

NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE AND ILL - TREATMENT

ANNUAL SPECIAL REPORT 2014



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PREVENTION OF TORTURE

Annual Special Report 2014 (article 23 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the General Assembly of the United Nations), L. 4228/2014

This report reflects the activities of the Greek Ombudsman in 2014, as the National Torture Preventive Mechanism, according to its special competence as provided in article 2, L. 4228/2014.

Establishment / Preparation

TORTURE is not only the systematic infliction of pain but also any inhuman or degrading treatment downgrading human existence. The use of torture is a gross violation of human dignity and aims at annihilating the personality of the victim. Apart from being a criminal act, based on the national and international law, it is an act which is against human civilization. Places, such as prisons, immigrant detention centers, psychiatric hospitals, police cells etc, are places which may pose a threat to human dignity. The remarks of accredited national and/or international bodies, regarding the status of rights of people held in the above mentioned places give rise to concern. Greece, however, should not stay inactive, waiting for the reproaches of international organizations, but must undertake initiatives in order to respond to the challenge of prevention.

Such a significant step was made with L. 4228/2014, which ratified the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* of the General Assembly of the United Nations. Article 2 of the above mentioned law nominates the Ombudsman as the “National Preventive Mechanism”. Furthermore, the Ombudsman’s representatives participated in 2012 in the working group that processed the relevant law.

The mission of the National Preventive Mechanism includes investigation of the treatment of persons deprived of their liberty on a regular basis, submission of respective improvement recommendations to the competent authorities, and, finally submission of proposals and observations regarding the applicable legislation or drafting of legislation. The Ombudsman, on the opportunity of the UN Day in support to victims of torture (26 June), has highlighted that it will perform its mission in a fair and constructive way.

(see.<http://www.synigoros.gr/resources/140626-dt-basanistiria.pdf>, available only at Greek language)

Article 4 of L. 4228/2014 stipulates that the National Preventive Mechanism visits all, public or private, places of detention, with or without previously informing the competent authorities. According to the international practice, such visits can be carried out on non-working days or even during night hours. The inspection by the National Preventive Mechanism includes the collection of evidence using any available means, such as, indicatively,

visiting all detention places, interviewing persons and taking photographs. Furthermore, based on the general competence of article 103, par. 9 of the Constitution and L. 3094/2003, the Ombudsman has access to all files, documents, data or archives.

To implement the mission assigned to the Ombudsman, a regulatory decision was initially issued setting up a working group, regarding the activities of the “National Preventive Mechanism” (NPM), under the responsibility of a Deputy Ombudsman. This group assumed the task of the unified management of all the matters falling within the spectrum of competence of the NPM and the effective organization and function of the National Preventive Mechanism, the performance of visits-inspections, and the meetings and co-operation with relative administration authorities. At the same time, the working group assumed the task of coordinating all related activities of the Ombudsman, as well as the proposal, implementation and monitoring of the annual action plan for the NPM issues. A later decision nominated the members of the working group and its coordinators. The group started operating in October 2014, when the members were informed and the duties were allocated. The actions were planned and the period up to the end of 2014 was set as preparation period.

Furthermore, in the context of preparation, the Ombudsman informed the competent ministries about this new competence, highlighted that this specific mission is an international obligation of the country, under which, there must be a regular information input of the competent UN bodies, and asked for their cooperation, aiming at the successful implementation of such a competence. The Ombudsman also requested all services under their jurisdiction to be informed in order to provide, according to the law, assistance in the performance of the specific task. In the context of preparing and informing the public and the public services for this new competence, the Ombudsman held an open event entitled: *“Fighting torture and ill-treatment: International experiences and Greek perspectives”* (8.12.2014). Experts and representatives of bodies were invited to contribute to the discussion. Furthermore, a training workshop was held (9.12.2014) for the personnel of the Ombudsman, senior investigators, staffing the NPM working group, entitled: *“Prevention of tortures: Difficulties and good practices”*. Representatives of international organizations (CPT¹, APT²), NPMs of other countries (Austria) and national bodies (Special Committee for Monitoring and Protecting the Rights of Persons with Mental Disorders) were invited to present their experiences and suggestions.

¹ Committee for the Prevention of Torture

² Association for the Prevention of Torture

International presence

Upon the Ombudsman assuming its new duties and competences, a representative of the UN Subcommittee on the Prevention of Torture (SPT) contacted the Ombudsman in writing expressing the willingness of the Subcommittee to set up a framework of continuous dialogue and possible cooperation. The Subcommittee also stated that it is ready to provide advice, experience and specialization about the main challenges faced by the National Preventive Mechanisms, underlying that it looks forward to a fertile cooperation and exchange of experiences and ideas with the Ombudsman.

A team of the Ombudsman, in the framework of its visit to Belgrade, met with the Deputy Ombudsman of Serbia, under his competence as the National Preventive Mechanism of the Republic of Serbia, also member of the UN Subcommittee on the Prevention of Torture. In the framework of this visit, there was an exchange of views on matters related to setting up mechanisms, good operation and good practices. In the end, both parties expressed the availability of both counterpart institutions for closer cooperation in the relevant field. In this framework, an expert of the Ombudsman participated in a two-day event (Belgrade, 27-28.11.2014), held by the National Preventive Mechanism of Serbia in cooperation with the Organization for Security and Cooperation in Europe (OSCE). The event, included a first meeting of the regional network of National Preventive Mechanisms of SE Europe (in which the Ombudsman participated as an observer) and a conference on the "Prevention of Torture and other Ill-Treatment and Fighting Non-Punishment", with the participation, inter alia, of representatives of the UN Subcommittee on Prevention of Torture (SPT) and the Association for the Prevention of Torture (APT).

The Ombudsman participates in the European Network of National Preventive Mechanisms, in the framework of which, there is an exchange of information on a regular basis between the participating NPMs of the member states of the Council of Europe. The objective of the network is to constantly keep its members up to date, regarding all recent developments concerning the activities of the NPMs, relative legislative initiatives and applicable, good practices.

Monitoring of detention places

The Ombudsman, in the framework of its long experience, has extensively been involved in the protection of rights of the persons deprived of their liberty, constantly highlighting arising problems and submitting respective proposals (see indicatively *Annual Report 1999*, p. 78 forward and *Annual Report 2013*, p. 68 forward). In this context, the Ombudsman has often un-

dertaken a wider action in the field, by making use of its capacity to investigate cases on its own initiative. Thus, the Ombudsman goes far beyond its traditional intermediary role, in the context of which he usually investigates cases, after the submission of a complaint, regarding detention conditions of the detainees, tracing structural problems and submitting remarks and suggestions.

In this framework, the Ombudsman, according to the Constitution (article 103, par. 9), L. 3094/2003 (article 4, par. 5), Prison Code (article 52, par.7), and primarily under his mandate as National Preventive Mechanism, conducted, in 2014, a series of visits - inspection reports, which included all findings, conclusions and proposals, following prior visits – inspections to prisons of *Diavata, Kos, Komotini* and *Corfu*, with **the subsequent submission of proposals for a more holistic approach of the penitentiary issue but also for taking all the necessary, immediate and medium-term improvement measures**. The Ombudsman stressed out that **"overpopulation" is a key matter to the hard core of fundamental rights of prisoners, and highlighted the unsuitability of building infrastructures, the insufficiency of medical/pharmaceutical care and the lack of specialized staff**. Furthermore, regarding *Tripolis Prison*, the Ombudsman highlighted that **following the conviction of the state by the ECHR on the detention conditions, the possibility of the immediate termination of its operation should be examined, if no other urgent improvement measures are taken**. Finally, the Ombudsman asked the Ministry of Justice to undertake initiatives for the implementation of a contact for steady cooperation.

Furthermore, the visits/inspections of police stations cells demonstrated the severe problem of the long detention of criminal prisoners in the above mentioned premises. This problem, although it was emphatically highlighted by the Ombudsman already (in 2007) and was the reason for many convictions of the state by the ECHR, not only has been solved, but on the contrary, escalated in 2014, as it is inextricably connected with the systemic problem of the overpopulation of prisons. Police cells, therefore, have in practice informally been transformed into prisons, resulting in seriously affecting the prisoners' rights. The administrative detention of irregular immigrants, waiting for their forced return, both in detention centers as well as in police stations cells³ will be a new challenge for the National Preventive Mechanism next year. It is a crucial issue, that has repeatedly been the focus of attention of the Ombudsman and is still critical, as the detention by definition harms the individual right of personal freedom but mainly because the above mentioned situation seems to have a generalized and clearly punitive nature.

³ See Special Report 2014 on "Returns of Third-Country Nationals" p.g 3-7 (http://www.synigoros.gr/resources/epistrofes_en_2014.pdf)

Visits to – inspections of prisons

On 22.1.2014, a team of experts of the Ombudsman visited *Cassandra Agricultural prison*. It was the first visit to an agricultural prison and the Ombudsman stressed **the need for strategic planning for agricultural prisons and of laying down the internal operation regulations for the support of the institution but also for the decongestion of other prisons of the state**. Furthermore, the Ombudsman highlighted the need for improving the building facilities, staffing with specialized personnel, strengthening the role of the prison guards and elaborating education and vocational training programs.

On 6.2.2014, a team of experts of the Ombudsman visited *Ioannina prison*, having also visited the particular prison twice in the past (2000, 2009), analytically recording its observations and submitting relevant improvement proposals. *It must be pointed out, that there are four (4) decisions of the European Court of Human Rights (ECHR) against the Greek state for violation of article 3 of the European Convention on Human Rights, namely inhuman and degrading treatment mainly due to the overpopulation, of the Ioannina prison. However, despite the fact that some measures have already been taken for the decrease in the number of prisoners, the Ombudsman has not seen any further changes in the prison infrastructures and operation, as recommended in its reports and the ECHR decisions.*

On 7.10.2014, a team of experts of the Ombudsman visited for the first time *Chios prison*. Apart from the analytical recording of the infrastructures and human resources (personnel and prisoners), the team cooperated with the prison's officials and also discussed with the prisoners. It then drew findings – conclusions and submitted respected improvement proposals regarding the living conditions, meals, health care, building improvements, education and entertainment, regular leaves, disciplinary measures.

A crucial point of general concern is the number of judgments of ECHR for detention conditions in prisons and police premises of the state. However, the ECHR judgments, the reports and public statement of CPT but also the Ombudsman's reports seem to fail in leading to major changes, as quite often the authorities raise the argument of the scarcity of available resources. The Ombudsman, however, believes that:



- Any scarcity of resources should not lead to the violation of the hard core of the prisoners' rights in any detention premises
- It is urgent to evaluate the penitentiary system of the country in the light of a "holistic" review of the operation of the criminal system and the interaction of its constituent parts, namely the legislative one (sentencing system), the judicial (gravity and type of sentences) and the penitentiary (detention conditions).
- It is urgent to review the terms and conditions for the imposition of administrative detention on irregular immigrants and asylum seekers as well as its reasonable duration.

