

CHAPTER VI

THE DEPARTMENT REGARDING THE PREVENTION OF TORTURE IN PLACES OF DETENTION - NPM

No one shall be subjected to torture or to inhuman or degrading treatment or punishment... not even in case of war or other public danger threatening the life of the nation.

(Art. 3 and 15 letter 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms)



*Department on the prevention of
torture in places of detention - NPM*

By ratifying the *Optional Protocol of December 18, 2002 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, Romania assumed the obligation to establish the National Mechanism for the Prevention of Torture in Places of Detention (NPM). Thus, in 2014, by the Government Emergency Ordinance no. 48, it was established that the People's Advocate institution, through the Department regarding the prevention of torture and other cruel, inhuman or degrading punishments or treatments in places of detention, shall fulfill the specific duties of a national preventive mechanism. The NPM mainly exercises a **preventive mandate**, its role consisting in identifying situations with potential risk of ill-treatment and strengthening the protection of persons deprived of liberty against ill-treatment and ensuring the non-discriminatory exercise of fundamental rights.

The NPM's activity generally consists of: making periodic visits, announced or unannounced, to places of detention; carrying out joint unannounced control visits, ex officio or upon request, initiated by the representatives of the Ombudsman for Children and joined by the NPM, to the educational or detention centers where minors carry out the custodial measures provided for by Law no. 286/2009, with subsequent amendments and additions, in the field of criminal liability of minors, to the persons responsible with the supervision and guidance of minors in the execution of non-custodial measures provided for by Law no. 286/2009, with subsequent amendments and additions, in the field of criminal liability of minors, at placement centers, family-type homes, foster care and family placement where the minor is placed as a special protection measure provided for by Law no. 272/2004, republished, with subsequent amendments and additions, to the extended family, as well as to

children's hospitals; resolving, in collaboration with the other structures of the People's Advocate institution, complaints regarding acts of torture, cruel, inhuman or degrading treatment in places of detention; formulating recommendations to the management of the places visited (and sometimes to the places where investigations are carried out) and hierarchically higher authorities; formulating legislative amendment proposals; awareness raising about the NPM mandate and the professional training of staff working in places of detention, regarding the prohibition of torture and the prevention of ill-treatment; maintaining contact with the Subcommittee on Prevention of Torture (SPT).

NPM includes: The central structure, which also includes Bucharest Zonal Center and Territorial structure, made up of 3 zonal centers: ● Alba Zonal Center; ● Bacău Zonal Center; ● Craiova Zonal Center. Within the 4 regional centers, during the year 2022, were employed specialized staff - 7 lawyers, 3 doctors, 2 psychologists, 2 social workers - and 4 people with administrative duties (drivers), and at the end of the year there were vacancies as follows: 2 positions of doctors (Zonal Center Bucharest and Zonal Center Bacău), 1 position of social worker (Zonal Center Bucharest) and 1 position of psychologist (Zonal Center Bucharest).

For carrying out the NPM activities are co-opted and external collaborators, based on service contracts, selected by the People's Advocate, based on the proposals received from the Romanian College of Physicians, the Romanian College of Psychologists and the National College of Social Workers. Thus, in 2022, the People's Advocate institution had 42 external collaborators (11 doctors, 11 social workers and 20 psychologists). Also, in the torture prevention activity participate representatives of non-governmental organizations active in the field of human rights protection, selected, depending on the requirements of the specific activity, by the People's Advocate. Currently, collaboration protocols are concluded with 27 non-governmental organizations.

I. Monitoring visits to places of detention

In the course of 2022, the NPM made **63 visits** to places of detention (part of the visits also checking the implementation of the recommendations formulated through previous visit reports):

- **Penitentiaries - 13 visits**
- **Psychiatric hospitals - 2 visits**
- **Detention and Preventive Arrest Centers - 9 visits**
- **Centers for adults with disabilities - 7 visits**
- **Centers for migrants - 6 visits**
- **Homes for the elderly - 15 visits**

II. Legislative amendment proposal

► *amendment of the Regulation regarding the organization and operation of detention and remand centers, as well as the necessary measures for their safety, approved by MAI Order no. 14/2018, by:*

a) the explicit introduction of the provisions of Art. 71 para. (6) from Law no. 254/2013, in the sense that the person deprived of liberty has the opportunity to benefit, for a fee, from an examination carried out by a doctor, at his choice, both in the standardized Minutes (provided in Annex no. 2 of the Regulation, in the section II - letter (a) and letter (b)), as well as in the extract that is displayed on the doors of the cells (in which the rights and obligations of the persons incarcerated, during the detention period are listed);

b) elimination of the phrase "with the opinion of the doctor who provides medical assistance at the level of the center", provided for in Art. 136 para. (5) of the Regulation, which **adds an additional condition** (doctor's approval), **which is not established by law**

(respectively: Art. 71 paragraph (6) of Law no. 254/2013, which also applies in detention and remand centers, according to Article 110 paragraph (1) of the same normative act, in conjunction with Article 237 paragraphs (1), (4), (5) and (11) of the Regulation on the application of Law No. 254/2013 and CPT Rules - Rule 42, which states: "... the right of access to a doctor should include the right to benefit, if the prisoner wishes, from an examination by a doctor of his choice (in addition to any other examination performed by the doctor called by the police)". Also in this sense, the provisions of Article 33 of the Law of Patient Rights No. 46/2003, stipulate: "The admitted patient has the right to medical services provided by a doctor accredited from outside the hospital."

In this sense, the NPM notified the Ministry of Internal Affairs, which, through the leadership of the General Inspectorate of the Romanian Police (IGPR) and the Medical Directorate, communicated the following:

"... the implementation of these aspects requires making legislative changes to the Regulation approved by the order of MAI no. 14/2018, which implies taking steps at an institutional level. ... At the level of the Detention and Remand Centers Coordination Service, activities are already underway to modify and complete the provisions of the approved Regulation by O.MAI no. 14/2018, the recommended aspects will be taken into account and materialized within these steps.

... measures were ordered to amend and complete the internal order regulations of the centers and, implicitly, of the extracts displayed on the doors of the detention rooms, so that they also contain the mentions regarding the possibility of the person deprived of liberty to benefit in the center, for a fee, following a written request, of medical assistance from a doctor chosen by them, with the opinion of the doctor who provides medical assistance at the level of the center and after informing the head of the center."

III. Actions to publicize NPM duties, participation in conferences, internal and international symposia, staff training, working groups

When setting the annual activities, the NPM takes into account the SPT's recommendation to emphasize not only visits, but also other prevention activities, such as media actions (awareness raising actions regarding the prevention of torture) (CAT/OP/ROU/1). Also, in accordance with the provisions of OPCAT and Law no. 35/1997, republished, NPM carried out professional training activities for the staff from places of detention, in the sense of Art. 4 of OPCAT, but also for its own members.

► **In order to increase the level of awareness regarding the prevention of torture and ill-treatment, the NPM carried out an extensive awareness raising activity this year as well (141 activities)**, addressed both to persons deprived of liberty, as well as to staff in places of detention and to the authorities that have subordinate units subject to NPM monitoring.

On the occasion of *the Open Days* of the People's Advocate institution celebrating 25 years in the service of the citizen, between October 10-14, 2022, NPM members met with the students of the Faculty of Law of the University of Bucharest and with groups of visitors who expressed their interest in knowing the People's Advocate institution.

► **NPM members participated** (physically or online) **in a series of webinars, meetings, conferences, symposia, working groups organized at national and international level.**

► NPM carried out **professional training activities for staff from units under the competence of monitoring by NPM**, among the topics addressed being: *Recognition of situations/forms of torture, cruel, inhuman, degrading treatments ; The concept of torture, the NPM mandate; the NPM activity report for 2021 ; Prevention, recognition and reporting*

forms of exploitation, violence and abuse; Investigation, analysis, reporting of traumatic marks, practice of CPT, SPT, Istanbul Protocol .

► Regarding **the professional training of NPM members** , during 2022, along with national and international seminars, workshops attended by NPM members, professional training activities were organized at an internal level, within the People's Advocate institution, with topics such as: *Mendez Principles ; Knowledge and promotion of human rights in social assistance activity; Maintaining contact with the family or other relevant people in the beneficiaries' lives; Presentation on the occasion of World Suicide Prevention Day, marked annually on September 1; The role of evaluation, monitoring and control institutions in the field of social services; Rights, obligations and prohibitions of asylum seekers; Aspects regarding the tolerance of foreigners who do not have the right of residence to stay on Romanian territory and who, for objective reasons, do not leave the territory of Romania; Best practice guide for cyber security, navigating the internet.*

This year, in July 2022, the NPM carried out a professional training activity for all its members, in Slănic Moldova, on the topic of *Guarantees of national preventive mechanisms (according to OPCAT) and the Procedure for carrying out visits. Strengthening the monitoring skills of NPM Romania staff by conducting a practical visit to the Târgu-Ocna Educational Center, Bacău County.* The event, through the participation of the entire NPM in the same monitoring visit, facilitated the exchange of experience between its members, specialists in different fields: legal, medical, psychological and social, more efficient.

Also, NPM (through a representative) participated in the second professional training session of the People's Advocate institution, organized in Albac commune, Alba county, between September 21-23, 2022, during which the activity of NPM was presented and solutions were identified for collaboration, under optimal conditions, with the other departments within the institution.

► **NPM meetings with non-governmental organizations** with which the People's Advocate institution has signed collaboration protocols, during which topics related to the monitoring visits, organization and ascertained aspects were addressed.

► Meetings were held **with external collaborators** (doctors, psychologists and social workers) on professional topics (national and international legislation regarding the prohibition and prevention of torture, aspects found in the NPM visits regarding the provision of medical/psychological/social assistance, the drawing up of visit reports, the presentation of the report on the activity of the NPM for the year 2021 etc.).

► NPM coordinates **the Working Group**, established on February 24, 2022, **in order to monitor the respect of the rights of refugees from Ukraine** (in the context of the increased flow of people who took refuge from Ukraine on the territory of Romania, after the outbreak of the armed conflict), made up of representatives of the 6 departments within the People's Advocate institution and met weekly.

In exercising their assigned duties, starting on February 28, the members of the group centralized the entire activity undertaken by the representatives of the People's Advocate institution regarding the refugee situation: information requests to the authorities; investigations at border points and refugee centers; visits to regional procedure centers and accommodation of asylum seekers.

The information regarding the actions taken by the representatives of the People's Advocate institution can be viewed on the institution's website, where a special section has been set up, *Monitoring respect for the rights of refugees from Ukraine*, by accessing the links: <https://avp.ro/index.php/2022/05/25/monitoring-of-respecting-the-rights-of-refugees-from-Ukraine/> (in Romanian); <https://avp.ro/index.php/en/2022/05/25/monitoring-the-observance->

of-rights-of-the-refugees-from-ukraine/ (in English). The reports of the visits made by the NPM can be viewed in full by accessing the link: <https://avp.ro/index.php/centre-pentru-migranti-2022/>.

IV. Collaboration with CPT, SPT and other international partners

► Subcommittee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (SPT)

In accordance with Art. 49 of Law no. 35/1997, republished, the NPM maintained contact with the SPT, this year participating in the event with the theme *The role of the NPMs in monitoring places where migrants are deprived of their freedom*, organized by the SPT, on the occasion of the 47th session for the NPM.

► European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

In 2022, the CPT visited Romania, ad hoc, for the second consecutive year. If in 2021 they visited penitentiaries and detention and pretrial detention centers, this year were monitored psychiatric hospitals and neuropsychiatric recovery and rehabilitation centers. The concerted actions of the various entities at the CoE level indicate their special concern for identifying solutions that improve the situation of people with mental disorders who are or could be deprived of their freedom in Romania, by involving the competent Romanian state authorities.

On the occasion of the CPT's visit to Romania, between September 19-30, 2022, the NPM collaborated with the CPT representatives, by exchanging information and holding meetings online and at the headquarters of the People's Advocate institution, which were attended by Ms. Renate Weber, the Romanian Ombudsperson, and the entire NPM staff.

► Association for the Prevention of Torture (APT)

During 2022, as in previous years, NPM maintained contact with APT and participated in events organized by this association, on topics such as: *Promoting the effective protection of LGBTI and persons deprived of liberty*, organized by APT in collaboration with ODIHR; *Preventing torture in the context of public assemblies*, *Meet the candidates for the SPT*.

► National Prevention Mechanisms - SEE NPM Network

NPM Romania is part of the Network of National Preventive Mechanisms from South-East Europe, whose activity can be viewed by accessing the link : <https://see-npm.net/>. Also this year, NPM members maintained contact with other NPMs and participated in meetings/training sessions organized by them, such as the one organized in Vienna by the Austrian Ombudsman institution and the Council of Europe's NPM Forum, with the theme *Special needs of elderly and disabled people in places of detention*.