



SUBMISSION ON DRAFT GENERAL  
COMMENT OF THE SUBCOMMITTEE ON  
PREVENTION OF TORTURE (SPT) ON  
ARTICLE 4 OF THE OPTIONAL PROTOCOL TO  
THE CONVENTION AGAINST TORTURE  
(OPCAT)

The Human Rights and Equality Institution of  
Türkiye (as the NPM of Türkiye)

## **1. Introduction**

This document is the submission of the Human Rights and Equality Institution of Türkiye (HREIT) as the National Preventive Mechanism (NPM) of Türkiye with regard to the draft general comment of the Subcommittee on Prevention of Torture (SPT) on Article 4 of the Optional Protocol to the Convention against Torture (OPCAT).

## **2. The NPM of Türkiye**

Türkiye signed the OPCAT in 2005 and completed its approval process in 2011. In 2013, the Human Rights Institution of Türkiye was designated as the NPM of Türkiye. With the adoption of the Law on the Human Rights and Equality Institution of Türkiye no. 6701 in 2016, this task was given to the Human Rights and Equality Institution of Türkiye.

Within the scope of the NPM duty, which is one of the three main duties assigned to the HREIT by Law no. 6701, announced or unannounced monitoring and follow-up visits are organized to the places where people are deprived of their liberties, reports prepared as a result of visits are shared with relevant institutions and organizations, implementation of recommendations is followed, special reports are published if necessary, and other tasks assigned by Law are fulfilled.

The following are included in the scope of the HREIT's mandate to operate as a National Preventive Mechanism:

- Making announced or unannounced regular visits to places where persons deprived of their liberty or under protection are held,
- Conveying the reports of these visits to the relevant institutions, sharing them with the public,
- Evaluating the reports created by provincial and sub-provincial human rights councils and reports created by other persons, institutions and organizations as a result of visits to such places,
- Preparing annual reports on the fight against torture and ill-treatment to be submitted to the Presidency of the Republic and the Parliament,
- Examining, investigating, making decisions and following up the results of applications of persons deprived of their liberty or protected under the mandate of the National Preventive Mechanism,
- Monitoring, researching, making decisions on legislative works related to the field of duty and informing the relevant authorities of their opinions and suggestions on them,
- Publishing special reports on the field of duty when necessary, except for regular annual reports, in order to inform the public,
- Conducting educational and training activities as well as awareness-raising activities,
- Cooperating with international organizations in the field within the framework of relevant legislation,
- Cooperating with public institutions and organizations, non-governmental organizations, professional organizations and universities,

- Monitoring the implementation of international agreements to which Türkiye is a party.

OPCAT envisages that National Preventive Mechanisms can access all kinds of information and documents related to the places where people deprived of their liberties are held.<sup>1</sup> In this regard, the Law no. 6701 states that HREIT can obtain all kinds of information and documents from all public institutions and organizations, as well as other individuals and legal entities, organize visits to the places of detention without any permission, meet with people who are allegedly subjected to ill-treatment; all institutions, organizations and persons obliged to facilitate visits of the Institution and to fulfil their requests without delay.<sup>2</sup>

### **3. The Approach of the HREIT as the NPM of Türkiye towards Article 4 of the OPCAT**

According to Article 4 of the OPCAT:

*1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall 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.*

*2. 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.*

When Article 4 is examined, it is seen that the OPCAT adopts a broad definition for “places of detention” to provide as much protection as possible for people who are deprived of their liberties. This conclusion follows from the fact that the paragraph 1 of Article 4 refers *any* place under a State Party’s jurisdiction and control where persons *are* or *may be* deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence as a place of detention rather than listing these places.

Similarly, the paragraph 2 of Article 4 defines “deprivation of liberty” as “*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*” with a view to ensure a strong protection.

In accordance with this broad definition, the Law no. 6701 states in its Article 9/1-j that undertaking regular visits to not only the places where those deprived of their liberties are held but also to the places where those under protection live is among the duties of the Institution as the NPM. To cover the places where people are taken under protection in the NPM visits is in compliance with the spirit of the OPCAT because of the fact that these people are at a higher risk of abuse as they live in relatively closed environments and due to their special needs and vulnerabilities.

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<sup>1</sup> OPCAT, Art. 20.

<sup>2</sup> Law no. 6701, Art. 19.

In addition, the places visited by the NPM of Türkiye can be public or private settings<sup>3</sup>, as it is envisaged by the paragraph 2 of Article 4 of the OPCAT.

Therefore, the NPM of Türkiye adopts an approach that prioritises the protection of those who deprived of their liberties regarding Article 4 in a similar manner with the draft Comment of the SPT and the practice of many other NPMs around the world.

In this regard, the visits of the NPM of Türkiye covers the following:

- Prisons,
- Custody centres of police or gendarmerie departments,
- Mental and psychiatric health hospitals,
- Hospital wards for patient-prisoners,
- Removal centres for illegal migrants,
- Transit zones at airports,
- Detention vehicles,
- Waiting areas of the courthouses reserved for the prisoners,
- Social care centres for people with disabilities,
- Nursing homes and elderly care and rehabilitation centres,
- Social care homes for children and child support centres,
- Temporary accommodation centres for refugees.

Within this framework, the NPM of Türkiye is of the opinion that the SPT might wish to consider to include some of the abovementioned places in an illustrative manner, e.g. waiting areas of the courthouses reserved for the prisoners, in Paragraph 36 *et seq.* of its draft Comment of Article 4 of the OPCAT.

Although it has not yet been visited by the NPM of Türkiye, it might also be helpful for all NPMs that the SPT clarifies whether shelters/temporary houses for women that are victims of violence to be protected from the occurrence of a similar act can be visited within the scope of Article 4 of the OPCAT.

#### **4. Conclusion**

The HREIT as the NPM of Türkiye welcomes the SPT's work to clarify the scope of Article 4 of the OPCAT.

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<sup>3</sup> Law no. 6701 states in its Article 9/1-j.