

MINUTES

of the 2019 meeting of the Civil Consultative Body attached to the OPCAT National Preventive Mechanism

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

Date and time: 3 December 2019, 10:00–11:30

Venue: Office of the Commissioner for Fundamental Rights, meeting room

Participants:

representing the OCFR:

Dr. Ákos Kozma
Dr. Réka Varga
Dr. Gábor Schmidt
Dr. Andrea Szalai
Dr. Gergely Fliegauf
Dr. Katalin Haraszti
Dr. Krisztina Izsó
Dr. Eszter Gilányi

invitees:

Dr. Lilla Hárدي (Cordelia Foundation)
Dr. Erzsébet Kadlót (Hungarian Bar Association)
Dr. András Kristóf Kádár (Hungarian Helsinki
Committee)
Dr. Laura Lovász (Hungarian Civil Liberties Union)
Dr. György Purebl (Hungarian Psychiatric
Association)

Commissioner for Fundamental Rights Dr. Ákos Kozma opened the meeting of the Civil Consultative Body (*hereinafter referred to as: CCB*) and greeted its participants. He said he was pleased that the cooperation between the Office of the Commissioner for Fundamental Rights (*hereinafter referred to as: Office*) and the members of the CCB had been so close and unbroken in this important field.

He took office on 26 September 2019, but the function of the National Preventive Mechanism (*hereinafter referred to as: NPM*) had been prioritized by him from the very first moment of this term. He insisted that the CCB's first meeting after his accession to office would be held this year.

He said that as Vice-President of the Independent Police Complaints' Board, he had previously dealt with fundamental rights issues concerning the operation of police services.

He introduced the new Secretary General of the Office, dr. Réka Varga.

He underlined his commitment towards the function of the NPM, and his ambition to conduct more visits, issue reports on visits as soon as possible, and achieve accountable results in the field of preventing ill-treatments.

Dr. Gergely Fliegauf, Head of OPCAT National Preventive Mechanism Department (*hereinafter referred to as: Department*) drew the attention of the participants to the fact that a audio recording was being made and minutes were being prepared about the meeting. He asked the representatives of the members of the CCB to adopt the tentative agenda.

The participants adopted the tentative agenda with no objection or abstention.

Dr. Gergely Fliegauf presented the activities of the NPM carried out since the CCB's last meeting (which was held on 4 December 2018). He said that the NPM had conducted 45 visits since its establishment, which had involved inspecting 60 places of detention. Meanwhile, the NPM had published its comprehensive report on its activities carried out in 2018. He mentioned that his colleagues had participated in two meetings of the South-East Europe National Preventive Mechanism Network, the festive event of the European Committee for the Prevention of Torture held on the occasion of its 30th anniversary and the relating international conferences, and the workshops of the international project on

the rights of suspects and accused persons carried out by the Hungarian Helsinki Committee and its international partners.

The NPM has conducted six visits in nine places of detention since the last meeting of the CCB. These include a visit to the Assisted Living Centre for the Elderly in Visegrád; to the Bács-Kiskun County Remand Prison in Kecskemét; to one of the facilities of the Central Transdanubian National Prison in Baracska; to the EMMI's (Ministry of Human Capacities) Special Children's Home Center, Primary School and Trade School in Esztergom; to the custodial premises of four police departments in Békés County; and it also paid a follow-up visit to the Integrated Care Center of Bács-Kiskun County in Kecskemét.

Since the last meeting of the CCB, the NPM has published six reports about its observations made on the visits to the following places: the South-Borsod Joint Social Institution, the Unit 1 of the Budapest Remand Prison where the delegation of the UN Subcommittee on Prevention of Torture was also present, the Psychiatric Department of the Tolna County Balassa János Hospital; police lockup facilities and police detention facilities in Nógrád County; the Chronic Aftercare Department of Unit III of the Szeged Strict and Medium Regime Prison, and the Visegrád Assisted Living Centre for the Elderly operated by the Visegrád Aranykor Foundation. The NPM is currently drafting nine more reports.

The NPM pursued dialogues with the relevant authorities on its recommendations made in its previously published reports. The Head of Department highlighted the consultations on the institutional reorganisation connecting to the adaptation leave in the case of persons under involuntary treatment; the right to notify third parties, the practice of using coercive measures, the right to appropriate information, and the supply of medicines in the case of police detention; the nutrition of detainees, the assessment of suitability for detainees' individual placement, and the treatment of sex offenders with respect to prison services; and furthermore, the validity of health workers' license of operation and the provision of direct contact to a patients' rights representative relating to persons placed in psychiatric wards.

Finally, he informed the participants that in 2019, the NPM had submitted its application for a grant from the special fund set up under Article 26 of the OPCAT. The NPM wishes to use this amount of grant for covering the costs of a workshop which deals with interview techniques, focusing on four special subjects: children, people with psycho-social disabilities, foreigners, and LGBTQ people. The NPM would like to involve the members of the South-East Europe National Preventive Mechanism Network, the Czech NPM and the Slovakian ombudsman institute, and the experts of the CPT, the APT, the SPT, the OSCE, the UNHCR, as well as the member of the CCB into the realisation of this workshop. The event will expectedly take place in October 2020.

Within the framework of the second agenda point, **Dr. Gergely Fliegauf** called upon the representatives of the members of the CCB to make proposals on the places of detention to be visited in 2020, as well as the themes of the inspections. He informed them that they could send their proposals to the NPM also via e-mail, and also briefed them about the fact that the proposed places – with respect to the unannounced nature of the visits paid by the NPM – could not be mentioned in the publicly accessible minutes.

Dr. Erzsébet Kadlót (Hungarian Bar Association) called attention to the fact that if a court imposes the prohibition to exercise professional activity on a teacher, such punishment is not recorded and its execution is not supervised by any organs. If a perpetrator is sentenced to a suspended imprisonment, measures should be undertaken on the basis of sectoral legislation, but this function is not delegated to any government agencies or to the Educational Authority, and furthermore, the courts are not allowed to inform the schools about these punishments according to the laws. She asked the Commissioner for Fundamental Rights to deal with this issue, either in his capacity as the National Preventive Mechanism or acting in his general competence to protect fundamental rights.

Deputy Head of Department **Dr. Katalin Haraszti** pointed out that the functioning of the judiciary – as one of the branches of power – could not be examined by the Commissioner for Fundamental Rights, but the obligation to keep registers fell within the competence of bodies belonging to the executive power,

therefore, it should be considered whether the Commissioner should examine this issue within the framework of his general competence to protect fundamental rights. She also raised that since the lawfulness of the execution of penal enforcement was supervised by the prosecution services, the Hungarian Bar Association could also turn to these services.

Dr. András Kristóf Kádár (Hungarian Helsinki Committee) reminded the colleagues of the NPM that it had recently been asked – with regard to a number of specific cases (for example in connection with handcuffing a person to an object as an informal sanction – that the NPM carry out inquiries within its competence to prevent torture. The Hungarian Helsinki Committee received the answer of the Office of the Commissioner for Fundamental Rights, explaining that as the suspicion of a criminal offence and a disciplinary offence had been raised, the Office forwarded the complaint to the prosecution services and the Hungarian Prison Service Headquarters. In his opinion, if the NPM identifies a systematic problem, it can carry out an investigation even if it is possible that the criminal responsibility of individuals arises in that case. He also pointed out that the Commissioner had the possibility to examine this issue by launching a proceeding ex officio within its general competence to protect fundamental rights.

Regarding the annual report on the activities of the NPM, he was glad to acknowledge that the NPM had also examined the infrastructure of visitation (for example visit rooms separated by plexiglas) in places of detention. The access of persons detained in police or prison services to their own (medical or detention-related) documentation, the circumstances of transport/countrywide transport, and the safeguards (such as the access to lawyer, the possibility of independent medical examination, or the rules of notifying relatives), and furthermore, the treatment of persons staying in immigration or asylum-related detention or transit zones, as well as their access to a lawyer were proposed by him as further aspects to be examined. It should also be considered that it should be followed up whether decisions made in cases of transfer from a special children's home centre to a general home centre are professionally justified or they only serve the clearing of institutions by administrative means. Regarding the procedures of recompense for poor housing conditions, he drew attention to the fact that the courts did not consider the Central Hospital of the Prison Service to be a place of detention justifying a claim for recompense.

Dr. Laura Lovász (Hungarian Civil Liberties Union) proposed that a number of specific places of detention be visited on the basis of complaints submitted to their organisation.

Dr. György Purebl (Hungarian Psychiatric Association) proposed that the minimum requirements on patient safety in psychiatric wards (for example the adequate number of staff), as well as the practice of courts on issuing a decision regarding the mandatory treatment of those psychiatric patients who had been under emergency treatment should be examined.

Dr. Lilla Hárدي (Cordelia Foundation) indicated that also her organisation considered the examination of transit zones justified, with special regard to the mental hygiene support available to people staying in such areas.

Dr. Ákos Kozma thanked for the information. He indicated that he had to leave the meeting due to his obligation to attend another event. He promised that the colleagues of the Office present at the meeting would answer the questions raised. He invited the members of the CCB that they indicate their eventual comments and proposals towards his colleagues even in between the meetings of the CCB.

In response to the remarks of the representative of the Hungarian Helsinki Committee regarding the sanction of handcuffing a person to an object, **Dr. Katalin Haraszti** elaborated that the NPM had encountered this problem during the visit of the Budapest Remand Prison. The prison service basically does not deny these cases, but it refers to the fact that this sanction is applied in emergency situations, for example when a suicidal detainee has to be restrained. The NPM turned to the prosecution services in a specific case which established the violation of law. The problem comes with the fact that the justification for using this measure needs to be examined on a case-by-case basis, but this exceeds the competence of the NPM which conducts visits for preventive purposes.

Regarding the circumstances of visitation, she said that in this field the NPM considered the recommendation of the Committee of Ministers of the Council of Europe concerning the rights of children with imprisoned parents to be followed, as well. The NPM endeavours to make its recommendations by relying on international rules, including “soft law”.

Relating to the right to defence, she noted that according to the statistics, the investigative authorities appointed a defence lawyer in a large number of cases in Hungary. What causes problems in practice is that defence lawyers meet clients in the court rooms for the first time, and they are not present in the investigative stage of the proceedings, during the police questioning, when such representation would be crucial from the aspect of the prevention of ill-treatment and the prohibition of torture. This is a familiar problem, and also the former ombudsmen dealt with this question, not only with regard to criminal proceedings, but for example also in connection with unaccompanied minors.

In the question of the independent medical examination, the NPM initiated that the detainees were not to be examined by the police doctor, but there was great resistance in this field. The NPM also took actions with regard to the notification of third parties, but in this issue – where the law was unclear – the modifications were moving in the direction of tightening the regulations.

Regarding the visits of immigration detention sites, the NPM examines the register in order to estimate the number of people affected by this issue. Relating to the transit zones operating in the land areas of the border of the country, she noted that according to the judgment of the Grand Chamber of the Strasbourg Court, these zones were not considered to be a place of detention under Article 5 of the European Convention on Human Rights. The experience of the inquiries conducted by the Office also shows that when the execution of removal becomes realistic, the people staying in the transit zones leave the country in the direction of Serbia on their own request.

In her view, the NPM has no competence regarding the question raised in connection with the special children’s home centre. The ombudsman cannot influence the judicial decisions made in cases of recompense.

She said that four of the reports made by the NPM this year had already been published, and the NPM intended to make four more reports available to the public in the foreseeable future. Within the framework of disseminating NPM-activities, one study written by the legal expert of the Department Krisztina Izsó has already been published, and two other articles written by Katalin Haraszti are yet to be published in prestigious professional journals.

Dr. Gergely Fliegauf indicated that it would have been of great help from a technical point of view if the participants of the meeting had sent their orally presented proposals to the staff members of the NPM also by e-mail. The participants made a promise to do so.

Dr. Erzsébet Kadlót (Hungarian Bar Association) announced that their proposals on specific places of detention for future visits would be sent in writing. As a systematic problem, she sought to draw the attention of the NPM to the shortage of staff in penitentiary institutions. She also experienced this issue in many institutions in her work.

Dr. Katalin Haraszti noted that the issue on the working conditions of staff members – as a factor which has a substantial impact on the treatment of detainees – is treated by the NPM as a high priority.

Dr. András Kristóf Kádár (Hungarian Helsinki Committee) agreed that the NPM should have presented this issue in its reports, as it had been done so far.

With regard to the method of examining the handcuffing of a person to an object, he proposed that the visiting group should study the documents of cases that are coming to its knowledge while visiting a place of detention. Regarding the question of detainees’ right to have contact with the outside world, he brought the judgment delivered by the European Court of Human Rights in the case of *Moiseyev v. Russia* to the attention of the NPM. As regards the transit zones, he drew attention to the fact that the shortness of

time spent by the complainants in these zones had been an important argument in the judgment of the Strasbourg Court. As regards the time spent in these zones, as well as the treatment therein, the situation has changed significantly since the case which led to the judgment. On the issue of recompense, he raised that the Commissioner for Fundamental Rights could exercise his right to propose legislation in order to ensure that also the wards of the Central Hospital of the Prison Service fall clearly within the scope of the relevant legal provisions.

Secretary General Dr. Réka Varga thanked for the participation and the constructive proposals of the member organisations of the CCB, also in the name of the Commissioner for Fundamental Rights. She said that they highly appreciated this opportunity, and they assured the participants that also the Department and the Office would seriously take into consideration everything which had been said during the meeting. She highlighted that the Department was very important from the perspective of the Office, it performed important tasks, and everybody would do their best to ensure that the Department could carry out these tasks as effectively as possible. She informed the participants that the NPM intended to hold two CCB-meetings annually again from next year.

After this, she closed the meeting.

Budapest, 3 December 2019

Drafted by: Eszter Gilányi

Approved by: Dr. Ákos Kozma

**Tentative agenda of the 2019 meeting of the Civil Consultative Body attached to the OPCAT
National Preventive Mechanism**

(Budapest, 3 December 2019) 10:00–11:30

- 10:00 **Registration**
- 10:15 **Welcoming remarks by Commissioner for Fundamental Rights Dr. Ákos Kozma**
- 10:30 **Adoption of the agenda**
- 10:35 **Brief report on the activities performed by the OPCAT National Preventive Mechanism Department since the CCB's last meeting**
- 10:55 **The CCB-members' proposals on the places of detention to be visited and themes of the inspections**
- 11:15 **Concluding remarks by Commissioner for Fundamental Rights Dr. Ákos Kozma, closing of the meeting**