

National Preventive Mechanism

Experience from the Czech Republic

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Institutum Iurisprudentiae Academia Sinica

"The maturity and humanity of any society is recognized by the way it treats the most vulnerable - that is, those who for whatever reason appear to be on its margins and whether it respects that these people too are free and equal with others in their dignity and rights. Every human being, without any exception, must be protected against torture or ill-treatment.,,"

Judgment of the Constitutional Court of the Czech Republic

10 November 2020, IV. ÚS 1559/20

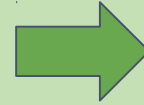
Obligation on effective investigation of ill-treatment (violence) in prison.

Seminar plan

Introduction of the
NPM



- Problem of definition
- Cases of ill-treatment



- Setting priorities
- Arrangement with experts
- Training



- Setting priorities
- Topics for the visit
- Visit manuals
- Leadership and management
- Role of experts
- Course of a visit
- Conflict situations



Discussion

Public Defender of Rights- NPM

- Established in 2006
- Amendment of the Act on the Public Defender of Rights
- New NPM Department (16 lawyers)
- Cooperation of external experts
- No separation between a reactive and preventive mandate



Photo: Kancelář veřejného ochránce práv (ombudsmana), Údolní 39, Brno. Celkový pohled z ulice, author: Martin Stachoň, source: Wikimedia Commons, CC BY-SA 4.0

Chapter I.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

For the purposes of this Convention, **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 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**. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (*UNCAT, Article 1*)

Torture: criterion of pain or aim?

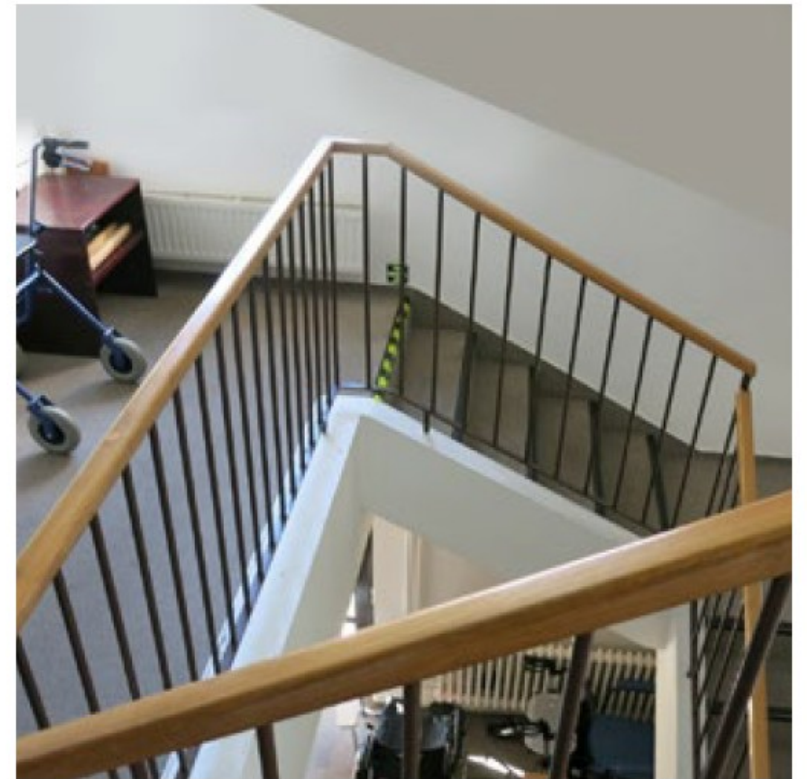
- Greek case (ECtHR, 1969)
- Aksoy against Turkey (ECtHR, 1996)
- Selmouni against France (ECtHR, 1999)
- General Comment No. 20 (ICCPR, 1992)
- General Comment No. 2 (CAT, 2008)
- Report of the Special Rapporteur on the question of torture (Manfred Nowak, 2005):
 - “[...] the decisive criteria for distinguishing torture from CIDT may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted, as argued by the European Court of Human Rights and many scholars.”

Other **Cruel, Inhuman** or **Degrading** Treatment or Punishment (other ill-treatment)

- The obligations concerning torture shall apply also to other ill-treatment (Art. 16, GC No. 2)
- The obligations to prevent torture and other ill-treatment are „[...] *indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture.*” (GC No. 2, para 3)
- Gäfgen against Germany (ECtHR, No. 22978/05)
 - Inhuman t.: “[...] it was premeditated, was applied for hours at a stretch and caused either **actual bodily injury or intense physical and mental suffering** [...].”
 - Degrading t.: „[...] such as to arouse in its victim’s feelings of **fear, anguish and inferiority capable of humiliating** and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience.”
- M. S. S. against Belgium (ECtHR, No. 30696/09)
 - Degrading t.: „[...] It may suffice that the **victim is humiliated in his or her own eyes**, even if not in the eyes of others.”

Focus on risk factors

- Relatively low number of cases labelled as „ill-treatment“
- Significant number of cases (and corresponding recommendations) concerning „risk of ill-treatment“ (Czechia, Norway, Georgia)
- “[L]abelling an act as torture or cruel, inhuman or degrading treatment or punishment may hinder the establishment of a constructive dialogue with the authorities, and/or staff within places of detention, by focusing discussions on definitions rather than on solutions to problems.” (APT, Implementation manual)
- “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.” (SPT, First annual report)



staircase over which some clients were moved manually

Photo: Public Defender of Rights, Report from the Residential Facilities Providing Care without Authorisation, 2015
(https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Socialni_sluzby/2015-social_care-no_authorisation.pdf)

Ill-treatment revealed by the NPM

- Isolation of prisoners with mental disabilities in Prison Karviná
- Poor living conditions in Social-care home Letiny
- Ill-treatment in 9 illegal social-care homes
- Excessively strict regime in reformatory Chrastava
- Degrading treatment with migrants in migrant facility Bělá-Jezová

Isolation of prisoners with mental disabilities in Prison Karviná

- Prisoners suffering from a serious mental disorder
- Locked in an ordinary prison cell most of a day for several months
- Neither individual or group activities, nor systematic therapeutic work provided by psychiatrists or other specialists



Photo: Public Defender of Rights, Visit Report – Věznice Heřmanice ([Léčebna pro dlouhodobě nemocné \(ochrance.cz\)](http://ochrance.cz))

Poor living conditions in Social-care home Letiny

- Serious cases of ill-treatment with clients, especially those suffering from dementia.
- The personnel lacked a basic knowledge about how to take care of people with a mental disability
- Improper use of side rails to their beds
- Use of dirty clothes and diapers
- Ignoring the right to privacy (some clients were naked while waiting in front of the bathroom)
- Some clients were malnourished
- Restriction of client's movement by psychiatric drugs



Photos: Kitchen and watering cans with drinks for clients



Photos: Public Defender of Rights, Visit Reports - Social-care home Letiny (<https://www.ochrance.cz/aktualne/tiskove-zpravy-2015/zarizeni-letiny-je-vysmechem-kvalite-v-socialnich-sluzbach/>)

Excessively strict regime in reformatory Chrastava

- Institute designed for 41 boys diagnosed with severe behavioural disorders between the ages of 12 and 18 years.
- Education based solely on repression, unconditional obedience and ignorance of basic needs of children.
- The boys must, for example, mop the floors twice a day; put on pyjamas after 6.30 p.m.; lock the toilet between 7:30 p.m. and 10:00 p.m.; wearing a uniform haircut; no free disposal of their money.
- The visit resulted in appointment of a new director and overall changes in the institution.



Photo: Illustrative photo, author: sick-street-photography, source: Pixabay, CC 0.

Degrading treatment with migrants in migrant facility Bělá-Jezová

- In the outbreak of so-called “migration crisis” in 2015
- Lack of basic hygienic needs, proper clothes, some children did not have even shoes.
- Dirty living premises
- Reports of an epidemic outbreak of salmonellosis
- Some of the detainees had no free access to the toilet and freshwater.
- Parents with children were held behind a high barbed wire fence and were under constant supervision by police officers, including heavy-armoured police units with police dogs.
- Ill-treatment and degrading treatment.



Photo: Public Defender of Rights, Visit Report – Bělá-Jezová (<https://www.ochrance.cz/aktualne/tiskove-zpravy-2015/mimoradna-tiskova-konference-k-situaci-v-zarizeni-bela-jezova/>)

Chapter II.

Annual Visit Plan



Photo: Public Defender of Rights of the Czech Republic, NPM Annual Report 2015

Visits

How many detention places to visit? Which types? Which visit first?

What type of visits to conduct? (general, thematic, ad hoc, follow-up)

What resources we need? Budget, personnel, technical equipment...

Staff

How to compose monitoring team?
Which experts to invite?

How to train the experts and NPM members?

How to handle with other NPM activities?

Dialogue

How to approach detention centres?

How to enter in dialogue with authorities? Which authorities to notify?
How to cooperate?

How to use „soft powers“ vs. „hard powers“?

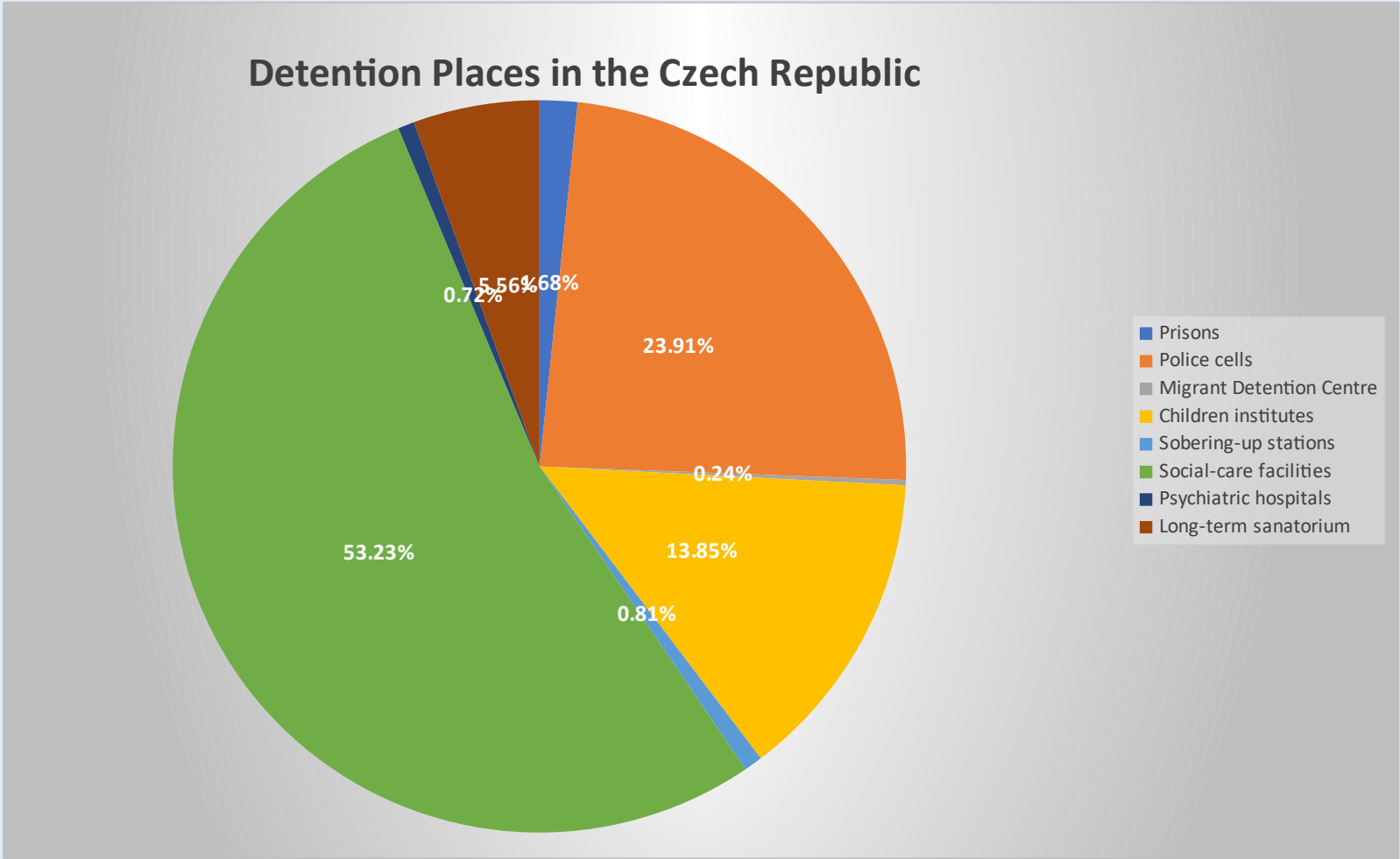
Places of Detention- Law

- The Defender shall systematically visit places where persons restricted in their freedom **by public authority, or as a result of their dependence on care provided, are or may be** confined (Sec. 1 para 3)
- The competence of the Defender pursuant to paragraph 3 above applies to
 - a) facilities serving for remand in custody, imprisonment, protective or institutional education, or protective treatment or preventive detention;
 - b) other places where persons restricted in their freedom by public authority are or may be confined, especially police cells, facilities for the detention of foreigners and asylum facilities;
 - c) places where persons restricted in their freedom are or may be confined as a result of dependence on the care provided, especially social services facilities and other facilities providing similar care, health-care facilities and facilities providing social and legal protection of children

Places of Detention- Practice

- All types of detention including private social-care homes and police cars

Prisons	35
Police cells	499
Migrant Detention Centre	5
Children institutes	289
Sobering-up stations	17
Social-care facilities	1111
Psychiatric hospitals	15
Long-term sanatorium	116
Total	2087



Priorities of visits?

- All places of detention be visited regularly
 - The type, size, security level, and nature of human rights concerns
 - The need for inclusion of urgent and follow-up visits (*UNHCR, Practical Guide*)
- Places where the risk of ill-treatment is particularly high (e.g. police stations and pre-trial facilities)
 - Places of detention that would otherwise not be open to public scrutiny or external oversight (e.g. psychiatric institutions, social care homes)
 - Places with a record of problems (e.g. recent complaints, reports from other organisations or the media) (*APT, Implementation Manual*)

Czech NPM

- Defines one or two categories of places as visiting priorities each year; other places may be visited on an ad hoc basis

455 visits 2006 – 2019

2006

- 5 social-care facilities for people with disabilities
- 19 police stations
- 4 migrant detention centres
- 5 sanatoriums for long-term patients
- 7 prisons
- 4 children facilities

2007

- 27 elderly homes
- 2 asylum reception centres
- 15 follow-up visits

2008

- 8 psychiatric hospitals
- 17 elderly homes
- 4 follow-up visits

NPM Visits 2015 - 2019

Year	Prisons	Police detention	Detention for foreigners	Psychiatric hospitals	Hospitals for long-term patients	Social-care homes (eg elderly homes)	Security detention	Children institutes
2015	3	8	3	0	8	0	0	0
2016	2	6	2	0	1	1	0	10
2017	1	4	0	5	0	6	1	3
2018	1	6	0	3	1	14	1	1
2019	3	3	1	5	1	3	0	9

Cross-section

X

In-depth preparation

Arrangement with experts

- Not standardized cooperation with experts
- Cooperation with experts from fields of psychology, psychiatry, nutrition, social work, and so forth. Sometimes, interpreters are invited.
- Public call for experts before a series of visits (for example before visits to institutes for children, the NPM called for child psychologists, psychotherapists, etopeds and social workers)
- Cooperation is on contractual basis and concerns participation in conducting visits, drafting visit report, consultations and advisory or training activities.
- In order for them to form an integral part of the visiting team, they receive initial training regarding the mandate of the NPM and its working methods.
- Special attention is paid to:
 - the expert's roles and responsibilities in relation to the different aspects of a visit (expert does not make any recommendations by himself/herself, he or she only collects information, a final assessment is by the ombudsman)
 - the expert's obligation to respect the confidentiality of certain information (e.g. personal data),
 - when selecting experts, attention should also be paid to the candidates' independence and to any potential conflicts of interest (for example, former high-ranked officials may be very problematic)
- NPM Georgia: Advisory Expert Group
- NPM Norway: Advisory Expert Group
- NPM Slovenia: contractual NGOs

Training of the NPM

- Education and training programmes for the NPMs (SPT, APT, FRA)
- Conferences, seminars and thematic workshops provided by Czech experts
- Theoretical (law, expert issues, common problems) and practical (methodology, soft-skills, legal writing)

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS



PROFESSIONAL TRAINING SERIES No. 7

Training Manual on Human Rights Monitoring



UNITED NATIONS
New York and Geneva, 2001

Examples of training of the NPM

- How to lead interviews with children
- How to talk with people with disabilities
- Problem of malnutrition in elderly homes
- How to write a report and formulate recommendations
- Seminar on Alzheimer disease
- Study visit to a psychiatric hospital, secured detention and long term sanatorium
- Training in the monitoring of forced returns
- Study visit to other NPMs (Georgia, France, Slovenia...)

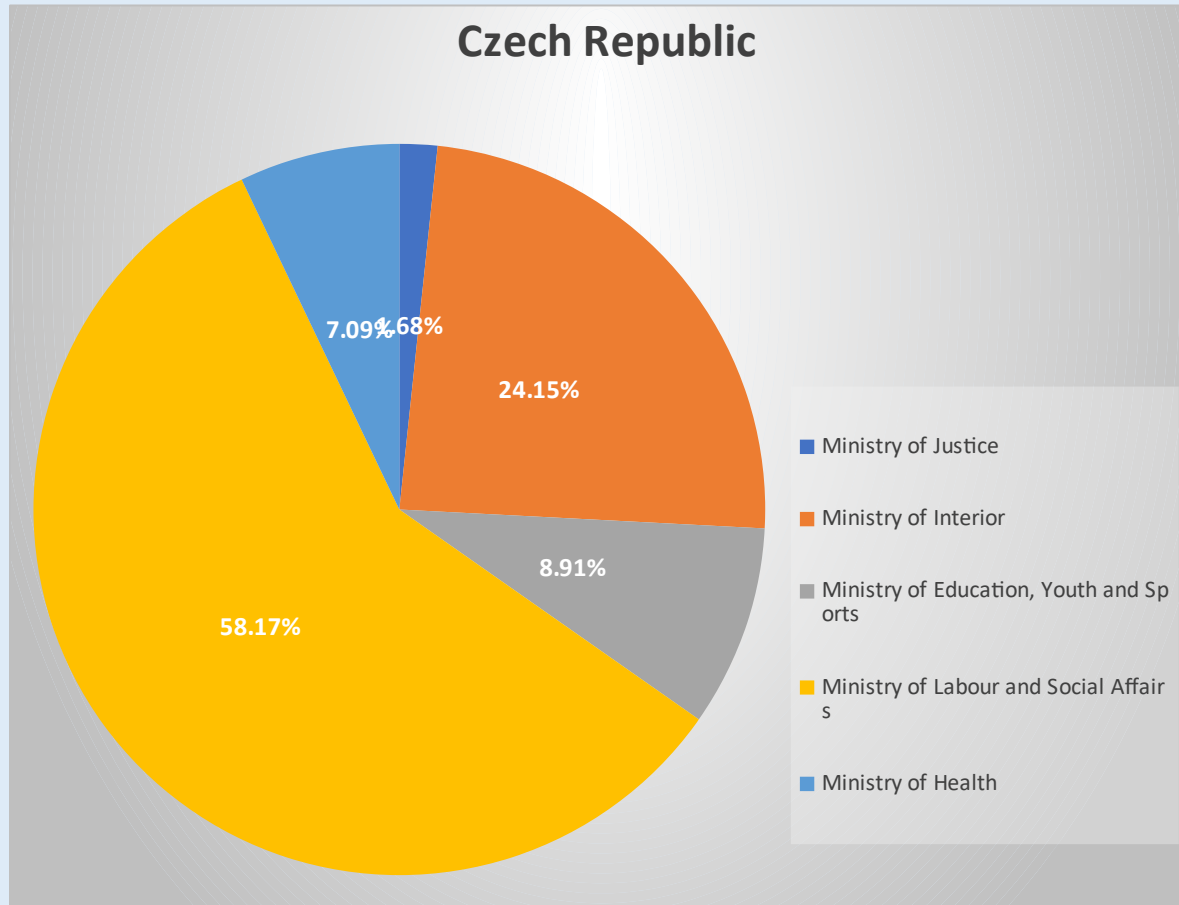


Photo: Public Defender of Rights of the Czech Republic (<https://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/aktuality-z-detenci/aktuality-z-detenci-2018/ucastnili-jsme-se-skoleni-evropske-pohranicni-a-pobrezni-straze/>)

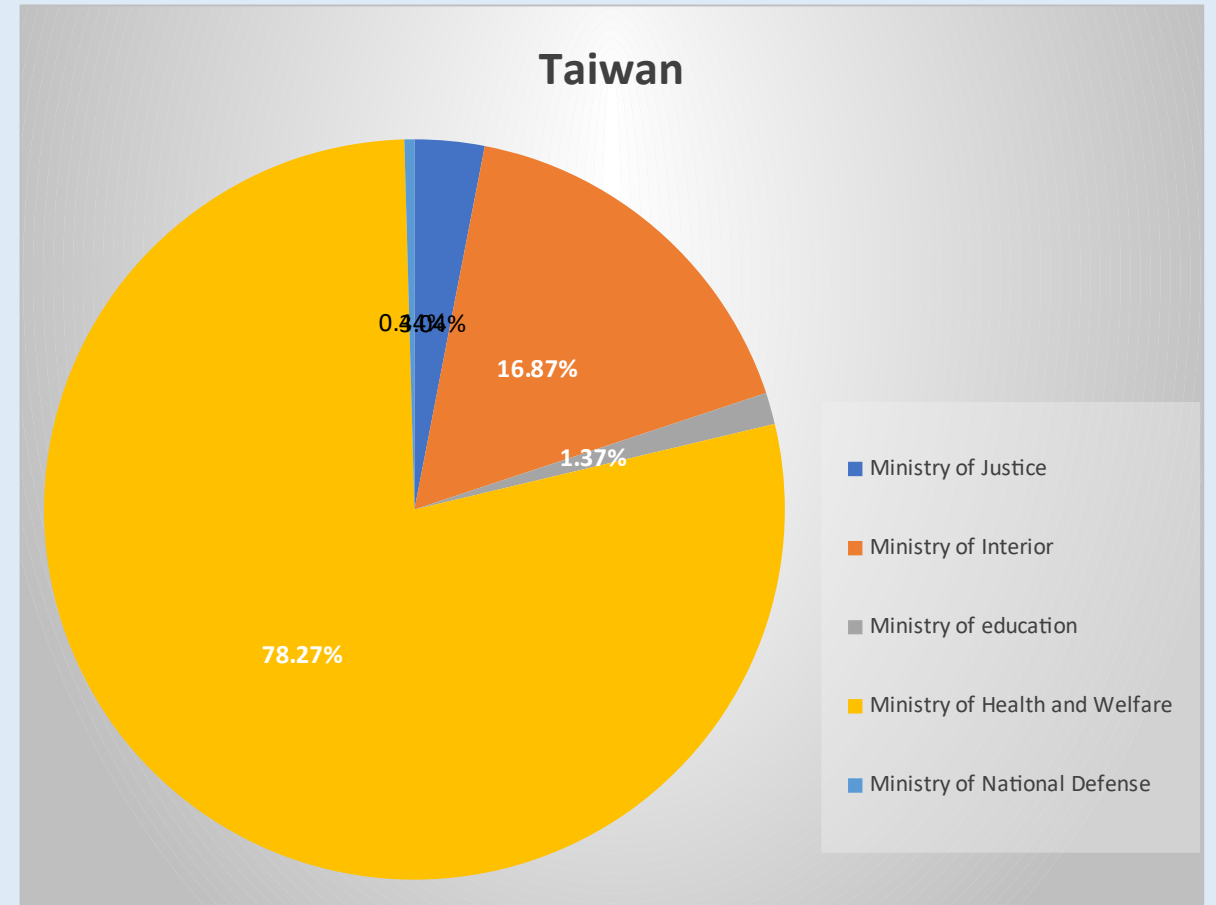
Examples of cooperation with state authorities prior to visiting

- Prior notification of visits to a prison
 - Before a series of visits the ombudsman turned to General Directorate of Prison Service to notify the plan to visit prisons in a given year.
 - Request to spread this information among the particular prisons and to ensure that prisons will cooperate with the NPM monitors.
- Understanding with Supreme Public Prosecutor
 - Overlap of mandates
 - Exchange of analytical knowledge concerning the prevention of torture and other ill-treatment

Places of Detention: Czech Rep.- Taiwan



2087



2039


Suggestion for the first year of NPM in Taiwan

- Is the purpose of the first year to get (1) an overall idea of all types of detention places in Taiwan or (2) to investigate a specific segment of detention?
- Setting priorities of what should be (1) in-depth general visit, (2) ad hoc „learning visit“
- Do not focus on specific topics without proper preparation (not harm principle)!

Ministry of Justice	5 Prisons 5 Detention centres
Ministry of Interior	10 Detention places 10 Inquiry waiting places 2 Immigration detention centres
Ministry of Health and Welfare?	3 Elderly nursing and care institutions
Ministry of Defence	5 Repentance rooms
Ministry of Education?	3 Special education schools

Chapter III.

Visit Plan



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

☐☐☐

20. How frequently and for how long do the prisoners take shower?

_____ /

21. How frequently the Administration changes the beddings within the institution:

_____ /

22. Is there a laundry bloc in the institution:

☐ Yes

☐ No

23. What products and articles are provided to the prisoners through the parcels:

_____ /

Principles of Visit

- Do not harm
- Respect to detainees and personnel
- Patience
- „Informal“ approach
- Credibility and Confidentiality
- Time management
- Evidence-based findings
- Attentiveness
- Transparency



example of shared accommodation

III. Preparing a Visit Plan

Based on Visit Manual or ad-hoc preparation:

1. Designation a visit leader
2. Setting-up a visiting team and inviting external experts
3. Setting visit topics and length of visit
4. Arrangment of accomodation, means of transport, cameras, questionnaires for visiting team and experts, letter for head of the facility, questionnaires for detainees, etc.
5. Workshop prior visit for visiting team and experts



Division of Supervision over Places of Detention

Role of experts

- A part of a monitoring team (equal rights and obligations with NPM monitors)
- Focusing on expert issues (e.g. Assessment of the availability of health-care in detention, assessment of *lege artis* treatment in specific cases, interviews with sick detainees, etc.)
- Involved in drafting the NPM visit report and other related activities (training, consultations, analysis, etc.).
- For example, in 2017, 12 experts took part in NPM visits (4 psychiatrists, 1 geriatrician, 3 general nurses, 3 psychiatric nurses, 1 specialist in education of children with behavioural disorders, 2 psychologists, 3 social services experts).

Important role of the visit leader

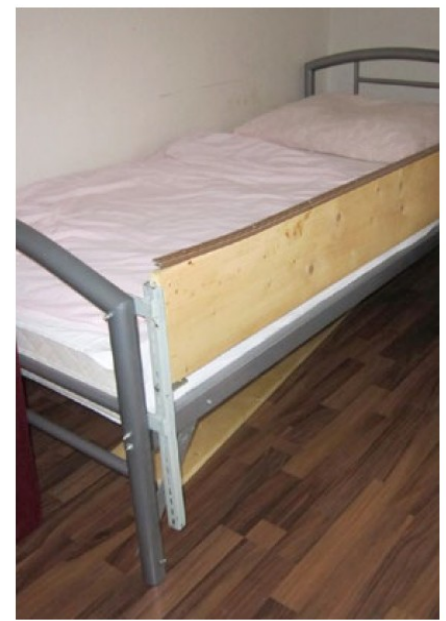
- Appointed for each visit from the NPM members
- Assembles and manages the visiting team
- Arranges necessary technical equipment
- Communicates with officials
- Deals with exceptional situations and the facility's resistance
- Conducts initial and final talks with the head of the facility
- Drafts the visit report and overseeing the facility's compliance

Visit Topics

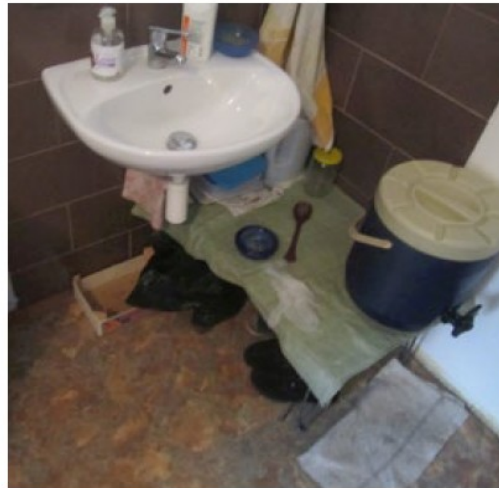
- Personnel (numbers, education, security matters)
- Material conditions (number of units, space, equipment, hygiene, clothing, light, fresh air)
- Medical care (access to a doctor, informed consent, cases of injuries)
- Means of restraint (types, frequency, documentation, complaints)
- System of complaints (procedure, frequent matters, remedy)
- Privacy (access to a toilet, CCTV system, correspondence)
- Outside world (access to lawyers, family members)
- Activities, cultural and religious needs
- Security issues (body searches, a system for prevention of violence and suicide, use of the solitary, presence of dogs)
- Vulnerable detainees (people with disabilities, foreigners, LGBT, victims of torture)

The course of visit

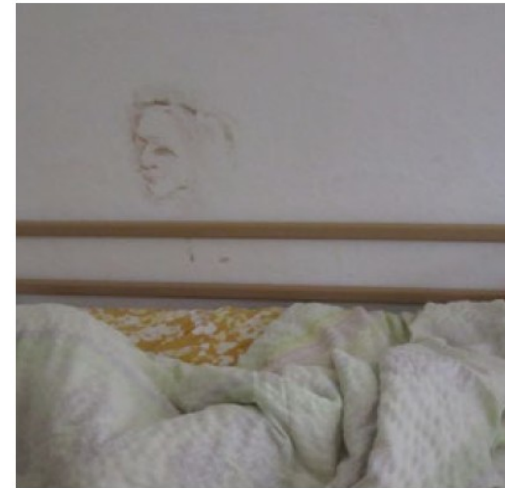
- No prior notice
- Visits at any time (including night visits)
- Introductory talk with the head of the facility
- Separation of a team
- Access to all places, all people, all information
- Debriefing
- Concluding talk
- Visit report



bed with a home-made bed-rail



insufficient hygienic conditions in a client's room



"picture" made of faeces on the wall next to a client's bed



carpet soiled with blood in a client's room

Priority issues

Use the advantage of surprise momentum

In later stages of the visit, evidence may be distorted

1. Have a list of vulnerable detainees (disability, foreigners, LGBT...)
2. Have a list of exceptional events and incidents (use of coercive measures, cases of violence, use of solitary, cases of suicide, use of disciplinary punishments...)
3. Monitor detainees, places and documents of above.
4. Promptly visit all places (first: bathrooms, accommodation units, later: library, gym, kitchen)
5. Promptly make pictures of documents that may be later concealed (informal notebooks of caring staff, notes on notice boards, etc.)
6. Talk to detainees and personnel (low-ranking staff first)
7. Talk to high-ranking officials for the last time (confront them with some findings)

Visit Report

- Basis for a constructive dialogue
- Set of recommendations
- Structure:
 - Standard
 - Finding
 - Recommendation
- Constructive dialogue
- Accessible on-line

Summary Report, Annual Report



Facility for Detention of Foreigners Bělá-Jezová

Evaluation of Systematic Visit

Address of the facility:	Jezová 1501, 294 21 Bělá pod Bezdězem
Founder:	Refugee Facilities Administration of the Ministry of the Interior
Director:	Ing. Viliam Andrassy
Type of facility:	Facility for Detention of Foreigners
Capacity:	270 beds standard, increased to 700 at the time of the visit
Date of the first visit:	31 August 2015
Issue date of the report:	9 September 2015
Date of inspection visit:	3 October 2015
Date of evaluation:	13 October 2015
Inspection visit carried out by:	Mgr. Anna Šabatová, Ph.D., Mgr. Marie Lukasová, Mgr. Beáta Szakácsová, Mgr. Pavel Doubek, JUDr. Ondřej Vala
Interpreters:	Ing. Noorullah Hashemi, Naji Khalil

Conflict Situations

- Denial of access to the facility or certain premises
- Refusing to contact certain detainees or staff
- Rejection of access to certain information
- Obstructions
 - Excessive delays
 - Employing inappropriate body searches and pat-downs

5. Course of the visit

The unannounced visit was carried out on 31 August 2015, from 10:00 a.m. to 6:15 p.m.

I carried it out in person together with authorised employees of the Office of the Public Defender of Rights (hereinafter the "Office"), Mgr. et Mgr. Linda Janků, Mgr. Beáta Szakácsová, JUDr. Pavel Pořízek, Ph.D., JUDr. Ondřej Vala, the interpreter of the Persian language (Farsi), Ing. Reza Mirchi, CSc., and the interpreter of the Arabic and Kurdish languages, Ing. Rachid Khalil.

The entry into the facility was hindered by delays (approx. 20 minutes) caused by unavailability of the head of the facility, Mr Andrásy, as well as the chief of the Police unit in the Facility, 1st Lt. Šarapatka. Further delays resulted when the police unit chief initially refused to allow me to bring and use a camera in the Facility for the purposes of photographic documentation of the conditions (the living conditions and documents; no photos of the security arrangements or the detained foreign nationals or Facility employees were to be taken).

I also note that the police unit chief believed the Facility housed approx. 30 children, while in reality their number was 5 times higher.

The visit was carried out in a standard fashion without any irregularities. We spoke with individual persons as well as with whole groups of detainees. We spoke with dozens of the detained foreign nationals and with employees of the Refugee Facilities Administration, the Health Care Facility and the private security contractor.

Thank you for your attention

Questions & Answers



Photo: Photo: Public Defender of Rights of the Czech Republic, Bělá-Jezová. Fotky k prezentaci z tiskové konference 13.10. 2015
(https://photos.google.com/share/AF1QipMzfFla-znhcYK3afc6_wm6oA7xCzktGNz0817BGy3iU3KAOSDf-q3nnwjImOJuFQ?key=bVZrZEhjME9RQl9ad1kyMURtUEp4VnFSUnhPaFpB)