

Older persons deprived of their liberty

Information from the National Preventive Mechanism of North Macedonia

The Republic of Macedonia¹ signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 01.09.2006. On 30.12.2008 the Macedonian Parliament ratified the OPCAT and designated the Ombudsman to act as a National Preventive Mechanism (NPM). The NPM team has become functional in 2011 but through years has undergone numerous changes in its composition. Currently it is composed of three core staff members: State Counselor (acting as its Head), Counselor and Senior Associate.

In cooperation with and upon previous consent of the Ombudsman, the registered non-governmental organizations and organizations with a status of humanitarian organizations in the country may assume some of the National Preventive Mechanism' competences. Thus, the team regularly benefits from the specific services of professional organizations and associations in the field of law, psychology, psychiatry, forensics, social work etc.

In accordance with article 11-a of the Law on the Ombudsman ("Official Gazette of the Republic of Macedonia" No. 60/03, 114/09, 181/16, 189/16, 35/18), the Ombudsman prevents against torture and other type of cruel, inhuman and degrading treatment or punishment in the places where persons are or may be deprived of liberty and provides special protection to other vulnerable categories of persons (children, persons with disability).

Pursuant article 31-a, paragraph 3 of the Law on the Ombudsman ("Official Gazette of the Republic of Macedonia" No. 60/03, 114/09, 181/16, 189/16, 35/18) the National Preventive Mechanism has an unobstructed access to all places of deprivation of liberty, an access to all information referring to the number of persons deprived of liberty as well as an access to all information referring to the treatment of the persons, the conditions for their deprivation of liberty, and has unrestricted possibility to interview any person deprived of liberty without supervision.

By this day, with exception of several visits paid to facilities for older persons², the NPM has not had a targeted visit to places of deprivation of liberty focused on older persons deprived of liberty, still the general findings of the team relate to that category of persons too.

¹ On 12 February 2019 following the adoption of the Constitutional amendments XXXIII, XXXIV, XXXV and XXXVI, the official name of the country changed in North Macedonia as a result of an agreement (Prespa Agreement) signed between Macedonia and Greece for putting an end of the decades long dispute between these two countries.

² These facilities do not represent facilities for deprivation of liberty. They are open-type institutions and the users are accommodated in them on voluntary basis. Hence, due to some restriction of movement, these facilities still fall within the mandate of the NPM.

Thus, the most recent findings of 2021 (in 2021 the NPM visited all prisons and penitentiaries in the country), indicate that although there are some improvements in comparison to the earlier years (especially in terms of the overcrowding), the large number of problems still affect the high level of risk of torture and other ill-treatment of detainees and convicts. In this sense, the adoption of the National Strategy for Development of the Penitentiary System (2021-2025) is welcomed, envisaging 12 strategic goals as well as an action plan for their implementation.

Hence, the biggest problem that detainees and convicts complained about still remains the health care i.e. timely access to a doctor and specialist doctors, as well as drug therapy.

Some improvements in terms of material conditions have been noted but the fact that a large number of persons are still housed in substandard conditions is worrying.

As far as the facilities for older persons are concerned, five visits in total were carried out during 2014, 2015 and 2017 when the material conditions, health and social care were inspected, in 2020 when the COVID-19 pandemic erupted the NPM approached these facilities to report about the measures taken in relation to the prevention from the pandemic of the older persons in them.

The information gathered informs about special measures undertaken for prevention from the virus in terms of disinfection of the utilities, dormitories and all areas where the older persons circulate. Protocols for reception of new persons were introduced, separate and isolated areas for infected persons created, regular anti-COVID testing introduced especially for the new-comers, enhanced hygienic measures and restriction of visits. When the vaccination process begun, the older persons from these facilities were among the firstly targeted category of recipients of the vaccine.

As for the Penitentiary-correctional facilities, the total number of persons deprived of liberty by 31.12.2021 is 2032 persons, of whom 82 are of age above 60³.

In relation to the outbreak of the **virus COVID-19**, the National Preventive Mechanism raised its concern that no measures should be undertaken if resulting in inhuman or degrading treatment of persons deprived of their liberty. In that respect the National Preventive Mechanism issued recommendations for treatment of persons deprived of liberty in line with the principles of the European Committee for prevention of torture.

Thus, actions should be taken to protect the health and safety of all persons deprived of their liberty. WHO guidelines should be introduced on fighting the pandemic. The staff availability in places of deprivation of liberty need to be reinforced, while as any restrictive measure in terms of COVID-19 vis-à-vis persons deprived of their liberty must have a legal basis.

³ An older person is defined by the United Nations as a person who is over 60 years of age.

The NPM further advised that close personal contacts should be alternated, especially in situations of overcrowding, alternatives to pre-trial detention should be considered, early release and probation; discharge or release to community care, and to refrain to the maximum extent possible, from detaining migrants.

In the focus of the urges of the National Preventive Mechanism were the specific needs of some special categories of detained persons, in particular vulnerable groups and/or groups at-risk such as older persons and persons with pre-existing medical conditions.

In addition, the National Preventive Mechanism asked the Directorate for Execution of Sanction, as well as all penitentiary and correctional institutions, nursing homes and psychiatric hospitals to report about the undertaken activities and measures for prevention and protection from the COVID-19 virus.

The Directorate for Execution of Sanctions informed the Ombudsman that acting upon the Conclusion of the Government of the Republic of North Macedonia adopted on 10.03.2020, which determined measures and recommendations to be acted upon, submitted an Order to the Directors of the Penitentiary-correctional and Educational-correctional facilities for implementation of measures for prevention and protection of the detained persons from COVID-19.

Further on, the Directorate informed that all possible measures for prevention and protection of COVID-19 were undertaken (hygienic measures, regular disinfection, distribution of means for disinfection of the inmates for individual use etc.), every newly arrived convicted or detained person, upon admission to the facility, was placed in an isolated room to prevent contact with healthy persons. The prison staff were required to wear masks and gloves.

Three psychiatric hospitals as well as the homes for the older persons that were contacted, also informed about prompt introduction of necessary measures to prevent the spread of the COVID-19.

As far as the **national legislation** is concerned, the Law on Execution of Sanctions ("Official Gazette of RS Macedonia" No. 99/2019) does not specify special protection for older persons, while as the Criminal Code ("Official Gazette of Republic of Macedonia" No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 и 248/2018) stipulates that: "If the offender of the crime for which the law prescribes a fine or an imprisonment of up to five years is old and weary, severely ill or pregnant woman, and if the court sentence him/her to imprisonment of up to three years, it may at the same time, decide to serve the sentence in house arrest with his/her consent. The court may replace the imprisonment sentence with house arrest if there are conditions, involving modern electronic and telecommunications devices, to

control the enforcement of the house arrest, whereby the convicted person is banned from leaving his home.”