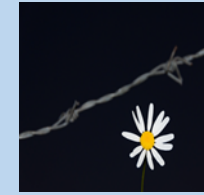




AVOCATUL POPORULUI



*The field for
the prevention of torture - NPM*

Ombudsman

***The field for the prevention of torture
in places of detention***

INTERNATIONAL REGULATIONS

Universal Declaration of Human Rights

Art. 5-No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

Convention against torture and other cruel, inhuman or degrading treatment or punishment

Art. 1 pct. 1- For the purposes of this Convention, the term 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.

Optional protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment ratified by Romania by Law no. 109/2009

Art. 19- National preventive mechanisms will have at least the following duties:

a) regularly examine of the treatment of persons deprived of their liberty in places of detention in order to strengthen, if necessary, their protection against torture and inhuman or degrading treatment or punishment;

b) make recommendations to the competent authorities in order to improve treatment and conditions of persons deprived of their liberty

and prevent torture and inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

c) formulate proposals and comments on existing laws or draft legislation.

INTERNAL REGULATIONS

Constitution of Romania

Art. 22 para. (2) – No one shall be subjected to torture or to any kind of inhuman or degrading punishment or treatment.

Criminal code

Art. 281: Submission to ill treatment

(1) Submission of an individual to serve a sentence, security or education measure other ways than as provided by the legal provisions shall be punishable by no less 6 months and no more than 3 years of imprisonment and the deprivation of the right to hold a public office.

(2) Submission of an individual who is in custody, detained or serving a custodial security or educational measure, to degrading or inhuman treatments shall be punishable by no less than 1 year and no more than 5 years of imprisonment and the deprivation of the right to hold a public office.

Art. 282: TORTURE

(1) The act of a public servant holding an office that involves the exercise of state authority or of other person acting upon the instigation of or with the acquiescence thereof to cause an individual pain or intense suffering, either physically or mentally:

a) to obtain information or statements from that person or from a third-party;

b) to punish them for an act they or a third party have committed or are suspected of having committed;

c) to intimidate or pressure them or a third-party;

d) for a reason based on any form of discrimination, shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.

(2) If the act set out in para. (1) has resulted in bodily harm, the penalty shall consist of no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(3) Torture that resulted in the victim's death shall be punishable by no less than 15 and no more than 25 years of imprisonment and a ban on the exercise of certain rights.

(4) The attempt to commit the offenses set out in par. (1) shall be punishable.

(5) No exceptional circumstance, regardless of its nature or of whether it involves a state of war or war threats, internal political instability or any other exceptional state, can be raised to justify torture. The order of a superior or of a public authority cannot be called upon to justify torture either.

(6) The pain or suffering that result exclusively from legal penalties and which are inherent thereto or caused by them do not constitute torture.

Law. 35/1997 on the organisation and functioning of the Ombudsman, republished

Article 2, paragraph (2) – The Ombudsman Institution, through the **Field for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Places of Detention**, hereinafter referred to as the Field for the Prevention of Torture in Places of Detention, fulfils the specific duties of the National Preventive Mechanism against torture in places of detention within the meaning of the Optional Protocol adopted in New York on 18 December 2002 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in New York on 10 December 1984, ratified by the Law no. 109/2009, hereinafter referred to as Optional Protocol.

Art. 35- The Field for preventing torture in places of detention regularly monitors the treatment of persons in detention **in order to strengthen their protection against torture and other cruel and inhuman or degrading treatment and to exercise indiscriminately their fundamental rights and freedoms**, by:

a) visiting, announced or unannounced, the places of detention in order to verify the conditions of detention and treatment of persons deprived of liberty;

b) formulating recommendations to the managements of visited places of detention following the visits;

c) formulating proposals for amending and supplementing the relevant legislation or comments on the existing legislative initiatives in the field, under art. 27;

d) drafting the project of the component part on preventing torture of the annual activity report of the Ombudsman;

e) formulating proposals and comments on the development, modification and completion of public policies and strategies in the field of prevention of torture and inhuman or degrading treatment or punishment under the law;

f) liaising with the Subcommittee on Prevention;

g) analysing, implementing, monitoring and evaluating, under the direction of the Ombudsman, international programs with technical and financial assistance for achieving the goal of the Field for the Prevention of torture in places of detention;

h) coordinating the organization of awareness, education and training campaigns in order to prevent torture and punishment or cruel, inhuman or degrading treatment;

i) performing any other duties established by the Ombudsman, within the law.

What are places of detention?

Place of detention means any place where persons are deprived of their liberty by a decision of an authority, at its request or with its consent or acquiescence.

Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting that

he cannot leave at will by decision of any judicial, administrative or other authority.

Which are the places of detention?

The following are considered places of detention and, where appropriate, places where the Ombudsman exercises its duties on the prevention of torture:

- a) prisons, including hospital prisons;
- b) educational centres, detention centres;
- c) detention and preventive arrest centres;
- d) residential services for minors who have committed crimes and are not criminally liable;
- e) psychiatric and safety hospitals;
- f) transit centres;
- g) accommodation centres for aliens taken into public custody subordinated and managed by the General Inspectorate for Immigration;
- h) special reception and accommodation centres for asylum seekers subordinated to the General Inspectorate for Immigration, having the legal regime of transit area;
- i) centres which grant assistance services for drug users in closed regime;
- j) any other place that fulfils the requirements of art. 29² par. (1) or part of the health system or the social assistance system.

Organizing the prevention of torture and cruel, inhuman and degrading treatment in places of detention

The Field for prevention of torture is organised in:

► **Central structure, which also include Bucharest zonal centre (which include the counties: Buzău, Călărași, Constanța, Dâmbovița, Ialomița, Ilfov, Giurgiu, Prahova, Teleorman și Tulcea) and**

► **Territorial structure consisting of 3 regional centres:**

- **Alba zonal centre, with the counties: Alba, Bihor, Bistrița-Năsăud, Brașov, Cluj, Covasna, Harghita, Hunedoara, Maramureș, Mureș, Sălaj, Satu-Mare and Sibiu;**

► **Territorial structure consisting of 3 regional centres:**

- **Alba zonal centre, with the counties: Alba, Bihor, Bistrița-Năsăud, Brașov, Cluj, Covasna, Harghita, Hunedoara, Maramureș, Mureș, Sălaj, Satu-Mare and Sibiu;**

- **Bacău zonal centre, with the counties: Bacău, Botoșani, Brăila, Galați, Iași, Neamț, Suceava, Vaslui and Vrancea;**

- **Craiova zonal centre, with the counties: Arad, Argeș, Caraș-Severin, Dolj, Gorj, Mehedinți, Olt, Timiș and Vâlcea.**

Carrying out visits in places of detention

According to Law no. 35/1997, republished, the visits are carried out on the basis of an Annual Visitation Plan, proposed by the Deputy Ombudsman – Head of the Field for Prevention of Torture in Places of Detention and approved by the Ombudsman, **announced or unannounced.**

The administration of the places of detention is obliged to ensure the access of the Ombudsman, the Deputy Ombudsman – Head of the Field for Prevention of Torture in Places of Detention, as well as the representatives of the institution, without any restriction, in all places of detention subject to monitoring, **for the purpose of carrying out visits.**

The institutions visited are obliged to provide the representatives of the visiting team, under the law, before, during or after the visit, any documents or information that are available to them or they can acquire, requested by them in order to fulfil their specific tasks on National Preventive Mechanism in places of detention.

Visiting teams, composed of representatives of the Ombudsman institution, at least one doctor and one representative of the NGOs, as well as psychologists, social workers or sociologists, perform announced or unannounced visits.

To fulfil their legal duties, the members of the visiting team may **also meet in private** with any person deprived of liberty within the institution visited.

Visiting team members may request meetings with any other person which they consider that can provide relevant information, with that person's consent.

Meetings take place only with the consent of the person deprived of liberty or his/her legal representative and shall be confidential.

The name and other personal data of the person being interviewed may not be disclosed without his/her prior written consent or that of its legal representative.

No person may be held liable for the information communicated to members of the visiting team.

The findings of the visits are contained in a **visit report** that, in cases when irregularities are noticed, is accompanied by **motivated recommendations** in order to improve the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other punishments or cruel, inhuman or degrading treatment.

The visited institution is required to submit, within 30 days, a reasoned response to the proposals and recommendations contained in the visiting report, indicating its viewpoint on the findings, the reasoned deadline for the measures to be taken to comply with their content or, if applicable, the reasons for which cannot comply.

The visiting report and the reasoned response, when it was sent, are public and shall be posted on the website of the institution targeted by it, of the superior authority or local or central public administration authority that issued the operating permit, and of the Ombudsman, except for the parts that concern personal data or classified information.

In cases where there is a breach of human rights through torture or cruel, inhuman or degrading treatment producing an imminent risk of harm to the life or health of a person **a preliminary report shall be prepared urgently**. The deadline for preparation and adoption of the preliminary report is 3 days and may be extended for valid reasons by another 3 days. Targeted institutions are required to comply urgently with the proposals and recommendations or to formulate a response within 3 calendar days.

The Ombudsman **has the obligation to immediately notify the judiciary** when, in exercising its duties, it becomes aware **of indications on offenses committed under criminal law**.

The Annual Report of the Field for Prevention of Torture in Places of Detention, part of the Annual Activity Report of the Ombudsman Institution, includes: the analysis and the conclusions of the visits carried out throughout the year; proposals and recommendations formulated; measures taken by national authorities in relation to them; proposals to improve the legislative framework in the field of activity, as well as any other data or information relevant to the activity of the Field for Prevention of Torture in Places of Detention.

In exercising his / her duties, the Ombudsman or, as the case may be, the Deputy Ombudsman – Head of the Field for Prevention of Torture in Places of Detention, liaises with the **Subcommittee on Prevention of Torture**, sends it information and meets with its members.

Contact details:

Ombudsman

National Preventive Mechanism (NPM)

Bucharest zonal centre

8 George Vraca Street, District 1, municipality of Bucharest

Phone: 021/ 312.71.34 ; Fax : 021/312.49.21 ; E-mail: avp@avp.ro

Internet: <http://www.avp.ro>

Alba zonal centre

2 Mihai Viteazul St, municipality of Alba Iulia, Alba County

Phone: 0258/813.865

E-mail: avp_prevenire_alba@avp.ro

Bacău zonal centre

5 Nicolae Bălcescu Street, municipality of Bacău, Bacău county

Phone: 0234/572.472

E-mail: avp_prevenire_bacau@avp.ro

Craiova zonal centre

93-95 Amaradia St, room, 108, municipality of Craiova, Dolj

County Phone:0251/418.707

E-mail:avp_prevenire_craiova@avp.ro