



**THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS**

MINUTES

of the second 2018 meeting of the OPCAT Civil Consultative Body

Annex: agenda proposed by OCFR (Office of the Commissioner for Fundamental Rights)

Time and date: 9.50-11.30 a.m., December 4, 2018

Venue: Office of the Commissioner for Fundamental Rights, auditorium

Attending:

on behalf of the OCFR:

László Székely
Miklós Garamvári
Elisabeth Sándor-Szalay
Gergely Fliegaufer
Katalin Haraszti
Klaudia Tóthné Kiss
Rita Rostás
Krisztina Izsó
Eszter Gilányi
György Bernát

invitees:

Gergely Farkas (Hungarian Medical Chamber)
Tamás Fekete (Hungarian Bar Association)
Lilla Hárدي (Cordelia Foundation)
Eszter Kirs (Hungarian Helsinki Committee)
Kristóf Környei (Hungarian Civil Liberties Union)
György Purebl (Hungarian Psychiatric Association)
Zsolt Szekeres (Hungarian Helsinki Committee)

Commissioner for Fundamental Rights László Székely welcomed the participants. He briefly summarized the results of his four-year activity as a National Preventive Mechanism (hereinafter referred to as: NPM). He visited as many as 51 places of detention, published 27 reports to the date of this meeting, and several other reports are to be published soon. He also gave account of considerable international activities. He answered the questions in the report on NPM of the UN's Subcommittee on Prevention of Torture (hereinafter referred to as: SPT), which he published too, as a result of which it became possible to file an application for funds specified in Article 26 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: OPCAT). He indicated that the discussion of this issue would be one of the points on the agenda of the meeting. There was a regular exchange of experience with the National Preventive Mechanisms of other states, in 2018, such events were held with the Serbian and Slovenian, as well as the Austrian colleagues. On such occasions, it becomes possible for the NPM to visit places of detention maintained by other states as well. In November, the delegation of the European Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the Council of Europe (hereinafter referred to as: CPT) paid a visit to the Office. The members of the OPCAT National Preventive Mechanism Department also took part in international professional meetings several times.

Head of Department Gergely Fliegauf greeted the participants. He drew attention to that minutes of the meeting is being written, which will be published on the homepage of the Office. He presented the agenda points (*see the annex*), he asked the attendees of the meeting to accept these, and he mentioned that as part of the last point on the agenda, the NPM was expecting proposals for future places of visits from the civil society organizations. The agenda was accepted by the attendees without any changes.

As part of the first point on the agenda, **Gergely Fliegauf** briefly described the activities performed by the NPM and the OPCAT National Preventive Mechanism Department (hereinafter referred to as: the Department) since the last meeting of the Civil Consultative Body (hereinafter referred to as: CCB). He mentioned it as a technical novelty that in the case of those persons who provide information to the NPM, the institutions under review are now informed on the prohibition of reprisal not only orally but also in a written form in the letters of commission. The NPM's homepage has also undergone considerable transformation and its content continues to be regularly updated.

6 visits had been made in 2018 before the meeting. In January, the Nógrád County police detention facilities, in May, an integrated care center in Borsodivánka, in June, Unit III of the Szeged Strict and Medium Regime Prison, in September, the Baranya County police detention facilities, in October, the foster care homes in Vas County were investigated into by the NPM, while in November, the NPM made a follow-up investigation at the Central Hospital of the Prison Service, and one more visit is planned for 2018.

In 2018, by the time of the meeting, as many as five reports on the experience of the visits to these places have been published: the Debrecen and Nagykanizsa reformatories; the police detention facility in the 14th district of Budapest; the Nagymágocs integrated care center; the Fejér County police detention facilities; as well as the follow-up visit to the Central Holding Facility of the Metropolitan Police Headquarters of Budapest (MPHQoB). The report on the Márianosztra Strict and Medium Regime Prison has also been prepared and sent to the organs concerned, and it will soon be published on the NPM's homepage too. He said that the staff of the Department was working on nine more reports, of which three are to be published soon. Now there is an ongoing dialog with the affected organs in relation to four reports, more precisely, in the cases of the of the Fejér County lock-up facility, the Forensic Psychiatric and Mental Institution, the reformatories and the police detention facility of the MPHQoB in the 14th district of Budapest.

Eszter Kirs (Hungarian Helsinki Committee) wanted to find out, related to the dialogs with the authorities, what response had been given to the NPM about the barred isolation cell mentioned in the report on the Debrecen Reformatory, which had been criticized by the MoHC (Ministry of Human Capacities).

Rita Rostás informed the attendees of the meeting that the reformatory had indicated, in its response given to the NPM initiatives, that the barred isolation cell would be rebuilt or removed from use altogether and another room would be transformed for the purposes of isolation. The NPM asked the institution to give them an account on how this was implemented in practice.

Related to the report on the Márianosztra Strict and Medium Regime Prison, **Eszter Kirs** noted that when the Hungarian Helsinki Committee (hereinafter referred to as: HHC) paid a visit there in 2016, they disclosed several serious problems when they returned to the site on several occasions, among others, in relation to the use of the security isolation cell and the inability to identify the members of the operations team. A target inspection was conducted by the Hungarian Prison Service Headquarters (hereinafter referred to as: HPSH) at the Strict and Medium Regime Prison as a result of this report. This is why they were eagerly expecting the description of the 2016 series of events and the current situation that evolved as a result of these events in the NPM report but they found that this perspective had not been reflected in the report.

After studying the report, she missed the conclusions on the practice of using the camera and there was no information either on whether the recommendation on the replacement of the protective gear, e.g. the dust-filtering masks for the detainees, who are employed by HHC, was fulfilled. Although the problems related to the application of the security isolation cell were mentioned in the report, this was done in a

mere few paragraphs and in her opinion, with the wrong emphasis, as the report did not mention the especially grave and concerning practice of physical abuse, which was common here according to their visit experience.

She wanted to know whether it is possible, according to the methodology followed in the NPM visits, to allow that a visiting delegation returns to the site at a later date if they are prevented or restricted from entry on the first occasion. HHC was prevented from conducting their review at this site, this is why they returned there several times in order to apply pressure and to examine the upcoming issues more thoroughly. By this, they managed to achieve that the HPSH conducted a targeted review at the Institution and later, the management was replaced too. She wanted to find out whether the NPM had ever experienced any such incidents at the site and whether it was possible to visit the site again if such prevention should occur.

As a response to the ideas brought up, **Gergely Fliegauf** said that the use of the security isolation cell had been examined in detail by the visiting delegation, he himself personally talked to a detainee who was placed here, on the occasion of the visit. The information obtained during the interviews was recorded by each member of the visiting delegation in their partial reports but besides this, the camera recordings were also analyzed, and photos were also taken, one of which is also attached in the annex to the report. In relation to this, he highlighted that special attention should be paid to that no one is disadvantaged as consequence of the inquiry, this is why such observations should be included in the reports with utmost care. In this specific case, in the photo, the tattoos of the detainee were blacked out so that he could not be clearly identified on the basis of the photo. The functioning of the operations group was not seen by the visiting delegation from up close but they received no detainee's complaint on this either. The functioning of the cameras was also checked by the visiting delegation and the photos that we asked the Institution to provide to us were also analyzed. Related to such analyzing activity, it should also be mentioned that no cameras should be installed in premises that are relevant for the prevention of ill-treatment (e.g. into showers, toilets) with regard to human rights aspects. The visiting delegation has found no issues related to the functioning of the cameras in the Institution but the staff members of the Department will strive to put more emphasis on this question in the reports in the future.

Related to the methodological issue, he said that the visiting delegation did not experience any hindering of its activities in Márianosztra. In his opinion, this, on the one hand, is to be put down to the fact that the prison authorities are aware that it is their obligation to cooperate with the visiting delegations during any inquiry conducted by the Commissioner for Fundamental Rights as a National Preventive Mechanism. On the other hand, he regards it as possible that the attitude of the new director who was appointed after the visit paid by the HHC was different from that of the previous commander.

The NPM also applies the method that if he experiences any hindrance of his activities during the on-site inspection, he returns at a later date. This happened, for instance, in the case of the Cseppekő Children's Home. It is also a part of the practice applied by the NPM that if supplementary information is needed, he will request further data in a letter. This has happened, among others, when the camera recordings were requested.

Deputy Head of Department Katalin Haraszti pointed out that the NPM inquiry was primarily based on the on-site interviews, and those items of information are included in the report that are shared with the visiting delegation by the interviewees. It is the obligation of the places of detention arising from Article 20 of OPCAT that they should provide access to the NPM to all places of detention, as well as the facilities and premises thereof. In the reports, mention is only made of this issue if one of the places of detention does not fulfill this obligation, or fulfills it with delay. The visiting delegation entered the Márianosztra Strict and Medium Regime Prison without any delay, and they could freely move around in its territory.

Responding to the other issue that was brought up, she recalled that in the report, the NPM had made a recommendation to the Prosecutor General on that the practice of using the security isolation cell in the Institution should be investigated into, through the competent prosecutor. Investigating into the lawfulness of the treatment of people at the prisons is the responsibility of the prosecutor's office. The Commissioner for Fundamental Rights cannot remove the competence of the prosecutor's office but he initiated that

such inquiries be conducted, on the basis of the provisions set out in Section 33 (1) of the Ombudsman Act.

Eszter Gilányi indicated that the visiting delegation had taken into account the viewpoints mentioned by Eszter Kirs but if no problems emerged in connection with the issue in question based on the collected information, this was not specifically recorded in the report.

Eszter Kirs thanked for the detailed information and concluded that according to the information shared at this meeting but not included in the report, the series of visits paid by HHB in 2016 was successful, as several issues that they highlighted seems to have been settled. She noted that she was not convinced that the competent prosecutor's office would ensure the efficient enforcement of rights related to the use of the security isolation cell.

Katalin Haraszti emphasized again that it is the prosecutor's office that is obliged to examine the lawfulness of the enforcement of deprivation of liberty. The Commissioner for Fundamental Rights is not in the position to withdraw the competence of the prosecutor's office stipulated by law.

Eszter Kirs remarked that during the inquiries, it would make sense to ask at least the detainees about whether they have the chance to speak to the prosecutor and if so, in what circumstances.

Gergely Fliegau asked whether there were any further comments on the first point on the agenda, then in the lack of such, he went on to discuss the next agenda point, i.e. the application that can be submitted for the funds under Article 26 of OPCAT (hereinafter referred to as: the Funds). He informed the attendees of the meeting that an application can be submitted for the Funds if the SPT pays a visit to a member state and the affected state or National Preventive Mechanism publishes the relevant report. In 2017, SPT reports were prepared on findings in Hungary both with regard to the activities of the state and those of the NPM, which were published by the NPM but not by the state. Applications can be submitted for the implementation of the actions recommended in the SPT report. According to the Guidelines for the Applicants and the Grantees of the Fund, the applications should be submitted by March 1 each year, while implementation can take place in the next calendar year. The 2019 tender has not yet been invited by SPT but this will probably happen before January 1.

The NPM is planning to submit an application in 2019, the project would be implemented in 2020. The NPM wishes to use these funds for covering the costs of a workshop on special interviewing techniques, in which international experts (e.g. the experts of the South-East Europe NPM Network, APT, SPT, OSCE, UNHCR) and the members of CCB would be involved. The event would include an exchange of experience on four topics, namely the special features of conducting interviews with children; with persons with psycho-social disabilities; foreigners and/or the members of national-ethnic minorities; as well as LMBTQ persons. These exchanges of ideas would take place in individual panels, according to the plans, the professional debates would be moderated by a member of a Hungarian or international civil society organization, e.g. the one related to LMBTQ persons would be moderated by the Hungarian Civil Liberties Union (hereinafter referred to as: HCLU) or by HHC, while the one on foreigners, for example, would be moderated by the Cordelia Foundation.

The NPM counts on the participation of the member organizations of CCB. It is a further opportunity for them to provide financial support to organizing the event, taking it into account that a minimum 35% of the project costs should be provided by the applicant as their own contribution besides the application funds. It was in relation to this that he asked the CCB member organizations to respond to the question whether they would like to take part in the project and if so, in what form, by the end of January the latest.

It is a further opportunity for CCB members to independently submit an application to the Fund. The two important criteria for this are that the project should be related to one or more recommendations made by the SPT, and that the tender documents should include a statement of consent by the NPM. This is why the CCB member organizations are also asked to indicate their intention to submit independent applications.

Katalin Haraszti also emphasized that the application would only be acceptable if the project contributed to the implementation of the recommendations of the SPT. The civil society organizations may submit their applications both individually or jointly, in cooperation but the NPM's preliminary approval is also necessary.

György Purebl (Hungarian Psychiatric Association) wanted to find out how many attendees were necessary for organizing such an event.

Katalin Haraszti explained that the 40-50 persons planned by the NPM are the maximum number of participants, as SPT supports practice-oriented and interactive events and it also had to be taken into account in the preliminary planning of the application that the topic should be one a training program on which has not recently been financed by SPT.

Gergely Fliegauf recommended that the attendees of this meeting check the data on the earlier winner applications on the homepage of SPT.

Eszter Kirs thanked for this initiative and said that the HHC would be glad to take part in the workshop but she does not think it is probable that they would submit an independent tender for the Funds as well, in addition to their projects that are running now. She proposed that it be considered that the discussions on the individual subjects take up one day, to allow meaningful work, and also, that in the moderation of the individual panels, the representatives of several expert civil society organizations should take part. In her view, HHC would be able to contribute to the work of the panel discussing the special needs of foreigners or ethnic minorities to a higher extent than to debating the questions concerning LMBTQ persons.

Furthermore, she proposed that it be considered whether each participant should take part in all the panels of the event, as in her experience, this does not contribute to intensive work.

Gergely Fliegauf thinks that everybody should be given the opportunity to take part in the panels that they are interested in.

Lilla Hárdi brought up that the well-defined interview techniques of the Istanbul Protocol could be incorporated in the program.

Kristóf Környei (Hungarian Civil Liberties Union) indicated that TASZ would also be glad to participate in the program but he thinks that they would be able to efficiently join the panel on conducting interviews with children with disabilities rather than the subject related to LMBTQ people. He suggests that Háttér Society should be involved in discussing LMBTQ people.

György Purebl brought it up whether there would be any opportunities for printing the earlier prepared patients' rights information document and for developing a related web page.

Gergely Fliegauf thinks that it is worth examining how this can be linked to the SPT recommendation and if this is possible, he thinks that the NPM would support such an application.

Katalin Haraszti reminded the attendees of the meeting that once the decision is made on that there will be an application, then a very high level of efficiency will be required for submitting it by March 1, 2019. If any ideas emerge, they should be discussed as soon as possible but she does not think that the details should be discussed now but they should be clarified in a meeting specifically held for this purpose.

Gergely Fliegauf proposed that the CCB member organizations that are interested should indicate their intention to take part, as well as their proposals in an e-mail message and these should be discussed at a meeting to be held in January.

Then he reminded the attendees of the meeting that in the last point of the agenda, they can propose places of detention for further visits. He called the attention of the participants to that these pieces of information would not be mentioned in the publicly accessible minutes, with regard to the fact that the NPM pays unannounced visits.

HHC, HCLU and the Hungarian Psychiatric Association proposed some places of detention.

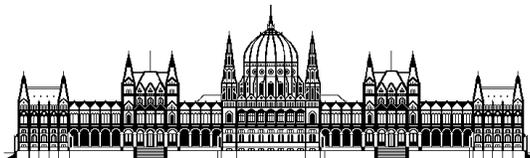
Gergely Fliegauf asked the attendees to indicate any further proposals via e-mail.

László Székely thanked the attendees for their participation, then closed the meeting.

Budapest, December 10, 2018

Prepared by: Eszter Gilányi

Approved by: László Székely



**THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS**

Case No.: /2018
Official in charge: Dr. Gergely Fliegauf

**Agenda proposed for the second meeting of 2018 of the Civil Consultative Body working with the
OPCAT National Preventive Mechanism**

(Budapest, December 4, 2018)

- 09:30 **Registration**
- 09:50 **Welcome speech given by the Commissioner for Fundamental Rights László Székely**
- 09:55 **Acceptance of the agenda**
- 10:00 **Brief report on the activities performed by the OPCAT National Preventive Mechanism since the last CCB meeting**
- 10:15 **Presentation of the possibility to apply for the OPCAT Special Fund and the NPM's application plan**
- 11:10 **Miscellaneous**
- 11:30 **Summary given by the Commissioner for Fundamental Rights László Székely, closing of the meeting**