

NATIONAL AND INTERNATIONAL STANDARDS OF ESTABLISHMENT OF NATIONAL PREVENTIVE MECHANISMS ON PREVENTION OF TORTURE

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Abstract: the article is dedicated to the national preventive mechanisms for prevention of torture, requirements of international standards on national preventive mechanisms, amendments to the law about formation of national preventive mechanisms in Uzbekistan has been analyzed and proposals for further improvement to current legislation in this sphere has been provided.

Keywords: "ombudsman+", preventive mechanism, optional protocol, places deprivation of liberty.

Introduction: Human rights is the supreme value. Everyone has the physical and mental integrity. Torture is a grave violation of human rights and strictly prohibited by international as well as national laws. Accordingly, during the development of standards of human rights by the United Nations, the issue was considered as the most crucial one. International law prohibits torture and other forms of inhuman and degrading treatment or punishment which can not be applied under any circumstances.

Fulfillment of the obligations undertaken by States in the prevention of torture as well as the need to effectively protect persons from humiliating and degrading treatment is permanently discussed by the international community, including the United Nations. On December 10, 1984, the UN adopted a Convention against torture and other cruel, inhuman or degrading treatment or punishment. Today 166 countries¹ participate in the convention and these states report to the UN Committee against Torture every four years on torture prevention. This states that the fight against torture is important for the international community as well as for every country.

In addition to this, in 2002, UN adopted the Optional Protocol to the above-mentioned Convention. Art.2 of the **Optional Protocol** envisions the establishment of the expert body – the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) which monitors the detention places and transfer of confidential reports to the relevant authorities in charge of preventing torture and ill-treatment. In addition, the Protocol provides for the establishment of national bodies performing similar monitoring activities of detention places.

Art.2 of the **Optional Protocol** stipulates that "Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)".

¹<https://treaties.un.org>

National preventive mechanism(NPM) is directed to prevent torture and it has no power to start criminal case or investigate that case. So (NPM) is not pre-investigative one.

In accordance with the Art. 19.of the Optional Protocol the national preventive mechanism shall be granted at a minimum with the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

In accordance with the Art. 4. Optional Protocol "Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control 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 (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

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 may not be left by a convict voluntarily without order of any judicial, administrative or other authority".

The Republic of Uzbekistan has chosen the Ombudsman+as the model for the establishment of a national preventive mechanism for the prevention of torture.

According to Article 20-9 of the Law of the Oliy Majlis of the Republic of Uzbekistan "On the Authorized Person for Human Rights (Ombudsman)"².

Authorized Person for Human Rights (Ombudsman)takes measures to prevent torture and other cruel, inhuman or degrading treatment or punishment through regular visits to places of detention.

Authorized Person(AP) during his visit to places of detention:

receives information on the number of persons in custody;

examines the conditions of detention and treatment of persons in custody;

holds meetings and conversations, including confidential ones, with persons in custody, as well as with employees of the administration of places of detention. At the same time, a protocol of these meetings and conversations is kept on the progress, if necessary, technical means are used;

gets acquainted and receives copies of documents confirming the legality of a person's detention;

requires the administration of places of detention to conduct a medical examination, provide medical, psychological and other assistance to a person in custody, only with his consent when carrying out these measures;

receives explanations from the administration of places of detention on issues of ensuring the rights, freedoms and legitimate interests of persons in custody;

takes immediate measures to suppress illegal actions (inaction) of the administration of places of detention;

².Law of the Oliy Majlis of the Republic of Uzbekistan "On the Authorized Person for Human Rights (Ombudsman)lex.uz/docs276159

draws up a conclusion on the conditions of detention of persons in custody and sends it to the relevant organizations or officials;

makes recommendations and suggestions to the relevant state bodies to improve their activities to prevent torture and other cruel, inhuman or degrading treatment or punishment.

It should be noted that the Authorized Person (AP) also takes the measures to prevent torture and other cruel, inhuman or degrading treatment or punishment in other places where the persons there cannot leave on their own free will.

And one of the main issues of the Optional Protocol is that "The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms".

It should be noted that the Report of the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsman) for 2019 states about "The rights of detainees and the introduction of the National Preventive Mechanism"; "Activities of the Authorized Person for Human Rights to prevent the use of torture and other cruel, inhuman or degrading treatment or punishment."³

Thus, in 2019, the Ombudsman carried out a total of 26 monitoring visits in penal institutions and pre-trial detention centers.

During the monitoring visits, collective (more than 3000) and individual (with 248 persons) meetings with persons in custody were held.

It should be noted that in 2019, as well as preliminary observations the Ombudsman's report on the fulfillment of the obligations of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment was submitted to the UN Committee on Combating Torture for the first time⁴.

Conclusion

The following conclusions can be drawn from the requirements set out in international standards for national preventive mechanisms.

The National Preventive Mechanism is an independent body that is not subordinate to any other body to which recommendations are given, so it provides the submission of relevant information to the competent authorities for the prevention of torture, monitors the conditions of detention in prisons, and give the proposals to improvement of legislation in this area.

According to Article 20-9 of the Law "On the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsman)":

To facilitate the work of the AP for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, he creates an expert group. The regulation on the expert group is approved by the AP. But expert group's guarantee and competence are not stipulated directly in the Law.

In this regard, in order to ensure the effectiveness and improve the performance of NPM, the following recommendations are made:

The NPM should conduct periodic anonymous surveys of detainees in pre-trial detention facilities, pre-trial detention centers, special reception centers for administrative detainees, and penitentiaries, as well as implementation of the findings publication process;

A transparent procedure for the selection and appointment of NPM members, should be clearly defined by law about their power, guarantees of their activities, economic independence and the right to inviolability.

³Ombudsman.uz/uz/publication/1703/

⁴Ombudsman.uz/uz/publication/1703/

In our opinion, the reflection of the above-mentioned proposals in the national legislation will serve to further improvement of the legislation on the establishment of national preventive mechanisms in our country.

It is necessary to stress that the norms and provisions of current national legislation meet the universally accepted norms and standards of international law. And the improvement of national legislation against torture and other cruel, inhuman or degrading treatment or punishment is one of the main conditions of the protection of human rights and freedoms.