Ombudsman as the head of the National Preventive Mechanism

and methodology of visits

In Poland, such visits should be made to approximately 1,800 establishments. In 2008 the NMP involved 76 visits, in 2009 - 99, and in 2010 - 80 visits. This year, there have been about 70 such visits.

1. Organization

Since 2011, the activities of the Mechanism have been undertaken by one team visiting all types of places of detention. The team is composed of eight people (mainly jurists, political scientists specialising in social rehabilitation and criminology, and rehabilitation educators), including a secretary. All the employees have received appropriate training indispensable for conducting preventive visits. However, the team is too small to perform all the tasks, thus, if the need arises, the visits are also carried out with the participation of the Penal Law Team members. Additional support for the team in charge of the Mechanism is provided by the staff of the field branches of the Defender’s Office. It should be also stated that in connection with the works on amending the Act on the Human Rights Defender external experts have not been allowed to take part in the visits in 2011, unlike in the preceding years. Previously, though, the participation of external experts was irregular owing to financial reasons.

2. Methodology of the visit

Now moving on to the methodology of the visits

3. Reasons for unannounced visits to places of detention

First of all, I would like to state the reasons why the visits conducted by the Polish NPM are unannounced. Firstly, we believe that such visits are more effective. The aim of monitoring, or of a visit, is to get the most accurate picture of the visited
establishment. Warning of a visit to be carried out distorts the picture of everyday life in a detention place, as it allows the management to get prepared, to "improve" the reality, and, consequently, to conceal the existing problems. I would like to present the methodology of visit on example of penitentiary institution. However the methodology is the same in every place of detention.

The duration of a visit depends on the size of the visited establishment and on the problems encountered. A visit to penitentiary units usually lasts between 2 and 3 days. The management of the establishment is not informed about the planned visit in advance.

4. Preparing the visit

Preparing the visit consist of two parts: first the composition of the visiting team, second gathering information on the establishment.

As provided in the OPCAT, the National Preventive Mechanism experts should have required capabilities and professional knowledge. The visiting teams are composed mostly of lawyers, political scientists and rehabilitation educators.

To comply with the gender balance requirement the NPM team carrying out visits in penitentiary institutions consists of 7 persons – 3 men and 4 women. Two of them, including the coordinator who is responsible for drafting the report, inspect the establishment and the site, while the rest of the team conduct private interviews with the detainees and inspect the living wards in different sections of the unit.

The basic source of information for us are the reports from previous visits as well as the reports of international, national (e.g. Supreme Control Chamber) and non-government organisations. We also make use of information that is generally available on the Internet. The number of complaints by the detainees, as well as the lack of such complaints, is an important piece of information as well.

5. The visit

Each visit consists of a number of stages: preliminary talk with the director of the establishment, viewing the establishment and the site, group and private interviews with the detainees, documentation analysis, and summing-up conversation with the director.
I would like to describe each point separately.

6. **Preliminary talk**

At the preliminary talk stage, we present the schedule of our visit and the methods we employ. We also decide on the spot where the team will meet to exchange the information collected and to analyse documentation. Some members of the visiting team are expected to participate in the preliminary talk, while others select the interviewees.

During the preliminary talk we can learn about the current problems of the establishment, we can find out to what extent the director is involved in everyday life of the establishment. We also request the staff to prepare documentation for us to analyse. Finally, we fix the time and place for the summing-up conversation.

7. **Viewing the establishment and the facilities**

At the viewing the establishment stage we check the living conditions of persons deprived of liberty. We inspect all areas of the establishment, its facilities, installations and premises where persons deprived of liberty spend their time, including among others the baths, the kitchens, the common rooms and the dormitories. We also ask the prisoners to indicate the place which in their opinion is the worst in a given establishment. Such place should then be inspected by the visiting team.

8. **Group and individual interviews with the detainees**

Interviews with the detainees are the key stage of the visit. They are carried out in private and in such a way as to ensure that no third party has access to the answers given. We select respondents randomly during the visit in each cell. We rarely interview detainees who want to be questioned.

The place for interviews should be as neutral as possible, so as to ensure that the visiting inspector is not equated in the eyes of the detainee with the staff. However, due to a shortage of space, the most frequently chosen location for interviews in penitentiary institutions are the rooms of tutors.
9. **Individual interviews**

We start individual interviews with introducing ourselves and giving the reasons for our visit, highlighting the confidentiality and voluntary nature of the interview. During the interviews we use check-list with the most important subjects to discuss. It is just a tool helpful in finding the most important problems to be discussed. It is more important for the conversation to be spontaneous rather than formalised, reminding the detainee of yet another interrogation.

10. **Group interviews**

We carry out group interviews during our inspection of the living wards. They may be regarded as a way of selecting persons to be interviewed individually later on. We get acquainted with the atmosphere and the specific conditions of different parts of the establishment. Sometimes the detainees are more eager to raise certain issues, important for them, when they are in a group in their cell rather than when interviewed individually. Group interviews, moreover, give us an opportunity to observe the relations between inmates in a given ward.

11. **Interviews with the staff of the establishment**

Interviews with the staff of the visited establishment permit us to verify, if necessary, the information given by the detainees. Care must be taken to ensure that our informant will not be identified. Our visits are not triggered by individual complaints; their goal is rather to identify the flaws of the system and prompt the dialogue with the management of the visited unit. Thus, it is essential to learn the point of view of the staff and to obtain information on their working conditions.

12. **Documentation analysis**

Documentation is also an important source of information, both on the functioning of a given unit and on the individuals. Analysing the files on the site, we may verify the information obtained from the detainees during individual interviews. We analyse, among others, the registers of extraordinary incidents, acts of self-aggression, queries, complaints and requests, as well as reports on the use of coercive measures. We also request the management of the visited institution to provide us with
copies of some documents which we can analyse later on in our office, (such as for example: internal rules and regulations of a given establishment).

13. Summing-up conversation
Prior to the summing-up conversation with the director, the visiting team meets to exchange the information collected (such meetings are also held during the visit) and to formulate major observations which will be presented to the director of the establishment. During the summing-up conversation, we report our initial findings and the information received from the detainees. We also notify about the date when the management may expect to receive the post-visit report. The summing-up conversation is meant as a start of a dialogue with the management of the unit with a view to find some solutions to the problems discovered by the team.

14. Post-visit reports
In a post-visit report we present the outcome of the visit conducted by our team. We describe the state of observance of prisoners’ rights, in terms of such categories as: living conditions, food, medical care, treatment of the detainees, penitentiary work, employment, cultural and educational activity, correspondence, visits, and religion services. At the end, we present the strengths of the establishment, along with our conclusions and recommendations.

15. Recommendations
In our report we also suggest solutions to the existing problems, for example: “ensure that persons who come into direct contact with the detainees, especially the ward supervisors, get adequate training and support in order to eliminate cases of ill-treatment of detainees by other detainees”. The order in which recommendations are presented depends on the weight and significance of the problem identified.

16. Addressees of the reports
The reports from visits to penitentiary institutions are sent to the directors of the establishments involved, to their supervisory bodies, to penitentiary judge supervising
the unit, to the chief chaplain, to NGOs such as the Helsinki Foundation for Human Rights, and to the Agreement on the Implementation of OPCAT.

17. Verifying how the recommendations are implemented
Since the number of employees performing the tasks of the National Preventive Mechanism is limited, verifying how the recommendations are implemented takes place mostly by way of correspondence. We monitor the time between sending the recommendations and getting a response. If the NPM does not receive a response from the addressee of recommendations within one month, we send a reminder informing about the need to take a stance on them. It is frequently necessary to exchange arguments, and we are often forced to present again the rationale behind our recommendations.

18. Examples of violations
The visiting team frequently encountered situations having the potential to result in inhuman or degrading treatment or punishment.

For example, in one sobering station the representatives of the Mechanism had reservations about the rather aggressive way of walking an arrested person into the sobering station by the Police officers and of accompanying the person into the room by the station’s personnel. During the check-in, the patient was thrown on the floor, undressed, pulled or even dragged into the room, where the person was kept without clothing. The representatives of the Mechanism found the behaviour recorded by the monitoring to constitute inhumane treatment. It also followed from the recording that some employees of the sobering station exhibited a hostile attitude towards the patients.

In another case, it was found that a psychiatric hospital had two observation rooms with transparent walls resembling cages, which were used for, among others, applying direct coercive measures. The glass patient rooms and observation ‘cages’ raised serious doubts of the visiting employees since their use was against the obligation to safeguard the inherent and inalienable dignity of patients as human beings and to respect their right to privacy and protection of image. In consequence, it was recommended that necessary measures be introduced in order to adjust these
rooms to the requirements ensuring the observance of patients' rights.

One more example the revealing of prohibited forms of punishment inflicted on juveniles. In one youth sociotherapy centre one girl was made to wear peasant clothing and a note on her back saying "I'm dishonest," the other one had her hair shaved. In many establishments for juveniles punishment took the form of collective responsibility or solitary confinement, physical exercise or deprivation of the possibility to go out.

I have cited only few examples of difficult situations encountered during visits under the Mechanism. The preventive visits allow to identify weak points in the functioning of certain institutions and of the system as a whole. Despite the fact that the Mechanism has only been functioning for 3.5 years, the measures taken have already produced significant results.

19. Outcome of NPM activity

The first and foremost outcome of the Mechanism's operation in Poland is the raised awareness of the society and the management of the establishments visited as regards broadly understood protection of human rights and rights of persons deprived of their liberty. Year after year, both directors of the units inspected and their supervising ministries have become increasingly open to the recommendations of the Mechanism and willing to engage in a dialogue aimed at improving the situation of detained persons. The readiness to cooperate is demonstrated, among others, by the fact that the representatives of the Mechanism are invited to conferences and meetings attended by persons working directly with detained persons. Such meetings provide an excellent occasion for presenting the activities under the Mechanism and the standards that the establishments visited should strive to achieve.

The National Preventive Mechanism also initiates a dialogue and discussion with persons responsible for the functioning of various places of detention in Poland. For instance, I would like to mention the meeting with the representatives of the Chief Police Headquarters aimed at elaborating a satisfactory solution to two issues: the presentation of rights available to detained persons and the prolonged detention of juveniles in Police emergency centres for children. Indeed, the preventive visits have
revealed that the manner of explaining the rules and regulations to persons staying in rooms for detained persons does not deliver the desired effect because in practice these persons are unaware of their rights.

In addition, the preventive visits allow for noticing many other problems as regards the observance of the detained persons’ rights. When these are exposed and defined, the Defender can address general motions to the relevant State bodies or apply to the Constitutional Tribunal for providing detained persons with effective legal protection.

Moreover, the visits under the National Preventive Mechanism serve an important informational function. The directors of the units visited have often thanked the representatives of the Mechanism for their activities undertaken in the establishments and for the information provided. Many of them had been infringing the rights of detained persons in an unlawful and arbitrary manner. Thanks to the visits under the Mechanism, despite the reluctance on the part of unit heads’ to adopt some of the Mechanism’s recommendations, we have observed an increase in the awareness of the fact that human rights may be denied only in exceptional, predetermined cases and in accordance with well-grounded procedures.

We are all aware that independent monitoring of places of detention is a key tool for guaranteeing the protection of detained persons against unacceptable treatment. The activity of national preventive mechanisms complements the measures taken by international organisations. Thanks to a dialogue with national authorities, the mechanisms have to a considerable extent contributed to the implementation of European and international standards.