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NATIONAL MECHANISMS FOR THE PREVENTION OF TORTURE WITHIN THE WIDE MANDATE INSTITUTIONS – FOCUS ON THE INDEPENDENCE

Abstract: The prohibition of torture is prescribed in numerous relevant international instruments, starting with the Universal Declaration on Human Rights. Today, the main document is the Convention against torture, which gives the universally accepted definition of torture. States obligation is to criminalize torture on the national levels. Barring in mind the necessity of the prevention of torture, numerous States became State parties of the Optional Protocol on the Convention against Torture and established or designated national mechanisms for the prevention of torture (NPM) – places of detention visiting bodies. The fundamental issue of the NPM is establishing and preserving their independency, which should be guaranteed by the State. Particular problem is independency of wide mandate institution designated as NPM, as well as the autonomy in performing NPM activities within that institution. Full organizational, functional and financial autonomy of special organizational unit or department inside the wide mandate institution should be established, in order to have the efficient, independent NPM. In this article, basic principles for the achievement of independency of the NPM within the wide mandate institution are elaborated in detail.

Key words: NPM, OPCAT, National Preventive Mechanism, Prevention of Torture, Ombudsman, NHRI, Independence, Autonomy.

1. INTRODUCTION

The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and National Preventive Mechanisms (NPM) are frequently confronted with the issue of independent performing the mandate of national visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, established by virtue of the Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Bearing in mind provisions of the OPCAT, particularly controversial is the independence issue of the already existing

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institutions with wide mandate (ombudsman, commissioners or other human rights institutions) designated as NPM.

2. BACKGROUND

2.1. *Prohibition of Torture in international instruments*

The prohibition of torture is declared in number of important international documents on human rights. The Universal Declaration of Human Rights,¹ proclaimed by the United Nations General Assembly in Paris, on 10 December 1948, prescribes that “torture and all other kind of cruel, inhuman and degrading treatment is prohibited”.² Since the adoption of the Universal Declaration “the United Nations has played a key role in developing human rights standards and mechanisms to monitor their implementation”.³ Most important international instrument for prohibition of torture is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁴ adopted by UN General Assembly on 10 December 1984, entry into force 26 June 1987.

2.2. *Prohibition of Torture in national legislation*

Prohibition of torture is commonly defined in Constitutions and national laws, by the same or very similar wording as it is stated in the Universal Declaration of Human Rights. For example, in the Constitution of the Republic of Serbia, it is prescribed that “nobody may be subjected to torture, inhuman or degrading treatment or punishment”.⁵ Furthermore, it is stated that “persons deprived of liberty must be treated humanely and with respect to dignity of their person”⁶ as well as that “any violence towards persons deprived of liberty shall be prohibited”.⁷

2.3. *Definition of torture*

Commonly, torture is understood as “the action or practice of inflicting severe pain on someone as a punishment or to force them to do or say something, or for the pleasure of the person inflicting the pain”⁸. The legal definition of torture in hu-

1 The Universal Declaration of Human Rights, General Assembly resolution 217 A, <http://www.un.org/en/universal-declaration-human-rights/>, accessed on April 1, 2017.

2 Universal declaration on human rights, article 5.

3 Association for Prevention of Torture, <http://www.ap.torture-prevention-and-the-un/>, accessed on April 1, 2017.

4 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

5 Constitution of Republic of Serbia, Article 25, paragraph 2.

6 *Ibid*, Article 28, paragraph 1.

7 *Ibid*, Article 28, paragraph 2.

8 Oxford Dictionary, <https://en.oxforddictionaries.com/definition/us/torture>, accessed on April 1, 2017.

man rights law differs quite significantly from the way the term is commonly used in the media or in general conversation.⁹

Article 1 of the CAT represents the internationally agreed legal definition: “Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.¹⁰

This definition contains four cumulative elements: 1) the intentional infliction; 2) the pain or suffering, whether physical or mental; 3) involvement of public official, directly or indirectly; and 4) the specific purpose such as obtaining information or confession; punishment; intimidation or coercing; or for any reason based on discrimination.

2.4. *Criminalisation of torture*

The UN Committee against Torture reiterated several times its recommendation that “the State party should incorporate into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention”.¹¹ In the Concluding observations on the Second Periodic report of Serbia, the Committee “urges the State party to promptly implement the legislative measures necessary to harmonize the provisions of the Criminal Code dealing with torture and align them with the definition contained in article 1 of the Convention”¹². Sir Malcolm Evans gave great contribution in understanding that the criminalisation of torture is a part of the human right framework, as well as highlighted distinction between “human rights” and “criminal law” perspective in this matter.¹³

9 Association for Prevention of Torture (APT), <http://www.apr.ch/en/what-is-torture/>, accessed on April 1, 2017.

10 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.

11 UN Committee against Torture, List of issues to be taken up in connection with the consideration of the fourth to sixth periodic reports of France (CAT/C/FRA/4–6), <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.FRA.Q4–6.pdf>, accessed on April 1, 2017.

12 UN Committee against Torture, Concluding observations on the second periodic report of Serbia, 3 June 2015, (CAT/C/SRB/CO/2), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/SRB/CO/2&Lang=En, accessed on April 1, 2017.

13 Malcolm D Evans, “The criminalisation of torture as a part of the human right framework”, *Crimen*, http://www.ius.bg.ac.rs/crimenjournal/articles/crimen_002–2014/Crimen%202–2014%20–2002%20Malco-lm%20D%20Evans.pdf, accessed on April 1, 2017.

3. PREVENTION OF TORTURE

3.1. *Prevention of torture*

Risks of torture exist in any time, in any country, in “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”.¹⁴ “Torture prevention is a global strategy that intends to reduce these risks and create an environment where torture and ill-treatment are less likely to occur”.¹⁵

According to the Association for Prevention of Torture (APT) “prevention of torture requires a three-stages approach that is best summarised in a “House of prevention”: 1) “The foundation” – an effective legal framework must be in place that both prohibits and prevents torture and ill-treatment, as well as legal safeguards; 2) “The walls” – these laws and regulations need to be applied in practice. Implementation is achieved through training (of the police and other actors), development of procedural safeguards (video-recording of interrogations; registers in prisons) as well as through sanctions in case of non-respect of the law. All these interventions would form the “walls of the house”; and “The protective roof” – control mechanisms should be in place in order to check both whether the legal framework exists and whether it is implemented. Regular visits to places of detention by independent bodies, in particular National Preventive Mechanisms, constitute one of these control mechanisms. In addition, the media as well as recommendations by international human rights bodies would also serve as control mechanisms”.¹⁶

3.2. *Optional Protocol to the Convention against Torture*

There are numerous instruments and mechanisms for the prevention of torture. On the universal level, the most important is the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),¹⁷ which was adopted on 18 December 2002 by the General Assembly of the United Nations, and entered into force on 22 June 2006.

Today, there are 83 States Parties and 16 additional States signatories of OPCAT.¹⁸ Serbia is the State Party of OPCAT starting from 2006, by Law on Ratification of OPCAT.¹⁹

OPCAT is a unique international human rights treaty which assists States to prevent torture and other forms of ill-treatment. It stands in addition to the CAT,

14 Optional Protocol to the Convention against torture (OPCAT), article 1, paragraph 1.

15 Association for Prevention of Torture (APT), <http://www.apr.ch/en/what-is-torture-prevention/>, accessed on April 1, 2017.

16 *Ibid.*

17 OPCAT, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, accessed on April 1, 2017.

18 <http://www.apr.ch/en/opcat-database/>; <http://indicators.ohchr.org/>, accessed on April 1, 2017.

19 Ombudsman of the Republic of Serbia, “Setting-up of National Preventive Mechanism in Serbia, Initial 6 months: GETTING ready, no monitoring”, January 2012, http://www.npm.ils.rs/attachments/017_-_%20-%20SERBIA%20NPM%20SETTING-UP.pdf, accessed on April 1, 2017.

its parent treaty, rather than replacing it.²⁰ The objective of the OPCAT is to prevent torture and other ill-treatment by establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.²¹ International body established by virtue of OPCAT is Subcommittee on Prevention of Torture (SPT). National bodies are NPMs, established or designated by OPCAT State Parties. OPCAT bodies work in close cooperation with national authorities, identifying gaps in laws and practice to protect the rights and dignity of all persons deprived of their liberty.

Today, 65 States have established or designated their NPM²². Serbia designated NPM by the Law on amending the Law on Ratification of OPCAT, adopted on 28 July 2011. It is prescribed that the Protector of Citizens (Ombudsman) shall operate a NPM function, in cooperation with ombudsmen of autonomous provinces and NGOs.²³

3.3. *National prevention mechanism (NPM)*

The OPCAT prescribes that “each State Party shall maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level”.²⁴

The NPMs shall be granted at a minimum the power: (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention; (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment; (c) To submit proposals and observations concerning existing or draft legislation.²⁵

In order to enable the NPMs to fulfil their mandate, the States Parties to the OPCAT should grant them: (a) Access to all information concerning the number of persons deprived of their liberty in places of detention; (b) Access to all information referring to the treatment of those persons as well as their conditions of detention; (c) Access to all places of detention and their installations and facilities; (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, as well as with any other person who the national preventive mechanism believes may supply relevant information; (e) The liberty to choose the places they want to visit and the persons they want to interview; and (f) The right

20 Association for Prevention of Torture, Optional Protocol to the UN Convention against Torture, Implementation Manual, page 11, 2010, http://www.ap.t.ch/content/files_res/opcat-manual-english-revised2010.pdf, accessed on April 1, 2017.

21 OPCAT, article 1.

22 <http://www.ap.t.ch/en/opcat-database/>, accessed on April 1, 2017

23 Ombudsman of the Republic of Serbia, “Setting-up of National Preventive Mechanism in Serbia, Initial 6 months: Getting ready, no monitoring”, January 2012, http://www.npm.ils.rs/attachments/017_-_%20-%20SERBIA%20NPM%20SETTING-UP.pdf, accessed on April 1, 2017.

24 OPCAT, article 17.

25 *Ibid*, article 19.

to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.²⁶

3.4. Models of NPMs

OPCAT does not define any structure or model for the NPM. It means that it is left to each State to make the decision on profiling its NPM, depending on its own national context and institutional landscape. So far, several models have emerged: 1) Creating a new and specialised body on torture prevention, as in France, Germany and Italy; 2) Designating a National Human Rights Commission, as in Turkey, Uruguay and Maldives, or Ombudsman Institution, as in Spain, Poland and Montenegro; 3) Designating an Ombudsman Institution with formal involvement of civil society organisations, as in Denmark, Slovenia and Ukraine; 4) Designating an Ombudsman Institution with formal involvement of regional Ombudsman Institutions and civil society organisations, as in Serbia; 5) Designating an Ombudsman Institution with formal involvement of specific regional NPM Commissions, as in Austria; and 6) Designating several institutions to serve the purpose of the NPM, as in UK, Brazil and Argentina.²⁷

4. INDEPENDENCE AND AUTHONOMY OF NPM WITHIN WIDE MANDATE INSTITUTIONS

The present document is not focused on mechanisms such as new institutions exclusively established as NPM, nor on models of several institutions, newly established or already existed, which are designated as NPM. Focus is on the most common model of NPM. Namely, in the large number of State parties of the OPCAT, already existing institutions with wide mandate (mostly like ombudsman, commissioners or other human rights institutions) are designated as NPM. It means that those institutions, besides their origin mandate, get an additional mandate, NPM mandate, unfortunately usually without previously reviewing their capacities and compatibility for parallel performing heterogeneous duties.

4.1. Independence of the NPM

Independence is *conditio sine qua non* for the NPM, it is a precondition to efficient carrying out of the missions assigned to it by the OPCAT.

The importance of NPM independence is emphasized in the OPCAT: 1) “the objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies... to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”;²⁸ 2) “each State Party shall maintain, des-

²⁶ *Ibid*, article 20.

²⁷ <http://www.apt.ch/en/list-of-designated-npm-by-regions-and-countries/>, accessed on April 1, 2017.

²⁸ OPCAT, article 1.

ignite or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level”;²⁹ 3) “The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel”;³⁰ 4) “the States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms”;³¹ and 5) “When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights”.³²

Subcommittee Guidelines on national preventive mechanisms³³ provides further clarities regarding the expectations of the Subcommittee in the regard of the independency of NPMs: 1) “the operational independence of the NPM should be guaranteed”;³⁴ 2) “the relevant legislation should specify the period of office of the member/s of the NPM and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the NPM”;³⁵ 3) “the necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol”;³⁶ 4) “the NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol”;³⁷ 5) “the effective operation of the NPM is a continuing obligation. The effectiveness of the NPM should be subject to regular appraisal by both the State and the NPM itself, taking into account the views of the SPT, with a view to its being reinforced and strengthened as and when necessary”;³⁸ 6) “the State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest”;³⁹ and 7) “the State should ensure that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions”.⁴⁰

Additionally, Subcommittee Guidelines on national preventive mechanisms particular attention dedicates to cases where the institutions with wide mandate are designated as NPM: “Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget”.⁴¹

29 *Ibid*, article 17

30 *Ibid*, article 18 (1)

31 *Ibid*, article 18 (3)

32 *Ibid*, article 18 (4)

33 Subcommittee Guidelines on national preventive mechanisms, CAT/OP/12/5, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en, accessed on April 1, 2017.

34 *Ibid*, paragraph 8.

35 *Ibid*, paragraph 9.

36 *Ibid*, paragraph 11.

37 *Ibid*, paragraph 12.

38 *Ibid*, paragraph 15.

39 *Ibid*, paragraph 18.

40 *Ibid*, paragraph 26.

41 *Ibid*, paragraph 32.

Further, special attention is paid on planning NPM activities. It is prescribed that “the NPM should establish a work plan/programme which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty”,⁴² and “the NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment”.⁴³

4.2. *Independence of institutions with wide mandate designated as NPM*

Independence of Ombudsman institutions, Commissioners or other human rights institutions, which are designated as NPM, varies from country to country. Bearing in mind provision of the OPCAT: “when establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights”,⁴⁴ those institutions designated as NPM should act in the accordance with the Paris Principles,⁴⁵ adopted by General Assembly on 20 December 1993. Independence should be prescribed by law, preferably by constitution. Those institutions should be completely separate and independent of executive power. National legislation should prescribe guaranties on their mandate and immunities, as well as their protection against reprisals. Indicator on their independence may be their status as National Human Rights Institution, through their accreditation by UN GANHRI Sub-Committee on Accreditation.⁴⁶

4.3. *Conflict in performing different mandates by institutions designated as NPM*

By virtue of national legislation, Ombudsman institutions, Commissioners or other human rights institutions, which are designated as NPM, commonly have wide, extensive mandate in protection and promotion of human rights. For those institutions prevention of torture presents their additional mandate, which became one of many issues that they are faced with in performing their responsibilities. There is a risk that they would not recognize their NPM role as significant and attractive activity as their role in protection of rights of children, rights or persons with disabilities, rights of LGBTI, or gender equality rights.

As a result of existing institutions wide mandate, the exercising of NPM work unfortunately quite frequently is not planned and determined primarily according to the real needs and in order to achieve NPM mandate. Those activities are com-

42 *Ibid*, paragraph 33.

43 *Ibid*, paragraph 34.

44 OPCAT, article 18, paragraph 4.

45 Principles relating to the Status of National Institutions (The Paris Principles), UN resolution 48/134, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>, accessed on April 1, 2017.

46 GANHRI, Sub-Committee on Accreditation, <http://nhri.ohchr.org/EN/Pages/default.aspx>, accessed on April 1, 2017.

monly strictly balanced and limited in relation to prerogatives and obligations of those institutions in other areas of their mandate. Prevention of torture might be recognized, in some cases, as one of their additional burdensome duties.

Pursuant to the aforesaid, Heads of those institutions (Ombudspersons, Commissioners...) are rarely members of visiting teams to places of detention, which is in the opposite with the main objective of the OPCAT– performing visits to places of detention: “The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”⁴⁷. The result of the foregoing is that Heads of those institutions do not have enough knowledge and experience in torture prevention work. In this regard, they delegate leadership in performing the NPM work to their deputies or other staff members. On the other side, they are retaining for themselves to make substantial decisions. Among other, they are making the *final cut* in finalizing the reports and recommendations, although they were not members of the visiting team in concrete visits to places of detention.

Further, very problematic is fact that most of those existing institutions designated as NPM have prominent reactive approach, mainly based on the handling of complaints in individual cases. Carrying out the mandate of NPM, primarily its preventive approach, is in contrary with their ordinary reactive work. Ordinary, they do not recognize the exclusivity of the NPM preventive approach, and they do not understand that it is not appropriate to mix reactive work on complaints in individual cases with NPM preventive activities. In accordance to that, staff members of those institutions mainly perform mandate of NPM and their duties of handling complaints in individual cases, in parallel.

4.4. *Independence in performing mandate of NPM by wide mandate institutions*

Independency of the institutions designated as NPM depends on various factors: 1) The mandate and powers of the national preventive mechanism should be clearly set out in a constitutional or legislative text;⁴⁸ 2) The operational independence of the national preventive mechanisms should be guaranteed;⁴⁹ 3) The relevant legislation should specify the period of office of the member/s of the national preventive mechanism and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the national preventive mechanism;⁵⁰ 3) The necessary resources should be provided to permit the effective operation of the national preventive mechanism in accordance with the requirements of the Optional Protocol;⁵¹ 4) The national preventive mechanism should enjoy complete financial and operational autonomy when car-

47 OPCAT, article 1.

48 Subcommittee Guidelines on national preventive mechanisms, paragraph 7.

49 *Ibid*, paragraph 8.

50 *Ibid*, paragraph 9.

51 *Ibid*, paragraph 11.

rying out its functions under the Optional Protocol;⁵² 5) The effective operation of the national preventive mechanism is a continuing obligation. The effectiveness of the national preventive mechanism should be subject to regular appraisal by both the State and the national preventive mechanism itself, taking into account the views of the Subcommittee, with a view to its being reinforced and strengthened as and when necessary;⁵³ 6) The independence of the national preventive mechanism should be ensured by not appointing to it members who hold positions which could raise questions of conflicts of interest;⁵⁴ 7) The members of the national preventive mechanism and its staff should enjoy such privileges and immunities as are necessary for the independent exercise of their functions;⁵⁵ 8) The national preventive mechanism should establish a work plan which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty. The national preventive mechanism should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment.⁵⁶

4.5. *Autonomy in performing the mandate of the NPM inside the institution with wide mandate*

As it is stated, the OPCAT does not define any structure or model for the NPM. Most State Parties of OPCAT, respecting their national context and institutional landscape, designated already existing institutions with wide mandate (ombudsman, commissioners or other human rights institutions) as NPM.

Bearing in mind that the mandate of already existing institutions with wide mandate designated as NPM is to perform other functions in addition to those under the OPCAT, it should be established higher level of autonomy in performing NPM functions inside the office of those institutions. There is only one provision in the Subcommittee Guidelines on national preventive mechanisms which is dedicated to such cases: “Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget”.⁵⁷

Considering all the aforementioned, in the aim to establish principles of autonomy in performing the mandate of the NPM within the wide mandate institution, it may be concluded:

1. The separate unit or department inside the wide mandate institution designated as NPM should not perform any activity which is not in line with the torture preventive role prescribed by OPCAT, primarily dealing with

52 *Ibid*, paragraph 12.

53 *Ibid*, paragraph 15.

54 *Ibid*, paragraph 18.

55 *Ibid*, paragraph 26.

56 *Ibid*, paragraph 33.

57 *Ibid*, paragraph 32.

complaints in individual cases. Furthermore, mixture of activities of NPM with activities of mechanisms established by other international instruments (i.e. Convention on the Rights of Persons with Disabilities mechanism) is not in accordance with OPCAT and creates inadmissible confusion of mandates.

2. The NPM separate unit or department inside the wide mandate institution designated as NPM should have its own staff. Number of staff members should be sufficient for successful fulfilment of all activities of the NPM.
3. The staff of separate unit or department inside the wide mandate institution designated as NPM should exclusively perform functions under the OPCAT, and they should not be engaged in performing of any other activities, especially they should not participate in the reactive work – handling complaints in individual cases.
4. Period of office of all staff members of separate unit or department inside the wide mandate institution designated as NPM as well as any grounds for their dismissal should be specified by the relevant legislation. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the NPM.
5. The staff of separate unit or department inside the wide mandate institution designated as NPM should enjoy such privileges and immunities as are necessary for the independent exercise of their functions prescribed by the OPCAT.
6. The separate unit or department inside the wide mandate institution designated as NPM should enjoy financial autonomy in carrying out its functions under the OPCAT. It should be established separate financial plan and budget for fulfillment of the mandate of the NPM. Taking into account that budget of wide mandate institution designated as NPM is unique budget, as well as the existence of legal obstacles to establish additional budget of an institution, solution would be the creation of the separate budget line as a part of the general budget of the wide mandate institution designated as NPM.
7. The separate unit or department inside the wide mandate institution designated as NPM should periodically and annually propose work plans of the NPM to the head of the institution designated as NPM. Work of the NPM should be planned in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention of torture. Work plan should, over time, encompass visits to all, or any, suspected, places of deprivation of liberty, as set out in Articles 4 and 29 of the OPCAT, which are within the jurisdiction of the State.
8. It would not be acceptable if work plans of the NPM proposed to the head of the wide mandate institution designated as NPM would not be adopted by them without reasonable arguments. Proposed working plans for fulfillment of activities of NPM should not be decreased by decision of the

head of the wide mandate institution designated as NPM as a result of their intention to make balance with intensity in performing other activities of institution.

9. Budget for performing mandate of NPM should be planned according to the real needs to achieve mandate of NPM, in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency in order to make an effective contribution to the prevention of torture. Budgetary plans for fulfillment of activities of NPM should not be decreased by decision of the head of the wide mandate institution designated as NPM as a result of their intention to relocate the budgetary funds earmarked for the NPM purpose in order to fulfil other activities of the wide mandate institution designated as NPM.
10. The separate unit or department inside the wide mandate institution designated as NPM should prepare reports following visits to places of detention, as well as periodical and annual reports on the work of NPM. When appropriate, reports should contain recommendations addressed to the relevant authorities. The recommendations of the NPM should take into account the relevant norms of the United Nations in the field of the prevention of torture and other ill-treatment, including the comments and recommendations of the Subcommittee. It would not be acceptable if those reports and recommendations addressed to the authorities, proposed to the head of the wide mandate institution designated as NPM, would not be adopted by them without reasonable arguments. It is preferable that annual reports of NPM are not part of general annual report of the wide mandate institution designated as NPM.

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Vršilac funkcije Zaštitnika građana

NACIONALNI PREVENTIVNI MEHANIZAM ZA PREVENCIJU TORTURE U OKVIRU INSTITUCIJA ŠIROKOG MANDATA – FOKUS NA NEZAVISNOSTI

Zabrana torture je propisana brojnim relevantnim međunarodnim instrumentima, počev od Univerzalne deklaracije o ljudskim pravima. Danas, osnovni dokument predstavlja Konvencija protiv torture, koja daje univerzalno prihvaćenu definiciju torture. Države potpisnice su obavezne da kriminalizuju akt torture na nacionalnim nivoima. Imajući na umu neophodnost prevencije torture, veliki broj država je pristupio Opcionom protokolu uz Konvenciju protiv torture i osnovao ili formirao nacionalne mehanizme za prevenciju torture (NPM) – telo koje vrši posete mestima na kojima se nalaze ili se mogu naći lica lišena slobode. Osnovni problem NPM-a je obezbeđivanje i očuvanje njegove nezavisnosti, a koja mora da bude garantovana od strane države. Poseban izazov predstavlja nezavisnost institucije širokog mandata kojoj je povereno vršenje mandata NPM-a, kao i autonomija u obavljanju

NPM aktivnosti u okviru te institucije. Neophodno je obezbediti punu organizacionu, funkcionalnu i finansijsku anotonomiju posebne organizacione jedinice ili odeljenja u okviru institucije širokog mandata, kako bi NPM mogao da bude efikasan i nezavisan. U ovom članku, detaljno su elaborirani osnovni principi za postizanje nezavisnosti NPM-a u okviru institucija širokog mandata.

Ključne reči: NPM, OPCAT, Nacionalni preventivni mehanizam, Prevencija torture, Ombudsman, NHRI, Nezavisnost, Autonomija.