



MONITORING OF THE UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, UNHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN BULGARIA

SUMMARY OF REPORT 2019

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THE CONVENTION

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) was adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987.

The Convention is the most significant international human rights treaty to insist on the universal abolition of torture and completes the process of codifying the fight against torture.

The main idea of the Convention is to unite States in their fight against torture by taking positive action to prevent it at both national and international levels. Specifically, the Convention requires States Parties to criminalize torture as a form of offence in their national legislation. In addition, the Convention establishes an international mechanism to monitor the implementation of its provisions, the UN Committee against Torture.

The Convention introduces two types of obligations on States: positive and negative. Negative obligations require each State to refrain from all forms of ill-treatment. **All acts containing the characteristics of torture should be criminalized and prosecuted as crimes in the domestic law of each State.**

Positive obligations are linked to the adoption of concrete measures to prevent torture (legislative, administrative, judicial, provision of training for staff in places of deprivation of liberty or others). In cases where a violation of the prohibition of torture has occurred, States should ensure that victims are fairly and adequately compensated.

On 18 December 2002, the UN General Assembly adopted the Optional Protocol to the Convention. The purpose of the Optional Protocol, in force since 22 June 2006, is to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment and to establish a preventive system. One element of the preventive system is the **establishment and maintenance of an independent NPM** for the prevention of torture and ill-treatment at national level.



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With the amendments to the Ombudsman Act in 2012, the Ombudsman of the Republic of Bulgaria began to perform the functions of the NPM in accordance with the Optional Protocol to the Convention. In this role, the Ombudsman carries out annual monitoring of places for serving imprisonment under the Ministry of Justice, places of detention of persons in the structures of the Ministry of the Interior, special homes for accommodation of foreigners under the Migration Directorate and registration and reception centres of the State Agency for Refugees under the Council of Ministers, residential social services for children and adults, public psychiatric hospitals.

UN CAT IMPLEMENTATION IN BULGARIA 2019

International law provides for restrictions of almost all fundamental human rights in certain statutory conditions and the interference in such fundamental rights is carried out in the discretion of the State. Only the prohibition of torture is absolute in nature – it may not be derogated or restricted in any way.

Within the VI Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee for the Prevention of Torture issued the following main recommendations to the Republic of Bulgaria in relation to:

- Need to adopt a legal definition of torture in the Criminal Code which will contain all elements envisaged in Article 1 of the Convention and to qualify torture as a separate crime in the Criminal Code. So far, despite the commitment of the State, this recommendation of the Committee has not been implemented;
- Use of force and auxiliary means in prisons and police departments. In the capacity of NPM, the Ombudsman has repeatedly found that the irregular use of auxiliary means (handcuffs) continues throughout the entire system of execution of punishments when external positions are opened at medical institutions. Recommendations have been made to the Minister of Justice for urgent and effective administrative measures to eliminate torture, cruel, inhuman or degrading treatment or punishment in the event of conveying and movement of persons deprived of liberty from sleeping premises to outdoor stay and when visiting internal and external medical institutions;
- Access to a lawyer in the beginning of the 24-hour detention at police departments and ensuring in practice all legal guarantees for detainees against torture, not just the statutory ones;
- Need for reforms at places for deprivation of liberty – prisons and police departments – to improve the material and living conditions, eliminate overcrowdedness, encourage the training of staff at such places, and investigate all cases of death at detention facilities. As the NPM, in the Annual Reports the Ombudsman has



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reviewed these issues in detail and has sent specific recommendations to the Minister of Justice and the Minister of the Interior to that effect;

- Position of persons accommodated at social institutions;
- Recommendations have been made to the State regarding the need to ensure sufficient legal guarantees for these persons, to improve the material conditions at such places and the need for independent monitoring to establish the extent as to which their rights are observed;
- A repeated finding of the Ombudsman is that the system for institutional social care has not been reformed yet and the quality of the social service has not been improved yet. As the NPM, over the years the Ombudsman has repeatedly recommended that the process of de-institutionalisation should be speeded up because the extended stay of persons with disabilities at institutions violated fundamental human rights. The accommodation of a person from a family environment into an institution should be applied solely as a protection measure of last resort;
- Situation of refugees and migrants on the territory of the Republic of Bulgaria;
- It should be noted that there is a significant change in the refugee landscape in comparison to 2015 and 2016. There is a significant decline in the number of applicants for international protection. The monitoring over the rights of unaccompanied children seeking or having received protection shows that the care for unaccompanied children from the state institutions in 2019 was heightened. The main recommendation of the Ombudsman to build a separate centre of the State Agency for Refugees where unaccompanied minors and underage children will be accommodated has been implemented partially through the setting up of “safe zones” at the departments of the Registration and Admission Centre – Sofia (at Voenna Rampa Residential Estate and Ovcha Kupel Residential Estate).

A main problem in relation to unaccompanied refugee children is the assignment of a legal representative for them. The Ombudsman has found the continuing practice for one legal representative to be responsible for many children while, at the same time, this person performs another role at the respective municipality. In this regard, the Ombudsman reiterates the recommendation to create a working model of representation of unaccompanied children, to determine advance criteria to be met by the official assigned as a representative and to provide this person with additional training.

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In the capacity of the National Preventive Mechanism (NPM), the Ombudsman performs annual monitoring of the places where people deprived of liberty are accommodated or where people detained in custody following an act or with the consent of a state authority are accommodated, places they cannot leave of their accord, in order to ensure protection of such persons against torture and other forms of cruel, inhuman or degrading treatment or punishment.

There were 55 inspections in the course of the calendar years 2019, divided into areas of competence as follows:

Table: *Inspections carried out at places where people deprived of liberty are accommodated in 2019, number*

Place of inspection	Number
	– 55
Prisons and prison hostels	18
Detention facilities	10
Psychiatric hospital and mental health centres	5
District police departments	9
Centres for refugees and migrants	4
Residential social services for children and adults	9

Residential social services for adults and children

The most vulnerable groups in the Bulgarian society are children and persons with disabilities accommodated at institutions. The opinion expressed repeatedly by the NPM is that



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the accommodation of children and adults taken from the family environment into an institution should be a protection measure of final resort and a temporary one. The NPM recommends that there should be an expert assessment of the process of deinstitutionalisation and the need to build more social services in the community – day care centres for children and persons with disabilities, social support centres and others, as well as of the need to ensure a sufficient number of personal assistants. There should be a sustainable procedure of regular effective control of the competent institutions over the work of social services for children and adults.

The main factors which will contribute to the improvement of the care include education, qualification and dignified remuneration for the specialised staff at residential social services.

Medical institutions for hospital psychiatric help

The National Mental Health Strategy 2020-2030 and the Action Plan for it have not been adopted yet. This utterly hampers the reform of the system of psychiatric care because the National Strategy envisages improvement of the facilities, training for specialists, information campaigns, psycho-social rehabilitation, social assistance, etc.

The health care in the medical institutions for in-patient psychiatric help where inspections were carried out is insufficient and the safety of the patients is not guaranteed.

Another problem is the staff resources, social rehabilitation and psychological care, the long hospital stay and repeated hospitalisations of persons with a grave social status. There are patients at the state psychiatric hospitals who live there permanently due to the lack of residential social services for people with mental disorders.

Centres for temporary accommodation of refugees and migrants

The monitoring over the right of unaccompanied children seeking or having received protection is a priority in the work of the NPM. In 2019, the NPM notes that the care for unaccompanied children provided by the state institutions was increased. The main recommendation of the Ombudsman as the NPM to build a separate centre of the State Agency for Refugees at the Council of Ministers to accommodate unaccompanied minors and underage children has been executed partially through the setting up of “safe zones” at the departments of the Sofia Registration and Admission Centre.

Despite the positive action taken, there is still a problem with assigning a legal representative to unaccompanied refugee children. In this regard, the NPM reiterates the recommendation given in the 2016 thematic report to set up a working mechanism of representation of unaccompanied children, to define criteria for the representative in advance and to provide additional training to this person.

The recommendations of the Ombudsman to guarantee minimum living area for every person, to lay down the time for stay outdoors and to allow meetings with a lawyer outside the time set in advance in urgent cases have been implemented.



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In performance of the recommendations issued in 2018, the NPM reports that the administration of the Special Home for Temporary Accommodation of Foreigners – Sofia has taken a number of actions to renovate and improve the facilities.

The NPM has not found improvement in the medical services provided to foreigners accommodated due to the language barrier and the shortage of translators and interpreters.

Places for deprivation of liberty at the Ministry of Justice

The NPM has found that certain places for deprivation of liberty have not resolved the problem with overcrowdedness; the issue is critical at Sofia Prison and the detention facilities in the structure of Execution of Punishments Regional Service – Sofia (the detention facilities on G.M.Dimitrov Boulevard and Major Vekilski Street).

As regards the places for deprivation of liberty in the system of execution of punishments, there are no clearly defined regulatory criteria for the necessary quantity of fresh air and daylight or artificial light.

The inspections in 2019 have shown that the health systems in prisons remain unreformed and the quality of healthcare for persons deprived of liberty is not improving. The NPM is of the opinion that there need to be structural reforms in the health services in the penitentiary system aimed at external health services in line with the European Prison Rules. Directorate General Execution of Punishments (DGEP) annually reports a shortage of specialists at medical centres and specialised prison hospitals which is a poor indicator of the quality of healthcare.

The NPM believes that the success of the reform in health services at prisons is integrally related to the improvement of the living conditions and the social engagement of the persons deprived of liberty. The recommendation that persons deprived of liberty should not be used as medical attendants and that medicines should not be provided by supervisory and security staff but by medical personnel only have not been implemented to date.

Unfortunately, over the years the statutory requirement of Article 46 of the Execution of Punishments and Detention in Custody Act has not been observed – the Minister of Justice should present to the Council of Ministers the recommendations of the Ombudsman to close places for deprivation of liberty which fail to meet the requirements (Kremikovtsi Prison Hostel, Sofia Prison, Keramichna Fabrika Prison Hostel in Vratsa).

The visits with inmates are still with no contact, although renovation works have been carried out in many places. The requirement has even been set in the legislation which is contrary to the recommendation of the Committee for the Prevention of Torture which is quite the opposite. An exception is the Sliven Prison where there have never been partitions for visits.

The inappropriate use of aids (handcuffs) when external positions are opened in medical institutions continues throughout the entire system of execution of punishments. The



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immobilisation with handcuffs continues for days without taking into account the risk and health situation of the person deprived of liberty.

Another systemic deficiency the NPM has found over the years is the lack of budget funds for adequate actions in the activities of social workers. The newly renovated detention facilities do not have space for social activities; in the places where there is such space (for example, the detention facilities in Plovdiv and Shumen), there are no social workers to implement the social activities.

Conditions are in place to breach the privacy of correspondence. Article 86, para 3 of the Execution of Punishments and Detention in Custody Act provides that: “The correspondence of the persons deprived of liberty shall not be subject to control of the written content unless this is required to reveal and prevent grave crime.” As a result, the administration at the places for deprivation of liberty has been given powers to control the correspondence of persons deprived of liberty without the sanction of a judicial authority. The NPM is of the opinion that it is necessary to introduce clear and accurate legislative criteria as to when it is admissible to breach the privacy of correspondence taking into account Article 34 of the Constitution of the Republic of Bulgaria.

Detention facilities

The NPM has found significant differences in the material and living conditions at the detention facilities which are subordinate to the management of a certain prison (for example, the detention facilities in Pleven and Lovech) and those subordinate to the Regional Services Execution of Punishments. In the case of the former, renovation works have been carried out everywhere unlike the case of the latter (for example, the detention facilities on G.M.Dimitrov Boulevard and the detention facilities in Svilengrad). The NPM has recommended to the Director General of DGEP to prepare a program for the development of the detention facilities and to re-table it to the Minister of Justice to be put forward to the Council of Ministers in order to ensure budget estimation in the drafting of the state budget for the following years.