



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Comments of the national preventive mechanism on the  
recommendations and observations addressed to it in  
connection with the Subcommittee visit to Poland undertaken  
from 9 to 18 July 2018\*, \*\*, \*\*\***

[Date received: 31 December 2019]

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- \* The present document is being issued without formal editing.
  - \*\* On 6 February 2020, the national preventive mechanism requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.
  - \*\*\* The annexes to the present document are being circulated as received in the language of submission only.

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## **A. Recommendations relating to institutional and structural issues**

### **1. Institutional framework and independence**

#### **Comments of the national preventive mechanism on the recommendation(s) contained in paragraph 19 of the recommendations and observations addressed to it in connection with the Subcommittee visit (CAT/OP/POL/RONPM/1)**

1. The Polish National Mechanism for the Prevention of Torture operates according to the Ombudsman model. Pursuant to Resolution No. 144/2005 of the Council of Ministers of 25 May 2005, Undersecretary of State in the Ministry of Justice, by way of a letter dated 18 January 2008, officially entrusted to the Polish Commissioner for Human Rights the role of the National Preventive Mechanism within the meaning of Article 3 of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: OPCAT). The protocol was adopted by the United Nations General Assembly on 18 December 2002 in New York. In relation to the Republic of Poland, it entered into force on 22 June 2006. Pursuant to Article 1(4) of the Act of 15 July 1987 on the Commissioner for Human Rights (hereinafter: the Act on the CHR), the Commissioner performs the function of a visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (National Preventive Mechanism). The performance of this function involves regular oversight over the manner of treatment of persons deprived of liberty (Article 8(2) of the Act on the CHR).

2. According to the Statutes of the Office of the Commissioner for Human Rights, the National Preventive Mechanism constitutes one of the Teams (i.e. units) of the Commissioner's Office, and is headed by the Team's director and his/her deputy. Substantive supervision over the Team is exercised by one of the CHR deputies.

3. Due to permanent understaffing of the Mechanism, an agreement has been concluded between the NMPT and CHR's regional representatives. Pursuant to that agreement, in each regional office an employee has been designated who, apart from working for the office, also takes part in three preventive visits under the Mechanism, held in establishments located in the area for which a given CHR's representative is responsible. Moreover, the Head of the Department for Migrant and National Minorities' Rights also participates in visits performed under the Mechanism to closed detention centres for migrants. During the preventive visits, the CHR Office employees carry out the mandate of the national preventive mechanism.

4. During the visits, the visiting team is supported by external experts: physicians - psychiatrists, geriatricians, internal medicine doctors, as well as professionals specializing in issues that constitute the focus of NMPT visits.

5. The scope of tasks and issues covered by the National Mechanism for the Prevention of Torture in many cases requires specialist knowledge and professional experience. Therefore, since 2016 the CHR's Expert Committee on the National Preventive Mechanism has been in operation. Among the members of the Committee is Ms. Maria Książak, co-founder of the Polish Centre for the Rehabilitation of Torture Victims, whose expert knowledge supports the Mechanism during its visits to closed detention centres for migrants.

6. The NMPT's separation from other subject-specific Teams of the CHR Office is reflected, primarily, by the fact that the Mechanism is not responsible for handling complaints from people deprived of their liberty. Such complaints are considered by employees of the Penalties Enforcement Team (with regard to penitentiary units) and employees of the Department for Law Enforcement Proceedings (with regard to the police).

7. During the visits, the Mechanism's representatives may record sound, with the consent of individuals who are going to be recorded, as well as hold meetings with persons deprived of their liberty without the presence of other parties and meet individuals who, at their discretion, may provide significant information (Article 13(1)(a) of the Act on the CHR).

**Comments on the recommendation(s) contained in paragraph 20**

8. The NMPT is aware of the shortcomings of the legal framework that determines its organisational form and, to a certain extent, influences the manner of carrying out its mandate. Bearing in mind the requirement to maintain compliance of the newly established mechanisms with the Paris Principles and SPT Guidelines (Guidelines on national preventive mechanisms CAT/OP/12/5) it should be noted, however, that the Polish mechanism enjoys institutional independence because its activities are not subject to the control of any institution: ministry, minister, the government, the President or the Prime Minister. Institutional changes regarding the Mechanism may only be introduced by amending the Act on the CHR.

9. As the Polish Mechanism operates within the Ombudsman model, its status is grounded in the parliamentary act, and it has unlimited access to comprehensive sources of information about people held in places of detention and on problems related to the operation of such places.

10. Obviously, as regards the Act on the CHR, it does not implement the provision of Article 35 of the OPCAT, relating to the mechanism members' privileges and immunities necessary for the independent exercise of their functions. Examples of such immunities are mentioned in Articles 22 and 23 of the Convention on Privileges and Immunities, which refer to the following solutions in this area:

- During and in connection with the exercise of the NPM functions:
  - A member of the Mechanism may not be arrested or detained in custody, and his/her personal luggage may not be searched;
  - His/her papers and documents may not be searched or confiscated;
  - His/her communication processes may not be hindered;
- During and after his/her term of office:
  - A member of the NPM may not be held liable for his/her verbal or written statements or actions in connection with the function performed.

11. Pursuant to the Act on the Commissioner for Human Rights, the abovementioned privileges apply to the Commissioner only. The fact that they are not extended to individual members of the Mechanism, however, does not cause any practical problems in the exercise of their powers, even taking into account the fact that the Mechanism members undergo a general safety check while entering penitentiary establishments.

12. The representatives of NMPT have no problems either in accessing information on persons deprived of their liberty. The scope of such information is limited only by the confidentiality clauses contained in documents, although it should be emphasized that the Director of the Mechanism is currently expected to be granted the power to access the so-called classified information.

13. If, in practice, there are cases when managers of the visited establishments refuse to provide information, such refusals definitely result from still insufficient recognition of the NMPT in the society, and not from deliberate intention to limit its powers.

14. As already mentioned, the tasks and subjects covered by the National Mechanism for the Prevention of Torture in many cases require specific knowledge and professional experience. That is why the Commissioner decided to establish the NMPT Expert Committee that is currently composed of 23 members. These are people who, thanks to their professional experience related to the protection of human rights, provide excellent substantive support to the Mechanism's activities. The Committee's interdisciplinary nature results from the diversified educational backgrounds of the members who include lawyers, doctors, NGO staff members, and persons whose daily work relates to the rights of persons deprived of their liberty. Among them are: Marzena Ksel, Ph.D. in medicine, Vice-president of the CPT; Maria Książak, co-founder of the Polish Centre for the Rehabilitation of Torture Victims; prof. Mirosław Wyrzykowski, associate professor at the University of Warsaw, judge of the Constitutional Court in 2001 – 2010; professor Marek Konopczyński, Ph.D., author of the scientific approach to creative rehabilitation of minors, Vice-President of the National Council for Social Readaptation and Support of Convicts; Mikołaj Pietrzak, lawyer, head of the Regional Bar Council in Warsaw; member of the Board of Trustees of

the UN Voluntary Fund for Victims of Torture; Witold Klaus, Ph.D., president of Stowarzyszenie Interwencji Prawnej [Association for Legal Interventions] that works in the field of human rights; Agnieszka Sikora, founder of the Po Drugie foundation that works with youth at risk of social exclusion, pathologies and helplessness, in particular residents and former residents of social rehabilitation institutions for minors. The interdisciplinary approach of the Committee makes it possible to establish working groups that help the Mechanism to develop positions on specific issues relating to the protection of the rights of persons deprived of liberty. An example of such activity may be the establishment of a working group for drafting a position on measures to be taken for the security of persons with reduced physical abilities, who stay in nursing care facilities.

15. As regards the recommendation to increase the autonomy of the Mechanism by strengthening the role of the NMPT Expert Committee, it should be noted that the activity of the Committee (as well as others committees operating within the CHR Office) focuses mainly on advise provision and the members' participation in the Mechanism's educational activities (a series of regional debates organized by the NMPT in 2016 - 2018). The experience of educational meetings held with university students and police officers, organized by the NMPT as part of the social campaign *State without torture*, has shown that the participation of Committee members in such activities is strongly needed. By participating in future trainings, individual experts of the Committee will be able to transfer their knowledge related to the prevention of torture, based on their professional experience. The National Mechanism for the Prevention of Torture will also consider the possibilities for members of the Committee to take part in visits to places of detention.

16. The National Mechanism for the Prevention of Torture, aware of the existing shortcomings, plans to undergo the process of evaluation of its operations.

17. Moreover, in order to identify other areas of the NMPT's work that require improvement, the Mechanism will request the NPM Observatory to carry out the process of evaluation of its operations.

#### **Comments on the recommendation(s) contained in paragraph 25**

18. At present, the NMPT has 11 staff members (including a secretary). Staff members working for the Mechanism have relevant education in the fields of law, sociology, political sciences, rehabilitation, psychology and criminology. However, the mechanism is aware that in its composition it does not yet have a person with medical education and that in recent years the gender parity has been disturbed (there are 7 women and 4 men). Bearing in mind the shortcomings noted, in the next round of recruitment of members of the Mechanism the focus will be on finding a person with medical education and on reducing the difference between the number of women and of men – members of the NMPT Team.

#### **Comments on the recommendation(s) contained in paragraph 26**

19. Every year, the NMPT Directors submit to the Commissioner a statement of the Mechanism's needs as regards both new job positions in the Team and the equipment necessary for the employees in connection with the performance of their duties. The indirect manner of planning the Mechanism's budget results from the fact that it is the Office of the Commissioner for Human Rights, and not its individual organizational units, that is allocated financial resources from the state budget. Therefore, the aforementioned method of planning the NMPT budget is used. In practice, this budget is formed as a result of allocating to the Mechanism a part of the overall amount assigned to the CHR Office. The process, which resembles the system of communicated vessels, is characteristic of the mechanisms that operate according to the Ombudsman model. Unfortunately, its main drawback is the direct interdependence between the financial resources allocated by the Parliament to the operations of the Office of the Commissioner for Human Rights, and the resources allocated to the NMPT as one of the Teams (units) of the CHR Office.

20. It should be emphasized that from the very beginning of the NMPT's operation, none of the budgets allocated to the Commissioner for Human Rights met the actual needs relating to the exercise of this additional function of entrusted to the Commissioner. The situation has been increasingly dramatic particularly over the last years, during the term of office of Adam Bodnar, Ph.D. Successive budget cuts that affected the CHR Office, accompanied by the Commissioner's new obligation to examine the so-called extraordinary

complaints filed by citizens, also reduce the possibility of the full-scope implementation of the NMPT's mandate.

21. In planning this year's budget of the CHR Office, the Sejm's Expert Analyses Bureau positively assessed the Commissioner's application for financial resources. However, in the course of the parliamentary debate, parliamentarians, despite the positive opinion of the said Bureau, reduced the CHR Office's budget. The budget cuts were introduced despite the existing international recommendations (CAT, UPR) which clearly indicated the need to provide a budget that would secure appropriate operation of the Office.

22. Expenses on the functioning of the NMPT in the years 2008 - 2019 are presented in the table below.

Table 1

**Amounts spent in 2008–2019 in connection with the implementation of the function of the national preventive mechanism by the Office of the Commissioner for Human Rights**

<i>Year</i>	<i>Funds spent on the NMPT</i>
2008	no data
2009	no data
2010	no data
2011	924 381.94 PLN
2012	1 629 486.12 PLN
2013	3 131 342.02 PLN
2014	3 030 816.31 PLN
2015	3 049 507.05 PLN
2016	2 361 864.71 PLN
2017	2 340 015.73 PLN
2018	2 265 537.93 PLN
2019*	2 665 139.00 PLN
<b>Total</b>	<b>21 398 090.81 PLN</b>

\* as of 27 August 2019

The sources of data for 2012–2018 are reports on the implementation of tasks financed from the state budget, where individual tasks are reported (the reporting obligation has been in force since 2012).

The only source of data for 2011 is the Finance and Accounting system.

23. In order to better illustrate the size of the CHR Office budget from which the NMPT's operation is financed, the table below presents overall CHR Office budget amounts requested in the subsequent years, and the amounts actually allocated by the Parliament.

Table 2

**Budget of the Office of the Commissioner for Human Rights in 2008–2019**

<i>Year</i>	<i>Budget requested in thousand PLN</i>			<i>Budget allocated in thousand PLN</i>		
	<i>including</i>			<i>including</i>		
	<i>financial resources</i>	<i>other resources for current operations</i>		<i>financial resources</i>	<i>resources for current operations</i>	
2008	32 302	980	31 322	32 302	980	31 322
2009	38 809	928	37 881	33 416	928	32 488
2010	34 945	700	34 245	33 945	700	33 245

Year	<i>Budget requested in thousand PLN</i>			<i>Budget allocated in thousand PLN</i>		
	<i>including</i>			<i>including</i>		
	<i>financial resources</i>	<i>other resources for current operations</i>		<i>financial resources</i>	<i>resources for current operations</i>	
2011	36 477	914	35 563	35 675	914	34 761
2012	40 044	1 900	38 144	38 019	1 900	36 119
2013	42 818	2 118	40 700	39 024	1 809	37 215
2014	41 549	1 782	39 767	39 171	1 782	37 389
2015	41 989	719	41 270	37 603	719	36 884
2016*	45 566	4 067	41 499	35 619	1 517	34 102
2017	41 039	3 196	37 843	37 182	2 637	34 545
2018	42 639	4 775	37 864	39 433	4 775	34 658
2019	48 109	5 650	42 459	40 883	5 520	35 363

\* The first budget allocated during the term of office of Adam Bodnar, Ph.D.

### **Comments on the recommendation(s) contained in paragraph 27**

24. Unfortunately, in the current political situation the vast majority of the Commissioner's activities are approached with criticism on the side of the ruling party that sees political motives behind his activities. This does not provide a climate for building a dialogue based on the full understanding of the role of the National Mechanism for the Prevention of Torture. An example of the lack of will on the part of the government and the Parliament representatives is the failure to take into account the Commissioner's opinion regarding the extensive amendment of the penal legislation which, by creating an oppressive system of penal law, would increase the number of persons deprived of liberty and seriously limit their rights (by reducing the age limit for liability for certain crimes to 15 years of age; tightening sanctions for crimes, introducing the penalty of unconditional imprisonment for life).

25. In the context of a constructive dialogue with the state authorities it is also worth paying attention to one of the NMPT's statements that was issued in connection with the arrest of a man suspected of murdering a 10-year-old girl. The whole operation was filmed by the police and the recording was posted on the internet. The NMPT's statement expressed doubts as to the proportionality of the direct coercion measures applied in relation to the suspect by the group of 10 police officers (the use of leg and hand cuffs, with the suspect's hands cuffed on his back; walking him out of the building only in his underwear and a T-shirt, without his shoes, interrogating him during the night hours, and the fact that during the interrogation he was not fully dressed). The Mechanism also expressed concern over the lack of information on ensuring a defending lawyer to the suspect, which, in the context of the information about his planned psychiatric examination, was a responsibility of the state. Moreover, in the case described, there was an evident violation of the presumption of innocence, because the man's photograph that "leaked" during the time of his interrogation was published on the internet.

26. Instead of holding a substantive discussion on the use of direct coercion measures by the law enforcement services of the state, which was expected in connection with the Mechanism's statement, representatives of the state's high-level officials (Deputy Minister of Justice Marcin Warchoł, and Speaker of the Senate Stanisław Karczewski) demanded the Commissioner's resignation and emphasized that he represented the interests of only some citizens. The wave of hatred that was expressed with regard to the Commissioner and the office represented by him was definitely unprecedented. On the media, the CHR was commonly referred to as the ombudsman of murderers and bandits. Also, a public television channel broadcast a material that undermined the Commissioner's personal rights as it was related to his family situation. The comments of internet users, posted under the said media reports concerning the Mechanism's statement, showed that there was absolutely no understanding for the reasons behind defending the arrested man, of the fact that his

defence was caused by the need to protect his inalienable dignity, and of the Mechanism's obligation to intervene in any situation in which one's dignity is violated. There were also comments calling for penalizing the man extrajudicially, even to death.

27. It should also be noted that one of the letters that was of key importance from the point of view of guaranteed protection against torture of persons deprived of liberty, and was sent to the Minister of Justice in April 2017<sup>1</sup>, is still remaining without a reply, despite many reminders, including the Polish Prime Minister's letter sent to the competent minister and requesting him to respond.

28. Nevertheless, the Mechanism takes steps to convince members of the Polish Parliament that it plays an important role in defending the rights of persons deprived of their liberty. In particular, those steps include inviting representatives of the Parliament to take part in inspection visits carried out by the NMPT. This postulate was included in the NMPT's strategy for 2019-2023 as an instrument for implementing actions in one of the strategic areas entitled *The NMPT's increased participation in the public debate on torture, in order to build the social culture of no tolerance of torture*.

#### **Comments on the recommendation(s) contained in paragraph 29**

29. The NMPT is aware that its mandate does not cover all places where people are deprived of their liberty in Poland. At present, the number of establishments that are subject to regular monitoring exceeds 3000. The fact that certain places of deprivation of liberty remain outside the Mechanism's monitoring although they meet the criteria defined in Article of the OPCAT results only from the funds insufficient for the full-scope implementation of the Mechanism's mandate. The currently visited places include: penitentiary establishments, rooms for persons detained by the Police, the Border Guard and the Military Police, police stations, police emergency centres for children, youth care centres, shelters for minors, youth correctional facilities, psychiatric hospitals, facilities providing 24-hour care to those in need, social care homes, nursing homes, sobering-up stations, closed centres and detention centres for migrants. The mechanism gradually seeks to extend its supervision to over new types of places of detention. In 2017, we began visits to facilities providing 24-hour care to those in need and to nursing homes. In 2018, the monitoring covered also police stations. In addition to visits conducted during business hours of visited places' managers, the Mechanism is going to visit detention places also during evenings.

30. Further places of deprivation of liberty will be covered by the Mechanism's monitoring when new members are employed within the Team. From the point of view of comprehensive protection of persons deprived of liberty against torture, the Mechanism should have 25 staff members. This number would allow the development of specializations according to individual groups of people held in detention (minors, senior persons, migrants, people with disabilities, and people with mental disorders).

#### **Comments on the recommendation(s) contained in paragraph 31**

31. The mechanism has developed its strategy for 2019-2023, according to which, after 11 years of activities consisting mainly in preventive visits, the focus is on educating the society. The desired effect of such actions should be the development of the social culture of no acceptance for torture. Education as an element of the Mechanism's work has been strengthened since 2016 when regional debates were held in capital cities of the 16 provinces [voivodeships] of the country. The events were addressed to people whose professional work relates to rights of people deprived of their liberty. The series of the meetings ended in 2018.

32. At the end of 2018, the social campaign entitled *State without torture* was launched. Its main pillar is formed by educational activities of the NMPT.

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<sup>1</sup> The letter pointed to the need for thorough legislative changes that would introduce the main pillars of protection of persons deprived of their liberty against torture: the inclusion of the crime of torture in the Polish Penal Code; the conducting of medical examinations of all detainees; the access to a lawyer from the time when the person is detained; the possibility for a detainee to independently inform his/her relatives of the fact of his/her detention.

33. As part of the campaign, representatives of the Mechanism conduct training sessions for university students who in the future, in their professional work, may come in contact with persons deprived of liberty (for example, for students taking part in internships in the CHR Office).

34. Also, the police attended training sessions on preventing torture. The police constitutes, undoubtedly, the service which, in view of existing court judgments regarding the use of torture against detained persons, displays most shortcomings in this area.<sup>2</sup>

35. As part of the campaign, an international debate was also organized on the issue of secondary victimization of victims of torture placed in closed centres for migrants. Among the invited guests were: Ms Ala Elczewska, a specialist in trauma treatment, who works for a Danish institute named Dignity and supports traumatized persons, as well as representatives of the national preventive mechanisms from the Czech Republic and Greece and of the Polish border guard.

36. Apart from the long-term strategy, the Mechanism's activities performed on annual basis consist in the implementation of two types of actions: preventive visits and educational activities. In addition, every year a decision is made by the Mechanism on the type of entities to which most attention will be paid during the visits (thus called thematic visits). This is necessary so as to collect information for thematic analyses of individual types of places of detention, or groups of people deprived of liberty. As an example, the thematic visits to psychiatric hospitals and other psychiatric establishments for minors resulted in the publication of a paper entitled *Psychiatric care for minors*. The current situation in Poland in the field of such care for minors is alarming. Another example of the thematic publication of the Mechanism is *Monitoring of the situation of prisoners with physical or sensory disabilities*. A publication on the situation of migrants placed in closed centres in Poland is also being prepared.

#### **Comments on the recommendation(s) contained in paragraph 34**

37. Over the past two years, a number of actions have been taken to increase the visibility of the Mechanism in society. The NMPT has its own logo and a website that describes all the activities it undertakes.

38. The National Mechanism for the Prevention of Torture, together with partners: the National Bar Council, the National Chamber of Legal Advisers, the Council of Europe, the OSCE ODIHR, the Association for the Prevention of Torture and Kantar Millward Brown conduct a social campaign entitled *State without torture*.

39. The NMPT's experience gained during more than 1,000 visits to places where people are deprived of liberty shows that the problem of torture or other forms of cruel and degrading treatment is still existing in Poland (2018 was the year of the 10th anniversary of the operation of the National Mechanism for the Prevention of Torture in Poland).

40. In the survey *Torture: Poles' opinions*, that was conducted at the turn of September and October 2018 by Kantar Millward Brown on the initiative of the Commissioner for Human Rights, as many as 71% of the respondents indicated that after 1989 in Poland there have been cases of torture. At the same time, citizens emphasize that the problem of the use of torture in public-sector facilities should be given more public space, as concluded by as many as 86% of the respondents. It is also of great concern that as many as 41% of the respondents believe that the use of torture may be justified in specific cases.

<sup>2</sup> In 2008-2015, 33 police officers were penalized for offenses under Article 246 of the Penal Code. In 2016, six such judgments became final, and 9 police officers were sentenced. According to the data provided by the National Criminal Records, in 2017 three police officers were sentenced under that Article. In 2018, a final judgment was issued with regard to 3 police officers penalized for the offence under Article 247 of the Penal Code. In 2018, another judgment, not yet final, was also issued with regard to 4 police officers violating Article 246 of the Penal Code. Moreover, in 2018, a prosecutor's office initiated proceedings regarding mistreatment of a person detained by 3 police officers (Article 247 of the Penal Code). The case was disclosed by employees of the National Mechanism for the Prevention of Torture during a routine visit to one of the police stations. Proceedings are also pending with regard to the death of Igor Stachowiak; four police officers have charges against them (Article 247 of the Penal Code).

41. The main goal of the campaign is to increase public awareness of what torture is and who can become its victim. The experience of the NMPT shows that the most often victims of torture are people with low social awareness, very often minors, but also people with disabilities.

42. The campaign's materials included two TV spots by APT, relating to the role of national prevention mechanisms and to changes in police interrogation methods. The Polish language versions of these recordings were compiled thanks to the support of the Supreme Bar Council and the National Chamber of Legal Advisers. Also thanks to the courtesy of the Supreme Bar Council, infographics have been developed illustrating the rights of people subjected to torture, the Mechanism's working methods, and the case law of the European Court of Human Rights that concerns torture and inhuman or degrading treatment or punishment.

43. The campaign's poster was developed by Luka Rayski, known also as the author of the poster *Constitution*. The poster has a QR code that can be scanned with a smartphone to easily access the Mechanism's website. The poster has also been sent to places of detention.

44. A new version of the Mechanism's leaflet has also been prepared, which has been translated into four languages: English, Russian, Ukrainian and Vietnamese. Thanks to the cooperation with the campaign partners, a list of contacts at the Office of the Commissioner for Human Rights and the National Mechanism for the Prevention of Torture was compiled and was sent to all penitentiary establishments in Poland. Infographics have also been developed and posted on the website of the Mechanism to inform about its role and tasks, the methods of conducting its activities, the rights of persons subjected to torture or its witnesses, as well as the case law of the European Court of Human Rights concerning torture and degrading or inhuman treatment or punishment.

45. In order to reach the largest possible target group, during the campaign attempts were made to attract the interest of managers of the Polish public television, and the Catholic church. Unfortunately, these steps were unsuccessful. Neither the public television nor representatives of the Catholic church were willing to cooperate in this area.

46. In this context, the role of representatives of the Evangelical Church of the Augsburg Confession should be emphasized, as the only entity to join the campaign *State without torture*. As part of their work among members of that church, and in the magazine *Zwiastun ewangelicki*, they disseminate information on the need to prevent torture.

47. The Mechanism's representatives carry out the campaign through the media: they take part in television programme recordings, radio interviews and prepare press articles.

48. Of course, educational activities are also conducted among students, police officers and employees of correctional facilities for minors, with the aim of increasing the visibility of the NMPT in the society. It is worth adding in this context that is planned to extend the educational activities to cover students of the so-called uniformed service schools, who in the future will seek employment within the police structures, and to cover universities' law clinics providing legal counselling to citizens.

49. A specific form of education of members of society are also the NMPT statements issued since 2017 based on media reports concerning the rights of persons deprived of their liberty. On the basis of information published by the media, statements are prepared in which comments are made, for example, on the activities of the law enforcement services regarding persons deprived of their liberty, in the context of protecting them against torture and inhuman or degrading treatment.

50. The mechanism fulfils its role also by submitting comments on existing and planned legislative instruments concerning also persons deprived of liberty. Since the beginning of its activity, the NMPT has formulated comments on 33 legislative instruments.

51. The opinions were issued, i.a., on the following legal acts:

- Opinion of 28 August 2018 on the draft act on video surveillance (CCTV). The Commissioner pointed out, first of all, the necessity to use this form of surveillance only based on provisions of a legal act of statutory rank.
- Opinion of 31 October 2016 and of 16 January 2017 on the draft regulation of the Minister of the Interior and Administration amending the regulation on rooms for

apprehended persons or for intoxicated persons brought to sober up, on transitional facilities and police emergency centres for children, as well as on rules governing the stay in such facilities, and on the manner of dealing with image recordings from such rooms, centres and facilities. As a result of changes proposed by the CHR, a legislative amendment was introduced allowing a juvenile to have obligatory contact, upon his/her request, with a lawyer, a parent or a legal guardian. The CHR also proposed that a juvenile should be allowed to be visited and have a phone conversation in conditions ensuring privacy. Amendment is also required in legal regulations that provide for a possibility for a lawyer to contact a juvenile in a sobering-up facility, only upon the juvenile's request. However, in the opinion of the Minister of the Interior and Administration, this remark need not be considered.

- Opinion of 30 October 2016 on the draft act amending the Act on mental health protection and some other acts. The CHR pointed out, among others, that the amendment does not specify who is to control the condition of person who has been subjected to direct coercion. In view of pertinence of the issue, it would also be worth considering whether the manner of checking the physical condition of person with mental disorders who is immobilized or isolated, and the way of assessing if using such measures is justified, should be regulated in the Act on mental health protection. In the CHR's opinion, all kinds of establishments (not only those intended for people with mental disorders, as is the case at present) should be subject to judicial supervision, since people with mental disorders are placed in various establishments, by decision of referring authority.
- Opinion of 10 June 2019 on draft regulation of the Minister of Justice amending the regulation on youth correctional centres and juvenile shelters. The amendments proposed by the CHR were assessed very favourably. First of all, the amended regulation excludes the possibility of isolating juveniles in separate rooms without indicating specific reasons for doing so and without specifying the time frame. Such practice, as results from materials collected under the NMPT, was rather common.
- Opinion on 14 March 2016 on draft regulation of the Minister of Justice amending the regulation on medical services provided by health entities to persons deprived of their liberty. The CHR pointed out that the amendment proposed in draft regulation would deprive representatives of prison health services of the possibility to take decisions to transport an inmate to an external health service provider. The proposition to abandon the obligatory dental check of each person admitted to penitentiary establishment was also negatively assessed. Finally, the first proposal of the CHR was incorporated in the regulation.
- Opinion of 30 June 2017 on the Council of Europe draft instrument to codify the Rules on the conditions of detention of migrants. The CHR raised reservations regarding: personal scope of application of the Rules, the manner of identification of victims of torture among foreigners in guarded centres, applying prisons rules towards people in administrative detention, and the admissibility of youth detention.
- Opinion of 15 April 2019 on draft act on juveniles. The CHR prepared a comprehensive opinion on the draft act regulating proceedings in cases of depraved youth; the draft act is to replace the Act of 1982 on proceeding in juvenile cases currently functioning in this scope.
- The Commissioner's initiative engaging the Office for Democratic Institutions and Human Rights (ODIHR) in developing a comprehensive legal opinion based on a review of the Polish legislation, indicating that the crime of torture as such is not specified there, is also worth recalling. As a result, the CHR wrote to the Minister of Justice to suggest the inclusion of the crime of torture in the Polish Penal Code, and attached the said opinion of the ODIHR.

## 2. Obligations and visibility of the mechanism

### Comments on the recommendation(s) contained in paragraph 35

52. In December 2018, the Commissioner, together with the Council of Europe, launched the *State without torture* social campaign. Within its framework, the National

Mechanism for the Prevention of Torture increases public awareness of the problem of torture and conducts training and lectures on the subject. As part of the campaign, a poster “No to torture” was developed and was sent, among others to all penitentiary establishments, police stations, youth care centres, correctional centres for minors, closed centres for migrants. By displaying the poster, the managers of the establishments make it clear that they are against all forms of ill-treatment and seek to build the culture of no acceptance of torture. Visitors to these places can use the QR code placed on the poster to use their mobile phones to find the website dedicated to the social campaign. There, they can find information e.g. on how to react when they witnesses torture or other forms of ill-treatment. Also, the National Headquarters of the Prison Service received printed posters with contact data of the National Mechanism for the Prevention of Torture and the Commissioner’s Office. The National Headquarters of the Prison Service declared they would place the posters on an information board in all wards of every prison and every remand facility in Poland.

53. As part of the campaign, leaflets have also been compiled to explain what the National Mechanism for the Prevention of Torture is and how it works, what torture is, and what the preventive visits look like. The leaflets contain contact information for victims or witnesses of torture. The leaflets are distributed by persons conducting the NMPT preventive visits, among persons deprived of liberty and among employees of the establishments. Also, the leaflets have been translated into four languages: English, Russian, Ukrainian and Vietnamese and posted on the website [www.kmpt.rpo.gov.pl](http://www.kmpt.rpo.gov.pl). The website also contain infographics on the Mechanism, which, as part of the ongoing social campaign, have been prepared by the National Bar Council.

#### **Comments on the recommendation(s) contained in paragraph 36**

54. The NMPT cooperates with non-governmental organizations whose scope of interest as well as tasks relates to broadly understood prevention of torture and inhuman or degrading treatment or punishment. This cooperation consists primarily in the exchange of information related to the situation of persons held in various places of deprivation of liberty across the country. At the beginning of the NMPT’s activity in Poland, one of its main partners was a coalition of non-governmental organizations and academic communities, named *Coalition for the introduction of OPCAT*.<sup>3</sup> The Coalition, since the beginning of its existence, supported the establishment of the National Preventive Mechanism in Poland, and its guidelines regarding the operation and reports of the Mechanism are still a valuable tool for its development.

55. Furthermore, representatives of non-governmental organizations took part in thematic visits conducted by the national preventive mechanism as external experts. A relevant agreement was signed with each expert, according to which he/she is required to draw up an expert opinion in return for adequate remuneration.

56. Representatives of the *Polska bez Barrier* foundation and the *Integracja* foundation participated in thematic visits to remand facilities and prisons, that were carried out to monitor the exercise of the rights of persons with disabilities (19 joint visits). They are also the authors of the standards referred to in the NMPT reports on planning the accessibility of buildings and rooms (such standards are not yet legislative documents). Moreover, the *Polska bez Barrier* foundation prepared the NMPT staff members for verifying the observance of the rights of persons with disabilities, by conducting a two-day workshop on space adaptations to the needs of people with disabilities.

57. A psychologist from the International Humanitarian Initiative participated in thematic visits to closed centres for migrants, to ensure proper psychological care for them (3 joint visits).

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<sup>3</sup> On 26 October 2007, a task group was established at the University of Warsaw, the Institute of Social Prevention and Rehabilitation, which consists of representatives of academic communities and non-governmental organizations working for human rights and their protection. Major human rights organizations were also invited to cooperate, such as: Amnesty International Polska; Helsinki Foundation for Human Rights; Association for Legal Interventions; International Lawyers Committee, Poland Chapter; Unit for Criminology and Crime Combating Policy, at the University of Warsaw; and the Sławek foundation.

58. Moreover, a representative of the Helsinki Foundation for Human Rights (HFHR) and the International Humanitarian Initiative took part in the NMPT's Regional Debates<sup>4</sup> that were organized in 2016-2018. During the debate in Wrocław, the HFHR representative discussed problems related to respecting the rights of minors in detention. The debate in Rzeszów focused on the problem of victims of torture in closed centres for migrants; the problem was explained by the representative of the Initiative.

59. The said cooperation of the NMPT with non-governmental organizations is of great value, as their representatives have extensive knowledge regarding human rights protection. It also serves the purpose of ensuring transparency of the Mechanism's activities. Therefore, in connection with the recommendation of the Subcommittee, please be informed that relevant NGOs will be requested to take part in the activities of the NMPT, such as visits to places of deprivation of liberty, and the conducted trainings. In addition, the International Humanitarian Initiative will be requested to carry out training for employees of the National Mechanism for the Prevention of Torture in the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol").

60. The issue of enhancing the NMPT's cooperation with civil society organizations will also be discussed by the NMPT Expert Committee.

## **B. Recommendations on methodological issues**

### **1. Recommendations on visit methodology**

#### **Preparing for and conducting of visits**

##### **Comments on the recommendation(s) contained in paragraph 39**

61. As regards the Subcommittee's recommendation, please be informed that in all visited establishments, the National Mechanism for the Prevention of Torture follows the same methodology. The first step is to determine the composition of the visiting team. The team consists of several persons, one of whom acts as the team coordinator. Two people, including the coordinator, are responsible for drawing up a post-visit report, and inspect the premises and buildings of the establishment, while the others conduct individual conversations with persons deprived of their liberty. External experts participating in visits draw up expert opinions which are incorporated in the visit report.

62. The duration of a specific visit depends on the size of the visited establishment, and lasts 1 to 3 days. Every visit of the NMPT comprises the following stages:

- Conversation with the establishment's managers.
- Inspection of all rooms used by persons deprived of their liberty.
- Individual and group conversations with detainees.
- Conversations with the personnel.
- Analysis of documents and video surveillance footage.
- Formulation of preliminary post-visit recommendations.
- Listening to the establishment managers' opinions on the presented recommendations.

63. Activities conducted during the joint visit of the NMPT and members of the SPT followed this sequence. However, as the Subcommittee noted in its report, that was the first visit of the NMPT to a facility of this type. Therefore, all participating members of the

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<sup>4</sup> A series of 16 regional debates, which took place between 2016 and 2018 in the capital cities of the country's provinces. The NMPT representatives discussed the main problems in the operation of places of deprivation of liberty in Poland. The meetings were addressed to employees of all types of places of detention, to prosecutors, judges, employees of the provincial governments, as well as universities.

NMPT, in order to gain knowledge about the specificity of such facilities, took part in the inspection of the rooms, without being divided into subgroups. Please be assured that this was a one-off situation caused by the first visit conducted at a police station.

64. Considering the fact that the NMPT Team is currently composed mostly of young employees, and bearing in mind the recommendation of the Subcommittee, please be informed that I have requested the Association for the Prevention of Torture (APT), based in Geneva, to conduct training in the methodology of conducting visits to places of deprivation of liberty. Also, the NMPT training plans foresee workshops on conducting individual interviews with persons deprived of their liberty.

#### **Comments on the recommendation(s) contained in paragraph 41**

65. As recommended by the Subcommittee, all Team members were reminded of the need to introduce themselves as the National Mechanism for the Prevention of Torture. External experts will also be informed of this rule before every visit. In addition, I would like to inform that every member of the visiting team will wear a badge “National Mechanism for the Prevention of Torture” in a visible place. As mentioned, every person interviewed by the NMPT delegation will receive leaflets with information about the Mechanism, compiled as part of the campaign *State without torture*.

#### **Confidentiality and risk of reprisals**

#### **Comments on the recommendation(s) contained in paragraph 43**

66. As recommended, the Mechanism has developed a Procedure of preventing reprisals against persons and organizations that provide information to representatives of the National Mechanism for the Prevention of Torture. The NMPT Expert Committee was requested to issue an opinion on it. The procedure will be forwarded for approval to the Commissioner for Human Rights. Please be informed that the NMPT delegation provides information on the prohibition of reprisals to managers of the visited establishment, during every visit. In addition, every person deprived of liberty with whom the visiting team members conduct interviews is informed about the content of Article 21 of the OPCAT. The prohibition of repression is also mentioned in the NMPT distributed during the preventive visits.

67. Attached is *Procedure of preventing reprisals against persons and organizations that provide information to representatives of the National Mechanism for the Prevention of Torture*.

#### **Comments on the recommendation(s) contained in paragraph 44**

68. As mentioned above, in accordance with the recommendations of the Subcommittee, the plans of training for members of the National Preventive Mechanism include:

- Training in conducting individual interviews;
- Training in visit conducting methodology;
- Training in monitoring the implementation of the NMPT recommendations;
- Training in the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”).

69. However, I would like to emphasize that the implementation of the training is dependent on the financial possibilities of the CHR Office.

#### **Reporting and follow-up**

#### **Comments on the recommendation(s) contained in paragraph 46**

70. In connection with the recommendation of the Subcommittee, the National Preventive Mechanism has requested the Association for the Prevention of Torture (APT), based in Geneva, to conduct training in follow-up of the implementation of the recommendations contained in its reports.

71. It should also be explained that due to understaffing of the NMPT, the implementation of the issued recommendations is monitored mainly by way of correspondence. We monitor the time between issuing the recommendations and receiving a response. If the NMPT does not receive a reply from the addressee within a month, a reminder is sent with information about the need to take a position. If the managers of the establishment do not agree with the recommendations, the representatives of the NMPT contact their supervisory body, requesting it to issue an opinion on the recommendations in question and to take a position on the matter. A dialogue is conducted to explain the recommendations issued. In addition, every year the NMPT re-visits several establishments.

72. Please also be informed that the NMPT has adopted the practice according to which, if the implementation of the recommendations requires longer time and significant financial outlays, a follow-up letter to the managers of the establishment is sent one year after issuing the recommendation.

73. Given that the number of re-visits is relatively small, the NMPT will consider conducting follow-up visits over a significant part or the whole of the next year, to verify the implementation of the Mechanism's recommendations.

#### **Comments on the recommendation(s) contained in paragraph 47**

74. The National Mechanism for the Prevention of Torture regularly meets with representatives of the National Headquarters of the Prison Service. During the meetings, systemic problems diagnosed during the visits to penitentiary establishments are discussed. The implementation of the NMPT recommendations by public authorities responsible for the operation of such establishments is monitored by way of correspondence. In connection with the recommendation of the Subcommittee, please be informed that this year a working meeting will be held with police officers to discuss the actual possibilities of implementing the recommendations concerning problems diagnosed with regard to police stations and police rooms for detained persons. The meeting will also be an opportunity to exchange good practices identified in the visited police facilities.

75. As mentioned above, the Mechanism sees the possibility to gradually convince members of the Polish Parliament that the NMPT plays an important role in torture prevention, by inviting MPs to participate in the conducted visits. This postulate was contained in the NMPT strategy for 2019–2023.

76. As regards the recommendation to disseminate the NMPT annual reports, please be informed that the annual reports are published on the NMPT website [www.kmpt.rpo.gov.pl](http://www.kmpt.rpo.gov.pl) under the tab *annual reports and publications*. The annual reports, translated into English, are also posted on the English-language website of the CHR, under the *National Preventive Mechanism* tab. Information about the publication of the annual report in English is sent by e-mail to national preventive mechanisms in other countries and to international organizations, including CPT, SPT, APT and CoE. The annual reports of the National Mechanism for the Prevention of Torture are also published on the Subcommittee's website.

## **C. Final recommendations**

#### **Comments on the recommendation(s) contained in paragraphs 48 and 49**

77. Since the beginning of its work, the Polish National Mechanism for the Prevention of Torture has been a member of such mechanisms' network (*NPM Forum*) that exists within the Council of Europe. In order to improve their skills and working methods necessary in the performance of their tasks, staff members of the Mechanism take part in all workshops organized by the network. As already mentioned, intensified cooperation with non-governmental organizations will be provided for under the NMPT strategy and discussed with its Expert Committee.

78. The National Mechanism for the Prevention of Torture remains open to cooperation with the Subcommittee and other mechanisms for the prevention of torture. However, this cooperation, due to scarcity of human and financial resources allocated to the CHR Office, is dependent on the costs of participation in relevant international-level events.

**Comments on the recommendation(s) contained in paragraph 53**

79. In connection with the content of Article 11b of the OPCAT, the National Mechanism for the Prevention of Torture has requested the United Nations High Commissioner for Human Rights for assistance in assessing the needs and resources required to strengthen the required torture prevention measures.

80. **Given that in the last years there the Polish Commissioner for Human Rights has experienced statements attacking him in the public space, in connection with the performance of his function as NPM, the National Mechanism for the Prevention of Torture expresses the hope that any attempts to undermine the CHR's authority will cause a firm and quick response of the United Nations Subcommittee on Prevention of Torture.**

## Annex I

### **Procedure of preventing reprisals against persons and organizations that provide information to representatives of the National Mechanism for the Prevention of Torture**

#### **Article 1**

1. This procedure implements the obligation to ensure prevention of reprisals against persons and organizations that provide information to representatives of the National Mechanism for the Prevention of Torture (hereinafter: the NMPT or the Mechanism) in connection with the mandate exercised by the Mechanism.

2. The protection shall cover all persons and organizations that have provided any information, either true or false, to the NMPT.

#### **Article 2**

1. The function of the National Mechanism for the Prevention of Torture in Poland shall be performed by the Polish Commissioner for Human Rights.

2. The National Mechanism for the Prevention of Torture shall have the powers to:

(a) Regularly monitor the manner of treatment of persons deprived of their liberty in places of detention referred to in Article 4 of the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment (Journal of Laws of 2007, No. 30, item 192), hereinafter referred to as OPCAT, in order to strengthen, if necessary, those persons' protection against torture and other cruel, inhuman or degrading treatment or punishment,

(b) Issue recommendations for the competent authorities, with the aim to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking note of relevant United Nations standards,

(c) Submit suggestions and comments on existing and planned legislative instruments.

3. In order to carry out the tasks specified in point 2, the NMPT shall have:

(a) Access to all information on the number of persons deprived of liberty in places of detention, as well as the number and location of such places,

(b) Access to all information regarding the treatment of such persons and the conditions in which they are deprived of liberty,

(c) Access to all places of detention, their installations and equipment,

(d) The possibility to hold conversations in private, without witnesses, with persons deprived of their liberty, either directly or through an interpreter if so necessary, as well as with any other person who, in the opinion of the national preventive mechanism, may provide relevant information,

(e) The freedom to choose places to be visited and people to talk to,

(f) The right to contact the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), forward information to it and meet with it.

#### **Article 3**

1. The prohibition of reprisals shall be absolute. No person (e.g. detainee, officer, civil employee, other person) or organization that has provided information to the NMPT may be subjected to any sanction or damage in this connection, regardless of whether the information provided by them was true or false.

2. No authority or official may order, apply, permit or enable the application of any sanction against any person or organization for providing any information, whether true or false, to the Mechanism, and no such person or organization shall suffer any damage in this regard.
3. Any repressive behaviour towards persons and entities referred to paragraph 1 shall constitute a violation of Article 21 of the OPCAT.

#### **Article 4**

1. The National Mechanism for the Prevention of Torture, in order to prevent reprisals against persons whom its representatives have spoken, shall in particular:
  - (a) Appoint the Mechanism's staff member responsible for implementing the present procedure;
  - (b) Inform every person with whom its representatives have spoken about the prohibition of reprisals by any authority, in connection with the contact with the Mechanism's representatives;
  - (c) Forward to managers of visited establishments the information on the prohibition of inquiring persons about the information they have provided to members of the Mechanism;
  - (d) Forward to managers of visited establishments the information on the prohibition of any retaliatory actions against persons who have provided information to members of the Mechanism;
  - (e) Draw up a document form for notifying the NMPT about reprisals experienced by persons who have provided information to the Mechanism.

#### **Article 5**

1. Any person who has contacted the NMPT representatives with regard to matters covered by the Mechanism's mandate and who has information or reasonable suspicion concerning reprisals experienced in this regard shall be entitled to notify this fact to the NMPT. The notification may concern the reprisals experienced by the reporting person or any other person who has contacted the Mechanism.
2. The notification about the reprisals may be anonymous.
3. The notification may be in writing, or verbally to the CHR Office helpline (800 676 676).
4. The notification form referred to in point 1 is attached as Annex 1 to this procedure and is available on the NMPT website ([www.kmpt.rpo.gov.pl](http://www.kmpt.rpo.gov.pl)).
5. The notification shall be sent to the Office of the Commissioner for Human Rights at: al. Solidarności 77, 00 - 090 Warsaw.

#### **Article 6**

1. Any notification received by the Office shall be forwarded to the secretariat of the National Mechanism for the Prevention of Torture to be registered as information on the violation Article 21 of the OPCAT.
2. The NMPT's designated employee shall assess the notification in order to forward it to the CHR Office's team competent for the type of the violation.
3. An employee of the team to whom the notification has been forwarded shall examine whether it is grounded and shall inform the designated employee of the NMPT about the actions taken with regard to the matter.
4. The designated employee of the NMPT shall inform the notifying person of actions taken with regard to the matter and the result of his examination.

**Article 7**

1. In the case of anonymous notifications, the NMPT may carry out an ad hoc visit to the establishment to which the application relates, in order to verify the observance of the prohibition of reprisals.

**Article 8**

1. In the event the use of reprisals has been confirmed, the NMPT shall notify the violation of Article 21 of the OPCAT to the facility's managers and supervisory bodies.

## Annex II

### Reprisals notification to the National Mechanism for the Prevention of Torture

Notification date: .....

Notifying person's name and surname: .....

Notifying person's correspondence address .....

Description of the circumstances which the applicant considers to be a manifestation of reprisals (indicating persons who may be the reprisals' perpetrators and victims):

.....  
.....  
.....  
.....

Names and surnames of persons who have or may have witnessed the circumstances described above:

.....  
.....  
.....

I hereby declare that I provide this information to the best of my knowledge and that it does not constitute slander .

I agree to disclose my personal data in order to investigate the matter notified.

.....

(signature)

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## Statement of grounds

1. This procedure implements the obligation to ensure the protection of persons who, in connection with the mandate performed by the NMPT, forwarded to its representatives information regarding the visited establishment. The prohibition of any reprisals against such persons by the authorities of the visited places is expressed explicitly in Article 21 of the OPCAT.
2. The procedure provides that everyone who has suffered any form of reprisals in connection with forwarding any information to the NMPT may notify this fact to the Commissioner for Human Rights, either using his/her personal data or anonymously.
3. A notification that contains personal data of the notifying person shall be forwarded to the NMPT Team. One of its employees shall assess the content of the notification and transfer it to the specialist team competent in view of the nature of the allegations described by the notifying person. The specialist team's member shall examine the person dealing with the examination of allegations in the substantive team shall notification and shall inform the NMPT team of the results of the examination. The designated NMPT employee shall inform the notifying person of actions taken on the case and the result of the examination. In the event the use of reprisals has been confirmed, the NMPT shall notify the violation of Article 21 of the OPCAT to the facility's managers and supervisory bodies.
4. In the case of anonymous notifications, the NMPT may carry out an ad hoc visit to the establishment to which the application relates, in order to verify the observance of the prohibition of reprisals.
5. In order to ensure a standardized form of the notifications, a reprisals notification form shall be created and posted on the NMPT website.

By:

Przemysław Kazimirski  
NMPT Team Director

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