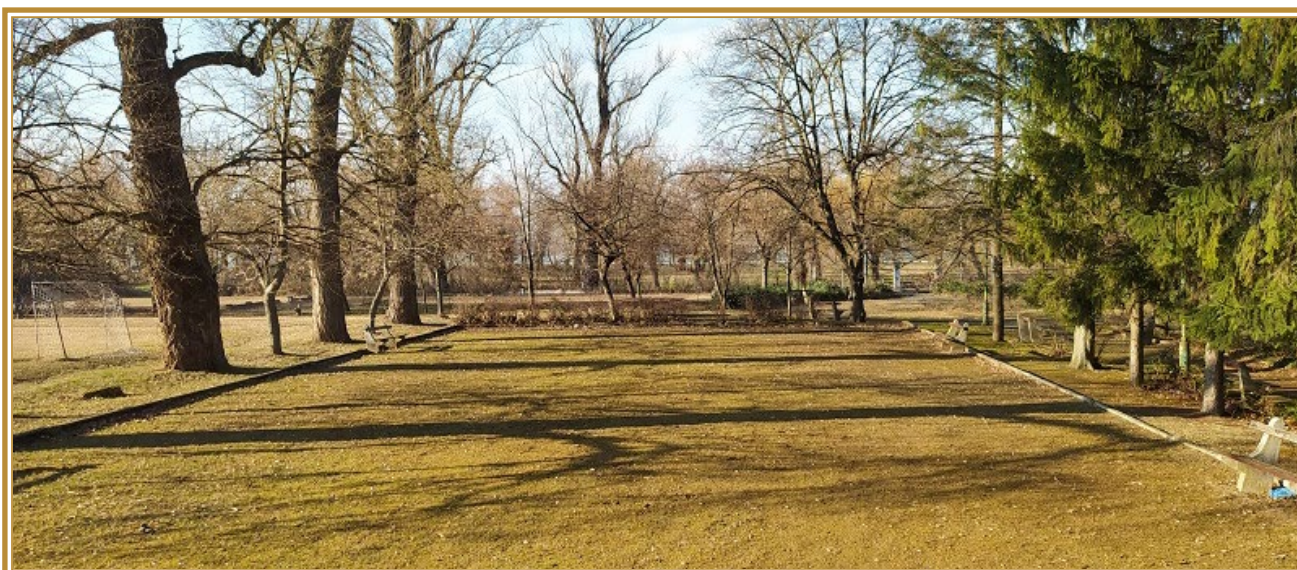
8.4.2. MATERIAL CONDITIONS



Room for mothers and babies at Kékmadár Children's Home

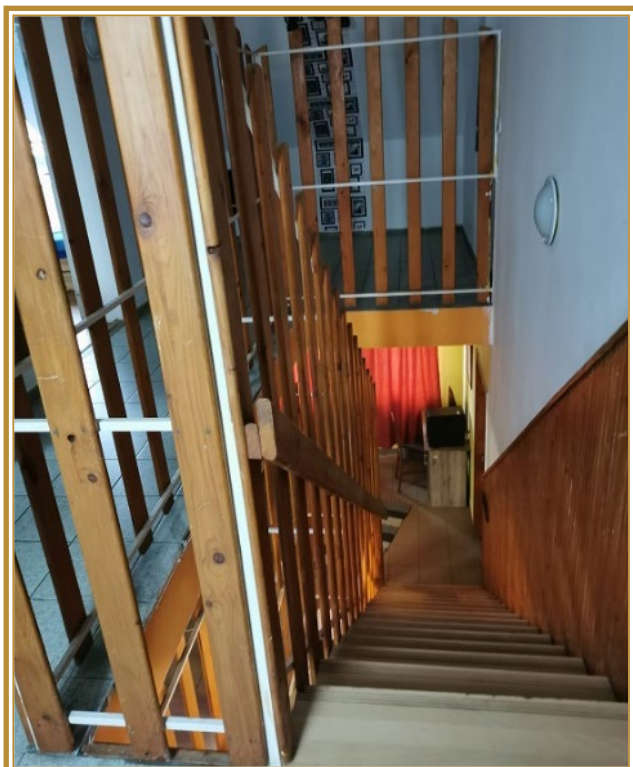
At the Kékmadár Children's Home, three 12-place group homes are operated, of which two housing units serve as mothers' shelters, where shelter is provided to adolescent mothers in child protection and their children, with 12 places in each unit (6+6). The young residents with children may receive follow-up care at the Children's Home after reaching legal age. On the day of the visit, there were 33 residents in the children's home, where 11 young children could stay with their mothers. The visiting group could see a modern layout of the homes, which were carefully designed, took the needs of mothers and children into account, in each mothers' section, 6 rooms were available, and in each room, there was a bed for the mother and a crib with a changing table for their children.

The Somogy County II. Rákóczi Ferenc Children's Home has a holding capacity of 48 persons, of which 10 places are taken up by the young adults who request follow-up care until they turn 24. At the time of the visit, the utilization rate was 58%, there were 25 children and 3 young adults in follow-up care in Fonyód. The groups' own kitchens, living rooms and bedrooms were of appropriate size. Some of the premises would have needed redecoration and some of the furniture would also



Park and sports yard of the Fonyód Somogy County II. Rákóczi Ferenc Children's Home

need to be replaced. The door of one of the bedrooms of the special group was torn off its hinges by one of the residents, the last destructions took place a few days before the visit. The NPM pointed out that the prevention of damaging the premises or the furnishings was the expert staff's responsibility



Two-level Hódmezővásárhely Group Home

At the Group Home of the Saint Agatha Child Protection Service in Hódmezővásárhely, 8 children in state care (4 with average needs, 3 with dual needs and 1 with special needs) lived in the 12-bed group home. The number of children with dual or special needs raised in the group home in the form of integrated education was higher than the number stipulated by the relevant law. The visiting group experienced order and cleanliness all over the group home, although renovation and repair seemed to be necessary at a few places both within the building and the courtyard. Most of the rooms were in the attic. There were several rooms in which there was only one boy, in some other places there were double rooms, there was enough space everywhere.

At the Csanádpalota Group Homes of the Saint Agatha Child Protection Service, each of the 12-person group homes accommodated 11 residents, children and young adults at the time of the visit. There were 4 bedrooms, in each of which 2-4 children were placed, in the one-floor building at 16 Kossuth utca. The refurbishment of the group home at 31 Kossuth utca had recently been finished. A large living room was set up near the spacious kitchen on the bottom floor of the two-level building. There was a community room on the top level as well, along with the bedrooms.

8.4.3. PERSONAL CONDITIONS

At the Kékmadár Children's Home, the psychologist was only available for the residents twice a week, for a weekly 12 hours, the qualifications of the special education teacher, the preschool teacher and the special needs assistant were not in line with the effective requirements of the law with regard to qualifications. At the Vadkörte Group Home, the position of the education expert was unfilled and the required five staff members assigned to the group were not available

At the Somogy County II. Rákóczi Ferenc Children's Home, the children's education, development and therapeutic support were done by a part-time special education teacher and a psychologist in 10 hours a week from mid- November 2020. At the time of the visit, the relevant requirements of NM (Ministry of Welfare) Decree No. 15/1998 (30 April) were not met but the full-time employment of a special education teacher was planned. At the time of the visit, three (two of them newly hired) child supervisors were working at the Institution without the appropriate qualifications, the obtaining of the qualification of 2 social care assistants and 1 preschool nanny was in progress, in a self-funded form. There was a high turnover rate among the employees.

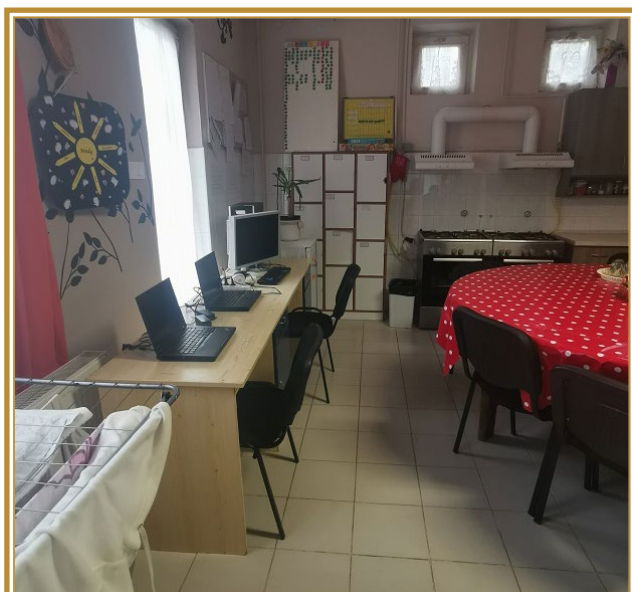
The Saint Agatha Child Protection Service employed more staff members than the minimum headcount stipulated by the NM (Ministry of Welfare) Decree in each group home of the county. At the Hódmezővásárhely Group Home, 7 adults were directly involved with children, with regard to the several children who had different from average needs. In addition to the education expert, a child protection assistant and five child supervisors performed the educational and care tasks for the children. Furthermore, a psychologist and a special education teacher also supported the children living in the home in a weekly 10 hours each. Due to the increased headcount, several adults could be there for the children at the same time. At the Csanádpalota group homes, the education experts held qualifications in pedagogy, while the child protection assistants were qualified special needs assistants. The child supervisors included child and youth protection supervisors and preschool nannies but there were some among them who did not hold the qualifications stipulated by the NM (Ministry of Welfare) Decree. At the group home at 31 Kossuth utca, the special education teacher held a primary school teacher's qualification, which did not meet the effective requirements of the NM (Ministry of Welfare) Decree with regard to qualifications either.

8.4.4. PARTICIPATION IN EDUCATION

At the Kékmadár Children's Home, expectant mothers and young mothers with newborn babies or older infants may resume their studies mainly in the status of home-schooled students. Older children attended preschool or school. It is not only those on

whom the education obligation was imposed but everyone else, except for one mother of nearly 19 years of age in follow-up care, who studied from among the residents of the Home. Besides the primary school students, two students were already preparing for their chosen profession and a gifted student was in the twelfth class of the textile design course of the Kaposvár Zichy Mihály Vocational School of Applied Arts. At the time of the transfer to the digital work schedule, the technical conditions were initially incomplete, many children remained in touch with the educational institutions by using their smartphones. However, a sufficient amount of devices shortly became available with operator and foundation support and an operable system was set up within a month, and the internet was also continuously available.

The residents of the Somogy County II. Rákóczi Ferenc Children's Home were enrolled in several schools, in addition to the school in Fonyód, the children attended the educational institutions of Fenyves, Somogyvár, Keszthely, Boglár, Nagybajom, Magyarhertelend as well, among others. In the case of seven students, special needs emerged due to learning disabilities, intellectual disability, dyslexia, dysgraphia and other mental deficiencies. Some of them were provided the necessary development in an integrated special needs methodological institution. Some of them were supported by a speech therapist, in the case of some others, social skills had to be developed, yet another group of students were provided kinesiotherapy and/or rehabilitation classes, or their reading skills, spelling, or communication skills were developed. In the first wave of the pandemic, in March 2020, at the time of the transfer to digital education, the internet network needed development. At that time, the Children's Home did not yet have an adequate number of computers or laptops with which they would have been able to join digital education smoothly. The network was developed and the number of computers was increased with foundation support. Continuous contact was kept with the schools via Skype and on the phone too.



IT devices in the community room of the Csanádpalota Group Home

All the residents of the Hódmezővásárhely és Csanádpalota Group Homes of the Saint Agatha Child Protection Service participated in education, irrespective of whether they were obliged to take part in education based on their age or condition. In Hódmezővásárhely, there were three staff members who performed their obligations in an individual work schedule. The transfer to digital education in the first wave of the pandemic did not cause major difficulties in this group home. At this place, due to the home-schooled students, the staff members had continuous experience in the organisation and support of education, in ensuring round-the-clock supervision, and the devices necessary for digital education were also available. Since several of the children in Csanádpalota lived in a students' hostel, the temporary suspension of face-to-face education meant a more significant change. The office computers were also used for keeping continuous contact with the school and the children also used their smartphones. Five of the children residing in Csanádpalota took part in the career counselling training session of the HÍD Programme. In the context of the HÍD Programme, those children who are lagging behind by several grades can complete two grades in one year.

8.4.5. KEEPING CONTACT DURING THE STATE OF DANGER

During the ban on visitation and leaving the institution ordered in the first wave of the state of danger, telephoning and internet-based forms of communication came to the foreground at the Kékmadár Children's Home. The parcels received by the children were kept in an outbuilding for three days. Depending on their individual temperaments, the children were outraged about the restrictions in varying degrees but they did not leave the institution without permission, nor were there any other incidents. After lifting the ban on visitation, the relatives were asked to spend shorter periods of time at the institution, the visits were organised in such a way that personal meetings should possibly happen separated from each other, in different time slots. There was an endeavour to organise the visits of relatives outdoors, and in colder weather, such occasions were organised in the corridor, the visitors were not allowed to enter the residential units.

At the Somogy County II. Rákóczi Ferenc Children's Home, the guardians notified the parents of the ban on visitation and the possible restriction of travelling home in a letter and on the phone, in line with the emergency scenario. There were only two cases when supervised contact was ordered, in the case of 12 children, it happened relatively frequently that contact was kept outside the children's home, with the child's biological parents or relatives. The ban on leaving the institution made both supervised contact and travelling home impossible. The older children complained that they could not see their class-

mates and friends, some of them were also concerned about the interruption of their relationships.

The relationship of half of the children living at the Hódmezővásárhely Group Home of the Saint Agatha Child Protection Service with their families had already been lost earlier, there was no contact regulated by the public guardianship office. However, the temporary ban on visitation and leaving the institution exerted a considerable impact on all the residents. During the time that had to be spent indoors, telephoning and the various forms of internet-based communication came to the foreground. The children could make a phone call home at the cost of the group home once a week.

In both of the Csanádpalota group homes of the Saint Agatha Child Protection Service, there was a child whose contact with their family had entirely been broken. The others kept contact with their parents, grandparents or siblings either in person or on the phone, and in the majority of cases, two-weekly meetings were allowed. Some relatives could also take the children from the institution. In the first wave of the pandemic, while the group home was closed down, there was mostly indirect communication (on the phone, on the internet) between the residents and their relatives. Some parents brought parcels for their children, in this case, they were not prohibited from talking through the fence, by keeping appropriate physical distance from each other. The missed personal meetings were made up for after the lifting of the restrictions.

8.4.6. RIGHT TO COMPLAIN

At the Kékmadár Children's Home, the children could turn to their carers and education experts with confidence if they had any problems. The children could also rely on the guardians and the children's rights representative, whose name and contact details were displayed in each residential unit. The complaints boxes in the group homes were emptied on a monthly basis, hardly any comments were submitted there. The atmosphere of the children's home is positive, personal problem-solving was allowed by the relationship between the staff members and the residents.

At the Somogy County II. Rákóczi Ferenc Children's Home, the children could contact the director of the institution with their problems at any time. The availability of a complaints box also allowed raising problems anonymously. It was also listed separately, in a conspicuous place, in a clearly legible form who and in what way can be contacted in the case of a complaint. The children could also rely on the guardians and they could also turn to the children's rights representative whose name and contact details were displayed.

The children could turn to the staff with confidence at the visited group homes of the Saint Agatha Child Protection Service as well. The NPM could not see any complaints boxes in the group homes.

9. DIALOGUE ABOUT THE MEASURES TAKEN BY THE NPM

Pursuant to Article 22 of OPCAT, *“the competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures”*.

In lack of OPCAT requirements concerning the dialogue between the NPM and the competent authorities, the fundamental principles defined by the Subcommittee on Prevention of Torture shall have governing effect with regard to the above-mentioned question.^[1]

The NPM

- should enter into a dialogue with the *“directors/operators of the government authorities and institutions on the possible implementation of the recommendations”*;^[2]
- *“he should establish a communication and cooperation mechanism with the competent authorities for the implementation of the recommendations”*;^[3]
- shall carry out a dialogue which shall include both *“a written and oral exchange of ideas”*.^[4]

Although the implementation of the measures proposed by the NPM is not mandatory, the provisions of the Ombudsman Act oblige the addressees of the measures to give meaningful responses to the improprieties exposed during the inspections and the initiatives taken for the elimination of the threat thereof. Engaging in a continuous and constructive dialogue aimed at following up the implementation of recommendations is a statutory obligation of only the NPM but also the heads of places of detention, authorities and other organs concerned. The dialogue between the NPM and the recommendations’ addressees is conducted using the report as a platform. The ways of following up recommendations, including the time limits for giving a response, are regulated in detail by the Ombudsman Act.^[5]

The key legal guarantee for the dialogue lies the provisions set out in Section 38 (1) of the CFR Act. Pursuant to the above-mentioned section of the law, if the authority subject to

inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the NPM does not agree with the position or the measure taken, he/she shall submit the case to the Parliament within the framework of his/her annual report, and may ask the Parliament to inquire into the matter. If, according to the NPM’s findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the NPM may propose that the Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

The NPM first carries on a written dialogue with the addressees of his measures, in which he also involves the supervising authority if necessary.

9.1. RESPONSES TO THE MEASURES TAKEN AFTER VISITS TO PRISON ESTABLISHMENTS

In his report on the visit to the Sopronkőhida Strict and Medium Regime Prison,^[6] in order to remedy the staff shortage of the personnel, the NPM requested the commander of the Institution to take measures for filling the vacancies, with special regard to the positions directly involved with the detainees. In his response, the commander informed the NPM that the headcount situation had significantly improved since the visit due to the increased recruitment activity. Furthermore, in order to decrease the overload of the personnel, the evolution of overtime is constantly monitored, the reasons for overtime are looked into, some measures were taken for optimising the work schedules, as a result of which overtime service decreased in the case of the most affected law enforcement department as well. The NPM accepted the response.

In the report on the visit to the Márianosztra Strict and Medium Regime Prison,^[7] in connection with the recommendations on the improvement of the placement conditions, the commander of the Institution provided information on that the maintenance of the

1 Paragraph (iii), Section 1, Article 11 of OPCAT

2 SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 34 of CAT/OP/1/Rev.1).

3 Clause 42 of CAT/OP/1/ Rev.1

4 Clause 34 of CAT/OP/1/ Rev.1

5 Sections 31-18 of the CFR Act

6 NPM Report No. AJB-750/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM’s Office under No. AJB-750/2021 and No. AJB-32/2022.

7 NPM Report No. AJB-874/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM’s Office under No. AJB-874/2021.

cells for the permanent placement of the detainees, as well as the disciplinary cells, is continuous at the Institution, and the equipment of the cells is regularly replaced and replenished. Furthermore, the complete renovation of the cell, including the floor, the walls, the doors and windows and if necessary, the electricity network is performed depending on the available financial resources, in a scheduled approach. Bedbug control on the premises used by the detainees is performed more frequently than required by the law, i.e. on a monthly basis, in addition to which bug sprays are also applied manually on an ad hoc basis. As a result of the methods and bug killers applied by the new service provider requested to act before the NPM's visit, the number of related incidents greatly decreased. Related to the recommendation on ensuring the detainees' personal hygiene, the commander reported that the cleaning of the bathrooms was controlled with higher intensity, developments and renovations began from 2020 in order to ensure the appropriate availability of hot water, the temperature of the heating cycles and water heaters is continuously monitored after setting up an automatic remote surveillance system, new hot water boilers have been procured and some other equipment was also modernised. With regard to the recommendation on the filling the vacancies of the Institution, with special regard to the vacant line officer's positions, the commander provided information on that the recruitment activity of the Institution was continuous, and the turnover rate decreased during 2021. With a view to strengthening the Institution's ability to retain staff, the improvement of the service and work conditions of the personnel is a constant priority for the management of the Institution. The NPM accepted the commander's response.

During his visit to the Borsod-Abaúj-Zemplén County Remand Prison,^[8] the NPM exposed improprieties with regard to fundamental rights related to the overload of the personnel and asked the commander of the Institution to remedy this situation. In his response, the commander reported on the increase in the staff headcount and provided detailed information to the NPM on his measures taken for the reorganisation of work schedules with a view to reducing overtime. In the case of the Institution operating in two buildings, the optimisation of performing the tasks was also supported by that a unit for the placement of detainees transported from the satellite unit to the prison headquarters located in the centre of the city of Miskolc because of the performance of the escorting tasks had been set up, so the number of transportations decreased. By the end of the first half of 2021, the number of

staff members who had been absent because of a disease or due to qualifying as contact persons as a consequence of the pandemic situation, has by now decreased, due to the vaccinations.

Due to the poor condition of the bathrooms of the building of the prison headquarters and the new lightweight construction buildings in the satellite unit, the NPM asked the commander to take measures, who informed him of that one of the bathrooms in the building of the headquarters had already been refurbished and the renovation and decoration work had already begun in the other one as well. In the lightweight construction buildings, some insulation problems had to be resolved, the jobs had partly been completed by the time of giving responses, the supervision of the condition of, as well as the maintenance and renovation of the detainees' bathrooms were continuous at the Institution. Furthermore, the commander provided information on the requirements on the wearing and replacement of face masks and the situation related to the vaccination of the detainees against Covid-19. The NPM accepted the commander's answers.

9.2. RESPONSES TO THE MEASURES TAKEN BY THE NPM FOLLOWING ITS VISITS TO POLICE DETENTION FACILITIES

In the reports on the visit to the Ajka Police Department^[9] and the Szarvas Police Department,^[10] the NPM proposed that the bench in the custody unit be replaced in order to make the furnishings suitable for rest.

The NPM made recommendations to all the visited police departments and police stations on that at the medical examination of the escorted person, the escort police officer should be beyond hearing distance during the confidential communication between the medical doctor and the detainee.

In the case of the Ajka Police Department and the Devecser Police Station,^[11] as well as the Keszthely Police Department,^[12] the NPM also made a recommendation on that the reports on the measures should also contain the performance of the tasks that had become necessary due to the pandemic.

The head of the police department informed the NPM on the acceptance of the recommendations.

8 NPM Report No. AJB-1190/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-1190/2021.

9 NPM Report No. AJB-634/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-634/2021.

10 NPM Report No. AJB-3825/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-3825/2021 and No. AJB-54/2022.

11 NPM Report No. AJB-634/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-634/2021.

12 NPM Report No. AJB-636/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-636/2021.

9.3. RESPONSES TO THE MEASURES TAKEN BY THE NPM FOLLOWING ITS VISITS TO SOCIAL CARE INSTITUTIONS

In his report on visiting the Gondoskodás Social Care Institution and Old-Age Home of Győr-Moson-Sopron County in Csáfordjánosfa, the NPM¹³ requested the General Directorate of Social Affairs and Child Protection as the operator of the Home to ensure the hiring of one more nurse and carer in one more position in order to ensure that the number of nurses and carers was in line with the norm stipulated by the relevant law and to create the conditions for the employment of one more mental health expert as a staff member if possible. In his response, the General Director of the General Directorate of Social Affairs and Child Protection informed the NPM on that the number of professional positions of the Home included 12 authorised and filled nurse and carer positions, and also, that in addition to the part-time (4-hour) social worker staff member, he initiated the employment of a professionals staff member with changed working abilities in a further 6 hours per day in the framework of the Human Resources Development Operational Programme (EFOP).

The NPM requested the Institution, in a recommendation, to try to convince the relatives that they should be open about the fact that the future residents were moving to an old-age home at the time of moving in. With regard to the fact that there was no male nurse at the Home, he proposed that steps should be taken for hiring a male nurse and carer. In the House Rules, the regulations for restrictive measures should be modified in order to ensure their full compliance with the statutory requirements. As regards the meals provided to the residents of the Institution, the NPM proposed that the breakfasts and the dinners should be more varied, in line with the criteria of a healthy diet (sometimes wholemeal bakery products, several kinds of cold cuts, raw vegetables should be offered), and the fruit given to the residents in the afternoon should be more varied as well. As regards the contact keeping of the residents, in his recommendation, he asked the head of the Institution to try to provide support for those residents who have lost touch with their relatives but who have the desire to re-establish these ties, he recommended that she should try to help them get in touch with their families and that, on account of the difficulties with signal strength, she should make it possible for as many residents as possible to initiate calls from landline telephones and to see their relatives in video calls. The NPM asked the Institution to set up a conjugal room in the Home. He also made a proposal on that the head of the Institution should arrange for those residents who cannot get around alone to be able to go outdoors in wheelchairs, and that the residents should be encouraged to express their wishes regarding the activities that they would be

interested in (e.g. handicraft, chess), that it should be found out what activities they would like to be involved in, that these should be organised for them and adequate help should be given for the implementation of these ideas. In the castle building used for the placement of residents confined to bed, she should ensure that the rooms are aired several times a day while the residents are covered with blankets. The NPM made a recommendation on that the chair of the Advocacy Forum should be elected and this body should hold meetings, possibly in person, or in a pandemic situation, online. The head of the Institution elaborated an action plan for the implementation of all the recommendations.

The NPM accepted the responses of the maintainer and the Institution.

9.4. RESPONSES TO THE MEASURES INITIATED BY THE NPM FOLLOWING ITS VISITS TO CHILD PROTECTION INSTITUTIONS

In the report on his visit to the Kékmadár Children's Home of the Somogy County Child Protection Centre and Regional Child Protection Service¹⁴, the NPM indicated to the operator that children under 12 should be placed with foster parents, with the exceptions listed in the Child Protection Act. In his response, the general director of the Directorate-General for Social Affairs and Child Protection indicated that he had called the attention of the Somogy County Regional Child Protection Service to this.

The further recommendations to the maintainers of the visited child protection institutions were about the improvement of the material environment, the performance of the necessary renovations, as well as the replacement of damaged and worn equipment and furniture. In their letter, the deputy general director of the Saint Agatha Child Protection Service and its county regional director informed the NPM on that the dangerous garden furniture at the Hódmezővásárhely Group Home¹⁵ had been sorted out, and the renovation and repair work was being done on a regular and continuous basis.



Commissioner for Fundamental Rights Dr. Ákos Kozma inspects the courtyard of the Hódmezővásárhely Children's Home

13 NPM Report No. AJB-4635/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-4635/2021 and No. AJB-371/2022.

14 NPM Report No. AJB-643/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-643/2021 and No. AJB-160/2022.

15 NPM Report No. AJB-1327/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-1327/2021.

The building and entire interior of the Csanádpalota Group Home¹⁶ were refurbished and the doors and windows were also replaced. The roof and the gas boiler were replaced, the heating was modernised. In his response sent to the NPM, the general director of the Directorate-General for Social Affairs and Child Protection explained the action plan for the renovation of the Somogy County II. Rákóczi Ferenc Children's¹⁷ Home.

In the report on his visit to the Hódmezővásárhely Group Home of the Saint Agatha Child Protection Service, the NPM made a recommendation on that children with different than average needs should not be placed at the Institution in a number higher than the one stipulated in the Child Protection Act. In their response, the Saint Agatha Child Protection Service indicated that a child with dual needs had been relocated in the meantime to a place of care that is appropriate for meeting his needs, furthermore, they informed the NPM on that the staff member who lacked the appropriate qualification had undertaken to obtain the necessary qualification, the exposed deficiencies had been cured.

In the report on his visit to the Somogy County II. Rákóczi Ferenc Children's Home, the NPM proposed that peer-to-peer abuse among the children should be reduced and an event meant to explain how to give up smoking should be organised. In his response, the head of the institution wrote that the number of children who had been absent without authorisation significantly decreased. In order to reduce aggressive behaviour among the residents, from 2022, parallel services would be organised in each group, and in order to ensure this, the number of staff members assigned to the groups would be raised. They got in touch with the Tükör Somogy County Outpatient Treatment Centre for Drug Addicts of the Indít Public Foundation, with whom they organise joint events at the children's home in order to prevent behavioural addictions. The NPM was also informed by the head of the Institution on that at their invitation, a health visitor of the Fonyódi Egészségügyi Kht held an awareness raising presentation on the harmful effects of smoking and the possible ways to give it up in November 2021.

16 NPM Report No. AJB-1328/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-1328/2021 and No. AJB-157/2022.

17 NPM Report No. AJB-1463/2021. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-1463/2021 and No. AJB-546/2022.

10. LEGISLATION-RELATED ACTIVITIES OF THE NPM

Pursuant to Article 19 of OPCAT, the NPM shall be granted power to submit “proposals and observations” concerning “existing or draft legislation”.

10.1. PROPOSALS IN THE NPM'S REPORTS

Preventive monitoring visits also cover the practice-oriented review of legal regulations applicable to the operation of the given place of detention; therefore, the NPM, primarily through presenting his observations and impressions from his visits, and via his legislative proposals based on their critical evaluation, promotes domestic legislation. If instances of ill-treatment or the threat thereof uncovered during the visits can be attributed to a superfluous, ambiguous or inappropriate provision of a piece of legislation, or to the lack or deficiency of the legal regulation of the given matter, the NPM may propose that the piece of legislation in question be modified, repealed or prepared.^[1]

In the reports on his visits published in 2021, the NPM made 3 legislative proposals.

In his report on visiting the Hódmezővásárhely Group Home of the Saint Agatha Child Protection Service,^[2] the NPM proposed to the Minister of Human Capacities that the requirement on the minimum amount of the catering norm as defined in Section 76(1) of NM (Ministry of Welfare) Decree No. 15/1998 (30 April) be reviewed, as the amount defined by the law, which has been unchanged since 2008, is not inflation-adjusted, it does not take the changing circumstances into account. The NPM also proposed to the Minister of Human Capacities that it should be reviewed to what extent the requirements of EMMI (Ministry of Human Capacities) Decree No. 37/2014 (11 March) are governing for group homes ensuring family style meals. In his response, the Ministry of Human Capacities informed the NPM on their agreement with the increase of the catering norm from a professional point of view, however, its implementation depends on the budgetary situation at any time. With regard to the effect of Ministry of Human Capacities (EMMI) Decree No. 37/ 2014 (11 March), the Ministry of Human Capacities informed the NPM on that in order to amend the law, they made

a proposal to the health care area with regard to the designation of group homes as exceptions.

In the reports on his visits to the Kékmadár Children's Home of the Somogy County Child Protection Centre and Regional Child Protection Service and the Csanádpalota Group Home of the Saint Agatha Child Protection Service, the NPM^[3] proposed to the Minister of Human Capacities that the qualification requirements for filling the position of a special education teacher of children's homes set out in Part II, Annex 2 of NM (Ministry of Welfare) Decree No. 15/1998 (30 April) should be reviewed. In its response, the Ministry of Human Capacities stated that they agreed on the need for a clear definition of qualification requirements for special education teachers' positions and he would take this proposal into account in the professional modification of the decree.

10.2. EX-POST REVIEW OF NORMS

If, in the course of its inquiries, the NPM finds that a fundamental rights-related impropriety is caused by a conflict between a self-government decree and another legal regulation, it may request to review the self-government decree's compatibility with the other legal regulation.^[4] If a legal regulation is in violation of the Fundamental Law, or an international treaty, the NPM may request the Constitutional Court to review it.^[5]

In 2021, as part of fulfilling his responsibilities as the NPM, the Commissioner for Fundamental Rights did not request an ex-post review of norms.

10.3. POWERS RELATED TO DRAFT LEGISLATION

Pursuant to Section 2(2) of the Ombudsman Act, the Commissioner for Fundamental Rights shall give an opinion on the draft legal rules affecting his tasks and competences, and may make proposals for the amendment or making of legal rules affecting fundamental rights and/or the expression of consent to be bound by an international treaty.

1 See Section 37 of the CFR Act

2 NPM Report No. AJB-1327/2021.

3 NPM Reports No. AJB-643/ 2021 and AJB-1328/2021.

4 Section 34./A (1) of the CFR Act

5 Section 34 of the CFR Act

In order to let the National Preventive Mechanism exercise its power to make proposals, the State has to submit, *ex officio*, in their preparatory phase, all pieces of draft legislation concerning detention conditions to the National Preventive Mechanism.^[6]

According to the Act on law-making, the party drafting legislation shall ensure that any and all organisations empowered by the law to review draft legislation concerning their legal status or competence may exercise their rights.^[7] The parties responsible for preparing legal regulations primarily submit their drafts to the NPM in order to prove that they have complied with the proposals of the NPM to modify, repeal or prepare legal rules specified in its reports. The Commissioner for Fundamental Rights reviews draft legislation in a complex way, i.e. on the basis of both his experience obtained during the visits conducted in his capacity as the NPM and the conclusions of his inquiries conducted in his general competence. In the course of a review, special attention shall be paid to finding out whether the proposed text of the norm is suitable for remedying the treatment criticised in the report and for preventing it from recurring in the future.

In the case of legislative concepts and draft bills relative to the application of which he has no investigative experience, the Commissioner for Fundamental Rights draws the attention of those responsible for codification to the risks of ill-treatment and to the measures required for the prevention thereof. When reviewing draft legislation, the NPM, depending on its future visits and the conclusions of its future investigations, reserves the right to initiate the amendment or annulment of regulations which will have in the meantime entered into force.

The organs responsible for drafting and preparing legislation requested that the Commissioner for Fundamental Rights to review 33 draft bills in 2021, as in 2020. The reason for the drop in the number of draft bills sent to the Commissioner for Fundamental Rights in comparison with previous years^[8] was that a special legal order was introduced in Hungary during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens. The remarks of the Commissioner for Fundamental Rights on the draft bills are not compelling; however, their fundamental rights protection approach may facilitate efficient codification and the elimination of potential deficiencies or contradictions.

⁶ Clause c) of Article 19 of OPCAT

⁷ See Section 19 of Act CXXX of 2010 on Lawmaking

⁸ The Commissioner for Fundamental Rights reviewed 154 draft bills in 2018, and 108 in 2019.

11. THE NPM'S INTERNATIONAL RELATIONS

Due to the coronavirus pandemic, similarly to 2020, the possibilities of keeping contact at international forums and personal meetings narrowed down in 2021 as well but this year, hybrid events, i.e. simultaneous personal and online meetings were also held. Furthermore, at the conferences held with the participation of national and international organisations, the Commissioner for Fundamental Rights and the Department's staff members could primarily communicate online about the implementation of the NPM's tasks.

11.1. RELATIONS BETWEEN THE NPM AND THE SUBCOMMITTEE ON PREVENTION OF TORTURE

The international workshop entitled "Specific techniques of interviewing members of vulnerable groups" was organised by the NPM on September 29-30, 2021,^[1] with partial funding from the Special Fund under Article 26 of the OPCAT. This event was also this year's second meeting of the OPCAT South East Europe National Preventive Mechanism Network (hereinafter referred to as: South East Europe NPM Network). The participants could join the workshop both in person and online.

The goal of the professional event was the further training of the NPM's staff members with a view to the implementation of the recommendations of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) formulated after its 2017 visit. The further goal of the workshop was to strengthen cooperation with the national preventive mechanisms of other states and civil society organisations, as well as to improve the efficiency of the work methods of the NPM through exchanging experience.

The workshop made it possible to discuss the specificities of interviewing detainees who qualify as especially vulnerable in respect of some of their characteristics or circumstances. The presentations focused on four vulnerable groups:

- children,
- persons living with psychosocial disabilities,
- foreigners and/or members of national or ethnic minorities, and
- LGBTIQI persons.

Besides the experts invited by the organizers, the event was also attended by the members of the South-East Europe NPM Network, the members of the Civil Consultative Body operating besides the Hungarian NPM, the staff members of the Hungarian NPM, and other interested colleagues from the Office of the Commissioner

for Fundamental Rights. On the first day of the workshop, in the morning following the opening plenary session, and also in the afternoon, there were altogether four working groups – in two simultaneous panels – focusing on a particular group of detainees, which explored their topic with the help of two experts, a main speaker and a facilitator. During the first day, the representatives of the members of the South-East Europe NPM Network also held a meeting to discuss the current affairs of the Network.

On the second day of the event, the main speakers summarized the conclusions of each panel discussion, which were then discussed with the involvement of the facilitators and all the attendees of the event in a plenary session. The working language of the event was English, but English–Hungarian simultaneous interpretation was also provided during the plenaries, as well as during one of the two panel discussions in the morning and in the afternoon, respectively.

The workshop was opened by Dr. Ákos Kozma's speech, in which he emphasised that it was very important for him to meet persons deprived of their liberty directly, as well as to investigate into their treatment. He pointed out that he had resumed the inspection of places of detention during the coronavirus pandemic as well. Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities in Hungary, the main speaker of one of the panels Dr. Elisabeth Sándor-Szalay recalled that in March 2020, together with the Commissioner for Fundamental Rights and the Deputy Commissioner responsible for the interests of future generations, they issued a joint statement drawing attention to the fact that during the coronavirus pandemic, certain vulnerable groups of society, especially those living in closed institutions and in segregated settlements, may face serious difficulties in the area of the enforcement of their rights. The moderator of the workshop was the staff member of the OPCAT NPM Department Dr. István Sárközy.



Commissioner for Fundamental Rights Dr. Ákos Kozma opens the event

1 Interview techniques with vulnerable groups



In the first panel, the interview techniques that can be applied with foreigners and/or members of national or ethnic minorities were discussed. The main speaker of the working group was Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities in Hungary Dr. Elisabeth Sándor-Szalay. The facilitator of the group was senior lecturer of the University of Pécs Faculty of Law Dr. Judit Zeller. With regard to foreign nationals, the main speaker highlighted that in addition to linguistic barriers, efficient communication may also be hampered by the different cultural and social backgrounds of the partners. The gender and social status of the interviewees should be taken into account, along with the expected behaviour related to these. The facilitator reminded the participants that foreign nationals were typically more isolated socially, they do not have, or have less social ties than the other detainees and their special needs usually cannot be met at the places of detention. Treatment based on stereotypes may traumatise the affected persons. With respect to the role of the interpreter, the main speaker pointed out that it is not enough for interpreters to be fluent speakers of the given language; they must also be familiar with the cultural background and the region from which the interviewees come from in order to understand if they make an allusion to some local event or person. The interpreter should be provided with the necessary background information and it should be underlined that the information obtained by them should be treated confidentially. In the case of members of national or ethnic minorities, the main speaker stressed that it is not belonging to an ethnic minority in itself that causes the difficulties but the related prejudices and stereotypes, which may also have a traumatic effect. However, intercultural skills are also vital for efficient communication. Comments were made about the importance of using plain language when communicating with both foreigners and members of a national minority. The representatives of some foreign NPMs reported that during their visits, they also rely on the expertise of a cultural mediator, or if it is not possible to involve an interpreter, they use a list of pre-formulated questions or information materials in the languages potentially spoken by the detainees in order to surmount linguistic barriers.



The second panel covered the techniques of interviews with persons with psycho-social disabilities. The main speaker was co-executive director of the Validity Foundation Steven Allen, while the facilitator's function was fulfilled by the impact manager of Validity Foundation Dr. Sándor Gurbai. Steven Allen explained that the independence of the monitoring body was of key importance. It is a further criterion to respect the “do no harm” principle, to pay regular visits to places of detention, to gather reliable information, and to avoid the accidental disclosure of data. The efficiency of the inspection is greatly enhanced by the involvement of so-called experts by experience, who either live with psychosocial disabilities themselves, or who have been placed in such an institution at some point in their lives. Those interviewees who are placed in isolation and those who have spent the longest time within the institution may provide important information about the prevention of ill-treatment. The key aim of the inspection is to find out how persons living with psychosocial disabilities can be re-integrated into society, and how they could regain their independence.



The third panel addressed the special techniques of interviewing children. The main speaker of the working group was Dr. Ágnes Lux, researcher of the Centre for Social Sciences, whereas the facilitator's role was taken on by Viktória Sebhegyi, human trafficking expert of the Hearing and Therapeutic Services Development Section of the National Child Protection Service. In her presentation, Dr. Ágnes Lux examined the problems of hearing children from the perspective of child

rights. The UN Convention on the Rights of the Child and the core principles laid down therein should imbue the activity of each and every professional working with children. During the interviews conducted with children, an environment meeting the needs of the child should be set up, the rights of the child should be respected, the experts involved with children have to be trained and the protraction of the procedure should be prevented if possible. The use of complicated technical terms should be avoided, children should be asked simple and clear questions during the interview. The facilitator talked to the participants about her relevant experience gained during her work with victimized children. During communication with traumatised children, body language should be paid special attention to. The expressions used should also be carefully selected, but the child should be told that he/she could speak as long as he/she wanted and that they could use any sort of language.



The fourth panel discussed the techniques of interviews made with LGBTIQI persons. The main speaker of the panel was researcher of the University of Geneva Jean-Sébastien Blanc, and the legal expert of Háttér Society Dr. Beáta Sándor was present as a facilitator. Jean-Sébastien Blanc began his talk by presenting the categories of the acronym “LGBTIQI”. He reminded that even today, same-sex relationships are punishable in many countries despite the fact that the SPT identifies the decriminalization of such relationships as a pre-requisite to the prevention of ill-treatment. The participants discussed the role of monitoring organs. An inspection methodology that is adjusted to the already existing inspection methods of the given monitoring organ should be elaborated. Efforts should be made to have a proportionate gender composition within the visiting group, and to involve experts by experience if possible. When interviewing LGBTIQI detainees, the principle of “do no harm” must be respected, and interviewers should be cautious not to identify these groups explicitly. Ensuring further training for the members of the monitoring group is important in this area, too. Sensitization trainings can help people to acquire inoffensive expressions and appropriate body language.

On September 30, 2021, on the second day of the workshop, a plenary session was organized involving all the participants, at the beginning of which the main speakers summarized the outcomes of the sessions of the previous day. Based on the exchange of experience, the participants’ common conclusions were outlined in relation to the NPM’s visits affecting vulnerable groups. Visits are to be profoundly prepared and experts by experience are to be involved in the visits. A multidisciplinary visiting group should be compiled. It is a common feature of interviewing techniques that interviewees are to be approached with empathy; and an adequate amount of time is to be assigned to these conversations. The information received during the interview is to be handled confidentially; generalisations and prejudices are to be avoided. Information is to be checked from various sources. Interviewees shall not suffer any disadvantage from having spoken with the members of the NPM. It is important to ensure continuous training for the members of the NPM and also, an exchange of experience among the NPMs.

The coronavirus pandemic posed considerable challenges for the National Preventive Mechanisms. It became increasingly difficult to visit places of detention and to arrange personal meetings. On the other hand, the measures taken in order to reduce the risk of infection and the fact that protective gear had to be worn had a significant effect on the interviews made. Nevertheless, these difficulties may also help the NPMs to improve themselves because it has spurred them to elaborate new methods for collecting and analysing data and to develop their toolkit.

The participants pointed out that great attention should also be paid to the content and structure of the reports drawn up on the basis of the on-site visits of the NPMs and their conclusions. From the perspective of efficiency, the quality of the written reports may have a bigger impact than the number of the places inspected.

The conference was closed by Dr. Balázs Könnnyid, Secretary-General of the Office of the Commissioner for Fundamental Rights, who thanked all the participants for their active contribution to the discussions and for sharing useful information.

On the basis of the experience of the workshop, the NPM elaborated methodological guidelines in both Hungarian and English for the interview techniques to be used with the members of vulnerable groups (foreigners and/or members of national or ethnic minorities, persons with psycho-social disabilities, children, LGBTIQI persons). These guidelines were disseminated by the NPM to both its Hungarian and international partners.

11.2. THE NPM'S RELATIONS WITH THE NATIONAL PREVENTIVE MECHANISMS OF OTHER COUNTRIES AND INTERNATIONAL ORGANIZATIONS

11.2.1. SOUTH-EAST EUROPE NPM NETWORK

The NPM has been participating in the activities of the SEE NPM Network, whose members can more efficiently perform the task of preventing ill-treatment in cooperation with each other and by sharing their professional experience, as an observer since 2014 and as a full member since 21 April 2016.

The presidency tasks of the SEE NPM Network were performed by the Hungarian NPM in 2021, as part of which two events were organized: an online workshop and a hybrid conference (with both personal and online attendance). The latter event was organised with the partial funding of the Special Fund under Article 26 of the OPCAT, this is why this was described in Chapter 11.1. entitled Relations between the NPM and the Subcommittee on Prevention of Torture.



Meeting of the representatives of the South-East Europe NPM Network at the workshop

In addition to what is described in Chapter 11.1, it should be pointed out that the members of the Network had the opportunity to discuss the takeover of the presidency tasks of 2022 and the tasks related to the setting up of the organisation's homepage.

The online workshop organised on 20 July 2021 was entitled "Impact of Covid-19 on the activities of the NPMs - challenges and key visitation priorities". The workshop was attended by the NPM and three of his colleagues, the chairman of CPT, an SPT member, an APT advisor and the members of the South-East Europe NPM Network.

Commissioner for Fundamental Rights Dr. Ákos Kozma open the workshop in a video message. The chairman of CPT and the members of SPT reported that in March 2020, both organisations suspended their on-site visits and they consulted the NPMs and the civil society organisations of the member states

online. The staff member of APT stressed that independent monitoring activities should be resumed by the NPMs in the changed circumstances as well, by applying new methods (e.g. hearing the detainees online or on the phone). The majority of national preventive mechanisms also suspended the visitation of places of detention temporarily.

The Hungarian NPM resumed his on-site visits from April 2020, during which he endeavoured to inspect different types of places of detention: he visited penitentiary institutions, police facilities, social and child care institutions, as well as refugee detention centres. The Covid-19-focused visits were of a shorter duration and the members of the visiting groups wore protective gear.

The head of the Austrian NPM explained that in this period, they conducted telephone interviews with the institutions about the most important issues.

The Croatian NPM resumed the visits after a few months' suspension but they arrived at the places of detention at unexpected (night) times in order to assess the treatment of detainees and to what extent the penitentiary institutions keep the rules related to the protection from the pandemic.

The first wave of the pandemic also posed challenges to the NPM of Montenegro. Due to the introduction of digital education, the NPM's staff members who had young children were not able to take part in the visits, this why the Ombudsman and one of his colleagues could inspect the sites.

A member of the North Macedonian NPM mentioned that they had had to modify their visitation methods significantly. The on-site visits could only be resumed in September 2020, due to the lockdowns.

A staff member of the Romanian NPM explained that they continued the visits during the pandemic as well. In addition to the on-site visits, they talked to the detainees and the staff of the places of detention on the phone and via video calls as well.

The Serbian NPM visited the places of detention in small visiting groups, in protective gear. The experience of the visits was summed up in thematic reports.

The Slovenian NPM mostly paid unannounced visits. The inquiries had to be suspended in March and October.

The members of the South-East Europe NPM Network agreed on the establishment of a common homepage, which is available at <https://see-npm.net/>.

11.2.2. CONFERENCES

On 4 March 2021, a staff member of the NPM participated in a webinar entitled “COVID19, Institutionalization of Persons with Disabilities and the Right to Truth”, which was organised by the European Network of Equality Bodies (EQUINET) and the European Network of National Human Rights Institutions ^[2](ENNHRI). As is suggested by the conclusions drawn from the event, the National Human Rights Institutions are responsible for participating in the efficient transposition of the human rights standards, monitoring pursuant to Article 33 of the CRPD, as well as submitting legislative recommendations to the government. The enforcement of the right to the truth also prevents the future infringements of rights. It is important to identify the problems in relation to the evidence and assess them as improprieties. With regard to the spread of Covid in closed institutions, de-institutionalisation means a solution in this respect as well.

On 17 March 2021, a staff member of the NPM attended the webinar of the European Network of Ombudspersons for Children, i.e. ENOC entitled “Enacting the Recommendations of the UN Global Study on Children Deprived of Liberty in the National Agenda and the European Context: Possible Roles, Actions and Impact by means of Independent Children’s Rights ^[3]Institutions”. The purpose of the event was to start a dialogue about the challenges and possibilities related to the enactment of the recommendations formulated in the global study and to lay the foundations for an information exchange and knowledge transfer between the ENOC member organisations, cooperation on the national and regional levels, as well as the elaboration of possible strategies. As the relevance of the individual questions discussed in the global study may differ by each member state, ^[4] in the second part of the event, the participants had the opportunity to share with each other in which areas they have already performed relevant activities and which are the key challenges that may determine the main direction of future action.

On 25 March 2021, the staff members of the NPM participated in a webinar entitled “Advocating against the draft additional protocol to the Oviedo Convention: ending coercion in mental health-

care”^[5], organised by EQUINET. The participants discussed that the draft additional protocol to the Oviedo Convention elaborated by the Committee on Bioethics of the Council of Europe was not in sync with the fundamental rights of persons with disabilities that they are equally entitled to in all walks of life as laid down in the Convention on the Rights of Persons with Disabilities (CRPD), it gravely violates the fundamental right to freedom and security, with the option of ordering compulsory treatment involving the deprivation of liberty.

On 29 April, a staff member of the NPM attended the webinar on the discussion of the “Union of Equality, Strategy for the Rights of Persons with Disabilities 2021-2030”^[6] organised by EQUINET and ENNHRI. The purpose of the webinar was to sum up the EU’s disability strategy, as well as to present and analyse its criteria. The Covid pandemic strengthened the disadvantage of persons with disabilities with regard to their poorer coverage with health care services. The Strategy focuses on these gaps between persons with disabilities and the rest of society, which also surfaced during the period of the Covid pandemic.^[7]

On 11 May, a staff member of the NPM attended the webinar entitled “Shaping the future of community mental health services based on human rights” ^[8] organised by Mental Health Europe. The attendants of the webinar discussed the situation of persons living with psychosocial disabilities in the present, the difficulties that they have to cope with in the period of the coronavirus pandemic, also with regard to the restrictive measures introduced for prevention. Institutionalisation violates human rights, changes and raised awareness are needed. In addition to defining the course line governing for community health services, the genuine meaning of a community has to be defined in the relation of the social model replacing the medical model. The community in the broadest sense of the word should be involved, including families, friends and the smaller communities.

From 15 to 17 June 2021, two staff members of the NPM took part in the webinar entitled “Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandem-

2 COVID19, Institutionalization of Persons with Disabilities and the Right to Truth

3 The United Nations Global Study on Children Deprived of Liberty. Enacting the Recommendations of the UN Global Study on Children Deprived of Liberty in the National Agenda and the European Context: Possible Roles, Actions and Impact by means of Independent Children’s Rights Institutions

4 6 areas: children placed in institutions; children deprived of their liberty in relation to justice (e.g. prison, police detention); children placed in penitentiary institutions together with their primary guardians; children deprived of their liberty in relation to migration; children deprived of their liberty in relation to armed conflicts; children deprived of their liberty for a national security reason. 4 comprehensive criteria: gender perspective; persons with disabilities; health impact; experience of children

5 Advocating against the draft additional protocol to the Oviedo Convention: ending coercion in mental healthcare

6 Union of Equality, Strategy for the Rights of Persons with Disabilities 2021-2030

7 1. accessibility, 2. exercising of European Union rights, 3. social protection system, 4. participation, 5. global support provided to persons with disabilities, 6. taking Strategy into account, 7. the disability criterion in the selection, employment and labour processes, 8. raising awareness of the process, its management and measurement

8 Shaping the future of community mental health services based on human rights

ic”^[9] organised for national preventive mechanisms and civil society organisations by the Association for the Prevention of Torture and the OSCE Office for Democratic Institutions and Human Rights. The NPMs discussed the care provided to older persons in social care institutions and penitentiary institutions. The ageing of societies is a general tendency, and diseases and poor living conditions may even accelerate the process of ageing. During their inquiries, the NPMs detected the following deficiencies: inadequate placement conditions, the lack of qualified employees (nurses, doctors, psychologists), inadequate medical services, stimuli-free environment, lack of leisure time activities.

On 21 July 2021, a staff member of the NPM took part in an online event entitled “*Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty: ODIHR Thematic Workshop for Monitoring Mechanisms*”^[10] organised by OSCE for monitoring bodies. The attendants had the opportunity to learn about the special features of sexual and gender-based violence, with special regard to those factors by which this form of violence differs from other violent acts, and also, to those on the basis of which violence committed at places of detention is different from such acts committed at other places. They could hear a presentation about which factors should be paid special attention to during planning and implementation in the case of visits aimed at exposing sexual and gender-based violence. Another presentation discussed the characteristic features of the sites of police detention, and the challenges of the monitoring activities performed at such places. Then the participants discussed a few cases presented by the organisers in a group form, which gave an insight into the operational practices of these organisations to the other participants.

On 20-21 September 2021, a staff member of the NPM took part in the online conference entitled “*The Role of NPMs in the Effective Implementation of European Court of Human Rights Judgements and CPT Recommendations. Tackling Police Ill-treatment and Effective Investigations into Alleged Ill-treatment*”^[11] organised by the European NPM Forum. The key topic of the conference was the role of national preventive mechanisms in the transposition of European Court of Human Rights (ECHR) judgements and CPT recommendations. The participants shared their experience gained in the prevention of ill-treatment and they called attention to the most frequently occurring cases. The speakers reminded the participants that police encroachments may already happen at the beginning of detention, at the time of escorting. Ill-treatment may occur during transportation, then also at the time of the interrogation and deten-

tion. National preventive mechanisms are responsible for regularly controlling the treatment of detainees by law enforcement officers. One of the most frequent reasons for ill-treatment is the lack of the training of the police staff, with special regard to international standards. This is why it is imperative that the members of the personnel of the places of detention attend further training programmes on a regular basis. At the training sessions, international practice, e.g. European Court of Human Rights (ECHR) judgements and relevant CPT recommendations should also be mentioned. The inquiries of national preventive mechanisms may detect systemic- and local-level bad practices, through which degrading and inhuman treatment may be prevented.

On 21 October 2021, a staff member of the NPM attended the meeting of the ombudspersons of the Visegrád Group (V4) countries in Visegrád, Hungary entitled “*The Role of the Ombudsman in the Protection of the Rights of the Most Vulnerable Social Groups during the Covid-19 Pandemic*”. In 2020, Covid posed challenges to the ombudsman institutions, the fundamental rights protection tasks had to be performed in pressing circumstances. New investigation methods had to be developed in order to mitigate health risks. Although the competences of the ombudsman institutions are different in each V4 country, all of them complied with the Venice Principles. The representatives of the V4 country ombudsman institutions reported on their experience gained during the coronavirus pandemic. The NPM staff member presented the operation of the national preventive mechanism, with special regard to the inquiries during Covid.

At the reintegration conference held by the National Headquarters of the Hungarian Prison Service on 29 October 2021, an NPM staff member gave a speech entitled “*The Activities of the Prison Organisation as Seen by the Commissioner for Fundamental Rights*”. The purpose of the online conference was to present and analyse the reintegration of detainees. After the presentation of the historical background of reintegration, the speakers shared the experience and restitution programmes of some of the penitentiary institutions. The representative of the Office of the Prosecutor General explained how the prosecutor’s office was linked to the reintegration of detainees and he shared some prosecutor’s statements on reintegration custody. One of the staff members of the NPM presented the circumstances of the establishment of the National Preventive Mechanism, as well as the respective provisions of the CFR Act. He explained the methods of selecting the places of detention to be visited and the way that the NPM’s visits are conducted. He presented how the investigation into the reintegration of detainees ap-

9 Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandemic

10 Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty: ODIHR Thematic Workshop for Monitoring Mechanisms

11 The Role of NPMs in the Effective Implementation of European Court of Human Rights Judgements and CPT Recommendations. Tackling Police Ill-treatment and Effective Investigations into Alleged Ill-treatment.

pears in the NPM's reports. The presentation was published as a study in issue 2022/1 of the journal *Börtönügyi Szemle*.^[12]

On 19 November 2021, a staff member of the NPM gave a talk entitled "*The Ombudsman's experience from prison visits, with special regard to the reintegration and contact of detainees*" at a conference entitled "*A new start? Contact and reintegration in law enforcement - experience and research findings of the last three years*" organised by ELTE University's Faculty of Law, Departments of Criminology, Criminal Procedures and Law Enforcement, as well as the Hungarian Helsinki Committee as a member of the

Support Network for Detainees and their Families (FECSKE). The purpose of the conference was to share the findings of the research efforts of the past three years into the keeping contact of the detainees and their reintegration, as a part of which some detainees, institutional participants and researchers shared their thoughts with the audience. The staff member of the NPM summed up the experience of the National Preventive Mechanism gained from the visits during the coronavirus pandemic, with special regard to the aspects of contact keeping and reintegration.

12 István Sárközy: A büntetés-végrehajtási szervezet tevékenysége az alapvető jogok biztosa megközelítésével (*The Activities of the Prison Organisation as Seen by the Commissioner for Fundamental Rights*), the journal *Börtönügyi Szemle*, issue 2022/1

12. MEDIA AND DISSEMINATION

In addition to conducting visits, the NPM's tasks also include the publication of his opinion, conclusions, and any other relevant information that may contribute to raising social awareness.^[1] The Commissioner for Fundamental Rights complies with this obligation primarily through displaying this information at the NPM interface^[2] of his Office's homepage.

It remains important that the leaflets containing the key information about the activities of the NPM be available at the places of detention. The specialised leaflets contain information formulated for the penitentiary system, the police system and mental health institutions.^[3]

12.1. MEDIA

The homepage of the Office and the press reported that at the initiative of the Commissioner for Fundamental Rights, the National Headquarters of the Hungarian Prison Service contributed to the renovation of the Rum Special Children's Home of the Vas County Child Protection Centre and Elementary School^[4] and the Baja Group Home maintained by the Saint Agatha Child Protection Service.

On 14 December 2021, the Commissioner for Fundamental Rights paid a visit to four Heves County children's homes, i.e. the Fészek Children's Home of the Heves County Child Protection Centre, the Mónosbél Children's Home, as well as the Egerszalók and Hevesaranyos Group Homes, in order to deliver those toys and gifts to the children living in these institutions that had been collected and donated to them by the staff members of the Office of the Commissioner for Fundamental Rights.

There were several articles in the online press on the measures taken in relation to the high per minute calling rates applied at the penitentiary institutions.^[5]

It was also reported on the homepage of the Office that Dr. Ákos Kozma held an online meeting with the Commissioner for Human Rights of the Council of Europe Dunja Mijatović on 1 February 2021, while he met with the Association des Ombudsmans et des Médiateurs de la Francophonie, i.e. AOMF, online, on 21 April 2021. The Commissioner for Fundamental

Rights attended the annual general assembly and online global conference of the International Ombudsman Institute, i.e. IOI on 26 and 27 May 2021. On 12 July, Dr. Ákos Kozma attended the conference organised by the Association des Ombudsmans et des Médiateurs de la Francophonie and the ombudsman institution of the Principality of Monaco. The two-day conference discussed how the protection of fundamental rights had been implemented during the coronavirus pandemic. Commissioner for Fundamental Rights Dr. Ákos Kozma and Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities in Hungary Dr. Elisabeth Sándor-Szalay received High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe Kairat Abdrakhmanov in the Office on 27 August 2021. The European Ombudsman Institute, i.e. EOI held its board meeting and annual general assembly in Novi Sad, Serbia on 2-3 September 2021. At the meeting, which was held in combination with a conference, Commissioner for Fundamental Rights Dr. Ákos Kozma was re-elected to be a Board Member of the organisation. The Hungarian Ombudsman was also elected by the general assembly to become a member of the Executive Board. On 8 September 2021, the Commissioner for Fundamental Rights gave a talk at the roundtable discussion entitled "Civil Society – Support or Problem for the Authorities" in the framework of the Karpacz Economic Forum. On 22 October 2021, Commissioner for Fundamental Rights Dr. Ákos Kozma attended a bilateral meeting with Polish Deputy Ombudsman Dr. Stanisław Trociuk, Czech Ombudsman Dr. Stanislav Křeček and Slovak Ombudswoman Dr. Mária Patakyová in Visegrád, Hungary.

The Commissioner for Fundamental Rights reported about his activities regularly both in his competence as NPM and when fulfilling his general mandate for the protection of fundamental rights in his social media profile.

12.2. DISSEMINATION

Purposeful dissemination is an obligation of the NPM. The staff members of the Department took part in educational activities, published articles in journals, and attended professional training programmes and events.

1 SPT: *Analytical self-assessment tool for National Prevention Mechanisms*, (CAT/OP/1/Rev.1) Clause 9 (b) <https://undocs.org/CAT/OP/1/Rev.1>

2 <https://www.ajbh.hu/opcat>

3 <https://www.ajbh.hu/opcat-rovid-tajekoztatas-fogvatartottak-szamara>

4 The online press also reported on the event. <http://www.szherdeszet.hu/hirek/befejezodott-a-rumi-gyermekotthon-felujitasa-karacsony-i-csoda.html>

5 <https://www.jogiforum.hu/hir/2021/07/12/magas-percdijak-a-bv-intezetekben-elitelteket-erinto-alapjogserelem-ombudsmani-allasfoglalas/>

12.2.1. EDUCATIONAL ACTIVITIES

An NPM staff member gave courses under the title “The theory and practice of restorative justice” in the Criminology M.A. programme of the Faculty of Law of the University of Miskolc.

A staff member of the NPM took part in the training of the Central Training Programme for Foster Parents (KOP) the as the trainer of the Maltese Family House Foster Network, she held a case discussion session for foster parents on 3 July 2021, while a training session on socially efficient attitudes on 17 July 2021.

12.2.2. PUBLICATIONS

Krisztina Izsó: A cselekvőképtelenek védelme – A francia, az osztrák és a magyar jog összehasonlító elemzése (Protecting the incapacitated - a comparative analysis of French, Austrian and Hungarian law), in: the journal *Állam és Jogtudomány*, issue 2021/2, pp. 30- 54

12.2.3. PARTICIPATION OF THE STAFF MEMBERS OF THE OPCAT DEPARTMENT IN TRAINING SESSIONS AND PROFESSIONAL EVENTS

The psychologist of the NPM staff attended an accredited Metamorphoses Fairytale Therapy training programme in the second half of 2021 (from August to December), which was organised by FÜPI Oktatási, Kulturális és Tanácsadó Kft. The training programme was held by Ildikó Boldizsár, who applied the method of fairytale therapy with children in prisons and child protection.

On 1 June 2021, one of the NPM’s staff members attended the online conference organised by the Association for the Creation of an International Training Centre for Visits to Places of Deprivation of Liberty, held under the aegis of the Council of Europe.⁶ The International Training Centre Project supported by the Council of Europe is a broad consultation process to make the institutions and organisations involved in the prevention of torture express their needs and expectations with regard to further training programmes. The consultation had two phases. In the first phase, the national preventive mechanisms of the member states of the Council of Europe and international torture prevention experts (SPT, CPT, APT, NPM Observatory, etc.), while in the second phase, the other national preventive mechanisms of the word could take part.

On 25 June 2021, in the framework of the same project, two staff members of the NPM took part in a video conference focusing on practical issues, organised for a small number of participants as well. At the event, the representatives of some European national preventive mechanisms explained the professional backgrounds of the experts that their organisations worked with and the kind of preparation that was received by their members. In addition to the possibilities for common training, the participants discussed the question of joint visits by the NPMs of different states, along with the advantages thereof for the exchange of experience and good practices. The majority of the participants was of the opinion that in the preparation for the performance of the NPM’s tasks, the obtaining of practical experience was the most important element.

6 Inaugural conference of the consultation of European NPMs and international stakeholders

SUMMARY

The NPM's most important task is to regularly examine the treatment of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment, even in lack of petitions or detected improprieties.^[1] The ultimate goal of the NPM's visits is to convince the respective authorities and institutions to improve the efficiency of their measures aimed at the prevention of ill-treatment.

The mandate of the second Civil Consultative Body working with the NPM expired on 16 May 2021, this is why, in March 2021, the Commissioner for Fundamental Rights invited a tender for those Hungarian civil society organisations that would like to help the performance of the tasks of the national preventive mechanism as CCB members selected in a tender procedure. The third Civil Consultative Body held its inaugural session with the participation of the members selected through the tender procedure and invited to participate on 22 September 2021.

When performing the tasks of the NPM, the Commissioner for Fundamental Rights may proceed, either personally, or through his staff members authorised by him to carry out the tasks related to the NPM. The NPM's 2021 visits were determined by the coronavirus pandemic. Dr. Ákos Kozma led the majority of NPM visits in person. During the visits, the Commissioner was accompanied by a 2- 3-member visiting group composed of multi-disciplinary experts with a balanced gender ratio.

In response to the challenges of the coronavirus pandemic, in 2020, the NPM introduced new working methods during his visits. Focusing on the need to prevent coronavirus infections, the visits were of a shorter duration and the members of the visiting group wore protective gear. The primary focus of the visits was to examine to what extent the restrictions imposed due to the pandemic affected the living conditions of the detainees, and how the institutions could carry out their duties aimed at the prevention of the coronavirus infection. The criteria of the visits were determined in consideration of the guidelines elaborated by the SPT and the CPT.

In 2021, the NPM investigated into a total of 5695 detention units at 23 places of detention. The utilisation rate of these detention units was varying. The overcrowding of the penitentiary institutions ended after the expansion of capacities in 2020, and the occupancy rate of the visited penitentiary institutions was between 64 and 97%.

The occupancy rate of child protection institutions moved on a broader scale, between 23 and 92%, while the visited social care institutions were almost or fully occupied (97 and 100%). During the visits to police custody units, there were no detainees present when the visiting group was there and it was the site and process of escorting that was reviewed.

The visiting delegations inspected the premises of the places of detention, furnishing and equipment, as well as the documents related to the number, treatment, and conditions of placement of the detainees, made photocopies of some of the documents, and conducted interviews with the detainees and the staff members as well. The staff members of the places of detention complied with their obligation to cooperate in performing the tasks of the NPM.

The visiting groups did not detect any circumstances indicative of intentional abuse potentially resulting in severe physical or psychological trauma committed by the staff of the places of detention.

In the reports on his visits published as part of his activities performed as the NPM, the Commissioner for Fundamental Rights recommends taking measures aimed at eliminating and preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2021, the NPM proposed a total of **50** measures. Most frequently, in 39 cases, the NPM made recommendations regarding the taking of measures to the heads of the places of detention^[2], in another 7 cases to the heads of the supervisory organ of the institution subject to inquiry^[3], and on 4 occasions, he made recommendations regarding law-making^[4].

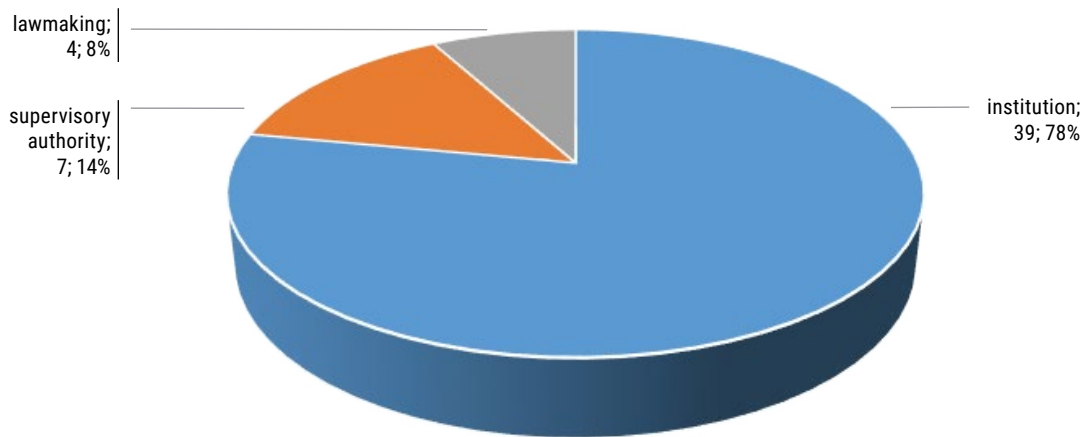
1 Section 39/B (1) of the CFR Act

2 Section 32 (1) of the CFR Act

3 Section 31 (1) of the CFR Act

4 Section 37 of the CFR Act

Number of measures initiated in the NPM's reports issued in 2021(Σ/50) grouped according to their addressees



The addressees of the measures studied the recommendations of the NPM, and responded on the substance within the period specified by the law.

Engaging in a continuous and constructive dialogue aimed at following up the implementation of recommendations is a statutory obligation of not only the NPM but also the heads of places of detention, authorities and other organs concerned. The dialogue between the NPM and the recommendations' addressees is conducted by using the report as a platform.

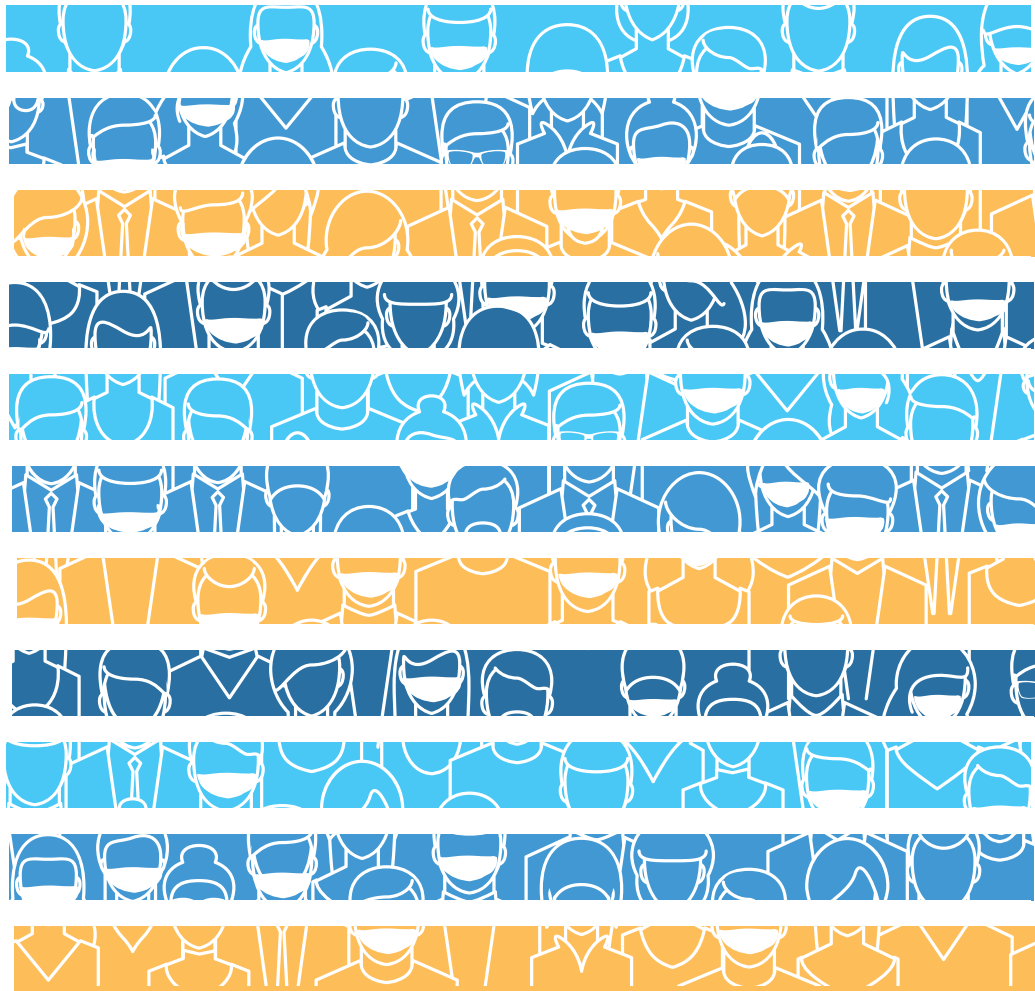
Under these provisions, if the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the NPM does not agree with the position or the measure taken, it may submit the case to the Parliament within the framework of his annual report, and ask the Parliament to inquire into the matter. If, according to the NPM's findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the NPM may propose that the Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

The authorities or their supervisory organs under review gave meaningful responses to the measures that the NPM had defined in its reports in 2021 and no such grave infringements were uncovered by these visits for remedying which the NPM should have turned to the National Assembly.

The NPM maintains a dialogue with the addressees of its measures mainly in writing, involving, as necessary, the supervisory organs as well. There is no legal obstacle to holding oral consultations within the framework of the dialogue.

Another form of dialogue is the follow-up visits, in the course of which the NPM tries to double-check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic areas. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of the NPM's measures with the personnel of the places of detention. In 2021, the NPM paid a follow-up visit to the Somogy County Remand Prison.

The NPM's operational costs in 2021 amounted to 86,924,441 Forints, which amount was allocated by the Office from its budget provided by the Parliament.



“The freedom loving man [...] never loses sight of the fact that human liberty and human dignity is one and the same, and any wrongdoing against anyone based on their social position, origin, gender or age endangers everyone else’s freedom and dignity: therefore he stands up either collectively, or if that is not immediately possible individually against any infringement on the human freedom, arbitrary arresting, detention, private or official harassment.”

(István Bibó: The Political Ten Commandments of the Freedom Loving Man)