

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

**Comprehensive Report
by the Commissioner for Fundamental Rights of Hungary
on the Activities of the OPCAT National Preventive Mechanism in 2020**



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Published by: Office of the Commissioner for Fundamental Rights
1055 Budapest, Falk Miksa u. 9-11.

Phone: +36 (1) 475-7100, Fax: +36 (1) 269-1615

Internet: www.ajbh.hu

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Cover picture: Exercise area of the Kiskunhalas National Prison

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Abbreviations

CCB	Civil Consultative Body
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
Department	OPCAT National Preventive Mechanism Department
HDG for SACP	Hungarian Directorate-General for Social Affairs and Child Protection
HPSH	Hungarian Prison Service Headquarters
MoHC	Ministry of Human Capacities
NPH	National Police Headquarters
NPM	National Preventive Mechanism
Office	Office of the Commissioner for Fundamental Rights
Ombudsman Act	Act CXI of 2011 on the Commissioner for Fundamental Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Act CXLIII of 2011
Prison Act	Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour
SEE NPM Network	South-East Europe National Preventive Mechanism Network South-East Europe NPM Network
Subcommittee on Prevention of Torture (SPT)	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UN Committee against Torture (CAT)	UN Committee against Torture
UN Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Legislative Decree 3 of 1988

Introduction



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

In 2020, the NPM faced extraordinary challenges. The social isolation of persons deprived of their liberty living in places of detention increased due to the coronavirus pandemic and the impacts of the epidemic hit those who live in these institutions harder. The vulnerable situation of persons who live in close proximity to each other, who are more exposed to infections due to their condition anyway, was increased by the need to organise protection from the epidemic in an institutional framework.

The extraordinary measures affecting the places of detention, taken in the periods of the special legal order declared by the Government on 11 March 2020 and lasting until 18 June 2020,² then the transitional rules and the state of epidemiological preparedness,³ followed by the repeatedly declared state of danger from 4 November 2020,⁴ had a profound effect on the everyday life of persons deprived of their liberty.

In these circumstances, it was of special importance that the NPM continue its monitoring activity at the places of detention in its competence. The visits and the interviews with the residents of these institutions had to be organised by observing the rules of keeping distance and protection.

From April 2020, I personally headed the visits conducted by the NPM. The visits laid special emphasis on the measures taken to protect people from the epidemic, the impact of these measures on the life of the detainees, as well as on finding out the extent to which the reorganisation of the daily schedules of the institutions could ease the situation, or could compensate for the difficulties by introducing the opportunity to keep virtual contact.

2021, Budapest

Dr. Ákos Kozma

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

² Government Decree No. 40/2020 (11 March) on the declaration of state of danger

³ Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger

⁴ Government Decree No. 478/2020 (3 November) on the declaration of state of danger

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.⁵

1.1. The Fundamental Law of Hungary

Pursuant to Paragraph (1) of Article III of the Fundamental Law of Hungary, “*No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude.*” Pursuant to Paragraph (1) of Article 53 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.*” Based on the common rules defined in Article 54 of the Fundamental Law of Hungary regarding the special legal order, the exercising of the right to human dignity ensured in Article II of the Fundamental Law of Hungary and the prohibition of torture specified in Paragraph (1) of Article III of the same Law cannot even be suspended in a period of a special legal order, and they can only be limited for the protection of the enforcement of another fundamental right or that of another constitutional value, at the extent that is definitely necessary, proportionately to the goal to be achieved, by respecting the substance of the fundamental right in question.

Pursuant to Paragraph (2) of Article 53 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 Paragraph (3) of Article 53 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.*”

In the 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*”.⁶

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*”.⁷ Acts shall be adopted by the Parliament.⁸ International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.⁹

⁵ Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988

⁶ Chapter IV, Clause 2.4 of Constitutional Court Decision 36/2000 (27 October)

⁷ Paragraph (3) of Article I of the Fundamental Law of Hungary

⁸ Paragraph (2)b) of Article 1 of the Fundamental Law of Hungary

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

Before January 1988, in the field of legislation, the Presidium of the People’s Republic (hereinafter referred to as: the “PPR”) 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 called an “act”. Statutory-level legal sources adopted by the PPR were called law-decrees. No law-decree may be adopted since the abolishment of the PPR. Prevailing law-decrees may be amended or repealed only by an act [Clause IV/2 of Constitutional Court decision No. 20/1994 (16 April)].

1.2.1. UN instruments

Pursuant to Article 7 of the **International Covenant on Civil and Political Rights**,¹⁰ “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, while it is stipulated with a general effect by Article 10(1) that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Based on Article 4 of the Covenant, no derogation may be made from Article 7, which stipulates the prohibition of torture, even in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.¹¹

Pursuant to Article 1 of the **UN Convention against Torture**,¹² the term “torture” means any act

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

Pursuant to Article 2.1 of the UN Convention against Torture, “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. 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 No. 2 of the Committee against Torture¹³, the prohibition of torture is absolute and non-derogable, i.e. no exceptional circumstances whatsoever may justify torture, and the prohibition of cruel, inhuman or degrading treatment or punishment as defined in Article 16 is also a provision that has to be taken into account in all circumstances.

The Optional Protocol to the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: the “OPCAT”), promulgated

¹⁰ International Covenant on Civil and Political Rights, adopted by the 21st Session of the UN General Assembly on 16 December 1966, promulgated by Law-decree 8 of 1976

¹¹ 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”.

¹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988

¹³ UN Committee Against Torture (CAT) *General Comment No. 2* (Clauses 5 and 6 of CAT/C/GC/2) <https://undocs.org/CAT/C/GC/2>

by Act CXLIII of 2011, is open to accession by only those States that have ratified or acceded to the Convention.¹⁴

According to the OPCAT, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment may be ensured not through judicial means but via regular, preventive visits to the various places of detention. In the system established by the 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.¹⁵

Pursuant to Article 4(2) of the OPCAT, “*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*”.

On the one hand, one of the tasks of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment established by the OPCAT (hereinafter referred to as: 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.¹⁶ From the aspect of the operation of the National Preventive Mechanisms and in addition to the general directives¹⁷ of the Subcommittee on Prevention of Torture, the conclusions, specific directives and recommendations¹⁸ 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.¹⁹

The Advice on the coronavirus pandemic issued by the Subcommittee on Prevention of Torture on 7 April 2020²⁰ emphasises that the persons deprived of their liberty constitute a highly vulnerable group, due to the restrictions already existing due to their situation and the limitations of taking the preventive measures.²¹ The National Preventive Mechanism reckoned with the guidance provided in the Advice during its visits at the time of the coronavirus pandemic.

¹⁴ Clause 3, Article 27 of the OPCAT

¹⁵ Article 1 of the OPCAT

¹⁶ Article 11 of the OPCAT

¹⁷ SPT: *Guidelines on National Preventive Mechanisms* (CAT/OP/12/5) <https://undocs.org/CAT/OP/12/5>; SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (CAT/OP/1/Rev.1) <https://undocs.org/CAT/OP/1/Rev.1>; *Compilation of SPT Advices to NPMs* (Annex to CAT/C/57/4) <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/AdvicesToNPMS.aspx>

¹⁸ 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) (CAT/OP/MDV/1), Clause 72/c). <https://undocs.org/CAT/OP/MDV/1>

¹⁹ 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>

²⁰ SPT: *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic* (CAT/OP/10) <https://undocs.org/CAT/OP/10>

²¹ Clause I.2 of CAT/OP/10

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

Pursuant to Article 15 of the **Convention on the Rights of Persons with Disabilities**, promulgated by Act XCII of 2007, *“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 and 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**, signed in Strasbourg on 26 November 1987, promulgated by Act III of 1995, on 4 November 1993; its provisions are to be observed as of 1 March 1994.²²

The provisions of the OPCAT *“do not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention”*.²³ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: the “CPT”) was 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 standards²⁴ of treating persons deprived of their liberty, elaborated by the CPT, interpret the prohibition of torture, inhuman or degrading treatment, stipulated in Article 3 of the European Convention on Human Rights, from the aspects of the practical operation of various places of detention (e.g. prisons, police lock-ups, psychiatric institutions, detention centres for refugees) and various vulnerable groups, such as women and juveniles.

The CPT met the Parliamentary Commissioner for Civil Rights for the first time on its 1999 periodic visit;²⁵ 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).²⁶ 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 its activities.

²² See Section 3 of Act III of 1995.

²³ Article 31 of the OPCAT

²⁴ CPT standards <https://www.coe.int/en/web/cpt/standards>

²⁵ The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on 1 July 1995.

²⁶ Information related to the CPT’s visits to Hungary are available at: <https://www.coe.int/en/web/cpt/hungary>

The statement of principles 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 2020²⁷ 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 of principles, special attention should be paid to the special needs of the persons deprived of their liberty, with special regard to those of the vulnerable groups such as the elderly or persons with concomitant diseases.²⁸ The continued 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.²⁹

1.3. Preventive activities of the National Preventive Mechanism

“The Commissioner for Fundamental Rights shall perform fundamental rights protection activities”,³⁰ which also cover the enforcement of the prohibition of torture, inhuman, 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.³¹

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 the OPCAT, also in the absence of any petition or alleged impropriety. During the on-site inspection, the NPM may enter without any restriction the places of detention and other premises of the authority under inspection, may inspect all documents concerning the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents, and may hear the personnel of the authority under inspection and any persons deprived of their liberty, including any person present on the site. At these interviews, any other person but the staff members authorised to perform the tasks of the NPM and the interviewees could only take part if the NPM's staff members consented to it.³²

²⁷ CPT: *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] <https://rm.coe.int/16809cfa4b%3E>

²⁸ Clause 6 of CPT/ Inf (2020) 13

²⁹ Clause 10 of CPT/ Inf (2020) 13

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

³¹ CAT *General Comment No. 2* (Clause 3 of CAT/C/GC/2) <https://undocs.org/CAT/C/GC/2>

³² Section 39/B of the Ombudsman Act

1.4. Extraordinary statutory and official provisions related to the places of detention at the time of the state of danger and the epidemiological stand-by period due to the COVID-19 pandemic

1.4.1. Extraordinary regulations affecting penitentiary institutions

The Government issued a decree on the derogatory application³³ of the provisions set out in Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour (hereinafter referred to as: the “Prison Act”) during the state of danger declared on 11 March 2020, in its competence specified in Paragraph (2) of Section 53 of the Fundamental Law of Hungary, as defined in Act XII of 2020 on the Containment of Coronavirus.³⁴ These special rules affected the provisions concerning the admission, communication, placement, employment, education and leisure time activities of the detainees. Based on the authorisation provided in Section 3(1) of Act XII of 2020, the Government extended the effect of government decree No. 90/2020 (5 April) from the 15th day of its promulgation until the termination of the state of danger defined in Government decree No. 40/2020 (11 March).³⁵ During the epidemiological stand-by period that followed the termination of the state of danger on 18 June 2020,³⁶ Section 236(1) of Act LVIII of 2020³⁷ on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger provided that the provisions set out by the Prison Act shall be applied with the derogations defined in this law by 31 December 2020.

1.4.2. Official measures related to social care and child protection institutions

On 8 March 2020,³⁸ the Chief Medical Officer, acting in her competence of a healthcare authority,³⁹ ordered a visiting ban in all the inpatient and residential social care institutions, on account of the epidemic. On 17 March 2020,⁴⁰ the visiting ban was extended and at the same time, a lockdown was implemented for the social care institutions providing speciality services, the institutions providing child protection services and the correctional facilities. With effect from 18 May 2020,⁴¹ the visiting ban and the lockdown did not extend any more to the institutions providing child protection services and to the correctional facilities. With effect from 3 June 2020,⁴² the Chief Medical Officer partially relaxed the visiting ban to the social care institutions as well, the visits could be organised if the predefined precautionary measures were taken. With regard to the social care institutions, the visiting ban and the lockdown were fully lifted on 18 June.⁴³

In the second wave of the pandemic, with effect from 7 September 2020,⁴⁴ the Chief Medical Officer repeatedly ordered a visitation ban and a lockdown for all specialised social care

³³ Government Decree No. 90/2020 (5 April) on the amendment of certain law enforcement rules related to the declaration of the state of danger

³⁴ Act XII of 2020 qualifies as cardinal based on its provisions set out in Section 9.

³⁵ Section 12 of Government decree No. 90/2020 (5 April) on the amendment of certain law enforcement rules related to the declaration of the state of danger

³⁶ Government Decree No. 282/2020 (17 June) on terminating the state of danger declared on 11 March 2020

³⁷ Government Decree No. 283/2020 (17 June) on the introduction of the epidemiological stand-by period

³⁸ Decision Reg. No. 13305-8/2020/EÜIG

³⁹ Pursuant to Section 11(5) of Act XI of 1991 on Health Governance and Administration Activity

⁴⁰ Decision Reg. No. 13305-16/2020/EÜIG

⁴¹ Decision Reg. No. 13305-47/2020/EÜIG

⁴² Decision Reg. No. 13305-54/2020/EÜIG

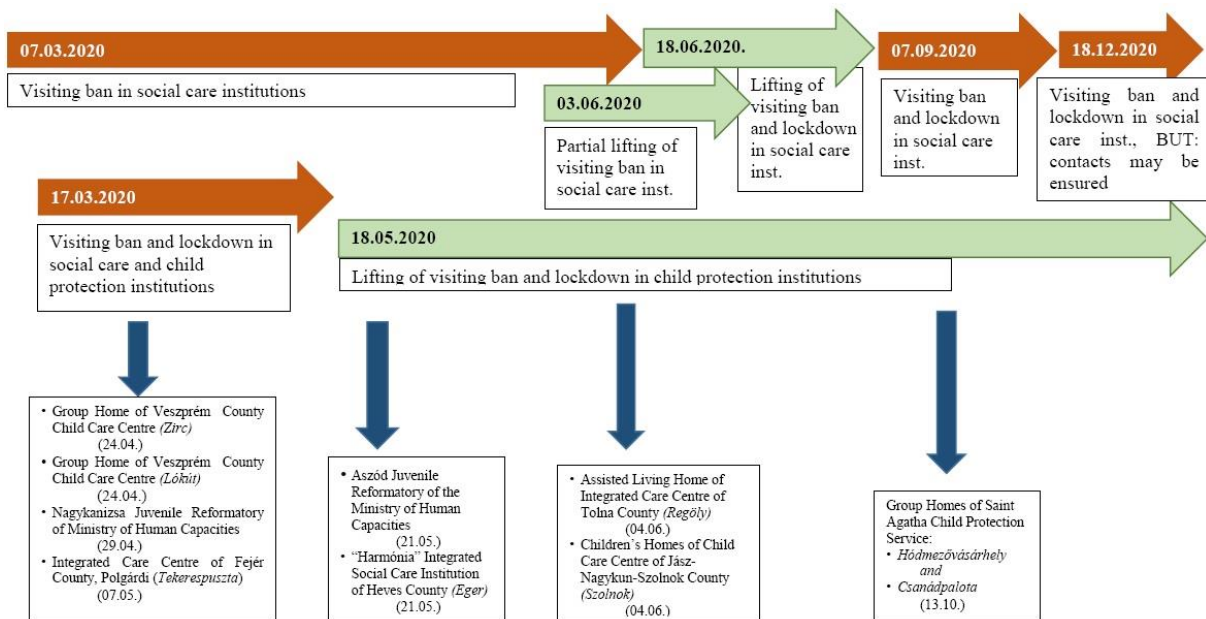
⁴³ Decision Reg. No. 13305-59/2020/EÜIG

⁴⁴ Decision Reg. No. 42935-2/2020/EÜIG

institutions. With effect from 18 December 2020,⁴⁵ the institutions could already allow the visits to the residents of care institutions if the conditions defined in the guidelines⁴⁶ elaborated by the National Public Health Centre and approved by the Ministry of Human Capacities were met.

The existence of the restrictions ordered by the measures taken by the Chief Medical Officer at the time of the visits paid by the NPM at social and child protection institutions is illustrated on the following timeline.

Measures taken by the National Chief Medical Officer and visits paid by the NPM to social and child protection institutions in 2020



⁴⁵ Decision Reg. No. 42935-3/2020/EÜIG

⁴⁶ National Public Health Centre: Proposals for keeping contact with those living in specialised social care institutions

https://szocialisportal.hu/wp-content/uploads/2020/12/Kapcsolattartásra_vonatkozó_javaslatok_20201209.pdf

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

2.1. Public servants in the Office of the Commissioner for Fundamental Rights

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

In the performance of his tasks, the NPM may act in person or by way of the members of his staff authorised by him. Staff members authorised by the NPM shall have the investigative powers of the NPM,⁴⁷ and the obligation for cooperation of the authorities concerned as well as their management and staff pursuant to Section 25 of the Ombudsman Act shall be complied with also in their respect.⁴⁸

To perform the tasks related to the National Preventive Mechanism, the NPM must authorise, on a permanent basis, at least eleven public servants from among the staff members of the Office of the Commissioner for Fundamental Rights (hereinafter: the “Office”). The “*authorized public servant staff members shall have outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience, as well as an academic degree*”.⁴⁹ 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 authorised public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.*”⁵⁰

The NPM performs this task by relying on the public servants of his Office authorised for this on a permanent basis,⁵¹ as well as an independent organisational unit,⁵² i.e. the OPCAT National Preventive Mechanism Department (hereinafter: the “Department”). In order to ensure a multidisciplinary approach, lawyers and psychologists took part in the visits paid by the NPM, while education specialists participated in the visits paid to child protection institutions. In the composition of the visiting delegations, the NPM also strove to ensure a gender balance.

2.2. The new headquarters of the Office of the Commissioner for Fundamental Rights

The Government decided in 2020 that the Office would move to a newly refurbished, more spacious and well-planned office building located in the city centre that would meet 21st-

⁴⁷ See Sections 21, 22 and 26, 27(1)–(2), as well as 39/B of the Ombudsman Act.

⁴⁸ Section 39/D, Subsection (1) of the Ombudsman Act

⁴⁹ Section 39/D, Subsection (3) of the Ombudsman Act

⁵⁰ Section 39/D, Subsection (4) of the Ombudsman Act

⁵¹ Section 39/D, Subsections (3) and (4) of the Ombudsman Act

⁵² SPT: *Guidelines on national preventive mechanisms* (Clause 32 of CAT/OP/12/5). <https://undocs.org/CAT/OP/12/5>

Furthermore, see Section 2 of Annex 1 of OMBUDSMAN Instruction No. 1/2012 (6 January) on the Organisational and Operational Rules of the Office of the Commissioner for Fundamental Rights (text versions effective between 1 January 2015 and 31 December 2020), as well as Section 23(2) thereof (in the text effective from 1 January 2021).

century expectations and would be easily accessible by public transport. The Office could move to its new, revamped headquarters at Falk Miksa u. 9–11., Budapest, District 5 on 1 September 2020.

2.3. Costs related to performing the tasks of the NPM in 2020

The Office performing the administrative and preparatory activities 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 2020 budget of the Office was planned in consideration of the financial coverage necessary for the performance of the tasks of the NPM. The resources at the NPM's disposal covered the costs of the performance of the tasks in connection with its mandate.⁵³

Expenditure for 2020	Amount
Personal allowances	75,374,597
Contributions	13,822,759
Professional and administrative materials	941,176
IT and communication expenses	1,865,525
Services supporting professional activities	1,112,669
Delegation expenses	111,548
Promotion, propaganda, international membership fees	869,702
Maintenance and repair costs	1,141,608
Public utility fees	551,783
Operational services	7,192,062
VAT	3,341,665
Total in HUF:	106,325,094*

* 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.

⁵³ SPT Visit to Hungary, 21–30 March 2017: in compliance with the recommendation in Clause 24 of the Conclusions and Recommendations for the National Preventive Mechanism (Clause 24 of CAT/OP/HUN/R.2). <https://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf/b62f5918-432c-788b-0319-34b58d5686dd>

3. The NPM's cooperation with civil society organizations

Pursuant to Article 3 of the OPCAT, the Commissioner for Fundamental Rights has to perform the tasks related to the NPM independently.⁵⁴ However, in its activities aimed at facilitating the enforcement and protection of human rights, the NPM has to cooperate with “*organizations and national institutions aiming at the promotion of the protection of fundamental rights*”.⁵⁵

3.1. The tasks of the Civil Consultative Body

The Civil Consultative Body (hereinafter referred to as: the "CCB") working with the NPM – whose members are various organizations registered and operating in Hungary – has been established to support the NPM's work by the proposals and comments of 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.⁵⁶ The mandate of the first CCB established in 2014 expired on 19 November 2017, while the second CCB held its first meeting on 16 May 2018.

The second CCB consisted of four members chosen on the basis of a public call for application, and four invitee members. Members of the CCB selected as a result of a public call for application are Cordelia Foundation for the Rehabilitation of Torture Victims, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, and the Validity Foundation (earlier called: Mental Disability Advocacy Centre – MDAC). The organizations invited by the Commissioner for Fundamental Rights are the Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Dietetic Association and the Hungarian Bar Association.

The CCB operates as a body. In the course of the CCB's operation, its members may make recommendations relative to the contents of the annual schedule of visits of the NPM and the inspection priorities; initiate visits to certain places of detention; recommend the involvement of experts with special knowledge who may be affiliated with the organization they represent. The CCB may review the NPM's working methods, reports, information materials, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorized to perform the tasks related to the NPM; furthermore, it may participate in conferences, workshops, exhibitions, and other events organized by the NPM.⁵⁷

The CCB held its meetings on 10 and 11 December 2020, in the form of a video conference, on account of the coronavirus pandemic.

⁵⁴ Section 2(6) of the Ombudsman Act

⁵⁵ Section 2(5) of the Ombudsman Act

⁵⁶ Section 1(6) of Normative Instruction 3/2014 (11 September) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body

⁵⁷ Section 6 of Normative Instruction 3/2014 (11 September) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body supporting the performance of the tasks of the National Preventive Mechanism

3.2. Further cooperation with civil society organizations

<i>Name of the civil society organization</i>	<i>Form of cooperation</i>
Moholy-Nagy University of Art and Design	Professional counselling and consultation for the architectural planning of children's homes also serving as places of detention (11 February 2020)
Hungarian Criminological Association	Participation in the scientific meeting entitled " <i>Possibilities and challenges for supporting the victims of trafficking in humans in child protection</i> " organised by the Hungarian Criminological Association (13 February 2020)
	Participation in the session meeting entitled " <i>Child abuse as shown by research findings</i> " organised by the Victimology Section of the Hungarian Criminological Association and the Faculty of Law Enforcement of the National University of Public Service (21 February 2020)
Hungarian Helsinki Committee	Participation in the online expert conference of the EU project entitled " <i>Working towards harmonized detention standards in the EU – the role of NPMs</i> ", organised by Associazione Antigone, the Bulgarian Helsinki Committee, the Hungarian Helsinki Committee and the Ludwig Boltzmann Institute (27 April 2020)

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 the OPCAT, the States Parties, in order to enable the National Preventive Mechanisms to fulfil their mandate, 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*”.

On 19 December 2019, referring to Article 20(a) of the 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 2019, of all places of detention as defined in Article 4 of the OPCAT.⁵⁸ All the requested organs complied with its data request.

The aggregate list of places of detention under Hungarian jurisdiction as of 31 December 2019 (in the case of the judiciary, on the last workday of the year)			
Type	Number of places	Holding capacity/ number of beds	Number of detainees/ patients
Social care institutions⁵⁹	1,435	86,583	81,801
Child protection services ⁶⁰	489 ⁶¹	30,418	20,971
Correctional facilities	5	564	336
Unaccompanied minors	1	34	23
Total in child protection	495	31,016	21,330
Penitentiary institutions ⁶²	42	14,829	16,078
Medical institutions of the penitentiary system	2	576	372
Total in penitentiary system	44	15,405	16,450
Healthcare⁶³	97	9,149	3,335
Police	774	2,485	547
Airport Police Directorate	4	67	4
Total for police⁶⁴	778	2,552	551
Judiciary⁶⁵	122	329	13
Guarded refugee reception centres⁶⁶	1	105	9
Total	2,972	145,139	123,489

⁵⁸ The letters requesting data provision are registered under File No. AJB-5781/2019 in the Office.

⁵⁹ Without institutions providing temporary, day and night care for the homeless and other institutions providing only day care.

⁶⁰ Exclusive of data on children in follow-up care.

⁶¹ Exclusive of the homes of foster parents.

⁶² On 31 December 2019, there were 181 minors and 809 foreign citizens detained in the penitentiary institutions. The average annual utilisation rate was 112%.

⁶³ Figures relative to the child, adolescent and adult psychiatric and addictology, as well as gerontology and infectology wards of the hospitals.

⁶⁴ In 2019, there was a total of 92,744 detainees, including 12,795 women, 6,518 minors and 7,778 foreign citizens detained in the police detention facilities, of whom 670 persons, including 108 women, 17 minors and 398 foreign citizens were detained in the area of the Airport Police Directorate.

⁶⁵ In 2019, there were altogether 4,217 detainees detained on the premises of courts suitable for apprehension.

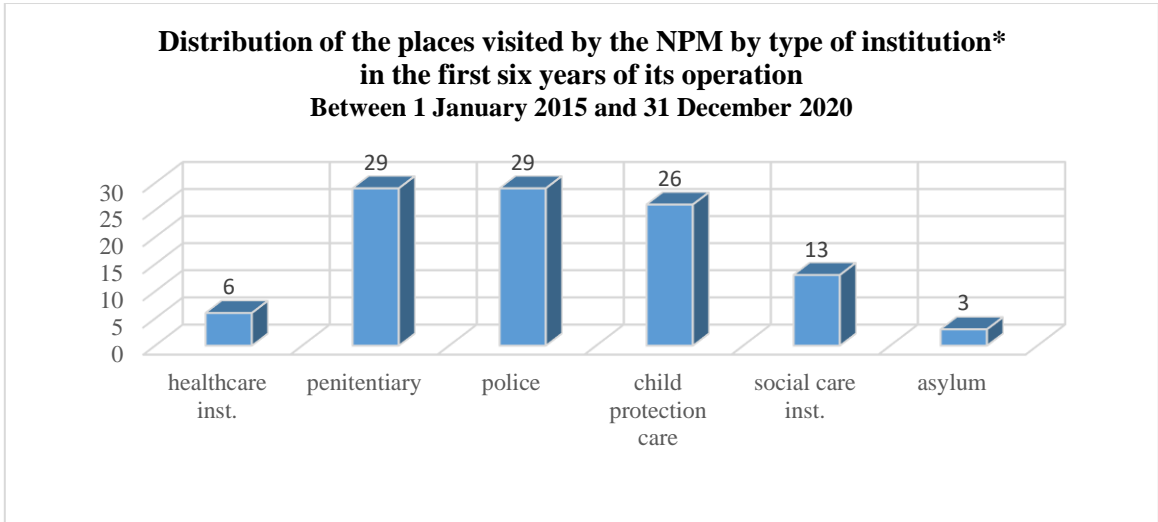
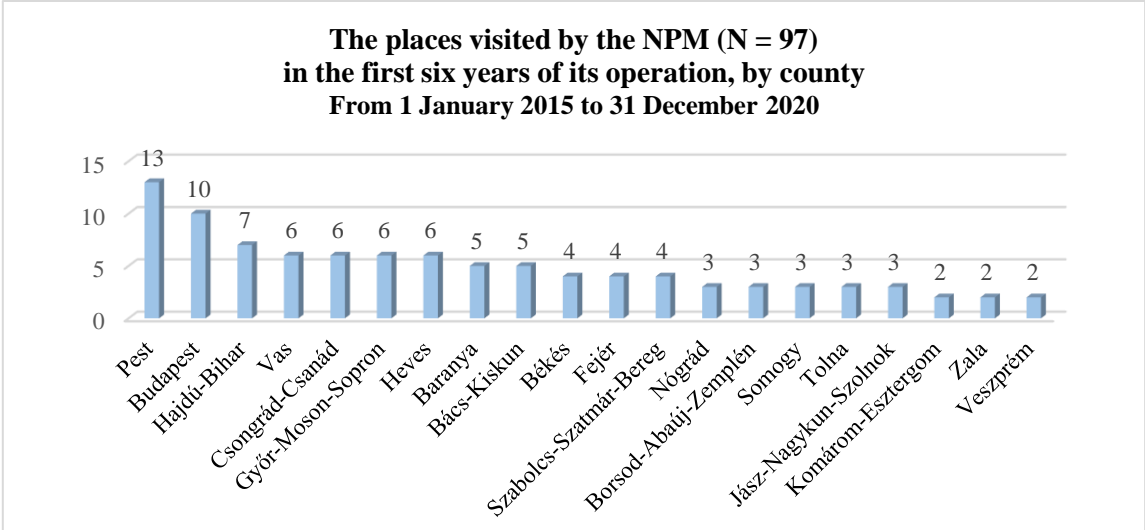
⁶⁶ In 2019, there were altogether 45 persons (including 2 women) detained for 54 days on average on the premises of the Guarded Refugee Reception Centre. The average annual utilisation rate was 7.77%.

According to the data provided to the NPM, on **31 December 2019**, in the **2,972** places of detention under Hungarian jurisdiction with a total holding capacity of **145,139** detainees, there were **123,489** persons being detained.⁶⁷

4.2. Institutions visited in the first six years of the operation of the NPM

In the first six years of the NPM’s operation, in selecting the places of detention to be inspected, the NPM took into account that visits should be paid to institutions of different types, in different geographical locations, and operated by different maintainers. 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.



*An institution (e.g. hospital, correctional facility) may be listed in several types at the same time.

⁶⁷ The data provided are registered under File No. AJB-149/2020 in the Office.

4.3. The 2020 schedule of visits of the NPM

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

On 17 December 2019,⁶⁸ based on the list of places of detention, the NPM determined the 2020 schedule of its visits.⁶⁹ The schedule of visits was compiled by taking the CCB's proposals into account.

In 2020, the NPM started its operation based on its schedule of visits, so in February and March, he inspected the circumstances of detention in a total of 8 police facilities, the custody units and the offices.

When the coronavirus pandemic reached Hungary, the NPM turned to the operators and supervisory organs of the places of detention and requested written information on the measures taken for the strengthening of the protection of persons deprived of their liberty, staying at places of detention, from the coronavirus infection. The Hungarian Prison Service Headquarters, the National Police Headquarters, the Directorate-General for Social Affairs and Child Protection, as well as the National Healthcare Services Centre informed the NPM on the measures that they had taken in the pandemic situation. According to this information, the organs concerned continuously monitored the changes of the laws adopted for the management of the pandemic situation, as well as the rules of procedure and guidelines issued by the Ministry of Human Capacities and the National Public Health Centre. Starting out from these, the central organs elaborated their own rules of procedure and internal regulatory instruments, reckoning with the special features of the places of detention under their control. The institutions regularly informed their staff members and the detainees of the tasks related to the prevention of the coronavirus infection. They obtained the necessary detergents and disinfectants, as well as the personal protective equipment, they continuously took care of the availability thereof. At the institutions, premises were designated for the isolation of new arrivals, infected persons or persons suspected of being infected, the rules of their application were laid down in the rules of procedure. To the extent possible, safe distance was kept from the detainees. At most of the institutions, the forms of keeping personal contact, such as the reception of visitors at the institution or the detainee's leaving the building, were terminated. At institutions where the reception of visitors was still permissible in highly justified cases (e.g. at hospital inpatient departments, at the guarded shelters operated by the Airport Police Directorate), this could only happen by ensuring increased protection from the infection. In order to mitigate the effects of the restrictions ordered for the protection against the pandemic, the institutions strove to ensure alternative ways of keeping contact (e.g. the implementation of digital communication at the penal institutions), as well as to extend the already existing options (e.g. making longer phone calls, the acquisition of further IT devices). The right to complaint and the right to legal remedy were also ensured to the detainees primarily on the phone and via IT devices. The staff members of the institutions provided increased support to the detainees with their keeping contact with the child rights, patient rights and resident rights representatives. The legislator did not restrict keeping personal contact with the lawyers. The institutions also endeavoured to protect their staff members by providing regular information, protective equipment, and the regular disinfection of the premises and the tools.

⁶⁸ Case file No. AJB-5860-1/2019

⁶⁹ Clause 33 of SPT *Guidelines on national preventive mechanisms* (CAT/OP/12/5)

After obtaining written information, from April 2020, the NPM resumed its visits on the basis of a new scenario in the state of danger declared due to the coronavirus pandemic, and it paid shorter, previously announced, primarily COVID-focused visits to the selected institutions.



Dr. Ákos Kozma, Commissioner for Fundamental Rights in protective equipment while visiting a group home

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 the OPCAT also in the absence of any petition or alleged impropriety.⁷⁰

In 2020, the NPM inspected **6,179** detention units at **36** locations. The table below shows the date of the visits, the names of the places of detention, as well as the number of detention units visited.

Locations visited by the NPM in 2020

Number	Date of the visit	Name of the place of detention	Number of interviewees at the time of the visit		
			Authorized capacity (persons)	Utilization rate %	Number of detainees
Inquiries based on general criteria					
1.	18–19.02.2020	Győr Police Department	17	5.9	1
2.	18–19.02.2020	Csorna Police Department	1	-	0
3.	18–19.02.2020	Mosonmagyaróvár Police Department	3	33.3	1
4.	18–19.02.2020	Kapuvár Police Department	4	-	0
5.	03–04.03.2020	Eger Police Department	3	33.3	1
6.	03–04.03.2020	Eger Police Department, Pétervására Police Station	2	-	0
7.	03–04.03.2020	Füzesabony Police Department	2	50	1
8.	03–04.03.2020	Gyöngyös Police Department	8	-	0
Inquiries with a COVID-19 focus					
9.	15.04.2020	Sátoraljaújhely Strict and Medium Regime Prison	292	146.9	429
10.	16.04.2020	Kiskunhalas National Prison	472	108.1	510
11.	17.04.2020	Szentendre Police Department – control of home quarantine	-	-	85
12.	24.04.2020	Group Home No. 4 of the Veszprém County Child Care Centre, Primary School, Vocational School, Skills Development School and Regional Child Protection Service (<i>Zirc</i>)	12	100	12
13.	24.04.2020	Group Home No. 6 of the Veszprém County Child Care Centre, Primary School, Vocational School,	12	91.7	11

⁷⁰ Section 39/B(1) of the Ombudsman Act

		Skills Development School and Regional Child Protection Service (<i>Lókút</i>)			
14.	29.04.2020	Nagykanizsa Juvenile Reformatory of Ministry of Human Capacities	108	45.4	49
15.	07.05.2020	Integrated Care Centre of Fejér County, Polgárdi - Tekerospuszta Unit	232	77.6	180
16.	07.05.2020	Gárdony Police Department, Martonvásár Police Station	1	-	0
17.	13.05.2020	Szombathely National Prison	1,476	94.7	1,437
18.	13.05.2020	Sopronkőhida Strict and Medium Regime Prison	433	133	577
19.	15.05.2020	Szeged Strict and Medium Regime Prison, Facility I	513	108.6	557
20.	21.05.2020	Aszód Juvenile Reformatory, Primary School, Vocational School and Special School of the Ministry of Human Capacities	160	53.1	85
21.	21.05.2020	“Harmónia” Integrated Social Care Institution of Heves County (<i>Eger</i>)	160	97.5	156
22.	04.06.2020	Assisted Living Home of Integrated Care Centre of Tolna County (<i>Regöly</i>)	8	100	8
23.	04.06.2020	Reception Home of Child Care Centre of Jász-Nagykun-Szolnok County and Territorial Child Protection Service (<i>Szolnok</i>)	15	46.7	7
24.	04.06.2020	Special Children’s Home of the Child Care Centre of Jász-Nagykun-Szolnok County and Territorial Child Protection Service (<i>Szolnok</i>)	16	62.5	10
25.	04.06.2020	Home for Children with Special Needs of the Child Care Centre of Jász-Nagykun-Szolnok County and Territorial Child Protection Service (<i>Szolnok</i>)	8	50	5
26.	18.09.2020	Guarded Shelter of the Szabolcs-Szatmár-Bereg County Police Headquarters (<i>Nyírbátor</i>)	160	25	40
27.	18.09.2020	Nyírbátor Unit of the Guarded Refugee Reception Centre of the National Directorate-General for Aliens Policing	105	7.6	8
28.	25.09.2020	Tamási Police Department	24	-	0
29.	25.09.2020	Fonyód Police Department	4	-	0
30.	30.09.2020	Tiszalök National Prison	1,100	98.8	1,087
31.	30.09.2020	Heves County Remand Prison	143	94.4	135
32.	02.10.2020	Tata Police Department	3	-	0
33.	07.10.2020	Vác Strict and Medium Regime Prison	646	97.7	631
34.	13.10.2020	Group Home of the Saint Agatha Child Protection Service (<i>Hódmezővásárhely</i>)	12	66.7	8
35.	13.10.2020	Group Home of the Saint Agatha Child Protection Service (<i>Csanádpalota, Kossuth u. 16.</i>)	12	91.7	11
36.	13.10.2020	Group Home of the Saint Agatha Child Protection Service (<i>Csanádpalota, Kossuth u. 31.</i>)	12	91.7	11
Total		Number of inspected places: 36	6,179		6,053

The primary objective of the NPM's visits is to establish which elements of the treatment of persons deprived of their liberty may lead to torture or other cruel, inhuman and degrading treatment or punishment, and how to prevent them. Another important task of the NPM is to make recommendations in order to prevent these from happening or recurring.⁷¹



Ready for visiting the Nagykanizsa Juvenile Reformatory of Ministry of Human Capacities – the Office's press agent (left) and two members of the visiting group

As a general rule, the staff members of the Department do not inquire into complaints lodged with the Office. The only exceptions are submissions containing data or information indicative of the violation of the provisions on the prohibition of reprisals, stipulated in Article 21(1) of the OPCAT, which are investigated by the staff members of the Department authorized to perform 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 serve as a compass for the selection of the locations of visits and the inspection criteria.

⁷¹ 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) (CAT/OP/MDV/1) Clause 5 <https://undocs.org/CAT/OP/MDV/1>

6. Focal points of the NPM's visits

6.1. Focal points of visits based on general criteria

In the course of the inspection of places of detention, the NPM examines the conditions of placement of persons deprived of their liberty and their treatment. The visiting delegations examined those aspects of placement and treatment which presented the highest risk of the insufficient enforcement of the fundamental rights of persons deprived of their liberty. The general visits paid prior to the emergence of the coronavirus disease (COVID-19) pandemic in Hungary were unannounced in 2020 as well.

The focal points 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 judgements 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.

In 2020, the NPM paid visits based on general criteria to 8 police facilities. These visits examined the circumstances of the placement of persons deprived of their liberty on the basis of the following key criteria:

- in what way the placement of the escorted person is ensured at the police custody units;
- in what circumstances the detainee was escorted, if any coercive devices were applied;
- the method and circumstances of the detainee's transportation;
- the way of providing information on the rights and obligations;
- provision of medical services;
- possibility to keep contact with the lawyer and a third party;
- treatment of detainees;
- enforcement of the rights of special groups of detainees (minors, women, foreign citizens, LMBTQI persons);
- treatment of detainees who belong to national minorities living in Hungary.

6.2. Visits with a COVID-19 focus

The focal points of the NPM's visits were defined by the examination of the consequences of the coronavirus pandemic from April 2020. According to the interim guidance of the World Health Organization (WHO) on the prevention and control of the COVID-19 infection in prisons and other places of detention issued on 15 March 2020, places of detention may act as starting points of the infection due to the close proximity of the detainees to each other, this is why preserving the health of the persons living there is a key priority for public health as well.⁷²

The NPM's visits primarily examined to what extent the pandemic situation and the restrictions applied at the places of detention affected the living conditions of the detainees and how the institutions could fulfil their obligations regarding the prevention of the coronavirus infection. The focus points were defined by taking the guidelines of the Subcommittee on Prevention of Torture and the CPT into account.

⁷² WHO: *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance, 15 March 2020.* p. 1. <https://apps.who.int/iris/bitstream/handle/10665/336525/WHO-EURO-2020-1405-41155-55954-eng.pdf>

The Advice issued by the Subcommittee on Prevention of Torture on 7 April 2020⁷³ points out that the prohibition of torture or cruel, inhuman or degrading treatment or punishment shall be ensured even in the case of the existence of extraordinary circumstances and emergencies.⁷⁴ According to the Advice, the national preventive mechanisms operating in the individual countries may decide themselves on the measures that they find the most suitable in the pandemic situation.⁷⁵ According to the Advice, the national preventive mechanisms shall exercise their mandates by reckoning with the restrictions of social contacts during the coronavirus pandemic.⁷⁶

In its statement of principles relating to the treatment of persons deprived of their liberty during the coronavirus pandemic, the CPT⁷⁷ also declared that the independent monitoring activity performed by the NPMs continues to be a vital guarantee against ill-treatment, by taking the “*do no harm*” principle into account.

During its COVID-focused visits, the NPM paid special attention to the following criteria:

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

In 2020, the NPM paid COVID-focused visits to 28 places of detention. It visited 8 penal institutions, 5 police custody units and 2 detention centres for refugees, 3 social care institutions and 10 child protection institutions.

The NPM announced the COVID-focused visits in advance, with a view to ensuring the protection of the detainees, the staff members of the places of detention, as well as the members of the visiting group from the virus infection, and the precautionary measures required with regard to the pandemic situation. The members of the visiting groups wore protective equipment during the visits, respecting the “*do no harm*” principle and kept appropriate distance during the personal interviews.

The COVID-focused visits were shorter than usual, due to the pandemic situation, in order to reduce the danger of infection. Those inquiries whose sites the NPM or the Commissioner for Fundamental Rights had already visited in his general competence before the pandemic situation did not comprehensively assess the implementation of the recommendations made in the reports on the previous inquiries, so they cannot be regarded as follow-up visits.

⁷³ SPT: *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic* (CAT/OP/10) <https://undocs.org/CAT/OP/10>

⁷⁴ Clause I/5 of CAT/OP/10

⁷⁵ Clause I/6 of CAT/OP/10

⁷⁶ Clause IV/11 of CAT/OP/10

⁷⁷ CPT: *Statement of principles relating to the persons deprived of their liberty during the coronavirus (COVID-19) pandemic* [CPT/Inf(2020)13] <https://rm.coe.int/16809e0704> and CPT: *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic* [CPT/Inf (2020) 21] <https://rm.coe.int/16809ef566>

7. The report of the NPM

The NPM makes reports on the visits it has conducted; *“it shall contain the uncovered facts and the findings and conclusions based on those facts”*.⁷⁸ 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.

7.1. Preparation of the report

Pursuant to Article 21(2) of the 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”*.⁷⁹

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 pictures taken on site, and the documents obtained in the course of the visit to the head of the visiting delegation; the external experts also submit their opinions. Neither the partial reports nor the expert opinions contain any data suitable for personal identification.

As *“the documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights are not public”*,⁸⁰ 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 the 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, the positions of the NPM’s colleagues who are public servants, and the method of the inspection. Since the preventive monitoring visits of the NPM also cover the practice-oriented review of the relevant legal regulations, 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*

⁷⁸ Section 28(1) of the Ombudsman Act

⁷⁹ Section 27(1) of the Ombudsman Act

⁸⁰ Section 27(3) of the Ombudsman Act

*national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way”.*⁸¹

7.4. Facts and findings of the case

From the aspects 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 place of detention’s basic data, as well as the detailed description of the observations, interviews, and documents obtained, on which the NPM bases its findings and measures.⁸² 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.⁸³

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.⁸⁴ Under the findings, it also has to be elaborated 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 legal act, or the absence or the deficiency of the given issue’s legal regulation.⁸⁵

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

The experience gathered from the visits shows that, in the case of detainees, enduring only treatment and/or placement conditions violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment but also treatment and/or placement conditions resulting in an impropriety related to fundamental rights may cause serious physical or psychological ordeal. Since the *full respect for the human rights of persons deprived of their liberty* is a common responsibility shared by all,⁸⁶ 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.

⁸¹ Clause 1, Article 21 of the OPCAT

⁸² See Article 32(1) of Normative Instruction No. 3/2015 (30 November) of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries (hereinafter referred to as: “Ombudsman Normative Instruction No. 3/2015 (30 November)”).

⁸³ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (CAT/OP/1/Rev.1) Clause 26 <https://undocs.org/CAT/OP/1/Rev.1>

⁸⁴ Section 33(1) of Ombudsman Normative Instruction No. 3/2015 (30 November)

⁸⁵ See Article 11 of the UN Convention against Torture

⁸⁶ See the Preamble of the 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 Disabilities,⁸⁷ the other organs of the UN and the Council of Europe, as well as by the Constitutional Court of Hungary.

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.⁸⁸

7.5. Measures taken by the NPM

Pursuant to Article 19(b) of the 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.⁸⁹ In every case, the provision of the Ombudsman Act giving grounds to a particular measure has to be indicated.⁹⁰

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.⁹¹ The measures with different addressees and the different measures to the same addressee must be clearly separated.⁹²

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

⁸⁷ See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated into law by Act XCII of 2007

⁸⁸ See SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (CAT/OP/1/Rev.1) Clause 30 <https://undocs.org/CAT/OP/1/Rev.1>

⁸⁹Section 34(1) of the Ombudsman Normative Instruction No. 3/2015 (30 November)

⁹⁰ Section 34(3) of Ombudsman Normative Instruction No. 3/2015 (30 November)

⁹¹Section 34(2) of Ombudsman Normative Instruction No. 3/2015 (30 November)

⁹²Section 34(4) of Ombudsman Normative Instruction No. 3/2015 (30 November)

NPM of its position on the merits of the initiative and on the measures taken.⁹³ If the authority subject to inquiry does not agree with the initiative, it shall, within thirty days of receipt of the initiative, submit the initiative to its supervisory organ together with its opinion thereon. Within thirty days of receipt of the submission, the supervisory organ shall inform the NPM of its position and on the measures taken.⁹⁴ Nearly all of the addressees of the 49 initiatives formulated in the reports published in 2020 on the NPM's visits 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, 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.⁹⁵ If there is no supervisory organ, the NPM makes a recommendation to the authority inspected.⁹⁶ The addressees of the 15 recommendations formulated in the reports published in 2020 on the NPM's visits 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 competent 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.⁹⁷ In 2020, the need for action by the competent public prosecutor did not arise.

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, it may report it to the National Authority for Data Protection and Freedom of Information.⁹⁸ In 2020, the need for reporting to the National Authority for Data Protection and Freedom of Information did not arise.

7.5.5. Legislative initiative

If, in the interest of eliminating ill-treatment or the threat thereof, the NPM suggests to modify or 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.⁹⁹ The NPM made two legislative initiatives in 2020.

⁹³ Section 32, Subsections (1) and (2) of the Ombudsman Act

⁹⁴ Section 32(3) of the Ombudsman Act

⁹⁵ Section 31(1) of the Ombudsman Act

⁹⁶ Section 31(4) of the Ombudsman Act

⁹⁷ Section 33(1) of the Ombudsman Act

⁹⁸ Section 36 of the Ombudsman Act

⁹⁹ Section 37 of the Ombudsman Act

7.6. Report on a follow-up visit

A follow-up inquiry provides an opportunity to monitor the implementation of the recommendations made in the previous report of the NPM and to discuss the experience of the earlier visits and in their light, the circumstances of the practical implementation of the measures with the personnel of the places of detention. The report on the follow-up visit repeatedly assesses the circumstances serving as the basis for the conclusions drawn in the previous report, in order to find whether the improprieties related to a fundamental right established earlier with regard to the placement condition or treatment in question have been remedied. If the impropriety with regard to a fundamental right continues to exist, the NPM repeatedly draws attention to the taking of the measure proposed in the earlier recommendation, or takes another measure to remedy the impropriety. If the report discloses other problems not dealt with in the earlier report, the NPM makes recommendations with regard to the newly explored problems in the follow-up report.

In 2020, the NPM issued a report on the follow-up visit to the Platán Integrated Social Care Institution of Bács-Kiskun County.¹⁰⁰

7.7. 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.”*¹⁰¹

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

The reports of the NPM have to be published on the Office's homepage in digital format, accessible without restriction, free of charge to anyone.¹⁰² Within a few days after sending the NPM's reports in Hungarian to the addressees, the staff members of the NPM make them accessible for the public¹⁰³ as well.¹⁰⁴ The NPM's reports shall also be published in the electronic archives within 30 days of their disclosure.¹⁰⁵

¹⁰⁰ NPM report No. AJB-518/2020, see more details in Chapter 9.3.1.

¹⁰¹ Section 28(2) of the Ombudsman Act

¹⁰² Section 39(1) of Ombudsman Normative Instruction No. 3/2015 (30 November)

¹⁰³ Section 39(2) of Ombudsman Normative Instruction No. 3/2015 (30 November)

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

¹⁰⁵ Section 39(3) of Ombudsman Normative Instruction No. 3/2015 (30 November)

Reports published in 2020 during the performance of the NPM's tasks

Number	Name of the place of detention	Measures			
		Total number	addressees		
			Institution subject to inquiry ¹⁰⁶	Supervisory organ ¹⁰⁷	Law-making ¹⁰⁸
1.	Platán Integrated Social Care Institution of Bács-Kiskun County	15	7	7	1
2.	Sátoraljaújhely Strict and Medium Regime Prison	3	3	-	-
3.	Martonvásár Police Station	3	3	-	-
4.	Group Homes No. 4 and 6 of the Veszprém County Child Care Centre, Primary School, Vocational School, Skills Development School and Regional Child Protection Service (Zirc, Lókút)	5	4	1	-
5.	Nagykanizsa Juvenile Reformatory of Ministry of Human Capacities	5	4	1	-
6.	“Harmónia” Integrated Social Care Institution of Heves County (Eger)	2	2	-	-
7.	Szeged Strict and Medium Regime Prison	2	1	1	-
8.	Esztergom Special Children’s Home Centre, Primary School and Trade School of the Ministry of Human Capacities	16	12	3	1
9.	Assisted Living Home of Integrated Care Centre of Tolna County (Regöly)	1	1	-	-
10.	Guarded Shelter of the Szabolcs-Szatmár-Bereg County Police Headquarters	2	2	-	-
11.	Aszód Juvenile Reformatory, Primary School, Vocational School and Special School of the Ministry of Human Capacities	7	6	1	-
12.	Szombathely National Prison	1	1	-	-
13.	Tamási Police Department	2	2	-	-
14.	Kiskunhalas National Prison and Mobile Epidemic Hospital	2	1	1	-
Total		66	49	15	2

¹⁰⁶ Section 32(1) of the Ombudsman Act

¹⁰⁷ Section 31(1) of the Ombudsman Act

¹⁰⁸ Section 37 of the Ombudsman Act

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

8.1. Detainees in penal institutions

In 2020, the NPM issued reports with a COVID-19 focus on visiting 4 penal institutions (Sátoraljaújhely Strict and Medium Regime Prison¹⁰⁹, Kiskunhalas National Prison,¹¹⁰ Szombathely National Prison,¹¹¹ Szeged Strict and Medium Regime Prison¹¹²).

8.1.1. Headcount and occupancy, placement of detainees

At the time of the visit, there were 429 registered detainees at the Sátoraljaújhely Strict and Medium Regime Prison, of whom 425 were staying at the Institution.

At the Kiskunhalas National Prison, with a holding capacity of 472 persons, 510 detainees were staying at the time of the visit. In order to reduce overcrowdedness in the future, the Institution was extended by a unit with 440 beds, which was being built at the time of the visit.

The Szombathely National Prison has a holding capacity of 1,476 persons. 1,437 detainees were present at the time of the visit, and the occupancy rate was 97.4%. It was deemed good practice by the NPM that elderly and chronically ill detainees, who belonged to a key risk group with regard to infection, were placed on a separate floor, isolated from the others, for their increased protection.

At the Szeged Strict and Medium Regime Prison, there was a total of 1,272 detainees (1,251 men and 21 women) in Facilities I, II and III, at the 1,284 places of the Institution, the occupancy rate of the Institution was 99%.



Prison cell in the Szeged Strict and Medium Regime Prison

¹⁰⁹ NPM Report No. AJB-2419/2020. Date of the visit: 15 April 2020

¹¹⁰ NPM Report No. AJB-2456/2020. Date of the visit: 16 April 2020

¹¹¹ NPM Report No. AJB-2728/2020. Date of the visit: 13 May 2020

¹¹² NPM Report No. AJB-2726/2020. Date of the visit: 15 May 2020

8.1.2. Measures taken to prevent the infection, with special regard to the admission procedure

In compliance with the statutory provisions and the instructions of the National Commander of the Hungarian Prison Service, the directors of all the penitentiary institutions took measures for ensuring protective equipment and disinfectants, as well as for the prevention of infections.

The detainees cleaned the prison cells several times a day. At the Sátoraljaújhely Strict and Medium Regime Prison, the detainees were given cleansers and detergents for cleaning, while at the time of visiting the Szombathely National Prison, the inmates already received detergents for washing with disinfectants on a daily basis as well. At the Szeged Strict and Medium Regime Prison, the detainees cleaned their prison cells with disinfectant water twice a week. The floors of the prison units were cleaned with disinfectant detergents several times a day at all four penitentiary institutions.

Masks were provided to the detainees at all the penal institutions under review. The detainees were obliged to wear masks when they left their prison cells or when the staff members entered their cells. The members of the staff who got into direct contact with the detainees were also obliged to wear protective equipment during the time of the personal contact.

The detainees were isolated for 14 days after admission. At the Sátoraljaújhely Strict and Medium Regime Prison, no external admissions took place from the effect of the state of danger until the day of the visit, new detainees only arrived from other penal institutions. The detainees to be admitted and the policemen escorting them entered through the separate entrance of the building and the new arrivals were placed in isolated cells at the healthcare unit. The Kiskunhalas National Prison used the transformed single cells of the disciplinary unit for healthcare isolation. In order to ensure that the detainees under medical supervision occupy themselves during the day, TV sets were placed into these cells. At the Szombathely National Prison, the 4th floor of Building A/3, as well as the cell of Building A/4 were designated for the isolation of the newly admitted detainees. At the Szeged Strict and Medium Regime Prison, the detainees were placed at a separate wing of the building in Facility I for a 14-day observation. In the period of observation, the affected detainees had to be moved separately from the other detainees in each case (e.g. at the time of buying items at the prison canteen, staying outdoors, seeing the doctor, etc.). After the isolated detainees crossed an area, these premises had to be disinfected.

8.1.3. Accessibility of healthcare services and psychologists

The doctor holding consulting hours at the Sátoraljaújhely Strict and Medium Regime Prison was available for the detainees every day of the week. The dentist was available every day, but he only treated the acute problems due to the pandemic situation. At the Institution, the doctor assessing job suitability and the psychiatrist held consulting hours once a week. According to the nurse, the symptoms of coronavirus had to be signalled by the detainees without any delay but no such complaints had arisen before the visit. Due to the emergency situation, the detainees were hospitalised only in highly justified, serious cases. One of the detainees, who injured his limb in a fight, was not received at the surgery department of the hospital during the week preceding the visit, so the check-up was done by the Institution's doctor. The interviewed detainees confirmed that the psychologist was available to them and if they had a problem, he could usually help.

At the Kiskunhalas National Prison, two doctors, who were working on the basis of a service contract, held consulting hours from Monday to Thursday, while they were on call from Friday to Sunday. Gynaecological and dentistry consulting hours, as well as job suitability examinations were held once a week. The detainees could signal to the nurses if they had a symptom, were feeling unwell, or had fever. In the case of such signals, temperatures were always taken but until the visit, no detainee had had fever. The healthcare workers also took the detainees' temperatures when the medicines were distributed, with a non-contact thermometer. At the time of the visit, the Institution had no full-time psychologist but the psychologist working on the basis of a contractual relationship was available every day. The hiring of another psychologist working on the basis of a contractual relationship was in progress. Some of the interviewed detainees said that the psychologist was available and was able to help them but there were some other detainees who never consult the psychologist.

At the Szombathely National Prison, detainees who were chronically ill were examined with a frequency depending on their condition, and when their medications were prescribed (e.g. testing blood sugar levels and measuring blood pressure). By the time of the visit, there had been no persons infected with the coronavirus at the Institution. It gave rise to special concern, on account of the psychologically demanding pandemic situation, that more than half of the psychologists' positions were not filled, which caused an impropriety with regard to the enforcement of the right to physical and mental health.

General doctor's services were available at each facility of the Szeged Strict and Medium Regime Prison, while dentists were available at Facilities I and III. All the psychologists' positions were filled. The detainees had the opportunity to talk to psychologists individually, who visited the prison units every week. At some units of the Institution, it would have been obligatory, based on the Prison Act, to hold psychological group therapy sessions, but these were suspended due to the threat of the virus. In the NPM's opinion, it would have made sense to organise these sessions in small groups, similarly to the religious group sessions. The missed psychological group therapy sessions threatened the enforcement of the right of the detainees to physical and mental health.

8.1.4. Daily routines – employment, education, staying outdoors, leisure time activities

The employment of the detainees could be resumed in the majority of the visited institutions. At the Sátoraljaújhely Strict and Medium Regime Prison, the majority of the detainees were involved in the production of protective clothing and masks, while many detainees worked in jobs financed from the state budget. There was no work outside the Institution. At the Kiskunhalas National Prison, the detainees could be employed in budgetary positions of the Institution, and they could also work in the sewing room and ready-to-wear unit of Adorján-Tex Kft., where disposable medical protective clothes are produced. At the Szombathely National Prison, the scope of job opportunities significantly decreased because the detainees and the civilian employees of the operator¹¹³ could not be isolated in the work areas. At the Szeged Strict and Medium Regime Prison, the detainees worked in budgetary positions and they were also employed by Nagy-Alföld Kft. (timber industry, laundry, bakery, metal technology, animal husbandry, growing crops). The protective equipment required for work was provided to the working detainees at all the visited institutions.

¹¹³ The Szombathely National Prison is an institution operating under a PPP arrangement. It is a private company called "FMZ Savaria Szolgáltató Korlátolt Felelősségű Társaság" [FMZ Savaria Services Ltd.] that performs the tasks related to the operation (e.g. providing the supplies, maintenance) on a contractual basis, while the professional tasks of law enforcement are performed by the employees of the Institution.

Education and training could be provided by the institutions in the form of distance learning, by completing worksheets. Teachers went to the Szeged Strict and Medium Regime Prison in person but the detainees also completed tests and worksheets here.

At the Kiskunhalas National Prison, the group sessions were held in small (5-member) groups, and in order to have the chance to practice religion on a regular basis, the Institution increased the number of religious group activities accessible to the detainees.

The daily one-hour stay outdoors was ensured to the detainees by all the penitentiary institutions. At the Sátorajújhely Strict and Medium Regime Prison, the duration of staying outdoors was increased to a daily 1.5 hours for the detainees during the Easter holidays. The NPM deemed it a good practice that at the Szombathely National Prison, a further one hour for outdoor sports activities was ensured to the detainees, in addition to the normal time that can be spent outdoors. During this, it was also ensured that the detainees could practice another sport every day (basketball, football, table tennis).

The institutions allowed the free of charge use of the gym to the detainees in such a way that the sport equipment was disinfected after each use. The entertainment of the detainees was provided by TV sets in each cell. The libraries of the institutions were closed but books were lent to the detainees individually or on each level of the building in all the institutions.

8.1.5. Contact with the outside world, with regard to compensating for the restrictions

In order to prevent the spread of the epidemic, the National Commander of the Hungarian Prison Service Headquarters was authorised by the legislator to restrict the right of the detainees to keeping contact with the outside world regulated by Section 122 b) of the Prison Act.¹¹⁴ According to the III Action Plan issued by the Hungarian Prison Service Headquarters (hereinafter referred to as: "HPSH ") for the performance of the tasks related to the coronavirus disease (COVID-19) pandemic,¹¹⁵ it was not possible to receive visitors at the penitentiary institutions. The lack of the personal form of keeping contact was attempted to be compensated for by HPSH in such a way that the opportunity to make Skype calls was created, and the duration of phone calls was increased by 15 minutes. With regard to the state of danger and the epidemiological stand-by period, those detainees who did not have mobile phones provided by the penitentiary institute received community phone use financed by the penitentiary system, in a duration of 3 times 5 minutes, based on individual request. The penitentiary system supported the use of Skype and this opportunity was promoted among the detainees and their relatives in information leaflets. The detainees were allowed to send and receive letters, the incoming letters were isolated for a short time, in order to decontaminate them from any potential viruses.

The detainees interviewed at the Sátorajújhely Strict and Medium Regime Prison said that they usually used the extra phoning possibility, divided to several parts during the week. With regard to the fact that the majority of the detainees worked, there were not many applications for the calling option funded by the penitentiary system, as the detainees could cover the costs of making their phone calls. About one half of the detainees used the opportunity to make Skype

¹¹⁴ Section 3(8)a) of Government Decree No. 90/2020 (5 April) on amending certain rules with regard to the declaration of the state of danger

¹¹⁵ Action Plan Reg. No. 30500/4116-9/2020 of the Hungarian Prison Service Headquarters issued on, and with effect from 9 April 2020

calls. For keeping contact, the detainees could use the 4 laptops in the remote hearing room and the education officer's room

At the Kiskunhalas National Prison, almost all the detainees made use of the opportunity to keep contact via Skype. On each level of the Institution, a “Skype cabinet” was available to the detainees (altogether four of them at the Institution). According to commander's instruction, Skype calls were permitted for the detainees if they kept the behavioural rules and demonstrated cooperative conduct for three months. If they committed an “undesirable act”, the three-month period had to be restarted. The NPM concluded that the wording “undesirable act”, which allowed broad interpretation, endangered the enforcement of the right to contact.



“Skype cabinet” at the Kiskunhalas National Prison

At the Szombathely National Prison, by way of compensation for the visitation ban, the detainees used and highly appreciated the increased phoning time and the possibility to make Skype calls. A total of nine termination points were built for keeping Skype contact, three computers were available in Building A/1, while two computers could be used in buildings A/2, A/3 and A/4 as well.

At the Szeged Strict and Medium Regime Prison, the detainees could use Skype on fifteen computers equipped with a web camera and headphones. The legal representatives usually talked to the detainees via Skype as well, in the visit room. The detainees were happy about the opportunity to use Skype for keeping contact, and almost each of them used this opportunity, or talked to their relatives on the phone.

8.1.6. Providing information

The detainees were informed of the pandemic situation and the measures aimed at the prevention of the spread of the infection regularly, by using several channels of communication. Information was constantly available on the notice boards and through the closed-circuit broadcasts on the television sets in the cells. In addition to these, the detainees were provided with information from the reintegration officers individually or in small group sessions. The relatives received information from the detainees and the communication statements



Information leaflets on one of the notice boards of the Sátorlajújhely Strict and Medium Regime

on the homepage of HPSH. Furthermore, pandemic call centres were created at the penitentiary institutions, through which information was provided on the preventive measures taken in relation to the pandemic situation.

8.2. Police custody

In 2020, the NPM issued reports with a COVID-19 focus on the visits to the Martonvásár Police Station of the Gárdonyi Police Department¹¹⁶ (hereinafter referred to as: the “Martonvásár Police Station”) and the Police Department in Tamási.¹¹⁷

The members of the visiting group inspected the custody room of the Martonvásár Police Station, the custody unit of the Tamási Police Department consisting of three custody rooms, the official rooms of both facility, and they conducted interviews with the staff members. At the time of the visits, there were no detainees in the police facilities.

The hand sanitiser dispenser set up at the entrance to the Martonvásár Police Station, the hygienic condition of the toilet designated for the detainees, the personal protective equipment and the sanitising devices placed in the boot of the service car were in compliance 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 (hereinafter referred to as: the “NPH”) for the senior officials of the police force, serving as professional guidelines.¹¹⁸ At the Tamási Police Department, the health protection measures included the established rules of client management and client entry, body temperature measurement and hand sanitising, providing disposable protective gloves and masks for newly arrived persons, and the executive measures aimed at protecting the health of the staff.



Hand sanitiser dispenser at the entrance to the Martonvásár Police Station



Custody room, Tamási Police Department

¹¹⁶ NPM Report No. AJB-2638/2020. Date of the visit: 7 May 2020

¹¹⁷ NPM Report No. AJB-6421/2020. Date of the visit: 25 September 2020

¹¹⁸ Rules of procedure Gen. Ref. No. 29000/3485-59/2020 on the health preservation and public health police tasks arising from the state of danger ordered in relation to the new type coronavirus identified in 2020, issued by the NPH.

While enforcing measures and taking police procedural actions, personal contact was unavoidable for police officers. Masks, gloves, sanitising material and protective gear were available for the staff of both facilities ensuring the safe execution of police tasks, and the necessary equipment was used by the staff in accordance with the specifications of the health protection protocols.

The enforcement of the detainees' right to contact was ensured in both facilities during the epidemic as well.

During the visit to the Martonvásár Police Station, an impropriety in relation to fundamental rights was identified by the visiting group with regard to an unsuitable bench placed in the custody unit, and they did not find the condition and size of the staff changing room and the condition of the staff toilets appropriate, either. At the Tamási Police Department, the NPM established a circumstance suggesting a fundamental-rights-related impropriety in connection with the medical examination of the detainees, and it also raised objections regarding the administration of the measures restricting personal liberty.

8.3. Persons in detention under immigration laws

The NPM visited the Guarded Refugee Reception Centre of the Szabolcs-Szatmár-Bereg County Police Headquarters (hereinafter referred to as: the "Guarded Refugee Reception Centre").¹¹⁹

On the day of the visit, there were 40 persons (all men) held at the Guarded Refugee Reception Centre with a holding capacity of 160 persons. All of the detainees were third country nationals who had been expelled. The Guarded Refugee Reception Centre had 60 positions for the official staff, out of which 2 were vacant. The number of armed security guards was 160, out of which 5 positions were not filled. 11 women worked as official staff members, and there were 23 women working as armed security guards. 87.5% of the staff could speak a foreign language, mainly German, English, Romanian or French. Many of the armed guards spoke Russian.

The building of the Guarded Refugee Reception Centre served solely for the detention of single male detainees. The infection- and symptom-free detainees were accommodated in the right wing on the first floor (this section of the building had a holding capacity of 64 persons). The ground floor was reserved for the accommodation of those detainees who might have become infected with COVID-19 but did not require hospitalisation (this sector had a capacity to accommodate 61 persons). The left sector on the first floor served as a so-called "quarantine sector" for the implementation of the 14-day isolation (with a holding capacity of 27 persons).



Washroom in the Guarded Refugee Reception Centre with information material on proper hand washing

¹¹⁹ NPM Report No. AJB-6175/2020. Date of the visit: 18 September 2020

Due to the fact that at the time of the visit, there were no detainees with COVID-disease or showing symptoms of infection in the Guarded Refugee Reception Centre and no quarantine was required, all detainees were accommodated in the right wing on the first floor.

At the time of the visit, there were 3 detainees in the Guarded Refugee Reception Centre who regularly would not accept the food served at mealtimes. However, according to the staff, they purchased food when the Centre's prison canteen was available for the detainees, and they ate some of that. Those detainees who had complained about health problems reported to have received only painkillers. The detainees could regularly phone their relatives. They were not allowed to use their own mobile phones, but they could use the pay telephone. Communication via Skype was only permitted without using the camera. Due to the coronavirus epidemic, it was not allowed for the detainees to receive visitors.

8.4. Residents of social care institutions

8.4.1. Report on a follow-up visit

The NPM paid a follow-up visit to the Platán Integrated Social Care Institution of Bács-Kiskun County.¹²⁰ The follow-up visit aimed to investigate the fulfilment of the recommendations of Report No. AJB-3772/2017,¹²¹ which was a follow-up inquiry itself (it was the follow-up inspection to Report No. AJB-1686/2015¹²²). As such, the inquiry was, in fact, the second follow-up inspection to Report No. AJB-1686/2015.

There were a total of 97 residents living in the Institution. The number of the nurses and carers, special education teachers, social and mental health workers complied with the norm concerning the number of professional staff in nursing and care homes providing personal care as stipulated by Annex 2 of Decree No. 1/2000 (7 January) of the Ministry of Social and Family Affairs on the professional duties of social institutions providing personal care and on the conditions of their operation. However, the NPM repeated its earlier recommendation regarding the employment of a physiotherapist.

The distribution of the rooms in the Institution changed since the previous inquiries. At the time of the third visit, the size of the rooms was 16–18, 20–27 and 22–33 square metres in the Institution, equipped with 2, 3 or 4 beds. With the exception of 2 rooms with 4 beds, the per capita living space specified in square metres complied with the provisions of the law. During the renovation of the Institution, 5 men's showers, 5 women's showers, 1 accessible shower, 7 men's toilets, 7 women's toilets and 1 accessible toilet were installed. There were 2 rooms for residents in stable partnership in the Institution. The conjugal room established by the period of the visit in 2017 was still operational. The diet of the residents was sufficiently varied and its composition met the requirements of a healthy diet. The calorie content of the diet was adequate, and food exceeding the prescribed calorie intake was also provided to the residents on request.

¹²⁰ NPM Report No. AJB-518/2020. The visit was made on 21–22 October 2019, prior to the coronavirus outbreak.

¹²¹ See also the 2017 Comprehensive Report of the Commissioner for Fundamental Rights on the Activities Performed by the OPCAT National Preventive Mechanism, Chapter 8.4.2.

https://www.ajbh.hu/documents/14315/2871655/2017_Comprehensive_Report_final_alairt.pdf

¹²² See also the 2015 Comprehensive Report of the Commissioner for Fundamental Rights on the Activities Performed by the OPCAT National Preventive Mechanism, Chapter 9.2.1.

<https://www.ajbh.hu/documents/14315/2550078/NPM+Report+for+2015.pdf>



The conjugal room called “Szívszoba”

According to the findings of the visit in 2017, the residents were administered large quantities of tranquillisers and bromide preparations that were no longer used in modern psychiatry, which caused an impropriety related to the residents’ right to human dignity enshrined in Article II of the Fundamental Law of Hungary. According to the report on the follow-up inquiry carried out in 2020, a new psychiatrist was looking after the residents since 2017, who modified their medication. Since then, no resident has been given bromide preparations. Around 60% of the residents were taking some form of psychiatric medication, 45 residents were taking one type of medication, and 12 residents were taking a combination of two medications. In exceptional cases, higher doses than those recommended in the summary of the product characteristics have been used.

The Institution, with the assistance of the mental health staff, educated the residents on the meaning and necessity of contraception. Despite the sex education and information classes, the female residents of the Institution did not make this decision themselves, but were taking contraceptive pills based on their guardian’s consent.

During the leisure activities, the residents were given tasks adapted to their abilities. The Institution had difficulties in providing the necessary equipment, crayons, pencils, stationery and other supplies for the programmes, and only those residents were able to participate in the external activities and excursions who could contribute to the costs of these programmes. The atmosphere was harmonious in all the sessions organised for the residents. A complaints box has been placed in the community room of the Institution.

8.4.2. Reports with a COVID-19 focus

The NPM issued reports with a COVID-19 focus on the visits to the “Harmónia” Integrated Social Care Institution of Heves County¹²³ and the Assisted Living Home of the Integrated Care Centre of Tolna County.¹²⁴

8.4.2.1. Placement

The Eger-based “Harmónia” Integrated Social Care Institution of Heves County mostly looks after persons with cumulative disabilities. The child protection unit of the Institution provides

¹²³ NPM Report No. AJB-2800/2020. Date of the visit: 21 May 2020

¹²⁴ NPM Report No. AJB-2951/2020. Date of the visit: 4 June 2020

child protection care with a capacity of 6 beds. At the time of the visit, there were 156 residents in the 160-bed Institution, out of whom 43 residents were minors. The oldest resident was 45 years old. The Institution accommodated two children between the ages of 0 and 3, one infant and an approximately one-year-old toddler in the framework of child protection services. The training house provided accommodation for residents preparing for a more independent life, most of whom were minors (5 girls and 6 boys), while 12 adults (6 men and 6 women) were housed in the assisted living home located on the same site.

A total of 8 persons, 5 women and 3 men were living in the Regöly-based Assisted Living Home of the Integrated Care Centre of Tolna County. The Assisted Living Home consisted of 4 two-bed rooms, out of which one was shared by two residents living in a partnership. The rooms were finely furnished, with many decorative objects on the shelves and stuffed animals on the beds. The residents were allowed to choose the colour of their rooms, and they could also have their own furniture and other objects. The residents were able to eat together in the large kitchen with a dining table. The Assisted Living Home was equipped with a bathroom containing a washing machine and a shower. The rooms for the potential isolation of the residents were designated in the building of the “Margaréta” Home of the Institution used for the occupational activities of the residents, which were complete with their own bathroom, dining room and nurses’ room. During the lockdown period, the residents stayed in the “Margaréta” Home in order to ensure the continuity of their work-related activities.

8.4.2.2. Measures taken with a view to preventing infections

The “Harmónia” Integrated Social Care Institution of Heves County had the necessary tools for sanitising surfaces, as well as protective equipment (i.e. masks, gloves) in sufficient quantities. Alcohol-based hand sanitiser was placed at the entrance, and paper towels were provided in each bathroom. The premises were regularly cleaned, and the door handles were disinfected several times a day. The Institution had an institutional policy elaborated for the prevention of the COVID-19 infection.

The instruction issued by the head of the Integrated Care Centre of Tolna County included the pandemic plan applicable to all the premises of the facility. Due to the epidemiological situation, increased attention was paid to the cleanliness, and disinfection was performed more rigorously. The institution was cleaned continuously for 12 hours a day; the cleaning staff worked with extended working hours. The towels of the residents were changed on a daily basis, and they always used paper towels after washing their hands. Liquid soaps, dishwashing detergents and cleaning supplies were replaced by products with disinfectant effects.

8.4.2.3. Medical care

In the “Harmónia” Integrated Social Care Institution of Heves County, the residents were treated by a physician employed within the framework of a service contract. The physician came to the Institution on a daily basis, and he was available for consultation for 3 hours each day. A psychiatrist visited the residents taking psychiatric medication every two weeks. The NPM pointed out that the Institution should have its own physician, who should be continuously present, especially in view of the risk of infection.

There had been no cases or symptoms of COVID-19 infection among the staff members or the residents in the “Margaréta” Home and the Assisted Living Home of the Integrated Care Centre of Tolna County up until the time of the NPM’s visit. The physician provided consultation

within the framework of a service contract on each Wednesday from 9 a.m. in the “Margaréta” Home’s doctor's office. The residents were also examined by a psychiatrist once a month, and the condition of the residents taking medication was regularly monitored by him. The female residents had annual gynaecological screening, and the lungs of those residents who smoked were also screened on a regular basis. Those female residents who were engaged in a relationship were informed about the necessity to use protection, but they were not obliged to take contraceptive pills. It was uncovered during the state of danger that one of the residents of the Home might have a serious health problem. The general practitioner examined the resident and documented the need for laboratory tests and ultrasound scans, however, these examinations were not carried out due to the epidemiological situation. The fact that the medical examination necessary for the resident was postponed due to the epidemiological situation caused an impropriety related to the resident's right to physical and mental health.

8.4.2.4. Education, work, free time activities

In the “Harmónia” Integrated Social Care Institution of Heves County, the therapies for the improvement of the physical and mental condition of the residents with severe and cumulative disabilities were carried out within the framework of specially designed conductive developments, in the course of which the staff provided help to the residents tailored to their needs and abilities. Some of the residents were enrolled in external kindergartens and schools, so their education was integrated. Those residents whose condition so permitted were also taken to a playhouse. The development classes were organised on-site, in the pottery room, the basket weaving room or the weaving room, and some of the residents worked at the laundry. At the time of the NPM’s visit, the external classes were suspended due to the pandemic, and education was provided remotely. The activities within the Institution could be pursued. However, some of the residents, for example those who cleaned in another unit of the Institution, could not work within the facility as they were not allowed to move between the groups in order to prevent the infections. In the inpatient ward of the Institution, informal recreational activities were organised after the afternoon snacks, in the course of which the patients were sat in a wheelchair, or in a porch swing in the summer period, while they received individual speech-, games- and motor development therapy, listening to music and, playing board games, reading storybooks and drawing pictures.

In the Integrated Care Centre of Tolna County, all residents worked in the Kiskunmajsa-based “Kézmű” Közhasznú Nonprofit Kft. (“Kézmű” Public Benefit Nonprofit Ltd.) 4 hours a day. Thanks to their temporary placement in the “Margaréta” Home, all residents were able to continue their work even during the lockdown. The residents talked about their work with great enthusiasm, and it was clear from their accounts that they took pleasure in this activity. The afternoon classes organised for the residents during the week of the NPM’s visit included outdoor fun activities, communication skills development, Bible classes, household skills classes, handicraft classes, badminton, card games and gym classes with music as well. Birthdays and other holidays were celebrated together. The residents were also involved in doing the chores around the home.

8.4.2.5. Communication with the outside world

In the “Harmónia” Integrated Social Care Institution of Heves County, nearly half of the residents had regular family contacts; prior to the pandemic, some of the residents had been visited by their families on a weekly basis or had been taken home by their families for the summer. The two young children receiving child protection services – a few-month-old infant

and an approximately one-year toddler – had no family contacts, therefore the lifting of the lockdown and of the visiting ban in these types of facilities did not affect the Institution in practice. The visiting group had the impression that the residents of the Institution were rarely contacted by their families, and many of them had no real, loving connection with their relatives even before the pandemic. The pandemic made this situation even more difficult, as keeping in touch with disabled children via Skype or telephone could not be a real means of communication due to the lack of personal contact.

Most of the residents in the Assisted Living Home had no such relatives who regularly visited them, thereby neither the visiting ban, nor its partial lifting made a big difference in their lives. Even those residents who had relatives were not regularly visited. However, it used to be typical that some of the residents would regularly go home, and they missed this previously existing form of contact with their relatives. The majority of the residents followed Facebook events on their phones and used the Messenger application.

8.5. Residents living in child protection institutions

8.5.1. Report on a general visit (with no COVID-19 focus)

The NPM paid a visit to the Esztergom Special Children’s Home Centre, Primary School and Trade School of the Ministry of Human Capacities.¹²⁵ In addition to a lawyer, a psychologist and an educational professional from the OPCAT NPM Department, a child psychiatrist also participated in the unannounced visit as an *ad hoc* expert.

In the institution with a holding capacity of 64 places, there were 52 children on the day of the visit, the filling of vacant places from the waiting list was in progress. The young girls aged between 13 and 18 years were placed in eight mixed groups according to their age and school classes. The headcount did not exceed the permitted limit of eight in any of the groups, but there were two groups in which the number of children with dual needs, i.e. those who had both psychological difficulties and other types of disabilities, was significantly higher than two, a figure stipulated by NM (Minister of Welfare) Decree No. 15/1998 (30 April). In these cases, the relatively high number of group members jeopardised the provision of the extra care required by the young girls with psychosocial or other disabilities and learning difficulties.



Leisure time opportunities in the courtyard of the children’s home



A bedroom

¹²⁵ NPM Report No. AJB-18/2020. The visit was made on 4–5 September 2019, prior to the coronavirus outbreak.

The NPM objected to the fact that several of the staff members working directly with the children lacked the necessary qualifications; moreover, there were fewer psychologists, special education teachers and nurses employed than what is required by the headcount norm of the NM (Minister of Welfare) Decree. The psychiatrist hired with a service contract did not have permanent consultation hours at the institution, and her qualification was not adapted to the age of the residents living in the home.

The visiting delegation found the treatment, the enforcement of the right to complain, and the implementation of keeping contact appropriate. Many of the girls residing at the Esztergom Special Children's Home Centre considered the time spent at the institution as a chance for change.

8.5.2. Reports with a COVID-19 focus

The NPM carried out visits with a COVID-19 focus to group homes no. 4 and 6 of the Veszprém County Child Care Centre, Primary School, Vocational School, Skills Development School and Regional Child Protection Service, located in Zirc and Lókút,¹²⁶ the Aszód Juvenile Reformatory of the Ministry of Human Capacities,¹²⁷ and the Nagykanizsa Juvenile Reformatory of the Ministry of Human Capacities.¹²⁸

8.5.2.1. Headcount and placement

There were 12 and 11 residents in the group homes of the Veszprém County Child Care Centre, with a holding capacity of 12 places each; the number of residents absent without authorisation was 5 in Zirc and 3 in Lókút. In both group homes, the number of children with additional needs (5 and 6 persons) was higher than the number stipulated by NM (Minister of Welfare) Decree No. 15/1998 (30 April).

At the time of the inspection carried out in the Aszód Juvenile Reformatory, the 160-bed institution operated at 53% of its holding capacity: 44 pupils were present, while 41 of them were on leave, in a prison establishment or absent without permission. The pupils were assigned into eight groups, with a maximum of eight persons in each. The state of danger caused no interruption in the reception and release procedures at the Reformatory. However, it was only with regard to the pandemic situation that it could be accepted that the pupils did not leave the integration group even after one month.

In the Nagykanizsa Juvenile Reformatory with a holding capacity of 108 places, there were 49 young offenders (of whom 19 were held in pre-trial detention and 30 were sentenced to correctional education), thus the utilization rate was 45.37%.

8.5.2.2. Staff

The NPM mentioned it as a good example that in the group homes of the Veszprém County Child Care Centre, the permanent staff members were assisted by substitute child carers.

¹²⁶ NPM Report No. AJB-2518/2020. Date of the visit: 24 April 2020

¹²⁷ NPM Report No. AJB-2799/2020. Date of the visit: 21 May 2020

¹²⁸ NPM Report No. 2569/2020. Date of the visit: 29 April 2020

In the Aszód Juvenile Reformatory, in order for the employees of the Reformatory to be able to ensure the internal education and activities, significant overtime was needed in general, whereas some of the teachers, child carers and instructors – whose number was lower than required to begin with – put in so many extra hours that it raised concerns in itself. In certain groups (including the integration and psycho-pedagogical ones), the number of child carers was higher than prescribed by the law; while in some other groups, there were not enough of them.

In certain positions (e.g. psychologist, schoolteacher, schoolmistress), the number of the employees of the Nagykanizsa Juvenile Reformatory did not comply with the legal requirements, and certain staff members were putting in a significant amount of overtime (based on the figures, irrespective of the extra duties generated by the epidemiological situation).

8.5.2.3. Hygiene, isolation

In the group homes of the Veszprém County Child Care Centre, the conditions were ensured for potential isolation. The NPM noted that it did not approve of the practice according to which two girls who were placed in “home quarantine” for prevention purposes were not allowed to go out in the courtyard. The necessary sanitising materials were available in both group homes.



Sanitising materials in the group home in Zirc

Cleaning, washing and disinfecting efforts were made more frequent at the Aszód Juvenile Reformatory during the epidemic, for which there was a sufficient amount of disinfectants and cleaning supplies available.

The director of the Nagykanizsa Juvenile Reformatory also placed strong emphasis on the tasks related to cleaning, disinfecting and ensuring personal hygiene in his action plan prepared in order to prevent the spread of the coronavirus infection.

8.5.2.4. Providing information

The children/pupils were well-informed about the epidemiological situation and its prevention in each institution. The residents of the group homes of the Veszprém County Child Care Centre understood the reasons of the visiting ban. The pupils accepted the changes introduced for compensating this tense situation: they took advantage of the possibility to make more frequent phone calls, and several of them also kept in touch with their relatives, guardians and the child rights representative via the Internet.

In the Aszód Juvenile Reformatory, the pupils were well-informed about the epidemiological situation and its prevention, and they understood the reasons for the introduction of the specific rules. However, many of them said that they felt more tense due to this situation. In order to release tension, the management of the institution ensured diverse sports activities and increased telephoning time for them.

In the Nagykanizsa Juvenile Reformatory, the pupils were appropriately informed by the staff about the coronavirus pandemic and the restrictions imposed due to the state of danger. The juveniles understood the necessity of the measures taken, but had some difficulties in coping with the changed circumstances.

8.5.2.5. Physical conditions

The members of the visiting delegation inspected the conditions of placement in each institution.

The two group homes were spacious, bright, cosy and well-equipped. Both sites had a kitchen as well as a living room for common meals and, if necessary, for studying and playing. Both units had several toilets and showers, and the cold and hot water supply was continuous. Due to the fact that there were several sanitary units in the group homes, it was possible that the isolated persons use not only a room, but also a toilet and a shower separately in case of a suspected infection.

The majority of the buildings visited at the Aszód Juvenile Reformatory were in good or acceptable condition. Some rooms were scheduled for painting, and some of the worn-out furniture needed replacement. The repair works were in progress. The renovation of the sanitary unit of the school had been recently completed.



The visiting group heading to the new building of the Aszód Juvenile Reformatory



Colourful corridor in the Nagykanizsa Juvenile Reformatory

During the visit to the Nagykanizsa Juvenile Reformatory, (although it was not a follow-up inquiry¹²⁹), the NPM noted that the corridors and the community rooms of the building, which

¹²⁹ The NPM paid a visit to the institution on 13–14 September 2016, which was still operating as the unit of the Debrecen Reformatory of the Ministry of Human Capacities at that time. The NPM reported on the experience

had given a bleak and cold impression during the previous visit in 2016, were now decorated, and the juveniles' personal belongings were also placed in the rooms. It was worrisome that due to structural and construction defects, the showers were out of order and in need of refurbishment in some of the residential units.

8.5.2.6. Education, work, and free time activities

In the group homes of the Veszprém County Child Care Centre, the conditions for participating in digital education were ensured. The NPM highlighted it as a positive example to be followed that in order to reduce the risk of infection, one resident from both group homes who had a job already were moved closer to their workplace from the respective group home.

There was a school operating in the Aszód Juvenile Reformatory, thus the education and workshops continued during the state of danger as before, i.e. no transition to remote education or online classes was needed.

The characteristics of the building of the Nagykanizsa Juvenile Reformatory allowed for education as well as work and free time activities, including outdoor sports, to be continuously provided for the residents in smaller groups within the territory of the facility, all this in compliance with the rules of the containment of the infection.



Studying in the group home in Lókút



One of the courtyards of the Nagykanizsa Juvenile Reformatory

8.5.2.7. Communication with the outside world

The children placed in the group homes were allowed to have personal contact with one or both of their parents, their siblings who had already reached the age of adulthood or were being raised somewhere else, their grandparents, or their earlier guardian in the foster family in a variety of ways and for a variable duration of time. Phone calls were able to compensate for the lack of personal contact to some extent, and the Internet-based forms of contact also gained ground.

gathered during the visit in its Report No. AJB-493/2018. See also the 2017 Comprehensive Report of the Commissioner for Fundamental Rights on the Activities Performed by the OPCAT National Preventive Mechanism, Chapter 8.1.1.

https://www.ajbh.hu/documents/14315/2871655/2017_Comprehensive_Report_final_alairt.pdf

In the Aszód Juvenile Reformatory, the pupils said that they were allowed to make phone calls three times a week. On the occasion of Mother's Day, each pupil was allowed to call home: the costs of these 5-minute phone conversations were covered by the Juvenile Reformatory.

In the Nagykanizsa Juvenile Reformatory, in order to ensure the maintenance of contacts, in addition to the provision of 10-minute phone calls twice a week as laid down in the House Rules, the residents could also make an additional 10-minute phone call once a week as a compensation for the ban on leaving the institution and the visiting ban due to the pandemic, or alternatively, the possibility of communicating via the Internet. The juveniles could also earn a 10-minute phone call per week as a reward.

8.5.2.8. Right to complain

The NPM found that in the group homes of the Veszprém County Child Care Centre, the restrictions ordered during the pandemic did not prevent children from exercising their right to complain. In the reformatories visited, the pupils made no complaints and they did not commit any disciplinary offences in relation to the restrictions imposed due to the pandemic.

9. Dialogue about the measures taken by the NPM

Pursuant to Article 22 of the 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.¹³⁰

The NPM

- should maintain a constructive dialogue with “*those to whom the recommendations are addressed, namely, governmental authorities and the directors/managers of the places of detention concerned*”¹³¹
- “*should establish a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations*”;¹³² and
- “*the dialogue should involve both written and oral exchanges on the implementation of the recommendations*”.¹³³

Although the implementation of the measures proposed by the NPM is not mandatory, the provisions of the Ombudsman Act oblige the addressees of the measures to give meaningful responses to the improprieties exposed during the inspections and the initiatives taken for the elimination of the threat thereof. Engaging in a continuous and constructive dialogue aimed at following up the implementation of the recommendations is a statutory obligation of not only the NPM but also the heads of places of detention, authorities and other organs concerned. Dialogue between the NPM and the recommendations’ addressees is conducted by using the report as a platform. The ways of following up the recommendations, including the time limits for giving a response, are regulated in detail by the Ombudsman Act.¹³⁴

The major legal guarantee of the dialogue is represented by the requirements set out in Section 38(1) of the Ombudsman 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 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 NPM first carries out a written dialogue with the addressees of his/her measures, in which he/she also involves the supervising authority, if necessary.

¹³⁰ Paragraph (iii), Section 1, Article 11 of OPCAT

¹³¹ SPT: *Analytical Self-assessment Tool for National Prevention Mechanisms* (CAT/OP/1/Rev.1) Clause 34 <https://undocs.org/CAT/OP/1/Rev.1>

¹³² Clause 42 of CAT/OP/1/ Rev.1

¹³³ Clause 34 of CAT/OP/1/ Rev.1

¹³⁴ Articles 31 to 38 of the Ombudsman Act

9.1. Responses to the measures taken after visits to prison establishments

Within the framework of the visits with COVID-19 focus, the NPM recommended in its report on its visit to the Sátoraljaújhely Strict and Medium Regime Prison¹³⁵ that the commander of the Institution provide disposable hand sanitisers to the detainees at the entrance to the Institution instead of using shared disinfectant water, if possible. Furthermore, the NPM recommended that the detainees receive a dose of antiseptic cleaning supplies every time they clean the floor of the cell-block. The report concluded that only those detainees who worked could have a daily shower, while those who did not were allowed to shower only four times a week. The NPM also recommended that the commander of the Institution make it possible for all detainees to have a daily shower. The commander of the Institution accepted all the NPM's recommendations, and ordered the elaboration of an action plan in their regard. At the same time, based on the NPM's recommendations, the National Commander of the Hungarian Prison Service instructed the heads of all penitentiary institutions to provide detainees with hand sanitiser, as well as with antiseptic cleaning supplies for cleaning the floor of their cell-blocks, while making sure that these products are used for their intended purpose, and to ensure that all detainees have the possibility to have a shower five times a week.

In the report on the visit to the Kiskunhalas National Prison,¹³⁶ the NPM requested the commander of the Institution to review and clarify a particular statement of his instruction according to which the three-month monitoring period preceding the authorisation of Skype-calls starts again in the case of those detainees who commit an "undesirable act". The commander of the Institution accepted the NPM's recommendation.

In the course of its visit to the Szombathely National Prison, the NPM revealed that more than half of the psychologist job positions were vacant in the penal institution. In its report,¹³⁷ the NPM requested that the commander of the Institution take the necessary measures to ensure that the vacant positions are filled in the Department of Psychology. In relation to the recommendation, both the commander of the Institution and the HPSH informed the NPM that in order to ensure the adequate level of psychological care, three psychologists had been hired by the Institution for the recruited positions in 2020, and that they were still waiting for the application of qualified professionals for the other two vacant positions, and in order to support these efforts, they placed a job advertisement on both the official advertising platforms and the social media pages of the Prison Service. While waiting for the filling of the full-time positions at the Department of Psychology, a clinical psychologist with appropriate experience was employed by a contract, and psychologists from the surrounding prison establishments also provided assistance in the performance of the professional tasks. The NPM accepted the measures taken.

In its report on the visit to the Szeged Strict and Medium Regime Prison,¹³⁸ the NPM requested that the commander of the Institution ensure the organisation of mandatory group activities under the provisions of the Prison Act in the medical-therapeutic unit, the psycho-social unit, the drug prevention unit, the Chronic Post-care Unit, as well as for the first-time offenders even

¹³⁵ NPM Report No. AJB-2419/2020. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-2419/2020.

¹³⁶ NPM Report No. AJB-2456/2020. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-2456/2020.

¹³⁷ NPM Report No. AJB-2728/2020. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-2728/2020 and No. AJB-404/2021.

¹³⁸ NPM Report No. AJB-2726/2020. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-2726/2020.

during the pandemic, if possible. The commander of the Institution accepted the NPM's recommendation.

In its reports on its visits to the Kiskunhalas National Prison and the Szeged Strict and Medium Regime Prison, the NPM formulated recommendations to the National Commander of the Hungarian Prison Service as well, with a view to ensuring that the possibility of Skype-calls remain available to the detainees even after the termination of the state of danger. The National Commander of the Hungarian Prison Service accepted the NPM's recommendation.

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

In relation to the visit to the Martonvásár Police Station,¹³⁹ the NPM requested that the head of the Gárdony Police Department ensure that the bench placed in the custody unit is replaced, the sanitary unit designated for the detainees is renovated, and the staff changing room as well as the toilets used by the staff are enlarged and refurbished, where necessary. The head of the Gárdony Police Department fully accepted the NPM's recommendations, and made arrangements for the installation of a bench that is also suitable for the nocturnal rest of the detainees. Furthermore, he also provided information about the ongoing works concerning the renovation of the toilet, the conditions of which had been criticised by the NPM, as well as about the repair and replacement of the covering and fittings of the staff changing rooms and the sanitary units used by the staff.

In relation to the visit to the Tamási Police Department,¹⁴⁰ the NPM invited the head of the Tamási Police Department to take measures to ensure that the accompanying police officer does not overhear any confidential communication between the doctor and the arrestee during the latter's medical examination. In his response, the head of the Tamási Police Department informed the NPM that he had established a protocol of action in consultation with the supervisor to ensure that confidential communication between the doctor and the detainee is respected; that he had provided training, preparation and briefing sessions to his staff thereon, and that he would also monitor the implementation of the protocol.

In both of these reports, the NPM drew attention to the fact that in the course of the administration of measures restricting personal liberty, greater care should be paid to the recording of compliance with those provisions that had been introduced due to the state of danger. The recommendation was accepted by the heads of the Gárdony Police Department and the Tamási Police Department, who presented the findings of the NPM's report to their staff as well.

¹³⁹ NPM Report No. AJB-2638/2020. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-2638/2020.

¹⁴⁰ NPM Report No. AJB-6421/2020. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-6421/2020 and No. AJB-401/2021.

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

9.3.1. Follow-up visit at the Platán Integrated Social Care Institution of Bács-Kiskun County¹⁴¹

The follow-up visit established that most of the residents living in a relationship were taking contraceptive pills. Despite the sex education and information classes, the female residents of the Institution did not make this decision themselves, but were taking pills based on their guardian's consent. The NPM asked the Minister of Human Capacities to provide information on the progress¹⁴² made regarding the elaboration of the policy to be applied if the person placed under guardianship and her guardian had different opinions about contraception (with the help of intra-uterine contraceptive devices), surgical sterilization, and abortion carried out on the person placed under guardianship. In its letter of reply, MoHC informed the NPM¹⁴³ that it had inquired about the position of the College of Hungarian Health Professionals on the matter at hand, and it had also initiated a questionnaire survey in institutions providing specialised care within the scope of personal care, and in light of all of the above, it was planning to convene a professional working group with a view to elaborating the professional questions and legal frameworks of the policy.

During the inquiry, the management of the Institution mentioned the possibility of deinstitutionalisation as an opportunity to leave the Institution (based on the deinstitutionalisation programme that the Institution was monitoring constantly), which more independent residents were really looking forward to. The interviews conducted with the residents confirmed the latter's desire to live more independently. In its report, the NPM asked the Director General of the Hungarian Directorate-General for Social Affairs and Child Protection (hereinafter: "HDG for SACP") as the maintainer of the Social Institution to support the residents in providing opportunities for more independent living, thus in getting admitted to assisted living homes, as well as in the process of reintegration into mainstream society, by assessing all the related opportunities. In its reply, the HDG for SACP referred to the concept plan of the implementation of the Institution's deinstitutionalisation plan.

The report formulated a recommendation for the Institution to employ a physiotherapist if possible. In its reply, the HDG for SACP informed the NPM that the Institution would be able to finance the recommended position when the budgetary appropriation for staffing costs became available.

The NPM asked the maintainer to ensure that the glass window of the isolation ward is shatterproof, as well as to have the potholes and cracks mended in the asphalt-paved courtyard of the Institution in order to eliminate the accident-prone situation. In its reply, the HDG for SACP wrote that it had begun the acquisition of shatterproof (unbreakable) glass, but based on the preliminary estimate of the contractor, the levelling of the pavement could be carried out by the demolition of the internal court's surfaces left without covering, and it would cost HUF 10,400,000.

¹⁴¹ NPM Report No. AJB-518/2020. The documents arising from the dialogue relating to the report up to 31 December 2020 are filed under No. AJB-518/2020 in the Office.

¹⁴² The report made a reference to the recommendation offered in Case No. AJB-372/2015.

¹⁴³ MoHC's letter of reply can be found in file no. AJB-2192/2021.

The report established that when the residents needed a specialised medical examination, it was often difficult to reach the health clinics, and long waiting lists also caused a problem. The NPM requested in its recommendation that there should be a discussion with the National Healthcare Service Centre in order to ensure better access to external healthcare providers for the residents. In its reply, the maintainer reassured the NPM that the head of the Institution arranged the potential appointments with the director of the Bács-Kiskun County Hospital, just like in the case of screening tests.

The report established that the Institution often struggled with financial difficulties when it came to ensuring the tools, colouring books, pencils, paper and other stationery necessary for the classes from its own budget. The NPM asked the maintainer to provide the Institution with the tools necessary for the craft and leisure time classes. In its reply, HDG for SACP reassured the NPM that it had initiated talks about the acquisition of all the necessary tools if possible.

The NPM established in its inquiry that only those residents could take part in the excursions organised by the Institution who could pay their required own contribution, and the fact that some of the residents were left out from these social programmes for financial reasons generated tension and frustration within the community. Therefore, the NPM requested that the maintainer provide the necessary financial and physical assets and make it possible for all the residents of the Institution to take part in the excursions organised by the latter. In its reply, HDG for SACP explained that bearing in mind the current budget, the Institution could not ensure cost-free participation in the excursion for its residents, but if the necessary funds became available, it would certainly contribute to the costs of these excursions.

The report found a formal defect regarding the care agreements of illiterate residents, and requested that the head of the Institution correct it. In her reply, the head of the Institution promised to correct the formal defects within 30 days.

In its report, the NPM also asked the head of the Institution to continue to support the residents in seeking out possibilities to lead a more independent life, thus in the process of moving to an assisted living home and reintegrating into mainstream society, and in preparing for that. In her reply, the head of the Institution informed the NPM that in 2019, four residents had submitted a request for placement in an assisted living home, and these residents were continuously preparing for a more independent life in the framework of development classes.

In its recommendation, the NPM asked the head of the Institution to provide supervision and recreational opportunities for the staff doing a responsible job involving physical and mental stress, and to try to make it possible for them to do some team-building in various forms (excursions, recreational activities). The head of the Institution pointed out that the planned measures were prevented by the COVID-19 pandemic, but a common lunch had been organised for the staff at the end of 2019.

Based on the dietitian's expert opinion, the report established that the diet provided for residents with diabetes had an elevated carbohydrate content (between 271 and 390 grams per day), and the gallbladder diet did not contain the recommended food items. The NPM called the Institution's attention to the importance of carefully composing the diabetes and gallbladder diets. In its reply, the Institution reassured the NPM that it had already initiated a discussion with the company providing catering services in order to take the necessary measures.

The report warned the Institution that the residents should be taking their medications based on informed consent, and that they should be informed – taking into consideration their knowledge, mental state and psychological illness – about their condition and the medications taken by them. In her reply, the head of the Institution confirmed that in each case, the doctor informs the residents about the recommended medication, as well as about their illness (in light of their mental state).

The report asked the head of the Institution to support those residents who wished to work at an external workplace to be engaged in real employment in the open job market in order to help them integrate into mainstream society. In her reply, the head of the Institution assured the NPM that she backed the residents in this area whenever possible: six residents had some sort of external employment, and fifteen persons were preparing for a more independent life in the framework of development classes.

The report found that due to the shortage of professional male staff, the Institution could not ensure that the residents be assisted in their bathing by carers of the corresponding sex, which offended the residents' sense of modesty, and endangered the enforcement of the prohibition of degrading treatment. The NPM called on the head of the Institution to ensure that if possible, the residents be helped with their bathing by a same-sex carer. In her reply, the head of the Institution wrote that there were two male carers employed by the Institution. The head of the Institution put it on the agenda of their next staff meeting to strive to provide assistance by a same-sex carer, and promised to stress its importance.

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

9.3.2. Visits with a COVID-19 focus¹⁴⁴

In the “Harmónia” Integrated Social Care Institution of Heves County,¹⁴⁵ the physician's position was vacant, and the residents – most of whom had multiple disabilities – were looked after by a doctor hired with a contract. In its recommendation, the NPM formulated the requirement for the head of the Institution that the Institution should have its own physician, who should be continuously present, especially in light of the risk of infections appearing in the Institution. In her reply, the head of the Institution referred to staff requirements laid down in Annex 2 of SZCSM Decree No. 1/2000 (7 January), which the Institution complied with. The general practitioner hired with a contract provided medical care for the residents for three hours a day, while the psychiatrist was at their service for two hours per week. The NPM asked the head of the Institution to encourage communication between the residents and their family members as frequently and through as many channels as possible in order to maintain family relations during the visiting ban. In her reply, the head of the Institution explained that communication took place via phone, Skype and e-mail, and relatives could also bring in their own mobile phones for the residents, which the latter could then use with the help of the staff. The epidemiological period made it more difficult for the residents to keep in touch; when the reply was written, the tender of the Institution for the acquisition of the necessary IT devices was still being assessed. The NPM acknowledged the Institution's replies.

¹⁴⁴ The documents arising from the dialogue relating to the reports are registered under file number AJB-2800/2020 and file number AJB-2951/2020 in the Office.

¹⁴⁵ NPM Report No. AJB-2800/2020

In the Assisted Living Home of the Integrated Social Care Institution of Tolna County,¹⁴⁶ the general practitioner ordered lab tests and ultrasound examinations, but due to the epidemiological situation, these examinations were carried out only months after the doctor had established their necessity. The NPM pointed out that medical examinations performed as early as possible and the exact diagnoses established based on them usually increase the efficiency of the treatment of diseases and the chances of full recovery. The fact that the medical examinations necessary for the resident were postponed due to the pandemic caused an impropriety in relation to the resident's physical and mental health. The NPM asked the head of the Institution to ensure that in compliance with the appropriate precautionary measures, medical care is provided to the residents at all times, even during the lockdown ordered due to the pandemic. In her reply, the head of the Institution informed the NPM that it was the changed operational order of specialised healthcare during the state of danger that caused a delay in the examination. The head of the Institution also reported that the resident in question had received the necessary therapy in the meantime, and could thus go back to work. The NPM accepted the response of the head of the Institution.

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

In the report on its visit to the Esztergom seat of Ministry of Human Capacities' Special Children's Home Centre, Primary School and Trade School,¹⁴⁷ the NPM asked the Minister of Human Capacities to consider reviewing – in connection with the placement of children with dual needs – Note 5a) of Section 126 of Decree No. 15/1998 (30 April) of the Ministry of National Welfare. In its reply, minister informed the NPM that a methodological guideline would be prepared in relation to those children with dual needs who can be placed in the individual groups of special children's homes. Moreover, the maintainer informed the NPM that they were planning to create new places, which would have an impact on both the placement of children with dual needs and the reduction of waiting time. It also indicated that the facility had received a fresh coat of paint, and the replacement of the wall cover causing mildew had also begun. The NPM accepted the maintainer's response. In its report, the NPM objected to the fact that several of the staff members working directly with the children did not have the required specialised qualification; moreover, there were fewer psychologists, special education teachers and nurses employed than what is prescribed by the staff norm of the Decree of the Ministry of National Welfare. The psychiatrist hired with a contract did not have permanent consultation hours at the Institution, and her qualification did not match the age of the residents living in the home. According to the reply of the head of the Institution, the number of employees with appropriate specialised qualification grew since the visit, the psychologist's vacant position was filled, and they also employed a child psychiatrist. The newly reinforced professional team would be responsible for providing therapeutic support for the personality correction of the girls. The NPM accepted the response of the head of the Institution.

In Group Home no. 4 in Zirc and in Group Home no. 6 (in Lókút) of the Veszprém County Child Care Centre,¹⁴⁸ the number of children with special needs (5 and 6, respectively) was higher than the number allowed by Decree No. 15/1998 (30 April) of the Ministry of National Welfare. In its recommendation, the NPM suggested to the head of the Child Care Centre that

¹⁴⁶ NPM Report No. AJB-2951/2020

¹⁴⁷ NMM Report No. AJB-18/2020. The documents arising from the dialogue relating to the reports are registered under file no. AJB-18/2020 in the Office.

¹⁴⁸ NPM Report No. AJB-2518/2020. The documents arising from the dialogue relating to the reports are registered under file no. AJB-2518/2020 in the Office.

this situation should be ended. The acting head of the Institution informed the NPM that the number of children with special needs would be reduced in Lókút, but not in Zirc. The NPM did not accept the response. The NPM asked the maintainer to provide the funds for the necessary maintenance works. The report on the scheduling of the works was accepted by the NPM.

In its report on its visit to the Aszód Juvenile Reformatory of the Ministry of Human Capacities,¹⁴⁹ the NPM asked the maintainer HDG for SACP to provide funds for the replacement of deteriorated furniture and for painting the buildings. In its reply, the maintainer indicated that it would include this item in its investment and development plan for 2021. In its further recommendations, the NPM asked the director of the Institution to comply with the number of employees working as child carers and school teachers, as prescribed in Annex 1 of Decree No. 1/2015 (14 January) of the Ministry of Human Capacities, in each of the groups. Furthermore, the NPM asked the director of the Institution to ensure that the workload of the employees would be reduced; to provide disposable hand sanitisers; and to consider increasing the time students could use to make phone calls, raising the number of the occasions to call, and expanding the forms of contact to controlled contacts through the Internet. In his reply,¹⁵⁰ the director of the Institution indicated that he had satisfied all of the NPM's requests.



**Bucket containing disinfectant for collective use in the Aszód Juvenile Reformatory.
Upon the NPM's recommendation, this practice was abolished by the head of the Institution.**

During its visit to the Nagykanizsa Juvenile Reformatory of the Ministry of Human Capacities,¹⁵¹ the NPM exposed that due to the structural problems of certain residential units of the building, the showers could not be used and were in need of refurbishment. The NPM asked the director of the Institution and HDG for SACP acting as the Institution's maintainer to take action, and they assured the NPM in their reply that they had secured the necessary funds, and the refurbishment would be completed by December 2020. In certain positions (e.g. psychologist, schoolteacher, schoolmistress), the number of the employees of the Nagykanizsa Juvenile Reformatory did not comply with the legal requirements, and certain staff members

¹⁴⁹ NPM Report No. AJB-2799/2020. The documents arising from the dialogue relating to the reports are registered under file no. AJB-2799/2020 and file number AJB-1324/2021 in the Office.

¹⁵⁰ The letter of reply of the director of the Institution can be found in file no. AJB-1324/2021.

¹⁵¹ NPM Report No. AJB-2569/2020. The documents arising from the dialogue relating to the reports are registered under file no. AJB-2569/2020 and file no. AJB-750/2021 in the Office.

were putting in a significant amount of overtime (based on the figures, irrespective of the extra duties generated by the epidemiological situation). The director informed the NPM that following its recommendations, the Institution announced a tender for the vacant positions, and some of them were already filled, and they had taken certain measures to eliminate disproportionate extra workload. Although in order to compensate for the visiting ban ordered due to the pandemic, the director lengthened the period allocated to phone calls by 1x10 minutes per week for everyone, this timeframe was still shorter than what detainees in penitentiary institutions were allowed to have. The director of the Nagykanizsa Juvenile Reformatory informed the NPM that following its recommendations, he raised the weekly timeframe for phone calls to 2x15 minutes, he provided an additional 10 minutes per week for compensation purposes, and 10 minutes per week could be handed out as a reward. The NPM accepted the measures taken.

10. Legislation-related activities of the NPM

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

10.1. Proposals in the NPM’s reports

Preventive monitoring visits also cover the practice-oriented review of legal regulations applicable to the operation of the given place of detention; therefore, the NPM, primarily through presenting its observations and impressions from its visits, and via its legislative proposals based on their critical evaluation, promotes domestic legislation. If instances of ill-treatment or the threat thereof uncovered during the visits can be attributed to a superfluous, ambiguous or inappropriate provision of a piece of legislation, or to the lack or deficiency of the legal regulation of the given matter, the NPM may propose that the piece of legislation in question be modified, repealed or prepared.¹⁵²

In its reports on the NPM visits published in 2020, the NPM made 2 legislative proposals. Following the legislative proposals made by the NPM in its reports issued earlier, the legislator amended several pieces of legislation in 2020.

In its report published in 2018,¹⁵³ the NPM called attention to a systemic problem in connection with the self-harming act of a detainee – who had previously been placed in the security isolation ward –, which was committed during the visit. Having reviewed the formal rules regarding solitary and isolated confinements, it became obvious that prior to the application of the individual types of these placements, the mental and physical conditions of the detainees were not examined at all, and it also raised concerns whether their condition was appropriately assessed. The NPM asked the Minister of Justice to review this regulation by involving the Minister of Interior. As a result of the review, the Hungarian Prison Service Headquarters amended several HPSH special orders¹⁵⁴ in the first half of 2019. In 2020, the legislator amended the provisions of the Prison Act as well as of certain decrees of the Ministry of Justice.¹⁵⁵ The legislator completed the earlier regulation, which prescribed a medical check-up in the case of the security isolation of detainees who could potentially inflict harm upon themselves or the public,¹⁵⁶ and of solitary confinement used as a disciplinary sanction.¹⁵⁷ According to the new provisions, in the case of detainees placed into security isolation or solitary confinement for disciplinary reasons, as well as during decision-making about placing

¹⁵² See Section 37 of the Ombudsman Act.

¹⁵³ NPM Report No. AJB-474/2018

¹⁵⁴ Special order of the National Commander of the Hungarian Prison Service No. 26/2015 (31 March) OP on the issuance of the Security Regulations of the prison organisation; special order of the National Commander of the Hungarian Prison Service No. 16/2017 (6 February) OP on the health care services provided to convicts detained in penal institutions and persons detained under other legal titles; special order of the National Commander of the Hungarian Prison Service No. 25/2017 (14 February) OP on the administration of the disciplinary cases of detainees placed in penal institutions; as well as special order of the National Commander of the Hungarian Prison Service No. 27/2017 (15 February) OP on the tasks related to the prevention of the detainees’ suicidal acts.

¹⁵⁵ Decree No. 14/2014 (17 December) IM of the Ministry of Justice on the disciplinary liability of convicts detained in penal institution and persons detained on other titles, and Decree No. 16/2014 (19 December) IM of the Ministry of Justice on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pretrial Detention and Disciplinary Fines.

¹⁵⁶ According to Section 146(5) of the Prison Act at the time of the visit.

¹⁵⁷ According to Section 31(1) of Decree No. 14/2014 (17 December) IM of the Ministry of Justice at the time of the visit.

a detainee in a security cell or ward and the review thereof, medical – and if necessary, psychological – examination has become obligatory.¹⁵⁸ Pursuant to the legal regulation, this examination must be carried out not only at the beginning of the isolated placement, but also during the time of the confinement at least once a week, and if based on the results, the prison doctor or psychologist so recommends, the confinement may not be started, or must be ended or suspended.¹⁵⁹ In connection with the treatment provided to sexual offenders, the NPM underlined in the same report¹⁶⁰ that the scope of criminal acts specified as the condition for participation in psychotherapy or other trainings reducing the likelihood of repeated infringement was different for convicts and those held in pre-trial detention.¹⁶¹ According to the Prison Act, such treatment had to be offered to convicts in the case of sexual offences specified in Chapter XIX of the Penal Code¹⁶² if the victim was a person under eighteen; however, in the case of arrested persons, there was no specification according to the victim's age. The NPM asked the Minister of Justice to review the statutory regulation in cooperation with the Minister of the Interior, and to eliminate any unjustified differences. Following the review, the legislator amended the Prison Act, thus based on the law, now convicts also had to be offered a possibility to participate in such treatment even in those cases where the victim of the criminal offence was older than eighteen.¹⁶³

As a result of the recommendation made in the NPM's report¹⁶⁴ also issued in 2018, the legislator completed Act XXXI of 1997 on the Protection of Children and Guardianship Administration with a new provision as of 1 January 2020.¹⁶⁵ According to the amendment, during their time spent in a juvenile reformatory, juvenile persons detained in a juvenile correctional institution must take part – regardless of their age – in education aimed at the acquisition of primary school curricula and in training facilitating further education, the learning of a trade, and employment, the frameworks of which shall be provided by the juvenile correctional institution.

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.¹⁶⁶ 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.¹⁶⁷

In 2020, the National Preventive Mechanism did not deem it necessary to initiate an ex post review of norms while performing its tasks.

¹⁵⁸ See Sections 146(5), 147(4) and (4a), and 169(8) of the Prison Act amended by Act XLIII of 2020 as of 1 January 2021.

¹⁵⁹ See Section 146(5) of the Prison Act amended by Act XLIII of 2020 as of 1 January 2021, as well as Sections 52(3a) and 53(3) and (4) of Decree No. 16/2014 (19 December) IM Of the Ministry of Justice amended by Decree No. 20/2020 (30 December) IM of the Ministry of Justice as of 1 January, and Section 13(4) and Note b) of Subsection (5) of Decree No. 14/2014 (17 December) IM of the Ministry of Justice.

¹⁶⁰ NPM Report No. AJB-474/2018

¹⁶¹ Sections 132 and 394(2) of the Prison Act at the time of the visit

¹⁶² Act C of 2012 on the Criminal Code

¹⁶³ Section 132(2) of the Prison Act promulgated by Act XLIII of 2020 as of 1 January 2021

¹⁶⁴ NPM Report No. AJB-493/2018

¹⁶⁵ See Section 66/M(4) of Act XXXI of 1997

¹⁶⁶ Section 34/A(1) of the Ombudsman Act

¹⁶⁷ Section 34 of the Ombudsman Act

10.3. Powers related to draft legislation

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

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.¹⁶⁸

According to the Act on legislation 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.¹⁶⁹ The parties responsible for preparing legal regulations usually submit their drafts to the NPM in order to prove that they have complied with the proposals of the NPM to modify, repeal or prepare legal rules specified in its reports. The Commissioner for Fundamental Rights reviews draft legislation in a complex way, i.e. on the basis of both his experience obtained during the visits conducted in his capacity as the NPM and the conclusions of his inquiries conducted in his general competence. In the course of a review, special attention shall be paid to finding out whether the proposed text of the norm is suitable for remedying the treatment criticised in the report and for preventing it from recurring in the future.

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

The organs responsible for drafting and preparing legislation requested that the Commissioner for Fundamental Rights review 33 draft bills in 2020. The reason for the drop in the number of draft bills sent to the Commissioner for Fundamental Rights in comparison with previous years¹⁷⁰ 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 eventual deficiencies or contradictions.

¹⁶⁸ Note c) of Article 19 of the OPCAT

¹⁶⁹ See Section 19(1) of Act CXXX of 2010 on Legislation.

¹⁷⁰ The Commissioner for Fundamental Rights reviewed 154 draft bills in 2018, and 108 in 2019.

11. The NPM's international relations

Due to the coronavirus pandemic, opportunities of contact at international forums and personal meetings were limited in 2020. At the conferences held with the participation of national and international organisations, the Commissioner for Fundamental Rights and his staff members could communicate only online about the execution of the NPM's tasks.

11.1. Relations between the NPM and the Subcommittee on Prevention of Torture

Following the publication of the ordinary visit of the Subcommittee on Prevention of Torture from 21 to 30 March 2017, the NPM obtained funds through a tender – from the fund specified in Article 26(1) of the OPCAT – with a view to facilitating the implementation of the recommendations formulated by the Subcommittee on Prevention of Torture, for organising the conference titled “*Interview Techniques, South-East Europe OPCAT NPM Workshop 2020 – Office of the Commissioner for Fundamental Rights (OCFR)*”. The Subcommittee on Prevention of Torture supported the organisation of the workshop by contributing to its costs with USD 10,249. Due to the coronavirus pandemic, the NPM postponed the conference – originally planned to take place in 2020 – to 2021.

The NPM was present on one of the days of the online session of the Subcommittee on Prevention of Torture held from 15 to 19 June 2020 (on 17 June 2020). The participants of the online event shared their experience about the operation of the national preventive mechanisms gained during COVID-19.

11.2. The NPM's relations with national preventive mechanisms of other countries

11.2.1. South-East Europe NPM Network

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

The South-East Europe NPM Network held two online workshops in 2020 under the title “*Strengthening the Prevention of Torture in South-East Europe: Monitoring Safeguards in the First Hours of Police Custody*”, which were attended by a staff member of the NPM. The workshop held on 12 and 13 October 2020 focused on the issues related to monitoring safeguards in the first hours of custody. Numerous similarities could be pointed out between the working methods of the participating NPMs. The majority of the NPMs selected the police departments to be visited on the basis of a yearly or monthly plan. It was a recurring problem that during the visits organised during office hours, there was not always an arrested person at the police departments visited, so the visiting group could not make any interviews with detainees. Several NPMs remedied this problem by scheduling the visits outside normal office hours (early in the morning or late in the evening), or at the weekend or on national holidays. The investigative methods of the NPMs were also quite similar to one another: making interviews with detainees and members of the staff, and analysing documents and video recordings.

The workshop held on 7 December 2020 concentrated on follow-up visits and challenges related to COVID-19.¹⁷¹ The representatives of the South-East Europe NPM Network shared their experience about their visits made during the coronavirus pandemic. Most of the NPMs continued to pay visits in this period as well. Nearly all of the NPMs conducted an active dialogue with the competent authorities and the Ministry of Interior about the condition of the places of detention and more specifically, police custody rooms. The members of the visiting groups wore protective gears during the visits.

At the December meeting of the South-East Europe NPM Network, the members made a decision that the Hungarian National Preventive Mechanism should take over the presidency of the SEE NPM Network for 2021.

11.2.2. Conferences

The staff members of the NPM attended an online meeting organised by the Association for the Prevention of Torture entitled “*Women and Prisons in Europe: 10 Years After the Bangkok Rules, Where Are We At?*”, which was held on 12 March 2020.

The NPM was also present through its staff members at the online expert seminar held by the Office of the UN High Commissioner for Human Rights on 27 and 28 May 2020, which focused on the impact of artificial intelligence, profiling, automatized decision-making and machine learning technologies on the right to privacy.

The International Ombudsman Institute (IOI) held an online conference on 24 November 2020 under the title “*COVID-19 and the Ombudsperson – Rising to the Challenge of a Pandemic*”. At the webinar, the Commissioner for Fundamental Rights also shared a video message about the activities of the Hungarian Ombudsman institution carried out for handling the challenges caused by the coronavirus pandemic and the experience gathered in this extraordinary period.

¹⁷¹ The title of the workshop in English: Strengthening the prevention of torture in South-East Europe: Monitoring safeguards in the first hours of police custody. Follow-up and responding to COVID-19-related challenges

12. Media and dissemination

In addition to conducting visits, the NPM's tasks also include the publication of his opinion, conclusions, and any other relevant information that may contribute to raising social awareness.¹⁷² The Commissioner for Fundamental Rights complies with this obligation primarily through displaying these information at the NPM interface¹⁷³ of his Office's homepage.

It remains important that the leaflets containing the key information about the activities of the NPM be available at the places of detention. The leaflets contain information formulated for the penitentiary system, the police, the psychiatric system and children.¹⁷⁴

12.1. Media

The print and online press published several articles about the visits made by the Commissioner for Fundamental Rights during the pandemic. As a closure of his first full year as Ombudsman, the Commissioner for Fundamental Rights gave an account of his experience gathered in year 2020 in a press interview.¹⁷⁵

The Office's website reported about the meetings between the Commissioner for Fundamental Rights and the officials of the places of detention. The National Headquarters of the Hungarian Prison Service held its ceremonial staff meeting on 27 January 2020 in Budapest where they evaluated the year 2019 and outlined the tasks for 2020. The Commissioner for Fundamental Rights also attended the event.¹⁷⁶ On 14 April 2020, the Commissioner for Fundamental Rights paid a visit to the Operations Management Centre of the National Police Headquarters. During the visit, the leaders of the National Police Headquarters briefed the Ombudsman about the police measures that became necessary due to the coronavirus pandemic and their management by the National Police Headquarters.¹⁷⁷ On 7 October 2020, the Commissioner for Fundamental Rights had a meeting with Major General Dr. Tamás Tóth, National Commander of the Hungarian Prison Service Headquarters, who informed the Commissioner about the prison organisation's programme aimed at increasing the number of prison places. According to the information provided by the National Commander, new facilities were completed in as many as ten prisons of the country, which means that saturation in the prisons was reduced to below 100 percent by creating nearly 3,000 new places, which remedied a problem that had existed for several decades.¹⁷⁸

On 26 March 2020, Dr. Ákos Kozma, Commissioner for Fundamental Rights of Hungary; Dr. Elisabeth Sándor-Szalay, Deputy Commissioner for the Protection of the Rights of Nationalities

¹⁷² SPT: *Analytical self-assessment tool for National Prevention Mechanisms*, (CAT/OP/1/Rev.1) Note 9 (b) <https://undocs.org/CAT/OP/1/Rev.1>

¹⁷³ <https://www.ajbh.hu/opcat>

¹⁷⁴ <https://www.ajbh.hu/opcat-rovid-tajekoztatas-fogvatartottak-szamara>

¹⁷⁵ "A 2020. év tapasztalatai, az új ombudsman első éve. Interjú dr. Kozma Ákossal, az alapvető jogok biztosával" [The experience of year 2020, the first year of the new Ombudsman. Interview with Dr. Ákos Kozma, Commissioner for Fundamental Rights], *Belügyi Szemle* 2020/12, pp. 123–127, online (in Hungarian): <https://belugyiszemle.hu/hu/node/1107>

¹⁷⁶ <https://www.ajbh.hu/en/web/ajbh-en/-/the-commissioner-for-fundamental-rights-participated-in-the-year-evaluation-executive-meeting-of-the-hungarian-police>

¹⁷⁷ <https://www.ajbh.hu/en/web/ajbh-en/-/the-commissioner-for-fundamental-rights-paid-a-visit-to-the-national-police-headquarters>

¹⁷⁸ <https://www.ajbh.hu/en/web/ajbh-en/-/ombudsman-meets-with-national-commander-of-hungarian-prison-service>

Living in Hungary; and Dr. Gyula Bándi, Deputy Commissioner for the Protection of the Future Generations in Hungary issued a joint statement on the issues related to the vulnerable groups of society due to the circumstances brought about by the global pandemic.¹⁷⁹

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

12.2. Dissemination

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

12.2.1. Educational activities

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

12.2.2. Publications

Haraszti, Margit Katalin: “Ami a kínzás fogalmából kimaradt: a törvényes szankció klauzula.” *Jogtudományi Közlöny*, 2020/6, pp. 254–264.

Haraszti, Margit Katalin: “A kínzás önálló bűncselekményi tényállásának alapjogvédelmi funkciója.” *Közjogi Szemle*, 2020/4, pp. 36–46.

Izsó, Krisztina: “A szerződések érdekbeli és gazdasági lehetetlenüléséről a 2020-as világjárvány kapcsán.” *Magyar Jog*, 2020/10, pp. 567–572.

12.2.3. Participation of the staff members of the OPCAT Department in trainings and professional events

<i>Training, event</i>	<i>Date</i>
The NPM’s staff member passed a final examination at the further training for psychologists on Disaster and Crisis Management, Faculty of Education and Psychology, ELTE, and obtained a diploma as a specialist psychologist in disaster and crisis management.	January/February 2020
Participation in the workshop discussion of the paper of Lídia Balogh, research fellow at the Centre for Social Sciences, Institute for Legal Studies, Hungarian Academy of Sciences Centre of Excellence, titled: “ <i>The ratification status of the Council of Europe’s Istanbul Convention among EU Member States</i> ”	20/02/2020
The deputy head of the OPCAT Department attended the technical meeting of the National Headquarters of the Hungarian Prison Service.	10/06/2020

¹⁷⁹<https://www.ajbh.hu/en/web/ajbh-en/-/communication-from-the-commissioner-for-fundamental-rights-of-hungary-and-his-deputies>

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.¹⁸⁰ The ultimate goal of the NPM's visits is to persuade 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 year 2020, which could be considered extraordinary due to the appearance of the coronavirus in Hungary, was Dr. Ákos Kozma's first complete year in office as Commissioner for Fundamental Rights. Acting in his competence as NPM, the Commissioner for Fundamental Rights headed all the visits himself from April 2020. During the visits, the Commissioner was accompanied by a 2-4-member visiting group composed of multidisciplinary experts with a balanced gender ratio.

In response to the challenges of the coronavirus pandemic, the NPM introduced new working methods during his visits. Bearing in mind the importance of preventing infection, the members of the visiting group wore protective equipment. 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 2020, the NPM inspected a total of 6,179 detention units at 36 places of detention. The utilisation rate of these detention units was varying. While in the first half of the year, the occupancy rate of the penitentiary institutions surpassed 100%, overcrowdedness was eliminated after the expansion of holding capacities. The occupancy rate of child protection and social care institutions varied between 45% and 100%, whereas during the visits paid to police custody rooms, in several cases there were no detainees in there, thus the visiting group inspected the custody units themselves and the process of short-term arrest.

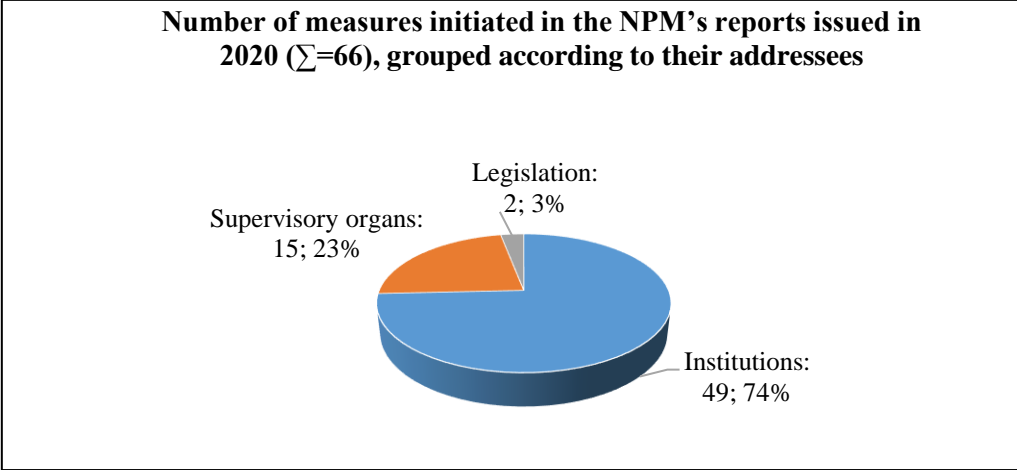
The visiting delegations inspected the premises of the places of detention, furnishing and equipment, as well as the documents related to the number, treatment, and conditions of placement of the detainees, made photocopies of some of the documents, reviewed the activities of the persons deprived of their liberty 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

¹⁸⁰ Section 39/B(1) of the Ombudsman Act

preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2020, the NPM proposed a total of 66 measures. Most frequently, in 49 cases, the NPM made recommendations to the heads of the places of detention¹⁸¹, in another 15 cases to the heads of the supervisory organ of the institution subject to inquiry¹⁸², and on 2 occasions, he made recommendations regarding legislation¹⁸³.



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

Engaging in a continuous and constructive dialogue aimed at following up the implementation of recommendations is a statutory obligation of only the NPM but also the heads of places of detention, authorities and other organs concerned. 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, it may submit the case to the Parliament within the framework of his annual report, and ask the Parliament to inquire into the matter. If, according to the NPM’s findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the NPM may propose that 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 2020 and no such grave infringements were uncovered by these visits for remedying which the NPM should have turned to the National Assembly.

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

¹⁸¹ Section 32(1) of the Ombudsman Act
¹⁸² Section 31(1) of the Ombudsman Act
¹⁸³ Section 37 of the Ombudsman Act

Another form of dialogue is the follow-up visits, in the course of which the NPM tries to double-check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic areas. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of the NPM's measures with the personnel of the places of detention. In 2020, the NPM paid a follow-up visit to the Platán Integrated Social Care Institution of Bács-Kiskun County.¹⁸⁴

The NPM's operational costs in 2020 amounted to HUF 106,325,094, which amount was allocated by the NPM's Office from its budget provided by the Parliament.

¹⁸⁴ See Report No. AJB-518/2020 of the NPM