

**Summary
of Case Report AJB-371/2015 on
OPCAT Visit to the Therapeutic House of Debrecen
(January 28, 2015)**

The National Preventive Mechanism (NPM) indicated in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) paid a visit to the Therapeutic House of Debrecen, a social care residential home for psychiatric patients and persons with disabilities, on 28 January 2015. Special attention was paid to monitoring the implementation of the provisions of the Convention on the Rights of Persons with Disabilities (CRPD) promulgated by the Act XCII of 2007. In the institution interviews were made with 33 people, *inter alia* the management of the institution, the staff of the institution and the residents.

In the Therapeutic House of Debrecen, maintained by the Board of Directors for Social and Child Protection 200 people with psychosocial disabilities (psychiatric patients) and 51 mentally disabled people were placed on the day of visit. At the time of the visit, 139 people were under guardianship fully limiting their legal capacity, 100 people were under guardianship partially limiting their legal capacity and 11 people had full legal capacity. The number of employees required in the Institution is 157 capita. On the day of visit the actual number of employees was 141 capita. The number of professionals is sufficient in the institution, the lack of employees affects the technical staff, principally the laundry, the kitchen and the desk. They try to compensate for this lack of employees by community service program. The number of nurses is 67 capita, out of which 57 are women and 10 are men. According to the management of the institution, the staff has become “worn out.”

The NPM has pointed out that, though, *the number of staff nurse meets the requirement of the law, it occurs that only one nurse is present in the nursing unit of more than 50 capita. In addition to that this division of work is unacceptable for the patients as well as the nurses, it risks the infringement of torture and other cruel, inhuman or degrading treatment or punishment, consequently, it constitutes an impropriety related to Article III. (1) of the Fundamental Law of Hungary.*

The initiators of the placement of the residents vary, but mostly they are the guardians and typically the professional guardians. Some of the residents voluntarily come to the institution, whereas others are placed here by their relatives, while some people get here directly from the child protection system.

The residents do not have the opportunity to freely choose with whom they want to live in a shared room. One of the staff of the institution put it that they are allocated to the rooms depending on their condition. She added “free choice would just cause trouble, they want to be with these people today and they will change their mind tomorrow.” With regard to this, the NPM has pointed out that *due to Article 19 of the CRPD the residents shall have the opportunity to freely choose with whom they want to live in a shared room. This is important even if the persons with disabilities may not have the opportunity to freely choose their place of residence, i.e. the building of the institution. The fact according to which the residents in the institution may not have the opportunity to freely choose with whom they want to live in a shared room creates an impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1).*

In relation to the institutional nursing units, the NPM noted that *the fact that the architectural implementations of the buildings may not allow for barrier-free movement in all cases creates an impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1) of the Fundamental Law; there is not at least six square metre place of residence in all cases in the rooms for each resident; there is not at least a bath tub or a shower and a toilet for both sexes in all cases for ten patients; in the rooms not at most four persons are placed.* In this context, the NPM emphasised that the creation of these conditions should not be achieved through renovation and extension, but through continuously decreasing the number of residents and helping the residents get prepared for leading a life in the community by ensuring community based services.

During the interviews conducted with the residents, fewer complaints arrived for the quality of the food, while it was generally stated in terms of the quantity that it was too little. In this respect, the NPM has drawn the attention to that proper attention should be paid not only to the quality of the food but also to its quantity.

The residents shall have a bath in the presence of a nurse once a week. The reason for this is that the nurse checks the skin for changes. *In this respect, the NPM has drawn the attention to that irrespective of their health condition, every resident's obligatory naked bathing and irrespective of their health condition, the inspection and examination of the male patients' intimate parts of body by female nursing staff create improprieties related to the prohibition of degrading treatment set out in Article III. (1) of the Fundamental Law. To the knowledge of the NPM male nurses do not bath female residents, however, if they did, that would, mutatis mutandis, constitute a degrading treatment.*

Regarding the nursing unit I of the institution, where male residents requiring a high degree of nursing, the NPM has established that *in spite of the regular and thorough cleaning, the toilet and certain patients smelled of urine to a great extent. Neglecting the patients and the lack of their proper nursing create an impropriety related to the prohibited degrading treatment set out in Article III. (1) of the Fundamental Law.*

Regarding the issues related to hygiene, the NPM has drawn the attention to that *the number of toilets should be established so as to prevent queues and the shower places should be made accessible. Waiting for the toilets as well as the lack of access to the shower places creates an impropriety related to the prohibition of degrading treatment set out in Article III. (1) of the Fundamental Law.*

Regarding the inquiry into the complaint mechanism and the operation of the advocacy system, the NPM has highlighted that *the lack of substantive, well-functioning complaint mechanism known by all the residents may lead to the imminent danger of the impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1) of the Fundamental Law.*

Regarding the preparation of the independent living and being included in the community, the NPM has stressed that the right of persons with disabilities to freely choose their place of residence and the related obligations of the States Parties is set out explicitly in Article 19 of the CRPD. The NPM has pointed out that on the one hand the institutional placement of persons with disabilities leads to isolation; on the other hand, it perpetuates stigmatisation as well as marginalisation. *This does not only violate Articles 12 and 19 of*

CRPD, but it also constitutes an impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1) of the Fundamental Law.

The members of the visiting group had the impression that the institutional environment is impoverished and the residents' situation is bleak and narrowed. The older residents rather lie around or they just hang around in the corridor. Sometimes they talk to their roommates.

Women are only accepted in the institution if they give their consent to contraception. A gynaecologist gives them the Depo-Provera injection, which is a long-acting contraceptive. If the injection cannot be given to the patient, a spiral is inserted. It occurred that somebody had a disorder of blood coagulation, therefore the gynaecologist used a spiral instead of the Depo-Provera. For the persons under guardianship fully limiting their legal capacity, the consent of the guardian is asked for. The NPM has pointed out that it may lead to an impropriety related to *the prohibition of torture and inhuman, degrading treatment or punishment set out in Article III. (1) of the Fundamental Law* that in the absence of the free and informed consent of the person concerned, the guardian may consent to allow the doctor to use an IUD contraceptive tool or to abort the life of the foetus for persons with disabilities.

There is an intimacy room in the institution, whose key has to be asked for in the treatment room. The management and the staff of the institution pay attention to that the residents should not use the intimacy room for ad hoc relationships. In practice this means that the use of the intimacy room is permitted only after a relationship of 3 months, other information indicates a relationship of 3 weeks. The NPM highlighted that *the fact that it occurs that residents need to queue for using the intimacy room and that they have to ask one of the members of the staff for the key and that the room shall be used only after certain "dating time" and only with the consent of the staff, creates an impropriety related to the prohibition of degrading treatment set out in Article III. (1) of the Fundamental Law.* All this prevents the residents of the institution having a sexual life under real intimacy. Furthermore, the NPM stressed that there are not any rules and recommendations on sexual life counselling, contraception, relationship and the use of the intimacy room either in the house rules or in the professional program of the institution. The listed deficiencies have proven that these aspects belonging to everyday life are still considered taboos. In order to eliminate these, information should be given to both the residents and the staff of the institution.

One of the persons under guardianship excluding legal capacity is in a relationship in the institution and they regularly use the intimacy room. According to the management, "they would like to have a common room, but they could not fulfil the criteria." The NPM finds it unacceptable that *disregarding the will and decision of the persons concerned, the institution arranges the relationship of the persons with disabilities in such a way that the opportunity of a common living area and the establishment of a home are not ensured for the residents. This treatment constitutes an impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1) of the Fundamental Law.*

Regarding pregnancy and having children, the NPM has pointed out that *State intervention is required for the persons with disabilities, being permanent residents in the institution, to receive proper help during their pregnancy, the delivery and when raising their children. The NPM has suggested considering making a law that provides proper support for the concerned persons with disabilities to enable them to have the opportunity to decide on*

independent living prior to them becoming parents or simultaneously, through the use of efficient community based services.

Regarding the institutional regulation on limiting measures affecting the residents' right to liberty, the NPM has detected some deficiencies and *called for revising the rules on the limiting measures*. Several "adult cage beds" are used in the institution, being similar structures to the cage beds of infants and little children and which have a closable door, but this door can be opened from both outside and inside. It occurs that these adult cage beds are made unopenable. The NPM has stressed that *the use of these cage beds must be immediately stopped*. The institution has filled out the forms on the limiting measures several times inappropriately and incompletely and it did not send it in due time to the resident's rights representative. *This latter and the fact that a resident was placed for more than 3 weeks in an observation room create an impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1) of the Fundamental Law and related to the right to personal freedom and safety set out in Article IV (2) of the Fundamental Law.*

Based on the interviews made with the residents and the staff of the institution, it occurs that due to being late, the residents are not allowed to be on leave of absence. The NPM has pointed to the fact that *if not allowing the residents to be on leave of absence is used as a punishment, it will create an impropriety related to the prohibition of inhuman, degrading treatment set out in Article III. (1) of the Fundamental Law and with regard to the right to free movement set out in Article XXVII (1) of the Fundamental Law.*

Regarding the establishments of the visit, the NPM has initiated the manager and the maintainer of the institution to take measures. Regarding its establishments, as a consequence of noticing circumstances indicating a violation of the laws, the NPM has initiated the inquiry of the competent prosecutor through the General Prosecutor. In addition, the NPM has asked the Minister of Human Capacities to consider

- elaborating a procedure for the cases where there is disagreement between a person under guardianship and his or her guardian, on using an IUD contraceptive tool, sterilisation and abortion of the foetus of the person under guardianship, taking into consideration the provisions of CRPD;
- preparing legal provisions, as a consequence of which persons with disabilities, being residents of the institution, may keep and, with proper help, raise their children in a way that prior to becoming parents or simultaneously, the opportunity of independent living is ensured for them by providing them with efficient community based services.