

# The National Preventive Mechanism: Experience from the Czech Republic

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## A. Introduction

The Czech Republic ratified the OPCAT in 2006 and designated the ombudsman institution, the Public Defender of Rights, as its NPM. The amendment of the Act on the Public Defender of Rights<sup>1</sup> changed some existing provisions, especially these related to ombudsman's powers (e.g., section 15 authorizing the ombudsman to carry out private interviews with persons in places of detention) and stipulated some new provisions (e.g., section 21a that sets forth a monitoring mandate). The NPM tasks have been devoted to a special department of the Office of the Public Defender of Rights (Department of Supervision over Restriction of Personal Freedom). This specific department consists of ombudsman's employees who perform daily tasks of the NPM and also cooperate with contractual external experts. Although the NPM department is not fully independent and its members are subordinate to various superiors of the ombudsman's office, it has a certain level of autonomy in planning its activities.

## B. Institutional challenges: Incompatibility with the OPCAT?

The NPM department consists of 16 lawyers.<sup>2</sup> From these, eight lawyers focus on the NPM mandate,<sup>3</sup> while others deal with issues that fall under the traditional ombudsman mandate (especially dealing with individual complaints of detainees). In addition, some lawyers are charged with the

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<sup>1</sup> Act No. 349/1999 Coll. on the Public Defender of Rights, as amended.

<sup>2</sup> They are employed as full-time employees of the Office of the Public Defender of Rights.

<sup>3</sup> Public Defender of Rights, *Protection against Ill-treatment 2018 – Report of the Public Defender of Rights as the National Preventive Mechanism* (2019), p. 9.

monitoring forced returns of foreign nationals<sup>4</sup>, which is also not exclusively an NPM agenda.<sup>5</sup> This arrangement is problematic for the OPCAT requirement to separate the preventive nature of the NPM from the reactive mandate of the ombudsman.<sup>6</sup> To make things more problematic, the mandate among the staff of the NPM department is not clearly defined and thus sometimes the same lawyers are involved in both, conducting preventive visits and dealing with individual complaints.<sup>7</sup>

The combination of a preventive and reactive approach within the NPM department can jeopardize the constructive dialogue with visited facilities, detainees and state authorities and also overload the NPM team. It may be difficult, for example, to keep on the annual visit plan if there is a constant uncertainty about the workload of new complaints.

The NPM personnel is subordinated to the head of the NPM unit, the head of the legal department of the ombudsman office, the head of the ombudsman office and finally to the ombudsman himself. At all levels of management, the superiors (even those standing formally outside the NPM unit) may give NPM staff instructions, assign them individual complaints files, supervise their work, impose disciplinary measures and evaluate their work. Further, the NPM staff must act in compliance with binding internal

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<sup>4</sup> According to the Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in the Member States for returning illegally staying third-country nationals („Return Directive“).

<sup>5</sup> Nevertheless, the treatment of aliens in migrant detention centres or police vehicles during a police escort fall within the scope of the OPCAT.

<sup>6</sup> Doubek, Pavel, *The National Preventive Mechanism: A Key Human Rights Component of Well-Functioning Democracy*, Taiwan Journal of Democracy, Volume 15, No. 2: 165-194.

<sup>7</sup> SPT, *Guidelines on National Preventive Mechanisms* (CAT/OP/12/5).

rules applied to the whole ombudsman office and all departments. This structural arrangement also raises questions regarding the compatibility with the OPCAT, as it undermines the NPM autonomy, visibility and differentiation from the rest of the institution, as highlighted by the UN Subcommittee on Prevention of Torture (SPT).<sup>8</sup>

The confusion between the mandate of the ombudsman and that of the NPM leads to the fact that few people and state authorities are aware of the existence and functions of the NPM. The head of the NPM, Ondřej Vala, highlights that people are well aware of the Public Defender's Office, while they have a little or no information about NPM.<sup>9</sup> Anna Šabatová, a former Czech ombudsman, has replied in a very similar way: "*NPM is definitely considered as the Public Defender of Rights.*"<sup>10</sup>

I have mentioned these shortcomings here to give Taiwanese stakeholders a little insight into the structural aspects of the NPM that might affect its functioning in the future. Since the process of establishing the NPM is at the beginning in Taiwan, it is worth to take them into account.

### C. Cooperation with experts

The NPM does not have any formal advisory body to support its tasks<sup>11</sup>,

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<sup>8</sup> Ibid.

<sup>9</sup> Information provided by Ondřej Vala, Head of the Czech NPM (e-mail communication on 5 April 2019).

<sup>10</sup> Information provided by Anna Šabatová, Czech Ombudsman (e-mail communication on 5 June 2019).

<sup>11</sup> Compared to an Advisory Council (NPM Georgia), Human Rights Advisory Council (NPM Austria), Human Rights Council and Human Rights Centre (NPM Slovenia) or Advisory Committee (NPM Norway). In: Doubek, Pavel, *Building a National Human Rights Institution and a National Preventive Mechanism within the Control Yuan of Taiwan – Research Report (July*

nevertheless, it cooperates with *ad hoc* contractual experts from the non-legal field such as physicians, nurses, interpreters, psychiatrists, social workers, interpreters, etc.<sup>12</sup> These experts are selected on the basis of a public call for proposals and are put on the ombudsman list from which they are selected for a particular visit according to a visit plan and actual need. Prior to the visit, the experts are instructed about the NPM mandate, purpose, course and focus of the visit, rights and duties of monitors and particular expert's role. NPM further organises training for experts focused on torture prevention and monitoring methodology.<sup>13</sup> The experts are also involved in drafting the NPM visit report (each expert shall write his or her own report which is then provided to the NPM) and other related activities (training, consultations, analysis, etc.).

#### D. Places of Detention

According to the Act on the Public Defender of Rights<sup>14</sup>, the Czech NPM has a right to visit all places where people are or may be restricted in their liberty, which includes a variety of formal and informal detention places. The NPM routinely visits, for example, prisons, police stations,

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2020), The Chang Fo-Chuan Center for the Study of Human Rights at Soochow University (<http://www.hrp.scu.edu.tw/center/links/%E5%87%BA%E7%89%88%E5%93%81>).

<sup>12</sup> For example, in 2017, 12 experts took part in NPM visits (4 psychiatrists, 1 geriatrician, 3 general nurses, 3 psychiatric nurses, 1 specialist in education of children with behavioural disorders, 2 psychologists, 3 social services experts).

<sup>13</sup> Public Defender of Rights, *Protection against Ill-treatment 2017 – Report of the Public Defender of Rights as the National Preventive Mechanism* (2018), p. 30.

<sup>14</sup> Section 1(3) of Act on the Public Defender of Rights.

migrant facilities, wards for involuntary patients in psychiatric hospitals. The NPM calls these places as “*detention de iure*” since a person must stay there on the basis of the authoritative decision of state authority (usually a court judgment or decision by the police).

Besides that, the NPM visits “de facto detentions” i.e., facilities, where persons have limited will to freely leave the facility as they are dependent on care provided due to their age or disability. The regime of such placement may be formally voluntary as there is usually a written consent of persons concerned or their relatives, but due to their dependence on care, they are in fact “detained” as their free will to leave is limited. Case in point would be various elderly homes, nursery homes, psychiatric institutions and psychiatric units in hospitals, hospices, foster care homes, etc. It is irrelevant, for the NPM mandate, whether an institution is founded by the public authority or run by a private entity.<sup>15</sup>

A vivid discussion had been led in the Czech NPM, whether the NPM mandate covers also private dwellings where persons are provided with social or health care on an informal basis by their relatives, neighbours or friends. The SPT provides the answer when stating that the deprivation of liberty must relate to a situation in which the State either exercises or might be expected to exercise a regulatory function.<sup>16</sup>

It is, therefore, necessary to distinguish between places where care is provided within the private sphere (immediate care of family members) and places where the care is organized to that extent that state might be expected

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<sup>15</sup> Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms Published by the Association for the Prevention of Torture* (2006), [https://www.apr.ch/content/files\\_res/NPM.Guide.pdf](https://www.apr.ch/content/files_res/NPM.Guide.pdf) (accessed 2 April 2019), p. 22.

<sup>16</sup> SPT, *Ninth annual report of the SPT* (22 March 2016, CAT/C/57/4), Item 3.

to exercise its regulatory function, i.e., to require a licence for such care, inspect quality care, and so forth. Case in point would be the visits to so-called “social care facilities without authorization.” These new (informal) type of detention places in the Czech Republic are the illegal social care homes that camouflage their activities by presenting themselves as hotels or guesthouses and thus circumvent a legal requirement to have an authorization for providing social care services.

Due to their “hidden” nature, the state authorities were not aware of their existence and thus no state inspections were performed. However, a state was still expected to exercise its regulatory powers (e.g., to inspect these facilities, initiate administrative and criminal proceedings, impose sanctions). The NPM argued that these facilities are neither family-type houses nor hostels since the level of management of services and the structure of persons (elderly and people with disabilities dependent on care) met the criteria of traditional social-care home. The NPM was therefore the first body that revealed this new type of places of detention and the gross human rights violations towards persons detained therein. Thanks to this activity, public authorities started to actively address this issue which resulted in legislative changes, broader systematic approach<sup>17</sup> and administrative and criminal proceedings in individual cases.

Currently, there are about 2,087 detention places in the Czech Republic. Of these, there are 35 prisons composed of 19,859 prisoners,<sup>18</sup> 499 police

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<sup>17</sup> See more about these facilities (only in Czech): Public Defender of Rights, *Unregistered Social Care*: <https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/unregistered-social-care-facilities/> (accessed 3 March 2019).

<sup>18</sup> Prison Services of the Czech Republic, *Information on the status and composition of prisoners in remand prisons, prisons and security detention*

cells, 5 migrant detention centres (3 centres for irregular migrants and 2 asylum reception centres), 289 children institutes (186 school institutions<sup>19</sup>, 23 infant homes and 80 facilities for children requiring immediate assistance), 17 sobering-up stations, 1,111 social-care facilities (534 elderly homes, 369 special regime homes and 208 homes for people with disabilities), 15 psychiatric hospitals and 116 long-term sanatoriums.<sup>20</sup> This list is incomplete as it does not include psychiatric wards and other specialized units of general hospitals and social-care homes that provide services without authorization.

## E. Preventive, Regular and Systematic Visits

The objective of the OPCAT is to establish a system of regular preventive visits<sup>21</sup> that includes the whole segment of places of detention. Some NPMs design a practice that they specify one particular type of places of detention for visiting in a given year. This may produce valuable in-depth findings concerning a particular segment of detainees, but reduce the level of protection of other detainees. The Czech NPM have carried out cross-section visits (see tables 1 and 2). However, for example, in 2013 it visited 16 social-care facilities, but no prison; further between 2015-2016, it visited several police stations and prisons, but no psychiatric hospital.

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*Prison services of the Czech Republic* (September 2020).

<sup>19</sup> Diagnostic institutions, children's homes, children's homes with school and reformatories.

<sup>20</sup> Data are elaborated based on public registers and information provided by the NPM (November 2020).

<sup>21</sup> Article 1 of the OPCAT.



**Table 1: Number of NPM visits between 2006 – 2014**  
(source: NPM Annual Report 2014)

Table 1: Number of visits to facilities performed									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number	44	43	29	42	55	44	32	29	19

  

Table 2: Types of the facilities visited									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
Prisons	7	3	-	4	7	1	1	-	5
Police cells	19	4	-	-	34	4	5	4	2
Institutional education facilities	4	1	-	-	2	24	18	3	2
Facilities for foreigners	4	2	-	-	2	1	-	-	1
Facilities for asylum seekers	-	2	-	-	2	-	-	-	-
Social services facilities	5	29	21	31	7	1	5	16	7
Health-care facilities	5	2	8	7	1	13	3	6	2

**Table 2: Number of NPM visits between 2015 – 2019**  
(Source: NPM Annual Reports 2015 – 2019)

Year	2015	2016	2017	2018	2019
Prisons	3	2	1	1	3
Police detention	8	6	4	6	3
Detention for foreigners	3	2	0	0	1
Psychiatric hospitals	0	0	5	3	5
Hospitals for long-term patients	8	1	0	1	1
Social-care homes (e.g., elderly homes)	0	1	6	14	3
Security detention	0	0	1	1	0
Children institutes	0	10	3	1	9

During the years 2006 – 2019, the Czech NPM has carried out 455 visits (32,5 visits a year on an average). The annual number of visits has a declining tendency since 2010 (55 visits) and in recent years the annual score stabilizes on 22 - 27 visits with a year.<sup>22</sup> This frequency is considerably low when comparing visit frequency with some other NPMs.<sup>23</sup> In the first half of 2020, the NPM conducted 15 visits, which is above-average, also given the COVID-19 pandemic.<sup>24</sup>

As said before, the NPM visits have a preventive nature, i.e. they are not targeted at the investigation of individual complaints. Nevertheless, it happens occasionally that detainee turns to the NPM monitoring team with his or her individual problem during a preventive visit. In such a case, a complaint is accepted and proceed later to particular ombudsman department (if it meets the complaint requirements). By no means, it is investigated during the course of the visit. However, any complaint may reveal some systematic problem that may be subject to further inquiries during the visit.

The Czech NPM performs usually general visits focused on a variety of issues. The aim is to get an overall picture of life in the facility and to assess all relevant factors that may increase risk of ill-treatment (for example, material conditions, health-care, hygiene, use of coercive measures, complaints mechanism, contact with relatives, etc.). Nevertheless, the visit

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<sup>22</sup> NPM carried out 44 visits in 2006, 43 visits in 2007, 29 visits in 2008, 42 visits in 2009, 55 visits in 2010, 44 visits in 2011, 32 visits in 2012, 29 visits in 2013, 19 visits in 2014, 22 visits in 2015, 22 visits in 2016, 22 visits in 2017, 27 visits in 2018, 25 visits in 2019.

<sup>23</sup> For example Georgian or Slovenian NPM.

<sup>24</sup> Most of the visits were targeted on the impact assessment of the preventive measures against the spread of this disease (for example, the use of restrictive measures, ensuring contact with the outside world, providing legal assistance, etc.).

plan usually emphasizes topics that should be dealt with higher priority. As an example, the NPM paid considerable attention to the treatment of prisoners with disabilities and foreigner prisoners during the series of visits in 2014.<sup>25</sup> Besides this, in the same year, the NPM carried out one purely thematic visit to a psychiatric hospital focused on the use of electroconvulsive therapy.<sup>26</sup>

## F. Annual Visit Plan

Annual visit plan includes a list of places of detention anticipated to be visited within a particular year. Its main purpose is to organize effectively NPM personal and financial resources in order to visit a variety of places of detentions regularly and systematically. The Czech Annual plan of visits is created by the NPM unit and then authorized by the ombudsman. Annual Report makes clear that “*the number of visits each year depends on the size of the facilities selected for the visit and the scope of the inquiry. To ensure that the findings are representative, the defender selects facilities both large and small, public and private, and located in cities and rural areas alike.*”<sup>27</sup> Annual Report further clarifies that “*the plan is sometimes operatively supplemented in reaction to pressing issues.*”<sup>28</sup>

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<sup>25</sup> Public Defender of Rights, *Protection against Ill-treatment 2014 – Report of the Public Defender of Rights as the National Preventive Mechanism* (2015), p. 12.

<sup>26</sup> *Ibid.*, p. 14.

<sup>27</sup> Public Defender of Rights, *Protection against Ill-treatment 2016 – Report of the Public Defender of Rights as the National Preventive Mechanism* (2017), p. 33.

<sup>28</sup> *Ibid.*

# Angle

## G. Visit Plan

Planning a particular visit to a chosen facility is a demanding activity as it involves extensive and in-depth preparation. The Czech NPM has elaborated internal guidelines, with respect to each kind of facility, focused on planning and conducting the visits.<sup>29</sup> Before the visit, the NPM members take part in necessary training focused on currently monitored issues.<sup>30</sup> Within the course of visit planning, the NPM members identify and analyze information about the given type of a facility and related legal framework including national and international soft-law documents. As a rule, NPM invites external experts. All members of a visiting team are equipped with check-lists in order to know what to check and to what extent.

A visit leader is appointed for each visit to a place of detention. He or she is the one who organises the visit, assembles and manages the visiting team, communicates with officials, drafting the visit report and oversees the facility's compliance with NPM recommendations. The leader also cooperates with logistical departments of the Office of the Ombudsman to arrange necessary technical equipment, such as a minibus and passenger cars for travel, accommodation, computers and cameras.<sup>31</sup> In a nutshell, he or she is responsible for the efficient conduct of the visit and consequent dialogue with the authorities.

Visits last between one to three days and involve three to five monitors and sometimes the ombudsman himself.<sup>32</sup>

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<sup>29</sup> These guidelines are, however, not public.

<sup>30</sup> Public Defender of Rights, *Protection against Ill-treatment 2017 – Report of the Public Defender of Rights as the National Preventive Mechanism* (2018), p. 35.

<sup>31</sup> *Ibid.*, p. 34-35.

<sup>32</sup> Public Defender of Rights, *Protection of Persons Restricted in their Freedom*:

## H. The Course of Visit

As a general rule, Czech NPM visits are performed without prior notice.<sup>33</sup> When arriving at the facility, the director of the facility or similar representing official is made aware of the visit, which is done in person or if the official is not currently present, a phone call is made.<sup>34</sup> First, the introductory talk with the head of the facility takes place.

In a course of this talk, the NPM introduces its members, mandate, visits schedule and asks for relevant information regarding the facility, its structure, detainees and so forth.

Commonly, a visit leader clarifies the NPM's right to talk privately with any detainee and staff, visit all premises and review any kind of documents. He or she also informs the head of the facility about monitors' right to use cameras, the right to access all information including medical files and also the possibility to carry out a night visit. The duration of an initial talk is usually very brief in order to start with the visit immediately. After the initial talk, the visiting team separates into several sub-groups and proceed to monitor.

Usually, the representing official is asked to guide several NPM members throughout the whole facility, while other NPM members may start with the monitoring in chosen premises of the facility. Separation of the NPM team enables the NPM to attain both the overall insight into the facility and the immediate commencement of monitoring.

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<https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/performing-systematic-visits/planning-and-course-of-visits/> (accessed 23 February 2019).

<sup>33</sup> Sec. 15(1) of the Act on the Public Defender of Rights.

<sup>34</sup> Sec. 19 of the Ombudsman Act.

Czech NPM routinely visits all types of premises such as dining rooms, storerooms, libraries, prison buses, kennel(s), medical centre, etc. Thanks to unrestricted movement throughout the whole facility, the Czech NPM once revealed an unofficial (hidden) unit composed of 22 portable cabins with migrants within the migrant detention centre that were not admitted before by the officials.<sup>35</sup>

As a rule, the Czech NPM aims to talk to detainees of all relevant groups, which are distinguished according to the place of detainees (e.g., standard cells, solitary confinement, secured ward, emergency unit) and also based on their characteristics (e.g., persons subjected to violence, suicidal persons, persons with disabilities, etc.). Staff are selected for interview based on all relevant expertise and positions, such as a director of the facility, heads of particular departments, physicians, nurses, prison guards, social workers, security staff, etc. As a rule, information received from interviews shall be verified by other evidence, e.g., other interviews, review of documentation, and so forth (cross-checking method).

The NPM has unlimited access to all kinds of documents, including medical records of detainees. As a rule, monitors use their cameras to take pictures of these documents as it seems necessary to have evidence-based information that can be consequently analysed in the office. It has to be emphasized that the assessment of all evidence gathered during the visit and drafting a visit report take several weeks or months.

At the end of the visit, the visiting team has a debriefing to share findings of all monitors and prepares topics for the concluding talk with the

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<sup>35</sup> Public Defender of Rights, *Visit Report on Migrant Facility Bělá-Jezová* (in Czech): [https://www.ochrance.cz/fileadmin/user\\_upload/ESO/24-\\_2015-NZ\\_Bela-Jezova-ZZ\\_vyhodnoceni\\_\\_rijen\\_2015\\_.pdf](https://www.ochrance.cz/fileadmin/user_upload/ESO/24-_2015-NZ_Bela-Jezova-ZZ_vyhodnoceni__rijen_2015_.pdf) (accessed 21 March 2019).

head of the facility, held again by the visit leader. When the NPM reveals no serious findings that shall be addressed immediately, the concluding talk is rather a shorter briefly summarizing the visit, appreciating the facility's cooperation and sketching an anticipated time frame for visit report with recommendations.

## I. Facility's Resistance

Naturally, the NPM monitoring does not always go smoothly. A facility may object to an NPM visit in many ways, such as the denial of the access to the facility or certain premises, refusing to contact certain detainees or staff, rejection of access to certain information. Further, the facility may fail to provide cooperation due to obstruction, such as excessive delays, employing inappropriate body searches and pat-downs.<sup>36</sup>

The Czech NPM has encountered more or less all of these forms of resistance. Often, the facility resists the monitors' right to have and use the cameras. Sometimes, the head of the facility obstructs with the commencement of the visit. The Ombudsman Act stipulates that if the authority fails to comply with its duties, the ombudsman shall inform the superior authority, or if there is no such authority, the ombudsman turns to the Government. Eventually, the ombudsman may reveal his or her findings to the public, including disclosure of the names and surnames of persons authorised to act on behalf of the authority.<sup>37</sup> This soft-law enforcement powers apply to both, non-compliance of the facility with the NPM on spot

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<sup>36</sup> SPT, Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms, Ninth annual report, Appendix I (CAT/OP/C/57/4, 22 March 2016), p. 4.

<sup>37</sup> Sec. 20 of the Act on the Public Defender of Rights.

and to NPM recommendations in the visit report.

In a “here and now” situation, it is the primary task of the visit leader to use all formal powers and communication skill to ensure the smooth course of the visit. Sometimes it helps when the or she makes a phone call to an ombudsman or the respective superior authority. Since the NPM has no power to enforce the compliance, it shall precisely and persuasively analyze the situation in the visit report and communicate the problem further with relevant state authorities or public.

## J. Visit Report

The visit is officially concluded by the NPM visit report. However, the visit report itself is just a commencement for the follow-up dialogue with the respective facility or authorities.

Each monitor of the visiting group (including external experts) has to write his or her report and submit it as soon as possible to the visit leader. He or she is then responsible for evaluating all the observations and drafting the visit report. Before the ombudsman signs the report and sends it to the visited facility, he or she may provide the visit leader with several instructions on report revision. The Czech NPM does not commonly provide the facility with any preliminary report. This may be done only exceptionally, where there is an urgent need to adopt immediate measures.

Commonly, the report is elaborated within one to three months from the visit, however, this time frame depends on a variety of factors, such as a size of a facility, a number of detainees, the seriousness of findings, need for further clarification of the evidence or communication with authorities. The visit report together with recommendations and request to respond within the prescribed period of time is sent to the visited facility only. However, if a



serious deficiency is identified, it may be also sent directly to relevant authorities (e.g., inspection bodies, public prosecutor, etc.) to start with particular proceedings.<sup>38</sup>

The number and urgency of the recommendations differ case by case. However, an average visit report may contain about 10 – 30 recommendations. The NPM imposes a deadline on its fulfilment. The deadline refers to the nature and seriousness of the deficiency and has following categories: immediate fulfilment, fulfilment within 1 month, within 3 months, within 6 months, within 1 year, continuous fulfilment.

After a series of visits to a certain type of detention facility, the Czech NPM usually draw-up so-called “summarizing” report that seeks to put together most frequent findings and problems concerning a particular type of detention. Each year, the NPM also elaborates an annual report that summarizes systematic deficiencies and recommendations and is sent to the Chamber of Deputies and other relevant stakeholders. As a general rule, all visit and summarizing reports, as well as annual reports, are published in the Czech language online on the ombudsman websites.<sup>39</sup>

Czech NPM maintains follow-up contact with visited facilities to check the fulfilment of NPM’s recommendations. Further, as a rule, after a series of visits, the NPM arrange a round table for representatives of visited facilities to discuss the most common findings and systematic issues. Further, the ombudsman meets regularly with the Director-General of the Prison Service of the Czech Republic, the Police President and public prosecutors of the

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<sup>38</sup> Sec. 21a(4) of the Act on the Public Defender of Rights.

<sup>39</sup> Public Defender of Right (<https://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/>). Some earlier reports are published also in English (<https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/>).

Supreme Public Prosecutor's Office.<sup>40</sup> Besides this, NPM organizes training, lectures and workshops for public officials, academic and the general public.

## K. Legislative Proposals

Art. 19(c) of the OPCAT states that the NPM shall be granted a power to submit proposals and observations concerning existing or draft legislation. Czech Ombudsman Act authorizes the ombudsman to recommend that a legal or internal regulation be issued, amended or cancelled. Such recommendations shall be addressed to the authority whose competence is concerned and, if the matter concerns a Government regulation or resolution or a law, to the Government.<sup>41</sup> Furthermore, the ombudsman may ask the Constitutional Court for annulment of any enactment<sup>42</sup>, or individual provisions thereof.<sup>43</sup> Ombudsman is, however, not eligible to seek the annulment of a statute.<sup>44</sup> Ombudsman may further provide the Constitutional Court with proposals as a friend of the court (*amicus curiae*).

## L. Cases of Ill-treatment

During its existence (2006-2019) the NPM has revealed ill-treatment in 15 detention places. Besides that, it revealed a number of deficiencies of both the conditions of detention and treatment with detainees that raises the risk of ill-treatment. To address the risk of ill-treatment, the NPM has issued

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<sup>40</sup> Public Defender of Rights, *Protection against Ill-treatment 2017 – Report of the Public Defender of Rights as the National Preventive Mechanism* (2018), p. 30.

<sup>41</sup> Sec. 22(1) of the Act on the Public Defender of Rights.

<sup>42</sup> Regulations of the lower legal force than statutes.

<sup>43</sup> Sec. 64(2f) of the Constitutional Court Act, No. 182/1993 Coll.

<sup>44</sup> Sec. 64(1) of the Constitutional Court Act, No. 182/1993 Coll.

hundreds of recommendations to visited places of detention and relevant authorities.

### 1. Solitary of Prisoners with Mental Disabilities in Prison

#### Karviná<sup>45</sup>

In 2014, the NPM has conducted an unannounced visit to Prison Karviná with special focus on prisoners with disability (physical and mental). It revealed that prison accommodates prisoners that suffer from serious mental disabilities, however, they were placed in an ordinary prison ward without any mental health services and therapeutic activities. These persons were locked alone in a plain prison cell most of a day for several months. Although the prison staff tried for several times to improve the situation of these prisoners, due to their aggressive behaviour and inability to cooperate, they repeatedly end up in solitary where they did not benefit from either, individual or group activities, nor systematic therapeutic work provided by psychiatrists or other specialists.

Given the seriousness of the prisoners' disability, the absence of any therapeutic activities and long-term isolation in the cell with minimal contact with the prison's professional staff, the NPM concluded that the treatment reached the intensity of ill-treatment.<sup>46</sup>

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<sup>45</sup> Read more about visits of the Czech NPM to prisons (English and Chinese) in: Doubek, P., *Travel Story (1): NPM and prisoners with mental disabilities* (<https://en.covenantwatch.org.tw/2019/12/20/npmtravelstory-1/>).

<sup>46</sup> The NPM referred to an extensive case-law of the European Court of Human Rights that sets up the standards for the incarceration of persons with mental disabilities and forbids the pure isolation of prisoners with mental disabilities without “appropriate treatment”.

## 2. Restriction of Liberty in Illegal Social-Care Home Atrium Liberec

In 2014, the NPM visited illegal elderly home (hotel-like facility providing social and health care to the elderly and people suffering from dementia without authorization). The visit revealed serious deficiencies in care (illegal sedation of person by psychiatric drugs, locking people in their rooms, providing health-care by unqualified personnel, poor hygiene, undignified food administration, etc.). The NPM has concluded in its visit report that *“the fact that we find elements of ill-treatment in all aspects of care relates to the fact that the facility does not have the right to provide social services and thus does not comply with quality standards of social services, or other legal requirements needed for the proper conduct of services.”*<sup>47</sup>

## 3. Poor Living Conditions in Social and Health Center Letiny

The NPM carried out two visits to the elderly home Letiny. Both visits revealed serious cases of ill-treatment with clients, especially those suffering from dementia.

The personnel lacked a basic knowledge about how to take care of people with a mental disability, which was manifested, inter alia, by locking clients' items, improper use of side rails to their beds, use dirty clothes and diapers, ignoring the right to privacy (some clients were naked while waiting in front of the bathroom), some clients were malnourished, restricting client's movement by psychiatric drugs, improper handling with clients' funds, etc.

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<sup>47</sup> Public Defender of Rights, *Social-care Home Atrium Liberec – Visit Report* (in Czech) ([https://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Socialni\\_sluzby/ATRIUM.pdf](https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Socialni_sluzby/ATRIUM.pdf)).

The NPM stressed: “*The operation of the Letiny Social and Health Center should be terminated immediately. The deficiencies identified are very serious, further, the facility’s management is unable to ensure quality care. In addition, the situation in the facility is deteriorating further and clients are exposed to ill-treatment over a long period of time.*”<sup>48</sup>

#### 4. Detention of Children in Migrant Detention Centre Bělá-Jezová

In the outbreak of so-called “migration crisis” in 2015, the Czech NPM has carried out an unannounced visit to migrant detention facility Bělá-Jezová.

The visit revealed that the detainees lacked basic hygienic needs, proper clothes, some children did not have even shoes. The living premises were dirty and there were even reports of an epidemic outbreak of salmonellosis. Some of the detainees had no free access to the toilet and freshwater. Due to the language barrier, migrants lacked basic information about what their current situation is and what will follow. Parents with children were held behind a high barbed wire fence and were under constant supervision by police officers, including heavy-armoured police units with police dogs. Besides, 56 men, including children, were accommodated in this cage-like space, which was completely enclosed with several cabins grouped in a rectangle and covered with a welded mesh from above. The living conditions in detention reached the level of ill-treatment. Given the serious conditions in the “unit” for 56 men, the NPM determined that the treatment reached the level of degrading treatment.<sup>49</sup>

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<sup>48</sup> Public Defender of Rights, *Elderly home Letiny – Visit Reports* (in Czech) (<https://www.ochrance.cz/aktualne/tiskove-zpravy-2015/zarizeni-letiny-je-vysmechem-kvalite-v-socialnich-sluzbach/>).

<sup>49</sup> Read more (in English and Chinese) in: Doubek, P., *Travel Story (5): NPM in*

### 5. Excessively Strict Regime in Reformatory Chrastava

Children’s homes with school and reformatory in Chrastava is the institute designed for 41 boys diagnosed with severe behavioural disorders between the ages of 12 and 18 years. The NPM revealed that that education was based solely on repression, unconditional obedience and ignorance of basic needs of children. The principle of normality (adjustment of the child’s life as much as possible to natural norms) was significantly reduced.

The boys must, for example, mop the floors twice a day; put on pyjamas after 6.30 p.m.; lock the toilet between 7:30 p.m. and 10:00 p.m.; wearing a uniform haircut; no free disposal of their money, not even with regard to small purchases. Even the purchase of chocolate had to be approved by the staff. The visit resulted in appointment of a new director of the institute with the task of transforming the overall living conditions and treatment.<sup>50</sup>

## M. Achievements of the NPM

The NPM has improved living conditions and treatment with detainees in many detention places. Commonly, the recommendations listed in the visit report were sufficient basis for gradual consensual improvement (via constructive dialogue). However, in some exceptional circumstances, the findings were so serious or the facility was so resistant, that the NPM had to turn to relevant authorities (inspection bodies, public prosecutors, etc.) to launch administrative or criminal proceedings.

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*migrant detention centres; Travel Story (6): NPM and children in migrant detention centres* (<https://en.covenantwatch.org.tw/issues/page/2/>).

<sup>50</sup> Read more (in English and Chinese) in: Doubek, P., *Travel Story (4): NPM in Children’s Institutes* (<https://en.covenantwatch.org.tw/2020/03/06/npmtravel-story-4/>).

Besides that, the NPM contributed to some systematic changes. The NPM was the first body in the Czech Republic that draw attention to the existence of the new type of informal detention places that provide social and health care without authorization and where is a significant risk of ill-treatment. Thanks to the NPM's alert, state authorities started administrative and also criminal proceedings with these facilities. The NPM's awareness-raising campaign further make public to be vigilant when searching for the appropriate social-care services for their relatives.

Further, thanks to the NPM's proposals, a number of legislative acts, internal rules and strategic documents were adopted or amended. Case in point would be clear rules for using the sedatives and other forms of restriction (i.e., mechanical restraints); standards of care in elderly homes; adoption of instructions for detainees in police cells; contribution to the standard of care of children in children's home and reformatories; etc.

The NPM has also adopted several summary reports that contain in-depth analysis of a particular segment of detention, for example, Report of the Protective Treatment and Restraints in Psychiatry; Analysis of Administration of Drugs to Clients with Dementia in Social Services Facilities; Report of Visits to Prisons and Security Detention; Recommendations Concerning Organization of the Regime and the Operation of Police Cells, etc.

## N. Conclusion

Despite some institutional challenges discussed at the beginning of this article, the Czech NPM is a well-established human rights watchdog that has made significant contributions to the prevention of ill-treatment in Czech detention places. During its 14 years of operation, it has created a clear

visiting methodology, established a constructive dialogue with all relevant authorities and came into contact with experts and organizations in both the Czech Republic and abroad. I am therefore convinced that the Czech NPM is a good example for Taiwan to follow in its efforts to establish its own National Preventive Mechanism.