



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: ohchr-registry@un.org

REFERENCE: AA/ES/MLR/VA

Geneva, 8 November 2023

I have the honour to write to you on behalf of the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), established in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) in my capacity as the Head of the European Regional Team.

The reference is made to your letter dated 29 March 2023. The European Regional Team of the SPT has carefully considered your request on the basis of OPCAT Article 20 (f) and would like to offer the following advice:

- (a) Pursuant to OPCAT Article 20 (a) and (b), the national preventive mechanism (NPM) is to be granted, inter alia, access to all information concerning the number of persons deprived of their liberty as well as the number and location of such places and access to all information concerning the treatment of such persons and their conditions of their detention;
- (b) This provision does not impose any limitations as to when the NPM is to be granted full access to the information indicated but merely stipulates that this is to enable the NPM to discharge its mandate.
- (c) The prime mode for the implementation of the NPM mandate is visits to places of deprivation of liberty. However, such visits are not the only means through which the NPM is to implement its mandate as the NPM preventive mandate is broad. This is clearly evident, for example, from Article 19 (c) of OPCAT, which mandates the NPMs to submit proposals and observations concerning existing or draft legislation. This is further supported by the SPT's Guidelines on the NPMs which state that "[T]he NPM should make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate."¹ This is only one example that makes it clear that in order to effectively discharge the broad preventive mandate, the NPMs are to have full access to all information indicated in Article 20 of OPCAT at any time it so requires. Any suggestion that this access to information is to be limited only to the actual time when the NPM is in the process of carrying out a visit would be a severe impediment to the full implementation of the NPM preventive mandate as stipulated in OPCAT.

.../...

Mr. Marcin Wiacek
Commissioner for Human Rights of Poland
Email: biurorzecznika@brpo.gov.pl

Cc: [REDACTED]

¹ CAT/OP/12/5 at para 35.



- (d) Moreover, the term “visits” should not be construed narrowly to mean solely the physical time that the NPM is spending in the actual facility but also include preparation for the visit as well as its aftermath. Thus, for example, in order to prepare for a visit effectively, the NPM will require the information stipulated in Article 20 of OPCAT. Equally, the same information may be required in the aftermath of the visit for the effective preparation of the report.
- (e) Consequently, the NPM is to be granted, inter alia, access to all information concerning the number of persons deprived of their liberty as well as the number and location of such places and access to all information concerning the treatment of such persons and their conditions of their detention at any time that this information is required by the NPM as stipulated by Article 20 of OPCAT.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Vasiliki Artinopoulou'.

Vasiliki Artinopoulou
SPT Member and Head of Regional Team for Europe