



**Commissioner for Fundamental Rights
The National Human Rights Institution of the United Nations**

Case Number: AJB-1915/2018
Official in charge: Norbert Mézes

Minutes

of the first 2018 meeting of the Civil Consultative Body
attached to the OPCAT National Preventive Mechanism

Attachment: Tentative agenda
Date and time: May 16, 2018 09:30 AM – 11:30 AM
Venue: Lotz Room, Office of the Commissioner for Fundamental Rights

Participants:

Representing the OCFR	Representing the CCB
László Székely	Barbara Méhes (Validity Foundation)
Miklós Garamvári	János Fiala-Butora (Validity Foundation)
Katalin Haraszti	Gergely Farkas (Hungarian Medical Chamber)
Eszter Gilányi	Dávid Víg (Hungarian Helsinki Committee)
Krisztina Izsó	Eszter Kirs (Hungarian Helsinki Committee)
Norbert Mézes	Lilla Hárđi (Cordelia Foundation)
Rita Rostás	Dominika Milanovich (Hungarian Civil Liberties Union)
István Sárközy	György Purebl, (Hungarian Psychiatric Association)
Klaudia Tóthné Kiss	

K. Haraszti informed the participants that, in the absence of Director General G. Fliegauř, she would chair the meeting. She welcomed the members of the second Civil Consultative Body (CCB). The attending representatives of the member organizations adopted the tentative agenda with no objection or abstention.

L. Székely greeted the participants and expressed his hope that the joint work would bring success to the parties concerned.

K. Haraszti stated that the Report addressed to the National Preventive Mechanism by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) on its visit to Hungary in 2017 (hereinafter the “Report”) had been received on December 8, 2017. The Commissioner for Fundamental Rights has published the Report and its Hungarian translation on the Office’s homepage; the texts have also been distributed to the participants. The National Preventive Mechanism (hereinafter the “NPM”) has to comment on the observations and recommendations of the Report until June 7, 2018, at the latest. The response of the NPM, just like the Report, will be made available to the public.

The reports on all the visits conducted in 2016 have been completed and published by the NPM. Since the CCB’s latest meeting, the NPM has published four reports that have also been forwarded to the members of the CCB. Reports on visits made in 2017 are already being prepared. In late 2017, another visit was made to the Szabolcs-Szatmár-Bereg County Remand Prison; the report on the visit is being prepared.

In 2018, the NPM has visited so far three police detention facilities in Nógrád County. The main investigation criterion of the 2018 visits is contact with the outside world.

When choosing this criterion, the submissions by a member of the Hungarian Bar Association have been taken into account, in which she drew attention to some communication-related issues she had come across as a defense attorney. On April 11, 2018, with the representatives of the CCB's member organizations attending, the NPM held a workshop for non-lawyer experts participating in the visits. Feedback is important for the NPM, how external experts and the civil organizations delegating them assess cooperation, what recommendation they may make to improve it.

The preparation of the 2017 comprehensive report on the performance of the tasks of the NPM is under way; it is to be presented to the Parliament within the framework of the debate on the annual report of the Commissioner for Fundamental Rights.

In the experience of **L. Székely**, his annual reports, with the exception of one or two particular cases, generate moderate interest among the members of the Parliament.

K. Haraszti introduced the new colleagues of the NPM. Klaudia Tóthné Kiss is a clinical psychologist under training who used to work at the Forensic Psychiatric and Mental Institution and the Budapest Strict and Medium Regime Prison. Norbert Mézes has professional experience in police work.

During the week following the CCB's meeting, the NPM and his colleagues, upon the Slovenian NPM's invitation, will go to Celje, where they are going to discuss the findings of a follow-up visit to a juvenile penitentiary institution and visit a local prison. On June 21, 2018, the Commissioner for Fundamental Rights is going to visit Austria upon the invitation of the Austrian NPM. Within the frameworks of cooperation with the Austrian NPM, the parties annually exchange visits to facilities on each other's territory, as well as experiences.

E. Kirs briefed the participants on the consultations between the Hungarian Helsinki Committee and the Office of the Prosecutor General as regards the communication of detainees. They have published the professional materials generated in the course of these consultations on their website. As far as the issue of installing toilets within the cells is concerned, they have contacted the National Police Headquarters (NPHQ). To their knowledge, the financial resources necessary for completing this work are secured; however, transformation works have not begun yet.

I. Sárközy confirmed that the NPHQ, responding to the recommendation made by the NPM, has confirmed the availability of around HUF 300 million allocated for this purpose; however, the installation of toilets in the cells requires a substantial transformation that can be realistically implemented within one–two years.

According to **K. Haraszti**, the NPM selects the locations of the follow-up visits with two factors in mind. First, whether there is the risk of serious improprieties affecting many people, as in the case of the Juvenile Penitentiary Institution of Tököl (so-called “high security” cases). Second, there are places of detention, e.g., the Platán Integrated Care Center, where the institution has moved back from its temporary premises to its original seat, giving cause for a new inquiry into the implementation of the recommendation made in the Report for the temporary premises (so-called “low security” cases). She is not aware of the reason why the changes recommended by the NPM and promised by the Police have not been implemented irrespective of the follow-up visit made to the lock-up facility of the Metropolitan Police Headquarters of Budapest. The NPM is considering to initiate personal consultations on this issue with the heads of the places of detention concerned.

E. Kirs reported that the staff members of the Hungarian Helsinki Committee conduct continuous inquiries into issues related to arresting and handcuffing. Unfortunately, they have not been able to establish a successful dialog with the Ministry of Interior in connection with these issues.

E. Gilányi pointed out that, according to the Ministry's stance on the practice of automatic handcuffing during the detainees' transfer, one should take into account not only the interests of the detainees but also the personal integrity and security of the policemen.

According to **László Székely**, this problem is rooted in the fact that the Staff Regulations of the police have established additional reasons for handcuffing, overstepping their authority provided by the Police Act.

E. Kirs mentioned that, taking into account the workload of the NPM's colleagues and the staff turnover of the Department, there could be merit in involving the CCB's members in conducting visits and drafting reports. The NPM's operation could be more efficient if, e.g., the staff members of the Hungarian Helsinki Committee with appropriate professional experience could participate in monitoring police lock-up facilities.

According to **K. Haraszti**, the staff turnover can be explained by the staff members' higher salary expectations. The NPM avails himself of the civil organizations' capacities mainly in selecting and employing non-lawyer experts. The Act on the Commissioner for Fundamental Rights (the Ombudsman Act) makes a difference between public servant staff members authorized permanently to perform tasks related to the NPM and outside experts authorized either permanently or on an ad hoc basis. As regards the contributing experts, the Ombudsman Act stipulates that, in addition to the public servant staff members, the Commissioner for Fundamental Rights may also authorize, either permanently or on an ad hoc basis, other experts. External experts participating in the visits may know only data necessary for preparing their expert opinion. The powers and competences listed in the Act and granted to the Commissioner for Fundamental Rights acting as the National Preventive Mechanism may be delegated in their entirety only to his co-workers authorized on a permanent basis. Preparing the draft reports on the visits is the task of the authorized public servant staff members, it may not be assigned to the staff members of the civil organizations.

E. Kirs pointed out that the Hungarian Helsinki Committee would like to participate in monitoring places of detention so that its staff could provide the head of the visiting delegation with their professional opinion and notes, adding some analytical parts, as well; the head of the visiting delegation could use their contribution within his/her discretion. In her opinion, it would not be different from that of a forensic medical expert.

K. Haraszti stressed that performing the tasks of the National Preventive Mechanism, either in person or by way of the members of his staff authorized by him, is the duty of the Commissioner for Fundamental Rights. The Office of the Commissioner for Fundamental Rights does possess the legal expertise and capacity required to perform this task. The NPM employs non-lawyer experts, mainly medical experts, dietitians, interpreters assisting the performance of his tasks on an ad hoc basis, via concluding civil law contracts.

L. Székely emphasized that judges do not employ external experts in drafting their rulings, either, since they have to possess the legal knowledge necessary for delivering their decisions.

According to **K. Haraszti**, the experience gathered so far by the NPM shows that public servants without a degree in law, e.g., physicians, cannot get efficiently involved in regular office activities following the preparation and conduct of the visits, the drafting of their expert opinions. The NPM's intent is to recommend an amendment to the Ombudsman Act that would allow the hiring of lawyers for the unfulfilled physicians' positions. The expectations vis-à-vis non-lawyer experts may be met through employing external experts recommended by the civil organizations, which allows for greater flexibility and transparency regarding the performance of the tasks.

E. Kirs voiced her assumption that not all lawyers working in the Office of the Commissioner for Fundamental Rights are experts in monitoring places of detention. If civil society organizations could get involved without financial compensation, the reports could be completed much faster, thus accommodating the SPT's expectations.

K. Haraszti pointed out that report drafting capacities are indeed insufficient. There is no legal regulation allowing the Commissioner for Fundamental Rights to share his competences with civil society organizations or anyone else, for that matter.

No one may participate in performing the NPM's tasks without proper compensation. In such cases, the legal provisions on voluntary activity for which the volunteer does not receive any remuneration should be applied.

K. Haraszti mentioned that the Special Fund set up in accordance with Article 26 of the OPCAT helps finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programs of the national preventive mechanisms. The deadline for submitting applications for 2018 expired on February 28. In his response to the Report, the Commissioner for Fundamental Rights requested the SPT to provide, in accordance with Article 11 of the OPCAT, training and technical assistance with a view to strengthening the NPM's capacities. As far as the 2019 applications are concerned, the NPM is going to consult the representatives of each member organization of the CCB.

Referring to his activities performed as NPM, **L. Székely** mentioned that the director of the Cseppkő Children's Home had taken the Office to court for allegedly defaming the institution through the findings and recommendations contained in the NPM's report on the visit to the Children's Home. The claim was rejected by the first instance court proceeding in the case; the claimant has filed an appeal against the ruling, the Office has filed a statement of defense and a counter-appeal. Second instance proceedings are under way. This case may be precedent-setting on whether a civil court may or may not review, from the aspect of personality rights, the NPM's findings, critical remarks, and recommendations unfavorable to an institution inspected by the NPM.

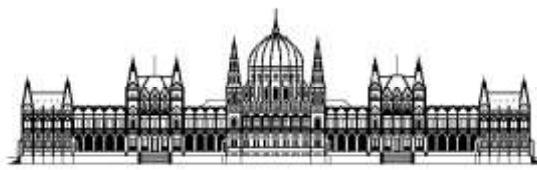
Responding to a question by **B. Méhes**, **K. Haraszti** explained that the NPM's plans for this year include visits to several police lock-up facilities and penitentiary institutions. The NPM welcomes any and all alerts for the ill-treatment of detainees and the operation of any place of detention. She requested the participants to alert the NPM, should they learn of any such facts or circumstances.

László Székely thanked the participants for their attendance and closed the meeting.

Budapest, May 30, 2018

Drafted by: Norbert Mézes

Approved by: Katalin Haraszti



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**Tentative agenda of the first 2018 meeting of the Civil Consultative Body
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Budapest, May 16, 2018

- 09:30 **Registration**
- 09:50 **Welcoming remarks by Commissioner for Fundamental Rights László Székely**
- 09:55 **Adoption of the agenda**
- 10:00 **Report on the activities of the OPCAT National Preventive Mechanism Department since the CCB's latest meeting (Katalin Haraszti, Deputy Head of Department)**
- 10:15 **Introduction of the member organizations, issues of concern**
- 11:00 **Report by the Subcommittee on Prevention of Torture (SPT) on the activities of the National Preventive Mechanism**
link: <http://www.ajbh.hu/en/opcat-SPT-jelentes-2017>
- 11:10 **The possibility of a joint application for a grant from the Special Fund**
- 11:20 **Miscellaneous issues**
- 11:30 **Concluding remarks by Commissioner for Fundamental Rights László Székely; conclusion of the meeting**