

Comment on article 4 of the Opcat

Optional protocol to the Convention against torture (OPCAT) represent the crucial international instrument that obliges State parties, to organized, on their level, national, independent body for prevention of torture. The national legislative framework may be constitutional or based on law. State party should create legal system in the aim to insure all obligations undertaken by OPCAT. Legal framework needs to put all guarantees that make system independent and effective in the practice. The state body for preventive of torture needs to be independent and multidisciplinary, and to respond to all basic principles that considers institution on human rights. National guarantees should provide principles that make work of NPM effective.

OPCAT at the same time gives national level authority legal base and right to visit all places of deprivation, where persons are or may be deprived. The visits should be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

NPM team on regular basis control place of deprivations define in art.4, visit places of detention and examine the treatment of people held here. NPM takes measures, and actions for improving their treatment, doing special reports, and giving concrete recommendations to state authority. Also, NPM takes legislative measures proposing concrete legal action and change, that improves condition and treatment of persons deprived of liberty.

Obligation define in art 4.1 authorized NPM to have a access to all relevant documents, number of persons deprived of liberty, number of place of deprivations, access to all places, right to private access, contact and talk to all persons deprived of liberty, and right to have contact and report SPT about their work.

Considering the role of NPM, all of this instrument, gives it opportunity to create a substantial policy, representing itself as good transport and effective line between national and international level, and as a good and effective mechanism for supporting and improving national human rights system.

Create a policy based on the main issues of their mandate, NPM should be recognized as a relevant authority on a national level, and create a good base of consistency cooperation with all relevant, governmental and non governmental bodies.

Also, creation of public policy, and communication strategy with public, is important role of work of NPM.

Communication with public, regular reports, and their present in a public, is not just way to present work, but to put awareness of the importance of the role of the NPM in a society and legal system.

For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

The place of deprivations by art 4.2 considers police detention facilities, special constitutional detention facilities-prisons, including prisons for women, prisons for minors, as well as other special institutions where minors may be sent and held.

In addition to the above, the place of deprivation by art 4.2 consider also psychiatric institutions, both: closed and semi-open psychiatric institutions, including geronto institutions.

Article 4.2 also includes places and areas at national and international border points where persons deprived of their liberty can be detained by the national or international authorities.

Article 4.2 includes also migrant centers and centers for refugees- centers for reception of foreigners and refugees.

By my opinion Article 4.2 should consider as a places of deprivation of liberty, also place of transports (establishing and considering standards of conditions of transports), especially in a case of large number of persons in the vehicle (or other way of transport), their transport to remote places etc.

This includes also conditions at places, where they may be held, during the period of transport (such as airports).

This is especially important for persons who are in the process of extradition - extradition detention, so in that situation importance of respect of rights of persons deprived of their liberty includes the right to be informed that there is an NPM team in the requested country, where he or she is held.

Considering this, mandate based on OPCAT, hope we will continue through our duty, work and practice, to improve system of protection of human rights of persons deprived of their liberty, by improve the meaning and significance of Article 4. In this sense, I would like to recall the fundamental value of the Universal Declaration of Human Rights and Freedoms as a common standard that should be achieved by all peoples and all nations and the obligation established in Article 5 which prescribes that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

At the end I would like to pointed out that Montenegro ratified the Optional Protocol, on December 31, 2008. and obliged to determine or introduce one or more mechanisms for the prevention of torture at the national level. Within the framework of the national legal system, in accordance with the Law on the Protector of Human Rights and Freedoms of Montenegro from 2011, the institution of the Protector was designated as the National Mechanism for the Prevention of Torture.

Milica Bogojević

Chief Advisor

Protector of Human Rights and Freedoms of Montenegro

milica.bogojevic@ombudsman.co.me

