

APPROVED
Republic of Lithuania
Order No 1 V-14 of 5 February 2014
of the Head of the Seimas Ombudsmen's
Office.

THE SEIMAS OMBUDSMEN'S OFFICE OF THE REPUBLIC OF LITHUANIA

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

I. OVERVIEW OF THE CURRENT SITUATION

LEGAL FRAMEWORK AND DEVELOPMENTS

1. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT; hereafter referred to as the "Optional Protocol" or the "Protocol") was adopted by the United Nations General Assembly on 18 December 2002. This Protocol reaffirmed that the protection of persons deprived of liberty against ill-treatment can be strengthened by regular inspections of places of detention. The aim is to establish a system whereby representatives of independent international and national authorities regularly visit places of detention with a view to preventing 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. By ratifying the Protocol, the Seimas also approved amendments to the Law on the Seimas Ombudsmen of the Republic of Lithuania.

2. According to the provisions of Articles 3 and 19¹ of the Law on the Seimas Ombudsmen, which entered into force on 1 January 2014, the Seimas Ombudsmen carry out the **national prevention of torture** (hereafter referred to as "NPT") in places of detention (deprivation of liberty) and regularly visit them. The Seimas Ombudsmen's Office is considered to be the national preventive mechanism.

In the context of the NPT, the Seimas Ombudsmen have the right to:

- (1) regularly check the treatment of persons deprived of their liberty in places of detention;
- 2) receive complete information on their treatment, conditions and numbers, the number and location of places of detention;
- 3) access to all places of deprivation of liberty and to all the facilities and infrastructure in them;
- 4) interview persons deprived of their liberty without witnesses, as well as any other person who could provide relevant information;
- 5) choose which places of detention to visit and which people to interview;
- 6) carry out inspections of places of detention together with selected experts;
- 7) make proposals/recommendations to the relevant authorities on how to improve the treatment and detention of persons deprived of their liberty, as well as the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- 8) provide opinions on existing legislation and draft legislation.

Pursuant to Article 19¹ (5) to (7) of the Law on the Seimas Ombudsmen, no public authority or official may order to apply, impose themselves, authorise to apply or tolerate any penalty on a person or organisation that has provided the Seimas Ombudsmen with information relating to the performance of the functions of the national preventive mechanism. The competent authorities will be obliged to examine the proposals/recommendations of the Seimas Ombudsmen, to consult with the Seimas Ombudsmen on possible measures for the implementation of the proposals/recommendations and to inform the Seimas Ombudsmen on the results of the implementation of the proposals/recommendations made by them. The Seimas Ombudsmen shall liaise with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations Committee against Torture.

3. Article 4 of the Optional Protocol contains a **broad definition** of the place of detention:

The place of detention (deprivation of liberty) shall be any place under the jurisdiction and control of the ratifying State 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.

According to the Manual for the Implementation of the Optional Protocol, which is the handbook of the *Association for the Prevention of Torture*, a non-governmental organisation founded in 1977 and which contributed to the drafting of the Protocol, the following places of deprivation of liberty are considered:

- police stations (detention centres);
- Pre-trial detention facilities;
- centres for juveniles;
- temporary detention facilities at border zones, transit zones in ports and airports;
- detention centres for migrants and asylum-seekers;
- closed mental health facilities;
- social care institutions;
- Security and /or intelligence force stations;
- detention facilities under the jurisdiction of the army;
- vehicles used for convoys;
- closed drug treatment facilities;
- orphanages (social care homes for children).

PLACES OF DEPRIVATION OF LIBERTY IN LITHUANIA

4. The number of institutions that can be considered as places of detention (deprivation of liberty) in Lithuania currently amounts to **340***. Out of this number: **11** penitentiary institutions (**3** remand prisons, 6 correction homes, **1** prison (note: Lukiškės remand prison performs 2 functions), an institution for juveniles - Kaunas Juvenile Remand Prison and Correction Home and a Prison Hospital), **25** police stations' detention facilities, **12** mental health institutions, **1** treatment facility for infectious diseases, about **250** social care institutions (including about **145** for adults and **100** for children), **39** premises of border control posts, a Foreigners Registration Centre (see Table I).

More than **26 000** people are held or accommodated in these institutions.

Table I. Preliminary list of places of detention (deprivation of liberty) in Lithuania (as of December 2013)

	Number of establishments	Number of places	Number of persons currently held (involuntary)
Prisons	11	9375	9 282
Remand prisons (including custody and cells)	3	1432	
Correction homes	6	6964	
Prisons	1	300	
Prison hospital	1	380	
Juvenile detention facility	1	299	
Police stations' detention facilities	25	787	On average 470 persons per day
Mental health institutions	12	over 2,000	~300
Psychiatric hospitals/units (of which 1 (one) for persons who have committed criminal offences)	11		
State Forensic Psychiatric Service by the Ministry of Health, Expert Department of Utena	1		
Treatment facilities for infectious diseases	1	55	10
Tuberculosis Hospital of Alytus region			
Social care institutions:	241	~21000	~21000
- <u>Older people's homes:</u>	<u>104</u>		
- private;	6		
- municipalities;	60		
- parishes;	29		
- Ministry of Social Security and Labour (MSSL)	3		
- non-governmental organisations (NGOs);	4		
- Vilnius University	1		
- joint (municipality, parish, NGO)	1		
- <u>Care facilities for adults for people with disabilities:</u>	<u>31</u>		
- private	1		
- municipalities;	3		
- MSSL;	25		
- Public Institution "Hope"	2		
- child care homes:	<u>106</u>		
-	5		
- orphanages for babies;	56		
- municipal orphanages;	12		
- municipal orphanages;	7		
- municipal orphanages;	22		
- public orphanages;	4		
- non-state orphanages;			
- social care homes for children with disabilities;			
Detention premises of border checkpoints	39	-	<i>Number of people is constantly changing</i>
Foreigners Registration Centre	1	168	168
In total:	330	~ 33400	~ 31 230

* In order to have an accurate number of places of detention, it would be useful to obtain detailed information from the responsible authorities, on the basis of which a list of institutions would be drawn up, with additional information about them (number of places, number of persons held, etc.).

**The information in the table is compiled and summarised on the basis of official material provided by the responsible authorities on places of detention.

INSPECTIONS OF PLACES OF DETENTION IN 2011-2013

5. During 2011-2013, **14** inspections of places of deprivation of liberty were carried out.

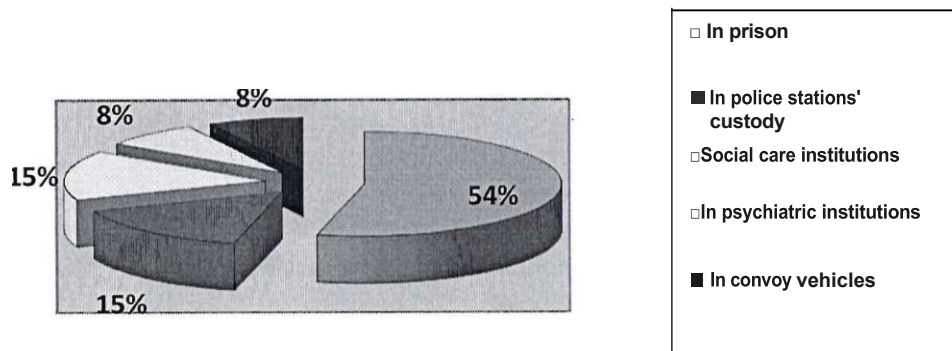
In order to assess detention conditions and human rights situation, the following inspections were carried out:

in 2011 - **3** (in Lukiškės remand prison, Alytus correction home and in the custody of the Vilnius District Chief Police Commissariat);

In 2012 - **3** (Vilnius District Chief Police Commissariat, Ukmergė District Police Commissariat, Marijampolė Correction Home and Blinstrubiškės Care Home for the Elderly);

In 2013 - **8** (two inspections were carried out at the Prison Hospital: 6 cells (wards), temporary custody rooms and walking courtyards were inspected on 31 January 2013, and the conditions of patients' stay were checked and a report was drawn up; during the visit of the Seimas Ombudsman on 10 October 2013, the quality of healthcare services was assessed; also the 3rd Board of Pravieniškės Correction Home-Open Colony visited, Alytus Correction Home (on the provision of safe environment for inmates and the use of special measures), Rokiškis Psychiatric Hospital (on the application of restrictions on the rights of hospitalized patients and the application of other restrictions), Panevėžys Correction Home (on the activities of a shop and the circumstances indicated by the prisoners regarding the organization of catering services), and the Prienai Social Care Home; the conditions of conveying prisoners from Lukiškės Remand Prison to Alytus Correction Home were checked in the light of regular complaints received from detainees and convicts about the procedure of conveying and the conditions of special transport).

Inspections by institution, 2011-2013



PRACTICE OF MONITORING PLACES OF DETENTION IN NEIGHBOURING AND OTHER COUNTRIES

6. An analysis of the activities and composition of the institutions in the neighbouring and other countries (**Estonia, Poland, the Czech Republic, Slovenia, Croatia, Bulgaria, Spain, Sweden, Finland, Austria, Luxembourg and Denmark**) that enforce the NPT shows that:

6.1. Most countries have set up separate units to carry out NPT functions.

- **In Sweden, which has** around **280** places of detention, the NPT unit consists of **4** staff members and **other** advisors, and carries out an average of **40** inspections per year;

- **Bulgaria** (about **500** places of detention) has 7 staff members carrying out **over 100** inspections per year;

- **Slovenia** (about **100** places of detention) - **8** staff members performing **around 50** inspections per year.

Unlike in the countries listed above, where the functions of the NPT are assigned to the Ombudsman's office, in the UK the NPT is carried out by 18 different bodies, with geographical, jurisdictional and thematic distribution of inspection sites.

6.2. Almost all NPM authorities carry out inspections in both institutions for children and adults as places where people's liberty may be restricted.

This is the practice of the ombudsman institutions in **Estonia, Poland, the Czech Republic, Slovenia, Croatia, Bulgaria, Spain, Austria, Luxembourg and Denmark.**

6.3. The Optional Protocol establishes that places of detention (deprivation of liberty) must be monitored on a regular basis, but does not specify the frequency.

However, according to experts of non-governmental organisations, who also contributed to drafting of the Protocol, it is recommended to inspect places of deprivation of liberty on average once every three years. In small countries with a small number of places of detention (e.g. Malta, Liechtenstein), they should be inspected once a year.

6.4. Ombudsman inspections are carried out by teams of 1-5 people (on average 3), usually made up of specialists, who are not only lawyers (e.g. psychologists, doctors, criminal investigators, anthropologists, etc).

In Bulgaria, for example, experts specialising in other fields than law even are employed at the institution responsible for the NPT. In **Slovenia, the Ombudsman** has opted for a mechanism of cooperation with the civil society organisations, i.e. organisations are selected through a public tender, and contracts are signed annually. The Slovenian Ombudsman has also taken appropriate measures to ensure that these organisations operate in accordance with the Regulations (Regulation) and Instructions of the Ombudsman's Office. Monitoring visits are carried out by mixed teams consisting of representatives of the Ombudsman's Office and three selected experts from civil society organisations. The Spanish Ombudsman's Office has an Advisory Board made up of representatives of various organisations, including universities. In Sweden, so far, only lawyers have carried out inspections, but the aim of including medical experts in inspections is a priority.

6.5. According to the Optional Protocol, monitoring should be carried out by specialists from different fields, i.e. it is recommended to involve social care, health service users and ex-convicts, who are called "experts by experience".

This practice is currently carried out by the **Estonian Chancellor of Justice (Ombudsman) and is also** planned to be used by the **Finnish Ombudsman** in future.

It should be noted that in January 2009, during a mission to Estonia, the staff of the then Human Rights Group of the Seimas Ombudsmen's Office, together with the office of the Estonian Chancellor of Justice (Ombudsman), participated in the monitoring of two closed institutions - the Louna-Eesthi Psychiatric Clinic of the Louna-Eesthi Hospital and the Louna-Eesthi Centre for Special Nursing Care. The visits to Estonian closed institutions were very useful and provided an opportunity to see how human rights monitoring is carried out in another country. The useful practical advice and knowledge gained during the monitoring helped to improve the performance of inspections in Lithuania and to avoid possible mistakes. It is therefore suggested to continue to cooperate with other Ombudsman institutions performing the NPT functions and to participate in their inspections.

II. CONTENT, OBJECTIVES AND INSTRUMENTS OF THE NPT

7. The Seimas Ombudsmen are assisted in the organisation of the activities of the NPT entrusted to them by a structural unit of the institution - the Human Rights Division (hereinafter referred to as the "HRD"), which ensures the performance of **4** main functions in the field of the NPT:

- carrying out inspections of places of detention;
- reporting and making recommendations;
- Providing comments and recommendations on legislation or draft legislation related to the prevention of torture;

- liaising with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and with the Ombudsman's institutions performing the NPT functions.

CARRYING OUT INSPECTIONS IN PLACES OF DETENTION

8. The Human Rights Division, which assists the Seimas Ombudsmen in carrying out the functions of the NPT, will organise the following inspections:

- 8.1. in-depth inspections – involve a comprehensive description of the situation of human rights and freedoms, analysing risk factors, identifying problems and best practices. Such inspections usually last several days and are carried out by a large team of experts and the institution may be notified in advance about the planned visit. Such inspections to the places of deprivation of liberty may be carried out every 5 years;
- 8.2. thematic inspections – performed usually following a report of possible infringements. They focus on a specific area, such as the provision of healthcare services or penalties, or on specific individuals, e.g. persons facing a life sentence, etc., and take into account the number and specificity of previous inspections, etc;
- 8.3. Questionnaire-type inspections - short inspections, which may be unannounced, carried out quickly by a small team using questionnaires and drawing up short reports.

9. Necessary steps that have to be taken in order to carry out such inspections:

- 9.1. compile a comprehensive list of all places of deprivation of liberty in Lithuania, including information on the number of places of deprivation of liberty, the head, the founder, etc.;
- 9.2. establish a monitoring system for places of deprivation of liberty, such as children's homes and the Kaunas juvenile detention centre (institutions monitored by the Office of the Ombudsman for the Protection of the Rights of the Child);
- 9.3. set the frequency of inspections for each place of deprivation of liberty, with a view to implementing the recommendation to inspect a place of detention **on average once every 3 years**. For example, places of detention with a large number of persons could be inspected once a year, while small places of detention could be inspected once every five years;
- 9.4. establish an annual plan for in-depth inspections, taking into account the purpose of the places of deprivation of liberty, the available information on them in terms of risk factors, the information gaps, the number and specifics of previous inspections and the detected irregularities, as well as the duration of the inspection visits (which may last from few hours to several days);
- 9.5. set up a system of questionnaire-based inspections.

REPORTING AND MAKING RECOMMENDATIONS

10. Reports and recommendations issued after performed inspections must be submitted to the administrations of the places of detention inspected shortly after the visit. Depending on the type of inspection of place of detention, the reports and recommendations will be provided:

- in cases of in-depth and thematic inspections, no later than within one month;
- in cases of questionnaire-type inspections, within one week at the latest.

Where appropriate and possible, the draft report is sent to the head of the inspected institution for comments and specification of the findings.

11. The HRD, which will assist the Seimas Ombudsmen in carrying out the NPT functions, shall produce **annual reports**. The annual report ensures publicity and accountability of NPT's activities, informs the responsible authorities and the public about those activities, identifies and analyses the most important issues related to the prevention of ill-treatment, making recommendations, assessing progress in the prevention of torture, and maintaining regular contacts with governmental and local authorities and bodies.

REPORTING AND MAKING RECOMMENDATIONS ON LEGISLATION AND DRAFT LEGISLATION RELATING TO THE PREVENTION OF TORTURE

12. According to the Optional Protocol, the HRD, in its capacity to assist the Seimas Ombudsmen in carrying out the NPT functions, has the right to make observations and recommendations on legislation and draft legislation related to the prevention of torture.

LIAISING WITH THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (SPT), AS WELL AS WITH THE OMBUDSMAN'S INSTITUTIONS PERFORMING THE NPT FUNCTIONS

13. Under the Optional Protocol, the mandate of the SPT includes advising and assisting Member States in establishing (or designating) NPMs, providing advice and assistance in assessing the needs and measures to strengthen the protection of the detained persons against torture and other cruel, inhuman or degrading treatment or punishment (Article 11 of the Optional Protocol).

Members of the SPT will be invited to come for an advisory/consultative visit and will be contacted for consultations on the implementation of the Optional Protocol and the strengthening of the effectiveness of the NPT.

The means of communication with the SPT will also include submitting them a copy of the annual report (or its summary) or other relevant information. The annual reports submitted by the NPM institutions are published by the SPT on their website. Copies of the annual report may also be sent to international and regional organisations.

14. Information and experience will be exchanged, bilateral and multilateral meetings and other events will be organised in cooperation with other countries' ombudsman institutions in charge of the NPT functions.

III. NPM TEAM

15. Article 18(1) and (3) of the Optional Protocol stipulates that the independence of the entity carrying out the NPT functions and its staff must be guaranteed and that the necessary resources must be allocated.

16. The requirements for the staff of the team carrying out the NPT functions are that they have the relevant skills and professional knowledge (Article 18(2) of the Optional Protocol).

The Optional Protocol Implementation Guide and the Guidelines for National Preventive Mechanisms (paragraphs 17 and 20) state that the persons carrying out inspections of places of detention should come from a variety of backgrounds (human rights, health, social programmes, etc.) related to places of detention.

The implementation of the above-mentioned requirement involves allocation of experts - persons who are called upon to answer questions that require specialised knowledge or to assess whether certain subjects, ideas, etc., meet the requirements set for them. Experts shall apply their expertise in a competent manner, supported by practical skills.

In the light of the above, it is proposed to establish lists of experts from governmental institutions, academia and NGOs. It must be ensured that these experts comply with both external and internal legal requirements when carrying out inspections.

The Optional Protocol Implementation Guide also stipulates that at least some of the team members must have experience in monitoring places of detention.

17. It is also recommended to include in the inspections of places of detention persons who could provide their opinion "by experience" on specific issues related to detention and living conditions in establishments, such as persons with disabilities or persons who have been subjected to torture, etc.

18. The Optional Protocol also requires gender balance and adequate representation of ethnic groups and social minorities (Article 18(2) of the Optional Protocol).

19. Taking into account the number of places of deprivation of liberty in Lithuania, i.e. 106 for children and **224** for adults (**330 in total**) and having an aim to visit each of these institutions on average **once every 3 years, i.e.** about **110** inspections per year (**9 to 10** inspections per month), **6 to 7 monitoring experts (for the sole purpose of this function)** would be needed to carry out the work.

IV. OTHER ASPECTS AND RELATED FUNCTIONS OF THE NPT

20. The SPT has noted that the scope of preventive work is broad, covering any ill-treatment/abuse of persons deprived of their liberty, which, if left unmonitored, may turn into torture or other cruel, inhuman or degrading treatment or punishment. Existing human rights institutions that have assumed the NPT functions will therefore need to adapt in order to adopt a truly **preventive approach**.

This means that:

(1) The institution in charge of NPT functions should put efforts to prevent ill-treatment by protecting human dignity from the broadest possible human rights perspective;

2) The preventive function means identifying potential risks and early signs of situations that could turn into ill-treatment or torture, rather than documenting and investigating violations that have already occurred;

3) Rather than dealing with individual situations, the preventive approach is a systemic analysis of the deprivation of liberty in order to identify the causes of violations;

4) The NPM's preventive action is not intended to condemn situations, but to focus on ways of resolving them through constructive dialogue and other means;

5) Preventive action of the NPT means assessing risk behaviour in society as a whole and not only in places of deprivation of liberty, i.e. a preventive strategy requires a holistic approach that extends the scope of the situation in the place of deprivation of liberty and the place of detention in order to analyse the possible causes of the misbehaviour;

6) a preventive approach takes time, rarely delivers results and brings about change here and now.

Therefore, the Human Rights Division, which assists the Seimas Ombudsmen in carrying out the NPT functions, first of all will seek the proper implementation of the measures listed above.

21. A tool to help protect human rights more effectively is the **dissemination of information on human rights and freedoms** to civil society and to state and local government institutions and bodies. The more people would know about their rights and how to protect them, the fewer human rights violations will occur. Therefore, the NPM team must disseminate detailed, accessible and understandable information on human rights, freedoms and the possibilities to protect them.

In order to achieve the above objectives, it is necessary to organise and carry out projects (seminars, lectures, discussions, etc.) with the civil society groups, international human rights organisations, ombudsmen of other countries and Lithuanian authorities.