

**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
on the Activities of the OPCAT National Preventive Mechanism in 2022**



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Abbreviations

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

Introduction



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

In his activity pursued since 2015, it was in 2020 that the NPM first encountered the extraordinary difficulty that was caused by the coronavirus pandemic in the lives of persons deprived of their liberty. The process that commenced in 2020 determined the whole of 2021 and even the first half of 2022 was characterised by COVID-focused visits. At the beginning of the year, the armed conflict that began in the neighbouring country and the placement of, and services to be provided to the persons fleeing this conflict posed a challenge to almost all the players of the social and child protection sector, this is why the NPM regularly visited institutions where refugees had been placed.

In the constant state of danger, a key role was assigned to the NPM's monitoring task, this is why this activity was determined by the endeavour to visit as many places as possible, for a shorter duration in compliance with the international human rights guidelines and keeping the "do no harm" principle in mind.

The comprehensive 2022 NPM report is the account of a very hard period full of challenges, similar to 2021. I am hopeful that the publication of this report, the activities and experience of the NPM will help the staff of the places of detention improve the living conditions of the persons deprived of their liberty.

Budapest, 2023

Dr. Ákos Kozma

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

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 53(1) of the Fundamental Law of Hungary, “*in the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate the consequences thereof, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act.*”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

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 until 24 May 2022

⁴ Constitutional Court Decision No. 36/2000. (X. 27.) 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. 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

on Article 4 of the Covenant, no derogation from Article 7, which declares the prohibition of torture, may be made, even in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.⁹

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

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

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

Pursuant to Article 2(2) of the UN Convention against Torture, “*no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*” Pursuant to General Comment 2 of the UN Committee against Torture,¹⁰ the prohibition of torture stipulated in Article 2 of the Covenant is an absolute prohibition whose application shall not be disregarded in the existence of any exceptional circumstances, and the prohibition of cruel, inhuman or degrading treatment or punishment as set out in Article 16 is another provision that should be taken into account in all circumstances.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment¹¹ (hereinafter referred to as: OPCAT) may be joined by any state that has ratified or joined the UN Convention against Torture.¹²

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.¹³

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

¹¹ Promulgated by Act CXLIII of 2011

¹² Article 27(3) of OPCAT

¹³ Article 1 of OPCAT

Pursuant to Article 4(2) of the Protocol, “*deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority*”.

OPCAT has established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to: Subcommittee on Prevention). One of the main tasks of the Subcommittee on Prevention of Torture is to inspect places where persons are deprived of their liberty; on the other hand, it advises and assists States Parties, when necessary, in establishing and operating their independent national bodies conducting regular visits to places of detention.¹⁴ From the aspect of the operation of the National Preventive Mechanisms and in addition to the general directives¹⁵ of the Subcommittee on Prevention of Torture, the conclusions, specific directives and recommendations¹⁶ 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.¹⁷

According to Article 37 of the **Convention on the Rights of the Child, signed in New York on 20 November 1989**,¹⁸ 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**¹⁹, “*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 1994.²⁰

¹⁴ Article 11 of OPCAT

¹⁵ SPT: *Guidelines on national preventive mechanisms* (CAT/OP/12/5); SPT: *Analytical self-assessment tool for National Preventive Mechanisms* (CAT/OP/1/Rev.1); *Compilation of SPT Advices to NPMs (Annex to CAT/C/57/4)*

¹⁶ 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)

¹⁷ 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>

¹⁸ Promulgated by Act LXIV of 1991

¹⁹ Promulgated by Act XCII of 2007

²⁰ See Section 3 of Act III of 1995, which promulgated the Convention.

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”²¹ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: “CPT”) has been established by the European Convention for the Prevention of Torture. The CPT shall, by means of regular visits to the territories of the States Parties, “examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment”. Following every visit, the CPT prepares a report containing, in addition to the facts discovered in the course of the visit, the comments of the body and its recommendations to the authorities concerned. The CPT’s reports on its visits to Hungary are of major importance for the National Preventive Mechanism.

The comprehensive standards²² 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 lock-ups, psychiatric institutions, detention centres for refugees) and various vulnerable groups, such as women and juveniles.

The CPT met with the Parliamentary Commissioner for Civil Rights for the first time on its 1999 periodic visit;²³ since then, the CPT has visited the Office of the Commissioner for Fundamental Rights during every visit paid to Hungary (the last visit took place on 19 November 2018).²⁴ The National Preventive Mechanism takes into account the conclusions of the CPT’s reports on its visits to Hungary, its recommendations made to the Government, as well as the latter’s response thereto during his activities.

1. 3. Preventive activities of the National Preventive Mechanism

“The Commissioner for Fundamental Rights shall perform fundamental rights protection activities”²⁵, 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.²⁶

In order to perform his tasks related to the National Preventive Mechanism, the Commissioner for Fundamental Rights regularly examines the treatment of persons deprived of their liberty held at various places of detention specified in Article 4 of OPCAT, also in the absence of any petition or alleged impropriety. During the on-site inspection, the NPM may enter without any restriction the places of detention and other premises of the authority under inspection, may inspect all documents concerning the number of persons deprived of their liberty who are held

²¹ Article 31 of OPCAT

²² CPT standards <https://www.coe.int/en/web/cpt/standards>

²³ The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on 1 July 1995.

²⁴ Information related to the CPT’s visits to Hungary is available at: <https://www.coe.int/en/web/cpt/hungary>

²⁵ Article 30(1) of the Fundamental Law

²⁶ CAT *General Comment No. 2* Clause 3 of CAT//C/GC/2)

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.²⁷

1. 4. Special international and national requirements that have governing effect for the Covid-19 pandemic

1.4.1. International human rights guidelines regarding the Covid-19 pandemic

The NPM's activities pursued in 2022 were determined by the coronavirus pandemic and during his visits, he took into account the following guidelines issued by the international organisations.

The new guidelines issued by the World Health Organisation (WHO) on 8 February 2021 (as the updated version of the guidance issued on 15 March 2020)²⁸ pointed out the correlations between the prevention of infection at places of detention and general health care, which suggest that places of detention, due to the close proximity of the detainees to each other, may become hotbeds of the infection, this is why efficient action against Covid-19 at places of detention is a key interest of society as a whole.²⁹ Those persons who live at places of detention and who are deprived of their liberty as they are may respond to any further restrictions more sensitively.³⁰ Health care providers and places of detention should cooperate with each other, public health measures shall not discriminate e.g. against detainees at penitentiary institutions.³¹ It is also pointed out by the guidance that the Covid-19 pandemic shall not hinder the visits paid by independent monitoring bodies, such as national preventive mechanisms, on the basis of the "do no harm" principle.³²

According to the guidelines on the coronavirus pandemic issued by the Subcommittee on Prevention on 7 April 2020 (hereinafter referred to as: SPT Advice)³³, persons deprived of their liberty constitute an especially vulnerable group, due to the restrictions that already exist on account of their situation, and the limited possibilities for taking preventive measures.³⁴ On 18 June 2021, the Subcommittee on Prevention issued Follow-up Advice to the national preventive mechanisms on the basis of the activities and experience of the first period of the pandemic³⁵, in which the measures already taken and those to be taken by the state parties in the future with regard to the pandemic situation, as well as the impact of these measures on the persons deprived of their liberty were summed up. On 10 June 2021, the Subcommittee on

²⁷ Section 39/B of the CFR Act

²⁸ *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance*, 8 February 2021 Copenhagen: WHO Regional Office for Europe; 2021 (hereinafter referred to as: Interim Guidance).

²⁹ Clause 1, Introduction and Clause 6, Introduction, Interim Guidance

³⁰ Clause 1.4, Interim Guidance

³¹ Clause 3, Introduction, Clause (12), as well as Clause 6.2, Interim Guidance

³² Clauses 3(16) and (19), Interim Guidance

³³ *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic* (CAT/OP/10)

³⁴ Clause 2 of CAT/OP/10

³⁵ *Follow-up advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic* (CAT/OP/12)

Prevention issued a protocol to the national preventive mechanisms with regard to the fast spread of the coronavirus pandemic³⁶ about the visits to be paid in the period of the pandemic. The protocol proposes that the national preventive mechanisms carry on their visits to the places of detention, by applying a new methodology and measures, as well as by taking the “do no harm” principle into account.³⁷ The visits should be planned with a view to minimising the time spent at the institutions, in this way, also the risk of infection for each person concerned.³⁸

The Statement relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic issued by the CPT on 20 March 2020³⁹ draws attention to the absolute nature of the prohibition of torture and inhuman or degrading treatment: the protective measures shall never result in the inhuman or degrading treatment of persons deprived of their liberty. According to the Statement, special attention should be paid to the special needs of persons deprived of their liberty, with special regard to those of the vulnerable groups such as the elderly or persons with concomitant diseases.⁴⁰ The continuous monitoring activities of the national preventive mechanisms, ensuring access to the places of detention are important guarantees for preventing ill-treatment in this period as well.⁴¹ After the issuance of the Statement, the CPT issued a Follow-up Statement on 9 July 2020, by taking the measures related to places of detention into account.⁴²

In her statement made on 17 March 2020, the UN Special Rapporteur on the rights of persons with disabilities⁴³ drew attention to the fact that the persons with disabilities placed in institutions were especially exposed to the risk of infection. The Chair of the CRPD Committee and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility issued a joint statement on the protection of persons with disabilities with regard to the Covid-19 pandemic⁴⁴ on 1 April 2020, in which they stressed that the protection of persons with disabilities should be ensured in situations of risk and humanitarian emergencies as well. In the joint statement, attention was also called to the fact that the persons residing in institutions were especially exposed to the risk of infection, this is why the process of de-institutionalisation should be speeded up.⁴⁵ In the statement issued by the CRPD on 20 June 2020,⁴⁶ the special vulnerability of persons with disabilities with regard to the coronavirus pandemic was stressed as well.

³⁶ *Protocol for national preventive mechanisms undertaking on-site visits during the coronavirus disease (COVID-19) pandemic* (CAT/OP/11), (hereinafter referred to as: the Protocol)

³⁷ Clauses 2, 3 and 9 of the Protocol

³⁸ Clauses 12 and 38 of the Protocol

³⁹ *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic* (CPT/Inf(2020)13)

⁴⁰ Clause 6 of CPT/Inf(2020)13

⁴¹ Clause 10 of CPT/Inf(2020)13

⁴² *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing Covid-19 pandemic* (CPT/Inf (2020) 21)

⁴³ *COVID-19: Who is protecting the people with disabilities?* – UN rights expert Geneva, 17 March 2020 <https://www.ohchr.org/en/press-releases/2020/03/covid-19-who-protecting-people-disabilities-un-rights-expert>

⁴⁴ *Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility*, 1 April 2020 <https://www.ohchr.org/en/statements/2020/04/joint-statement-persons-disabilities-and-covid-19-chair-united-nations-committee>

⁴⁵ Clause 5, Joint Statement

⁴⁶ *Statement on COVID-19 and the human rights of persons with disabilities*

1.2.4. Extraordinary statutory and official provisions issued with regard to places of detention

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

Government Decree No. 27/2021 (I. 29.), simultaneously to the termination of the state of danger declared by Government Decree No. 478/2020 (XI. 3.) by Government Decree No. 26/2021 (XI. 3.) declared another state of danger from 8 February 2021 in order to avert the consequences of the coronavirus pandemic. The state of danger was terminated by Government Decree No. 181/2022 (V.24.) on 1 June 2022.⁴⁷

Before the termination of the state of danger, both the prisons and the social and child protection institutions were affected by special instructions.

1.4.2.1. The option to use the vaccine against the coronavirus and mandatory vaccination

In Hungary, the first who could be administered the coronavirus vaccine, which was initially available in a limited amount, were those who belong to high-risk groups of the population with regard to the infection or the consequences thereof. First, health care workers could be vaccinated from 27 December 2020.⁴⁸ From 7 January 2021, vaccines were first administered to the residents and staff members of the four largest old-age homes of the country,⁴⁹ then during the rest of January, to those of other old-age homes⁵⁰ and residential social care institutions⁵¹, finally from 4 February, to those senior citizens who do not live⁵² in institutions. Furthermore, from the critically endangered groups, February saw the beginning of the vaccination of chronically ill persons under the age of sixty,⁵³ then that of law enforcement officers,⁵⁴ school, preschool and creche staff members,⁵⁵ as well as expectant⁵⁶ women. Mass-scale vaccination covering the entire population of the country was ordered by the Chief Medical Officer of Hungary from 26 April 2021. The vaccination of detainees living in penitentiary institutions began on 28 April 2021, the vaccines were administered by the health care staff of the prison

⁴⁷ By Government Decree No. 424/2022 (X.28.), the Government declared a state of danger for all the territory of Hungary with effect from 25 May 2022, with regard to the armed conflict and humanitarian disaster on the territory of Ukraine, as well as with a view to the averting and handling the consequences thereof, which was prolonged by Government Decrees No. 424/2022 (X.28.) and 479/2022 (XI.28.).

⁴⁸<https://koronavirus.gov.hu/cikkek/orszagos-tisztifoorvos-december-27-en-kezdozik-az-egeszsegugyi-dolgozok-oltasa>

⁴⁹ <https://koronavirus.gov.hu/cikkek/az-idosothonokban-elkezdodott-koronavirus-elleni-vedooltasok-beadasa>

⁵⁰ <https://koronavirus.gov.hu/cikkek/hetvegen-folytatodik-nagyobb-idosothonok-bentlakoinak-es-dolgozoinak-oltasa>

⁵¹ <https://koronavirus.gov.hu/cikkek/operativ-torzs-megkezdodott-az-idosothonokban-es-mas-bentlakasos-intezmenyekben-elok>

⁵² <https://koronavirus.gov.hu/cikkek/operativ-torzs-mar-oltjak-regisztralt-legidosebbeket>

⁵³ <https://koronavirus.gov.hu/cikkek/kormanyinfo-vedettseget-igazolo-okmany-bevezeteserol-dontott-kormany>

⁵⁴ <https://koronavirus.gov.hu/cikkek/hol-tartunk-az-oltasban>

⁵⁵ <https://koronavirus.gov.hu/cikkek/ovodai-iskolai-es-bolcsodei-dolgozok-figyelem-regisztracio-marcius-29-hetfo-ejfelig>

⁵⁶ <https://koronavirus.gov.hu/cikkek/novak-katalin-elindult-varandosok-onkentes-beoltasa>

organisation.⁵⁷ Children were vaccinated gradually after 10 May 2021, the opportunity first opened for the generation between 16-18 years of age,⁵⁸ then from June, for those aged 12-15,⁵⁹ and finally, from December, for 5-11 year-old⁶⁰ children as well.

Government Decree No. 449/2021 (VII. 29.) prescribed mandatory coronavirus vaccination for the health care staff members employed by residential social care institutions 3.) and child protection institutions. Government Decree No. 599/2021 (X.28.) on the mandatory vaccination against coronavirus by the employees of state and municipality institutions rendered the vaccination mandatory until 15 December 2021 for all the employees of social care and child protection institutions, as well as the employees of law enforcement bodies, including the police, aliens policing organs and penitentiary institutions⁶¹, as long as their job involved meeting clients on a regular basis.⁶² If the person concerned failed to fulfil their obligation despite instruction from their respective employer and has had no such medical expert opinion that would have suggested that the administration of the vaccine was contraindicated for them for a medical reason, such person had to be ordered by their employer to take unpaid leave on the basis of the government decree.

Act V of 2022 provides on the regulatory issues related to the termination of the state of danger declared in relation to the coronavirus pandemic. In lack of a different decision by the employer, Act V of 2022 stipulates that the unpaid leave ordered on the basis of Government Decree No. 599/2021. (X. 28.) will be terminated with effect from 15 June 2022, and the employment of the employee can be resumed. However, the transitional provisions of the law allow the employer to require, even after the termination of the state of danger, the administration of the vaccination as the condition to employment at the above-mentioned institutions, as well as the maintenance of the unpaid leave of the employees who fail to fulfil this requirement until the vaccination is administered to them, furthermore, for one year after ordering the administration of the vaccination. The respective decision shall be made by 15 June 2022. If the employer decides to maintain the unpaid leave, then the provisions of the Health Act (the 'Eütv') regarding the mandatory ordering of vaccinations⁶³ should be applied as well, by adding that the calculation of deadlines will not start again. This means that, if the employer already decided to order mandatory vaccination at the time of the state of danger, and they maintain such decision, the termination of the state of danger will not affect the deadline for administering the vaccination and the duration of the unpaid leave. The period of unpaid leave may last until the state of epidemiological preparedness ends but for a maximum of one year.⁶⁴ If the employee receives the vaccination during the period of unpaid leave and the fact

⁵⁷ <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4131>

⁵⁸ <https://koronavirus.gov.hu/cikkek/mar-16-18-eves-fiatalokat-lehet-regisztralni-oltasra>

⁵⁹ <https://koronavirus.gov.hu/cikkek/12-15-evesek-oltasara-lehet-idopontot-foglalni-regisztracio-ervenyesites-utan>

⁶⁰ <https://koronavirus.gov.hu/cikkek/megnylt-az-idopontfoglalo-az-5-11-eves-gyermek-oltasahoz>

⁶¹ Pursuant to Sections 1 a), d) and f) of Act XLII of 2015 on the service relationship of the professional personnel of the law enforcement organs quoted in the Government Decree

⁶² The deadline for the fulfilment of the vaccination obligation for the further employees is 31 January 2022. The Government Decree took effect on 1 November 2021.

⁶³ In the case of ordering the state of epidemiological preparedness, pursuant to Section 232/H of the Health Act, the employer is authorised to require the mandatory administering of the vaccination as a condition to employment, with the approval of the supervising authority or the owner, for those who are employed by an organ, institution or economic association maintained or owned by the state or a municipality with a view to ensuring the continuous performance of state and municipality tasks, as well as to protecting the health of the employees, the clients, the students, the residents, the patients, and others.

⁶⁴ Irrespective of the termination of the state of danger, the state of epidemiological preparedness is still in force, and its justification is reviewed by the Government every three months.

thereof is appropriately certified in line with the requirements in the Health Act, the employer will terminate the unpaid leave without delay. On the other hand, those employees who have been exempted from performing their availability and work obligations before the deadline of the obligation to be vaccinated, they can be obliged to receive the vaccination after the termination of such exemption under the new rules of the Health Act, while in the case of failing to receive the vaccination, the legal consequences set out in the Health Act can already be applied against such persons (of course, only as long as the state of epidemiological preparedness still exists at the time of the termination of the exemption). If one year has elapsed since the ordering of the unpaid leave, or the state of epidemiological preparedness is terminated in the meantime, and the employee still has not received the vaccination, the employer will be entitled to terminate the employment through dismissal or notice, with immediate effect, without any entitlement to redundancy money, or may continue to employ the employee.⁶⁵

1.4.2.2. Immunity certificates

The Government introduced the so-called “immunity certificates” by Government Decree No. 60/2021 (12 12.) on certifying immunity from coronavirus with effect from 13 February 2021. Pursuant to the government decree, immunity from the coronavirus could be certified with the fact of recovery from the disease caused by the coronavirus infection within a certain period of time,⁶⁶ or the fact of having been vaccinated with a vaccine of a dose predefined by the manufacturer authorised in the European Union or Hungary and used for the vaccination of the population. Pursuant to the decree, official certificates or an application could be used for certifying immunity. Government Decree No. 188/ 2022 (V. 26.) has made an amendment, according to which immunity can exclusively be certified officially in the case of having been vaccinated, while no immunity certificate can be issued on the basis of a certified recovery from the coronavirus disease. In the period of easing the restrictions that had become necessary due to the pandemic, in the case of those who live in children’s homes and social care institutions, as well as the detainees in penitentiary institutions, the possession of immunity certificates by visitors to the places of detention was a precondition to keeping personal contact.

1.4.2.3. Extraordinary regulations affecting penitentiary institutions

The amended Section 236(1) of Act LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the state of epidemiological preparedness that was introduced during the state of epidemiological preparedness⁶⁷ after the state of danger that was declared from 11 March ended on 18 June⁶⁸ 2020,⁶⁹ provided on that the provisions of the Prison Code (‘Bv. tv.’)⁷⁰ should be applied with the derogations set out in this Act until the state of danger defined in Government Decree No. 27/2021 (I. 29.) on the declaration of the state of danger (XI. (29 ends. With regard to the continued state of danger, the provisions of the

⁶⁵ <https://jegyzopraxis.hu/cikk/haborus-veszelyhelyzet-onkormanyzat>

⁶⁶ Pursuant to Section 2(2) of the Government Decree, in a case when a person has recovered from coronavirus infection, which is certified by a positive PCR test or an antigen rapid test registered in the National eHealth Infrastructure, the certificate will be valid for six months. According to Section 2(4) of the Government Decree, in the case of those persons who have undergone subsequent antibody testing, the result of which certifies that they have recovered from the infection, the certificate will be valid for four months.

⁶⁷ Government Decree No. 40/2020 (III. 11.) on the declaration of the state of danger

⁶⁸ Government Decree No. 282/2020 (VI. 17.) on the termination of the state of danger declared on 11 March 2020

⁶⁹ Government Decree No. 283/2020 (17 17.) on the introduction of the state of epidemiological preparedness

⁷⁰ Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Confinement for Administrative Offences

Prison Code ('Bv. tv.') had to be applied with the derogations set out in Sections 236-245 of Act LVIII of 2020 all through 2021. These special rules affected the provisions concerning the admission, communication, placement, employment, education and leisure time activities of the detainees.

Besides the special areas that had been assigned to his decision-making authority by the law, the National Commander of the Hungarian Prison Service also regulated, in his action plan on the prevention of the infection with regard to the prison organisation, the rules of admission, wearing masks, keeping distance, disinfection, as well as the rules to be applied in the case of a suspicion of coronavirus infection.⁷¹

Due to the improving epidemiological situation, the visitation ban was released at prisons with effect from 1 May 2022.

1.4.2.4. Provisions related to social care and child protection institutions

The general obligation to wear masks required by Government Decree No. 484/2020 (XI. 10) on the second phase of protective measures applicable at the time of a state of danger, which was in effect in the first half of 2021, was terminated on 3 July 2021, and the government decree authorised the Minister responsible for Health Care and the Minister for Social Affairs and Pension Policy to establish the rules of the mandatory wearing of masks with regard to the health care and social care institutions in a decree. EMMI (Ministry of Human Capacities) decree No. 31/2021 (VII. 7.) on the rules of wearing masks on the territory of health care and social care institutions rendered the wearing of masks mandatory in health care institutions (it also provided on exceptions) with effect from 8 July 2021, and it also defined the conditions of wearing masks with regard to social care institutions, which regulation was repealed on 7 March 2022 through Government Decree No. 77/2022 (III.4.).

Extraordinary regulations for the emergency situation were introduced through the decisions and proposals of the Chief Medical Officer adopted in her official health care competence concerning social care and child protection institutions⁷² with regard to the health crisis⁷³, as well as through the rules issued by the National Public Health Centre and the Ministry of Human Capacities.

On 18 December 2020, the Chief Medical Officer imposed a ban on visiting and leaving the institutions with regard to⁷⁴ specialised social care institutions. As regards the contact of patients with their relatives, the Chief Medical Officer issued special proposals regarding the establishment⁷⁵ of the conditions of keeping contact, and personal visits adjusted to the characteristics of the institution in question were possible under the conditions defined in this document. The ban on visiting and leaving the institutions was partially lifted and partially modified on 19 April 2021 (those who possessed immunity cards were allowed to pay visits to

⁷¹ The National Commander of the Hungarian Prison Service regularly updated the action plan in sync with the evolution of the epidemiological situation. In 2021, at the time of the beginning of the visits, Action Plan IV No. 30500/11866-128/2020/2020.ált. on the execution of tasks related to the coronavirus pandemic, amended with effect from 04 November 2020, was in effect, while at the time of the last visit, Action Plan VIII No. 30500-16/492-178/2021.bizt. on the execution of tasks related to the coronavirus pandemic, approved on 11 November 2021, 2020, in effect.

⁷² Sections 230 (4) h) and i) of Act CLIV of 1997 on Health Care

⁷³ Pursuant to Section 11(5) of Act XI of 1991 on Health Governance and Administration Activity

⁷⁴ Decision Reg. No. 42935- 3/2020/EÜIG

⁷⁵ Proposals for keeping contact with those living in specialised social care institutions (01 December 2020)

the institutions and those patients who possessed such cards could also leave the institutions).⁷⁶ The ban on visiting and leaving the institutions was fully withdrawn by the Chief Medical Officer on 25 May 2021,⁷⁷ by modifying the responsibilities defined for residential social care institutions as set out in Annex 2 of⁷⁸ the protocol issued by the National Public Health Centre on 31 March 2021. It became possible to leave the institutions without possessing immunity cards as well but in the case of an absence exceeding 72 hours, a rapid test had to be done on return, while personal visits to the institutions could only be paid in possession of immunity certificates (and also, with special protective measures as defined in the above proposals). These restrictions were withdrawn by the Chief Medical Officer in her decision dated on⁷⁹ 16 July 2021. In her decision on specialised social care institutions, the Chief Medical Officer ordered, with effect from 1 November 2021,⁸⁰ that, as long as the number of the infected residents exceeds 5% of the total number of patients in the institution in question, and isolation from the other patients and their visitors cannot be ensured, a temporary ban on visiting and leaving the institutions should come into effect. On 28 October 2021, the National Public Health Centre published a new protocol⁸¹ in a circular letter dated on 9 December 2021 sent to residential social care institutions and the heads of such institutions⁸², in which provisions were set out on the detailed rules applicable for the admission of patients to these institutions, as well as their discharge from them, or their return from hospital treatment.

In her decision, the Chief Medical Officer ordered a ban on visiting and leaving the child protection institutions⁸³ from 8 March to 7 April 2021, which she prolonged until 19 April.⁸⁴

The Ministry for Human Capacities issued a protocol that has governing effect for both specialised social care institutions and child protection institutions⁸⁵, in which, with a view to efficient protection from the epidemic, it made possible, among others, to define a 24-hour work schedule⁸⁶, derogation from the availability of physical conditions and the requirements of professional qualification, furthermore, it defined the epidemiological requirements to be kept during exceptional visits to the institutions and leaving the institutions, as well as other measures related to the state of danger.

The Chief Medical Officer repealed the visitation ban in social care institutions that provide specialised services ordered by decision No. 66340-2/2021/EÜIG by introducing her decision No. 15144-2/2022/EÜIG on 7 March 2022 and she established new rules for the wearing of masks. On the other hand, the rules of procedure issued on 28 October 2021 were repealed on 28 April 2022.⁸⁷

⁷⁶ Decision Reg. No. 25710- 1/2021/EÜIG

⁷⁷ Decision Reg. No. 25710- 2/2021/EÜIG

⁷⁸ Protocol Reg. No. 5561-51/2020/JIF on the new coronavirus identified in 2020 (applicable epidemiological and infection control rules) 31 March 2021 (Published in issue 22 of 2021 of the Official Notices annexed to the Hungarian Official Gazette)

⁷⁹ Decision Reg. No. 25710- 3/2021/EÜIG

⁸⁰ 66340-2/2021/EÜIG

⁸¹ Statement Reg. No. 61529-1/2021/JIF on the protocol issued by the Chief Medical Officer on the epidemiological and infection control rules related to the new coronavirus identified in 2020 (Published in issue 52 of 2021 of the Official Notices annexed to the Hungarian Official Gazette)

⁸² 67883-2/2021/JIF

⁸³ Decision Reg. No. 15717- 3/2021/EÜIG

⁸⁴ Decision Reg. No. 15717- 5/2021/EÜIG

⁸⁵ Protocol on the prevention of the spread of coronavirus and the mitigation of risks for specialised social care institutions, children's homes providing temporary care, child protection institutions, as well as reformatories

⁸⁶ The option to order 24-hour shifts was already offered in Act XCIX of 2021 (Section 102) on the transitional rules related to the state of danger, which came into effect by Act CXV of 2021 on 1 December 2021.

2 Staff members participating in performing tasks related to the NPM and the costs related to performing the tasks of the NPM

2. 1. Public servants in the Office of the Commissioner for Fundamental Rights

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

In the performance of his tasks, the NPM may act in person, or by way of the members of his staff authorised by him. Staff members authorised by the NPM shall have the investigative powers of the NPM⁸⁸, 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.⁸⁹

For performing the tasks of the NPM, at least eleven staff members of the public servants of the Office of the Commissioner for Fundamental Rights (hereinafter referred to as: the Office) should be authorised on a permanent basis. The “*authorised public servant staff members shall have outstanding theoretical knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience*”.⁹⁰ Among them, “*there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary and at least two persons each with a degree in law, medicine and psychology respectively. Among the authorized public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.*”⁹¹

The staff members of the Office permanently authorised to perform tasks related to the NPM⁹² carry out their activities within an independent organizational unit, the OPCAT National Preventive Mechanism Department⁹³ (hereinafter referred to as: the “Department”). In order to ensure a multidisciplinary approach, lawyers and psychologists took part in the visits paid by the NPM, while education specialists participated in the visits paid to child protection institutions. In the composition of the visiting delegations, the NPM also strove to ensure a gender balance.

2. 2. Costs related to performing the tasks of the NPM in 2022

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 2022 budget of the Office was planned in consideration of the financial

⁸⁸ 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 CFR Act.

⁸⁹ Section 39/D (1) of the CFR Act

⁹⁰ Section 39/D (3) of the CFR Act

⁹¹ Section 39/D (1) of the CFR Act

⁹² Sections 39/D (3) and (4) of the CFR Act

⁹³ SPT: *Guidelines on national preventive mechanisms* (Clause 32 of CAT/OP/12/5)

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

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.⁹⁴

Expenditure for 2022	Amount
Personal allowances	58,600,283
Contributions	7618037
Professional and administrative materials	1,126,537
IT and communication expenses	1259696
Services supporting professional activities	1374914
Delegation expenses*	136,292
Promotion, propaganda, international membership fees	719199
Maintenance and repair costs	2054413
Public utility fees	2,213,500
Operational services	6569621
VAT	3581827
Total in HUF**:	85,254,319

*Delegation expenses include a part of the travel and accommodation costs of the guests invited to the international event organised by the NPM in 2022 (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, and HUF **86,924,441** in 2021.

⁹⁴ SPT Visit to Hungary, 21–30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), in line with the recommendation set out in Clause 24. <https://www.ajbh.hu/documents/10180/1787026/CAT-OP-HUN-R2+HUN.pdf>

3 The NPM's cooperation with civil society organizations

Pursuant to Article 3 of OPCAT, the Commissioner for Fundamental Rights has to perform the tasks related to the NPM independently.⁹⁵ 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*”.⁹⁶

3. 1. The tasks of the Civil Consultative Body

The Civil Consultative Body (hereinafter referred to as: the CCB), whose members are various organizations registered and operating in Hungary, which supports the NPM, was set up in order to help the work of the NPM with its proposals and comments based on the members' outstanding practical and/or high-level theoretical knowledge relative to the treatment of persons deprived of their liberty. The CCB's mandate is for three years.⁹⁷

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

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

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

⁹⁵ Section 2 (6) of the CFR Act

⁹⁶ Section 2 (1) of the CFR Act

⁹⁷ Instruction No. 3/ 2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body as the organ supporting the performance of the tasks of the national preventive mechanism, Section 1 of the CFR Act

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; furthermore, it may participate in conferences, workshops, exhibitions, and other events organized by the NPM.⁹⁸

3. 2. The meetings of the CCB

The CCB held its meetings on 16 September 2022 and 16 December 2022. At the first meeting, the NPM reported on the role taken by the office in relation to war refugees and the continuation of COVID-focused inquiries, as well as the restoration of the system of unannounced visits by the NPM as the epidemic situation is changing. At the second meeting, the NPM reported that the Office had set up temporary offices in the Ukrainian-Hungarian border area and the NPM paid visits to places of detention located in the border region. The temporary office established in the BOK Sports Hall was also shown to the foreign colleagues.

In 2022, the Office opened regional offices in Miskolc, Debrecen, Szeged, Székesfehérvár, Győr and Pécs. The regional offices contribute to the fulfilment of the goal to bring people closer to the office and to allow them to receive direct help with their matters concerning fundamental rights. The CCB members proposed several places to be included in the visitation plan based both on the signals that they had received and their own experience.

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. The participants presented their experience and position on this question. In the wake of this fruitful meeting, the NPM is planning to organise further workshops on this topic, with a view to following the changes in the statutory environment and the legislative practices regarding these questions.

⁹⁸ Instruction No. 3/ 2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body as the organ supporting the performance of the tasks of the national preventive mechanism, Section 6

4 Register of domestic places of detention and the NPM's annual schedule of visits

4. 1. Register of places of detention

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

With reference to Section 20(a) of OPCAT, the NPM sent letters to the heads of the governmental organs concerned, requesting them to provide him with the data, as of 31 December 2021, of all places of detention as defined in Article 4 of OPCAT.⁹⁹ All the requested organs complied with his data request.

The aggregate list of places of detention under Hungarian jurisdiction

as of 31 December 2021, 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 institutions ¹⁰⁰	1,179	79952	72023
Child protection services	800 ¹⁰¹	28,861 ¹⁰²	21,044 ¹⁰³
Juvenile correctional institutions	5	564	212
Unaccompanied minors	1	No data available	13
Total in child protection	806	29425	21269
Penitentiary institutions	39	18,713 ¹⁰⁴	18,175
Medical institutions of the penitentiary system	2	505	433
Total in penitentiary system	41	19218	18608
Healthcare	108	18036	8106
Police	618	2630	232 ¹⁰⁵
Guarded refugee reception centres	1	105	2 ¹⁰⁶

⁹⁹ The letters requesting data provision are registered under file number AJB-590/2022 in the Office.

¹⁰⁰ Without institutions providing temporary, day and night care for the homeless, and other institutions providing only day care.

¹⁰¹ Exclusive of the homes of foster parents.

¹⁰² Exclusive of the places reserved for those receiving follow-up care, and of external places.

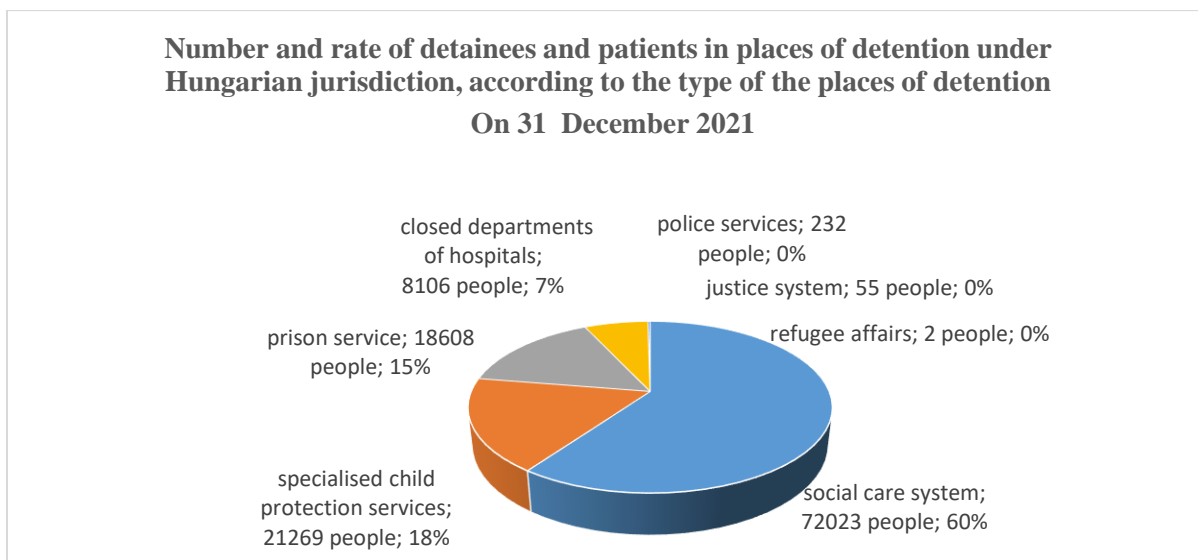
¹⁰³ The number of minors receiving care from child protection services (exclusive of those receiving aftercare).

¹⁰⁴ The capacity extension project that was launched in the previous year resumed during this year, as part of which another 1,311 places were established.

¹⁰⁵ In 2021, altogether 99,640 persons were held in places of detention operated by the police, of whom 13,259 were women, 5,789 were minors and 12,805 were foreign nationals.

¹⁰⁶ In 2021, there were 3 asylum-seekers and 25 persons under the Dublin procedure (pursuant to Section 31/A (1) (a) of the Asylum Act ('Met')) in a guarded refugee reception centre for an average 43 days.

Judiciary	149	335	55¹⁰⁷
Aggregated data	2901	149701	120295



According to the data provided to him, on **31 December 2021**, in the **2901** places of detention under Hungarian jurisdiction with a total capacity of **149,701** detainees, there were **120,295** persons detained.

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.

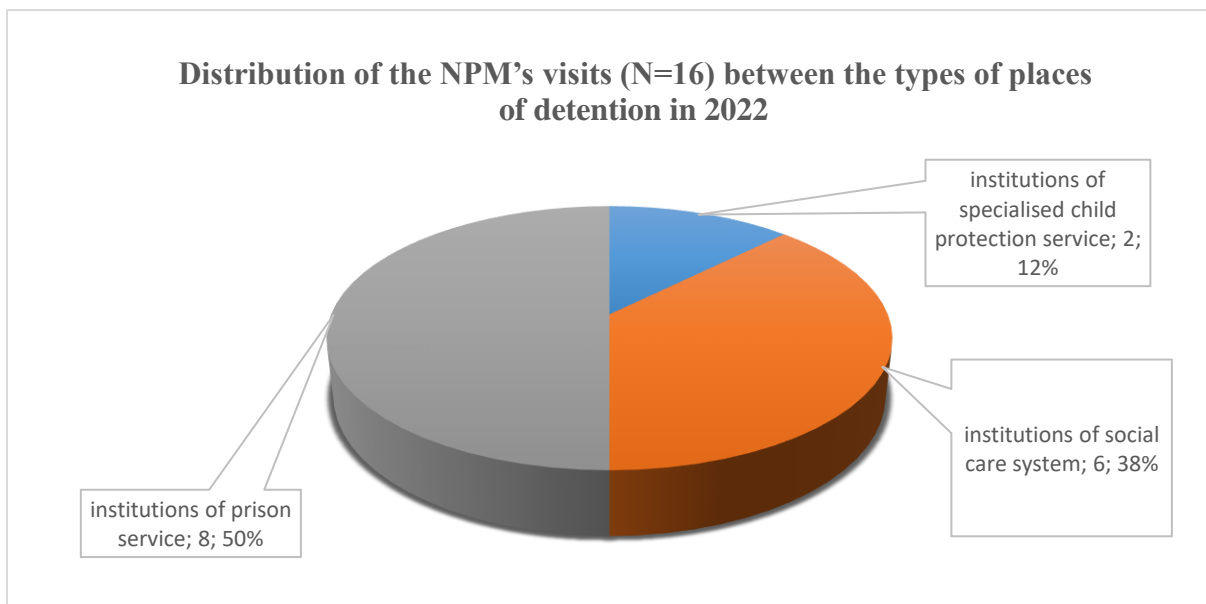
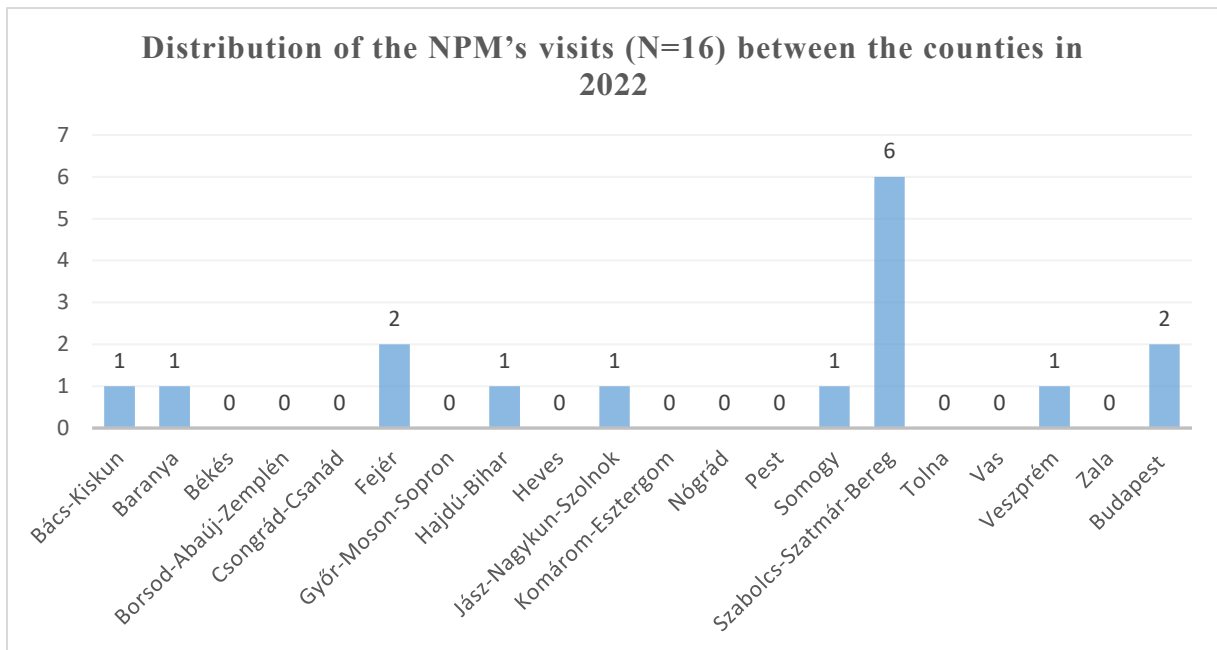
Figures relative to the child contain the data of adolescent and adult psychiatric and addictology; as well as gerontology and infectology wards of the hospitals, including Covid wards.

4. 2. Places to visit selected by the NPM

In selecting the places to be visited, the NPM took it into account in 2022 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.

¹⁰⁷ In 2021, based on the data provided by the National Office for the Judiciary (OBH), there were altogether 4,114 detainees who were held in the custodial units of the courts.



4. 3. The 2022 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 2022 schedule of its visits. The schedule of visits was compiled by taking the CCB's proposals into account.

The NPM pursued his 2022 activities based on his schedule of visits and the proposals made by the CCB during the year as well.

5 The NPM's visits

In order to perform his tasks related to the NPM, the Commissioner for Fundamental Rights has to regularly examine the treatment of persons deprived of their liberty and held at various places of detention specified in Article 4 of OPCAT also in the absence of any petition or alleged impropriety.¹⁰⁸

In 2022, the NPM inspected **4069** detention units in **16** 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 2022

Serial number	Date of the visit	Name of the place of detention	At the time of the visit:		
			Authorized capacity (persons)	Utilization rate %	Number of detainees (heads)
1	02-03/03/2022	Rákospalota Reformatory Institute and Central Special Children's Home	70	70	59
2	10/03/2022	Bereg-Nyírség Integrated Social Care Association, Home for the Elderly (Lónya)	20	105	21
3	10/03/2022	Vásárosnamény Human Services Centre, Home for the Elderly	26	100	26
4	10/03/2022	Baktalórántháza Micro-regional Social Care Centre, Home for the Elderly	32	116	37
5	23/03/2022	Veszprém County Remand Prison	523	98.49	531
6	24/03/2022	Szabolcs-Szatmár-Bereg County Viktória Integrated Social Care Institutions, Nursing and Residential Care Home, Mándok	90	98.89	89
7	30/03/2022	Szabolcs-Szatmár-Bereg County Child Protection Centre, Children's Home, Mátészalka	112	41.97	47
8	05/04/2022	Szabolcs-Szatmár-Bereg County Viktória Integrated Social Care Institutions, Nursing and Residential Care Home, Fülöpösdaróc	50	112	56
9	17/05/2022	Kiskunhalas National Prison (follow-up inquiry)	889	98.2	873
10	30/05/2022	Reménysugár Habilitation Institute (Budapest)	116	100	116
11	19-20/10/2022	Hungarian Prison Health Centre and Gróf Tisza István Hospital (Berettyóújfalu)	194	88.66	172

¹⁰⁸ Section 39/B (1) of the CFR Act

12	16/11/2022	Székesfehérvár Facility of the Central Transdanubian National Prison	127	112.6	143
13	17/11/2022	National Prison of Pálhalma (Pálhalma and Mélykút)	1372	100.5	1379
14	01/12/2022	Jász-Nagykun-Szolnok County Remand Prison (Szolnok)	130	115.38	145
15	07/12/2022	Somogy County Remand Prison (Kaposvár)	134	110.44	148
16	15/12/2022	Baranya County Remand Prison (Pécs)	184	111.96	206
Aggregated data		Number of inspected places: 16	4069		

It is clear from the table that 8 of the institutions visited in 2022 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.¹⁰⁹

As a general rule, the staff members of the NPM 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.

¹⁰⁹ SPT: *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives* (26 February 2009), (Clause 5 of CAT/OP/MDV/1)

6. Focal points of the NPM's visits

To prevent ill-treatment, each State Party “shall keep under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction”.¹¹⁰

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.¹¹¹ “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”.¹¹²

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

6. 1. Focal points of general visits

6/1/1 Admission

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

¹¹⁰ See Article 11 of the UN Convention against Torture.

¹¹¹ 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)

¹¹² See: SPT: *First annual report* (Clause 12 of CAT/C/40/2)

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.¹¹³

6/1/2 Material conditions of detention

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

6/1/3 Vulnerable groups

In all his activities, thus also during the performance of his tasks as National Preventive Mechanism, the Commissioner for Fundamental Rights has to pay special attention to protecting the rights of children, nationalities living in Hungary, other most vulnerable groups of society, and persons living with disabilities, as well as to facilitating, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities.¹¹⁴

The definition of the term “torture”, as set out in Article 1 of the United Nations Convention Against Torture, means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person “*for any reason based on discrimination of any kind*”. In its General Comment, the Committee points out that states parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, age, religious belief or affiliation, gender, sexual orientation, transgender identity, health status, mental or other disability, political opinion, nationality, etc.¹¹⁵

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

6/1/4 Medical care

In Hungary, “*everyone shall have the right to physical and mental health*”.¹¹⁶ 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*”¹¹⁷

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

¹¹³ CAT *General Comment No. 2* Clause 13 of CAT/C/GC/2

¹¹⁴ Sections 1 (2) and (3) of the CFR Act

¹¹⁵ CAT *General Comment No. 2* Clause 21 of CAT/C/GC/2

¹¹⁶ Article XX (1) of the Fundamental Law of Hungary

¹¹⁷ Section 7 (1) of Act CLIV of 1997 on Health

the medical, nursing, and technical staff thereof should also meet the aforementioned requirements.

6/1/5 Nutrition

A proper diet is an immanent element of the detainees' right to health, guaranteed by Article XX of the Fundamental Law of Hungary. Unhealthy diets, 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.¹¹⁸ 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.

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.

¹¹⁸ <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/nutrition>

*“Mixed-gender staffing is another safeguard against ill-treatment in places of detention.”*¹¹⁹ 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 gender¹²⁰, 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-treatment¹²¹, 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”*.¹²²

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.¹²³

The visiting delegations gather information as to whether the detainees have received adequate information about the possibility and manner of submitting their complaints. The NPM pays particular attention to ensuring the right to complain for illiterate or non-Hungarian speaking detainees as well as for those with limited communicative skills due to their age or some kind of disability. The NPM examines whether the complaint mechanism available for such detainees and their relatives is suitable for effectively counterbalancing the drawbacks resulting from their limited communicative skills. In consideration of the vulnerable situation of persons

¹¹⁹ Clause 26 of the 9th General Report on the CPT’s activities [CPT/Inf (99) 12]

¹²⁰ Clause 23 of the 10th General Report on the CPT’s activities [CPT/Inf (2000) 13].

¹²¹ See also Articles 10 and 16 of the UN Convention against Torture.

¹²² Article XXV of the Fundamental Law of Hungary

¹²³ See also Articles 13 and 16 of the UN Convention against Torture.

living in institutional care and in particular, of their concerns regarding any potential retaliations, it is a basic requirement set by the NPM that the complaint mechanism available at the individual places of detention should also ensure the conditions for submitting anonymous petitions.

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

6. 2. Special types of visits

6.2.1. Visits focusing on the situation of persons fleeing the armed conflict in Ukraine

With regard to the Russia-Ukrainian war conflict, pursuant to Section 2 of Government Decree No. 56/2022 (II. 24.), the Government recognized the Ukrainian nationals, as well as third country nationals lawfully staying on the territory of Ukraine as persons entitled to receive temporary protection with effect from 24 February 2022 based on Section 19 b) of Act LXXX of 2007 on Asylum. In addition to these refugees, a high number of Hungarian citizens living in Ukraine also fled to Hungary. As a result of the high number of persons fleeing the conflict, the social welfare system of the border regions is under high pressure.

The main goal of the visits is to examine how the placement conditions and treatment of the persons residing at the institutions are affected by the war situation. Due to the war situation, these visits were announced in advance.

6.2.2 Follow-up visit

The follow-up visit is part of the NPM's activities aimed at preventing the ill-treatment of persons deprived of their liberty. The primary objective of the follow-up visit is to get information about the measures aimed at the implementation of the NPM's recommendations.¹²⁴ A further objective is to encourage the personnel of the places of detention and the authorities to implement the NPM's recommendations.¹²⁵ 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 2022, the NPM paid a follow-up visit to the Kiskunhalas National Remand Prison. The purpose of the visit was to review the implementation of the recommendations made in the report on his visit paid on 16 April 2020, as well as to control the implementation of the measures related to the prevention of the coronavirus infection (COVID19) and the handling of the pandemic situation at the institution. Special attention was paid to the measures aimed at preventing the spread of the pandemic, ensuring adequate protective equipment and personal hygiene for the personnel and the detainees, providing health care and psychological services for the personnel and the detainees, defining the circumstances of allowing the reception of

¹²⁴ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 33 of CAT/OP/1/Rev.1).

¹²⁵ 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

visitors again, determining the measures applied for the prevention of the infection during personal visits, as well as ensuring alternative ways of communication (on the phone, via Skype, through correspondence).

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”*.¹²⁶ In addition to indicating the location of the visit, the cover of the reports also states that the report is published by the Commissioner for Fundamental Rights while performing his tasks related to the NPM and not as part of his general fundamental rights protection activities.

7. 1. Preparation of the report

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

The Commissioner for Fundamental Rights, *“in the course of his proceedings, may process – to the extent necessary for those proceedings – all those personal data and data qualifying as secrets protected by an Act or as secrets restricted to the exercise of a profession which are related to the inquiry or the processing of which is necessary for the successful conduct of the proceedings”*.¹²⁷

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 are not public”*,¹²⁸ 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*

¹²⁶ Section 28 (1) of the CFR Act

¹²⁷ Section 27 (1) of the CFR Act

¹²⁸ Section 27 (3) of the CFR Act

*national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way”.*¹²⁹

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 his findings and measures.¹³⁰ The head of the visiting delegation drafts the report using the partial reports prepared by the members of the visiting delegation and the opinions of the external experts. The application of the method of triangulation, i.e. cross-checking information (allegations), provided by various persons, as well as documents, facilitates objectivity.¹³¹

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.¹³² 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.¹³³

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*”. The UN Convention against Torture does not give a definition of “*other acts*” of ill-treatment which do not qualify as torture as defined in Article 1. The prohibition of “*other acts*” compels the national preventive mechanism to take action against various types of treatment that fall outside the concept of torture but cause suffering to the persons deprived of their liberty.

The experience gathered from the visits shows that, in the case of detainees, enduring not only treatment and/or placement conditions violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment but also, treatment and/or placement conditions resulting in an impropriety related to 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 all¹³⁴, 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.

¹²⁹ Article 21(1) of OPCAT

¹³⁰ See Section 32(1) of Instruction No. 3/2015 (XI. 30.) of the Commissioner for Fundamental Rights on the Professional Rules and Methods of the Inquiries Conducted by the Commissioner for Fundamental Rights (hereinafter referred to as: CFR Instruction).

¹³¹ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 26 of CAT/OP/1/Rev.1)

¹³² Section 33 (1) of CFR Instruction No. 3/2015 (XI. 30.)

¹³³ See Article 11 of the UN Convention against Torture in this context.

¹³⁴ Preamble of OPCAT

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 Disabilities¹³⁵, 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.¹³⁶

7. 5. Measures taken by the NPM

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

This part of the report shall detail those measures that are necessary for remedying fundamental-rights-related improprieties related to the treatment and placement of the detainees, as well as for eliminating circumstances threatening the enforcement of fundamental rights.¹³⁷ In every case, the provision of the CFR Act giving grounds to a particular measure has to be indicated.¹³⁸

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.¹³⁹ The measures with different addressees and the different measures to the same addressee must be clearly separated.¹⁴⁰

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.¹⁴¹ If the authority subject to inquiry does not agree with the initiative, it shall, within thirty days of receipt of the

¹³⁵ See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated into law by Act XCII of 2007

¹³⁶ See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 30 of CAT/OP/1/Rev.1).

¹³⁷ Section 34 (1) of CFR Instruction No. 3/2015. (XI. 30.)

¹³⁸ Section 34 (1) of CFR Instruction No. 3/2015. (XI. 30.)

¹³⁹ Section 34 (2) (XI. 30.)

¹⁴⁰ Section 34 (1) of CFR Instruction No. 3/2015. (XI. 30.)

¹⁴¹ Sections 32 (1) and (2) of the CFR Act

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.¹⁴² The addressees of the 34 recommendations formulated in the reports published by the NPM in 2022 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.¹⁴³ If there is no supervisory organ, the NPM makes a recommendation to the authority inspected.¹⁴⁴ The addressees of the 8 recommendations formulated in the reports on the NPM's visits published in 2022 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.¹⁴⁵ The NPM did not exercise this power in 2022.

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.¹⁴⁶ The NPM did not exercise this power in 2022.

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.¹⁴⁷ The NPM made 4 legislative initiatives in 2022.

¹⁴² Sections 32 (1) and (2) of the CFR Act

¹⁴³ Section 31 (1) of the CFR Act

¹⁴⁴ Section 31 (4) of the CFR Act

¹⁴⁵ Section 33 (1) of the CFR Act

¹⁴⁶ Section 36 of the CFR Act

¹⁴⁷ Section 37 of the CFR Act

The NPM's reports published in 2022, including the number of measures taken

Number	Name of the place of detention	Measures			
		total number	addressees		
			institution subject to inquiry ¹⁴⁸	supervisory organ ¹⁴⁹	law-making ¹⁵⁰
1	Fonyód Police Department	2	2	-	-
2	Tata Police Department	4	4	-	-
3	Children's homes operating at the seat of the Child Protection Centre and Regional Child Protection Service of Jász-Nagykun-Szolnok County	7	5	2	-
4	Zala County Szivárvány Integrated Care Centre, Napsugár Home (Pölöskefő)	12	8	3	1
5	Children's home of the Child Protection Centre of Szabolcs-Szatmár-Bereg County (Mátészalka)	8	5	2	1
6	Baranya County Remand Prison	5	4	-	1
7	Hajdú-Bihar County Remand Prison	3	3	-	-
8	Szabolcs-Szatmár-Bereg County Viktória Integrated Social Care Institution, Nursing and Residential Care Home (Mándok and Fülöpösdaróc), Supported Housing Unit No. 6, Fülöpösdaróc	4	3	1	-
Total		45	34	8	3

7. 6. Publishing the NPM's reports

“The reports of the Commissioner for Fundamental Rights shall be public. Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession.”¹⁵¹

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.¹⁵² 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 public¹⁵³ as well.¹⁵⁴ The NPM's reports shall also be published in the electronic archives within 30 days of their disclosure.¹⁵⁵

¹⁴⁸ Section 32 (1) of the CFR Act

¹⁴⁹ Section 31 (1) of the CFR Act

¹⁵⁰ Section 37 of the CFR Act

¹⁵¹ Section 28 (2) of the CFR Act

¹⁵² Section 39 (1) of CFR Instruction No. 3/2015. (XI. 30.)

¹⁵³ Section 39 (1) of CFR Instruction No. 3/2015. (XI. 30.)

¹⁵⁴ <https://www.ajbh.hu/hu/opcat-jelentesek>

¹⁵⁵ Section 39 (3) (XI. 30.)

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

8. 1. Detainees in penal institutions

In 2022, the NPM issued reports on visiting 2 penal institutions (the Baranya County Remand Prison¹⁵⁶ and the Hajdú-Bihar County Remand Prison¹⁵⁷).

In 2022, the focus of the visits to penitentiary institutions remained the prevention of the coronavirus epidemic, as well as the control of the measures taken to avert the consequences of the pandemic, and the examination of how the restrictions that had been implemented affected the everyday lives of the detainees and what measures were taken to compensate for these effects.

8.1.1 Findings of the visit to the Baranya County Remand Prison

The NPM paid a visit to the Baranya County Remand Prison on 26 January 2021 (hereinafter referred to as the Institution in Section 8.1.1.). On the day of the visit, there were 159 detainees at the Institution, the occupancy rate was 89%.

Previously, it was possible to place young offenders at the Institution but at the time of the visit, the Institution no longer accepted juvenile offenders. It caused an impropriety with regard to the requirement of legal certainty arising from the principle of the rule of law that several laws still permitted this.

At the time of the visit, a total of 8 detainees and 23 staff members were infected with the coronavirus. The Institution had its own action plan for the execution of the tasks related to the coronavirus pandemic, which it fully realized. The Institution had an adequate number of protective equipment, the prison units and the cells were regularly cleaned and the furnishings were regularly disinfected.

The detainees reported that hot water had not always been available at the Institution and the grates of some of the cells were very thick, this is why there was little natural light in the cells. At the time of the visit, some cells in a poor condition were found, where the walls of the toilet were isolated from the rest of the cell by using strand board sheets, the walls of the cells were dirty but at the time of the visit, there were no detainees in such cells. The governor of the institution informed the NPM of the ongoing cell refurbishment efforts.

As part of the inmate labour program, the detainees had the chance to work in the prison units, at the warehouse of the Institution, in the in-house workshop and in the kitchen. At the Institution, secondary school training and various vocational and professional training courses were available.

Several detainees complained of the poor choice and high prices of the prison canteen. Several of them experienced that products almost past their sell-by-date were sold to them at full price. After the short expiry of the products, the prison guards had them dumped. The detainees felt that it was degrading to have bought the products almost past their sell-by-date at full price and then having had to dump them.

The majority of the detainees used the Skype communication option for keeping contact with their relatives. However, many detainees felt that this way of communication could not replace the personal reception of visitors.

¹⁵⁶ NPM Report No. AJB-443/2022.

¹⁵⁷ NPM Report No. AJB-464/2022.



Thick-grate window in a cell at the Baranya County Remand Prison

8.1.2 Findings of the visit to the Hajdú-Bihar County Remand Prison

The NPM paid a visit to the Hajdú-Bihar County Remand Prison on 14 July 2021 (hereinafter referred to as the Institution in Section 8.1.1.). On the day of the visit, there were 173 detainees at the Institution with a capacity of 182 (157 men and 16 women), of whom 12 were foreign nationals. The occupancy rate of the Institution was 95%.

At the time of the NPM's visit, there were no persons infected with the coronavirus at the Institution. The first COVID vaccination was administered to 173 detainees and 74 staff members. The second vaccination was received by 118 detainees and 71 staff members. The detainees could choose between the types of vaccinations.¹⁵⁸

The detainees had to wear masks outside the cells and this obligation was also imposed on the personnel who were in direct contact with the detainees. During the period of the pandemic, those detainees over 65 who had chronic diseases were isolated from the others.

Phone call time was increased by the Institution by 15 minutes for every detainee. Those detainees who had no prison accounts could use the phone for a monthly 3x5 minutes, at the Institution's costs.

At the time of the visit, several development projects were in progress at the Institution, among others, the duty stations of the reintegration officers and the line officers were refurbished in the context of the development programme. The refurbishment jobs were done by the detainees employed at the Institution's in-house workshop.

The detainees were placed in 1-11 capacity cells. The NPM concluded that the size of the cells was in compliance with the statutory requirements. The interviewed detainees did not voice any complaints on the way they were treated by the guards.

According to the statement of the National Headquarters of the Hungarian Prison Service, the vaccination of the detainees against Covid-19 began on 28 April 2021.¹⁵⁸ (Source: <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/4131>)

In some of the inspected cells, the tap knob and the spout were missing. The lack of the spout was remedied by a detainee by using a plastic bag to avoid that everything around the tap became wet.



Cell in the Hajdú-Bihar County Remand Prison

From 1 July 2021, the detainees could receive visitors again. In July 2021, 6 detainees, while in August 2021, 8 of them requested to receive visitors. Those detainees who received visitors could initiate Skype calls twice a month (rather than four times a month). The duration of receiving visitors was 30 minutes.

As reported by the management of the Institution, the detainees preferred Skype contact to the reception of visitors. According to the majority of the interviewed detainees, Skype was the better mode of keeping contact but there were some who preferred the personal reception of visitors.

A female detainee complained that they could only take part in very few activities. Their situation was made more difficult by that, due to the renovation works going on at the Institution, the working male detainees had to be separated from the female detainees and this is why moving the female detainees required even more organising. Due to all this, the female detainees could attend fewer activities, which jeopardised the enforcement of the requirement of equal treatment.

Primary health care services were available at the Institution every day, while the dentist received the patients twice a week. There was one psychologist at the Institution, who could be consulted by the detainees from Monday to Friday. Group activities were suspended because of COVID-19.

8. 2. Police custody

In 2022, the NPM issued COVID-specific reports on the visits to the Fonyód Police Department, as well as the Tata Police Department¹⁵⁹.

The purpose of the visits was to control the measures taken in order to prevent and avert the consequences of the human epidemic causing mass infections endangering the safety of life and property (hereinafter referred to as: the pandemic), furthermore, to examine how the

¹⁵⁹ NPM Report No. AJB-1109/2022.

restrictions arising from the state of epidemiological preparedness affected the rights of police detainees.

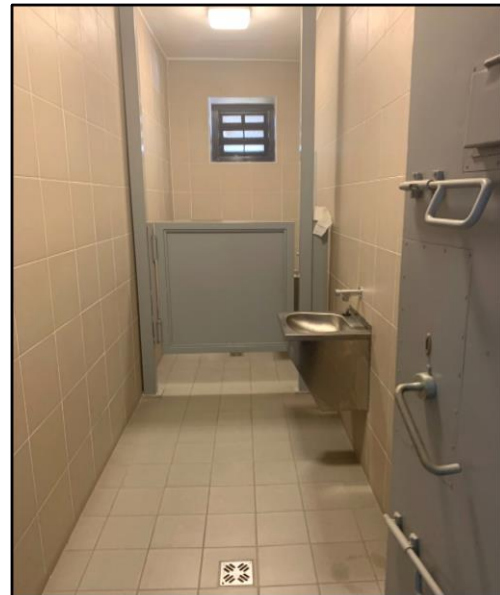
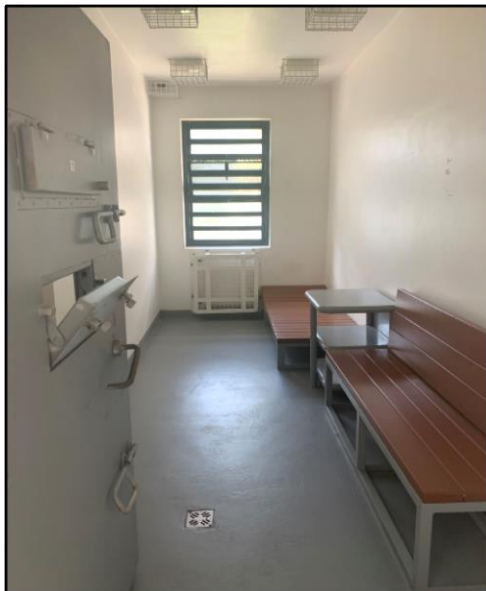
According to the information provided by the heads of both police departments, the earlier level of protection readiness was maintained after the ordering of the state of epidemiological preparedness as well.

1.2.8. Findings of the visit to the Fonyód Police Department

The members of the visiting group inspected the custody unit and the offices of the Fonyód Police Department (hereinafter referred to as the Facility in Section 8.2.1.) and they conducted interviews with 3 members and the head of the staff.

Protection against the coronavirus was ensured by the sensory hand sanitizer placed at the entrance to the Facility, as well as an entry regime ensuring the mandatory taking of body temperature, as well as the control of wearing face masks. The hygienic condition of the toilet and bathroom, as well as shower established for the detainees was adequate, and individual protective equipment and disinfectants were available in the trunk of the police car.

There were no detainees in the building at the time of the visit. During the police measures taken after the ordering of the state of danger, the police took no persons suspected to be infected with coronavirus to the Facility. The NPM concluded that, in response to the to the pandemic situation, the management of the Police Department satisfied the requirements aimed at the protection of both the detainees and the staff in the facilities affected by the execution of police apprehension, and adequately ensured the conditions that guaranteed the enforcement of the detainees' rights even under the circumstances of the health crisis. However, the NPM established circumstances suggesting an impropriety related to fundamental rights, with regard to the medical examination of the detainees.



Custody unit at the Fonyód Police Department and bathroom set up for the detainees in the custody unit

8.2.2 Findings of the visit to the Tata Police Department

The members of the visiting group inspected the custody unit and the offices of the Tata Police Department (hereinafter referred to as the Police Department in Section 8.2.2.) and they conducted interviews with 3 members and the head of the staff.

A sensory hand sanitiser was set up at the entrance to the Department, personal protective equipment and sanitising devices were placed in the boot of the service car, which was in sync with the requirements set out in the Rules of Procedure on the health preservation and public health police tasks issued by the National Police Headquarters for the senior officials of the police force, serving as professional guidelines. The hygienic condition of the bathroom set up for the detainees was adequate.

There were no detainees in the building at the time of the visit. During the police measures taken after the ordering of the state of danger, the police took no persons suspected to be infected with coronavirus to the Police Department. Responding to the challenges posed by the pandemic situation, the management of the police department met the requirements aimed at ensuring the safety of both the detainees and the personnel in the premises affected by the execution of police apprehension, and ensured the conditions required for the enforcement of the rights of the arrested persons even amidst the circumstances of the health crisis. The NPM established a circumstance suggesting an impropriety with regard to a fundamental right related to the unsuitable furnishings of the custody unit and the medical examination of the arrested persons but no deficiencies were found in relation to the hygienic condition of the premises used by the arrested persons and the level of their equipment.

The visiting group voiced their concerns about the administration of measures restricting personal freedom and the condition and size of the changing rooms of the personnel and the possibility to wear civilised clothing.



Custody unit and sensory hand sanitizer at the entrance to the police station

8. 3. Residents of social care institutions

8.3.1 Findings of the inquiry conducted at the Napsugár Home of the Zala County Szivárvány Integrated Care Centre (Pölöskefő)

The staff of the Commissioner for Fundamental Rights performing the tasks of the NPM paid an unannounced visit to the Napsugár Home of the Zala County Szivárvány Integrated Care Centre on 23 November 2021 at the proposal of the Civil Consultative Body¹⁶⁰ (hereinafter referred to as the Home in Section 8.3.1.). With regard to the fact that all the residents of the Home were under guardianship, in addition to exploring the conditions and circumstances of the institution, the investigation also focused on the safeguards of the guardianship procedure.

At the time of the visit, 31 persons under partial or plenary guardianship lived in the Home. In the report, the NPM requested the Minister of the Interior to issue guidelines, in cooperation with the Minister of the Prime Minister's Office, to the Budapest and country government offices on that the expert evidence procedure requested in the applications submitted in the guardianship cases should only refer to questions that require medical expertise, and at the same time, they should draw attention to that the appointment of a personal assistant at request may also provide support to the person who needs help with the administration of their matters and the making of their decisions, as an alternative to placing them under guardianship.

Some of the rooms could be called cosy, there were soft stuffed animals on the beds and personal objects on the shelves, and there were several rooms decorated with Christmas trees as well. The Home had no rooms where couples could be placed, nor was there a conjugal room. According to the information received from the head of the Institution, a renovation effort at the Home is planned for 2022, there will be a partition wall in the community room, so that there were two common rooms, and lofts will be set up in the premises with high ceilings. The number of bathrooms and sanitary units was in compliance with that required by the provisions set out in Section 41(4) b) of the SZCSM (Ministry of Social and Family Affairs) decree but they were in a run-down condition. According to the information provided by the head of the Institution, the renovation of the sanitary rooms will be realized in the context of the planned refurbishment.



Rooms in the Home

¹⁶⁰ NPM Report No. AJB-2300/2022.

The number of carers and nurses (11) was under the professional headcount norm (11.7) calculated on the basis of Annex 2 to the SZCSM (Ministry of Social and Family Affairs) decree, as 6 of the 31 residents had severe and multiple disabilities. The conclusion drawn by the visiting group was that the majority of the work time of the carers and nurses was spent caring for a man with autism spectrum disorder. This is why the NPM proposed that one more professional expert specialising in the care for persons with autism spectrum disorder possibly be hired, and also, that the Institution provide further training courses on this topic to the carers and nurses. With regard to the long-term absence of the therapeutic expert, the NPM proposed that another therapeutic expert be hired as a replacement (even for a definite term) in the Home. In her response, the head of the Institution informed the NPM that she had taken care of the replacement of the colleague who was absent, and she had increased the headcount of carers and nurses to 13. As regards the increase of the professional knowledge of the staff of the Home, she did so in the form of a further training course by entering into a mandate agreement with an expert on the development of residents with autism spectrum disorder.

The lack of regular, daily individual and group activities for the residents has caused an



impropriety with regard to the residents' right to human dignity, as well as to mental and physical health. The NPM asked the head of the Home to ensure diverse daily activities for the residents in the form of organised programmes. According to the information received from the operator, they endeavour to organise events and outings, while the daily activities will be provided by the new therapeutic expert.

At the time of the visit, the visiting group saw no complaints box in the Home, so the residents or their relatives could not make anonymous complaints on the conditions in the institution. In their response, the operator and the head of the Institution informed the NPM that the complaints box had been set up.

Drawing of a resident of Napsugár Home

8.3.2 Findings of the visit paid to the Nursing and Residential Care Home of the Szabolcs-Szatmár-Bereg County Viktória Integrated Social Care Institution (Mándok and Fülöpösdaróc), as well as the Supported Housing Unit No. 6, Fülöpösdaróc

On 24 March 2022, the staff members of the Office of the Commissioner for Fundamental Rights of Hungary, responsible for performing the tasks of the OPCAT National Preventive Mechanism (NPM), paid a visit to the Mándok Residential Care Home (hereinafter referred to as the Mándok Home) of the Viktória Integrated Social Care Institution of Szabolcs-Szatmár-Bereg County (hereinafter referred to as the Institution in Section 8.3.2.), and on 5 April 2022, to the Fülöpösdaróc Residential Care Home (hereinafter referred to as the Fülöpösdaróc Home), as well as to Supported Housing Unit No. 6 of the Institution in Fülöpösdaróc, (hereinafter referred to as the Supported Housing Unit).¹⁶¹

The visits of the NPM to the institutions situated near the Ukrainian–Hungarian border had a special focus, as they primarily examined, similarly to the Mátészalka report discussed in Sub-chapter 5.1.3., the way in which these institutions contribute to the care and eventually the

¹⁶¹ NPM Report No. AJB-1667/2022.

placement of the people fleeing to Hungary from the Russian-Ukrainian war, and also, what influence this may exert on the circumstances of the residents living in the institutions. Another focus of the visits was to inspect, with regard to the coronavirus epidemic, whether the protection of the residents against the infection was ensured.

At the time of the visit, in Mándok, 77 residents lived in the residential care home, and 12 residents lived in the group home. 36 persons of the residential care home and 4 residents of the group home lived with psychosocial disability. Out of those with disabilities, 8 residents lived with autism spectrum disorder, one of whom lived in the group home. In the 50-capacity Home of Fülöpösdaróc, 56 elderly residents lived at the time of the visit, of whom 38 residents moved in in 2021. Out of the residents, 52 persons lived with dementia, 4 had average needs. In February 2021, 60 residents could move out from the Fülöpösdaróc Home to supported living homes, i.e. to 5 supported housing units with 12 beds each. Supported Housing Unit No. 6 in Fülöpösdaróc had 12 residents.

The NPM established that most of the residents of the Supported Housing Unit did not have the right to vote, which was not in conformity with Article 29 of the CRPD, ensuring participation of persons with disabilities in political and public life. The report of the NPM stated that the residents should be supported in all possible ways in getting back their right to vote in the judicial procedure of reviewing their guardianship, or in initiating a process to terminate their guardianship. In the case of the residents living in the supported housing units, the termination of guardianship, or the replacement of guardianship by supported decision-making, which has no impact on their legal capacity, could be justified.

Regarding the material conditions in the Home of Mándok, the statutory minimum living space of six square meters per person in a room as defined in Note a), Section 41(4) of the SZCSM (Ministry of Social and Family Affairs) decree was not provided, and also, the investigation concluded that the requirement set out in Section 42(1) of the same decree, i.e. that a maximum of 4 residents can be placed in one room, was not met either. In relation to the personal requirements, the report pointed to the fact that the personnel of the Mándok Home, who perform a highly responsible and demanding job, should be supported by supervision as well.

The Fülöpösdaróc Home received the refugees in the old, separate castle building. In this building, there were no more in-patient residents. At the time of the visit, a family of 3 (parents with their young child) lived in this building. On the day of the visit, the Home expected the arrival of another 25 refugees, out of whom 15 persons lived with disability. There was a child living with autism, people using a wheelchair, and elderly people living with dementia. According to the reports of the management, the rooms will be distributed after the arrival of the families, by taking into account, if possible, that the families should be kept together. In some rooms, there were wardrobes, tables and sinks as well. For ensuring the safe placement of those who have movement disorders, the Home provided 10 pine beds with mattresses and a special hospital bed besides the camp beds. There were mattresses in the beds too. For babies and young children, baby carriages were available. The refugees were placed separately from the residents of the Home, the personnel could not ensure their supervision, as they were providing care for the elderly residents of the Home in round-the-clock service. In case any problems occurred (e.g. a young child had fever in a refugee group staying here earlier), the refugees could turn to the personnel in the Home with their problems, and the personnel helped them.

The Covid-19 cases that occurred during the epidemic were isolated both in the home of Mándok and of Fülöpösdaróc, and the residents received the vaccination. The health care services necessary for the residents were also ensured during the epidemic.

Study and employment opportunities for the children and the residents were supported in the visited homes.

During the period of the epidemic, when the personal visits were prohibited, the residents could contact their relatives via phone or video calls, or they spoke with them through the fence. After the ban on visitation had been lifted, they could already receive visitors in person, by taking the necessary precautions.



The old castle building ensuring the placement of fleeing persons and the beds in the Nursing and Residential Care Home of the Szabolcs-Szatmár-Bereg County Viktória Integrated Social Care Institution in Fülöpösdaróc

8. 4. Residents living in child protection institutions

8.4.1. AJB-1106/2022 - Findings of the inquiry conducted at the children's homes operating at the seat of the Jász-Nagykun-Szolnok Centre for Child Protection and Regional Child Protection Service

The Commissioner for Fundamental Rights performing the tasks of the National Preventive Mechanism and two of his staff members paid a visit to the central children's home operating at the seat of the Jász-Nagykun-Szolnok Centre for Child Protection and Regional Child Protection Service on 4 June 2020. The purpose of the visit was to control the measures taken to prevent the spread of the COVID-19 infection and to examine what changes have been generated by the ordered restrictions, such as the ban on visitation and leaving the institution, and how they affected the children in state care.

During the on-site visit, the members of the visiting group inspected the temporary, special and specific needs children's homes, wearing protective equipment, they conducted interviews with the children and staff who were there at the time.

With a view to preventing infection in the pandemic situation, it was ordered that special attention should be paid to hygiene at the centre and at all the sites of the institution, which included the observance of the rules of hand hygiene, as well as the 2-hourly disinfection of door handles and switches. Non-contact automatic dispensers for disinfectants were placed at every entrance.

At the special children's home, the lack of qualifications, as well as non-compliance with the headcount norm stipulated in Annex I of NM (Ministry of Welfare) decree No. 15/1998 (IV.30.) caused an impropriety with regard to the right of every child to protection and care ensured by Section XVI(1) of the Fundamental Law of Hungary.

The extra work done due to substitution, the long-term, significant amount of extra hours put in by the staff members may affect the treatment of children in state care. The explanation is that an exhausted staff member cannot demonstrate adequate patience towards the children, which may jeopardize the enforcement of the right of children to protection and care ensured by Section XVI (1) of the Fundamental Law of Hungary.

As regards catering, it could not be decided from the menus whether the residents were provided the energy needed for their age and whether the quality and quantity of the consumed food products were in line with the requirements of a healthy diet.

In the initial phase of the pandemic, remote education was not ensured, as the necessary internet connection, the laptops and computers were not available, and these were obtained and the technical conditions of remote education were created gradually, after the pandemic had set in. Electronic devices were also donated to the institution, these were distributed among the homes. The head of the institution said that at the time of the visit, each home had one or two computers. However, remote education was not ensured at the temporary home at the time of the visit either.



The premises of the institution

8.4.2. AJB-1748/2022 – Findings of the inquiry conducted at the Children’s Home of the Szabolcs-Szatmár-Bereg County Child Protection Centre (Mátészalka)

The visit paid to the Children’s Home of the Szabolcs-Szatmár-Bereg County Child Protection Centre in Mátészalka on 30 March 2022- (hereinafter referred to as: the Children’s Home in Section 8.4.21) had a double purpose: in addition to the OPCAT-focused investigation into the services provided to children in state care, the visiting group also inspected the placement conditions of the families fleeing the Ukrainian-Russian war.

The Szabolcs-Szatmár-Bereg County Defence Committee designated the wing of the building of the Children’s Home that had been out of use since 2015 for the hosting of families fleeing the war for 30 days from 1 March 2022. During this time, 63 persons fleeing Ukraine, including 43 children, arrived, several of whom only spent a few hours or days at the shelter, where they were provided three meals a day. With a view to preventing any potential negative consequences, the qualified staff made sure that the children in state care and the fleeing persons were separated from each other.

The members of the visiting group concluded that the fleeing persons had received the help they needed. However, the children in state care were not adversely affected by the admission of the fleeing persons, the help provided to the refugees did not restrict or affect their daily activities and regimes. At the time of the visit, there were no refugees at the institution.

At the 112-bed institution, 46 children and one young adult were cared for in 4 groups on the day of the visit, whose placement conditions were appropriate, their living space was clean but rundown at the time of the visit. The de-institutionalisation of the children’s home was in progress. The 4 new group homes (with 4x12 places) with 2-person bedrooms and neat

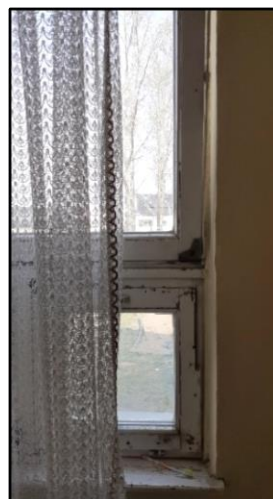
furnishings were already awaiting delivery. Regarding de-institutionalisation, the NPM said that the number of officially permitted places was not in line with practice.

Three children under the age of twelve were taken care of at the children's home. The NPM drew attention to that children of this age should be placed with foster parents, except for the cases specified in the law. Half of the children under care were absent without permission in the quarter under review. The high number of unauthorised absences threatened the enforcement of the children's right to protection and care, it hindered keeping contact with relatives, and it also resulted in school absence. Although the staff of the Children's Home included a high number of well-trained professionals, there were two groups without carers. On the institutional level, the positions of special education teacher and psychologist were not filled. The filling of these vacancies would play an important role in supporting individual learning and making up for school disadvantages as well, among others. Unfilled positions and unauthorised absence may both have contributed to that many residents had not completed, or had interrupted their studies when they reached the obligatory general school age. During the 15 months preceding the visit, one third of the young adults who were out of the system of child care due to their having reached legal age had not even completed their primary school studies, only one resident obtained qualification that could be used in the labour market.

With regard to the food provided to children, the NPM concluded that the information in the menus was incomplete. This report drew the attention to the differences between the statutory provisions that defined the catering of children in state care.



Premises used for the placement of fleeing persons



Children's home unit, leisure time activities, bedroom, windows and doors to be renovated, neat garden

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.¹⁶²

The NPM

- should enter into a dialogue with the “*directors/operators of the government authorities and institutions on the possible implementation of the recommendations*”;¹⁶³
- “*he should establish a communication and cooperation mechanism with the competent authorities for the implementation of the recommendations*”;¹⁶⁴
- shall carry out a dialogue which shall include both “*a written and oral exchange of ideas*”.¹⁶⁵

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 recommendations’ addressees is conducted by using the report as a platform. The ways of following up recommendations, including the time limits for giving a response, are regulated in detail by the CFR Act.¹⁶⁶

The key legal guarantee for the dialogue lies the provisions set out in Section 38 (1) of the CFR Act. Pursuant to the above-mentioned section of the law, if the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the NPM does not agree with the position or the measure taken, he/she shall submit the case to the Parliament within the framework of his/her annual report, and may ask the Parliament to inquire into the matter. If, according to the NPM’s findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the NPM may propose that the Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

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

¹⁶² Paragraph (iii), Section 1, Article 11 of OPCAT

¹⁶³ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (Clause 34 of CAT/OP/1/Rev.1).

¹⁶⁴ Clause 42 of CAT/OP/1/ Rev.1

¹⁶⁵ Clause 34 of CAT/OP/1/ Rev.1

¹⁶⁶ Sections 31- 38 of the CFR Act

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

In his report on the visit to the *Baranya County Remand Prison*¹⁶⁷, the NPM called the attention of the prison governor to ensuring continuous hot water supply; to making sure that in the course of the renovation works, such window grates that allow the admission of natural light to the cells are installed; to taking measures to prevent the placement of detainees in rundown cells; and to getting the detainees' complaints regarding the prison canteen investigated into and signalling these to the operator of the store.

The prison governor informed the NPM that, as a result of the modernisation of the hot water supply system, continuous hot water supply was ensured, and the cells in question were refurbished and redecorated. No view blockers were installed in the cells of the institution that look on the street, so the grates are denser than in the other cells. Most of the forbidden objects were attempted to be sent to the cells that look on the street by damaging the expanded metal sheets. As a result of the building being under the protection of historical monuments, it is not possible to fence off the street cells, this is why safety grids should be installed. The conditions for reading are provided by modern lamps and the admission of natural light. Both the detainees and the detainees' relatives can file complaints about the pricing applied and the assortment of goods at the prison canteen addressed to the prison governor, which will be forwarded to Bv. Holding Kft. The NPM accepted the response.

In his report on the visit to the *Hajdú-Bihar County Remand Prison*, the ¹⁶⁸ NPM called the attention of the prison governor to taking care of supplying the missing tap knobs and spouts; as long as it is possible for a detainee to receive visitors in person in an epidemic situation, the number of electronic contacts should not be disproportionately restricted for the detainees who wish to use this possibility; furthermore, measures should be taken for escorting the female detainees, in such a way that the female detainees should not be deprived of the possibility to take part in various activities organised for the detainees.

The prison governor informed the NPM that he had taken care of the replacement of the broken taps and he reviewed the leisure time activities ensured for female detainees. As a result of this, female detainees could attend EFOP (Human Resources Development Operational Programme) and church events, as well as a gardening club. As the virus situation eased, the reception of visitors was permitted again with effect from May 2022 and it is now ensured at the request of the detainees. The NPM accepted the measures taken by the prison governor. The NPM accepted the response.

9. 2. Responses to the measures taken by the NPM following its visits to police detention facilities

In his report on the visit to the *Fonyód Police Department* ¹⁶⁹, the NPM established a circumstance suggesting an impropriety with regard to fundamental rights related to the medical examination of the apprehended persons, and he asked the head of the Police Department to make sure that the accompanying policeman should not be an ear witness to the confidential communication between the medical doctor and the detainee during the medical examination; furthermore, that the arrested person who gets injured during the apprehension should not be accompanied to the medical examination by the policeman who executed the apprehension.

¹⁶⁷ NPM Report No. AJB-443/2022.

¹⁶⁸ NPM Report No. AJB-464/2022.

¹⁶⁹ NPM Report No. AJB-1108/2022.

In his response, the head of the Somogy County Police Headquarters informed the NPM that the recommendations formulated in the report had been presented to the staff, and that the report had been sent to the organisational units and local bodies of the Somogy County Police Headquarters in order to fulfil the recommendations. The NPM accepted the response.

In the case of the *Tata Police Department*,¹⁷⁰ in his recommendations formulated in the report, the NPM asked the head of the Tata Police Department to make sure that the accompanying policeman should not be an ear witness to the confidential communication between the medical doctor and the detainee during the medical examination; furthermore, that the arrested person who gets injured during the apprehension should not be accompanied to the medical examination by the policeman who executed the apprehension. Furthermore, he asked him to make sure that the furnishings of the custody unit are changed, by ensuring, if possible, that the furniture is also suitable for a longer rest, and to ensure the extension and modernisation of the changing rooms and bathrooms used by the personnel as needed, as well as the renovation of the building, due to its condition.

In his response, the head of the Komárom-Esztergom County Police Headquarters informed the NPM that they had placed a bed into the custody unit and the sanitary unit next to the changing room used by the personnel had been refurbished. As regards the medical examination of the arrested persons, he informed the NPM that due to the headcount situation and other tasks, the number of staff that can be involved in the escorting of the arrested persons was limited. The NPM accepted the information.

9. 3. Responses to the measures taken by the NPM following its visits to social care institutions

As regards the visit paid to *the Napsugár Home of the Zala County Szivárvány Integrated Social Care Institution*,¹⁷¹ in his report, the NPM requested the General Directorate of Social Affairs and Child Protection as the operator of the Institution to ensure the renovation of the bathrooms and the establishment of a separate activity room and storage space during the planned modernisation of the Home, and that the residents of the rehabilitation unit should have their own finishing kitchen if possible. Furthermore, he requested that the financial conditions for procuring the missing tangible assets (washing machine, dryer, dining tables and chairs, tools for the activities, decorations, laptop and computer) of the Home be ensured. In his report, the NPM asked the head of the Home to set up rooms allowing the placement of registered partners, as well as a conjugal room in the Home. In their response, the supervising authority and the head of the Institution informed the NPM that the preparation of the renovation was in progress, however, due to the type and characteristics of the building, no separate activity room, storage space, conjugal room or a room for registered partners can be set up. The missing tangible assets were obtained.

Furthermore, the NPM proposed that a professional staff member qualified for caring for persons with autism spectrum disorder be hired and also, that the Institution ensure such further training for the carers and nurses working there. With regard to the long-term absence of the therapeutic expert, the NPM proposed that another therapeutic expert be hired as a replacement (even for a definite term) in the Home. In her response, the head of the Institution informed the NPM that she had taken care of the replacement of the colleague who was absent, and she had increased the headcount of carers and nurses to 13. As regards increasing the professional knowledge of the staff of the Home, she did so in the form of a further training

¹⁷⁰ NPM Report No. AJB-1109/2022.

¹⁷¹ NPM Report No. AJB-2300/2022. Date of the visit: 23 November 2021

course by entering into a mandate agreement with an expert on the development of residents with autism spectrum disorder.

The NPM asked the head of the Home to ensure diverse daily activities for the residents in the form of organised programmes. According to the information received from the operator, they endeavour to organise events and outings, while the daily activities will be provided by the new therapeutic expert.

In their response, the operator and the head of the Institution informed the NPM that they had set up the complaints box that the NPM missed in his report.

In his report on the visit paid to the *Mándok Residential Care Home of the Szabolcs-Szatmár-Bereg County Viktória Integrated Social Care Centre*, and on 5 April 2022 to the *Fülpösdaróc Residential Care Home of the Institution*, as well as *Supported Housing Unit No. 6 of Fülpösdaróc*, the NPM called the operator of the institution to ensure, during the transformation of the Mándok Home, that at least 6 square metres of living space be provided to each resident in a room, and that a maximum four persons be placed in one room. Furthermore, he requested the head of the institution to provide all the necessary support and consulting to those incapacitated residents who cannot enforce their right to vote, with special regard to the residents of the Fülpösdaróc Supported Housing Unit, to ensure that they are returned the possibility of exercising their right to vote; to ensure that the residents can choose their roommates to their mutual satisfaction in the Supported Housing Unit, and to encourage that those who enter into relationships can move in together; and also, to provide supervision for the personnel of the Mándok Home.

In her response, the head of the institution informed the NPM that in the future, the Institution would pay special attention to providing support to the residents in the Supported Housing Unit with getting their right to vote back, if possible, in the course of the guardianship review process. Furthermore, the Institution strives to ensure that those who move to the Supported Housing Units may choose their roommates themselves and those who are in a relationship could move in together. (There are currently 8 couples at the Institution.) The group supervision of the staff was also organised, and it will take place in the first half of 2023. The NPM accepted the response, including the one on the measures taken by the operator in order to put an end to the overcrowding at the Mándok site, as well as to change the furniture and make the living environment more comfortable.

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

In his report on his visit to the central children's home of the *Jász-Nagykun-Szolnok County Child Protection Centre and Regional Child Protection Service*¹⁷², the NPM requested the Minister of Human Capacities to take measures in order to ensure the education of schoolable children placed in temporary children's homes. Furthermore, in the report, he requested the head of the Hungarian Directorate-General for Social Affairs and Child Protection, as well as the operator of the Special Children's Home to ensure a possibility for the staff to take part in supervision. In the report, the NPM proposed, in some recommendations, that the director of the *Jász-Nagykun-Szolnok County Child Protection Centre and Regional Child Protection Service* comply with the minimum professional headcount norm stipulated in Annex I of NM (Ministry of Welfare) decree No. 15/1998 (IV.30.) with regard to all the groups and work positions, and that children under the age of 3 be provided more than the maximum 3 hours of contact with their relatives per week, and provide catering in line with the

¹⁷² NPM Report No. AJB-1106/2022.

requirements of a healthy diet for the children in care. Furthermore, he requested that by taking the children's best interests into account, they should strive to place children under 12 into foster care.

In his response, the supervising authority said that they had called the attention of the director of the National Child Protection Service to endeavouring to place children under the age of 12 in foster families by taking the children's best interests into account, furthermore, to ensuring that children under 12 are only placed in institutions in a strongly justified case, in the child's best interests, in order to ensure the most adequate satisfaction of their needs. However, in their response, they indicated that the implementation of this, in the case of children under the age of 12 dealing with behavioural issues, those who have already committed a crime or a misdemeanor, or have a mental disorder, is very difficult, due to the lack of places in the foster parent network.

Regarding the initiatives taken at the Special Children's Home, the supervising authority informed the NPM that, related to the issue of the professional headcount requirement defined in Annex I to NM (Ministry of Welfare) decree No. 15/1998 (IV.30.), the replenishment of the professional staff members was continuous, and a higher wage supplement was determined in addition to the mandatory special home allowance due under Section 15 (5) of Government Decree No.257/2000 (XII. 26.); furthermore, the participation of the staff members of the special children's home in supervision, as well as in training programmes was ensured. The NPM accepted the information.

In the report on his visit to the *Central Children's Home of the Szabolcs-Szatmár-Bereg County Child Protection Centre*,¹⁷³ the NPM made several recommendations to the supervising authority. In her letter reg. No. SZGYF-IKT-8446-2/2022 dated on 21 October 2022, the head of the Hungarian Directorate-General for Social Affairs and Child Protection informed the NPM that the children were moved on 2 August 2022 and the permitted number of places already reflect the actual situation.

In the same letter, the Director-General also informed the NPM that, following our signal, she called the attention of the Szabolcs-Szatmár-Bereg County Regional Directorate of the National Child Protection Service to that in making a proposal for the place of care, special attention should be paid to the placement of children under 12 with foster parents.

The observance of the minimum professional headcount norm stipulated in Annex I to NM (Ministry of Welfare) decree No. 15/1998 caused a problem in this Children's Home as well. In her response letter reg. No. 91511-X/1210-6/2021 dated on 14 October 2022, the head of the Szabolcs-Szatmár-Bereg County Child Protection Centre informed the Commissioner for Fundamental Rights that in the meantime, several of her staff members had obtained their qualifications, she managed to fill one of the vacancies for a carer's position but due to the lack of suitable applicants, the positions of another carer, a special education teacher and a psychologist could not be filled. In her letter of response, the director gave a detailed account of her measures taken to retain the staff members and she also expressed her hope that the nice new living environment that had been occupied in the meantime, and the organisational structure of the group home would both contribute to maintaining the wellbeing of both the staff and the children, and to reducing absenteeism. The director sent over the menus, which provided more detailed information than the earlier ones.

¹⁷³ NPM Report No. AJB-1748/2022

10. Legislation-related activities of the NPM

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

10. 1. Proposals in the NPM’s reports

Preventive monitoring visits also cover the practice-oriented review of legal regulations applicable to the operation of the given place of detention; therefore, the NPM, primarily through presenting his observations and impressions from his visits, and via his legislative proposals based on their critical evaluation, promotes domestic legislation. If instances of ill-treatment or the threat thereof uncovered during the visits can be attributed to a superfluous, ambiguous or inappropriate provision of a piece of legislation, or to the lack or deficiency of the legal regulation of the given matter, the NPM may propose that the piece of legislation in question be modified, repealed or prepared.¹⁷⁴

In the reports on his visits published in 2022, the NPM made 3 legislative proposals.

In the case of the *Napsugár Home of the Zala County Szivárvány Integrated Social Care Institution*,¹⁷⁵ the NPM asked the Hungarian Chamber of Judicial Experts to take into account, in the elaboration of the methodology letter prepared for forensic medical experts acting in guardianship cases, the contents of the report on the investigation conducted by the CRPD Committee concerning Hungary based on Article 6 of the Optional Protocol to CRPD¹⁷⁶, according to which the adoption of decisions in guardianship cases may not primarily be based on the expert opinion of the psychiatric expert.

In its response, the Hungarian Chamber of Judicial Experts ensured the NPM that the contents of the CRPD report would be taken into account by the committee preparing the methodology letter.

In his report on the visit paid to the *Children’s Home of the Szabolcs-Szatmár-Bereg County Child Protection Centre*,¹⁷⁷ the NPM proposed that the Minister of the Interior review the provisions set out in EMMI (Ministry for Human Capacities) decree No. 37/2014 (III. 11.) concerning children’s care homes, as well as the target numbers for professional staff members defined in NM (Ministry of Welfare) decree No. 15/1998 (IV. 30.) related to catering, in order to harmonise the provisions set out therein.

In his report on the visit paid to the *Baranya County Remand Prison*¹⁷⁸ the NPM requested the Minister of the Interior to take care of amending Annex 2 of BM (Ministry of the Interior) decree No. 16/2018 (VI. 7.) and Section 10 of BVOP (National Headquarters of the Hungarian Prison Service) instruction No. 65/2020 (XII. 12.), to ensure that in the future, the Baranya County Remand Prison is not designated for the placement of young offenders by these laws.

In his response, the Minister of the Interior informed the NPM that young offenders had already been placed at the Institution since the visit. It should be kept in mind that the penal authority should execute the sentence of imprisonment at the penal institution that is nearest the

¹⁷⁴ See Section 37 of the CFR Act

¹⁷⁵ NPM Report No. AJB-2300/2022

¹⁷⁶ CRPD/C/HUN/IR/1 IV. Clause A/29

¹⁷⁷ NPM Report No. AJB-1748/2022

¹⁷⁸ NPM Report No. AJB-443/2022

residential address of the convict, if possible. With regard to all this, he thinks that it is justified for the Institution to be appointed for the placement of young offenders, this is why the legal possibility for this should be maintained in the future as well. The NPM accepted the response.

10. 2. Ex-post review of norms

If, in the course of its inquiries, the NPM finds that a fundamental rights-related impropriety is caused by a conflict between a self-government decree and another legal regulation, it may request to review the self-government decree's compatibility with the other legal regulation.¹⁷⁹ If a legal regulation is in violation of the Fundamental Law, or an international treaty, the NPM may request the Constitutional Court to review it.¹⁸⁰

In 2022, as part of fulfilling his responsibilities as the NPM, the Commissioner for Fundamental Rights did not request an ex-post review of norms.

10. 3. Powers related to draft legislation

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

In order to let the National Preventive Mechanism exercise its power to make proposals, the State has to submit, ex officio, in their preparatory phase, all pieces of draft legislation concerning detention conditions to the National Preventive Mechanism.¹⁸¹

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.¹⁸² The parties responsible for preparing legal regulations primarily submit their drafts to the NPM in order to prove that they have complied with the proposals of the NPM to modify, repeal or prepare legal rules specified in its reports. The Commissioner for Fundamental Rights reviews draft legislation in a complex way, i.e. on the basis of both his experience obtained during the visits conducted in his capacity as the NPM and the conclusions of his inquiries conducted in his general competence. In the course of a review, special attention shall be paid to finding out whether the proposed text of the norm is suitable for remedying the treatment criticised in the report and for preventing it from recurring in the future.

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

¹⁷⁹ Section 34/A (1) of the CFR Act

¹⁸⁰ Section 34 of the CFR Act

¹⁸¹ Clause c) of Article 19 of OPCAT

¹⁸² See Section 19 (1) of Act CXXX of 2010 on Lawmaking

The organs responsible for drafting and preparing legislation requested that the Commissioner for Fundamental Rights review 30 draft bills in 2022. The reason for the drop in the number of draft bills sent to the Commissioner for Fundamental Rights in comparison with previous years¹⁸³ was that a special legal order was introduced in Hungary during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, for the elimination of its consequences, and for the protection of the health and lives of Hungarian citizens. The remarks of the Commissioner for Fundamental Rights on the draft bills are not compelling; however, their fundamental rights protection approach may facilitate efficient codification and the elimination of potential deficiencies or contradictions.

¹⁸³ The Commissioner for Fundamental Rights reviewed 154 draft bills in 2018, and 108 in 2019.

11. The NPM's domestic and international relations

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

Two staff members of the NPM attended the video conference entitled „*Presentation of Reintegration Crime Prevention Programmes that Strengthen Social Cohesion and Reduce Recidivism*” organised by the Hungarian Prison Service Headquarters on 4 May 2022. At the event, the staff members of the prison organisation presented the reintegration programmes provided to the detainees and the key achievements thereof, then the National Crime Prevention Council also presented their contribution to these programmes. From among the alternatives to imprisonment, the practical implications of the execution of probation service were discussed. The staff members of the NPM joined the roundtable discussions following the talks and they shared their experience gained in the on-site visits with the other participants.

A staff member of the NPM attended a roundtable discussion organised by the Hungarian Helsinki Committee on 10 June 2022, which was organised in the framework of an international project coordinated by Penal Reform International on the topic of promoting non-discriminatory alternatives to imprisonment. At the meeting, a professional analysis of the Hungarian legal environment from the aspect of vulnerable social groups was discussed by involving a wide range of Hungarian experts.

From 20 to 22 June 2022, a staff member of the NPM took part in a conference organised by the South-East Europe NPM Network, which focused on the special needs of the elderly and persons with disabilities at places of detention.

On 14 June 2022, two staff members of the NPM, as well as a colleague from the Office's Department of General Inquiries and Administrative Cases took part in a webinar entitled “*The Role of NPMs in Monitoring Places where Migrants are Deprived of Liberty*”¹⁸⁴ organised by the SPT.

At the event, the experts of the UN and the representatives of the NPMs of different states gave talks on the critical areas of the NPMs' responsibilities related to the migrants deprived of their liberty.

On 23 June 2022, an expert staff member of the NPM attended a roundtable discussion entitled “*Effects of the Capacity Extension Programme on the Security of Detention, or the Legal and Security Aspects of Detainees Placed in Lightweight Construction Buildings*” organised by the Hungarian Prison Society, which focused on the processes of the implementation and operation of, as well as the challenges posed by the new buildings erected in the course of the prison capacity extension programme.

¹⁸⁴ “The Role of NPMs in Monitoring Places where Migrants are Deprived of Liberty”

From 7 to 9 September 2022, a staff member of the NPM took part in a regional training session entitled “*Integrating the Issue of Sexual and Gender-Based Violence in Detention Monitoring*” organised by the OSCE Office for Democratic Institutions and Human Rights (OSCE ODIHR). The participants, i.e. the staff members of the NPMs of European and Asian countries, had the opportunity to deepen the knowledge shared with them at the theoretical presentations through resolving tasks in groups, by analysing specific cases, under the guidance of international expert trainers. During the training session, it also became possible for the participants to pay a visit to the Polish Office of the Commissioner for Human Rights and to get an insight into the work of the Polish NPM and the Unit of Law Enforcement Cases of the Office, which is responsible for investigating into individual complaints.

On 8 September 2022, an expert staff member of the NPM attended the international conference of the National Crime Prevention Council entitled “Solution Focus, or Possibilities without Frontiers”, where the speakers presented that solution-focused communication could be successfully used from hearings in child protection to interviews with detainees at police stations or penal institutions. An expert staff member of the NPM gained practice in a twice two-day training programme on solution-focused communication (each taking 20 hours of training) launched by the National Crime Prevention Council. (The titles and the dates of the training sessions were as follows: The training course entitled “Solution-focused interviewing” was organised on 28-29 September 2022, while the one called “Solution-focused interviewing - the manager in you” was held on 3-4 November 2022.)

On 5 and 6 October 2022, the acting head of the OPCAT NPM Department took part in the European NPM Forum in Strasbourg, at which the methodology of monitoring was discussed with regard to all the vulnerable groups deprived of their liberty (the elderly, women, young persons and minors, migrants, persons belonging to ethnic minorities, LGBTQ persons).

On 13 October 2022, a staff member of the NPM attended a roundtable discussion organised by the National University of Public Service, the subject of which was the treatment of detainees and the legal safeguards used in this area, as well as the complaints procedures and efficient investigations into abuse by the police. The expert of the NPM presented the NPM’s investigation methods, including the visits to police custody units and lock-up facilities. He stressed that the complaints related to police measures were investigated into by the Police Complaints Directorate of the Office of the Commissioner for Fundamental Rights (AJBH).

On 15-16 November 2022, the acting head of the Department attended the 2nd 2022 session of the South-East Europe Network of National Preventive Mechanisms, in the context of which the participants exchanged their experience in the treatment of children and adolescents with mental and physical disability, as well as the coercive measures applied against young persons and persons with mental disabilities.

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.¹⁸⁵ 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 may proceed either personally, or through his staff members authorised by him to carry out the tasks related to the NPM. The NPM's 2022 visits were determined by the coronavirus pandemic and the war in Ukraine. The Commissioner for Fundamental Rights 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 response to the challenges of the coronavirus pandemic, in 2020, the NPM introduced new working methods during his visits. Focusing on the need to prevent coronavirus infections, the visits were of a shorter duration and the members of the visiting group wore protective gear. The primary focus of the visits was to examine to what extent the restrictions imposed due to the pandemic affected the living conditions of the detainees, and how the institutions could carry out their duties aimed at the prevention of the coronavirus infection. The criteria of the visits were determined in consideration of the guidelines elaborated by the SPT and the CPT.

In 2022, the NPM investigated into a total of 4069 detention units at 16 places of detention. The utilisation rate of these detention units was varied. The overcrowding of penal institutions came to an end after the capacity extension that took place in 2020 but unfortunately, 2022 again saw the signs of overcrowding.

The occupancy rate of child protection institutions moved on a broader scale, between 42 and 70%, while the visited social care institutions were almost fully, or fully occupied, and even overcrowded in certain cases. During the visits to police custody units, there were no detainees present when the visiting group was there and it was the site and process of escorting that were reviewed.

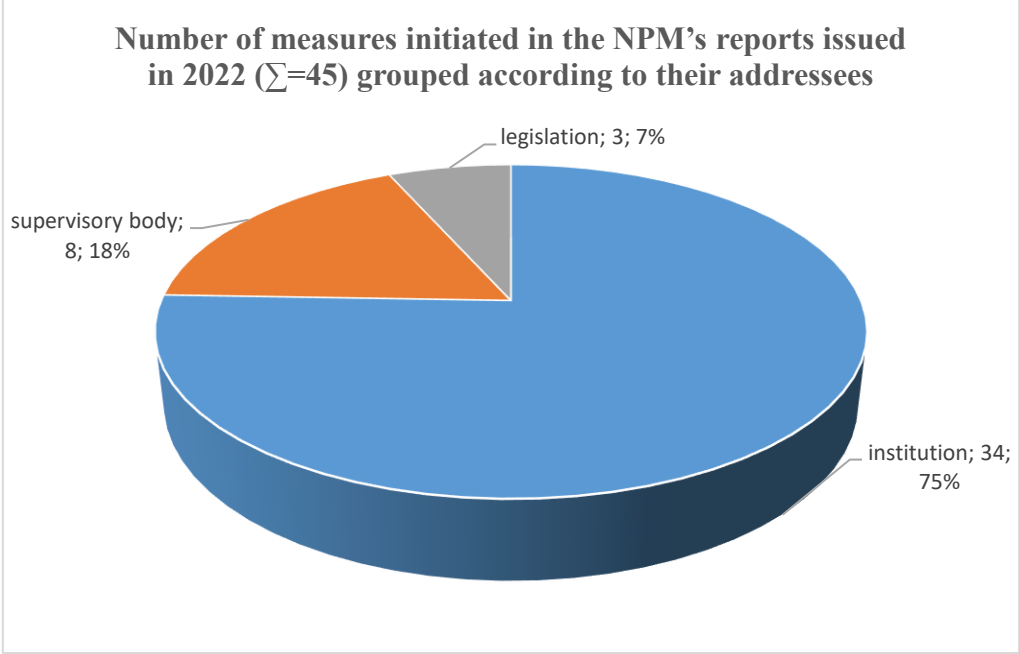
The visiting delegations inspected the premises of the places of detention, furnishing and equipment, as well as the documents related to the number, treatment, and conditions of placement of the detainees, they made photocopies of some of the documents, and conducted interviews with the detainees and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

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

In the reports on his visits published as part of his activities performed as the NPM, the Commissioner for Fundamental Rights recommends taking measures aimed at eliminating and

¹⁸⁵ Section 39/B (1) of the CFR Act

preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2022, the NPM proposed a total of **45** measures. Most frequently, in 34 cases, the NPM made recommendations to the heads of the places of detention¹⁸⁶, in another 4 cases to the heads of the supervisory organ of the institution subject to inquiry¹⁸⁷, and on 3 occasions, he made recommendations regarding law-making¹⁸⁸.



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 measures is a statutory obligation of not only the NPM but also the heads of places of detention, authorities and other organs concerned. The dialogue between the NPM and the recommendations' addressees is conducted 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 his 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 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 2022 and no such grave infringements were

¹⁸⁶ Section 32 (1) of the CFR Act
¹⁸⁷ Section 31 (1) of the CFR Act
¹⁸⁸ Section 37 of the CFR Act

uncovered by these visits for remedying which the NPM should have turned to the National Assembly.

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

Another form of dialogue is the follow-up visits, in the course of which the NPM tries to double-check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic areas. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of the NPM's measures with the personnel of the places of detention. In 2022, the NPM paid a follow-up visit to the Kiskunhalas National Remand Prison.