



People's Advocate

No. 2902/3 March 2015

**Non-governmental Organisation
European Association for the Defence
of Human Rights - AEPADO**

No. 10/3 March 2015

PROTOCOL

No. 4 from 3 March 2015

Regarding the collaboration aiming to fulfil the responsibilities provided by Art. 29⁴ para. (4) and Art. 29⁷ para. (1)-(3) from the Law No. 35/1997 for the organisation and functioning of the People's Advocate institution, republished, as amended and supplemented, by Government Ordinance No. 48/2014, approved by Law No. 181/2014

Signed between

The People's Advocate institution, with the headquarters located in the municipality of Bucharest, Eugeniu Carada Street, No. 3, sector 3, represented by the Ombudsman mr. **Victor Ciorbea**, as **Authority**.

And

The Non-governmental Organisation - European Association for the Defence of Human Rights – (AEPADO), with the registered office in Bucharest, Pantelimon Street, No. 225, building No. 66, entrance 6, apartment No. 236, sector 2, represented by its President, **Cătălin Ungurașu**, as **Partner**.

Having regard to the provisions of art. 29⁴ para. (4) and art. 29⁷ para. (1)-(3) from the Law No. 35/1997 for the organisation and functioning of the People's Advocate institution, republished, as amended and supplemented by the Government Ordinance No. 48/2014, approved by the Law No. 181/2014, the Parties have signed the present Protocol, hereinafter called ***The Protocol***.

Article 1

The object of the Protocol

The object of the Protocol consists in regulating the collaboration, between the *Authority* and the Non-governmental Organisation (NGO), hereinafter called *Partner*, for the purpose of implementing the provisions of art. 29⁴ para. (4) and art. 29⁷ para. (1)-(3) from the Law No. 35/1997 for the organisation and functioning of the People's Advocate institution, republished, as amended and supplemented by the Government Ordinance No. 48/2014, approved by the Law No. 181/2014.

According to the aforementioned legal provisions, in the activity on the prevention of torture in places of detention, shall participate the representatives of the Non-governmental Organisations active in the field of human rights protection, selected by the Ombudsman, on the base of their activity.

According to the provisions of art. 29³ para. (1) and art. 29⁷ para. (1)-(3) from the Law No. 35/1997, republished, as amended and supplemented, the *Scope for the prevention of torture in places of detention regularly monitors the treatment of persons in detention in order to strengthen their protection against torture and other cruel, inhuman or degrading treatments or punishments and to ensure the indiscriminate exercise of their fundamental rights and freedoms.* The visiting teams carry out scheduled or unannounced visits to the places of detention falling under the law. The visiting team is made up of at least one physician, depending on the specialty needed, and one representative of the NGOs referred to in art. 29⁴ para (4). The visits are carried out ex-officio, on the basis of an annual visitation plan, proposed by the Deputy Ombudsman for the Scope for the prevention of torture in places of detention and approved by the Ombudsman, or unannounced, on the basis of a notification from any person or after finding out, by any means, about the existence of a situation of torture or other cruel, inhuman or degrading treatments or punishments in a place of detention.

In the fulfilment of the duties specific to the Scope for the prevention of torture in places of detention, the members of the visiting teams are

independent, according to art. 29⁵ para. (3) from the Law No. 35/1997, amended and supplemented.

For the fulfilment of the aforementioned legal provisions, the representatives designated by the *Partner* shall be part of the teams visiting the places of detention, as defined by art 29², para. 1-3 from the Law No. 35/1997 for the organisation and functioning of the People's Advocate institution, republished, as amended and supplemented, and shall participate to the visits organised and approved by the Ombudsman.

Article 2 General Principles

In the course of the collaboration between Parties, and for the purpose of applying the present Protocol, the following principles shall apply:

- 1) The relation between Parties is a collaboration relationship;
- 2) Each of the Parties keeps its decisional, functional and organisational independence;
- 3) The provisions of the present Protocol apply exclusively to the collaboration relations between the Parties, as independent and autonomous entities, according to the law, the Parties acting in good faith when using the data and information exchanged between them, under the Protocol;
- 4) Each of the Parties shall be held accountable exclusively for the fulfilment of the legal duties or the duties deriving from the present protocol;
- 5) The representatives designated by the *Partner* shall carry out their activity in conditions of impartiality and independence, within the limits of the objectives set by the *Authority* for the visits and in agreement with the members of the visiting team. If the situation requires it, during the visit, the visiting team may add additional objectives with the consent of its members;
- 6) None of the provisions of the present Protocol will impose to any of the Parties to act outside the Law.

Article 3 Collaboration

- 1) For carrying out its duties provided by the Law No. 35/1997 for the organisation and functioning of the People's Advocate institution,

republished, as amended and supplemented, the *Authority* shall request from the *Partner* the designation of representatives who shall be part of the visiting teams, according to the type of activity carried out by the *Partner*.

- 2) After the conclusion of the present Protocol, the *Partner* shall inform the *Authority*, within 30 days, of the names of the persons designated to participate in the activity carried out by the *Partner* for the prevention of torture in places of detention.
- 3) In exceptional situations (the repeated failure of the designated representatives to attend the visits, unfulfillment of their duties as members of the visiting teams), the *Authority* may send a written request to the *Partner* for the replacement of the external collaborators concerned. The *Partner* shall solve the request within 15 days after it being communicated to them and inform the *Authority* of the persons designated as representatives.

Article 4

The obligations of the *Authority*

- 1) The *Authority* shall ensure the independence of the *Partner's* representatives participating as members of the teams designated to carry out visits to the places of detention and acting within the limits of the objectives set by the *Authority* for the visits.
- 2) The *Authority* shall take from the representatives designated by the *Partner* statements of confidentiality as well as statements concerning the protection of personal data of the interviewed persons and of other persons whose personal data may come to their knowledge during the visits.
- 3) The *Authority* shall inform, in due time, the representative of the *Partner* who is about to be part of a visiting team about the place of detention where the visit will be carried out and shall provide him with the necessary data regarding the objectives of the visit.
- 4) After the completion of the visits to the places of detention, the *Authority* shall cooperate with the representatives designated by the *Partner* in order to prepare, as soon as possible, the Visit Report or the Preliminary Report, as the case may be.
- 5) The *Authority* shall mention, in the visit reports and public documents on the prevention of torture in places of detention, the points of view of the

Partner when these differ from the points of view of the People's Advocate.

- 6) In the documents drawn up by the *Authority*, regarding the activity on the prevention of torture in places of detention, the *Partner's* contribution shall be mentioned.
- 7) The *Authority* shall organise communication and information sessions with the representatives designated by the *Partner* with the aim of enabling them to fulfil their legal duties.
- 8) The *Authority* shall organise, annually, a meeting with all the *Partners*, during which will inform them of the work done by their representatives, the results of their work and will make proposals for improving the collaboration.
- 9) The Parties shall inform each other about the practice of National and European Courts of Law on the prevention of torture and other cruel, inhuman or degrading treatments or punishments in places of detention.
- 10) The *Authority* shall inform the *Partner* about the inappropriate behaviour and the unfulfillment of duties by the representatives designated to be part of the visiting teams.

Article 5

The obligations of the *Partner*

- 1) The *Partner* shall collaborate with the *Authority* by designating the representatives that will be part of the visiting teams to the places of detention (for minors, foreigners, asylum seekers, detainees, persons with disabilities, persons with mental illness).
- 2) The *Partner* shall designate its representatives according to the nature of the activity carried out by the *Authority*, in the places of detention, and will bring to its knowledge their names and contact details, the places of detention where the visits will be carried out from among those provided by art. 29² para. (1)-(3) from the Law No. 35/1997 with the subsequent amendments and supplements, as well as the geographical area that they are going to cover.
- 2) The representatives designated by the *Partner* to participate to the visits shall observe the provisions of the Law 35/1997, amended and supplemented, and the Regulation for Organisation and Functioning of the People's Advocate institution, as well as the decisional and organisational independence of the People's Advocate institution.

- 3) The representatives designated by the *Partner* to participate to the visits, shall meet the objectives established by the People's Advocate and, along with the other members of the visiting team, shall have confidential meetings with persons deprived of their liberty within the visited institution. The members of the NGO's who are part of the visiting teams shall act only during the visits organised and conducted by the People's Advocate institution.
- 4) The *Partner* may not act in the name of the People's Advocate institution – the Scope for the prevention of torture in places of detention. Otherwise, the cooperation will cease.
- 5) The *Partner* may visit places of detention, in its own name, and may publish separate/independent reports, without mentioning the name of the People's Advocate institution. To avoid situations of incompatibility, the *Partner* shall inform the *Authority* of the places of detention visited in its own name, so that its representatives be assigned to visiting teams of the People's Advocate institution conducting visits to other places of detention than those visited by the *Partner* in its own name.
- 6) The *Partner* assumes full responsibility, in case it violates the relevant legal provisions on the incompatibility of the designated representatives.
- 7) The representatives designated by the *Partner* to be part of the visiting team are obliged to participate to the drawing up of the Visit Report or, as the case may be, the Preliminary Emergency Report at the premises of the People's Advocate institution.
- 8) The *Partner* shall inform its representatives about their obligation to maintain the confidentiality of the personal data that may come to their knowledge during their participation to the actions undertaken by the Scope for the prevention of torture in places of detention in the fulfilment of its duties, to observe the legal provisions on the protection of the personal data of the interviewed persons and of other persons whose personal data came to their knowledge during the visits and to fulfil their professional and disciplinary obligations; otherwise, the cooperation will cease. The *Partner* and the persons designated to be part of the visiting teams shall not use the information resulting from the visits conducted to the places of detention before the Visit Report or, as the case may be, the Preliminary Emergency Report become public and are posted on the website of the visited institution, the hierarchically superior institution, the local or central public administration authority that issued the functioning authorization as well as the People's Advocate institution.
- 9) The *Partner* shall transmit to the *Authority* synthesis documents drawn up following its monitoring activity, based on which the *Authority* shall

prepare the Annual visitation plans and which may be considered for future proposals on legislative amendments.

- 10) The *Partner* shall invite the representatives of the People's Advocate to meetings organised or hosted by it, during which matters of common interest shall be debated.
- 11) The *Partner* shall indicate, in its reports and publicly, its role and activity in fulfilling the duties of the Scope for the prevention of torture in places of detention.
- 12) The *Partner* shall inform the *Authority* about the inappropriate behaviour and the unfulfillment of duties by the representatives designated by the *Authority* to be part of the visiting teams.

Article 6 Expenses

- 1) The *Partner* shall bear the expenses of the representatives designated to carry out the activities provided by the present Protocol.
- 2) Participating as a member of the visiting teams to the places of detention does not represent service provision for the People's Advocate and is not remunerated.
- 3) Both the *Authority* and the *Partner* shall put joint efforts into identifying and attracting funds for covering the *Partner's* financial expenses resulted from its participation to the activity on the prevention of torture carried out by the visiting teams (for example, transport and accommodation costs).

Article 7 Final provisions

- 1) The present protocol is signed for a period of one year.
- 2) The protocol ceases:
 - a) on the expiry of the validity period;
 - b) by mutual agreement of the Parties;
 - c) in case of denunciation by one of the Parties, when the other Party repeatedly fails to fulfil its obligations assumed by common agreement.
- 3) The problems arising from the implementation of the present Protocol shall be settled by the signatory Parties.

- 4) The present Protocol shall enter into force upon signature and may be amended and its period of validity extended by the agreement of the Parties.

The Protocol was concluded today 3 March 2015, in Bucharest, in 2 original copies, one for each Party.

People's Advocate Institution
People's Advocate,
Victor Ciorbea

**European Association for the Defence
of Human Rights – AEPADO**
President,
Cătălin Ungurașu