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Department on the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention – NPM

Ms. Suzanne Jabbour

Chairperson

Subcommittee on Prevention of Torture

Office of the United Nations High Commissioner for Human Rights

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AVOCATUL POPORULUI
REGISTRATURĂ GENERALĂ
IEȘIRE Nr. 10816.....27.MAI.2021

Dear Ms. Chairperson,

First of all, thank you for the support given to us by SPT during 2020, as well as for the initiative to formulate a general comment on Art. 4 of OPCAT.

Regarding the letter dated March 4, 2021, sent to the Romanian NPM, requesting information in preparation for a general comment on the article 4 of OPCAT, information concerning, in particular, the: practical / legal / theoretical difficulties which we faced in the implementation of Art. 4 of OPCAT; the criteria taken into account in the selection of places of detention to be visited; types of detention places visited and types of detention places to which we consider that the provisions of Art. 4 apply, we communicate the following:

1. Types of places of detention monitored by the Romanian NPM and the criteria taken into account when selecting the places of deprivation of liberty to be visited

The department on the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention (Department on the prevention of torture in places of detention - NPM) within the People's Advocate institution, in accordance with Law no. 35/1997 on the organization and functioning of the People's Advocate, republished, fulfils the specific duties of the National Mechanism for the Prevention of Torture in Detention Places, within the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

According to the same normative act (Art. 34 of Law no. 35/1997, republished), the NPM exercises its preventive mandate, in the following types of places of detention:

- penitentiaries, including hospital penitentiaries;
- educational centres, detention centres;
- detention and remand centres;
- residential services for minors who have committed criminal acts and are not criminally liable;
- psychiatric hospitals for safety measures, psychiatric hospitals;

- transit centres;
- accommodation centres for foreigners taken into public custody, under the subordination and administration of the General Inspectorate for Immigration;
- the special reception and accommodation centres for asylum seekers subordinated to the General Inspectorate for Immigration, having the legal regime of the transit area;
- the centres where assistance services are provided for drug users, in closed regime;
- any other place where persons are deprived of their liberty on the basis of a decision of an authority, at its request or with its express or tacit consent, which is part of the health system or social assistance system

Regarding the places that are part of the social assistance system (which are not expressly mentioned in the law), although they are not expressly mentioned, the following types of social services are considered: residential centres for minors, homes for the elderly, residential centres for adults with disabilities.

In 2020, in the context of the COVID-19 coronavirus pandemic, new places of detention appeared in Romania within the meaning of Art. 4 of the OPCAT, namely: institutionalized quarantine sites and COVID-19 hospitals.

NPM visits are carried out ex officio, on the basis of an **annual visitation plan**, at the establishment of which a series of criteria are taken into account, such as: the types of existing detention places; geographical distribution of places of detention; the known vulnerability of certain types of places of detention; the previous reports of the NPM and of the other departments within the People's Advocate institution; petitions addressed to the People's Advocate institution; ex officio notifications of the other departments within the People's Advocate institution; media articles; information provided by third parties (families of persons deprived of their liberty, lawyers, representatives of non-governmental organizations).

Another criterion considered is the elaboration of a thematic report; for example, for the year 2021 it is foreseen the elaboration of a special report regarding the psychiatric assistance provided to the detainees with mental illnesses, and, in this regard will be monitored penitentiary-hospitals that have psychiatric wards.

2. Difficulties encountered in carrying out the activity of monitoring places of detention

a. COVID-19 hospitals and quarantine centres

In the context of the COVID-19 pandemic, the Romanian authorities adopted a series of measures in order to prevent the spread of the infection, among which was the isolation of people in institutionalized quarantine places and in hospitals designated COVID-19.

Consequently, starting with February 2020, new places appeared in which people were deprived of liberty, in the sense provided by Art. 4 of OPCAT. These places thus fell within the mandate of the NPM.

COVID-19 hospitals

In exercising its preventive role, the NPM decided to monitor COVID-19 Hospitals between May and June 2020, in order to identify high-risk aspects of ill-treatment. **Criteria** such as were considered:

- increased vulnerability of hospitals that have become COVID-19 (hospitals where patients' status has changed from patients admitted on a voluntary basis to patients admitted without their consent; mandatory measures have been taken, including new hospitalization procedures, treatment, protocol in case of death, etc., the impact of the designation as COVID-19 hospital on the staff, the living conditions provided to patients who could not leave these hospitals on their own will, for periods of time exceeding 30 days, etc.) ;
- complaints received by the People's Advocate institution and articles in the media which reported alleged/confirmed inappropriate treatments applied to patients suspected of being Covid-19 positive, in these hospitals.

Guided by the “*do no harm*” principle, the NPM team used alternative means of monitoring to the classic visits, namely:

- elaboration of questionnaires for patients / former patients / relatives, posted on the website of the People's Advocate institution, with the possibility of filling in directly on the website;
- publishing press releases on the monitoring of COVID-19 hospitals and informing the public on the possibility of completing the aforementioned questionnaires;
- in the case of hospitals designated as COVID-19 (at the time of monitoring) in the counties of Buzău, Călărași, Constanța, Dâmbovița, Giurgiu, Ialomița, Prahova, Teleorman, Tulcea, as well as in Bucharest (a total of 24 hospitals), we requested :
 - communication of information / documents on a number of issues related mainly to the protection measures adopted, respect for patients' rights, hospital staff, maintaining a continuous dialogue through liaison persons from both the People's Advocate and the hospital;
 - displaying in the hospital, in accessible places, two announcements for patients and staff, to inform about the monitoring activity, the questionnaires posted on the website of the People's Advocate and contact details of the NPM team.

Even if the NPM legally exercised its role of prevention, there has been opposition to the monitoring of COVID-19 hospitals, publicly expressed by hospital managers / the Commander of the action, Secretary of State / leadership of the College of Physicians. Through the media, as well as through the letters sent to the People's Advocate, the cessation of the monitoring was requested, a state of affairs that deeply surprised the NPM team. Also, high representatives of the Romanian Government and the Prime Minister publicly requested that the NPM withdraw its requests for information and documents sent to these hospitals, motivating that the assimilation of these institutions with places of detention would be a distortion of reality done in bad faith, and a comparison of situations that have nothing in common.

All these actions demonstrated the ignorance or lack of knowledge of the Conventions and Protocols on the prohibition and prevention of torture, to which Romania is a party, including by the Government which must be the guarantor of their observance; ignorance or lack of knowledge of the national legal provisions by which Romania undertook to establish the National Mechanism for the Prevention of Torture and to ensure its access to: all information on the number of persons deprived of liberty in places of detention, as well as the number of such places and their location; all information regarding the treatment applied to those persons, as well as the conditions of detention; all places of detention and their installations and facilities. NPM members should have the opportunity to meet with persons deprived of their liberty without witnesses, as well as with anyone who can provide relevant information and the freedom to choose the places they want to visit and the people they want to have meetings with.

In these circumstances, the MNP appealed to the provisions of the OPCAT and addressed the SPT, requesting its support and an official point of view to assist the NPM in the exercise of its mandate. The response of the SPT was prompt, Mr. Daniel Fink, SPT member and leader of the Regional Team for Europe, addressing His Excellency M. Adrian Cosmin Vierița, Ambassador Extraordinary and Plenipotentiary to the Permanent Mission of Romania to the United Nations Office at Geneva and International Organizations based in Switzerland, reiterating the provisions of the aforementioned SPT Opinions and emphasizing that *“in accordance with Art. 20 of the Optional Protocol, national preventive mechanisms shall have access to all data, including relevant medical documents, records and other information necessary for the prevention of inhuman or degrading treatment in places where persons are or could be deprived of their liberty [...]. In addition, in the Opinion of the Subcommittee sent to States Parties and national preventive mechanisms, on the prevention of coronavirus (CAT/OP/10), the SPT clarified that all people held in official quarantine places should be able to benefit from fundamental safeguards against ill-treatment.”*

In this context, out of the 24 monitored hospitals, 14 hospitals responded to the requests of the NPM (some hospitals communicated only partially the requested information / documents), 8 hospitals did not respond, and 2 hospitals refused in writing to allow the monitoring activity, motivating that they are no places of detention and requesting the withdrawal of the request.

Quarantine centres

Since the establishment of the quarantine centres, the NPM has been concerned with respecting the fundamental rights of quarantined persons. We took into account: • the unique situation of the quarantined persons (they were deprived of their liberty for a period of 14 days, in a location that could be far from their place of residence), as well as the staff serving these centres, among their duties being the supervision of the persons not to leave the room / centre; • the petitions sent to the People's Advocate institution, in which irregularities were notified regarding the application of this measure and the living conditions provided in the centres.

Consequently, at the beginning of March 2020, the NPM addressed all the Prefect's Institutions in the country requesting information on the quarantine centres in each county / plus Bucharest city (number, location, capacity), staff assigned to the centre, number of people quarantined, conditions accommodation and restrictions imposed on them. It also sent brochures with the mandate and contact details of the NPM, to be distributed to quarantined persons. Subsequently, between June and July 2020, the Techirghiol Spa and Recovery Sanatorium (the only quarantine centre in Constanța County during the monitoring period) was monitored by alternative means to the classic visits.

• The prefect's institutions notified about the institutionalized quarantine places communicated partial information / failed to answer or refused to give certain information, such as the location of the quarantine centres, indicating the following reasons: *“the location of the centres is NOT intended for the general public (Arad); communication is made only at the central level, through the Strategic Communication Group (Giurgiu); additional information can be requested from the local public administration (Bucharest); the locations of these centres are known by a small number of people, who have responsibilities in managing the situation related to COVID 19, etc.”*

b. Residential centres for minors, for adults with disabilities and homes for the elderly

In practice, there have been situations when the visiting teams faced a lack of cooperation from the management of such centres, especially private institutions, which have argued that they are not places of detention.

However, in the case of the respective centres (state or private, both OPCAT and Law no. 35/1997, republished without distinguishing between public and private) the following conditions were met:

- is a place that the person cannot leave at will, by the decision of a judicial, administrative or other authority, respectively at the request or with its express or tacit consent
- are included in the social assistance system, listed by Art. 34 of Law no. 35/1997, republished (previously mentioned article).

During 2020, the management of two centres (a public centre for persons with disabilities and a private home for the elderly) refused to be monitored by the NPM. In the case of one of the centres, visited in 2019, a follow-up visit to verify the implementation of the recommendations was to be carried out. Although initially the new management of the centre (management changed between the two visits) was willing to participate in the scheduled visit, after sending the letter requesting information / documents on the activity of the unit, the staff of the unit refused to comply with our requests. This change of attitude was motivated by the fact that the unit is not a detention centre and does not fall under the scope of Law no. 35/1997, republished.

c. Police stations

During 2017, at the 26th Police Station within the Bucharest Sector 4 Police, the NPM team was denied access to the police station, although its members (lawyer and doctor - NPM staff) presented the power of attorney from the People's Advocate to carry out the visit and identified themselves with the work IDs, and the NGO representative with the identity card.

They requested that all members of the visiting team (doctor and lawyer), who were in the premises of the 26th Bucharest Police Station in the exercise of their duties, present their identity cards, and they were intimidated and threatened by police officers mentioning that they will not leave the police station until they identify themselves with their identity cards and that they could be detained for 24 hours due to suspicions regarding their presence in the police station.

During subsequent discussions with the head of the 26th Bucharest Police Station, he invoked a misunderstanding on the part of his subordinates regarding the access of team members inside the police station, stating that according to their claims, the members of the visiting team refused to leave their mobile phones at the entrance, statement which the NPM representatives told him that it wasn't true.

Given the attitude of the officer on duty, to intimidate and threaten NPM representatives, the team decided not to conduct the visit. In this regard, the Recommendations of the United Nations Subcommittee on Prevention of Torture (SPT) state that when members of the visiting team feel threatened, the visit is no longer carried out.

The incident was brought to the attention of the Minister of Internal Affairs, who was requested to order the legal measures and to inform the subordinate units, including the police stations, of the MNP's powers and mandate.

Following the steps taken by the People's Advocate institution, the General Inspectorate of the Romanian Police through the Coordination Service of Detention and Remand Centres communicated that it retransmitted to all subordinated units information related to the activity of the NPM, and included in the training program a topic related to the NPM, including by inviting NPM members as lecturers.

In 2018, a monitoring visit was made to the 26th Police Station. Also, in 2020, the General Inspectorate of the Romanian Police invited NPM representatives to participate, as lecturers, in training courses in the field of torture prevention, aimed at the continuous

professional training of the staff of detention and remand centres, as well as students from the “Vasile Lascăr” Câmpina School of Police Agents. In the context of the COVID-19 pandemic, the courses were suspended, and will be resumed when the epidemiological situation allows it.

3. Regarding the variety of places whose monitoring falls within the mandate of the NPM

As mentioned at point 1, in Law no. 35/1997, republished, the following places are provided where NPM exercises its preventive mandate: • penitentiaries, including penitentiary-hospitals; • educational centres, detention centres; • detention and remand centres; • residential services for minors who have committed criminal acts and are not criminally liable; • psychiatric hospitals; • psychiatric hospitals psychiatric hospitals for safety measures; • transit centres; • accommodation centres for foreigners taken into public custody, under the subordination and administration of the General Inspectorate for Immigration; • special reception and accommodation centres for asylum seekers subordinated to the General Inspectorate for Immigration, having the legal regime of transit areas; • closed care centres for drug users; • any other place where persons are deprived of their liberty on the basis of a decision of an authority, at its request or with its express or tacit consent which is part of the health or social assistance system (residential centres for minors, homes for the elderly, residential centres for adults with disabilities).

We also consider that the following places fall under Art. 4 of the OPCAT, although they are not expressly provided in Law no. 35/1997, republished:

- police stations
- external wards of psychiatric hospitals and internal or external psychiatric wards of general hospitals
- general hospitals, if hospitalization is made without the patient's consent, as it was the case with COVID-19 hospitals
- institutionalized quarantine sites
- land, air, river and naval means of transport used for the transport of persons deprived of their liberty, including those removed under escorted
- transit areas at airports where third-country nationals who are not allowed access to the territory of our country are detained or spaces through which foreigners pass during the forced return (closed spaces at the airport).¹

4. Regarding the scope of mandate of the NPM, we bring to your attention the following situation:

During the monitoring of COVID-19 hospitals, in 2020, NPM found that in general hospitals (most did not have psychiatric wards) was applied immobilization / restraint of patients, based on Law no. 487/2002 on mental health and protection of persons with mental disorders, republished and the Norm for the application of this law, but without complying, in most cases, with legal provisions, such as: restraint not to exceed 4 hours; vital functions to be monitored every 15 minutes; restraint not to be applied in the presence of other patients; to set up and complete restraint register accordingly; to use approved means of restraint, etc.

Consequently, in these hospitals, patients were restrained under the specific legislation for the protection of persons with mental disorders, but without respecting the existing guarantees in these normative acts.

¹ The visitation plan for 2021 included a visit to the enclosed spaces within the Bucharest-Otopeni International Airport.

Moreover, in March 2021, the People's Advocate institution, through the department on human rights, equal opportunities between men and women, religious cults and national minorities, proceeded ex officio regarding the statements of a former nurse from Sibiu County Hospital, published in the press, regarding the fact that in the Intensive Care Unit, the patients with COVID-19 were allegedly tied to the beds, with wounds on the hands due to the ties and sedated with anaesthetics and extremely strong sedatives, in order not keep them from becoming agitated.

Points of view were requested from the following entities: the Ministry of Health, on the need to issue national regulations on patient restraint and the Romanian Society of Anaesthesia and Intensive Care, on the need to issue a national guide on the restraint of patients who are hospitalized in departments other than psychiatry, as well as to regulate, also at national level, a procedure that provides the criteria on the basis of which restraint may be applied.

Following the steps taken by colleagues in the field of human rights, the Ministry of Health communicated that the Romanian Society of Anaesthesia and Intensive Care and the specialized commission within the Ministry of Health initiated steps to develop a draft normative act in this regard and addressed the People's Advocate institution a requested to provide an analysis and advice for the achievement of appropriate regulations in the field.

In view of the above, as well as the fact that the application of restraint has profound implications for the person's freedom of movement and dignity², we would be grateful to know the opinion of the SPT on the application of mechanical/chemical restraints on patients admitted to hospitals/wards other than psychiatry and the scope of mandate of the NPM in monitoring such situations.

We thank you once again for the involvement of SPT in ensuring that NPMs carry out, in the best possible conditions, their essential role in the prevention of torture and other cruel or inhuman or degrading treatment or punishment and we assure you of our full cooperation in all the steps you will take in this regard.

With my best regards,


Ombudsperson,
Renate Weber

Bucharest, 27 May 2021

² This aspect was also noted by the Ministry of Health in its response, stating that in recent decades there has been an emphasis on the need to implement programs to reduce restraint as much as possible, complex programs that include measures at several levels, the most important being education and legislative measures.

