



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

SUMMARY OF REPORT 2020

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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 2020

The main recommendations of the Committee for the Prevention of Torture to the Republic of Bulgaria issued within the VI Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment continued to be valid in 2020:

- A repeated recommendation of the Committee for the Prevention of Torture to the institutions in the Republic of Bulgaria is related to the 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.
- The Committee for the Prevention of Torture expresses concerns in relation to the 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 penitentiary system when external positions are opened at medical institutions. In this regard, the Ombudsman has issued recommendations 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. In the conditions of the emergency epidemic situation in 2020 the NPM inspections did not find a positive change in this regard. Handcuffing and the restriction of movement continue for days with no account taken of the risk or the health situation of the person deprived of liberty.

- According to the Committee for the Prevention of Torture, additional efforts are needed to provide training to police officers and prison staff in relation to the observance of the main principles of use of force and to ensure that all cases of torture and maltreatment are investigated effectively by an independent authority.



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- The Committee for the Prevention of Torture pays special attention to the importance for detainees to have 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.

In 2020, the NPM inspected thirteen premises for accommodation of detainees in MoI structures, including structures of the Sofia Directorate of Interior. In view of the mass protests in the country, the NPM received complaints and signals from citizens and non-governmental organisations with information about grave violations on the part of the police of the rights of detainees who were participants in the protests in Sofia on 10 July 2020 and 2 September 2020. Details were submitted that detainees at the Second District Department of the Sofia Directorate of Interior were not granted the fundamental guarantee of protection – ensuring access to a lawyer, including in cases where lawyers hired by relatives of the detainees appeared on site in the police department and asked to see their clients.

- The Committee also notes that persons' injuries are not recorded in the medical documentation, the examinations often take place in the presence of a police officer and the medical records contain scarce information.

The inspections carried out by the NPM in 2020 found that detainees were provided with the opportunity to use medical help. Medical examinations or refusals to undergo such are reflected in a Register of Detainees. Every file is appended with a report from the Emergency Medical Assistance Centre where detainees are usually examined.

- The Committee for the Prevention of Torture emphasises the need for reforms at places for deprivation of liberty – prisons and police departments – to improve the material and living conditions, eliminate over crowdedness, reform medical services, encourage the training of staff at such places, and investigate all cases of death at detention facilities.

The 2020 Report of the Ombudsman as the NPM expressly emphasises the following main recommendations:

Main recommendations:

- Set a specific policy to overcome the problem with over crowdedness, the lack of ventilation and natural light;
- Improve the awareness of detainees of their rights;
- Improve the access of detainees to legal aid;
- Refine the need for medical help in the case of detaining people of unsound mind (temporarily legally incapacitated) within the meaning of Article 21, para 1 of Instruction No. 1821z-78 of 2015 on the procedure for detention, outfitting premises for detainees and the procedure in them in the Ministry of Interior.



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- Another important topic in the focus of attention of the Committee for the Prevention of Torture is related to the situation 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 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. One of the main problems is that the homes for adults with mental disabilities, mental disorders and dementia are often located outside cities and have poor road and communication infrastructure which hampers the access of specialists. Few homes and newly built social services are located in cities with possibilities to provide complex social and health services.

The 2020 inspections found a **troubling tendency for accelerated removal of children from homes for medical and social care at the end of the year when the new social services were not ready yet.** Some children are accommodated at family-type accommodation centres for children with disabilities, others have been reintegrated, placed in foster care or adopted while the children with grave disabilities are accommodated in the four homes for medical and social child care functioning until the end of 2021.

Another troubling finding of the Ombudsman as the NPM is that, currently, a very small percentage of the persons accommodated at residential social services use services in the community which is a prerequisite for potential difficulties when they are moved to new social services and an obstacle to their future successful inclusion in society.

In this regard, the Ombudsman as the NPM reiterates its opinion that the deinstitutionalisation process which started as early as 2010 is too slow. § 34 (1) of the Social Services Act provides that the homes for adults with mental disabilities, mental disorders, physical disabilities, sensory disabilities and dementia are to be closed down by 1 January 2035. In view of the quality of the care and facilities of the homes visited by the Committee for the Prevention of Torture, the NPM is of the opinion that the persons accommodated there need to be removed from there as soon as possible in line with clear criteria and approach to moving persons to residential social services in the community.

- The Committee for the Prevention of Torture is also concerned about the 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. According to the official statistics of the State Agency for Refugees at the Council of Ministers for the period 1 January – 31 December 2019, the total number of persons seeking protection is 2,152, mainly from Afghanistan, Pakistan, Syria and Iraq and there was an improvement of the conditions at centres.



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THE OMBUDSMAN IN DEFENCE OF PERSONS DETAINED IN INSTITUTIONS IN BULGARIA

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.

The NPM's annual reports provide an assessment of the human rights situation in prisons and detention facilities. Their addressees are the institutions in the Republic of Bulgaria, as well as international organizations and non-governmental associations involved in and committed to the protection of persons deprived of their liberty. The 2020 report is based on on-the-spot checks, observations, documentary checks, meetings, and interviews with detainees, convicted inmates, and corrections officers. Numerous complaints and denunciations have also been analysed and summarised.

3,848 persons received protection from the NPM in 2020. Throughout the state of emergency and the emergency epidemic situation, the Ombudsman provided access to the mobile phones of all NPM experts to ensure that the rights of all citizens held in correctional facilities and detention centres were effectively protected.

The state of emergency and the emergency epidemic situation necessitated changes to the scope and schedule of inspections conducted by the NPM. The aim was to visit both the facilities planned for inspection based on recommendations from previous years and to conduct unplanned inspections on the implementation of anti-epidemic measures in the correctional and detention facilities. Thus, a total of 49 planned, unplanned, and ad hoc inspections were carried out in 2020 in various facilities — prisons and hostels associated with them, detention facilities, district and border police departments, psychiatric hospitals, etc. This was an increase of 50 percent compared to the original plans. The focus of the inspections organised by the Ombudsman in her capacity as NPM in 2020 was to cover as many persons deprived of their liberty as possible.

Following up on the inspections, the NPM put forward 39 recommendations to specific institutions.

The methodology for carrying out inspections in correctional and detention facilities was supplemented to include the updated international and European human rights standards, such as the *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*¹, as well as the Statement of principles relating

¹ Adopted on 25 March 2020



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to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)², and the World Health Organization Pandemic Guidelines

The inspections conducted by the NPM identified numerous shortcomings, particularly evident in those systems on whose reform the Ombudsman has long insisted.

The NPM found, for example, that in some detention facilities it was not possible to quarantine new detainees. PCR testing as an alternative to quarantine was not in place. The Ombudsman, therefore, recommended to the General Directorate Execution of Sentences to apply a flexible approach to the implementation of the anti-epidemic measures, considering the actual capacities of prisons and detention facilities, and to carry out systematic monitoring.

The results of the monitoring are made public in the Ombudsman's annual reports to serve as a starting point for policy changes and improvement of conditions in the correctional and detention facilities specified in the report.

The 2020 Annual Report is available at <https://www.ombudsman.bg/national-prevention/>.

² Issued on 20 March 2020