

Tel. No.: 22405501, 22405556

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Office of the High Commissioner for Human Rights
Subcommittee on Prevention of Torture
Ms Laetitia Colucci
laetitia.colucci@un.org

Comment by the Commissioner for Administration and the Protection of Human rights (Ombudsman) of the Republic of Cyprus on the Draft General Comment of the Subcommittee on the Prevention of Torture (SPT) on article 4 of the Optional Protocol to the Convention against Torture (OPCAT)

In 2009, the Commissioner for Administration and the Protection of Human rights (Ombudsman) was given the power to act as the National Body for the Prevention of Torture in the Republic of Cyprus.

Specifically, the Republic of Cyprus, in addition to ratifying the United Nations Convention against Torture, also ratified the Optional Protocol to the aforementioned Convention by adopting Law 2(III)/2009 of 27 March 2009.

Consequently, a National Preventive Mechanism (NPM) was set up at national level, which was assigned to the Commissioner for Administration because of the Independence of the institution.

In 2020, following the Commissioner's initiative and efforts to align with the recommendations of the Council of Europe's Committee for the Prevention of Torture (CPT), the House of Representatives passed Law 3(III)/2020 amending Law 2(III)/2009 and the Commissioner can now conduct visits freely, unhindered and unannounced to any place or places of detention of her choice.

Therefore, although in practice Commissioner's visits to places where persons were deprived of their liberty were carried out unannounced, this was not provided for by law and, therefore, this specific amendment was deemed

necessary to remove any doubts regarding the authority and competences of the Commissioner as the National Mechanisms for the Prevention of Torture.

Over the years, the Commissioner's visits under his/her mandate as the National Mechanism for the Prevention of Torture have not only been limited to traditional places of detention, such as Prisons and Police Detention Centres, but also extend to other places where people are deprived of their liberty, such as Psychiatric Hospitals and Psychiatric Clinics, homes for the elderly, homes for the disabled, immigration detention centres, airport detention centres (no fly zone), etc.

Therefore, the adoption of a General Comment in relation to Article 4, we are of the opinion that it is necessary and particularly useful, as this will remove any doubts regarding the role and powers of the National Mechanisms for the Prevention of Torture.

A large number of these visits to places other than traditional places of deprivation of liberty are taking place to private and not state-owned facilities, such as homes for the elderly and the disabled.

Depending on the nature of the facility, in some cases the visits are carried out in conjunction with Commissioner's other mandates, such as National Human Rights Institution and Independent Mechanism for the Promotion, Protection and Monitoring of the CRPD.

The State's obligation to ensure the prevention of torture and ill-treatment does not only apply to state-owned establishments, but also extends to establishments owned by private entities, where the State also has an obligation to protect the persons residing there from any acts of torture and ill-treatment committed against them, regardless of the person who commits them.

Therefore and even though we have never faced denial of access to any of the abovementioned facilities, even when they are owned by private and not public/state entities, we strongly believe that the adoption of a General Comment in relation to Article 4, is very important, necessary and particularly helpful for the work of a NPM, as this will remove any doubts regarding the role and powers of the National Mechanisms for the Prevention of Torture.

In relation to the content of the General Comment, we fully agree with it and therefore have no significant comments on it, but only a few remarks:

- At **paragraph 14**, should be clarified if persons "involuntarily transported" is actually refers to forced returns operations and to what extent these operations will have to be monitored not only by the Forced Returns Monitoring Mechanisms but also, at the same time, by the NPMs.

- At **paragraph 21**, in the phrase “...States parties **should allow** national preventive mechanisms to visit any private institution, and institutions operated by private actors as a result of outsourcing or by non-State officials, from which a person is not permitted to leave at will...”, the “should allow” could be replaced with “**must guarantee**” to better reflect the State's obligation to secure visits by NPMs.
- At **paragraph 29** and in relation to “even if a territory is not be under the effective control of the State”, it is noted that the Republic of Cyprus does not exercise effective control over its occupied territories and, therefore, it is impossible for us, as NPM, to conduct any visit there. Furthermore, the occupied territories are not under the control of paramilitaries but of the occupying country (Turkey) itself, which does not recognize the Republic of Cyprus and, consequently, neither does our Institute as the NPM of the Republic of Cyprus.
- At **paragraph 30**, clarification could be made regarding persons with disabilities who are denied legal capacity and whose guardian decides on their behalf by court order. In fact, although the CRPD strictly prohibits the substitution of the judgment of persons with disabilities, when this occurs, the guardian acts on behalf of them.
- At **paragraph 36**, It should be clarified whether religious schools or daaras may include and monasteries, when there is an allegation (which cannot be cross-checked) that a person is staying there against his/her will.
- At **paragraph 40** could be clarified that isolation places may be located in any facilities, including prisons and, therefore it should be clear that the NPM may visit them freely. It should also be clarified whether isolation includes any kind of isolation (for various reasons) in private homes, for example where there is an allegation that a parent locks their children in a room against their will and abuses them and does not allow them to go out. In such a case, will it be the responsibility of the NPM to intervene and visit a private home or the State itself through the Police and Welfare Services, after obtaining a court order to do so?

We remain at your disposal for any further information or clarifications.

Maria Stylianou-Lottides

Commissioner for Administration
and the Protection of Human Rights

National Preventive Mechanism