

**THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS
HUNGARY**

**Comprehensive Report
by the Commissioner for Fundamental Rights of Hungary
on the Activities of the OPCAT National Preventive Mechanism in 2023**



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Abbreviations

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|--------------------------------------|---|
| Ombudsman Act (CFR Act) | Act CXI of 2011 on the Commissioner for Fundamental Rights of Hungary |
| 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 |
| 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 of Hungary |
| CAT | UN Committee against 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 |

Introduction

Ever since the establishment of the ombudsman's institution in Hungary, Hungarian ombudsmen – responsible to the Parliament – have been regularly visiting state and local institutions which house residents deprived of or restricted in their liberty.

The purpose of the on-site inspections was to assess whether the fundamental rights of individuals, who require institutional care for varying periods due to their age, health conditions, difficult life circumstances, or a court decision, are being respected in the treatment they receive.

From January 2015, the Commissioner for Fundamental Rights of Hungary has been performing the tasks of the 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 light of recent challenges – such as the COVID-19 pandemic and the influx of refugees fleeing conflict – NPM's monitoring role has become increasingly significant. In 2023, the NPM visited a total of 26 places of detention. It issued 19 reports on the findings from these visits, which are published on the website of the Commissioner for Fundamental Rights of Hungary to ensure that NPM reports are accessible not only to the institutions and maintainers concerned but also to the broader public.

Budapest, 2024

Dr. Ákos Kozma

¹ Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as: CFR Act) Section 39/B (1)

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.²

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 51(1) of the Fundamental Law of Hungary, “*The Government may declare a state of danger in the event of an armed conflict, war situation or humanitarian catastrophe in a neighbouring country, or a serious incident endangering life and property, in particular a natural disaster or industrial accident, and in order to eliminate the consequences thereof.*”³ 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*”.⁴

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*”.⁵ Acts shall be adopted by the Parliament.⁶ International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.⁷

1.2.1. UN instruments

Pursuant to Article 7 of the **International Covenant on Civil and Political Rights**⁸, “*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

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

³ Text of Section 53(1) of the Fundamental Law of Hungary in effect in 1 November 2024

⁴ Constitutional Court Decision No. 36/2000. (X. of Chapter IV, Note 2.4.)

⁵ Article I (3) of the Fundamental Law

⁶ Article 1(2) b) of the Fundamental Law

⁷ Section 9(1) of Act L of 2005 on the Procedure regarding 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 No. NM (Ministry of Welfare) decree No. 15/1998 IV.) Constitutional Court Decision 20/1994 (IV. 16.)].

⁸ 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

of the nation and the existence of which is officially proclaimed.⁹

Pursuant to Article 1 of **the UN Convention against Torture**¹⁰, 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.

Pursuant to Article 2.1 of the UN Convention against Torture, “*Each State Party shall take effective legislative, administrative, judicial or other 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,¹¹ 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 OPCAT¹² may be joined by any state that has ratified or joined the UN Convention against Torture.¹³

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.¹⁴

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 SPT, one of the main tasks of which 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.¹⁵ From the aspect of the operation of the NPMs

⁹ 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”.

¹⁰ Promulgated by Law Decree no. 3 of 1998

¹¹ UN Committee Against Torture (CAT) *General Comment No. 2 Notes 5 and 6 of CAT/C/GC/2*

¹² Promulgated by Act CXLIII of 2011

¹³ Article 27(3) of OPCAT

¹⁴ Article 1 of OPCAT

¹⁵ Article 11 of OPCAT

and in addition to the general directives¹⁶ of the SPT, the conclusions, specific directives and recommendations¹⁷ 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.¹⁸

According to Article 37 of the **Convention on the Rights of the Child, signed in New York on 20 November 1989**¹⁹, 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**²⁰, “*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 other cruel, inhuman or degrading treatment or punishment*”.

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 1994.²¹

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*”²² The 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 NPM.

The comprehensive standards²³ of treating persons deprived of their liberty, elaborated by the CPT, interpret the prohibition of torture, inhuman or degrading treatment or punishment, 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 detention areas, 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,²⁴ since then, the CPT has visited the Office of the Commissioner for Fundamental Rights of Hungary during every visit paid to Hungary (the last visit took place on 24 May 2023).²⁵ The NPM takes into account the conclusions of the CPT's reports on its visits

¹⁶ 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)*

¹⁷ 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)

¹⁸ 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>

¹⁹ Promulgated by Act LXIV of 1991

²⁰ Promulgated by Act XCII of 2007

²¹ See Section 3 of Act III of 1995

²² Article 31 of OPCAT

²³ CPT standards – <https://www.coe.int/en/web/cpt/standards>

²⁴ The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on 1 July 1995.

²⁵ Information related to the CPT's visits to Hungary is available at: <https://www.coe.int/en/web/cpt/hungary>

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 of Hungary shall perform fundamental rights protection activities”*²⁶, 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.²⁷

In order to perform his tasks related to the NPM, the Commissioner for Fundamental Rights of Hungary 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.²⁸

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 of Hungary

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 its 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 NPM²⁹, and the obligation for cooperation of the authorities concerned, as well as their management and staff pursuant to Section 25 of the CFR Act, also in their respect.³⁰

For performing the tasks of the NPM, at least eleven staff members of the public servants of 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”*.³¹ Among them, *“there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights of Hungary 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*

²⁶ Article 30(1) of the Fundamental Law of Hungary

²⁷ CAT General Comment No. 2 Clause 3 of CAT//C/GC/2)

²⁸ Section 39/B (4) of the CFR Act

²⁹ See Sections 21, 22 and 26 of the CFR Act, Subsections (1) and (2) of Section 27 of this Act, as well as Section 39/B of the Office of the Commissioner for Fundamental Rights of Hungary

³⁰ Section 39/D (1) of the CFR Act

³¹ Section 39/D (3) the CFR Act

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.”³²

The staff members of the Office permanently authorised to perform tasks related to the NPM³³ carry out their activities within an independent Department³⁴. 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 2023

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 2023 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.³⁵

| Expenditure for 2023 | Amount |
|--|-------------------|
| Personal allowances | 51 427 743 |
| Contributions | 6 691 457 |
| Professional and administrative materials | 982 621 |
| IT and communication expenses | 1 700 909 |
| Services supporting professional activities | 866 892 |
| Delegation expenses* | 111 509 |
| Promotion, propaganda, international membership fees | 596 692 |
| Maintenance and repair costs | 1 211 530 |
| Public utility fees | 6 254 130 |
| Operational services | 5 032 846 |
| VAT | 4 232 898 |
| Total in HUF**: | 79 109 227 |

*Delegation expenses include a part of the travel and accommodation costs of the guests invited to the international event organised by the NPM in 2023 (see in detail in Section 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, HUF **106 325 094** in 2020, HUF **86 924 441** in 2021 and HUF **85 254 319** in 2022.

³² Section 39/D (4) of the CFR Act

³³ Sections 39/D (3)-(4) of the CFR Act

³⁴ SPT: *Guidelines on national preventive mechanisms* (Clause 32 of CAT/OP/12/5) (32)

See also Section 23 of CFR instruction No. 1/2012 on the rules of procedure 6.) on the Operational and Organisational Rules of the Office of the Commissioner for Fundamental Rights

³⁵ 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 of Hungary has to perform the tasks related to the NPM independently.³⁶ 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”*.³⁷

3/1. The tasks of the Civil Consultative Body

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.³⁸

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 of Hungary 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 to participate by the Commissioner for Fundamental Rights of Hungary, 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 that 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;

³⁶ Sections 2 (6) of the CFR Act

³⁷ Section 2 (5) of the CFR Act

³⁸ Instruction No. 3/ 2014 (IX. 11.) of the Commissioner for Fundamental Rights of Hungary 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)

furthermore, it may participate in conferences, workshops, exhibitions, and other events organized by the NPM.³⁹

3. 2. The Meetings of the CCB

The CCB held its meetings on 6 October 2023 and 19 December 2023. At the first meeting, the NPM reported on its activities regarding the support for refugees fleeing from the war, the reinstatement of unannounced inspections following changes in the pandemic situation, and the visits planned and conducted. During the second meeting, the NPM provided updates on the implementation phase of the OPCAT Special Fund project and discussed reports issued under the general mandate of the Commissioner for Fundamental Rights of Hungary that also pertain to the NPM's activities.

3. 3. Workshop on Custody for an Infraction and Confinement

Based on the proposals of the CCB members, the NPM organised a workshop on custody for an infraction and confinement with the involvement of the ministries concerned on 16 September 2022. On 6 October 6 2023, a follow-up discussion was held with the relevant law enforcement agencies and legislative drafting bodies. During the meeting, participants shared their experiences and perspectives on the issue. As a result of the productive discussion, the NPM compiled a document, which was subsequently sent to the Minister of Interior and the Minister of Justice for further action.

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 NPMs 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 2022, of all places of detention as defined in Article 4 of OPCAT.⁴⁰ All the requested organs complied with the request for data provision.

The aggregate list of places of detention under Hungarian jurisdiction

as of 31 December 2022, or in the case of the penitentiary system, on the last workday of the year

| Type | Number of places | Holding capacity/ number of beds | Number of detainees/ patients |
|--|-------------------|----------------------------------|-------------------------------|
| Social care institutions⁴¹ | 1 442 | 88 395 | 80 242 |
| Child protection services | 534 ⁴² | 28 266 ⁴³ | 21 109 ⁴⁴ |

³⁹ Instruction No. 3/2014 (IX. 11.) of the Commissioner for Fundamental Rights of Hungary 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

⁴⁰ The letters requesting data provision are registered under file number AJB-590/2022 in the Office.

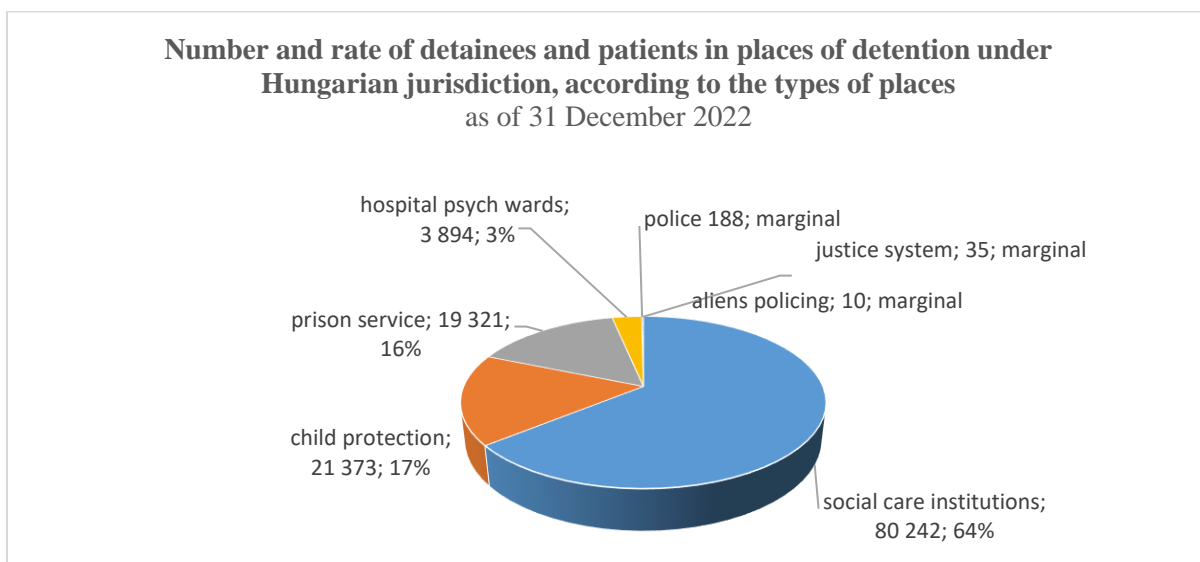
⁴¹ Residential care homes for the elderly, persons with disabilities, as well as psychiatric patients and addicts

⁴² Exclusive of the homes of foster parents.

⁴³ Exclusive of the places reserved for those receiving follow-up care, and of external places.

⁴⁴ The number of minors receiving care from child protection services (exclusive of those receiving aftercare).

| | | | |
|---|--------------|----------------|-------------------------|
| Juvenile correctional institutions | 5 | 568 | 264 |
| Unaccompanied minors | 1 | 34 | 3 |
| Total in child protection | 540 | 28 868 | 21 373 |
| Penitentiary institutions | 39 | 18 142 | 18 875 |
| Medical institutions of the penitentiary system | 2 | 505 | 446 |
| Total in penitentiary system | 41 | 18 647 | 19 321 |
| Healthcare⁴⁵ | 77 | 7 832 | 3 894 |
| Police | 677 | 3 473 | 188⁴⁶ |
| Guarded refugee reception centres | 1 | 105 | 10⁴⁷ |
| Judiciary | 127 | 432 | 35⁴⁸ |
| Aggregated data | 2 905 | 147 752 | 125 063 |



According to the data provided, on **31 December 2022**, in the **2 905** places of detention under Hungarian jurisdiction with a total capacity of **147 752** detainees, there were **125 063** persons being detained.⁴⁹

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.

⁴⁵ Data on hospitals childrens', juveniles or adults psych wards, addictology wards, gerontology wards and infectiology wards.

⁴⁶ In 2022, altogether 100 093 persons were held in places of detention operated by the police, of whom 13,029 were women, 5 668 were minors and 11 695 were foreign nationals.

⁴⁷ In 2022, 39 persons, including 1 woman, were held on the premises of the Guarded Refugee Reception Centre for 43 days on average.

⁴⁸ In 2022, 6 265 persons (507 women, 67 minors and 1056 foreign nationals) were detained on the premises of the courts suitable for functioning as custody units.

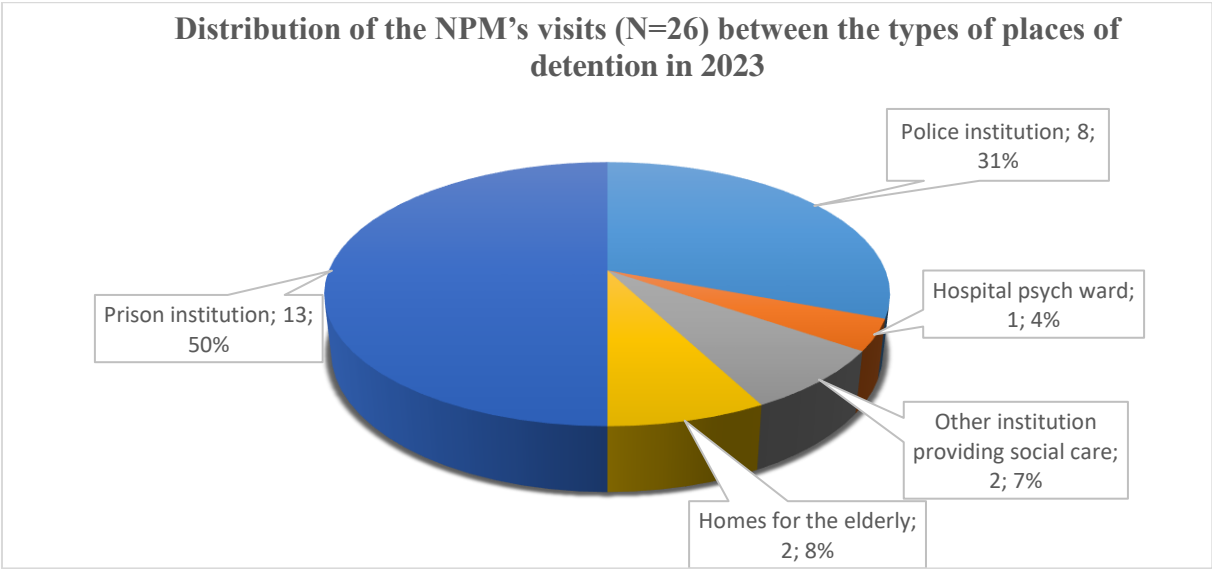
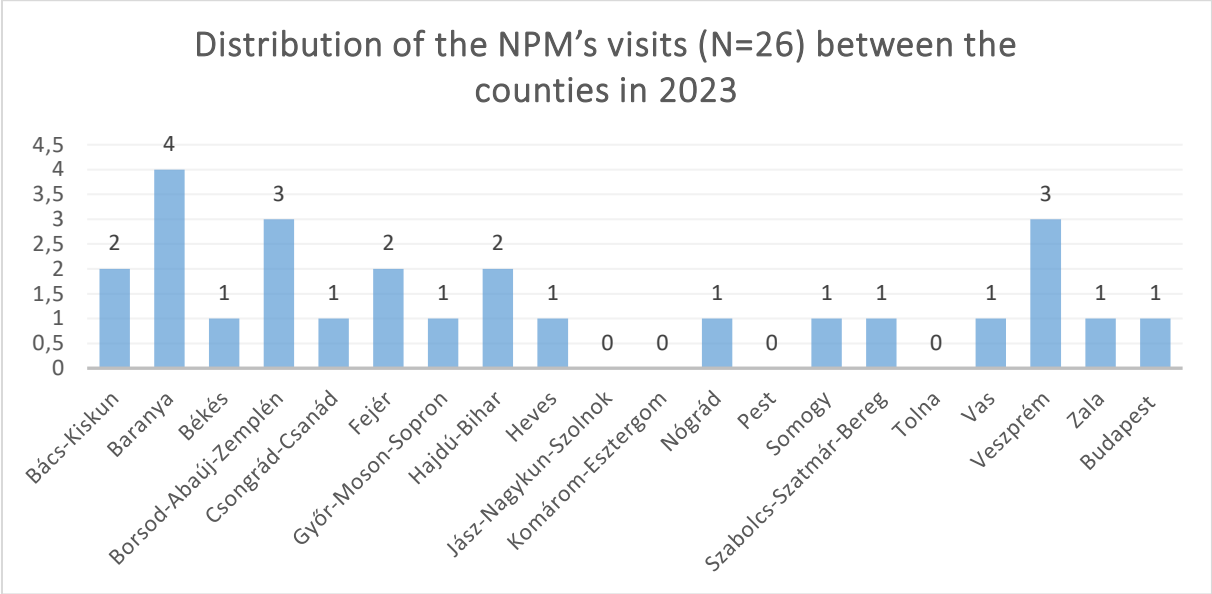
⁴⁹ The data provided to the Office are registered under file number AJB-149/2020 in the Office.

Figures relative to the child contain the data of adolescent and adult psychiatric and addictology; as well as gerontology and infectiology 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 2023 as well that he should visit institutions of different geographical locations and types. 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.



4. 3. The 2023 schedule of visits of the NPM

Pursuant to Article 20(e) of OPCAT, the NPMs shall be granted the liberty to choose the places that they want to visit.

Based on the list of places of detention, the NPM determined the 2023 schedule of its visits.⁵⁰ The schedule of visits was compiled by taking the CCB's proposals into account.

The NPM pursued its 2023 activities based on the schedule of visits and the proposals made by the CCB during the year.

5. The NPM's visits

In order to perform his tasks related to the NPM, the Commissioner for Fundamental Rights of Hungary 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.⁵¹

In 2023, the NPM inspected **5 892** detention units in **26** locations. The table below shows the dates 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 2023

| Serial number | Date of the visit | Name of the place of detention | | At the time of the visit: | | |
|---------------|-------------------|---|---------------------------------|----------------------------|-----------------------------------|-----------------------|
| | | | | Authori zed capacity | Number of detainees (heads) | Utilization rate % |
| | | | | Number | | |
| 1. | 2023. 01. 17. | National Prison of Pálhalma | | 279 | 245 | 88 |
| 2. | 2023. 03. 01. | Somogy County Police Headquarters | | 20 | 7 | 35 |
| 3. | 2023. 03. 16. | MMSZ Gondviselés Háza – Zalaapáti Care Provider | Classical institutional care | 130 | 131 ⁵² | 101 |
| | | | Supported housing | 72 | 70 ⁵³ | 97 |
| 4. | 2023. 03. 21. | Hajdú-Bihar County Remand Prison | | 180 | 214 | 119 |
| 5. | 2023. 04. 12. | Veszprém Police Department | | 3 | 0 | 0 |
| 6. | 2023. 04. 12. | Veszprém Police Department | Zirc Police Station | 0 ⁵⁴ | 0 | 0 |

⁵⁰ Case file No. AJB-3943/2021

⁵¹ Sections 39/B of the Act CLIV of 1997 on Health

⁵² On the waiting list: 134 persons

⁵³ On the waiting list: 26 persons

⁵⁴ Administrative office is used as no dedicated area was available for this purpose.

| | | | | | | |
|-----|---------------|--|---------------------|-------------------|-----|----|
| 7. | 2023. 04. 12. | Várpalota Police Department | 6 | 0 | 0 | |
| 8. | 2023. 04. 18. | Sátoraljaújhely Erzsébet Hospital, Psych Wards | Acute Unit | 40 | 20 | 50 |
| | | | Rehabilitation Unit | 40 | 17 | 43 |
| 9. | 2023. 04. 18. | Bács-Kiskun County Remand Prison | 223 | 263 | 118 | |
| 10. | 2023. 05. 17. | Budapest Municipal Government Kamaraerdő Home for the Elderly | 652 | 563 | 86 | |
| 11. | 2023. 05. 22. | Csongrád-Csanád County Castle Home of Nagymágocs | 300 | 204 ⁵⁵ | 68 | |
| 12. | 2023. 06. 14. | Tengerszem ISZI B-A-Z Home for the Elderly Boldogkőváralja | 110 | 110 ⁵⁶ | 100 | |
| 13. | 2023. 09. 16. | Balassagyarmat Strict and Medium Regime Prison | 313 | 349 | 112 | |
| 14. | 2023. 09. 26. | Facility II of Siklós Police Department | 1 | 0 | 0 | |
| 15. | 2023. 09. 26. | Pécs Police Department, Municipal Station | 0 ⁵⁷ | 1 | n/a | |
| 16. | 2023. 09. 27. | Pécs Police Department, Gyárváros Station | 0 ⁵⁸ | 1 | n/a | |
| 17. | 2023. 09. 27. | Komló Police Station | 4 | 0 | 0 | |
| 18. | 2023. 10. 05. | Szabolcs-Szatmár-Bereg County Remand Prison | 167 | 184 | 110 | |
| 19. | 2023. 10. 05. | Borsod-Abaúj-Zemplén County Remand Prison | N/A | N/A | N/A | |
| 20. | 2023. 10. 12. | Heves County Remand Prison | 143 | 153 | 107 | |
| 21. | 2023. 10. 24. | Zala County Remand Prison | 102 | 96 | 94 | |
| 22. | 2023. 11. 16. | Hajdú-Bihar County Remand Prison | 180 | 192 | 107 | |
| 23. | 2023. 11. 23. | Szeged Strict and Medium Regime Prison, Unit I | 595 | 527 | 89 | |
| 24. | 2023. 11. 23. | Békés County Remand Prison | 107 | 120 | 112 | |

⁵⁵ On the waiting list: 34 persons

⁵⁶ On the waiting list: 9 persons

⁵⁷ Administrative office is used as no dedicated area was available for this purpose.

⁵⁸ Administrative office is used as no dedicated area was available for this purpose.

| | | | | | |
|------------------------|---------------|--|--------------|-------|----|
| 25. | 2023. 11. 28. | Sopronkőhida Strict and Medium Regime Prison | 749 | 611 | 82 |
| 26. | 2023. 11. 28. | Szombathely National Prison | 1 476 | 1 396 | 95 |
| Aggregated data | | Number of inspected places: | 5 892 | | |

It is clear from the table that 8 of the institutions visited in 2023 were overcrowded at the places visited by the NPM, there were some detainees or patients whose number 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 or 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.⁵⁹

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.

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"*.⁶⁰

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.⁶¹ *"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"*.⁶²

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

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

In addition to its 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

⁵⁹ 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)

⁶⁰ See Article 11 of the UN Convention against Torture.

⁶¹ 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)

⁶² See: SPT: *First annual report* (Clause 12 of CAT/C/40/2)

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.⁶³

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 NPM, the Commissioner for Fundamental Rights of Hungary has to pay special attention to protecting the rights of children, the 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.⁶⁴

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 state 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.⁶⁵

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.

⁶³ CAT *General Comment No. 2* Clause 13 of CAT/C/GC/2

⁶⁴ Sections 1. CFR Act

⁶⁵ CAT *General Comment No. 2* Clause 21 of CAT/C/GC/2

6/1/4 Medical care

In Hungary, “everyone shall have the right to physical and mental health”.⁶⁶ 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”⁶⁷.

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, as well as 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 inherent element of the detainees’ right to health, guaranteed by Article XX of the Fundamental Law of Hungary. Unhealthy diets, being overweight, as well as 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.⁶⁸ According to the findings of the visits, 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 outdoors activities 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 affect the enforcement of fundamental rights as they are. The risks emerging from this 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.

⁶⁶ Article XX (1) of the Fundamental Law of Hungary

⁶⁷ Section 7 (1) of Act CLIV of 1997 on Health

⁶⁸ <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/nutrition>

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.

*“Mixed-gender staffing is another safeguard against ill-treatment in places of detention.”*⁶⁹ 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 gender⁷⁰, 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-treatment⁷¹, and how accessible and efficient supervision for them 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”*.⁷²

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 liberty as soon as possible, investigates those grievances within a reasonable period of time and takes the measures necessary to remedy them without delay.⁷³

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

⁶⁹ Clause 26 of the 9th General Report on the CPT’s activities [CPT/Inf (99) 12]

⁷⁰ Clause 23 of the 10th General Report on the CPT’s activities [CPT/Inf (2000) 13].

⁷¹ See also Articles 10 and 16 of the UN Convention against Torture.

⁷² Article XXV of the Fundamental Law of Hungary

⁷³ See also Articles 13 and 16 of the UN Convention against Torture.

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. 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.⁷⁴ A further objective is to encourage the personnel of the places of detention and the authorities to implement the NPM's recommendations.⁷⁵ 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 2023, the NPM paid a follow-up visit to the Hajdú-Bihar County Remand Prison. The purpose of the follow-up investigation was to check the implementation of the recommendations formulated in the report on the visit paid on 14 July 2021. During the follow-up investigation, the NPM examined the experience of the detainees of the newly started personal reception of visitors, the types of leisure time activities that they can take part in, and the types of further measures taken by the Institution against coronavirus.

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”*.⁷⁶ 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 of Hungary 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 of Hungary, *“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”*.⁷⁷

⁷⁴ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 33 of CAT/OP/1/Rev.1).

⁷⁵ 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

⁷⁶ CFR Act Section 28 (1)

⁷⁷ CFR Act Section 27 (1)

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 to them. 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 of Hungary are not public*”,⁷⁸ 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*”.⁷⁹

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 data obtained, on which the NPM bases its findings and measures.⁸⁰ 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-examining information (allegations), provided by various persons, as well as documents, facilitates objectivity.⁸¹

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.⁸² 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.⁸³

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*

⁷⁸ CFR Act Section 27 (3)

⁷⁹ Article 21(1) of OPCAT

⁸⁰ See Section 32(1) of Instruction No. 3/2015 (XI. 30.) of the Commissioner for Fundamental Rights of Hungary.

⁸¹ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 26 of CAT/OP/1/Rev.1)

⁸² No. 3/2015 of CFR Instruction No. 3/2015 (30 30.) Act CLIV of 1997 on Health

⁸³ See Article 11 of the UN Convention against Torture in this context.

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 NPM 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 other 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 all⁸⁴, 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 Disabilities⁸⁵, 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.⁸⁶

7. 5. Measures taken by the NPM

Pursuant to Article 19 b) of OPCAT, the NPMs 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.⁸⁷ In every case, the provision of the CFR Act giving grounds to a particular measure has to be indicated.⁸⁸

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.⁸⁹ The measures with different addressees and the different measures to the same addressee must be clearly separated.⁹⁰

⁸⁴ Preamble of OPCAT

⁸⁵ See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated into law by Act XCII of 2007

⁸⁶ See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 30 of CAT/OP/1/Rev.1).

⁸⁷ Section 34 (1) of CFR Instruction No. 3/2015

⁸⁸ Section 34 (3) of CFR Instruction No. 3/2015

⁸⁹ Section 34 (2) of CFR Instruction No. 3/2015

⁹⁰ Section 34 (4) of CFR Instruction No. 3/2015.Act

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 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.⁹¹ 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.⁹² The addressees of the 105 recommendations formulated in the reports published by the NPM in 2023 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.⁹³ If there is no supervisory organ, the NPM makes a recommendation to the authority inspected.⁹⁴ The addressees of the 28 recommendations formulated in the reports on the NPM's visits published in 2023 responded on the substance within the time limit prescribed by the law.

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.⁹⁵ there were NPM did not exercise this power in 2023.

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.⁹⁶ there were NPM did not exercise this power in 2023.

⁹¹ Sections 32 (1)-(2) of the CFR Act

⁹² Sections 32 (3) of the CFR Act

⁹³ Section 31 (1) of the CFR Act

⁹⁴ Section 31 (4) of the CFR Act

⁹⁵ Section 33 (1) of the CFR Act

⁹⁶ Section 36 of the CFR Act

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.⁹⁷ The NPM made 9 legislative initiatives in 2023.

The NPM's reports published in 2023, including the number of measures taken
(To be continued on the next page)

| Serial number | Name of the place of detention | Measures | | | |
|---------------|---|--------------|--|---------------------------------|----------------------------|
| | | Total number | Addressees | | |
| | | | Institution subject to inquiry ⁹⁸ | Supervisory organ ⁹⁹ | Legislation ¹⁰⁰ |
| 1. | Report on the visit to Reménysugár Habilitation Institution | 10 | 6 | 4 | 0 |
| 2. | Report on the visit to Tolna County Remand Prison | 4 | 4 | 0 | 0 |
| 3. | Report on the visit to Rákospalota Reformatory Institute and Central Special Children's Home | 16 | 9 | 3 | 4 |
| 4. | Report on the visit to Bács-Kiskun County Remand Prison | 7 | 5 | 2 | 0 |
| 5. | Report on the visit to Szentendre Police Station | 0 | 0 | 0 | 0 |
| 6. | Report on the visit to Heves County Remand Prison | 2 | 2 | 0 | 0 |
| 7. | Report on the visit to Vác Strict and Medium Regime Prison | 5 | 5 | 0 | 0 |
| 8. | Report on the visit to the Baracska Unit of Central-Transdanubia National Prison | 12 | 12 | 0 | 0 |
| 9. | Report on the visit to Állampuszta National Prison | 7 | 4 | 1 | 2 |
| 10. | Report on the visit to Budapest Reformatory | 16 | 10 | 3 | 3 |
| 11. | Report on the visit to the Police Departments of Békéscsaba, Békés, Sarkad and Orosháza | 10 | 10 | 0 | 0 |
| 12. | Report on the visit to the Budapest Strict and Medium Regime Prison as the venue for the regular prisoner round transfers | 16 | 0 | 16 | 0 |

⁹⁷ Section 37 of the CFR Act

⁹⁸ Section 32 (1) of the CFR Act

⁹⁹ Section 31 (1) of the CFR Act

¹⁰⁰ Section 37 of the CFR Act

| | | | | | |
|--------------|---|------------|------------|-----------|----------|
| 13. | Report on the visit to the Police Departments of Győr, Mosonmagyaróvár, Kapuvár and Csorna | 9 | 9 | 0 | 0 |
| 14. | Report on the visit to the Polgárdi-Tekerespuszta unit of the Fejér County Integrated Care Centre | 4 | 4 | 0 | 0 |
| 15. | Report on the visit to Tiszalök National Prison | 5 | 5 | 0 | 0 |
| 16. | Report on the visit to Zala County Remand Prison | 1 | 1 | 0 | 0 |
| 17. | Report on the visit to Békés County Remand Prison | 2 | 2 | 0 | 0 |
| 18. | Report on the follow-up visit to the Kiskunhalas National Prison | 7 | 6 | 1 | 0 |
| 19. | Report on the follow-up visit to Hajdú-Bihar County Remand Prison | 12 | 11 | 1 | 0 |
| Total | | 145 | 105 | 31 | 9 |

7. 6. Publishing the NPM's reports

“The reports of the Commissioner for Fundamental Rights of Hungary 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.”¹⁰¹

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.¹⁰² 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 public¹⁰³ as well.¹⁰⁴ The NPM's reports shall also be published in the electronic archives within 30 days of their disclosure.¹⁰⁵

The following reports from those published by the NPM in 2023 will be summarized.

8. Persons deprived of their liberty at the places of detention visited by the NPM

8/1. Detainees in penal institutions

As the coronavirus pandemic abated, the main goal of the inquiry conducted by the NPM was to monitor the daily activities of the detainees and residents, the restart of the personal reception of visitors, as well as the measures taken for further protection against the pandemic, to control the measures promised in the wake of earlier reports, and to observe the conditions of detention in the summer and the winter.

¹⁰¹ Section 28 (4) of the CFR Act

¹⁰² Section 39 (1) of CFR Instruction No. 3/2015

¹⁰³ Section 39 (2) of CFR Instruction No. 3/2015

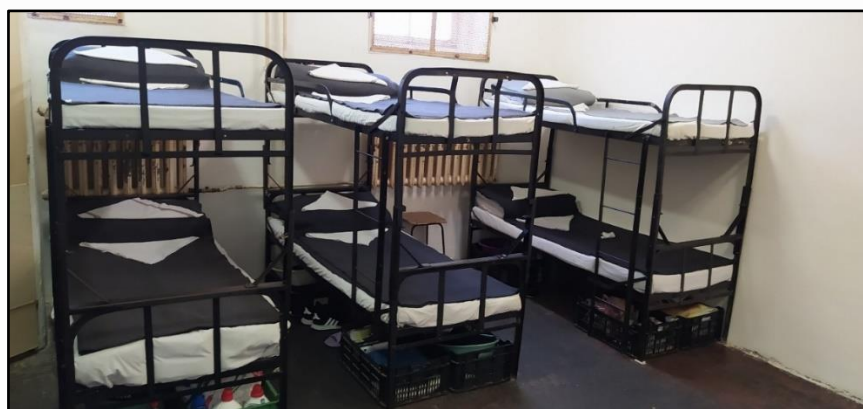
¹⁰⁴ <https://www.ajbh.hu/hu/opcat-jelentesek>

¹⁰⁵ Section 39 (3) of CFR Instruction No. 3/2015

8.1.1 Findings of the visit to the Tolna County Remand Prison

The NPM paid a visit to the Tolna County Remand Prison in October 2021. The visit focused on the measures aimed at the prevention of the coronavirus pandemic and assessed the health care and psychological services provided to the detainees, as well as the possible forms of their keeping contact with their relatives.

At the time of the inquiry, there were 97 detainees in the institution with a capacity of 100 persons, the occupancy rate was 97%. On the day of the visit, there were 45 foreign detainees at the institution. 2019 saw a number of refurbishments at the Institution, thus, among others, the kitchen, the community rooms and the cells were renovated. At the time of the visit, there were no detainees infected with COVID at the institution. From among the detainees, the first vaccination was administered to 116 persons, the second one to 91, while the third one was given to 17 inmates. Some 79% of the staff were vaccinated. The inter-prison transfer of detainees was suspended due to the coronavirus pandemic, and this was replaced by target transports and remote hearings were preferred. The detainees were placed in cells for 1-12 persons. Heating and hot water were available in the cells.



A cell in the institution

The foreign detainees complained that they could not meaningfully communicate with the staff members, this is why they asked other detainees to interpret for them. Several detainees decided not to share their problems with the staff members due to this circumstance, to avoid that the detainee doing the translation becomes aware of their problems. The NPM thinks that these circumstances ran counter to the prohibition of degrading treatment.

The female detainees complained that the leaders of the Institution had not allowed hair drying. The NPM established that this had caused an impropriety with regard to the right to physical and mental health.

Skype calls were popular among most of the detainees, the other most preferred form of communication was the making of phone calls. Those detainees who had no prison accounts were provided with a telephoning possibility of a monthly 3x5 minutes. The number of visits by relatives was very low.

The female detainees complained that they could not take part in employment. The NPM concluded that this was an impropriety with regard to the prohibition of discrimination.

The health care staff members reported that, on account of the lack of staff at the security department, they occasionally had to perform security tasks (e.g., searching clothes). The confidentiality between the health care staff and the detainees is adversely affected by the health care staff fulfilling security tasks. The NPM thinks that all this ran counter to the prohibition of degrading treatment.

8/1/2 Findings of the visit to the Bács-Kiskun County Remand Prison

The NPM paid a visit to the Bács-Kiskun County Remand Prison in 2019 and 2021. During the 2019 visit, the NPM examined the placement conditions of the detainees, catering, medical and psychological care, the treatment of detainees, the contact options, leisure time activities, employment and education, with special regard to the situation of persons who belong to special groups of detainees such as women, including women with young children or infants and youngsters. In 2021, the NPM deemed it important to monitor the placement conditions of special groups of detainees, with special regard to the special measures taken to prevent the coronavirus infection, and the effect of these exerted on the everyday lives of the detainees.

In 2019, the occupancy rate of the Institution was 128 percent (288 heads for 225 places). By 2021, as a result of the capacity extension programme of the Hungarian Prison Service Headquarters (hereinafter: HPS), the occupancy ratio decreased to 84.6 percent (198 heads for 237 places).

In order to improve the working conditions of the staff, the Institution took several measures in 2020, the service and recreation rooms were renovated, the kitchens became well-equipped, and a gym was also built for the staff. Nevertheless, it raises concerns that it is a practice at the Institution even in 2021 that, as a result of the lack of sufficient staff, sometimes the members of the staff who are not in security positions also performed security-related tasks.

The Institution endeavoured to provide the appropriate level of health care services to the detainees. Based on the experience gained from the 2021 visit, the NPM continuously monitored the measures taken to ensure the recovery of the detainees infected by the coronavirus, the prevention of the spreading of the infection, as well as the maintenance of everyday hygiene and sanitation. During its visits, the NPM did not detect any circumstances suggesting an impropriety with regard to fundamental rights in the psychological care provided to the detainees but he called attention to the special importance of providing appropriate psychological support at the time of the pandemic both for the persons deprived of their liberty and for the personnel.



Community room in the mother and child unit of Facility II (2019)



Visitation room in the mother and child unit of Facility II (2019)



**Community room in the mother and child unit
(2021)**



Mother and child yard (2021)

With regard to the coronavirus pandemic, at the time of the 2021 visit, the laws allowed the limitation of the participation of the detainees in employment, education, training and leisure time activities. The NPM appreciated that the majority of clubs and activities organised for the detainees were held by the Institute in the pandemic situation as well, by keeping the necessary preventive and precautionary measures. The NPM called attention to that involvement in education and leisure time activities was especially important for young detainees in ensuring the right of children to the protection and care required for appropriate physical, mental and moral development. The NPM also urged the Institution to endeavour to ensure as wide as possible employment of the detainees, including women, as the pandemic abates.

With regard to the catering of the detainees, he called attention to that the decree-level regulations required by the relevant law had still not been adopted on this question.

At the time of the 2019 visit, the majority of the detainees was not provided with the possibility of physical contact when they received visitors. Making phone calls and correspondence were common modes of keeping contact in this period as well, and the Institution also ensured electronic contact in a narrow scope. In 2021, the detainees were not allowed to receive visitors due to the pandemic situation. They could keep contact with their relatives on the phone, via Skype and through correspondence.

The NPM concluded, based on the experience gained from its 2019 visit, that the fact that a detainee did not receive his letter and he was not even informed of the denial of delivery jeopardised the enforcement of the right to contact. As regards the personal reception of visitors, he called attention to that contact on the phone and electronically cannot replace the detainees seeing their relatives in person. The NPM also added that the different ways of keeping contact may only be restricted in the case of the individual detainees with appropriate differentiation, after individual risk assessment, the missing of which may jeopardise the enforcement of the right of the detainee to privacy and contact, as well as the prohibition of inhuman treatment, with special regard to that the restriction of physical contact does not only affect the fundamental rights of the detainees but also, those of their relatives, including children. Furthermore, it would contribute to the enforcement of the fundamental rights of both the female detainees and their children living outside the Institution if the prison organisation actively helped the female detainees in keeping contact with their children.

The NPM experienced, during both of its visits, that the joint placement of the detained mothers with their children in the so-called mother and child units, the conditions of placement, the health care provided to infants, as well as the so-called “child visitation” ensured for the mothers placed with their children and their relatives in Facility II can be deemed good practice.

8/1/3 Findings of the inquiry conducted at the Baracska Facility of the Central Transdanubia National Prison

The NPM visited the Baracska Facility of the Central Transdanubia National Prison in 2019 and 2021.

During the 2019 visit, the NPM checked the placement conditions of the detainees, the treatment of detainees, the possibilities of keeping contact, the leisure time activities, employment, education, medical and psychological care, as well as catering. During the 2021 visit, in addition to examining the key questions of the previous inquiry, the NPM also checked the measures related to the emergency situation caused by the coronavirus pandemic.

In 2019, the occupancy rate of the Institution was 125 percent (764 heads for 607 places), which exceeded the national average. By 2021, as a result of the capacity extension programme of the HPS, occupancy decreased to 94 percent (872 heads for 927 places). The Institution had its own action plan, which defined the order of using protective equipment, the disinfection tasks, as well as the reduction of external contact. The coronavirus pandemic affected as many as 223 members of the staff until the date of the visit. At the time of the visit, 14 persons were staying at home, 5 staff members had a verified positive test result, 22 persons were infected, 7 persons were contact persons, while 2 persons stayed at home with symptoms. A total of 61 persons recovered from the infection. From among the detainees, there were 2 certified positive cases until the date of the visit, and 10 infected detainees were taken over to the Tököl Unit of the Health Centre of the Prison Services. All those who entered the Institution had their temperatures taken. Each detainee waiting to be admitted was tested or isolated for 14 days. Hand sanitisers were placed at the entry points. Both the detainees and the members of the personnel were provided with the necessary protective equipment. The detainees complained that sometimes there was not a sufficient quantity of available disinfectants, so they had to use their own shampoo and shower gel for the cleaning of the cells. The detainees were informed of the facts that they should know about the coronavirus pandemic by their reintegration officers. They could find out about the current epidemic situation both on CCTV and from the notice board. The Institution was running a call centre, where the relatives of the detainees could be informed.

In several cases, the cells of the detainees were run down, the floor was broken, the walls were covered with mould and dirt, and there was no continuous hot water supply either. The detainees complained that the air-conditioning equipment (heating) was only turned on after 20.00 p.m., while they were cold during the day.



Cell for eleven persons (2021)

The detainees complained of the behaviour of the personnel both in 2019 and in 2021. The detainees said that the guards talked to them in a condescending, degrading tone, they used the informal way of address in their communication with them, they threatened to abuse them

and sometimes did physically abuse them. Both in 2019 and 2021, there was a lower headcount in the personnel, mainly in the supervisor positions of the security and law enforcement units, the number of overtime hours was high, which may have affected the treatment of the detainees. The Institution improved the staff's working conditions by air-conditioning the offices, as well as procuring work tools and new pieces of furniture.

The detainees complained that the Institution did not provide them with appropriate leisure time activities. They also mentioned that they did not get to the prison canteen on a weekly basis either.

The Institution provided the detainees with work and education opportunities. They participated in elementary, secondary and vocational training, e.g., they obtained qualifications as bakers and construction material handlers.

The detainees could keep contact with their relatives in different ways: in the form of Skype and phone calls, sending and receiving letters and parcels. Some of the detainees thought that keeping contact via Skype was a step forward but others thought that this mode of keeping contact could not replace receiving visitors in person. The interviewed detainees were glad about the possibility to make Skype calls.

During both the 2019 and 2021 visits, the detainees claimed that the health care staff treated them in a very condescending and cynical manner, they were not given the painkillers that they had asked for, and it took a very long time for them to get access to the medical examinations. The Institution did not employ a doctor on a permanent basis. The positions of psychologists were fully filled up both in 2019 and in 2021. The detainees said that the psychologists were available.

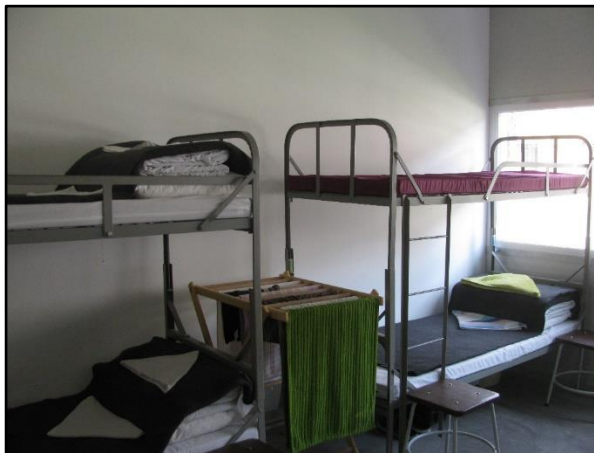
8/1/4 Findings of the visit to the Állampuszta National Prison

The Commissioner for Fundamental Rights of Hungary, acting in his capacity as NPM, and three of his staff members paid a visit to the Állampuszta National Prison in 2021. The aim of the visit was to inspect the implementation of the measures taken with the purpose of preventing the coronavirus pandemic and averting its consequences, as well as to examine how the restrictions ordered due to the state of danger affected the everyday lives of the detainees.

After the several phases of capacity extension that had previously taken place in the Institution, as well as the delivery of the new module housing facility in 2020 as part of the national capacity extension programme, the number of places increased, and the Institution was not overcrowded at the time of the visit. At the Institution with a total admission capacity of 1186, there were as many as 1111 detainees on the day of the visit, which meant a 93.68% occupancy rate.

The governor of the Institution took measures to ensure the appropriate protective equipment and sanitisers, as well as to avoid the spread of the infection into the Institution, and he followed the procedural rules to be applied in the case of suspected and verified inspections. By the day of the visit, there had been 83 detainees and 58 staff members who were infected. In compliance with the special laws created on account of the pandemic situation, some rights of the detainees were restricted at the Institution.

The scope of the offered leisure time activities narrowed down, and the activities were held in smaller groups. The pandemic situation significantly affected the organisation of education and employment. Participation in education was first of all ensured without the presence of teachers. By taking measures aimed at the prevention of the infection, there was in-person training at the practical classes of trade education.



A cell in the module housing facility in Állampuszta



Outdoor sports facility in Solt

It was not possible to receive visitors at the Institution. As compensation for this restriction, the detainees could make longer phone calls and keep electronic contact.

The NPM exposed improprieties regarding fundamental rights related to the extra burden on the staff, the placement conditions in some of the cellblocks, the deficiencies in ensuring the criteria for personal hygiene, the availability of medicine, as well as the situation of detainees on custody for an infraction.

8/1/5 Findings of the visit to the Zala County Remand Prison

The NPM paid a visit to the Zala County Remand Prison on 14 October 2021. The inquiry focused on the measures taken to prevent the spread of the coronavirus pandemic, the health care and psychological services provided to the detainees, as well as the options of keeping contact to replace receiving visitors.



Antimicrobial carpet on the corridor



Detention unit at the institution

On the day of the visit, there were 96 detainees at the Institution, the occupancy rate was 94%. Since the outbreak of the pandemic, up to the day of the visit, 6 detainees and 6 staff members got infected at the Institution. 79 percent of the detainees and 75 percent of the personnel were vaccinated. It should be stressed that in 2020, there were no detainees suspected

to be infected with the coronavirus at the Institution. The detainees were usually administered with the vaccinations Sinopharm and Sputnik.

At the time of the visit, the members of the personnel had to wear masks and rubber gloves. The Institution ensured hand sanitisers to both the detainees and the members of the personnel.

The detainees could take a shower five times a week. There was no hot water in the cells but the detainees were provided with hot water in cans twice a day. The size of the cells of the Institution was compliant with the statutory requirements.

The visitor reception room was transformed into a Skype room, it functioned as the latter at the time of the visit. Skype calls were popular among the detainees, as it would have caused difficulties for several relatives to travel to Zalaegerszeg.

Several detainees complained that they could not pass their time with many different activities. The NPM established that the enforcement of the right of the detainees to the prohibition of degrading treatment may be jeopardised by ensuring a low number of activities to the detainees.

The inquiry did not expose any improprieties with regard to fundamental rights in relation to the medical and psychological care provided to the detainees.

8/1/6 Findings of the visit to the Békés County Remand Prison

The Commissioner for Fundamental Rights of Hungary, acting in his capacity as NPM, and three of his staff members paid a visit to the Békés County Remand Prison on 22 July 2021. At the time of the visit, the admission capacity of the Institution was 107 persons. At the time of the visit, 96 detainees were staying at the Institution, which meant an occupancy rate of 89%.

The aim of the visits was to inspect the implementation of the measures taken with the purpose of preventing the coronavirus pandemic and to avert its consequences, as well as to examine how the restrictions ordered due to the pandemic affected the everyday lives and the rights of the detainees to keeping contact with their relatives.

On the day of the visit, there were no infected detainees or members of the personnel. In compliance with the special laws created on account of the pandemic situation, the possibilities of the detainees to keep contact were restricted at the Institution. The group activities were permitted in smaller groups and if the distancing rules could be kept. Education and trade classes were temporarily suspended.

The reception of visitors was permitted again with effect from 1 July 2021; however, this possibility was combined with the reduction of the number of monthly Skype conversations for the detainees.

As compensation for the measures aimed at the restriction of communication, the detainees were allowed to make longer phone calls and they could also communicate with their relatives electronically.

The visiting group commented that the detainees did not receive food of appropriate quality and quantity during the meals provided by the Institution, which jeopardised the right of the persons placed in the Institution to physical and mental health. The NPM stressed that better quality catering had a positive effect on the detainees' mood, which may contribute to the decrease of conflicts between the detainees and between the detainees and the members of the personnel.

He also found fault with the circumstances of ensuring hot water to the detainees, with regard to the pandemic situation and he also found the situation of female detainees concerning, with regard to the employment opportunities at the Institution.



A quarantine cell and the interior of the chapel at the institution

The visit did not expose any improprieties with regard to fundamental rights in connection with the placement conditions and the rights of the detainees to keeping contact with their relatives, other registered contact persons and legal representatives. However, the NPM made an observation on the need to maintain parallel forms of keeping contact, i.e., communication via Skype and the personal reception of visitors, as the number of electronic contact possibilities was reduced when the detainee requested a personal visit.

8/1/7 Findings of the visit to the to the Kiskunhalas National Prison

The NPM conducted a follow-up investigation at the Kiskunhalas National Prison on 17 May 2022. The purpose of the follow-up investigation was to check the implementation of the recommendations formulated during the 2020 visit, as well as to monitor the activities of the period that had elapsed since then. In its 2020 report, the NPM made a recommendation on that the Skype calls made by the detainees should remain available even after the end of the state of danger. Furthermore, the NPM requested the governor of the Institution to review and clarify a particular statement of its instruction according to which the three-month monitoring period preceding the authorisation of Skype calls started again in the case of those detainees who commit an “undesirable act”. The management of the Institution accepted both recommendations of the NPM. The detainees could make Skype calls after the end of the state of danger as well. The respective order given by the governor was also amended, so the recommendations made by the NPM in its earlier report were implemented.

The total admission capacity of the Institution was 889 persons, on the day of the visit, there were 873 detainees at the Institution, so the occupancy rate was 98.2%. In the meantime, the number of beds of the Institution increased: in the module housing facility of building “C”, it was possible to place a total of 440 detainees in 3-6-person cells.

The capacity extension was also made necessary by the expanded profile of the Institution in the meantime, as this was the place where the Baranya County detainees came to be confined. Since the first visit, all the positions of education officers have been filled. The NPM established that the overcrowding experienced at the time of the 2020 visit has stopped.

The increase in the number of disciplinary cells did not go hand in hand with the capacity extension of the Institution, this is why there were 5 isolation wards for the nearly 900 detainees. Ideally, the isolation of the detainees could have been done with 15-20 cells. The NPM proposed that more disciplinary cells should be designated.

The Institution provided several kinds of diets for the detainees but no vegetarian diet was available.

Several detainees complained that in buildings “A” and “B”, there was no continuous hot water supply.

The most frequently used forms of communication between the detainees and their relatives were Skype calls and phone calls. From May 2022, visitors could be received again. The detainees complained that they could only meet their relatives separated by a plexiglass wall during the reception of visitors.



Skype work station at the institution (2020)



Dressmaker's shop for female detainees at the institution (2022)

In connection with healthcare services, several detainees complained that they did not receive their medicine, or received them with long delays, furthermore, that the healthcare staff treated them in a condescending manner.

In 2021, one detainee took his own life at the Institution. The identification and protection of endangered detainees can only be efficient if there is a sufficient number of psychologists.

The Institution ensured vocational training to the detainees using which they can quickly find employment after they are released. The training courses included the following trades: dressmaker, mason, painter, social carer and nurse, tiler and gardener.

Some detainees said that they only learnt about the leisure time activities when there was some inspection at the Institution, so they could not participate in these.

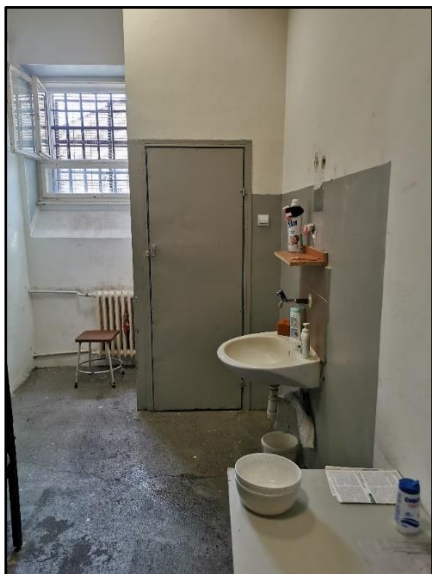
8/1/8 Findings of the visit to the Hajdú-Bihar County Remand Prison

The NPM conducted a follow-up investigation at the Hajdú-Bihar County Remand Prison on 21 March 2023. The purpose of the follow-up investigation was to check the implementation of the recommendations formulated in the report on the visit paid on 14 July 2021. During the follow-up investigation, the NPM examined the experience of the detainees of the newly restarted personal reception of visitors, the types of leisure time activities that they can take part in, and the types of further measures taken by the Institution against coronavirus.

On the day of the visit, there were 214 detainees at the Institution with a total admission capacity of 180 persons, so the occupancy rate was 119%. The size of the cells of the Institution was compliant with the statutory requirements. The detainees reported that from time to time, there were cockroaches and bedbugs in the cells but the Institution immediately took care of pest control.

The cells were generally in a run-down condition: the walls were mouldy, the walls around the toilet pans were in poor condition, the floors were worn and shabby. The recommendation made by the NPM in 2021 was implemented: the buttons and spouts missing from the taps were replaced but the rundown condition of the cells remained.

A young detainee was placed in a cell that earlier used to be a healthcare isolation ward alone and his placement conditions were not appropriate.



Interior of a cell



Traces of leaking

Due to the rising energy prices, cost reduction measures were introduced in the penitentiary institutions. This is why the detainees could use maximum 500 W kettles, among others. Those higher power devices that were purchased or rented from the penitentiary institution had to be checked. At the time of the visit, several detainees complained that, since on the previous days, there had been no hot water at the Institution, they could not use the previously collected kettles even in the period when no hot water was available.

In order to rationalise water usage, only the young, female and working detainees could take a daily bath, while the other detainees were only allowed to do so three times a week. Several detainees complained that in the winter, they were cold in the cells, as the heating was not appropriate.

The foreign detainees complained that they could practically not communicate with the members of the staff. They were placed in the same cell with such detainees who could not speak the language of their foreign peers.

The members of the staff were overwhelmed, the transformations affecting the prison organisation as a whole did not have a favourable effect on the work morale of the staff.

Many of the detainees participating in EFOP (Human Resources Development Operational Programme) worked in their cell. The NPM proposed that those detainees who took part in EFOP could spend their work time outside their cells.

The detainees continued to request personal visits. They complained that during the reception of their visitors, the separating plexiglass walls did not allow any physical contact with their relatives. The recommendation made by the NPM in its 2021 inquiry was implemented: he recommended that the permitted number of electronic contacts should not decrease in the case of those detainees who receive personal visitations.

It jeopardised the enforcement of the right of the detainees to physical and mental health that, due to the small floor area of the psychologist's office, the organisation of group activities encountered difficulties.

8. 2. Residents of social care institutions

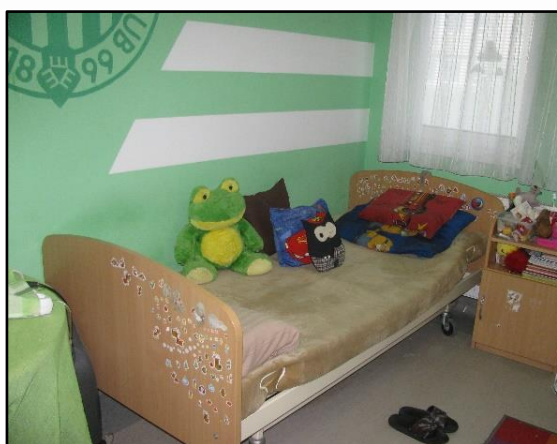
8/2/1. Findings of the visit to Reménysugár Habilitation Institute

The staff members of the Commissioner for Fundamental Rights of Hungary, who also performs the tasks of the NPM, as well as the psychiatric expert commissioned by the Office of the Commissioner for Fundamental Rights of Hungary paid an unannounced visit to the Reménysugár (lit.: “Ray of Hope”) Habilitation Institute on 30 May 2022, at the proposal of one of the members of the Civil Consultative Body¹⁰⁶.

The visited institution provides care and nursing services to residents with grave and multiple disabilities, including patients with autism spectrum disorder. At the Sziporka residential unit, residents were originally placed in the spirit of preparation for independent living but lower- standard services than planned were actually realised.

The Institution struggled with a significant lack of staff, which has led to the overload of the staff and a decrease in the quality of performing the tasks. The development classes, the other activities and autism-specific interventions have been missed. The lack of financial incentives, the missed professional further training courses have meant the threat of the burnout of the staff. The facilities of the Institution, which earlier ensured serious development (hydrotherapy pool, waterbed) remained unused, due to the lack of financial and human resources.

Due to the low staff number, a residential unit was closed down by the Institution and the supervision of the residents was ensured in the other units, which involved overcrowding. There were some residential units where there was no night supervision.



Room in the Sziporka Residential Unit



Development room

Despite the reduction of the staff to a critically low level, the patients were properly cared for, they were in a good condition. The regular visits by the relatives meant a lot for the patients, which the Institution endeavoured to ensure, even in the period of the coronavirus pandemic, whenever it was possible. The parents could reach the residents on the phone through the carers at any time. Adequate channels should be ensured for signalling the complaints of the relatives, it would make sense to place a complaint box at a conspicuous place for anonymous complaints.

¹⁰⁶ Report no. AJB-1541/2023

8/2/2 Key findings of the report on the visit to the Polgárdi-Tekerespuszta Unit of the Fejér County Integrated Care Centre

The NPM paid a visit to the Polgárdi-Tekerespuszta Unit of the Fejér County Integrated Care Centre under the effect of Government Decree No. 40/2020 (III. 11.) on the declaration of the state of danger.¹⁰⁷

The Unit is far from a residential area, in a place that is accessible from the railway on foot or by bike, near agricultural areas, where the residents are used to leaving the institution and taking care of their everyday affairs at any time. At the time of the visit, the visitation ban and curfew were in effect with regard to the Unit as well, which required adaptation from the part of the residents, which they endeavoured to patiently comply with. During the visit, the daily activities of the residents and their keeping contact with the relatives were monitored in the changed circumstances. The further focus of the visit was to find out whether the protection of the residents placed in the Institution from the COVID-19 infection was ensured from every aspect. The inquiry examined whether the Unit had an adequate quantity of protective devices, disinfectants and whether their use took place according to the relevant guidelines. In addition to this, the inquiry also placed emphasis on controlling whether the health care services were appropriately provided to the residents in the pandemic period and it checked the physical and personal conditions of the care provided to the residents.

8. 3. Residents living in child protection institutions

8/3/1 Visit to the Rákospalota Reformatory and Central Special Children's Home

The staff members of the NPM and an ad hoc medical expert paid an unannounced visit to the Rákospalota Reformatory and Central Special Children's Home on 2-3 March 2022. Besides examining the general treatment of the residents, the aim of the visit was to monitor the impact of the measures taken for the prevention of the spread of the Covid-19 infection.



Corridor of the institution with a punching bag



Bedroom for two



Corridor with worn floorboards

On the day of the visit, the utilisation rate of the 84-bed Institution was 70%. In the educational unit of the reformatory institute, two groups received the girls in pre-trial detention and those referred to reformatory education, respectively. The children receiving special children's home care were listed in three groups, while in the eighth group, the mothers and

¹⁰⁷ Report no. AJB-1055/2023

their children were placed together. In the 8 groups, 55 children and young adults were cared for, of whom three were absent without permission. However, officially, the number of residents in the institution was 59, due to double registrations. The NPM called the attention of the staff that it would be necessary to harmonise the actual headcount numbers, the registered headcount and the number of available beds broken down by groups.

The NPM established that the minimum headcount and qualification requirements specified in EMMI (Ministry of Human Capacities) decree No. 1/2015 (I.14.) on the rules of juvenile correctional institutions (hereinafter referred to as: the “Rules”) and NM (Ministry of Welfare) Decree No. 15/1998 (IV. 30.) on the professional responsibilities and operational conditions of child welfare and child protection institutions and individuals providing personal care were not met in some cases. It raised concerns that about one quarter of the qualified staff worked a very significant amount of overtime. Overtime raises concerns regarding both the burnout of the employees and the treatment of the detainees even if the employee takes on overtime voluntarily and a separate contract for these extra hours is entered into with them. The NPM was convinced again that one policeman was not sufficient for performing the tasks that belong to the Police, this is why he repeatedly proposes that the respective headcount requirement of the Rules be modified.



Plumbing unit of the mother and child unit



Living room of the mother and child unit



Bedroom of the mother and child unit

The NPM found good placement conditions in the building located in a park and protected as a historical monument, which was due to recent refurbishment efforts. The children and young adults were living in a special environment satisfying the needs of modern education. The size, neatness and cleanliness of the residential units were appropriate. The residents could spend sufficient time outdoors, and diverse guided activities played an important role in their daily routines, besides education. Except for the three infants, all the residents were students. The effectiveness of education is shown by the fact that two thirds of those who left the Institution in the past thirty years finished elementary school, mastered a trade, thus their chances for employment and successful integration into society have increased. The grading system applied at the Institution ensured an increasing level of independence to those who kept

the rules, three of whom pursued their studies and did their professional practice outside the Institution. The NPM proposed that after the use of the isolation wards, the involvement of psychologists should be obligatory and documented.

The NPM was delighted to see that every resident keeps regular contact with someone and almost everyone has a relative who is present in their lives. Raised frequency and duration of keeping contact was a frequently used method of awarding. However, the NPM proposed that the Institution with a national scope consider keeping the possibility of providing Skype contact for the residents, in addition to that of receiving visitors in person.

Police staff is involved in transporting the residents of the reformatory institute to external locations. In this context, the residents said that they were kept in handcuffs and on lunge lines on such occasions. The NPM called attention to that the automatic application of handcuffs and lunge lines was not compatible with the principle of corrective education. The spread of the infection was prevented by continuous monitoring, frequent testing and the observation of the set of hygiene rules that was introduced at the very beginning of the pandemic (e.g. frequent handwashing, regular disinfection, including the doorhandles and the light switches, the wearing of masks and protective clothes, keeping distance if possible, etc.), for which the necessary means were continuously available. On the day of the visit, 94% of the residents were vaccinated.

8/3/2 Findings of the visit paid to the Budapest Juvenile Correctional Institution

Three staff members of the Commissioner for Fundamental Rights of Hungary paid an unannounced visit to the Budapest Juvenile Correctional Institution on 24 June 2021.¹⁰⁹ In addition to examining the general treatment of the youngsters, the purpose of the visit was to check the measures taken to prevent the spread of the COVID-19 infection, and to review the changes generated by the restrictions ordered in the state of danger¹¹⁰ in the lives of children and youngsters residing in the correctional institution.

On the date of the visit, 23 youngsters in 4 groups were cared for in the Institution with a capacity of 100 persons without setting up different age groups, i.e., those under and over the age of 16 were not separated from each other, which the NPM criticised. The groups were heterogeneous both regarding needs of education and the needs of the youngsters.

Both admission and release were smooth despite the pandemic situation, the rules of procedure for admission were modified by taking the danger of infection into account. The isolations that became necessary in order to avoid the risk of infection were ensured at the health care unit. Up to the time of the visit, there had been no cases of Covid-19 infections among the children. The majority of the youngsters had already received the 1. vaccine.

The NPM established that the employment of fewer nurses than the number stipulated by the law was required by the regulations of the institution, and they worked in compliance with the internal regulation in practice as well, which is a danger both from the aspect of the principle of the rule of law and the enforcement of the right of children to health. The same right to health was also jeopardised by the fact that the visiting group found some medicine past their expiration dates during the inspection.

Some staff members of the institution lacked the required qualifications. In addition to a high turnover rate, several staff members worked a significant amount of overtime. The NPM thinks that the lack of the necessary rest period may cause burnout and thus, reduce the level of empathy and patience towards the youngsters, which may lead to the occurrence of ill treatment.

The NPM found the placement conditions appropriate, the youngsters could spend sufficient time outdoors, in the nicely kept park and in the modernised sports fields.

¹⁰⁹ Report no. AJB-755/2023

¹¹⁰ Government Decree No. 40/2020 (III. 11.) on the declaration of the state of danger; Government Decree No. 478/2020 (XI. 3.) on the declaration of the state of danger; Government Decree No. 27/2021 (I. 29.) on the declaration of the state of danger and the entry into force of emergency measures

The employment and education of the youngsters were efficient, whole-day activities were ensured by a well-organized daily schedule.

Cleaning at the Institution was made more frequent in the threat of the pandemic, and regular disinfection was carried out by an enlarged cleaning staff. The youngsters also took their share in cleaning their environment. On the occasion of the unannounced visit, the NPM found a clean and neat environment.



The premises of the institution

In order to compensate for the lack of personal visits, the possibility for keeping contact via Skype was created. The NPM found it important for this mode of staying in touch to remain parallel to receiving visitors in the future as well. In its report on the visit, he drew attention to that increasing phone contact is of key importance during the pandemic but it would be necessary to increase phone time in general as well.

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.¹¹¹

The NPM

- should enter into a dialogue with the *“directors/operators of the government authorities and institutions on the possible implementation of the recommendations”*;¹¹²
- *should establish a communication and cooperation mechanism with the competent authorities for the implementation of the recommendations*;¹¹³
- shall carry out a dialogue which shall include both *“a written and oral exchange of ideas”*.¹¹⁴

Although the implementation of the measures proposed by the NPM is not mandatory, the provisions of the CFR 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 not only the NPM but also the heads of places of detention, authorities and other organs concerned. The dialogue between the NPM and the addressees of the recommendations is conducted by using

¹¹¹ Paragraph (iii), Section 1, Article 11 of OPCAT

¹¹² SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 34 of CAT/OP/1/Rev.1).

¹¹³ Clause 42 of CAT/OP/1/ Rev.1

¹¹⁴ Clause 34 of CAT/OP/1/ Rev.1

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 CFR Act.¹¹⁵

The key legal guarantee for such dialogue lies in 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 or not to put the matter on the agenda.

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

9/1. Responses to the measures taken after visits to prison establishments

Responding to the recommendations made in the report on the visit to the *Tolna County Remand Prison*¹¹⁶, the HPS explained that the possibility to dry hair is provided to all the detainees, as the detainees may possess hairstyling tools (hair dryer, up to the power of 1200 W, waving irons, curlers and clips, hairnets, shower caps) pursuant to Section 1.12 of Annex 1 of IM (Ministry of Justice) Decree No. 16/2014. (XII. 19.) on the detailed rules of implementing imprisonment, confinement, pre-trial detention and confinement replacing disciplinary fine.

As regards communication with the foreign detainees, he explained that a database on the members of Regional Centre II who speak foreign languages is available and they can provide assistance with the solution of translation problems by electronic contact (Skype, e-mail, telephone). The governor of the institution also obtained a portable translator, which is available to promote efficient communication.

As regards the employment of female detainees, he informed the NPM on that the institution places arrested women who cannot be obliged to work. Occupation may only be ensured at the request of the arrested person. If any of the arrested women request that they be employed, the institution will try to provide an opportunity for this. He highlighted that the female members of the health care staff who have a professional legal relationship exclusively performed such short-term target tasks related to security that could not be done by the male members of the staff under the relevant law. For example, such was the case when, in cases where no female security supervisors were available, then the clothes of the female detainees were searched by the female nurses. In its opinion, all this may not have an adverse effect on the official relationship between the health care staff and the detained women, which is of a fundamentally supporting nature, in the case of a professional performance of tasks but it contributes to the maintenance of the security of the institution. The Ombudsman accepted the response.

As regards the recommendations made in the report on the NPM's visit to the *Bács-Kiskun County Remand Prison*¹¹⁷, HPS replied that the contact between the detained women and their children was ensured by the institution based on the respective rules. The child may also be present at the conversations through the telecommunications device that is allowed in the respective category set out in the rules. In the case of receiving visitors from the family, the detainee may hold her child in her lap and may hold the hands of her relatives during the time of the visit. The other parent exercising supervisory rights over the child, or one who is entitled to keep contact, the sister or brother, the grandparent entitled to keep contact with the child, as well as the guardian may keep contact with the detainee once a week and may receive

¹¹⁵ Sections 31- 38 of the CFR Act

¹¹⁶ NPM Report AJB-1152/2023

¹¹⁷ Report No. AJB-1056/2023 of the NPM

information on the development of the child after prior coordination, which is ensured by the institution. Both the mothers and the contact persons are satisfied with such a simple and quick administration of matters.

The extra burden on the personnel and the security responsibilities of those working in other positions were reduced by the prison by putting armed security guards in service and using the possibility of regional cooperation for performing the individual security professional tasks. The staff members of the Kalocsa Strict and Medium Regime Prison help escorting the detainees to investigations and court hearings if justified, furthermore, the prisons of the region also take part in the execution of transportation tasks.

As regards the health care services provided to the detainees, he informed the NPM that a GP and an occupational health doctor were employed by the penitentiary institution in the form of a service contract, thus the medical examination of the newly admitted and isolated detainees takes place by the specified deadline and according to the respective requirements.

The opportunity to stay outdoors for the duration stipulated by the law is ensured by the institution to all detainees, furthermore, the institution also took measures to ensure that the detainees are informed of the rejection to forward or deliver their letters in all cases.

The governor of the institution took measures to achieve that only such healthcare professionals who have valid operating records be employed at the institution. The acting chief nurse working at the mother and child unit may only carry out healthcare responsibilities under supervision until her operational card is renewed. The governor of the institution called the attention of the nutritionist to settle the validity of her operating records. The nutritionist has the appropriate special exam certificate for the renewal of such validity. On this subject, the Healthcare Department of HPS conducted an inquiry, related to which it was ordered that the nutritionist perform her tasks under professional supervision. As long as the nutritionist is not able to carry out her tasks under professional supervision, her employment contract will be terminated and the institution will conclude an employment contract with a nutritionist with professional competence compliant with the relevant laws and possessing a valid operating licence. The Ombudsman accepted the response.

Responding to the recommendations made in the report on the visit to the *Baracska Facility of the Central Transdanubia National Prison*¹¹⁸, HPS explained that the Auxiliary Economic Institution of HPS (hereinafter referred to as: GEI) continuously arranges the obtaining of the disinfectants and cleaning devices necessary for the cleaning of cells by the detainees, as well as the replenishment of the stocks. The institution regularly assesses the deficiencies of the cells and other premises. The infrastructural background for maintenance is provided by GEI and it is also this organisation that procures and replenishes the clothes of the detainees.

According to the information that they provided, the staff members were briefed on the need to treat the detainees humanely and the examination of this treatment will be the subject of managerial controls in the future.

If a circumstance that excludes imposing confinement for administrative offences is detected, the institution will obtain the medical opinion and the certificate issued by the government office. The detainee is released immediately upon these documents are produced.

The institution has taken recruitment, selection and promotional measures for filling the vacancies of the position table. It is a great stride forward that the positions of nurses directly involved with the detainees were filled with young, human-centred employees and they can also employ a medical doctor working part-time.

The detainees could eat at the canteen every week. The staff offers diverse leisure time activities for the detainees by organising e.g., table tennis, chess, board games and card games for them, which are typically held at the weekends, in the community rooms. As regards the phoning regime of the detainees, he informed the NPM that it is possible to use the wall-mounted telephone between 7.30 a.m. and 18.00 p.m. The detainees who have mobile phone sets provided to them by the institution may make phone calls from 7 a.m. to 21 p.m.

¹¹⁸ NPM Report AJB-1024/2023

Depending on the financial resources that can be used for catering, the Institution provides fruit and vegetables for the detainees, and they also strive to ensure a diverse diet. The Ombudsman accepted the response.

Responding to the recommendations made in the report on the visit to the *Allampuszta National Prison*¹¹⁹, HPS explained that the management of the Institution took care of the renovation of the cells in a rundown condition as part of Phase II of the project aimed at the development of the security elements of the law enforcement organs, as well as from their own resources. The repair of the walls and floors of the cells and residential units was implemented out of order. The condition of the cells is regularly assessed and if any deficiencies are detected, repair is ordered without delay, and depending on the budget of the institution, the condition improvements and the renovation are continuously implemented.

The position table was modified and from 1 January 2023, all those staff members who perform security tasks were transferred to the security unit. In order to fill the vacancies of the position table, the Institution took recruitment measures, as a result of which the number of the security supervisors and line officers could be increased.

As a response to the respective recommendation, HPS explained that the detainees have access to the basic toiletries necessary for the maintenance of personal hygiene at the institution. The institution took measures to provide sanitation in line with the provisions set out in the relevant law. Those detainees who have no prison accounts receive the equipment necessary for basic sanitation from the institution. Bathrooms are available at all the departments of the prison, the condition and hygienic circumstances of which are monitored with special care and appropriate cleaning devices for keeping them clean are provided. The institution took the necessary measures to reduce the risk of infection.

According to the information provided by HPS, the medication is prescribed and distributed with medical approval, which is continuously ensured for the detainees. The medications or medicinal products are provided to the detainees by the institution, as prescribed by the medical doctor of the institution, or a specialist doctor during an examination outside the institution. In the case of missing medications, the institution takes care of procuring replacement products, or products with the same active ingredients that are professionally justified or permitted by the medical doctor.

The position taken by the Ministry of the Interior on the recommendation made to them in the report was that they agreed with the contents of the recommendation on the elaboration of an appropriate law and they were starting the preparatory work for the review of the effective regulations, by involving the bodies concerned.

In the report sent over as a response to the recommendations made in the report on the visit to the *Zala County Remand Prison*¹²⁰, HPS informed the NPM that they regularly organised group sessions of 5-10 persons for the detainees, thus they had the opportunity to participate in cultural, sports and literary clubs, among others, and they also had the chance to do sports.

As regards the recommendation on offering as many leisure time activities as possible, they explained that they had launched activities for the detainees at the drug prevention unit every week, and that the psychologist also held assertiveness improvement and personality development sessions for seven detainees every two weeks, and a further 11 detainees took part in the EFOP employment rehabilitation programme.

The full report was presented at the institution. As regards the contact of the detainees with their relatives, we were informed that this takes places according to the pre-COVID regime, so the detainees may receive visitors and also, make Skype calls. The Ombudsman accepted the response.

¹¹⁹ NPM Report AJB-1224/2023

¹²⁰ NPM Report AJB-1153/2023

Related to the recommendations set out in the report on the visit to the *Békés County Remand Prison*, as well as the execution of health preservation tasks ordered on account of the coronavirus pandemic,¹²¹ HPS explained, in connection with the increase of the quantity and the improvement of the quality of the meals prepared according to the menu for the detainees, that the amount that can be used for the basic norm had risen as compared to the year 2021 under review, which made it possible to increase the quantity of the portions of food. This is in compliance with the provisions set out in Section 2, Annex 6 of the Decree of the Minister of Justice (IM) No. 16/2014. (XII. 19.) on the detailed rules of implementing imprisonment, confinement, pre-trial detention and confinement replacing disciplinary fine, the meals are prepared in line with these requirements. The suppliers provide raw materials of excellent quality to the institution, under the contract.

As a response to the recommendation made in connection with the deficiencies in hot water supply, which is necessary for proper sanitation, HPS said to the NPM that in the autumn of 2021, at the time of the repair of the boiler supplying hot water, the high-power pump of the system was also replaced, this is why, as a result of this repair, hot water is uninterruptedly provided to the detainees at the institution. The Ombudsman accepted the response.

Responding to the recommendations made in the report on the *Kiskunhalas National Prison*,¹²² HPS explained that in order to increase the number of disciplinary cells, the institution escalated the expansion plan to HPS in January 2023, following an earlier assessment. The cell doors necessary for the building of disciplinary cells were procured and after the issuance of the HPS permission, the number of disciplinary cells can be increased.

According to the response given by HPS, the institution provided vegetarian (meatless) diet for as many as 12 detainees at the time of responding.

They also informed the NPM on that hot water was supplied in the bathrooms of the detainees, furthermore, in the cells and at the departments for the placement of women.

As regards the recommendation on the provision of medication and medical aids, the institution satisfies the medication needs from the basic medical supplies until the necessary products are delivered to the institution, in justified cases. In order to ensure the proper treatment of the detainees, the health care staff members are informed during the meetings and briefings and there was also a training session on HPS's methodological guidelines on communication, as explained by HPS.

In their response, they explained in detail that the institution employed 2 psychologists and another psychologist was transferred from the Szeged Strict and Medium Regime Prison and the institution also proposed that the number of psychologist positions should be increased at the institution.

The position taken by HPS on the respective recommendation was that the detainees are personally informed on the leisure time activities by the reintegration officers, furthermore, that the detainees may find out about the activities from the KIOSZK (terminal for the administration of detainee affairs) system, the closed-circuit television system and the posters on the notice board as well.

As regards the ways in which physical contact between the detainees and their relatives may be ensured, HPS's comment was that the experience gained by the institutions has shown that physical contact during the reception of visitors means a considerable security risk, since it allows the entry of forbidden items and substances to the institution. They also stressed that the so-called reception of family visitors involving physical contact is still not excluded, which can be permitted to those detainees who were not under any disciplinary procedures within the six months preceding the reception of the visitors and who were not imposed a disciplinary punishment for possessing forbidden items within the past two years. They also pointed out that in this way, the institutions may continue to apply the system of the reception of family visitors, in the course of which physical contact is allowed. This form of receiving visitors is an efficient motivational tool as well. According to the information provided by HPS, in 2023, family visits

¹²¹ NPM Report AJB-1298/2023

¹²² NPM Report AJB-1541/2023

were permitted at the institutions in a total of 126 cases. The Ombudsman accepted and acknowledged the response.

As a response to the recommendations made in the report on the visit to the *Hajdú-Bihar County Remand Prison*¹²³, HPS explained that the capacity of the institution was 180 heads. Due to the high number of arrested persons, it is difficult to observe the rule regarding the maximum headcount, however, the institution is trying to reduce the number of detainees to the best of their abilities.

On a national level, the number of detainees simultaneously placed in institutions has continuously been on the rise since January 2021, on 2 February 2023, the headcount exceeded 20 000 persons, and in the subsequent period, this figure was never lower.

Government Decree No. 3/2023. (I.12.) on the different application of certain penal rules during the state of danger allows the non-Hungarian convicts the interruption of the execution of the sentence of imprisonment for the time of the state of danger, in case certain conditions exist and if such convicts leave Hungary for a different state (in case of expulsion or the transfer of the execution of imprisonment).

Based on the provisions set out in Government Decree No. 148/2023. (IV.27.) on the reintegration detention of persons convicted of the offence of smuggling of human beings, it is possible to place non-Hungarian detainees exclusively convicted for the crime of trafficking in humans in reintegration detention for the time of the state of danger, in case certain conditions exist, by adding that the convict shall leave the territory of Hungary within 72 hours and if they breach the rules of conduct, they will have to serve the remaining part of the incarceration. The procedures ensured by the above-mentioned decrees considerably reduced the pressure on the prison organisation caused by the increasing number of detainees. The measures that were introduced exerted a favourable effect on the occupancy rates of all the penitentiary institutions, including the Hajdú-Bihar County Remand Prison.

NM (Ministry of Welfare) Decree No. 18/1998. (VI.3.) on the epidemiological measures aimed at the prevention of infectious diseases and epidemics stipulates obligatory insect and pest control extending to the entire area of the institution at least twice a year. At the institution, comprehensive insect and pest control efforts are and will be taken four times a year, in a quarterly breakdown, and if need be, the institution also takes such measures on an ad hoc basis.

The institution performs the repair and maintenance tasks. A schedule, in a monthly breakdown, is prepared for the decoration and maintenance of the cells, which contains both the compulsory sanitary painting and the larger-scale repair works funded from the budget. The exact date of the painting of each cell was recorded in the schedule, according to which in 2023, 32 cells underwent sanitary painting, and 3 single cells and 2 10-person cells were maintained, according to the information received by the NPM.

The institution handles the placement of young detainees and the designation of their cells with special care. As long as placement is problematic, the institution will take measures for the transfer of the detainee in question within the region.

As regards the transitional period regarding the use of electric kettles of appropriate power, HPS explained in their response that the institution ensures the rent of electric kettles in compliance with the central rules and by imposing a charge for the extra service. In addition to this option, it is also possible to purchase an electric kettle at the shop operated by Bv. Holding Ltd., where there are 2-4 electric kettles in stock to satisfy the needs of the detainees.

As regards the baths taken by the detainees at the penitentiary institutions, it is Section 132 of the Decree of the Minister of Justice (IM) No. 16/2014. (XII. 19.) on the detailed rules of implementing imprisonment, confinement, pre-trial detention and confinement replacing disciplinary fine that stipulates on it, based on which the detainees shall be ensured hot water bath opportunities at least three times a week, and every day for female detainees and every day after work, for the detainees who work in prison. Based on this provision, the possibility of taking baths is still ensured.

¹²³ NPM Report AJB-1682/2023

According to the position of HPS, heating of the appropriate temperature is ensured at the institution. In the previous heating season (15 October 2022 – 15 April 2023), no technical problems prevented this. With a view to ensuring the minimum value, the temperatures of the premises where the detainees were placed were documented and controlled on a weekly basis. For those detainees who occasionally reported poor feelings of heat, extra blankets and underwear were provided.

Several of the members of the staff serving at the institution speak Romanian, English, German or Serbian. Communication between the personnel and the detainees was smooth and uninterrupted in the past period. The institution strives to ensure that the language difficulties should not cause problems in communicating with the foreign detainees.

As regards the availability of foreign language television channels, HPS answered that as many as 13 public access TV channels are available for the detainees at the moment, the reason for which is that no cable television providers are accessible due to the geographical location of the institution and the options of ordering other television services are being looked into by the institution right now.

The organization of service is planned and executed with continuous managerial control, the persons responsible for the organization of service act with special care to ensure that the workload among the members of the staff should be equal and minimized to the extent possible, in line with the HPS position on workload.

In the employment rehabilitation project element of the priority project EFOP 1.3.3.-16-2016-00001 entitled the Reintegration of detainees, which is run at the institution, as many as 26 detainees take part. The sessions are held in and outside the cells on 4-5 days of the week. Due to the high number of detainees, the participants take part in the arts and crafts group sessions in several groups, which are held outside the 3 cells. The group classes outside the cells are held in the EFOP office and the inmate classroom.

As a result of the architectural design of the building of the institution, it is not possible to build new premises or to restructure the current spaces, however, the institution is currently looking into the ways in which the group sessions may be held in a psychologist's office that is larger than the one used today.

By organizing prison visits at a desk which separates the detainees and their visitors with a plexiglass wall, thus entirely excluding the possibility of physical contact, the prevention of the entry of forbidden items and substances threatening security and suitable for generating extraordinary events to the penitentiary institution can be achieved, by which measure the legal institution of the reception of visitors is not restricted, and the right of the detainees to keeping contact with their relatives is not breached. By using physical space partitioning elements, the institution minimizes the risk of the entry of diseases dangerous for the prison population to the penitentiary institution, as a result of which mass infections can be prevented.

With a view to protecting the physical integrity of both the staff members and the detainees, to guaranteeing the safe operation of the prison facilities, as well as preventing the occurrence of extraordinary events disturbing public order, it continues to be justified to maintain the current general practice of the reception of visitors by the detainees, in addition to which, for those detainees who are listed in less strict and general regimes and who had not been imposed disciplinary sanctions within 6 months from the date of the reception of visitors and who had not been subject to disciplinary punishment for the possession of prohibited items within 2 years can be allowed to hold family visitations even now, based on the provisions set out in Section 12 of HPS Instruction No. 12/2020. (IV. 24.) on the procedural rules of the implementation of visits. The Ombudsman accepted the response.

9. 2. Responses to the measures taken following visits to social care institutions

Related to the findings of the visit paid to the *Reménysugár Habilitation Institute*¹²⁴, the head of the institution informed the NPM in her response that there had been a replacement in the management of the institution and since she was appointed as director, she has taken several measures aimed at the strengthening and standardisation of nursing and care activities. The legal representatives of the residents of the institution are informed of the events of the past month, as well as the activities and development planned for the following month on a monthly basis. In addition to this, personal (individual or group) coordination meetings are also held on a regular basis.

As regards the recommendation on Wi-Fi access, the head of the institution does not regard it as justified to have Wi-Fi available in the whole facility, as this may be to the detriment of work, however, Wi-Fi is accessible in the “green” hall and the community room, in order to ensure the uninterrupted work of the mental health group.

The staff members are regularly notified of the external training and clinical supervision opportunities.

In order to alleviate the difficulties caused by the lack of staff members, rented nurses are hired through employment agencies. Furthermore, this year they managed to hire several staff members, and they were able to enlarge and fill up the groups. The number of the mental health group also increased to 9 persons, which allows every resident to receive development services.

In their response, SZGYF, i.e., the General Directorate of Social Affairs and Child Protection, among others, gave detailed information to the Ombudsman on the renovation and maintenance projects that have been implemented since the last inquiry, the newly procured devices and furnishings, as well as the planned refurbishment works. Also, the head of the General Directorate provided detailed information to the NPM on the restoration of the function of the earlier development room, their efforts taken to offer varied leisure time activities and sessions and the measures taken to increase the number of employees (rented nurses, the re-employment of pensioners, etc.). The inability to use the hydrotherapy pool is caused by a technical problem rather than the lack of staff. However, the amount necessary for covering the costs of repair is available.

The Commissioner for Fundamental Rights of Hungary accepted the information but at the same time, asked the director of the institution and SZGYF to continue to do their best, in the future, to increase the actual number of staff members, with special regard to the headcount of carers, nurses and therapeutic staff members, thus ensuring the high standards of care, and decreasing the workload of the other members of the staff. In addition to this, he asked for prompt measures to repair the pool.

As regards the recommendations in the report on the visit to the *Polgárdi-Tekerespuszta Unit of the Fejér County Integrated Care Centre*¹²⁵, the head of the Institution responded that the patient rights representative regularly discusses the topics and options regarding guardianship at the Advocacy Forums and Patient Rights Information sessions. The unit organises meetings for the guardians every year and also holds a forum where the Public Guardianship Office is also represented. The places of the rehabilitation unit of the institution were renovated. The Re-institutionalisation Plan was also prepared by this institution, it is regularly revised.

The Ombudsman accepted the response to the recommendation and asked the management of the institution to continue giving all help to the residents whose condition makes it possible to achieve more independent living.

According to the response given by BM (the Ministry of Interior), the patient rights representative holds regular consulting hours at the institution and provides information on guardianship and how to terminate it. The attitude of the judges should also be shaped in order

¹²⁴ NPM Report No. AJB-1541/2023

¹²⁵ NPM Report No. AJB-1055/2023

to better establish the institution of supported decision-making in Hungary and to terminate unjustified cases of guardianship.

The Ombudsman accepted the response to the recommendation but asked the institution to do their best in the future too to ensure that the patient rights representative may assist the residents with enforcing their rights as efficiently as possible in the social care institution in question.

9. 3. Responses to the measures initiated by the NPM following its visits to child protection institutions

SZGYF as the operator accepted the recommendations made by the Commissioner in the report on the visit to the *Rákospalota Correctional Institute and Central Special Children's Home*¹²⁶, and began the amendment of the founding regulation of the Institution by leaving the basic profile and the framework number of admissions intact, and disregarding the number of places allocated to each task.

According to the information provided by the head of the institution, they are trying to make up for the missing medical doctors in the framework of mandate or business agreements, as they refrained from being employed by the correctional institute. As long as the number of youngsters placed in the correctional institute exceeds 40, the missing half-time position of psychologist will be filled, furthermore, they also put up an advertisement for the filling of the missing nurse's position. They took measures to ensure the obtaining of the missing qualifications of the child supervisors, and in the future, they are striving to employ staff members holding appropriate qualifications in the case of new hirings.

Medical care could finally be provided by using a bridging solution, and measures were taken to replace the staff members in the other categories and to ensure compliance with the qualification requirements as well.

In the future, special care will be taken for the prevention of the smoking of youngsters under 18 years of age, and menus providing complete information, which is in compliance with the relevant laws, will be displayed in the canteens. After a young resident is released from security isolation, the institution will provide the opportunity for them to meet the psychologist as soon as possible and this will also be properly recorded in the documentation.

The use of old-type medicine boxes was terminated, and on the new ones, the names of the patients are indicated both at the bottom and on the top, thus preventing the possible mixing up of medication. The institution uses medication approved by OGYÉI (the National Institute of Pharmacy and Nutrition) in 100%, and in exceptional cases, as long as the psychiatrist prescribes medication that is different from the indication for the age group or the diagnosis, it will be pointed out that a special OGYÉI approval will be necessary, or the medication cannot be used at all.

As regards the recommendation on the maintenance of supervised online visits, they explained that this form of keeping contact did not always live up to the expectations, and it was many times slow, due to the lack of cooperation from the contact persons. At the same time, this form of contact will be offered in two educational units in the future too and the corresponding rules were also established.

The Ombudsman accepted the responses and continued to request that the management endeavour to fill the medical doctors' positions in the form of an employment relationship and to fill the remaining vacancies as soon as possible.

According to the position of the National Police Headquarters, the norms and procedural rules on escorting the detainees with regard to the application of coercive devices, are in compliance with the requirements of proportionality set out in the Police Act. The use of handcuffs is allowed by the Police Act without any age restrictions. However, the police measures shall be in compliance not only with the relevant laws and public law regulatory

¹²⁶ NPM Report No. AJB-1356/2023

instruments but with the obligations with regard to fundamental human rights as set out in the Fundamental Law of Hungary. Examining the question from this aspect, it obviously does not make sense to approach the warning in the recommendation exclusively through the means of law. With regard to the subject of the warning, they took measures for the prevention and avoidance of police measures involving the potential violation of human dignity, as well as the means of correctional education in the future, for discussing the criteria of the activities related to police escorting, as well as the practical implementation of the latter, by asking the Budapest Police Headquarters to take the necessary steps for the professional review of the topic and ensuring the compliance of escorting with fundamental rights requirements.

Also, the Ministry of Interior did not find it justified to modify the rules of escorting, nor did they find it necessary to modify the rules on the head of catering. However, they agreed with the Commissioner's recommendation that the places that are only filled theoretically due to those who are temporarily absent should be freed. With a view to solving the problem, they will initiate coordination talks with the organisations sponsoring and operating the special children's homes and the National Child Protection Service. The Ombudsman acknowledged the answers.

In the report on the visit to the *Budapest Reformatory Institute*¹²⁷, the NPM requested the general director of the General Directorate of Social Affairs and Child Protection as the operator to define the approved number of beds in compliance with the headcount in the case of full occupancy of the 8 groups that can be established at the Institute, to ensure the funding for the employment of the nurses of the number that is required by the relevant law, as well as for the replacement of the worn furnishings and the necessary renovation and maintenance jobs. In their response, the head of the General Directorate explained that the modernisation of the furnishings indicated in the report, as well as the renovation and maintenance efforts were realised in 2022 and the costs of the 2023 modernisation jobs can be covered from the so-called "emergency fund".

As regards the optimal utilisation of the number of beds approved in the founding regulation, the planned transformation of the institute into a multifunctional one was also mentioned, as a result of which the institution will not only perform the task of educating those who are arrested but also, of those who have been sentenced to binding reformatory education with the already existing 100 places. In their opinion, as the institute is currently only involved in executing arrests, the tasks of nursing can be carried out by the currently employed 3 nurses, and in addition to regular medical care, the transportation of the youngsters to health care institutions is performed by the police, in the performance of which task no nurses need to be involved.

The NPM accepted the above information, however, he warned that, as long as the institution is transformed into a multifunctional one, they should also take care of the generation of the funds for increasing the headcount of the nursing staff to 4 and the amendment of the internal regulations of the institute related to the changed staff headcount.

The NPM requested the director of the Reformatory Institute to ensure that the institution meets the statutory requirements on age-based separation, the internal regulations (the Organisational and Operational Rules) should be harmonised with the required headcount norm for nurses, by meeting the headcount requirement both for the institution as a whole and the individual groups, to make sure that the qualification requirements are met, furthermore, to ensure that the workload of the employees, the average number of overtime hours, as well as the excessively high number of overtime hours done by the individual staff members decrease. Also, he recommended to the head of the institution that he make sure that the expiry dates of the medicine supply are controlled more thoroughly and they should consider allowing the increased use of personal decorations in the bedrooms, as well as the replacement of the cleaning devices used by the residents with more modern ones, by also taking the challenges of the pandemic situation on cleaning and disinfection into account. And last but not least, he

¹²⁷ NPM Report No. AJB-755/2023

should consider increasing the residents' phoning time, the number of phoning occasions, as well as the extension of the forms of communication to supervised online visits.

In his response, the head of the institution explained that at the institution, the rules of age-based separation are kept at the moment but the director is entitled to diverge from these requirements with statutory permits if there are pedagogical reasons to do so. With regard to the fact that currently they are only involved in performing arrests and that no nurses are involved in the transportation of the youngsters to health care institutions, as the latter task is fully performed by police staff members, in the current circumstances, the headcount of the nursing staff is sufficient, in their view. The response was accepted by the NPM but he also warned, that as the institution is going to become a multifunctional one, also designated to execute binding sentences, he should take care of increasing the nursing staff to 4 persons and the amendment of the internal regulations, as long as this transformation in fact happens.

As regards the further recommendations, the director of the institution also informed the NPM on that the youngsters are currently allowed to place decorations in their bedrooms and that the forms of communication stipulated in the relevant law are fully used, and it is also possible to make video calls. In addition to this, at request, or as an award, they provide an opportunity for keeping contact and the necessary and appropriate cleaning devices are available for the youngsters. Increased attention is paid to the expiry dates of the medical supplies, this is why a new control method was introduced, furthermore, measures were taken to hire new staff members to fill the vacant positions, and to fulfil the qualification requirements.

During its visit, the NPM established that in the course of a medical examination outside the institution, despite the express request of the psychiatrist and the peaceful, cooperative behaviour of the detainee, the policeman entrusted with the escorting of the young student did not disregard the use of handcuffs and a lunge line, which endangered the enforcement of the right to human dignity and the protection of personal data. The NPM warned that the automatic use of handcuffs and lunge lines was not compatible with the principle of correctional education. He made a recommendation in connection with this to the Chief Commissioner of the National Police Headquarters to review the practice of escorting the young detainees placed in the reformatory and their guarding during the external medical examinations and to call the attention of his staff members to meet the guarantee requirements of the use of handcuffs as stipulated in the Police Act.

In relation to the findings of the visit, in the report, he made a recommendation to the Minister of Interior as well, in which he asked the Minister to consider the modification of the headcount norm requirements in the case of the police staff, as well as the medical doctors employed at the institution, and also, the statutory provision on the options and guarantees of the use of lunge lines (handcuffs) in the police escorting of the detainees, on account of the above case.

In its response, the representative of the National Police Headquarters (ORFK) emphasised that on the occasion of escorting, the comprehensive implementation of the security aspects of the task enjoys priority. As regards the sensitive data that the policepersons become aware of (familiar with) during the escorting, the policeperson in question shall proceed according to the rules of the Police on data management. In their view, the norms and rules of procedure regarding the escorting of the detainees, with regard to the use of coercive devices, are in compliance with the requirements of proportionality set out in the Police Act, furthermore, the use of handcuffs is allowed by the same Act without any age limitations. However, the police measures should be in harmony with the obligations on fundamental human rights listed in the Fundamental Law of Hungary, in addition to their obligation to comply with the relevant laws and the public law regulatory instruments.

With regard to the subject of the recommendation, as part of taking measures for the prevention and avoidance of police measures involving the potential violation of human dignity, as well as ensuring the appropriate methods of police escorting from the aspect of the enforcement of fundamental rights, the head of the National Police Headquarters (ORFK)

ordered the head of the Budapest Police Headquarters to take the necessary steps and to inform the heads of the county police headquarters of the contents of the report.

According to the position taken by the Ministry of Interior, there is no general statutory obligation governing the use of coercive devices, even in the case of escorting, it is the subject of consideration on the basis of the statutory guarantees in each case. With regard to this, they did not find it justified to amend the laws on the use of coercive measures in the course of escorting the young detainees in reformatories. The Ombudsman acknowledged the answer.

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 its observations and impressions from its visits, and via its 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.¹²⁸

In the reports on its visits published in 2023, the NPM made 9 legislative proposals.

*In its report on the visit paid to the Rákospalota Correctional Institute and Central Special Children’s Home,*¹²⁹ the NPM requested the Minister of Interior review the requirements set out in EMMI (Ministry for Human Capacities) Decree No. 37/2014. (III. 11.) on the child protection institutions, as well as the target headcount numbers defined in NM (Ministry of Welfare) decree No. 15/1998. (IV. 30.) and in the Regulations related to catering, in order to harmonise the provisions set out therein. Furthermore, the NPM asked the Minister of Interior to consider the modification of the headcount norm requirement for police staff specified in Annex 1 of the Regulations, and to consider how those places in special children’s homes that are only filled in theory due to double registration could be freed; furthermore, to provide, on the level of laws, on the options and guarantees of the use of handcuffs and lunge lines in the case of the police escorting of young detainees.

The Minister of Interior did not find it justified to modify the rules of escorting, furthermore, that of the rules on the head of catering either. As regards the headcount of the police staff, he explained that the quoted decree defines a minimum headcount, thus the institution may employ a higher number of policepersons, as has been done by the reformatory as well. He did not deem the modification of the headcount norm requirement feasible in lack of extra resources at the moment. However, he agreed with the Commissioner’s recommendation on that the places that are filled in theory on account of those who are temporarily absent should be freed. In order to solve the problem, he initiated coordination talks with the organisations sponsoring and operating the special children’s homes and the National Child Protection Service.

In the report on the visit to the *Budapest Reformatory*,¹³⁰ the NPM asked the Minister of Interior to consider the modification of the headcount norm requirements for police staff and medical doctors specified in Annex 1 of the Regulations; as well as to provide, on the level of

¹²⁸ See Section 37 of the CFR Act

¹²⁹ NPM Report No. AJB-1356/2023

¹³⁰ NPM Report No. AJB-755/2023

laws, on the options and guarantees of the use of lunge lines and handcuffs in the case of the police escorting of young detainees.

According to the position taken by the Ministry of Interior, there is no general obligation to use coercive devices, even in the case of escorting, this should always be a matter of deliberation on the basis of the safeguards provided by the law, in each case. With regard to this, in escorting the youngsters in reformatories, the Ministry did not deem it justified to amend the law on the use of coercive devices. He did not deem the modification of the headcount norm requirement of policepersons feasible in lack of extra resources. The Minister of Interior agreed with the conclusion that the obligation to employ a full-time medical doctor can be diverged from and this question should be regulated more flexibly. During the amendment of the Regulations in the second half of 2023, by involving the General Directorate of Social Affairs and Child Protection, i.e., SZGYF, they will make a proposal that can be fulfilled from the part of the institution and that also takes the interests of the youngsters in the reformatory into account, with regard to the employment of the medical doctor.

In the report on the visit to the *Allampuszta National Prison*,¹³¹ the NPM asked the Minister of Interior to ensure the creation of a statutory environment that ensures that a person on whom the sentence of confinement for administrative offences should not be imposed under Section 10 of the Act on Regulatory Offences should not be allowed to be deprived of their liberty for the execution of the sentence of confinement for administrative offences; and that he should consider the setting up of an interprofessional working group, by involving professional and civil society organisations, for the elaboration of a protocol and assessment tool for the identification of disability.

The Minister of Interior agreed with that the effective legal regulations need to be reviewed in order to resolve the contradiction arising from the time requirement of the reopening of a case that can be launched by the public prosecutor and the short duration of the imposed confinement in the case of an excluding circumstance identified in relation to admission to a penitentiary institution in the case of an infringement procedure. With this in mind, they will begin the preparatory work, with the involvement of the organs concerned, such as the public prosecutor's

10/2. Powers related to draft legislation

Pursuant to Section 2(2) of the CFR Act, the Commissioner for Fundamental Rights of Hungary 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.

In order to let the NPM 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 NPM.¹³²

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.¹³³ 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 of Hungary 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

¹³¹ NPM Report AJB-1224/2023

¹³² Clause c) of Article 19 of OPCAT

¹³³ See Section 19 (1) of Act CXXX of 2010 on Legislation

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 of Hungary 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 of Hungary review numerous draft bills in 2023. At the same time, the remarks of the Commissioner for Fundamental Rights of Hungary 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.

11. The NPM's International Relations

Due to the coronavirus pandemic, in 2020-2021, the possibilities of keeping contact at international forums and personal meetings narrowed down as well but from 2022 onwards, hybrid events, i.e., simultaneous personal and online meetings were also held. After the end of the pandemic, the NPM returned to the practice of personal conference attendance.

The staff members of the NPM attended a **webinar entitled “Monitoring Mental Health Care in Prison”** on 14-15 February 2023, which was organised by the **SPACE and European NPM Forum, the Council of Europe and the Association for the Prevention of Torture (hereinafter referred to as: “APT”)**.

It was the Secretary General of the Office who represented the NPM **at the conference entitled “Monitoring Mental Health Care in Prison”** organised by the **South-East Europe NPM Network** on 1-2 June 2023. In his keynote, the Secretary General gave a detailed presentation of the experience gained in this area in Hungary, also discussing the experience gained from his visit to the Berettyóújfalu Central Hospital of the Forensic Psychiatric and Mental Institution.

A staff member of the NPM attended a **webinar called “Strengthening the Role of NPMs in Torture Prevention”** organised by the **SPT European Regional Team** on 7 June 2023, where on the one hand, the best practices applied by the professionals of the member organisations, and on the other hand, the methods and techniques of the efficient monitoring of the implementation of the recommendations were discussed.

A staff member of the NPM participated in a **webinar entitled “General Discussion of the Draft General Comment of SPT on Article 4 of OPCAT”** organised by the **SPT** on 8 June 2023, at which forum the participants held a detailed discussion of the working material prepared for the review of the concept of places of detention.

In 2022, the NPM repeatedly applied for a grant from the **OPCAT Special Fund**, which is a fund established on the basis of Article 26 of OPCAT. The basis of the competition was primarily provided by the recommendations made to the NPM in the report on the experience of the SPT gained in Hungary during their 2017 visit, with special regard to the need to increase the visibility of the work of the NPM. As part of the tender, the NPM invited a literary and drawing competition entitled **“MY LIFE AFTER COVID”** for the residents of social care homes, children's homes, health care institutions and penitentiary institutions. Nearly 1,000 entries from more than 100 institutions were sent to the Office, which greatly exceeded expectations. By making use of the selected entries, several information materials were prepared on the work of the Department.

The NPM training day held for university students was also organised in the framework of a tender of the OPCAT Special Fund on 16 October 2023, where the country rapporteur of

the SPT for Hungary Ms. Anica Tomsic gave a talk as a foreign presenter on the relations between the NPM and the SPT, as well as on the work done by the SPT.



Szilveszter Orbán – Life as a Detainee
(Penitentiary institutions,
painting – graphics category, 1st place)



István Lovász – Freedom
(Old-age home, painting – graphics category, 1st
place)

On 9-10 November 2023, the **Sixth Regional Meeting of NPMs and Civil Society Organisations**, which was organised by APT, ODIHR and the Danish Ombudsman Office, was held, where the Office was represented by the Deputy Secretary General.

The international conference entitled “Let Us Build Bridges - Acting Together for the Protection and Promotion of Human Rights amidst Challenges”, which was attended by several CCB delegates, was held on 1 December 2023. At the conference, the Romanian Deputy Ombudsman, the Serbian Ombudsman and the representative of the Hungarian NPM, among others, gave a detailed account of the work of their own national NPMs in the past few years.

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.¹³⁴ The ultimate 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.

When performing the tasks of the NPM, the Commissioner for Fundamental Rights of Hungary may proceed either personally, or through his public servant staff members authorised by him to carry out the tasks related to the NPM. The Commissioner for Fundamental Rights of Hungary led the majority of the NPM visits in person. During the visits, the Commissioner was accompanied by a 2- 3-member visiting group composed of multidisciplinary experts with a balanced gender ratio.

In 2023, the NPM inspected a total of 5 892 detention units at 26 places of detention. The utilisation rate of these detention units was varied.

The social care institutions are nearly or fully occupied, what is more, there are usually waiting lists for these places. The NPM did not experience any overcrowding during visiting the police custody units.

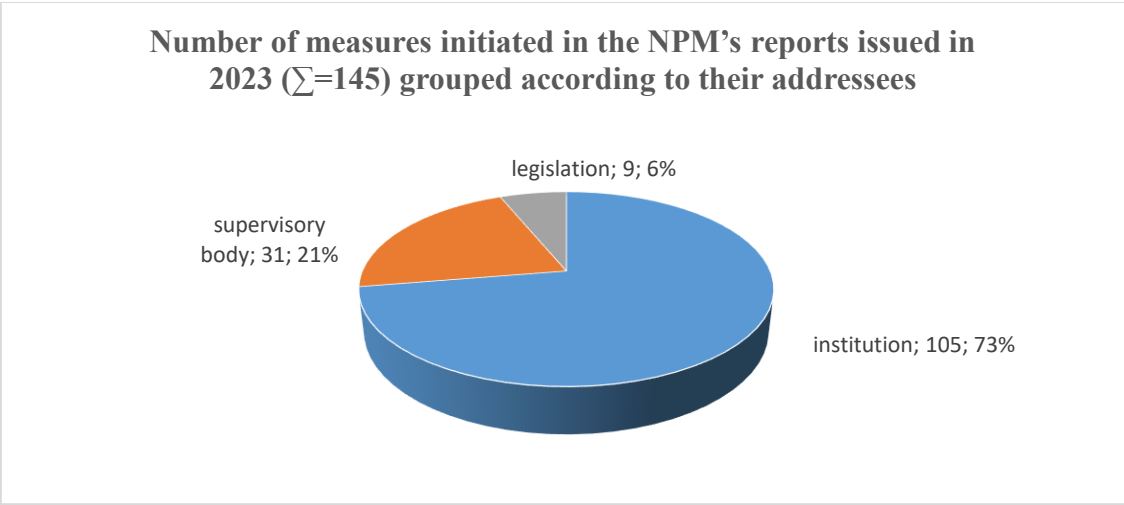
The visiting delegations inspected the premises, the furnishing and equipment of the places of detention, as well as the documents related to the number, treatment, and conditions of placement of the detainees, they made photocopies of some of the documents, and conducted

¹³⁴ Section 39/B (1) of the CFR Act

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.

In 2023, 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 its visits published as part of the activities performed as the NPM, the Commissioner for Fundamental Rights of Hungary recommends taking measures aimed at eliminating and preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2023, the NPM proposed a total of 145 measures. Most frequently, in 105 cases, the NPM made recommendations to the heads of the places of detention¹³⁵, in another 31 cases to the heads of the supervisory organ of the institution subject to inquiry¹³⁶, and on 9 occasions, he made recommendations regarding law-making¹³⁷. The NPM did not launch any procedures with the prosecutor's office or the data protection authority in the year under review.



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 addressees of the recommendations 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, he may submit the case to the Parliament within the framework of the annual report, and ask the Parliament to inquire into the matter. If, according to his/her 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 or not 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 2023 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.

¹³⁵ Sections 32 (1) of the CFR Act

¹³⁶ Section 31 (1) of the CFR Act

¹³⁷ Section 37 of the CFR Act

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 2023, the NPM paid a follow-up visit to the Hajdú-Bihar County Remand Prison.

The NPM's operational costs in 2023 amounted to 79 109 227 HUF, which amount was allocated by the NPM's Office from its budget provided by the Parliament.