

APPROVED

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Seimas Ombudsmen's Office of the
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THE SEIMAS OMBUDSMEN'S OFFICE OF THE REPUBLIC OF LITHUANIA

**THE PROGRAMME FOR IMPLEMENTATION OF
THE NATIONAL PREVENTION OF TORTURE (NPT)
AT PLACES OF DETENTION
UNDER THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

I. OVERVIEW OF THE CURRENT SITUATION

LEGAL REGULATION AND ITS CHANGES

1. On 18 December 2002, the United Nations General Assembly adopted the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT; hereinafter referred to as the 'Optional Protocol' or 'Protocol'). This Protocol reaffirms that the protection of persons deprived of their liberty against mistreatment can be strengthened by regular inspections of places of detention. The Protocol seeks to establish a system of regular visits undertaken by representatives of independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

This Protocol was ratified by the Seimas of the Republic of Lithuania on 3 December 2013 and entered into force on 1 January 2014. Ratifying the Protocol, the Seimas also approved amendments to the Law on the Seimas Ombudsmen of the Republic of Lithuania.

2. In accordance with the provisions of Articles 3 and 19¹ of the Law on the Seimas Ombudsmen that entered into force on 1 January 2014, the Seimas Ombudsmen carry out the **national prevention of torture** (hereinafter 'NPT') at places of detention and undertake regular visits to them, and the Seimas Ombudsmen's Office is considered a national preventive mechanism.

In carrying out the NPT, the Seimas Ombudsmen have the right:

- (1) To regularly examine the treatment of the persons deprived of their liberty in places of detention;
- (2) To have access to all information concerning the treatment of such persons, their conditions of detention and number, as well as the number of places of detention and their location;
- (3) To have access to all places of detention and their premises, and their installations and facilities;
- (4) To have interviews with the persons deprived of their liberty without witnesses, as well as without any other person who may supply relevant information;
- (5) To have the liberty to choose the places they want to visit and the persons they want to interview;
- (6) To carry out inspections of places of detention together with chosen experts;
- (7) To make proposals/recommendations to the relevant authorities with the aim of improving the treatment and conditions of the persons deprived of their liberty, as well as preventing torture or other cruel, inhuman or degrading treatment or punishment;
- (8) To submit conclusions concerning existing or draft legislation.

Pursuant to paragraphs 5 to 7 of Article 19¹ of the Law on the Seimas Ombudsmen, no authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Seimas Ombudsmen any information referring to the performance of the functions of the national preventive mechanism. The competent authorities must examine the proposals/recommendations of the Seimas Ombudsmen and enter into a dialogue with them on possible implementation measures of the proposals/recommendations as well as inform the Seimas Ombudsmen about the results of the implementation of their proposals/recommendations. The Seimas Ombudsmen shall maintain contacts with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture.

3. Article 4 of the Optional Protocol gives a **broad** concept of a place of detention:

*A place of detention is any place under the jurisdiction and control of a State that has ratified this Protocol where **persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.** For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the **placement** of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.*

In accordance with the Implementation Manual of the Optional Protocol prepared by the Association for the Prevention of Torture that was established in 1977 and contributed to the preparation of the Protocol, the following should be considered places of detention:

- police stations;
- pre-trial centres/remand prisons;
- juvenile detention centres;
- facilities of temporary detention at border crossings and transit zones of ports and airports;
- immigrant and asylum-seeker detention centres;
- closed mental health institutions;
- social care homes;
- security and/or intelligence service detention facilities;
- detention facilities under military jurisdiction;
- means of transport for the transfer of detainees;
- closed drug treatment centres, and
- children's homes.

PLACES OF DETENTION IN LITHUANIA

4. At present the number of institutions that can be considered places of detention in Lithuania is about **340***. Of this number, **11** are places of imprisonment (**3** remand prisons, **6** correctional institutions, **1** prison (Note: the Lukiškės remand prison performs two functions), a juvenile institution Kaunas juvenile remand prison/correction house and the Hospital of Places of Detention), **25** arrest houses of police stations, **12** mental health institutions, **1** communicable disease treatment facility, about **250** care homes (of which some **145** for adults and **100** for children), **39** facilities at border crossings, and the Foreigners Registration Centre (see Table 1).

The number of persons held in or capacity of these institutions is more than **26 000**.

Table 1. Preliminary list of places of detention in Lithuania (as of December 2013)**

	Number of institutions	Capacity of institutions	Number of persons held in them (<u>forcibly</u>) at present
Places of imprisonment	11	9 375	9 282
Remand prisons (incl. arrest houses)	3	1 432	
Correctional institutions	6	6 964	
Prisons	1	300	
Hospital of Places of Detention	1	380	
Juvenile prison	1	299	
Arrest houses of police stations	25	787	470 persons held per day on average
Mental health institutions	12	Over 2 000	~ 300
Mental hospitals / divisions (of which 1 (one) for persons who committed criminal acts)	11		
Utena Expert Division of the National Service of Forensic Psychiatry under the Ministry of Health	1		
Communicable disease treatment institutions	1	55	10
Alytus County Tuberculosis Hospital			
Care homes:	241	~ 21 000	~ 21 000
• <u>Old people's care homes:</u>	<u>104</u>		
- private;	6		
- municipal;	60		
- parochial;	29		
- of the Ministry of Social Security and Labour (MoSSL);	3		
- of non-governmental organisations (NGOs);			
- of Vilnius University;	4		
- joint (municipal, parochial, NGOs);	1		
• <u>Care homes for disabled adults:</u>	<u>1</u>		
- private;			
- municipal;	<u>31</u>		
- MoSSL;	1		
- Public establishment Viltis	3		
• <u>Children's homes:</u>	<u>25</u>		
- infant homes;	2		
- municipal children's homes;	<u>106</u>		
- municipal child care groups;	5		
- state-owned children's homes;	56		
- non-state-owned children's homes;	12		
- social care homes for children with disabilities.	7		
	22		
	4		
Facilities at border crossings	39	–	<i>Number of persons under constant change</i>
Foreigners Registration Centre	1	168	168
Total:	330	~ 33 400	~ 31 230

**For an accurate number of the places of detention, it is appropriate to obtain detailed information from competent authorities that would serve as the basis for compiling a list of institutions with additional information on them (capacity of institutions, number of persons held, etc.).*

***The information shown in the table has been collected and summarised on the basis of the information concerning the places of detention officially provided by the competent authorities.*

INSPECTIONS OF PLACES OF DETENTION IN 2011–2013

5. In 2011–2013, a total of **14** inspections of the places of detention were carried out.

To evaluate the conditions of detention and the situation with human rights in them, the following inspections were carried out:

- in 2011: **3** (Lukiškės remand prison, Alytus correction house and arrest house of the Vilnius County Police Headquarters);
- in 2012: **3** (arrest house of the Ukmergė District Police Station of the Vilnius County Police Headquarters, Marijampolė correction house and Blinstrubiškiai old people's home);
- in 2013: **8** (two inspections were carried out at the Hospital of Places of Detention: on 31 January 2013, 6 cells (wards), temporary detention facilities and courtyards for walk and the patients' conditions were checked, and a report was drawn up; during the visit of the Seimas Ombudsman on 10 October 2013, the quality of the health services was assessed; also visits were undertaken to the 3rd Administration of the Pravieniškės correction house/open prison colony, the Alytus correction house (with regard to ensuring the safe environment for the sentenced persons and the use of special measures), the Rokiškis Mental Hospital (concerning the application of restrictions and other constraints to the rights of the hospitalised patients), the Panevėžys correction house (concerning the activities of the shop and the circumstances indicated by the sentenced persons relating to the organisation of meals) and the Prienai correction house; in response to the regular complaints of the detainees and sentenced persons about the procedure of transfer and the special transport conditions, the conditions of transfer of prisoners from the Lukiškės remand prison to the Alytus correction house were checked).

2011–2013 inspections by the institution

Places of imprisonment

Arrest houses of police stations

Social care institutions

Mental health institutions

Means of transport for the transfer of detainees

MONITORING PRACTICE OF PLACES OF DETENTION IN NEIGHBOURING AND OTHER STATES

6. On analysing the activities and composition of the authorities engaged in the NPT in the neighbouring and other states (**Estonia, Poland, the Czech Republic, Slovenia, Croatia, Bulgaria, Spain, Sweden, Finland, Austria, Luxembourg and Denmark**), it was discovered that:

6.1. Most states have established separate divisions for performing the NPT functions.

- In **Sweden** with more than **280** places of detention, the division performing the NPT functions comprises **4** officers and involves **other** advisers, and carries out **40** inspections on average per year;

- In **Bulgaria** (about **500** places of detention), **7** officers who carry out **more than 100** inspections annually;

- In **Slovenia** (about **100** places of detention), **8** officers who carry out **about 50** inspections per year.

Differently from the above states where the NPT functions are assigned to the ombudsmen's offices, in the United Kingdom the functions of the national preventive mechanism (NPM) are performed by 18 different authorities that have divided the places they inspect on the principle of geography, jurisdiction and theme.

6.2. Almost all the authorities engaged in the NPT carry out inspections also at the care homes for children and adults as places where the liberty of persons may be restricted.

This practice is applied at the ombudsmen's offices of **Estonia, Poland, the Czech Republic, Slovenia, Croatia, Bulgaria, Spain, Austria, Luxembourg and Denmark.**

6.3. The Optional Protocol provides that places of detention must be monitored regularly, but does not define the frequency of monitoring.

In the opinion of experts working for non-governmental organisations, who have contributed to the development of the Protocol as well, it is recommended to inspect places of detention once in three years on average. In small states with few places of detention (Malta or Liechtenstein), they must be inspected once a year.

6.4. Inspections of institutions by ombudsmen in teams of 1 to 5 (mostly 3) persons that most often include not only lawyers but also other specialists (psychologists, medical doctors, criminal investigation specialists, anthropologists, etc.).

In **Bulgaria**, experts of other spheres work in particular at the authority that performs the NPT functions. The **Slovenian Ombudsman** has chosen a mechanism of cooperation with civil society organisations, i.e. organisations are chosen by an open tendering procedure to which contracts are awarded every year. The Slovenian Ombudsman has also taken appropriate measures to ensure that these organisations act in accordance with the regulations and instructions of the Ombudsman's Office. Monitoring visits are undertaken by mixed teams consisting of representatives of the Ombudsman's Office and experts of three chosen civil society organisations. The Spanish Ombudsman's Office has an Advisory Council comprising representatives of different organisations, including universities. In Sweden, inspections so far have been carried out by lawyers only, but the aim of including medical experts in inspections is one of the priorities.

6.5. Under the Optional Protocol, monitoring must be conducted by specialists of various spheres, which means that in monitoring it is recommended to involve consumers of social care and health services and former sentenced persons who are referred to as experts 'by experience'.

Currently such practices are applied by the **Estonian Chancellor of Justice (Ombudsman's) Office**, and are to be undertaken by the **Finnish Ombudsman's Office** in the future.

It is noteworthy that during an official trip to Estonia in January 2009, employees of the then Group for the Protection of Human Rights in Places of Detention of the Seimas Ombudsmen's Office, together with the Estonian Chancellor of Justice (Ombudsman's) Office, took part in the monitoring of two closed institutions, in particular the public establishment Lõuna-Eesti Hospital Mental Clinic and the Lõuna-Eesti special care centre. The visits to the Estonian closed institutions were very useful and gave an opportunity to evaluate the implementation of human rights monitoring in another state. The useful practical advice and knowledge gained during this monitoring helped to improve inspections in Lithuania and avoid possible mistakes. Therefore it is recommended to continue cooperation with the ombudsmen's offices performing the NPT functions and participate in joint inspections carried out by them.

II. NPT CONTENT, TASKS AND MEASURES

7. In organising the NPT activities assigned to the Seimas Ombudsmen, the Ombudsmen are supported by the Human Rights Bureau (hereinafter 'HRB'), a structural unit of the Ombudsmen's Office, which in the NPT sphere will ensure the performance of the following **4** key functions:

- inspections of places of detention;
- reporting and submission of recommendations;
- submission of comments and recommendations concerning existing and draft legislation relating to the prevention of torture;

- maintenance of contacts with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the ombudsmen's offices performing the NPT functions.

INSPECTION PRACTICE AT PLACES OF DETENTION

8. The HRB, which will assist the Seimas Ombudsmen in performing the NPT functions, will organise the following inspections:

8.1. Thorough inspections, representing a detailed description of the situation with human rights and freedoms that analyses the risk factors and identifies problems and good practice. Such inspections mostly last several days and are undertaken by a large group of experts, while notice of an intended visit can be given in advance. Such inspections can be carried out at places of detention every 5 years;

8.2. Thematic inspections, mostly carried out on receiving a report about possible violations. They are focused on a specific sphere, for example, the provision of health services or the imposition of penalties, or particular persons such as those serving a life sentence, etc. Also the amount, specific features, etc. of any previous inspections are taken into consideration;

8.3. Survey inspections, representing short checks that can be carried out without prior notice and conducted swiftly by a small team by filling in inspection surveys and submitting short reports.

9. Measures required for carrying out these inspections are:

9.1. Compiling a comprehensive list of all places of detention in Lithuania with information on their capacity, head, founder, etc.;

9.2. Establishing a system for monitoring the places of detention such as the children's homes and the Kaunas juvenile remand prison/correction house (institutions with activities controlled by the Institution of the Ombudsman for Children Rights of the Republic of Lithuania);

9.3. Determining the frequency of inspections of each place of detention, with a view to implementing the recommendation that a place of detention is inspected **once in 3 years on average**. For example, places of detention accommodating a large number of persons could be inspected once a year, while small ones could undergo inspections once every five years;

9.4. Drawing up a detailed annual plan of inspections, with account of the intended purpose of the places of detentions, the information available on them by the risk factors, the shortage of information, the number and specific features of previous inspections and the violations identified, as well as the length of inspection visits (such visits can last from several hours to several days);

9.5. Developing a system of survey inspections.

REPORTING AND SUBMISSION OF RECOMMENDATIONS

10. Reports and recommendations on completed inspections must be submitted to the inspected administrations of the places of detention shortly after a visit. Based on the types of inspections of the places of detention, reports and recommendations after inspections will be submitted:

- for thorough and thematic inspections, no later than within a month;
- for survey inspections, no later than within a week.

Where needed and possible, a draft report is sent to the head of the inspected institution for receiving his/her answer and providing a more specific outline of the established facts.

11. The HRB, which will assist the Seimas Ombudsmen with performing the NPT functions, will also prepare **annual reports**. An annual report ensures the publicity and accountability of the HRB activities, the competent authorities and the public are informed of the NPT activities, and the most

important questions relating to ill-treatment are identified and analysed, recommendations are provided, progress in the sphere of prevention of torture is assessed and regular contacts are maintained with national and municipal authorities and bodies.

SUBMISSION OF COMMENTS AND RECOMMENDATIONS ON EXISTING AND DRAFT LEGISLATION RELATING TO THE PREVENTION OF TORTURE

12. In accordance with the Optional Protocol, the HRB as a body that assists the Seimas Ombudsmen with performing the NPT functions is entitled to submit comments and recommendations on existing and draft legislation relating to the prevention of torture.

MAINTENANCE OF CONTACTS WITH THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (SPT), AS WELL AS THE OMBUDSMEN'S OFFICES PERFORMING THE NPT FUNCTIONS

13. In accordance with the Optional Protocol, the mandate of the SPT includes consultations and assistance to State Parties in establishing (or appointing) mechanisms that perform the NPT, advising and assisting them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment (Article 11 of the Optional Protocol).

Members of the SPT will be invited for an advisory visit, and contacts will be maintained in consulting them on the implementation of the Optional Protocol and the enhancement of effectiveness of the NPT activities.

The submission of a copy of an annual report (or its summary) or any other relevant information will represent a means for maintaining contacts with the SPT. The annual reports submitted by the NPT mechanisms will be published on the SPT website. Copies of an annual report may also be sent to international and regional organisations.

14. In cooperation with the ombudsmen's offices of other states carrying out the NPT, information and experience will be shared, and bilateral and multilateral meetings and other events will be organised.

III. THE TEAM TO PERFORM THE NPT FUNCTIONS

15. Paragraphs 1 and 3 of Article 18 of the Optional Protocol stipulate that the functional independence of the entity and its personnel performing the NPT functions must be guaranteed, and the necessary resources must be made available.

16. Members of a team performing the NPT functions must have the required capabilities and professional knowledge (paragraph 2 of Article 18 of the Optional Protocol).

The Implementation Manual of the Optional Protocol and the Guidelines on national preventive mechanisms (paragraphs 17 and 20) state that persons carrying out inspections of places of detention should come from various spheres (human rights, health care, social programmes, etc.) relating to places of detention.

Experts needed for implementing the above requirement are persons invited to answer questions which require special knowledge, or evaluate whether certain matters, ideas, etc. satisfy the requirements set for them. Experts are competent to apply their expertise based on practical capabilities.

In view of the foregoing, compiling lists of state, science and NGO experts is recommended. It must be ensured that these experts comply with the requirements provided for in both external and internal legislation when carrying out inspections.

The Implementation Manual of the Optional Protocol also provides that at least a few team members must have experience in monitoring places of detention.

17. It is also recommended that inspections of places of detention also involve persons who could give their opinion as experts 'by experience' on specific issues of the deprivation of freedom and the living conditions at institutions, for example, with respect to people with disabilities, survivors of torture, etc.

18. The Optional Protocol also requires striving for a gender balance and the adequate representation of ethnic and minority groups (paragraph 2 of Article 18 of the Optional Protocol).

19. As the number of place of detention in Lithuania is **106** and **224** institutions for children and adults respectively (a total of **330**), and with a view to achieving that each institution is visited **once in 3 years on average**, i.e. that **110** inspections are carried out annually (between **9** and **10** inspections a month), there should be **6 to 7** observers designated for this work (**exclusively for performing this function**).

IV. OTHER NPT ASPECTS AND RELATED FUNCTIONS

20. The SPT has noted that the scope of preventive work is large, including any ill-treatment (abuse) of persons deprived of their liberty, which if not controlled can degenerate into torture or other cruel, inhuman or degrading treatment or punishment. Thus the existing human rights institutions that have assumed the NPT functions will have to adapt themselves for the purpose of adopting the genuine **preventive approach**.

This means that:

(1) A body performing the NPT functions must strive to prevent ill-treatment by protecting human dignity from the broadest possible human rights perspective;

(2) Rather than documenting or investigating past violations, the preventive approach seeks to identify possible risks and to detect early signs that situations may degenerate into ill-treatment or torture;

(3) Rather than trying to resolve individual situations, the preventive approach analyses systems of deprivation of liberty to identify the root causes of violations;

(4) The NPT preventive actions do not aim to denounce situations but rather to focus on ways of resolving them through constructive dialogue and other measures;

(5) The NPT preventive approach implies a holistic examination of risk factors within society as a whole rather than just in places of detention, i.e. the preventive strategy requires a holistic approach that goes beyond the actual situation and functioning of places of detention in order to analyse possible root causes of ill-treatment;

(6) A preventive approach requires time; it will rarely produce immediate results and changes.

Therefore the HRB that assists the Seimas Ombudsmen with the performance of the NPT functions will strive to achieve the proper implementation of the above measures.

21. A measure that helps to protect human rights with greater effectiveness is the **dissemination of information on human rights and freedoms** to the public and national and municipal authorities and bodies. The more persons know about their rights and opportunities to protect them, the fewer violations of human rights will exist. Thus a team performing the NPT functions must disseminate detailed, accessible and comprehensible information about human rights and freedoms and their protection opportunities.

To achieve the above aims, it is necessary to organise and implement projects (seminars, lectures, discussions, etc.) with civil society groups, international organisations for the protection of human rights, ombudsmen's offices of other states and Lithuanian authorities.