

Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms

European Training and Research Centre for Human Rights and Democracy

Veronika Apostolovski, Renate Kicker, Markus Möstl, Maddalena Vivona

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LIST OF ABBREVIATIONS

AOB	Austrian Ombudsman Board
APT	Association for the Prevention of Torture
B-VG	Austrian Federal Constitution
CAT	Convention on the Prohibition of Torture
CG	Contrôleur Général
CoE	Council of Europe
CPT	Council of Europe Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment
CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EU	European Union
GeO	Standing Rules of the Austrian Ombudsman Board
HRAC	Austrian Human Rights Advisory Council
ICTY	International Criminal Tribunal for the former Yugoslavia
IHR	Inter-American Institute for Human Rights
NGO	Non-governmental Organisation
NHRI	National Human Rights Institutions
NPM	National Preventive Mechanism
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the UN Convention against Torture
SPT	United Nations Subcommittee on Prevention of Torture
UN	United Nations
UNGA	General Assembly of the United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo

I. INTRODUCTION

In July 2012, the Austrian National Preventive Mechanism (NPM), consisting of the Austrian Ombudsman Board (AOB) and its regional Commissions, took up its mandate to monitor all places where persons are deprived of their liberty. Thereby, a national layer of preventive monitoring has been added to existing international and regional monitoring mechanisms, namely the United Nations Subcommittee on Prevention of Torture (SPT) and the Council of Europe Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT). The establishment of the NPM in Austria raises numerous questions regarding the interaction of the monitoring bodies, which is subject to an in-depth research in the project “Bringing Home Human Rights Standards: The Role of National Preventive Mechanisms”, which is supported by funds of the Austrian National Bank (Oesterreichische Nationalbank, Anniversary Fund, project number: 16041).

This research paper studies the different roles of the key actors entrusted with preventive monitoring of places where persons are deprived of their liberty, as well as their relationship to each other. Although a special focus is given to the Austrian NPM, selected NPMs established in other European states, namely Germany, Slovenia and France, will also be subject to the research in order to allow for an international comparison of different approaches to the tasks given to the NPMs. The NPMs of Germany, Slovenia and France have been chosen because they thorough represent the diversity of NPMs that are currently active in Europe.

In Chapter II a review of the legal framework and the monitoring procedures of these monitoring bodies will be made as a first step. A comparison of the legal framework, the mandates and the composition of the monitoring bodies will allow for the identification of communalities and similarities in the mandates of the international, regional and national monitoring bodies active in Austria and the three other EU member states.

In a next step, Chapter III will analyse key features of the international, regional and national monitoring procedures in order to identify particularities and distinctive differences among these monitoring bodies.

Chapter IV will then examine the formal and informal relations that are established or envisaged for the future between the preventive monitoring bodies under review. The analysis of the communication and relation between the monitoring bodies will help identify the potentially distinct roles of these bodies.

Finally, Chapter V will present the key conclusions of the previous chapters and in doing so, it will point out the role that the Austrian NPM currently has for the preventive monitoring of places where persons are deprived of their liberty in the international and regional context.

Overall this research paper constitutes the basis for a second research paper that will examine in more detail the role the Austrian NPM has for the preventive monitoring of places where persons are deprived of their liberty, i.e. of public and private institutions and facilities, including prisons, barracks, police stations, psychiatric institutions, homes for the elderly, long-term care facilities and facilities and programmes for people with disabilities. The second research paper will discuss the various (non-binding) standards developed and applied by the monitoring bodies and will pay particular attention to the role NPMs may play as an “interface” between the international and regional order on the one hand and on the domestic legal order on the other hand. Thus, the present research paper forms the basis for the second research paper, which will discuss the role the Austrian NPM may attain in transposing internationally developed non-binding human rights standards into binding national obligations.

II. COMPARISON OF THE LEGAL FRAMEWORK, MANDATE AND COMPOSITION OF THE SPT, THE CPT AND SELECTED NPMS

1. INTRODUCTION AND REMARKS ON THE METHODOLOGY

The comparative analysis of the international, regional and national monitoring mechanisms commences with a comparative analysis of the legal framework, mandate and composition of the SPT, the CPT and the NPMs established in Austria, France, Germany and Slovenia. Where appropriate, a number of sub-questions on the particularities of the Austrian situation will be introduced here as well. Table 1 provides an overview of the topics and questions that will be discussed in this chapter.

Table 1: Questions addressed in Chapter II for each monitoring body under review

Legal framework	<ul style="list-style-type: none">- On which legal bases does the monitoring body operate?- What secondary rules have been established for the monitoring body? E.g., do the bodies have rules of procedure, etc.?
Mandate	<ul style="list-style-type: none">- What mandate does the monitoring body have? E.g., is it a purely preventive mandate for monitoring places of detention?- What outputs does the monitoring body produce as a result of its mandate? E.g., what are the country-specific outputs and are there outputs that are addressed to the states in general?- What outputs have the SPT, the CPT and the Austrian NPM produced for Austria? E.g., how many reports have been adopted for this country thus far?
Composition of the monitoring body	<ul style="list-style-type: none">- How many experts/members are assembled in the expert body and for what period of time are they appointed?- Who appoints or elects these members?- Who supports the members of the monitoring body in their work? (e.g., experts, secretariats ...)

The legal provisions governing the establishment and work of the monitoring bodies constitutes the main source for answering the questions of this chapter. Additional sources, such as academic literature, explanatory reports, internal rules of procedures, the annual reports, as well as the websites of the monitoring bodies were consulted as well.

2. SPT

2.1. LEGAL FRAMEWORK

The SPT was established in accordance with Article 2(1) of the Optional Protocol to the UN Convention against Torture (OPCAT).¹ The OPCAT was adopted by the General Assembly of the United Nations (UNGA) on December 2002 and entered into force in June 2006.² The SPT started its work in February 2007. At the time of writing OPCAT counts 79 states parties and 18 signatory states.³

The idea to create an international monitoring system with the right to conduct unannounced visits to places of detention and make recommendations to states on how to best prevent torture was born in the early 1970ies by Jean-Jacque Gautier.⁴ Inspired by these ideas, the UNGA entrusted the Commission on Human Rights to draft a Convention on the Prohibition of Torture (CAT).⁵ The working group drafting the CAT, however, suggested to include the more controversial idea of Gautier in an Optional Protocol.⁶ As a result, the only article in the CAT dealing with monitoring places of detention is Article 20 allowing the Committee against Torture to request a state party to consent to an on-the-spot visit “[i]f the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party (...)”.⁷

The first draft of OPCAT was tabled in the year 1980 by the government of Costa Rica.⁸ At this stage the focus was set on an international monitoring body. Only at a later stage of the drafting process, namely in 2001, the focus shifted towards the introduction of NPMs

¹ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 57/199 of 18 December 2002 (entered into force on 22 June 2006), available at: www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

² The OPCAT entered into force on 23 June 2006, 30 days after the twentieth ratification/ accession, in accordance with Article 28(1) OPCAT.

³ Office of the High Commissioner for Human Rights, ‘Status of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, available at: <http://indicators.ohchr.org>, accessed on 17 August 2015.

⁴ Mischler Nathalie, *Jean-Jacques Gautier et la prévention de la torture: de l'idée à l'action: Recueil de textes* (APT 2003), available at: www.apr.ch/content/files_res/jjg_2003-2.pdf.

⁵ United Nations General Assembly, *Resolution on a Draft Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments*, A/RES/32/62 of 8 December 1977, available at: www.un.org/documents/ga/res/32/ares32r62.pdf.

⁶ Rodley Nigel S., *Reflections on Working for the Prevention of Torture*, (2009) 6 Essex Human Rights Review 15, available at: <http://projects.essex.ac.uk/ehrr/V6N1/Rodley.pdf>.

⁷ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of 10 December 1984 (entered into force 26 June 1987), Art. 20.

⁸ Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to the letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights, UN Doc E/CN.4/1991/66.

instead.⁹ On behalf of the European Union (EU) states, Sweden tabled a new proposal, in which it included a dual system, with the NPMs having only a subsidiary role to the international monitoring procedure.¹⁰ The final text of the OPCAT is a compromise between these two options: it establishes the legal basis for a strong international mechanism coupled with an equally strong national monitoring system.

The OPCAT does not contain new substantive rights, nor does it seek to provide redress for breaches of the prohibition of torture. It focuses instead on the prevention of acts, which might constitute torture and other cruel, inhuman or degrading treatment or punishment, by establishing a system of regular visits undertaken by independent international and national bodies.¹¹ The SPT (and the NPMs) were thus created with the clear objective to prevent the occurrence of torture.¹² The SPT has published a statement clarifying its approach to the concept of prevention. In this document, the SPT does not offer a “comprehensive statement of what the obligation to prevent torture and ill-treatment entails in abstracto”,¹³ but rather defines a series of principles that govern the work of the SPT in practice (e.g. the prevalence of torture is influenced by the general level of enjoyment of human rights, torture and ill-treatment are more easily prevented if the system of detention is open to scrutiny).¹⁴

The OPCAT requires the SPT to adopt rules of procedures. The treaty merely provides some cornerstones of these rules, e.g. by stating that a quorum is constituted by half of the members plus one and that decisions can be taken by a majority vote of the members presents, and finally that the SPT “shall meet in camera”.¹⁵ The SPT did not adopt its Rules of Procedure right away, explaining in its First Annual Report that the Rules of Procedures were

⁹ United Nations Commission on Human Rights, *Report of the Working Group on a Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its ninth session*, E/CN.4/2001/67 of 13 March 2001, available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/116/73/PDF/G0111673.pdf?OpenElement>

Murray Rachel, Steinerte Elina, Evans Malcolm, Hallo de Wolf Antenor, *The Optional Protocol to the UN Convention against Torture* (Oxford University Press 2011), p. 25.

¹⁰ Draft Optional Protocol to the CAT, UN Doc E/CN.4/1991/66.

¹¹ Article 1 OPCAT.

¹² Subcommittee on the Prevention of Torture, *The Approach of the SPT to the Concept of Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the OPCAT*, CAT/OP/12/6 of 30 December 2010; Murray and others, *The OPCAT* (Oxford University Press 2011), pp. 58-63 on the concept of prevention; Rodley, *Reflections on Working for the Prevention of Torture* (2009); United Nations Committee against Torture, General Comment Nr. 2 on the Implementation of Article 2 by States Parties, CAT/C/GC/2 of 24 January 2008. The OPCAT Contact Group (NGOs) discussed the issue of prevention in a meeting in Copenhagen in 2009: the discussion was then reported in the: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Third Annual Report*, CAT/C/44/2 of 25 March 2010, para. 17.

¹³ SPT, *The Approach of the SPT to the Concept of Prevention of Torture*, CAT/OP/12/6, para. 3.

¹⁴ SPT, *The Approach of the SPT to the Concept of Prevention of Torture*, CAT/OP/12/6; Murray and others, *The OPCAT* (Oxford University Press 2011), p. 62.

¹⁵ Article 10(2) OPCAT.

considered “internal working documents for ongoing review and development”¹⁶ without giving any further explanation for the reasons behind this quite unusual choice.¹⁷ The Rules of Procedures were made public only in November 2012.¹⁸ They provide general information on the sessions of the SPT, the election and term of office of its members, the Bureau and the Secretariat of the SPT, independence of the SPT members, all sorts of communications, language and interpretation, as well as rules on confidentiality.

2.2. MANDATE

Article 11 OPCAT¹⁹ defines the mandate of the SPT, which consists of three pillars: 1) visiting places of detention; 2) supporting and advising the work of the NPMs; and 3) cooperating with the relevant international, regional and national institutions or organisations for the prevention of torture.

Regarding the first pillar, according to Article 4(1) OPCAT, the SPT may visit “any place under its [state parties] 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”.²⁰ Article 14(1) OPCAT grants this body unrestricted access to places of detention, their installations or facilities. A restriction is only possible “on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit.”²¹ According to this provision, it is only possible to postpone temporarily a specific visit to a place of detention, when there is a serious reason for fearing for the safety of the persons involved. OPCAT envisages the same visiting powers to the SPT and the NPMs.²²

¹⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *First Annual Report*, CAT/C/40/2 of 14 May 2008, para. 60.

¹⁷ Murray and others, *The OPCAT* (Oxford University Press 2011), p. 96.

¹⁸ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rule of Procedures*, CAT/OP/3 of 22 February 2013, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/3&Lang=en
Additional information:

“At its eighteenth session, the Subcommittee endorsed the Guidelines on independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines) and adapted its rules of procedure to ensure they are in full conformity with the Guidelines. It also adopted a statement on the treaty body strengthening process (available on the Subcommittee website). Further, it also participated in numerous other OHCHR activities (see chap. II, sect. E above).”

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sixth Annual Report*, CAT/C/50/2 of 23 April 2013, para. 42.

¹⁹ Article 11 OPCAT.

²⁰ Article 4(1) OPCAT.

²¹ Article 14(2) OPCAT.

²² Article 19(a).

The OPCAT further defines the meaning of ‘deprivation of liberty’ as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting in which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.²³ There appears to be a discrepancy between the text of Article 4(1) and Article 4(2) OPCAT in relation to the extent and limits of the visiting mandate of both, the SPT and NPMs. Article 4(1) in fact extended the range of places of detention also to those places where people are deprived of their liberty not only by the state, but also by non-state actors “at its [public authority] instigation or with its consent or acquiescence”, while Article 4(2) appears to refer only to places where a “person is not permitted to leave at will by order of any judicial, administrative or other authority”. The visiting practice of the SPT, which has so far visited not only traditional places of detention, but also non-traditional ones, like elderly homes, immigration centres, children homes, psychiatric hospitals, etc., as well as a sound interpretation of the treaty according to the Vienna Convention on the Law of the Treaty²⁴ support a broad understanding of Article 4(2) OPCAT.²⁵

Furthermore, the mandate of the SPT and the NPMs extends not only to places where persons are actually held in detention, but also to those places where persons might be detained. This provision, as explained by Nowak and McArthur, refers to those facilities which at the time of visiting are not ‘hosting’ any detainees. The SPT might still evaluate future conditions of detention by looking at the building, its physical security arrangements, etc.²⁶

In January 2011 the SPT published Guidelines on visits to states parties.²⁷ The guidelines provide information on the standard procedure used by the SPT when visiting states. They give information on how the visiting delegation is appointed, on the content and composition of the preparatory work for the visit, how states should cooperate and facilitate visits, etc.

²³ Article 4(2) OPCAT.

²⁴ Vienna Convention on the Law of the Treaties, A/CONF.39/27 of 23 May 1969.

²⁵ Nowak Manfred and McArthur Elizabeth. *The United Nations Convention Against Torture. A Commentary* (Oxford University Press 2008), p. 935.

²⁶ Nowak and McArthur. *The CAT. A Commentary* (Oxford University Press 2008), p. 932; Association for the Prevention of Torture (APT) and Inter-American Institute for Human Rights (IHR), *Optional Protocol to the UN Convention against Torture Implementation Manual* (APT 2005), p. 76.

²⁷ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Visits to States Parties*, CAT/OP/12/4 of 18 January 2011. A brief outline of an SPT visit was already published in Annex V of the SPT First Annual Report. SPT, *First Annual Report*, CAT/C/40/2, Annex V.

The second pillar of the SPT mandate consists in supporting and guiding the work of the NPMs. More specifically, the SPT should:

- “(i) Advise and assist States Parties, when necessary, in their establishment;
- (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
- (iii) Advise and assist 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;
- (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.”²⁸

In its First Annual Report, the SPT published Preliminary guidelines for the ongoing development of NPMs,²⁹ that were further discussed, revised to “reflect and respond to some of the questions and issues which have arisen in practice”³⁰ and finally adopted in 2010.³¹ In relation to this part of the mandate however, the SPT has focussed more on its visiting mandate than on its advisory function at the beginning of its work:³² “In practice, the SPT has tended to include references to the effective functioning and/or establishment of NPMs in the recommendations and observations in its visit reports (although [.....] the provision of such advice is not limited to States Parties that have received an in-country visit).”³³

The third pillar of the SPT mandate is the cooperation with relevant international, regional and national institutions and organisations working towards strengthening the protection and prevention of torture.³⁴ A formal cooperation with the CAT is envisaged in the

²⁸ Article 11(b) OPCAT.

²⁹ SPT, *First Annual Report*, CAT/C/40/2, para. 28-29.

³⁰ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Fourth Annual Report*, CAT/C/46/2 of 3 February 2011, para. 64-66.

³¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on National Preventive Mechanisms*, CAT/OP/12/5 of 9 December 2010.

³² Murray and others, *The OPCAT* (Oxford University Press 2011), p. 111.

³³ Association for the Prevention of Torture (APT) and Inter-American Institute for Human Rights (IHR), *Optional Protocol to the UN Convention against Torture Implementation Manual* (APT 2010), p. 70.

³⁴ Article 11(c) OPCAT.

Optional Protocol: at least once a year the CAT and the SPT are required to hold their meetings simultaneously.³⁵

As part of the third pillar of its mandate, the SPT also discusses common issues, especially within the framework of the United Nations (UN) Inter-Committee Meetings, with the UN Human Rights Committee, the Committee on the Rights of the Child, and the Committee for the Elimination of Discrimination against Women, as well as the Committee on the Rights of Persons with Disabilities.³⁶ It also maintains ties with the CPT³⁷ and other organisations working in the field of the prevention of torture,³⁸ including civil society organizations.³⁹

The SPT produces an Annual Report and three different types of visits reports. The Annual Reports are published yearly and briefly describe the main activities undertaken during the reporting period in all three pillars of its mandate, as well as administrative and budgetary matters and organisational activities (working methods, confidentiality, etc.). While earlier the SPT Annual Report was integrated in an addendum to the CAT report to the General Assembly, since 2009, the CAT, the SPT and the Special Rapporteur on Torture present their Annual Reports together at the General Assembly.⁴⁰ Regarding cooperation between CAT and OPCAT in its country reports sometimes the SPT discusses the obligation to submit reports on the implementation of the Convention against Torture.⁴¹ General substantial issues related to the prevention of torture are also discussed within this framework.⁴² Whenever the SPT wishes to highlight further issues on the matter, it does so in the form of a separate statement, such as in the case of the role of judicial review and due process in the prevention of torture in prisons.⁴³

In line with Article 16(1) OPCAT, the SPT issues a country report after each country visit. These country reports are confidential until the state agrees to publication or publishes

³⁵ Article 10(3) OPCAT.

³⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Second Annual Report*, CAT/C/42/2 of 7 April 2009, para. 50.

³⁷ See for example: SPT, *First Annual Report*, CAT/C/40/2, para. 37.

³⁸ In relation to the Inter-American Commission on Human Rights, OSCE and the International Committee of the Red Cross see for example: SPT, *First Annual Report*, CAT/C/40/2, para. 38-40.

³⁹ See for example: SPT, *First Annual Report*, CAT/C/40/2, para. 41-43.

⁴⁰ Murray and others, *The OPCAT* (Oxford University Press 2011), pp. 139-142.

⁴¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Visit to Mali*, CAT/OP/MLI/1 of 20 March 2014, para. 4-5.

⁴² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Third Annual Report*, CAT/C/44/2 of 25 March 2010, para 30-32.

⁴³ Subcommittee on the Prevention of Torture, *Provisional Statement on the Role of Judicial Review and Due Process in the Prevention of Torture in Prisons*, adopted at its sixteenth session 20 to 24 February 2012, CAT/OP/2 of 1 October 2012.

parts of it. In both cases the SPT is then allowed to publish the entire report.⁴⁴ Only about half of the reports have been published by the SPT. So far the SPT has not visited Austria.

The country reports do not always follow the same structure. However, they first always analyse issues relating to the well-functioning of the NPM in the country, especially in terms of the scope of the NPMs' mandates⁴⁵, the selection and appointment of members,⁴⁶ staffing⁴⁷, as well as resources and independence⁴⁸. The reports then discuss findings on fundamental safeguards against torture (such as the information on rights of accused, right of access to a lawyer, complaints mechanisms, etc.). The third part of the reports is then dedicated to the situation of persons deprived of their liberty in different settings (police detention, court cells, penitentiary institutions, institutions for children and adolescents, military institutions, centre for accommodation of refugees and asylum seekers, border facilities and transportation of detainees). At the end of each report there are always two Annexes, containing a list of persons (authorities, international organizations and civil society organisations) met by the SPT during the visit⁴⁹ and a list of the places of deprivation of liberty that have been visited.⁵⁰

The country reports always contain recommendations on how to improve the situation of persons deprived of their liberty, which originates from the situation observed in the country.⁵¹ States parties are then given six months to reply to the recommendations made by the SPT, by detailing the measures taken to remedy the situation.⁵²

⁴⁴ Article 16(2) OPCAT.

⁴⁵ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Visit to New Zealand*, CAT/OP/NZL/1 of 25 August 2014, para. 16.

⁴⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Visit to Brazil*, CAT/OP/BRA/1 of 5 July 2012, para. 16.

⁴⁷ SPT, *Report on the Visit to New Zealand*, CAT/OP/NZL/1, para. 13.

⁴⁸ SPT, *Report on the Visit to New Zealand*, CAT/OP/NZL/1, para. 12; SPT, *Report on the Visit to Mali*, CAT/OP/MLI/1, para. 14.

⁴⁹ SPT, *Report on the Visit to Brazil*, CAT/OP/BRA/1, Annex I.

⁵⁰ SPT, *Report on the Visit to Brazil*, CAT/OP/BRA/1, Annex II.

⁵¹ For example in its visit to Mali the SPT observed that although the right of medical examination is enshrined in the Code of Criminal Procedure, it is not implemented in practice (no medical examination was performed when persons were taken into custody or detention and adequate registers for medical visits in police stations were overall lacking). Drawing from the general standards on the prevention of torture and ill-treatment, the SPT recommended that:

“a medical examination be performed on all persons arrested as soon as possible after they are brought into custody, especially if they show signs of ill-health, whether ensuing from their arrest or not. These medical examinations should be free and should be performed in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)”.

SPT, *Report on the Visit to Mali*, CAT/OP/MLI/1, para. 24.

⁵² SPT, *Report on the Visit to Mali*, CAT/OP/MLI/1, para. 99.

Since 2012 the SPT conducts NPMs advisory visits to states parties.⁵³ As a result of a NPM advisory visit, the SPT produces two NPMs visit reports, one is sent to the state and one to the NPM itself. Both reports analyse the legal framework governing the work of the NPM as well as their monitoring activities and discusses ways of improving it.

More recently, the SPT started to organize so called OPCAT advisory visits. These visits shall help states parties to implement their obligations under OPCAT and take the form of “short visits, focussing on high-level talks with senior government officials of the relevant ministries and bodies, as well as civil society representatives and any other relevant entities.”⁵⁴

Furthermore, the SPT may ask the Committee against Torture to issue a public statement whenever states are unwilling to cooperate with the SPT.⁵⁵ The SPT has not made use of this option in practice so far.

2.3. COMPOSITION

The SPT is composed of 25 members, making it the largest body among those created by the nine core UN human rights treaties.⁵⁶ Members are appointed for a period of four years and may be re-elected only once.⁵⁷ They serve in their individual capacity and therefore may not be represented by alternates.⁵⁸

The members of the SPT are elected by the state parties to the OPCAT at their biennial meetings, which are convened by the Secretary-General of the United Nations.⁵⁹ Each state party can nominate up to two qualified candidates. Candidates must possess the nationality of one of OPCAT member states.⁶⁰ Whenever a state wishes to nominate a candidate of another member state, it should seek the consent of the member state first. Furthermore, when nominating two candidates, at least one candidate should be a national of the member state nominating her/him.⁶¹

⁵³ See for example: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Purpose of providing Advisory Assistance to the National Preventive Mechanism of Senegal - Report for the National Preventive Mechanism*, CAT/OP/SEN/2 of 31 July 2013.

⁵⁴ Website of the SPT, available at: www.ohchr.org/EN/HRBodies/OPCAT/Pages/AdvisoryVisits.aspx.

⁵⁵ Article 16(1) OPCAT.

⁵⁶ Originally the SPT was composed of 10 members. Article 5(1) OPCAT however provided the SPT with the possibility of increasing the number of its members once OPCAT reached 50 states parties.

⁵⁷ Article 9 OPCAT.

⁵⁸ SPT, *Rule of Procedures*, CAT/OP/3, Rule 6(3).

⁵⁹ Article 6(3) OPCAT.

⁶⁰ Article 6(2) OPCAT.

⁶¹ Article 6(2) OPCAT.

Article 5(2) OPCAT defines the traits that members of the SPT should possess: being of ‘high moral character’ and “having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.”⁶² Article 5(3) OPCAT recommends an overall gender-balanced composition,⁶³ reflecting also an even geographic distribution and “the representation of different forms of civilization and legal systems of the States Parties.”⁶⁴ The criterion of achieving gender-balance was not really fulfilled in the beginning, with the SPT having only two women out of ten members in the first years.⁶⁵ However in the SPT current composition, the majority (13 out of 25) of its members are women.⁶⁶ Regarding the geographical balance, the SPT pointed out that in the beginning its composition was extremely uneven, since members of the Africa-Pacific region were missing. This was in part due to the status of ratification of OPCAT, which still has large geographical areas where the treaty has not been signed (such as North America, Asia, Eastern and Northern Africa).⁶⁷ In its third annual report, in the light of the increasing of the OPCAT member states and because of the changed pattern of regional participation, the SPT suggested for its members the following geographical distribution: three members for Africa, three members for Asia, five members for Western Europe, eight members for Eastern Europe and six members for Latin America.⁶⁸ At the beginning of its work, about half of the members of the SPT, including its chairperson, were chosen among former members of the CPT.⁶⁹

The SPT elects one Chairperson and four Vice-Chairpersons for a term of two years. These members constitute the SPT’s Bureau, which may be re-elected.⁷⁰ The Bureau elects one of its Chairpersons as a Rapporteur.⁷¹ The Bureau directs the work of the SPT and may decide on urgent matters on behalf of the SPT, when the SPT is not in session.⁷² In 2011 the SPT assigned a distinct working area of the SPT’s mandate (NPMs, visits, external relations and jurisprudence) to each of the members of the Bureau.⁷³

⁶² Article 5(2) OPCAT.

⁶³ Article 5(4) OPCAT.

⁶⁴ Article 5(3) OPCAT.

⁶⁵ Murray and others, *The OPCAT* (Oxford University Press 2011), pp. 92-95.

⁶⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘Membership’, available at: www.ohchr.org/EN/HRBodies/OPCAT/Pages/Membership.aspx.

⁶⁷ As of January 2016 the OPCAT has 80 states parties.

⁶⁸ SPT, *Fourth Annual Report*, CAT/C/46/2, para. 6-10.

⁶⁹ Of the 10 original members of the SPT, Ms. Silvia Casale, Ms. Marija Definis Gojanovic, Mr. Zdenek Hajek and Mr. Leopoldo Torres Boursault were previously members of the CPT.

⁷⁰ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rule of Procedures*, CAT/OP/3 of 22 February 2013, Rule 10(2).

⁷¹ SPT, *Rule of Procedures*, CAT/OP/3, Rule 10(2), Rule 10.

⁷² SPT, *Rule of Procedures*, CAT/OP/3, Rule 10(2), Rule 11(1).

⁷³ SPT, *Fourth Annual Report*, CAT/C/46/2, para. 9.

The SPT decided to establish a regional focal point and an NPM task force “to enable more meaningful and structured engagement with the NPMs”.⁷⁴ Since their work was often overlapping, the system was then modified in 2013 with a system of regional teams aiming at examining “the implementation of the Optional Protocol in the State parties in the region”.⁷⁵ The number of the members of each regional task force varies between three for Africa and nine for Europe, depending on the number of member states to the OPCAT present in the region. Each SPT member belongs to a regional task force: a minimum of two and a maximum of four countries have been assigned to each SPT member (with the only exception of the Head of the European Task Force who has six countries).⁷⁶

The SPT is supported by a secretariat, which is provided by the Secretary General of the UN.⁷⁷ The Secretariat is responsible for all the necessary arrangements for the SPT sessions, providing in advance working documents relating to issues on the agenda of the SPT, and generally for providing the SPT with all the necessary information to carry out its mandate.⁷⁸

The SPT has, however, stressed on many occasions that the resources available are insufficient to fulfil its mandate. The problems begun already when the SPT commenced its work in 2007, as no funding was available and the SPT had to rely on the staff and resources provisionally made available by the Office of the High Commissioner for Human Rights (OHCHR) from extra budgetary funds,⁷⁹ with the consequence that staff was often changing. This resulted, for example, in a delay in the presentation of the country visit to the Maldives, where “none of the staff who went on that visit continued to work with the SPT after the visit or were available to assist in the drafting process”.⁸⁰ Although the situation regarding resources for the SPT staff improved, in the Seventh Annual Report the SPT still complains about the inadequacy of its staff for fulfilling all the activities comprised in its mandate.⁸¹

⁷⁴ SPT, *Fourth Annual Report*, CAT/C/46/2, para. 40.

⁷⁵ SPT, *Sixth Annual Report*, CAT/C/50/2, para. 8.

⁷⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘OPCAT Regional Teams’, available at: www.ohchr.org/EN/HRBodies/OPCAT/Pages/ContactRegionalTeams.aspx.

⁷⁷ SPT, *Rule of Procedures*, CAT/OP/3, Rule 14.

⁷⁸ SPT, *Rule of Procedures*, CAT/OP/3, Rule 15.

⁷⁹ SPT, *First Annual Report*, CAT/C/40/2, para. 47.

⁸⁰ SPT, *Second Annual Report*, CAT/C/42/2, para. 67.

⁸¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Seventh Annual Report*, CAT/C/52/2 of 20 March 2014, para. 105.

3. CPT

3.1. LEGAL FRAMEWORK

The CPT was established by way of Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT).⁸² This convention entered into force in 1989 and has since been amended by two protocols, both of which entered into force in 2002.⁸³ The ECPT and its two Additional Protocols have been ratified by the 47 member states of the Council of Europe (CoE). As outlined in the preamble, the ECPT has been adopted on the conviction that “the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits.” Thus, the CPT was established as a mechanism that should effectively enforce compliance with the states’ obligation to prohibit torture and inhuman or degrading treatment or punishment. The CPT conducted its first visits in 1990.

An Explanatory Report to the ECPT provides observations on each of the 23 Articles of the ECPT and thereby gives an interpretation of the Convention.⁸⁴ The CPT attributed the Explanatory Report the same legal force as the Convention itself.⁸⁵ Based on Article 6(2) ECPT, the CPT adopted Rules of Procedure in 1989 during the Committee’s first plenary meeting in Strasbourg.⁸⁶ These Rules of Procedure set out regulations on the organisation and working of the Committee, rules on confidentiality, as well as details on the procedures concerning visits and the post-visit procedures.

⁸² European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126, CPT/Inf/C (2002)1, Article 1, available at: <http://cpt.coe.int/en/documents/ecpt.htm>.

⁸³ Protocol Nr. 1 provides that the Committee of Ministers may invite non-member states of the CoE to accede to the Convention. Protocol Nr. 2 provides for technical amendments, such as the possibility for member of the Committee to be re-elected twice instead of once.

Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 151, CPT/Inf/C (93)17 (Part 1) of 4 November 1993, available at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=151>; Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 152, CPT/Inf/C (93)17 (Part 2) of 4 November 1993, available at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=152&CL=ENG>.

⁸⁴ Explanatory Report to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/C (2002), available at: www.cpt.coe.int/en/documents/explanatory-report.htm.

⁸⁵ Kicker Renate, ‘The European Convention on the Prevention of Torture compared with the United Nations Convention against Torture and its Optional Protocol’, in: Ulfstein Geir, Marauhn Thilo, and Zimmermann Andreas (eds.), *Making Treaties Work: Human Rights, Environment and Arms Control* (Cambridge University Press 2007), p. 95.

⁸⁶ Since then, the Rules of Procedures have been amended on 8 March 1990, 11 May 1990, 9 November 1990, 31 January 1991, 20 September 1991, 12 March 1997 and 7 March 2008.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Rules of Procedure*, CPT/Inf/C (2008) 1, available at: <http://cpt.coe.int/en/documents/rules-procedure.pdf>.

Due to an agreement between the CoE and the United Nations Interim Administration Mission in Kosovo (UNMIK) and an exchange of letters between the CoE and the North Atlantic Treaty Organization (NATO), Kosovo was subject to specific monitoring arrangements.⁸⁷ Additionally, the CPT has been requested to and has agreed to monitor the situation of persons convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) and serving their sentences in Albania, Germany, Portugal, Ukraine and the United Kingdom. This specific monitoring activity is regulated by an exchange of letters between the ICTY and the CPT in November 2000.⁸⁸

3.2. MANDATE

The CPT's mandate is made clear in Article 1 of the ECPT. This provision states that the CPT "[...] shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment."⁸⁹ The Explanatory Report clarifies further that it is "the Committee's function [...] to carry out visits and, where necessary, to suggest improvements as regards the protection of persons deprived of their liberty from torture and from inhuman or degrading treatment or punishment." The prevention of ill-treatment of persons deprived of their liberty by way of on-site visits is thus the core of the CPT's mandate. The CPT has no authority to adjudge individual complaints or award compensation. The preamble of the ECPT makes it very clear that the CPT is created as a preventive non-judicial system. Thus, the CPT is meant to operate alongside the judicial system laid down in the European Convention on Human Rights (ECHR). While the European Court of Human Rights settles legal disputes concerning alleged violations of Article 3 ECHR, the CPT has the mandate to prevent breaches of the principle of the prohibition of torture, and protecting persons deprived of their liberty by a public authority from ill-treatment. The Committee thus follows a proactive approach.

The Committee has the mandate to conduct on-site inspections. According to Article 8 ECPT, the parties to the ECPT shall ensure the "unlimited access to any place where persons

⁸⁷ On the Agreement between UNMIK and the CoE see: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *14th General Report on the CPT's activities covering the period 1 August 2003 to 31 July 2004*, CPT/Inf (2004)28 of 21 September 2004, Appendix 8, available at: www.cpt.coe.int/en/docsannual.htm.

⁸⁸ For the texts of these letters see: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *11th General Report on the CPT's activities covering the period 1 January to 31 December 2000*, CPT/Inf (2001) of 3 September 2001, Appendix 5, available at: www.cpt.coe.int/en/docsannual.htm.

⁸⁹ Article 1 ECPT.

are deprived of their liberty, including the right to move inside such places without restriction.” As neither the ECPT nor its Explanatory Report provide a definition of the terms ‘torture’ or ‘inhuman or degrading treatment or punishment’, the CPT’s mandate extends to any situations, which could amount to such violations. This enabled the CPT to dynamically develop its mandate in relation to the places of detention visited. The CPT thus visits not only police stations, prisons and psychiatric establishments, but also social welfare homes for mentally impaired or elderly persons, administrative detention for foreign nationals under aliens legislation, juvenile detention centres and military detention facilities. Additionally, immigrants in transit zones of airports are also considered as falling under the CPT’s mandate of preventive monitoring. Over the years, the CPT put a specific focus on numerous particularly vulnerable groups that have been identified by the Committee in the different types of establishments during the monitoring activities. These target groups include long-term and life-sentenced prisoners, persons placed in high security units, those held in conditions of isolation, as well as juveniles and women.⁹⁰

In the course of its country-by-country monitoring, the CPT draws up so called country reports, which include the facts found during the visit as well as a set of related recommendations addressed to the member state concerned. Article 8(5) ECPT also provides the opportunity to communicate immediate observations to the state authorities right after each visit. Although it is not the purpose of the CPT to condemn states, but “to seek improvements, if necessary, in the protection of persons deprived of their liberty”⁹¹ the Committee may issue public statements. According to Article 10(2) ECPT the CPT may issue such a statement if a state party “fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, [...]” So far, the CPT issued public statements with regard to four countries (Bulgaria, Greece, Russian Federation and Turkey).

On a more general level, the CPT publishes annual General Reports according to Article 12 ECPT. In these General Reports, the CPT outlines its main activities and organisational matters.⁹² Most of these reports also contain a substantive section, in which the CPT’s standard recommendations are summarised for specific topics of its work. The CPT’s

⁹⁰ Kicker Renate, ‘The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment’, in: de Beco Gauthier (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012), p. 49.

⁹¹ Explanatory Report to the ECPT, CPT/Inf/C (2002), para. 20.

⁹² So far the CPT has published 24 General Reports. For more information see: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), ‘General Reports’, available at: www.cpt.coe.int/en/docsannual.htm.

recent General Reports include sections on the phenomena of intimidation and reprisals and on juveniles deprived of their liberty under criminal legislation, a section on documenting and reporting medical evidence of ill-treatment, as well as a section on NPMs. The substantive findings are regularly compiled and updated in the so-called ‘CPT Standards’ which constitute the assessment criteria applied by the CPT in its monitoring procedure.⁹³

3.3. COMPOSITION

According to Article 4 ECPT, the number of the CPT members equals the number of state parties to this convention. No two members of the Committee may be nationals of the same state. As all member states of the CoE are party to the ECPT, the CPT generally comprises 47 members. However, at the time of writing, one seat (Malta) is left vacant.

The procedures for the election of the members of the Committee are laid down in Article 5 ECPT. According to this provision, the members of the CPT are elected by the Committee of Ministers of the CoE for a period of four years.⁹⁴ The vote is taken by an absolute majority of votes and the candidates are chosen from a list that is drawn up by the Bureau of the Parliamentary Assembly of the CoE. Article 4 ECPT also provides for certain requirements to become a member of the CPT as it stipulates that all members should be “persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by the Convention.” In practice, the members of the CPT usually are lawyers, medical doctors, political scientists, psychiatrists, sociologists, specialists in forensic medicine, criminologists or have experience in similar professions. As laid down in Article 4 ECPT, all members of the CPT shall be independent and impartial and shall also be sufficiently available to carry out their mandate.

The members of the CPT may be assisted by experts and interpreters according to Article 7(2) ECPT. The underlying idea of this provision is to “supplement the experience of the Committee by the assistance, for example, of persons who have special training or experience of humanitarian missions, who have a medical background or possess a special competence in the treatment of detainees or in prison regimes and, when appropriate, as

⁹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), ‘CPT Standards’, available at: <http://cpt.coe.int/en/docsstandards.htm>.

⁹⁴ Since the Additional Protocol No. 2 entered into force in 2002, the term of office may vary, as half of the membership of the Committee is renewed every two years. Further members may be re-elected twice on the basis of the Additional Protocol No. 2 to the Convention.

regards young persons.”⁹⁵ In practice, the CPT regularly resorts to this option and invites one or two experts, who then are also members of the visiting delegation.

The CPT is also supported by a secretariat, which prepares the organisation of the Committee’s on-site visits and the subsequent drafting of the reports. It has also become a common practice that members of the secretariat support delegations in carrying out the field work during a visit.⁹⁶

4. SELECTED NATIONAL PREVENTIVE MECHANISMS UNDER OPCAT

The OPCAT provides that the monitoring conducted at the international level should be complemented by maintaining, designating or establishing NPMs at the domestic level within one year from the time of ratification.⁹⁷ Upon ratification, a state may declare to postpone this deadline to up to three years. After that period of time, the Committee against Torture may grant a further extension of up to two years to implement this obligation.⁹⁸

The OPCAT leaves it up to the states to decide, what form the NPMs take, but provides for basic rules and guarantees for them, among others that they comply with the Paris Principles.⁹⁹ In practice, states have created a broad variety of types of monitoring bodies: in some cases the NPMs tasks were allocated to already existing institutions, such as National Human Rights Institutions (NHRI) or ombudsman institutions, while in other cases states created brand new bodies or modified existing ones to fit into this new role. Some states have even created a local system of monitoring places of detention, alongside the national mechanism.¹⁰⁰

The SPT has produced a guideline for state parties on the establishing and maintaining of well-functioning NPMs.¹⁰¹ The first guidance given for establishing NPMs is that such bodies should strive “to complement rather than replace existing systems of oversight”.¹⁰² In

⁹⁵ Explanatory Report to the ECPT, CPT/Inf/C (2002), para. 51, available at: www.cpt.coe.int/en/documents/explanatory-report.htm.

⁹⁶ Kicker Renate, ‘The CPT’, in: de Beco Gauthier (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012), p. 57.

⁹⁷ Article 17 OPCAT.

⁹⁸ Article 24 OPCAT.

⁹⁹ Article 18(4) OPCAT.

¹⁰⁰ Argentina and Brazil for example have created local national preventive mechanisms to complement the work of the NPM at provincial level.

Argentina, Mecanismo Nacional de Prevencion de la Tortura y Otrs Tratos o Penas Cruelles, Inhumanos o Degradante, Ley 26.827 of 28 November 2012, available at: www.aptr.ch/content/files/npm/americas/ley268271%20%282%29.pdf.

¹⁰¹ SPT, *Guidelines on NPMs*, CAT/OP/12/5.

¹⁰² SPT, *Guidelines on NPMs*, CAT/OP/12/5, para. 5.

this respect the SPT has also stated that “the proliferation of structures in charge of prevention of torture does not necessarily lead to greater results and, in the absence of coordination, may contribute to inefficient use of available resources and, to some extent, may weaken the NPM mandate.”¹⁰³

According to the SPT, “[t]he mandate and powers of the NPM should be clearly set out in a constitutional or legislative text.”¹⁰⁴ The SPT guidelines also provide that, whenever the NPM is part of a larger body also holding other functions, these different functions must be reflected in the structure of the organization and in the financial provisions for its proper functioning.¹⁰⁵ In practice, many of the OPCAT ratifying countries have chosen the so-called ‘Ombudsperson’ (the Ombudsperson is designated as NPM) and ‘Ombudsperson plus’ model (the NPM mandate is carried out by the Ombudsperson office together with non-governmental organisations), but not all have provided this institution with a distinct unit working on the prevention of torture, additional personnel or financial resources adequate to fulfil the new tasks.¹⁰⁶ The SPT has also highlighted on many occasions that whenever the NPMs function are integrated within a larger body, irrespective of the organizational structure chosen, the NPM must be clearly visible and identifiable as such by the general population.¹⁰⁷

Another important aspect for the SPT is the relation of the NPM with civil society. The SPT has stressed that NPMs should be established following a “transparent and inclusive

¹⁰³ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Purpose of providing Advisory Assistance to the National Preventive Mechanism of Moldova - Report for State Party*, CAT/OP/MDA/1 of 14 March 2014, para. 25.

¹⁰⁴ SPT, *Guidelines on NPMs*, CAT/OP/12/5, para. 7.

This however has not been always the case: in Ecuador the existing Ombudsperson’s Office (*Defensoria del Pueblo*) adopted on its own initiative a resolution taking over the tasks of the NPMs as set out in OPCAT, that was then addressed by the Ministry of Foreign Affairs. Only recently an amendment to the law establishing the Equadorian Ombudsperson’ Office is being discussed which will, among others, clarify the legislative basis of its NPM mandate.

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Informe del Subcomité para la Prevención de la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes sobre su visita de Asesoramiento al Mecanismo Nacional de Prevención de Ecuador – Informe dirigido al Mecanismo Nacional de Prevención*, CAT/OP/ECU/2 of 17 June 2015, para 14-15.

¹⁰⁵ SPT, *Guidelines on NPMs*, CAT/OP/12/5, para. 32.

¹⁰⁶ See for example the case of Moldova and Armenia.

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Purpose of providing Advisory Assistance to the National Preventive Mechanism of the Republic of Armenia - Report to the State Party*, CAT/OP/ARM/1 of 22 May 2015.

SPT, *Report on the Visit to the National Preventive Mechanism of Moldova - Report for State Party*, CAT/OP/MDA/1, para 13-27.

¹⁰⁷ SPT, *Informe sobre su visita de Asesoramiento al Mecanismo Nacional de Prevención de Ecuador – Informe dirigido al Mecanismo Nacional de Prevención*, CAT/OP/ECU/2, para. 16.

process which involves a wide range of stakeholders, including civil society”.¹⁰⁸ In some cases civil society organisations have also been integrated in the structure of the NPMs.¹⁰⁹

Regardless of the structure or NPM model chosen, there are some basic features and guarantees that every NPM must be equipped with. First and foremost, NPMs must be independent.¹¹⁰ Independence of NPMs must be guaranteed not only on a personnel level but also through the possibility to decide about the tasks that needs to be carried out and the resources necessary to this end.¹¹¹ The composition of the NPM must reflect gender balance and represent adequately ethnic and minority groups.¹¹²

According to the provisions of OPCAT, NPMs must be entrusted with at least the power to “regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4”,¹¹³ to “make recommendations to the relevant authorities”¹¹⁴ with the aim of improving condition of detention and to “submit proposals and observations concerning existing or draft legislation”.¹¹⁵

To this end NPMs must be granted the same powers as the SPT concerning access to all places where persons are deprived of their liberty as well as to all information concerning persons deprived of their liberty. Furthermore, they must be granted the possibility to hold private interviews with any person deprived of his/her liberty, as well as the right to contact the SPT, exchange information and meet with it.¹¹⁶ However, the provision of OPCAT does

¹⁰⁸ SPT, *Guidelines on NPMs*, CAT/OP/12/5, para. 16.

¹⁰⁹ A good example of integration of CSOs, that will be discussed later on, is the Slovenian NPM. Similarly Armenia has included NGOs in its NPM in the form of an Expert Council. The Armenian Expert Council members are appointed by the Human Rights Defender and work on a voluntary basis. They support the NPM in carrying out its duty, for example by visiting places of detention and compiling the reports thereof.

SPT, *Report on the visit made to the National Preventive Mechanism of the Republic of Armenia - Report to the State Party*, CAT/OP/ARM/1, para. 13-17.

¹¹⁰ Article 18(1) OPCAT.

¹¹¹ Article 18(3) OPCAT.

In the case of Moldova for example the SPT has commented on the lacking independence of the NPM within the Ombudsperson Office:

“Although it is comprised of the Consultative Council together with the Centre for Human Rights, the NPM is legally placed under the Chair of the Parliamentary Advocate (Ombudsman). Hence, the support team, employed by the Ombudsman office, is dependent on his instructions and not on the collegial body of the NPM. This controverts article 18.1 of OPCAT setting out that States Parties shall guarantee the independence of the NPM personnel. Moreover, the NPM as a collegial body does not have access to the budget, which is administered solely by the Centre for Human Rights, and, thus, cannot decide independently on the use of resources, according to the priorities and evaluation of needs.”

SPT, *Report on the Visit made to the NPM of Moldova - Report for State Party*, CAT/OP/MDA/1, para. 18.

¹¹² Article 18(2) OPCAT.

¹¹³ Article 19(a) OPCAT.

¹¹⁴ Article 19(b) OPCAT.

¹¹⁵ Article 19(c) OPCAT.

¹¹⁶ Article 20 OPCAT.

This last requirement might seem obvious, but it has already been challenged for example in the Maldives, where charges of high treason were brought against the members of the National Human Rights Commission, the body

not bind NPMs by confidentiality, but leave the decision on how to handle confidentiality to the states.

In the following subchapters, the NPMs established in Austria, Germany, Slovenia and France will be described in more detail.

4.1 NPM AUSTRIA

4.1.1. LEGAL FRAMEWORK

By way of the Act Implementing the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment¹¹⁷ (OPCAT-Implementation Act) amending the Austrian Federal Constitution (B-VG)¹¹⁸ the AOB was entrusted with the tasks of a NPM in 2012. Since then, the NPM has a legal foundation in the Constitution, more specifically in Article 148a (3) B-VG. The amendments to the Constitution also foresee that commissions should be established, which should carry out the monitoring tasks of the NPM. Thus, the AOB and its commissions form the Austrian NPM. Moreover, the amendments to the constitution foresee that a Human Rights Advisory Council (HRAC) shall be established, which has mainly an advisory role for the AOB.

Apart from the provision in the constitution, there are also secondary rules on the Austrian NPM established in ordinary, sub-constitutional law. First of all, the Act on the Austrian Ombudsman Board (Volksanwaltschaftsgesetz 1982)¹¹⁹ was amended by the OPCAT-Implementation Act and now includes a section III on the “Protection and Promotion of Human Rights”. This section regulates the details of the organisation, competences and work of the AOB and the commissions of the NPM, as well as of the HRAC. Two further sub-

that is also functioning as NPM in the Maldives, for sending a report on the status of the judiciary in the country to the United Nations Human Rights Council within the framework of the Universal Periodic Review: the Supreme Court has stated in a recent judgment that the National Human Rights Commission must not exchange information with international organisations directly, but only based on the agreement of the government.

United Nations Office of the High Commissioner for Human Rights, ‘Maldives: UN experts urge Supreme Court to reconsider decision against Maldivian Human Rights Commission’, available at: www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16101&LangID=R.

¹¹⁷ Bundesgesetz zur Durchführung des Fakultativprotokolls vom 18. Dezember 2002 zum Übereinkommen der Vereinten Nationen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe – OPCAT-Durchführungsgesetz, BGBl. I Nr. 1/2012 of 10 January 2012, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_1/BGBLA_2012_I_1.html.

¹¹⁸ Bundes-Verfassungsgesetz (B-VG), BGBl. I Nr. 194/1999 (DFB), available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138.

¹¹⁹ Bundesgesetz über die Volksanwaltschaft (Volksanwaltschaftsgesetz 1982 - VolksanwG), BGBl. Nr. 433/1982, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000732.

constitutional laws complement the legal basis of the Austrian NPM. On the one hand there are the Standing Rules of the AOB, (Geschäftsordnung der Volksanwaltschaft, GeO),¹²⁰ which lay down further details of the NPM. More specifically, §§16-24 GeO provide details on the tasks, organisation, leadership, conduct of visits, decision-making and remuneration of the commissions of the NPM. On the other hand, the Act on the Allocation of Duties of the AOB (Geschäftsverteilung der Volksanwaltschaft),¹²¹ details the local competencies of the six commissions of the NPM.

4.1.2. MANDATE

The constitutional mandate given to the Austrian NPM in Article 148a (3) B-VG comprises three branches:

- Article 148a (3) 1 B-VG: To monitor public and private institutions and facilities where individuals are or can be detained.
- Article 148a (3) 2 B-VG: To monitor and concomitantly inspect executive bodies and officers of administrative authorities authorised to issue direct orders and carry out coercive measures.
- Article 148a (3) 3 B-VG: To monitor and visit facilities and programmes designed to serve persons with disabilities.

§11 (1) of the Act on the Austrian Ombudsman Board confirms this threefold mandate in sub-constitutional law. As can be seen, the mandate of the Austrian NPM goes beyond the mandate provided for in the OPCAT, as Article 148a (3) 2 B-VG provides the AOB and its commissions with the mandate to monitor and inspect administrative authorities issuing direct orders or carry out coercive measures. According to an advisory opinion by the HRAC, the mandate of the Austrian NPM also entails the monitoring of the deportation of foreign nationals.¹²² According to a decree issued by the Federal Ministry of the Interior, the AOB and its commissions shall be informed of targeted campaigns, major raids and events, as well as (forced) returns. Additionally, the AOB acting as NPM implements Article 16 (3) of the UN

¹²⁰ Geschäftsordnung der Volksanwaltschaft, ihrer Kommissionen und des Menschenrechtsbeirates (GeO der VA 2012) BGBl. II Nr. 249/2012, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007920.

¹²¹ Geschäftsverteilung der Volksanwaltschaft, ihrer Kommissionen und des Menschenrechtsbeirates (GeV der VA 2014), BGBl. II Nr. 70/2014, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2014_II_70/BGBLA_2014_II_70.html.

¹²² Menschenrechtsbeirat, *Stellungnahme des VA-MRB zu NPM-Mandat für Abschiebungen und Zurückweisungen am Luftweg*, 8 April 2014, available at: <http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/der-menschenrechtsbeirat#anchor-index-2445>.

Convention on the Rights of Persons with Disabilities (CRPD) as it is entrusted with the task of visiting facilities designed to serve persons with disabilities according to Article 148a(3)3 B-VG with a view to prevent exploitation, violence and abuse. The NPM made clear that these three tasks are interrelated in practice and that the visiting programs take into account all three aspects of the mandate, despite of the different legal bases underlying Article 148a(3) B-VG. As the monitoring of places of detention is the focus of this research, a focus will be put on the mandate provided in Article 148a(3)1 B-VG in the following.

The main purpose of monitoring according to Article 148a(3)1 B-VG is prevention, i.e. the reduction of risks of becoming a victim of a human rights violation for persons deprived of their liberty. The NPM's "findings help to identify deficits in the system based on individual cases, which could constitute a latent risk for human rights violations."¹²³ The definition of places of detention to be monitored in the course of Article 148a(3)1 B-VG follows the definition provided in Article 4 OPCAT and in practice includes correctional institutions, retirement and nursing homes, psychiatric facilities and crisis centres.¹²⁴ This monitoring is done all over Austria and on a routinely basis.¹²⁵ This means that the AOB and its commissions examine around 4.000 institutions and facilities where persons are or can be deprived of their liberty.¹²⁶ It has to be noted that the province of Vorarlberg set up a separate NPM monitoring places of detention under the competence of the province of Vorarlberg. The federal institutions in Vorarlberg, where persons are or may be deprived of their liberty, remain under the responsibility of the Austrian NPM.

The amendments introduced by the OPCAT-Implementation Act constitute the most profound expansion of the AOB's responsibilities since its establishment in 1977. While the AOB for a long time focussed on the ex-post control of the public administration and reviewed individual complaints for that purpose, the AOB's mandate now includes preventive monitoring tasks. It was made very clear by the Austrian NPM that the focus on prevention implies more than ex-post control of places of detention. The 2013 Report on the NPM states that "[the] commissions consider it their duty to contribute to a strengthening of human rights standards at the visited institution and to advocate the protection and promotion of human

¹²³ Volksanwaltschaft, *Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013*, May 2014, available at: http://volksanwaltschaft.gv.at/downloads/48h64/Austria_ReportonActivitiesofNPM_2013.pdf, p. 7.

¹²⁴ Volksanwaltschaft, *Report of the AOB 2013*, May 2014, p. 9.

¹²⁵ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014*, Band 2: Präventive Menschenrechtskontrolle, March 2015, available at: <http://volksanwaltschaft.gv.at/downloads/64om2/Parlamentsbericht%202014%20Band%20II.pdf>, p. 9.

¹²⁶ Volksanwaltschaft, *Report of the AOB 2013*, May 2014, p. 9.

rights across Austria.”¹²⁷ Given this focus on prevention, it is important to note that Article 148c B-VG provides the AOB with the competence to issue recommendations for measures to be taken by the authorities of the highest administrative level. The authority concerned must then conform to such recommendations, or has to inform the AOB in writing about the reasons for not following the recommendations. Moreover, the AOB may suggest the amendment or adoption of laws according to §7(2) Act on the Austrian Ombudsman Board. Draft laws and draft decrees have to be submitted to the AOB for review as well.¹²⁸ Thus, the Austrian NPM may implement its preventive mandate also by way of legislative proposals.

The AOB is further obliged to cooperate with science and educational establishments according to §7(3) Act on the Austrian Ombudsman Board.

According to §14 Act on the Austrian Ombudsman Board, the HRAC is mandated to provide (legal) advice to the AOB in relation to §11(1) Act on the Austrian Ombudsman Board, and particularly when the AOB is deciding upon focus areas for monitoring (*PrüfSchwerpunkte*), prior to issuing determinations of maladministration (*Erstattung von Missstandsfeststellungen*), as well as regarding recommendations on uniform procedures and standards for monitoring. The HRAC, for instance, “compiled a legal statement of opinion, based on which the commissions must be given extensive access to the medical data of detainees at police detention centres.”¹²⁹

4.1.3. COMPOSITION

The Austrian NPM is made up of the AOB and its six regional commissions. Additionally, the HRAC fulfils an advisory function.

The AOB consists of three members, one of which holds the annually rotating chairmanship. The members of the AOB are appointed for a term of six years, whereby re-election is possible once according to Article 148g B-VG. The AOB is elected by the National Council (*Nationalrat*) on the basis of an overall proposal, for which each of the three parties holding the most mandates in the National Council may propose a candidate. Only persons eligible for election to the National Council having, inter alia, knowledge in the area of human rights may become a member of the AOB.

¹²⁷ Volksanwaltschaft, *Report of the AOB 2013*, May 2014, p. 26.

¹²⁸ Bundesgesetz über die Volksanwaltschaft (Volksanwaltschaftsgesetz 1982 - VolksanwG), BGBl. Nr. 433/1982, §7 (1), available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000732.

¹²⁹ Volksanwaltschaft, *Report of the AOB 2013*, May 2014, p. 8.

The six commissions of the Austrian NPM are organised according to regional aspects. Thus, one commission has been set up for Tyrol and Vorarlberg, one for Salzburg and Upper Austria, one for Styria and Carinthia, one for some districts of Vienna, one for the remaining districts of Vienna and some districts of Lower Austria, and one commission has been set up for Burgenland and the remaining districts of Lower Austria. This distribution of competences is in line with §8 of the Act on the Allocation of Duties of the AOB.¹³⁰ Each commission comprises up to eight members and a head of the commission. This way the legal requirement of having at least 42 commission members and additional heads for each commission prescribed in § 12(1) Act on the Austrian Ombudsman Board and §18 GeO is fulfilled.

The appointment of commission members requires a collegial decision by the AOB after a public tender and after consulting the HRAC and the heads of the commission in line with §19(2) GeO and §12 Act on the Austrian Ombudsman Board. Members of the regional commissions need to have the “required skills and knowledge”, whereby the law does not provide any details on these requirements. When appointing commission members, the AOB has to strive for a gender balance and adequate representation of ethnic and minority groups and should ensure an independent, multidisciplinary and pluralist composition. Commission members are appointed for a term of six years. After three years, half of all the commission members have to be reappointed. However, commission members may also be reappointed. They all receive a remuneration for their activities, which is determined by the AOB.

Each commission is headed by a personality renown in the field of human rights according to §21(1) GeO. The appointment of the heads of commissions also requires a collegial decision by the AOB after a public tender and a hearing by the HRAC in line with §19(1) GeO. It is provided by §13(4) Act on the Austrian Ombudsman Board that the heads of the commissions should coordinate their activities.

If required, the commissions may receive support from external experts or interpreters during their visits according to §22(4) GeO.

The HRAC comprises 32 representatives of non-governmental organisations and the Federal Ministries. It is thus also a kind of institutionalized inclusion of representatives of NGOs in the HRAC.¹³¹ According to §15(2) Act on the National Ombudsman Board members of the HRAC have to have respective competence and expertise in the area of human rights.

¹³⁰ Geschäftsverteilung der Volksanwaltschaft, BGBl. II Nr. 70/2014.

¹³¹ Volksanwaltschaft, *Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism* 2012, May 2013, available at: http://volksanwaltschaft.gv.at/downloads/a78u3/Report%20of%20the%20AOB%20on%20the%20activities%20of%20the%20NPM_2012.pdf, p. 37.

The Chair is a renowned personality in the area of human rights with outstanding knowledge of the organisation and functioning of the administration and has scientific expertise in constitutional law. The AOB has to care for a balanced representation of the sexes, an appropriate representation of ethnic groups and minorities, and has to ensure an independent, interdisciplinary and pluralistic composition of the HRAC.

The members of the HRAC are appointed by the AOB according to § 15(3) Act on the National Ombudsman Board. For the appointment of a member and a substitute member the Austrian Ombudsman Board is bound to a proposal by each of the following Ministers: Federal Chancellor, Minister of the Interior, Minister of Justice, Minister for Health, Minister of Defence and Sports, Minister of Labour, Social Affairs and Consumer Protection, and the Minister for European and International Affairs. Seven non-governmental organisations that are determined by the AOB propose a member and a substitute member for the HRAC. The AOB is bound to these proposals. The Chair and deputy of the HRAC are appointed by the AOB without being bound to any proposals.

4.2. NPM GERMANY

4.2.1. LEGAL FRAMEWORK

Germany ratified the OPCAT on 26 August 2008 with a Declaration under Article 24 to delay the establishment of the NPM.¹³² On 20 November 2008 an Administrative Order by the Ministry of Justice (*Organisationserlass des Bundesministeriums für Justiz*) foresaw the establishment of the NPM, which then started its work in May 2009.¹³³ Through a State Treaty the Joint Commission of the States (*Länderkommission*) was set up in June 2009.¹³⁴ The Federal Agency (*Nationale Stelle zur Verhütung der Folter*) and the Joint Commission of the States together form the national preventive mechanism in line with OPCAT. The NPM office is situated in Wiesbaden.

¹³² Association for the Prevention of Torture, 'Germany OPCAT situation', available at: www.appt.ch/en/opcat_pages/opcat-situation-1/.

¹³³ Deutscher Bundestag, *Unterrichtung durch die Bundesregierung, Jahresbericht 2010/2011 der Nationalen Stelle zur Verhütung von Folter*, 2 April 2012, p. 7, available at: <http://dip21.bundestag.de/dip21/btd/17/093/1709377.pdf>.

¹³⁴ Staatsvertrag über die Einrichtung eines nationalen Mechanismus aller Länder nach Artikel 3 des Fakultativprotokolls vom 18. Dezember 2002 zu dem Übereinkommen der Vereinten Nationen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe, GBl. BW of 7 December 2009, p. 681, available at: www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Rechtsgrundlagen/Staatsvertrag_Laenderkommission.pdf.

One third of the national agency is funded by the federal state and two thirds are funded by the states (*Länder*). It does not fall under any legal or professional supervision. The agency had massive problems regarding finances from the outset, as for the year 2013 the annual budget was € 300.000. This was continuously mentioned by the agency in its annual reports and also acknowledged by the state itself.¹³⁵ For 2015 the budget was raised to €540.000 and additional staff was contracted for the administrative work.¹³⁶

4.2.2. MANDATE

The mandate of the German NPM arises directly from the OPCAT, which was transposed into national law, as well as from the Administrative Order and the state treaty mentioned above. The Federal Agency and the Provincial Commission have the rights and powers as laid down in Articles 19 and 20 OPCAT. This is stated in point 3 of the Administrative Order and in Article 2(2) of the State Treaty. The mandate thus comprises examining the treatment of persons deprived of their liberty in places of detention, to make recommendations to authorities and to submit proposals and observations concerning existing or draft legislation.¹³⁷

The NPM visits “places of detention” without further stating in the legal norms which places are to be associated with this term. The NPM identifies deficiencies and gives recommendations for improvement to the authorities. Generally, visits are announced one day in advance, but some are also conducted unannounced.¹³⁸ The federal state and the *Länder*

¹³⁵ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2013*, p. 15, available at: www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/JAHRESBERICHT_2013_web.pdf;

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Purpose of providing Advisory Assistance to the National Preventive Mechanism of the Federal Republic of Germany - Report to the National Preventive Mechanism*, CAT/OP/DEU/2 of 29 October 2013, p. 4.

¹³⁶ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 12, available at: http://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/JAHRESBERICHT.p_2014df.

¹³⁷ The SPT in its report on Germany states, that:

“In accordance with Article 19 (c) of the Optional Protocol, the SPT recommends that the State Party amend the decree of the Federal Ministry of Justice of 20 November 2008 and the State Treaty between the 16 States of 24 June 2009, and other legal acts as relevant, in order to ensure that the NPM can submit proposals and observations concerning existing or draft legislation related to its mandate. At the same time, the SPT recommends that the State Party allocate the NPM sufficient resources to enable it to fully discharge its mandate in this regard.”

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Purpose of providing Advisory Assistance to the National Preventive Mechanism of the Federal Republic of Germany - Report to the State Party*, CAT/OP/DEU/1 of 16 December 2013, para. 36.

¹³⁸ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 14, available at: http://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/JAHRESBERICHT.p_2014df.

grant the NPM access to all information on the persons and the conditions of deprivation of liberty. Furthermore, the members of the delegations have access to all places of deprivation of liberty and the possibility to talk to the persons detained without further witnesses. The NPM decides freely which places to visit.¹³⁹

The Federal Agency is competent for all institutions of the federal state, namely detention facilities of the federal police, the army and customs, transit areas of international airports as well as monitoring extradition flights, altogether amounting to circa 280 institutions.¹⁴⁰

The majority of places monitored by the German NPM are under the responsibility of the Joint Commission of the States. These places include 186 prisons, around 1.430 police stations of the provincial polices, more than 300 psychiatric clinics and all courts, as well as seven places for persons awaiting removal and 27 places of the child- and youth welfare. Furthermore, the NPM's mandate extends to around 10.900 care facilities and facilities for old persons which fall under the competence of the Joint Commission.¹⁴¹

As a result of the visits, the German NPM writes visiting reports. These reports are available at the website of the NPM. Furthermore the reactions of the relevant state authorities (e.g. Ministries of Justice) are uploaded on the page next to the reports.¹⁴²

The NPM issues annual reports on its work, including summaries of its visits. In its annual report of 2014 the NPM for the first time specified and described standards, which it developed for certain topics. Those standardised recommendations concern the topics of keeping up the private sphere of persons, fixations, solitary confinement, equipment of cells, equipment of cells for short-term placement, documentation of short-term incarcerated persons and instruction at the point of arrest.¹⁴³

4.2.3. COMPOSITION

The German NPM was originally composed of five unpaid members, four in the Joint Commission of the States according to Article 4 of the State Treaty and one in the Federal Agency. In 2013 the Federal Agency was increased to two members. As of 1 January 2015 the

¹³⁹ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2013*, p. 15.

¹⁴⁰ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 10.

¹⁴¹ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 10.

¹⁴² Nationale Stelle zur Verhütung der Folter, 'Besuche', available at: www.nationale-stelle.de/index.php?id=besuche.

¹⁴³ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, from p. 15.

Joint Commission of the States was increased to eight members, now amounting to a total of ten NPM members. The members of the Joint Commission of the States are appointed by the Conference of Ministers of Justice. The members of the Federal Agency are appointed by the Federal Ministry of Justice, together with the Federal Ministry of the Interior and the Federal Ministry of Defence. The NPM members are appointed for four years and re-appointment is possible.¹⁴⁴

The members of the NPM are assisted by a full-time secretariat, located in Wiesbaden.¹⁴⁵

According to No. 4 of the Administrative Order and Article 4 of the State Treaty the head of the Federal Agency and the members of the Joint Commission of the States are completely independent. The members of both bodies work without remuneration on a voluntary basis (*ehrenamtlich*) and can resign at any given time. A premature dismissal might only occur under the conditions of § 24 of the German Judges Act (*Deutsches Richtergesetz, DRiG*), which foresees a number of cases when a person can no longer act in this function, e.g. being convicted to a prison sentence of more than a year, etc.¹⁴⁶

The Administrative Order installing the Federal Agency is very brief, not exceeding two A4 pages and foresees only basic provisions on the establishment of the body.¹⁴⁷ For example it states that the Federal Agency has the task to visit places of deprivation of liberty in the competence of the federal state to prevent torture according to Article 4 OPCAT, holding the rights and authority according to Article 19 and 20 OPCAT. The Federal Agency can give recommendations to the relevant authorities to improve conditions for persons deprived of their liberty. The authorities are asked to thoroughly check those recommendations and comment on them within a reasonable time. The Federal Agency together with the Joint Commission of the State shall write an annual report and hand it over to the federal government, the governments of the *Länder*, the Bundestag and the parliaments of the *Länder*.

Article 4(4) of the State Treaty stipulates that the members of the Joint Commission of the States should be persons with recognised expertise in the areas of law enforcement, police, psychiatry, criminology or other comparable areas. When setting up the commission it shall be

¹⁴⁴ Article 4(2) of the State Treaty.

¹⁴⁵ Nationale Stelle zur Verhütung von Folter, 'Nationaler Stelle', available at: www.nationale-stelle.de/index.php?id=72&L=1.

¹⁴⁶ Deutscher Bundestag, *Unterrichtung durch die Bundesregierung, Jahresbericht 2010/2011 der Nationalen Stelle zur Verhütung von Folter*, p. 8.

¹⁴⁷ Organisationserlass des Bundesministeriums für Justiz, 20. November 2008 (Bundesanzeiger Nr. 182, S. 4277), available at: www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Rechtsgrundlagen/Organisationserlass_OPCAT.pdf.

taken into account, that several areas of expertise are represented. Members of the Commission shall not be older than 70 years. The Organisation Order on the Federal Agency does not foresee any such detailed provision on who to appoint as members.

4.3. NPM SLOVENIA

4.3.1. LEGAL FRAMEWORK

Slovenia ratified the OPCAT in 2006 through the Act of Ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴⁸ and assigned its national human rights Ombudsman the role of an NPM.¹⁴⁹ Formal cooperation with non-governmental organisations to thoroughly implement the NPMs mandate is foreseen in Article 5 of the Act of Ratification of the OPCAT, stating the following:

“In carrying out monitoring at places of detention and checking the treatment of persons who have been deprived of their liberty, nongovernmental organisations registered in the Republic of Slovenia and organisations that have obtained the status of humanitarian organisations in the Republic of Slovenia, which deal with the protection of human rights or fundamental freedoms, especially in the field of preventing torture and other cruel, inhuman or degrading treatment of punishment, may cooperate with the Ombudsman in carrying out the tasks and authorities of the Ombudsman under this protocol.”¹⁵⁰

Apart from the OPCAT, which is directly applicable in Slovenia, the ratification act and the Human Rights Ombudsman Act¹⁵¹ provide for the legal framework of the NPM. The Ombudsman Act foresees basic rules on the set-up, the autonomy and functioning of the Ombuds-Institution. The ratification act entails the cooperation with civil society organisations within the work as NPM.

¹⁴⁸ Act of Ratification of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette RS no. 114/06 – International Treaties no. 20/06, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Opcijski_Protokol_dvostr.pdf.

¹⁴⁹ Association for the Prevention of Torture, ‘Slovenia - OPCAT Situation’, available at: www.apr.ch/en/opcat_pages/opcat-situation-66/.

¹⁵⁰ Act of Ratification of the OPCAT, Official Gazette RS no. 114/06, Article 5, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Opcijski_Protokol_dvostr.pdf.

¹⁵¹ Human Rights Ombudsman Act, available at: www.varuh-rs.si/index.php?id=91&L=6#c613.

In 2012 the “Methodology of Implementing Duties and Powers” was released; it is an internal handbook for the NPM’s work.¹⁵²

4.3.2. MANDATE

The mandate of the Slovenian NPM arises directly out of the OPCAT, as this Protocol is directly applicable in Slovenia. However, the Ombudsman Act and the OPCAT Ratification Act also foresee some norms on the NPM’s mandate. The Ombudsman “may make suggestions and give recommendations, opinions and critiques to the bodies which are bound to consider them and respond within the deadline specified by the Ombudsman”.¹⁵³

The NPM is allowed to visit the following institutions according to its statement in the annual reports:

- prisons with all their units and Radeče Correctional Facility;¹⁵⁴
- juvenile institutions;
- certain social care institutions – retirement homes and special social care institutions;¹⁵⁵
- psychiatric hospitals;
- police custody and/or detention rooms at police stations;
- the Aliens Centre and the Asylum Centre;
- detention rooms operated by the Slovenian Armed Forces, and
- all other places within the meaning of Article 4 of the Optional Protocol (e.g. police emergency vehicles and similar).¹⁵⁶

The tasks of the NPM were thus added to the existing tasks of the Ombudsman.

¹⁵² NPM Slovenia, *Annual Report 2013*, p. 13, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/1p/Porocilo_DPM_za_let_2013_-_dvostransko.pdf.

¹⁵³ Human Rights Ombudsman Act, Article 7, available at: www.varuh-rs.si/legal-framework/constitution-laws/human-rights-ombudsman-act/?L=6.

¹⁵⁴ Also including pre-trial detention units.

¹⁵⁵ Article 2 of the Mental Health Act defines social security institutions, both retirement homes and special social care institutions fall under this definition. A member of the Slovenian NPMs points out due to inconsistencies in the translations of annual reports the Slovene term “socialno varstveni zavod” was translated using either “social care institution” or “social security institution”. These wordings are synonyms for the Slovene term. Not the whole institutions are visited, but only the secure wards thereof. Information provided by a member of the Slovene NPM on 20 August 2015 by e-mail.

¹⁵⁶ NPM Slovenia, *Annual Report 2013*, p. 9.

After each visit a report on findings, opinions and criticism and – when necessary – recommendations for improvement, is published. The Ombudsman holds general responsibility for those reports, but NGOs cooperate in drafting the reports. On a visit-by-visit basis the Ombudsman can decide whether an NGO member shall draft the report. For example in 2012 members of the NGO SKUP provided four reports.¹⁵⁷ If externally contracted experts are present during a visit, their views are also included into the report. The report shall be addressed to the Ombudsman within 8 days after the visit. In case the Ombudsman disagrees with the views of experts from organisations, their views can be presented as separate opinions.¹⁵⁸ Visiting reports include information on the delegation, time of visit, visiting activities, findings and recommendations for improvement.

The report is submitted to the institution visited as well as the competent authority (i.e. the superior body of the visited institution), together with a request to comment on the statements or recommendations and submit this to the Ombudsman within a set deadline (usually 30 days). On the basis of the report, the response of the relevant authority and possible additional observations of the NPM a brief report is published on the website after each visit.¹⁵⁹

4.3.3. COMPOSITION

According to Article 2 of the Human Rights Ombudsman Act the Ombudsman shall be elected by Parliament upon nomination made by the President of the Republic. The Ombudsman shall be autonomous and independent according to Article 4. Only a Slovenian citizen may act as Ombudsman. The Ombudsman is elected for six years and may be re-elected once according to Article 11.

The Ombudsman shall have an expert service according to Article 52 of the Human Rights Ombudsman Act, he shall appoint and dismiss his counsels and other employees when he deems that necessary. A Secretary General shall be appointed to manage the Bureau.¹⁶⁰

¹⁵⁷ Sodja Katja (2012), SKUP- Skupnost privatnih zavodov: The role of NGO in NPM, The ways of collaboration with the Human Rights Ombudsman of Republic of Slovenia, available at: <http://webcache.googleusercontent.com/search?q=cache:JBuiJnUiEAkJ:www.skup.si/sites/default/files/THE%2520ROLE%2520OF%2520NGO%2520IN%2520NPM1.pptx+&cd=1&hl=de&ct=clnk&gl=at>.

¹⁵⁸ Association for the Prevention of Torture, 'Slovenia – NPM Working Methods', available at: www.appt.ch/en/opcat_pages/npm-working-methods-23.

¹⁵⁹ NPM Slovenia, *Annual Report 2014*, p. 15, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Porocila/Porocilo_DPM_-_Varuh_-2014_-_dvostranska_postavitev.pdf.

¹⁶⁰ Human Rights Ombudsman Act.

Until the end of 2014 the staff conducting NPM tasks was also still conducting ombudsman tasks (especially discussing individual complaints). While this holds various advantages (getting to know the issues better when also looking into individual complaints), it also entails various negative impacts (as overburdening staff). So in the end of 2014 it was decided to completely separate the task for a trial one-year project in 2015, as also stipulated in Item 32 of the SPT's Guidelines on NPMs. After this trial period the future work-method will be assessed.¹⁶¹ At the moment the NPM unit consists of five people, two dealing with only NPM related work (i.e. visits, reports), and three still being involved also with Ombudsman tasks. So strictly speaking the complete separation between Ombudsman tasks and NPM tasks has not taken place. According to information received from a member of NPM Slovenia, this is due to insufficient funds; it was not affordable to have five Ombudsman's employees working as NPM staff only.¹⁶² Most of the staff working on NPM matters are lawyers, one a specialist in criminal investigation and one is a professor for defectology. As the NPM does not have staff with medical expertise, external experts were additionally contracted.¹⁶³

In 2012 and 2013 a total of five NGOs were working with the NPM.¹⁶⁴ As of 2015 the number of organisations working with the NPM increased to 8, since then also including Caritas Slovenia, SKUP-Community of Private Institutes, and others are contributing to the work of the NPM.¹⁶⁵

4.4. NPM FRANCE

4.4.1. LEGAL FRAMEWORK

The institution acting as the French NPM was installed already before the OPCAT was ratified. The Act on the Contrôleur général set up the Contrôleur général des lieux de privation de liberté in 2007.¹⁶⁶ The OPCAT was ratified in July 2008 and as a consequence the Act on the Contrôleur Général (CG) was amended in 2014. The amendment created the possibility for the Contrôleur Général to gather information from any person, suspected to be able to

¹⁶¹ NPM Slovenia, *Annual Report 2014*, p. 9.

¹⁶² Information received from a member of the Slovene NPM on 20 August 2015.

¹⁶³ NPM Slovenia, *Annual Report 2014*, p. 13.

¹⁶⁴ NPM Slovenia, *Annual Report 2013*, p. 10.

¹⁶⁵ NPM Slovenia, *Annual Report 2014*, p. 11.

¹⁶⁶ Loi No. 2007 – 1545 du 30 octobre 2007 instituant un Contrôleur général des lieux de privation de liberté, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000279700.

enlighten the CG and not just persons at the institutions visited (Article 8), so to broaden the possibilities to question persons possibly holding information.

According to Art. 8 (2) addressing the CG should not lead to any negative impacts for the persons concerned.¹⁶⁷ Furthermore, rules on disclosure of documents, subject to medical secrecy were formulated in Article 8(1).

4.4.2. MANDATE

The Act on the Contrôleur Général states that the CG may visit any place where a person is detained after a decision by a public authority and any health care facility where a person is kept without his/her consent. The law does not provide a list of places the CG is allowed to visit. According to information received from the French NPM it visits prisons (pre-trial and detention centres), police custody cells, court cells, psychiatric hospitals, administrative detention (illegal immigrants), customs detention cells, waiting zones (airports), return flights, juvenile detention centres, and young offenders institutions, but does not visit elder care institutions or social care institutions.¹⁶⁸ Article 8 of the Act on the Contrôleur Général states, that authorities might speak up against the visit on urgent and compelling grounds of national defence, public safety, natural disasters or serious disorder (*motifs graves et impérieux liés à la défense nationale, à la sécurité publique, à des catastrophes naturelles ou à des troubles sérieux dans le lieu visité*). Such a provision is not foreseen in OPCAT for the NPMs.

The CG's mandate is broader than OPCAT, as it may also receive individual complaints and may monitor the deportation of foreign nationals.¹⁶⁹

According to Article 10 of the Act of 2007 the CG shall publish opinions and make recommendations to public authorities. Furthermore the CG shall propose changes to existing laws to the government which are published in the official journal of France after informing the authorities thereof.¹⁷⁰

In 2014 the CG published all of its opinions and recommendations of 2008 until 2014 in a compilation, together with the APT, to reflect on the first six years of the CG's existence.

¹⁶⁷ Loi No. 2014 – 528 du 26 mai 2014 modifiant la loi No. 2007-1545 du 30 octobre 2007 instituant un Contrôleur général des lieux de privation de liberté, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028986483&dateTexte=&categorieLien=id.

¹⁶⁸ Information received from member of staff of the NPM France on 1 September 2015 via e-mail.

¹⁶⁹ This was included in the amendment to the law creating the Cōntroleur Général of May 2014.

¹⁷⁰ Cōntroleur Général, 'Les avis du CGLPL publiés au Journal Officiel de la République Française', available at: www.cglpl.fr/rapports-et-recommandations/les-avis/.

This compilation shall act as a document of inspiration for other NPMs worldwide, to build on the extensive expertise of the CG.¹⁷¹

4.4.3. COMPOSITION

The CG is set up as an independent public body by Parliament. It cannot receive any instruction from any authorities. The CG is appointed by the president for six years, without possibility of removal or renewal. The CG cannot be prosecuted for his opinions issued in his functions. He may not carry out any other duties or elected mandates while in office.¹⁷²

The CG is assisted by a Secretary General and four administrative staff as well as seventeen inspectors working on full-time basis as well as twenty two external consultants, providing their expertise continuously or intermittently. Furthermore, there are six full-time inspectors looking into individual cases brought to the CG through letters or interviews with persons deprived of their liberty.¹⁷³

The budget given to the NPM is around € 4,46 million for 2014.¹⁷⁴

¹⁷¹ Association for the Prevention of Torture (APT) and Contrôleur général des lieux de privation de liberté, *Opinions and Recommendations of the French 'Contrôleur général des lieux de privation de liberté' 2008 – 2014* (CG and APT 2014).

¹⁷² Contrôleur Général, 'An independent body', available at: www.cglpl.fr/en/missions/.

¹⁷³ Contrôleur Général, 'Equipe', available at: www.cglpl.fr/missions-et-actions/presentation-de-lequipe/.

¹⁷⁴ Contrôleur Général, *Rapport d'activité 2014*, p. 284, available at: www.cglpl.fr/wp-content/uploads/2015/04/CGLPL_rapport-2014_version-web_3.pdf.

III. COMPARISON OF THE MONITORING PROCEDURES OF THE SPT, THE CPT AND SELECTED NPMS

1. INTRODUCTION AND REMARKS ON THE METHODOLOGY

Chapter III presents the results of a comparative analysis of the monitoring procedures of the SPT, the CPT and the NPMs established in Austria, France, Germany and Slovenia. Table 3 provides an overview of the topics and questions that will be discussed in this chapter.

Table 3: Questions addressed in Chapter III for each monitoring body under review

Basic features of the monitoring procedure	<ul style="list-style-type: none"> - How do the bodies' monitoring procedures work? How does the "dialogue" between the monitoring bodies and the state work from a formal point of view? - What role (if at all) do political bodies play in the monitoring procedures?
Periodicity of monitoring and reactive mechanisms	<ul style="list-style-type: none"> - How long are the intervals between the body's regular monitoring activities? - What initiatives may the monitoring body take in-between these intervals? (e.g. control visits, correspondence with authorities, follow-up visits, high-level meetings) - How many monitoring cycles have been conducted by the SPT, CPT and Austrian NPM in Austria? What initiatives, if any, have been taken by these monitoring bodies in-between the regular intervals?
Sources of information used	<ul style="list-style-type: none"> - What sources of information may be used by the monitoring body in its monitoring procedure? - To what extent may NGOs, civil society and further relevant stakeholders provide input to the monitoring body's procedure? - What input, if any, has been provided by these Austrian stakeholders to the monitoring procedure of the SPT, the CPT and the Austrian NPM?
Publicity, transparency and confidentiality	<ul style="list-style-type: none"> - How does the monitoring body balance the principle of confidentiality with the potential that is offered by public and transparent monitoring procedures? How and when are the reports published? When (if at all) are they openly available? - To what extent has publicity, transparency and confidentiality been an issue for the SPT, the CPT and the Austrian NPM in Austria?

The sources used for answering these questions are again the legal provisions governing the establishment and work of the monitoring bodies, internal rules of procedures and explanatory reports, the annual reports, the websites of the monitoring bodies, as well as academic literature.

2. SPT

2.1. BASIC FEATURES OF THE MONITORING PROCEDURE

Apart from OPCAT advisory visits, which support states to fully implement their OPCAT obligations, the SPT conducts two types of monitoring visits: NPM advisory visits and own visits to places of detention in the member states.

For what concerns NPMs advisory visits, the SPT may visit states parties even before they created an NPM: such SPT visits aim to support states in understanding the work of the NPMs under OPCAT and in advising on practical matters related to the effective establishment and functioning of the NPM. The SPT meets with state authorities, NHRI as well as with civil society organizations. Once an NPM has been established, the SPT advisory visits aim at strengthening the working practice of the NPM. For this reason, such visits may also include ‘shadow monitoring visits’ to places of detention: in these cases however the SPT maintains the role of observer of the NPMs.¹⁷⁵ NPMs advisory visits usually last for less than a week. After such a visit, the SPT sends out two reports, one to the state concerned and one to the NPM of that state itself. So far the SPT has conducted nine NPMs advisory visits¹⁷⁶ to the following states: Honduras,¹⁷⁷ Senegal,¹⁷⁸ the Republic of Moldova,¹⁷⁹ Germany,¹⁸⁰ Armenia¹⁸¹, Ecuador,¹⁸² Malta, the Netherlands and Turkey.¹⁸³

¹⁷⁵ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘Outline of SPT advisory visits to NPMs’, available at: www.ohchr.org/EN/HRBodies/OPCAT/Pages/NoteSPTAdvisoryvisitsstoNPMS.aspx.

¹⁷⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘SPT Visits’, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx#.

¹⁷⁷ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Honduras - Report for the national preventive mechanism*, CAT/OP/HND/3 of 25 January 2013.

¹⁷⁸ SPT, *Report on the visit made to the NPM of Senegal - Report for the NPM*, CAT/OP/SEN/2.

¹⁷⁹ SPT, *Report on the Visit made to the NPM of Moldova - Report for State Party*, CAT/OP/MDA/1; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the National Preventive Mechanism of Moldova - Report for the national preventive mechanism*, CAT/OP/MDA/2 of 30 May 2013.

SPT visits to places of detention in the member states are meant to be periodical. However due to the high number of states parties to the OPCAT and the limited resources available, this task was not satisfactorily accomplished thus far. Since its establishment in 2007, the SPT has conducted 27 monitoring visits and three follow-up visits,¹⁸⁴ thirteen of these visits¹⁸⁵ have been authorised for publication by the state parties.¹⁸⁶

The OPCAT foresees that the first states to be visited by the SPT should be chosen by lot,¹⁸⁷ in order to ensure that no state will be targeted or singled out by the SPT (the ECPT does not contain a similar obligation).¹⁸⁸ After that, the SPT is free to decide which states to visit by ‘reasoned process’,¹⁸⁹ taking into consideration “date of ratification, development of national preventive mechanisms, geographic distribution, size and complexity of the state, regional preventive monitoring and urgent issues reported”.¹⁹⁰

In 2011 the SPT has published guidelines for its own visits to state parties, which lay out the visiting procedure in more detail.¹⁹¹ In order to facilitate the visits, at least two months prior to the visit the SPT provides the state party with information on the dates of the visits, an

¹⁸⁰ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the State Party*, CAT/OP/DEU/1; SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2.

¹⁸¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rapport du Sous-Comité pour la prévention de la torture et autres peines ou traitements cruels, inhumains ou dégradants sur sa visite de conseil au mécanisme national de prévention de la République d’Arménie - Rapport à l’attention de l’État partie*, CAT/OP/ARM/R.1 of 25 November 2013.

¹⁸² SPT, *Informe sobre su visita de asesoramiento al mecanismo nacional de prevención de Ecuador - Informe dirigido al mecanismo nacional de prevención*, CAT/OP/ECU/2.

¹⁸³ SPT, ‘SPT Visits’, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx#..

¹⁸⁴ SPT, ‘SPT Visits’, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx#..

¹⁸⁵ SPT, ‘SPT Visits’, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx#..

¹⁸⁶ SPT, ‘SPT Visits’, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx#..

¹⁸⁷ Article 13(1) OPCAT.

The first states that were chosen were Maldives, Mauritius and Sweden. It is interesting to note that since the CPT conducted a visit to Sweden the same year that the SPT did, the SPT conducted only a shorter visits and took “a more targeted approach, taking into account the preventive visiting already undertaken in Sweden and based on consultation and cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.”

SPT, *First Annual Report*, CAT/C/40/2, para. 21.

¹⁸⁸ Murray, and others, *The OPCAT* (Oxford University Press 2011), p. 98.

¹⁸⁹ SPT, *First Annual Report*, CAT/C/40/2, para. 14.

¹⁹⁰ SPT, *First Annual Report*, CAT/C/40/2, para. 14.

¹⁹¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Visits to States Parties*, CAT/OP/12/4 of 18 January 2011.

indicative programme¹⁹² (without prejudice to possible changes that the SPT might retain necessary) and the name of the members of the delegations.¹⁹³

The size of the SPT visiting delegation depends on the “size and complexity of the country”, but must comprise at least two SPT members - one lawyer and one medical doctor.¹⁹⁴ The members of the delegation are chosen depending on their language skills and on their experience in working with the visited country.¹⁹⁵ One of the members shall be appointed as Head of Delegation. Additionally, at least one member of the SPT Secretariat should participate in the visit.¹⁹⁶ Experts and interpreters may be appointed as well, to assist the SPT in fulfilling its tasks.¹⁹⁷

A periodic monitoring visit by the SPT usually takes around 10 days, during which the members of the delegation, together or separately, visit a number of places of detention, meet with national authorities, the NPM, NHRI and civil society organizations. Member states are obliged to allow the SPT to visit any places where persons are deprived of their liberty and “to provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture”.¹⁹⁸ Visits to places of deprivation of liberty include also private conversation with inmates, as well as with staff.¹⁹⁹

The work of the SPT is rooted in the dialogue with the state. At the end of the visit the SPT thus meets with the relevant state authorities to present its preliminary observations and briefly discusses matters that require immediate action. After the visit, the SPT issues a report to the state party, which reflects the observation made during the visit and recommendations on how to improve the situation. The report may also be confidentially sent to the NPM,

¹⁹² Depending on the information received prior to its visit, the Head of Delegation may decide, in consultation with the other members of the delegation and the Secretariat, on the focus of the visit and draft a program which is then presented to the Subcommittee for approval.

SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 16.

¹⁹³ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 13-14.

¹⁹⁴ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 3.

¹⁹⁵ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 6.

¹⁹⁶ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 6 – 11.

¹⁹⁷ Article 13(3) OPCAT states that:

“The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.”

¹⁹⁸ Article 12(a) and (b) OPCAT.

¹⁹⁹ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 22.

whenever the SPT deems it relevant.²⁰⁰ This is quite an exception of the principle of confidentiality which binds the work of the SPT, since NPMs are not bound under OPCAT by confidentiality and the decision about sharing this information is left to the discretion of the SPT. States and NPMs are requested to provide a written statement within six months upon transmittal of the SPT report.²⁰¹

Political bodies are not involved in the work of the SPT.

2.2. PERIODICITY OF MONITORING AND REACTIVE MECHANISMS

Concerning the number of states monitored per year, the plan developed by the SPT was that after an initial period of assessment, the annual programme of visits should have increased to eight member states per year. This periodicity would allow for a cycle of visits of four to five years, similar to the one of the CPT.²⁰² In practice however, even with more members of the SPT, the number of monitoring visits is still limited to four to five per year. This results in an average monitoring cycle of around 15 years per country. The SPT has compensated the long time span in between visits partly by organizing follow-up visits in some of the member states where a periodic visit has already taken place.²⁰³

Whenever a state party “refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention”²⁰⁴ the SPT may ask the Committee against Torture to “decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention”.²⁰⁵

So far, no monitoring visit has been conducted by the SPT in Austria.

²⁰⁰ Article 16(1) OPCAT.

²⁰¹ Neither OPCAT nor the Guidelines in relations to visits to states parties offer a deadline for the provision of the state’s reply. It has however become practice for the SPT to request a reply within six month. See for example: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Eight Annual Report*, CAT/C/54/2 of 26 March 2015, para. 18.

²⁰² SPT, *First Annual Report*, CAT/C/40/2, para. 15.

²⁰³ So far four follow-up visits have been undertaken by the SPT to Paraguay, Cambodia, the Maldives and Benin.

²⁰⁴ Article 16(4) OPCAT.

²⁰⁵ Article 16(4) OPCAT.

2.3. SOURCES OF INFORMATION

Prior to a monitoring visit by the SPT, the Secretariat of the SPT provides “a compilation and analysis of detailed information concerning the State Party”.²⁰⁶ The Secretariat draws its information on a wide variety of sources, such as other UN human rights mechanisms, the state’s information and information stemming from other sources, such as NHRI, NGOs, etc.

The types of information provided through the secretariat is also extensive: information concerning current legislation and regulations in areas related to the SPT mandate, a list of places of deprivation of liberty, statistical information, information from UN human rights mechanisms working in the same area, information on NHRI (including reports of ill-treatment and the last annual report), other bodies and NGOs working in the area of deprivation of liberty as well as communications received by the Subcommittee.²⁰⁷

During the visit, the members of the delegation hold private conversations with staff and persons deprived of their liberty. In these cases the SPT is bound to inform the interviewees that it will treat the information received as confidential, unless the interviewee agrees to publication. Photo documentation is usually not deemed necessary.²⁰⁸

After the visit has taken place the SPT may ask NGOs to report on any relevant changes in policies and practices.²⁰⁹

2.4. PUBLICITY, TRANSPARENCY AND CONFIDENTIALITY

In general, the SPT is bound by the principle of confidentiality.²¹⁰ Confidentiality is the cornerstone of the activities of the SPT and allows an open dialogue with the state, without causing the fear of ‘naming and shaming’. Differently from other UN bodies, which allow for example members of NGO to assist their meetings, the SPT holds its meeting *in camera*.

The principle of confidentiality is enshrined in Article 2(3) OPCAT and serves as a means for creating trust and an open dialogue with states. Confidentiality may be lifted with the consent of the state. In 2012, for example, the SPT met with a Mexican delegation to

²⁰⁶ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 15.

²⁰⁷ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 15.

²⁰⁸ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 23.

²⁰⁹ SPT, *Guidelines to Visits to States Parties*, CAT/OP/12/4, para. 25.

²¹⁰ Article 2(3) OPCAT.

discuss the state's reply to the SPT visiting report. Members of the NPMs were allowed to join the meeting to present orally their observation on the SPT report.²¹¹

As it was stated earlier, the reports of the SPT are also bound by the confidentiality clause. Only about half of the reports of the SPT have been authorized by states for publication.²¹²

There are two scenarios for which the OPCAT provides the SPT with the possibility to publish a report that would otherwise be confidential. Article 16(2) authorizes the SPT to publish a report, fully or in part, whenever the state concerned has published part of it. Article 16(4) states that “if the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the SPT, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention”.²¹³ So far no public statement has been made by the Committee against Torture on behalf of the SPT.

In 2011 the SPT created the OPCAT special fund with the aim to assist states in implementing SPT recommendations. Since publication of the reports is a necessary condition for applying for funds, the SPT has thus provided an incentive for publications.²¹⁴

Confidentiality is ensured towards the staff and the persons deprived of their liberty with whom the SPT hold private conversation during its monitoring visits. In these cases confidentiality aims to guarantee that these persons will not be object to any reprisal for the information that they have provided to the SPT.²¹⁵

3. CPT

3.1. BASIC FEATURES OF THE MONITORING PROCEDURE

According to Article 8 ECPT, the CPT is obliged to notify the state concerned of its intention to carry out a visit. The Explanatory Report to the ECPT clarifies that “exceptional situations

²¹¹ SPT, *Sixth Annual Report*, CAT/C/50/2, para. 23.

²¹² SPT, ‘SPT Visits’, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx#.

²¹³ Article 16(2) and (4) OPCAT.

²¹⁴ SPT, ‘2015 Call for Applications to the Special Fund of the OPCAT’.

²¹⁵ Article 15 OPCAT: “No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.”

could arise in which the visit takes place immediately after the notification has been given". Representations against a visit by the CPT may only be made "on grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress".²¹⁶ The state is also obliged to inform the CPT about the places, where persons are deprived of their liberty and shall grant unlimited access to such locations.

A CPT visiting delegation comprises at least two, but usually more CPT members, who are often accompanied by members of the Committee's secretariat, further experts and interpreters. When conducting the on-site inspections at places of detention, the members of the visiting delegation of the CPT may interview in private persons deprived of their liberty and communicate freely with any person whom they believe can supply relevant information.²¹⁷

The draft report on the findings and observations by a delegation is discussed and adopted by the plenary of the CPT, and is then submitted to the state concerned. The reports usually include recommendations on actions to remedy situations where ill-treatment was found or was regarded as likely to occur. Such recommendations include suggestions for legal or administrative reforms, advice for improving material conditions, as well as issues related to raising awareness.²¹⁸ The state authorities are obliged to provide a written response to the CPT report, in which they provide comments and inform the CPT about steps to be taken to implement the recommendation made.²¹⁹ This way a dialogue is established between the CPT and the states. Generally, such a state response is required within six months.²²⁰ In case the CPT issues immediate observations according to Article 8(5) ECPT after a visit, reactions by the state are required within a shorter period of time.²²¹ Apart from the periodic visits, the CPT may also conduct *ad hoc* visits as required in the circumstances according to Article 7 ECPT.

There is no political body involved in the monitoring work of the CPT. The CPT's annual General Reports, however, are submitted to the Committee of Ministers and in the

²¹⁶ Article 9(1) ECPT. In relation to Georgia, the CPT could not get access to the breakaway regions of South Ossetia. Kicker, 'The CPT', in: de Beco (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012), p. 49.

²¹⁷ Article 8(3) and(4) ECPT.

²¹⁸ Murdoch Jim, *The Treatment of Prisoners: European Standards* (Council of Europe Publishing 2006), p. 38.

²¹⁹ Kicker Renate, 'The European Committee on the Prevention of Torture (CPT) Developing European Human Rights Law?', in: Benedek Wolfgang, Isak Hubert and Kicker Renate (eds.), *Development and Developing International and European Law - Essays in Honour of Konrad Ginther on the Occasion of his 65th Birthday* (Peter Lang 1999), p. 13.

²²⁰ Kicker, 'The CPT', in: de Beco (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012), p. 60.

²²¹ The immediate observations are also published in the CPT reports.

following, there is an annual hearing organised with the CPT's President. In case the CPT issues a public statement, the Committee of Ministers can ideally also engage politically in a dialogue with the country concerned and can in this way impose pressure on the respective state to remedy the situation.²²² Likewise, the Human Rights Commissioner may refer to concerns raised in CPT reports or public statements in his dialogue with member states.

3.2. PERIODICITY OF MONITORING AND REACTIVE MECHANISMS

The CPT conducts periodic visits according to Article 7 ECPT. On average, a country is visited every four to five years. Apart from these periodic visits, the CPT may also conduct additional ad hoc visits if required according to Article 7(1) ECPT. It has become a practice of the CPT to conduct 'follow-up visits' to institutions that previously have been subject to recommendations and 'ad hoc visits', which are carried out in response to information received. The rules laid down for the periodic visits also apply for the follow-up visits and ad hoc visits. Thus the CPT has to notify the visit to the state concerned and may carry out the visits immediately after notification in exceptional circumstances. As of April 2015, the CPT has conducted 222 periodic visits and 152 ad hoc visits, amounting to a total of 374 visits since its establishment.²²³

In case a state does not comply with the CPT's recommendation or with its obligation to cooperate with the CPT, the Committee may issue a public statement on the matter according to Article 10(1) and (2) ECPT. After the state has had an opportunity to provide its views in this regard, the CPT may lift the confidentiality and may publish all relevant information. The decision on issuing a public statement must be taken by a majority of two-thirds of the CPT members. In practice, the Committee rarely resorts to public statements.²²⁴

In practice, the CPT has established the practice of holding 'high-level talks' with state representatives with the president of the state, ministers and state secretaries. Such talks are

²²² Kicker, 'The CPT', in: de Beco (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012), p. 63.

²²³ For statistics on the number of visits conducted by the CPT see: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'The CPT in brief', available at: www.cpt.coe.int/en/about.htm.

²²⁴ To date, only seven public statements have been issued: two in respect of Turkey (1992 and 1996), three in respect of the Russian Federation in relation to the North Caucasian region (2001, 2003 and 2007), Greece (2011), and the most recent one in respect to Bulgaria (2015).

usually organised by the Bureau of the CPT and aim at addressing difficulties in the dialogue with state representatives at the highest political level.²²⁵

In total, the CPT has visited Austria six times so far (1990, 1994, 1999, 2004, 2009, and 2014). Since 1990, the CPT has made 60 visits to police establishments including police detention centres, 18 visits to prisons and five visits to psychiatric establishments in total. On average the visits lasted approximately 10 days.

CPT visits to Austria	1990	1994	1999	2004	2009	2014	Total
Police establishments (including detention centres)	10	11	10	11	11	7	60
Prisons	2	2	3	3	3	5	18
Psychiatric establishments and care institutions	0	0	1	1	2	1	5

Five out of the six reports, as well as the respective responses by the Austrian government have been published.²²⁶ In 1999, 2005 and 2010, the CPT's delegation met senior Government officials at the end of the visits and issued immediate observations on issues of particular concern.²²⁷

CPT visits to Austria	1990	1994	1999	2004	2009	2014	Total
Duration of	7	12	12	10	11	10	62

²²⁵ Kicker, 'The CPT', in: de Beco (ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012), p. 64. There are no provisions in the ECPT regulating these high-level talks.

²²⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Austria', available at: www.cpt.coe.int/en/states/aut.htm.

²²⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015)34 of 6 November 2015.

the visit (days)							
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Austria has never been subject to a public statement by the CPT.

3.3. SOURCES OF INFORMATION

For the CPT, the main source of information is their own on-site visits in the member states, during which interviews are conducted in private with persons deprived of their liberty, as well as with the personnel working at such places. The visiting delegations of the CPT may also consult all relevant documents, such as medical records.

A CPT visit also includes discussions with the relevant Ministers, consultations with senior state officials, as well as international and non-governmental organizations active in areas of concern to the CPT.

During its visits in Austria, the CPT regularly consulted national authorities (including high-level representatives of the Federal Chancellery, the Federal Ministry of Foreign Affairs, Federal Ministry of Health, Federal Ministry of the Interior, Federal Ministry of Justice, the Ombudsman Board), intergovernmental organizations (particularly the Office of the United Nations High Commissioner for Refugees in Vienna), the Austrian Bar Association, as well as non-governmental organizations (including, for instance, the Austrian Section of Amnesty International and Caritas Austria).²²⁸ There are, however, no details provided in the CPT reports on what issues are discussed in the course of these consultations.

²²⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015)34 of 6 November 2015; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 2009*, CPT/Inf (2010)5 of 11 March 2010; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 23 April 2004*, CPT/Inf (2005)13 of 21 July 2005; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Rapport au Gouvernement autrichien relatif à la visite en Autriche effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 19 au 30 septembre 1999*, CPT/Inf (2001)8 of 21 June 2001; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture And Inhuman or Degrading Treatment or Punishment (CPT) from 20 May 1990 To 27 May 1990*, CPT/Inf (91)10.

3.4. PUBLICITY, TRANSPARENCY AND CONFIDENTIALITY

According to Article 11 ECPT, the information gathered by the Committee in relation to a country visit, namely the facts observed, information obtained from external sources and information collected by the CPT itself, shall be confidential. The CPT report can be published, whenever the state requests the CPT to do so. Yet, no personal data shall be published without the explicit consent of the person concerned. The Committee must also comply with the provisions on confidentiality of Article 11 ECPT when preparing its annual report.

In practice, many states are willing to authorize the publication of the CPT reports and their written responses and make them available to the public.²²⁹ The Government of Austria has requested the publication of the CPT reports and of its responses for the reports of 1990, 1994, 1999, 2004 and 2009. The CPT report of 2014 has not been published yet at the time of writing.

In case of a consistent lack of cooperation and non-implementation of its recommendations, the CPT has the possibility to lift confidentiality and may issue a public statement. In practice, the CPT regularly devotes a paragraph to the level of cooperation with state authorities in its state reports. However, these statements concern the formal cooperation by states. The material cooperation is covered in more detail in each report. In respect to Austria, the CPT repeatedly welcomed the excellent level of formal cooperation by the authorities and highlighted the beneficial role of the national CPT liaison officers providing assistance before and during the CPT visit.

4. SELECTED NATIONAL PREVENTIVE MECHANISMS UNDER OPCAT

The SPT provided the NPMs with guidance on how to conduct the monitoring visits. The NPMs guidelines produced by the SPT in fact do not contain any detailed information on how the NPMs should conduct their visits. The NPMs advisory visit reports however contain a series of recommendations in this regard. In particular the SPT has stressed the importance “for the NPM to expand operational guidelines and handbooks that will provide a means of transferring knowledge when its membership changes.”²³⁰ These operational guidelines should

²²⁹ Murdoch, *The Treatment of Prisoners: European Standards* (CoE Publishing 2006), p. 44; Kicker Renate, The Council of Europe Committee for the Prevention of Torture (CPT), (2009) *European Yearbook on Human Rights* 199, p. 202.

²³⁰ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 55.

reflect the diversity of places where persons are deprived of their liberty and include “guidelines for conducting private interviews, as well as policies for dealing with vulnerable groups of inmates, and ensure that information from all available sources is collected.”²³¹ The guidelines for the NPMs should also include security guidelines for the members of the NPMs when conducting their visits.²³²

The SPT has stressed that:

“the mandate of the NPM differs from that of other bodies working against torture and is characterized by its preventive approach which involves identifying patterns and detecting systemic risks of torture and ill-treatment. Rather than seeking to investigate or resolve individual complaints, the NPM should advise detainees on how and to whom to address individual complaints and seek to ensure the effectiveness of complaints mechanisms as a means of prevention.”²³³

Concerning the preparation of the monitoring visits by the NPMs, the SPT has stressed the importance of the establishment of a “work plan or programme which, over time, encompasses unannounced and follow-up visits with an appropriate frequency to all locations (...) where persons are or may be deprived of their liberty, as provided for by Articles 4 and 29 of the Optional Protocol.” The SPT further recommends that the NPM develops common criteria for selecting the facilities to be visited that will ensure that all facilities are visited periodically over time. These criteria should reflect the type and size of the places of deprivation of liberty, and the nature of any concerns of which the NPM is aware, and include all forms of institutions in all geographic areas”.²³⁴ In the preparation of the visit the NPM should ensure

²³¹ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 56

²³² During the NPM advisory visit to Ecuador, the SPT

“presenció entrevistas colectivas e individuales. En el Centro de detención de Quito el SPT observó una entrevista colectiva que permitió al equipo identificar problemas comunes, reconocer a los líderes informales y obtener una visión del estado de ánimo general. El equipo logró manejar el grupo de 30 PPL con autoridad, estableciendo reglas de toma de palabra desde el inicio de la conversación. El SPT observó, sin embargo, que el MNP no tenía protocolos de seguridad, lo que dio lugar a situaciones susceptibles de ser peligrosas para ellos. Por ejemplo, en uno de los pabellones el equipo condujo una entrevista colectiva al fondo de un pasillo largo y estrecho y completamente rodeado de PPL. El SPT observó que en la eventualidad de una emergencia, el equipo podría haberse visto acorralado y sin posibilidad de acceder a una salida.

El SPT recomienda que el MNP, en consulta con un especialista en seguridad, desarrolle protocolos y reciba una capacitación en materia de seguridad. El SPT recomienda que al inicio de la visita, el MNP considere cuidadosamente las restricciones propuestas por el personal del centro por razones de seguridad y solicite información sobre incidentes que hayan podido ocurrir recientemente y medidas tomadas al respecto.”

SPT, *Informe sobre su visita de Asesoramiento al Mecanismo Nacional de Prevención de Ecuador – Informe dirigido al Mecanismo Nacional de Prevención*, CAT/OP/EQU/2 of 17 June 2015, para. 57-58.

²³³ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 66.

²³⁴ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 49-50.

that the visiting team is interdisciplinary²³⁵ and that the members are equipped with all necessary instruments to properly evaluate the conditions of detention.²³⁶ The SPT recommends that the

“NPM [should] allocate specific tasks to its members prior to their arrival at a place of deprivation of liberty, in order to avoid any duplication and to enable them to cover as many areas as possible. It also recommends that the NPM choose specific issues to be addressed in detail during each visit. The composition of the visiting team should be such as to allow both general and specific issues to be covered and should include a health-care professional, preferably a doctor.”²³⁷

According to the SPT, “unannounced visits, or visits at short notice, are necessary to ensure that the NPM can form an accurate understanding of the experience of those deprived of liberty.”²³⁸

The SPT stresses that during visits “an accurate, complete presentation of the NPM mandate and objectives facilitates communication and trust-building with the respondents and thus improves the interviews.”²³⁹ Furthermore, during an interview, the members should introduce themselves and “explain the mandate of the NPM, placing particular emphasis on its preventive nature. The interviewer should also obtain the consent of the interviewee and make it clear that the interview is confidential, voluntary and can be interrupted at any time at the interviewee’s request.”²⁴⁰

In the view of the SPT, equal weight should be given to interviews with detainees and authorities.²⁴¹ The NPM should in principle conduct “private, individual and unsupervised interviews with detainees, staff and others, including the medical personnel. In addition, the SPT recommends that, as a general rule, members of the NPM include questions relating to the health of persons deprived of their liberty and their access to a health professional and

²³⁵ SPT, *Informe sobre su visita de Asesoramiento al Mecanismo Nacional de Prevención de Ecuador – Informe dirigido al Mecanismo Nacional de Prevención*, CAT/OP/ECU/2 of 17 June 2015, para. 64.

²³⁶ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 62.

²³⁷ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 52.

²³⁸ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 53.

²³⁹ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 57.

²⁴⁰ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 58.

²⁴¹ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 64.

facilities.”²⁴² Collective interviews are possible in principle, but the size of the group as well as the conditions in which the interview take place should be carefully chosen in order to reach the quality of information needed.²⁴³

In the aftermath of the visit, the SPT “recommends that the [NPM] reports should focus on prevention, identifying problems and proposing solutions in the form of recommendations. These recommendations must be concrete and well-grounded, should be directed towards developing preventive measures to deal with shortcomings in systems and practices, and should be practicable”.²⁴⁴

Particular attention should be also given to “the need to ensure protection of persons who provide information to the NPM from sanctions or reprisals through, inter alia, follow-up visits, contacts with family members, and by reminding those in authority that such behaviour will be reported and sanctioned”.²⁴⁵

4.1. NPM AUSTRIA

4.1.1. BASIC FEATURES OF THE MONITORING PROCEDURE

The heads of the six commissions of the Austrian NPM set up visiting programmes for their commissions taking into consideration the focus areas for monitoring (*Prüfeschwerpunkte*), which have been defined by the AOB.²⁴⁶ The first focus area for monitoring, for instance, was the performance of urine and drug testing in penal institutions.²⁴⁷ Such visiting agendas are agreed upon on a quarterly basis. The AOB also has the opportunity to inform the commissions about individual complaints as well as previous monitoring results regarding the institutions to be visited according to the visiting plan. Apart from these regular visits, the commissions may conduct *ad hoc* visits on the initiative of the head of the commission.²⁴⁸ The commissions’ visits do not have to be announced in advance, the commissions merely have to pay due attention to the requirements of the operation of the institution visited.²⁴⁹

²⁴² SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 60.

²⁴³ SPT, *Informe sobre su visita de Asesoramiento al Mecanismo Nacional de Prevención de Ecuador – Informe dirigido al Mecanismo Nacional de Prevención*, CAT/OP/ECU/2 of 17 June 2015, para. 59.

²⁴⁴ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 69-70.

²⁴⁵ SPT, *Report on the visit made to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2 of 29 October 2013, para. 68.

²⁴⁶ Geschäftsordnung der Volksanwaltschaft, BGBl. II Nr. 249/2012, § 21 (2) 4.

²⁴⁷ Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012, 2013*, p. 19.

²⁴⁸ Geschäftsordnung der Volksanwaltschaft, BGBl. II Nr. 249/2012, § 22 (2).

²⁴⁹ Geschäftsordnung der Volksanwaltschaft, BGBl. II Nr. 249/2012, § 22 (3).

The Austrian NPM has to be granted access to all places of detention and may also access all relevant files. If required and if possible given the overall budgetary limits of the commissions, additional experts and/or interpreters may be brought in for the visits upon the decision by the head of the commission.²⁵⁰ The inclusion of peer counsellors was identified as necessary, particularly for institutions and facilities for persons with disabilities.²⁵¹

The AOB' Annual Report of 2013 summarizes the commissions monitoring activities during the visits as follows:

“Monitoring includes all aspects of the protection of the human rights of individuals deprived of their liberty. Questions regarding the application of security measures or measures restricting a person’s liberty, signs of torture or degrading treatment and health care are particularly relevant to the examination. Supervision and enforcement plans, procedures for (forced) returns and releasing those detained, staff situation and complaint management are also investigated. Furthermore the commissions examine location, building structure and infrastructural fixtures and fittings of the institutions, living and residence conditions of the individuals detained, if they are able to establish contact with the outside, if their right to family and privacy is preserved, the existing training and employment offers as well as access to internal information.”²⁵²

The AOB’s commissions thus carry out interviews with the staff of the institutions, talk to persons deprived of their liberty and collect further information and documents on-site. In 2015, a guidance document on the monitoring activities of the NPM has been published. The document outlines principles that should guide the NPM’s monitoring activities. These principles are quality before quantity; focus areas for monitoring should be regarded as guidance and support, not as a strict corset; harmonized approach all over Austria; fact-based documentation of the monitoring findings; intensive and permanent communication among all elements of the NPM; training and continuing education; efficient interaction with the HRAC.²⁵³

²⁵⁰ Geschäftsordnung der Volksanwaltschaft, BGBl. II Nr. 249/2012, § 22 (4).

²⁵¹ Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012*, 2013, p. 23.

²⁵² Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012*, 2013, p. 26.

²⁵³ Volksanwaltschaft, *Prüfschema, Methodik und Veranlassungen der Volksanwaltschaft und ihrer Kommissionen*; available at: <http://volksanwaltschaft.gv.at/downloads/f3sa1/Pr%C3%BCfschema%20-%20Methodik%20-%20Veranlassungen.pdf>.

As a result of their visits, the commissions' observations and assessments are compiled in a standardised visiting report. While these reports are not public, the blank form for these reports is available at the website of the AOB.²⁵⁴ The report should contain information on the institution visited, findings regarding the visit, material findings regarding a number of priority topics, comments made to the authorities, a human rights assessment and a section on further observations. The commission members submit their reports to the head of the commission, which should be done within four weeks according to the law.²⁵⁵ The head of the commission then forwards the reports to the AOB. The commissions' reports may also include suggestions for assertions of deficiency (*Vorschläge für Missstandsfeststellungen*) and recommendations to the AOB according to §13 (2) Act on the Austrian Ombudsman Board.

It is important to note that the commissions' findings, human rights evaluations and recommendations, are not binding to the AOB, but are only a basis for its decision whether a case of maladministration is at hand, or not. The AOB may even carry out further investigative proceeding, involving the competent ministries and supervisory authorities, particularly in case of systemic shortcomings. Moreover, the AOB may consult the HRAC and incorporate the Council's expert reports in its final evaluations.²⁵⁶ The commissions assessments thus only form the basis for the AOB's final assessment. In case the AOB does not take up the suggestions or recommendations by the commissions in its report, the commissions may attach their remarks to the AOB's annual reports. In respect to their field of activity, the heads of the commissions may participate in the AOB's consultative meetings regarding the AOB's report.²⁵⁷ In case the AOB decides that further action is required, it approaches the relevant institution's supervisory body, namely the respective Ministries or authorities of the provinces usually without getting in direct contact with the institution concerned. These communications with the state authorities are not publicly available.

The AOB is also obliged to report annually on its activities (including on its activities as NPM), to the National Council (*Nationalrat*) and Federal Council (*Bundesrat*) and publish these reports afterwards.²⁵⁸ These reports contain overviews of the commissions' observations including examples of deficits identified during individual visits, but also common issues of concern identified as a result of visits conducted by various commissions. Moreover, an outline of the measures initiated by the AOB as a response to these observations is provided,

²⁵⁴ Volksanwaltschaft, 'Präventive Menschenrechtskontrolle', available at: <http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle>.

²⁵⁵ Geschäftsordnung der Volksanwaltschaft, BGBl. II Nr. 249/2012, § 22(5).

²⁵⁶ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014, p. 25.

²⁵⁷ Bundesgesetz über die Volksanwaltschaft, BGBl. Nr. 433/1982, § 13 (2).

²⁵⁸ Bundes-Verfassungsgesetz (B-VG), BGBl. I Nr. 194/1999 (DFB), Art. 148(1).

particularly with regard to the measures taken in order to find a solution together with the competent Ministry. The most recent report by the AOB, covering the reporting year 2014, for the first time was published in two volumes, whereby the second volume covers in detail the work done by the AOB acting as NPM. These annual reports contain reports on individual cases reported by the commissions, but generally focus more on structural deficits identified in the different types of institutions monitored, as well as the measures taken or proposed to remedy these deficits. Occasionally, examples of good practices are also provided. The AOB's annual reports are then also to be submitted to the SPT according to §3 Act on the Austrian Ombudsman Board.

As can be seen, no political body is involved in the monitoring procedure. It is worth noting, however, that the candidates for the three members of the AOB are proposed by the three parties holding the most mandates in the National Council. However, this procedure raises the question, if the NPM is living up to the requirement of independence according to the Paris Principles.

Apart from the report to the AOB, the commissions also provide preliminary feedback to the institution visited. This is done verbally in a final meeting, or in writing if required.²⁵⁹

4.1.2. PERIODICITY OF MONITORING AND REACTIVE MECHANISMS

The Austrian NPM held its constitutive meeting in July 2012. Since then the commissions regularly visit institutions where persons may be deprived of their liberty. In May 2013, the AOB published its first report covering the activities of the NPM in 2012.²⁶⁰ Further reports followed for the reporting years 2013²⁶¹ and 2014²⁶².

The overall number of institutions and facilities that are to be monitored and controlled according to the NPM's mandate amounts to more than 4.000. For the first round of visits in 2012, the NPM decided to monitor the "largest and most important institutions and facilities of the respective regions".²⁶³ For the year 2013, a monitoring focus was given to institutions that had not previously been subject to preventive monitoring by the former Human Rights

²⁵⁹ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014, p. 26.

²⁶⁰ Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012*, 2013.

²⁶¹ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014,

²⁶² Volksanwaltschaft, Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014, Band 2: Präventive Menschenrechtskontrolle, March 2015.

²⁶³ Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012*, 2013, p. 19.

Advisory Board of the Federal Ministry of the Interior.²⁶⁴ In its report on the activities of the year 2013, the NPM made clear that the initial visits should allow for “first atmospheric impressions”.²⁶⁵ An overview of the visits conducted is given in Table 4. The number given in brackets indicated the number of unannounced visits.

Table 4: Overview of the visits conducted by the Austrian NPM²⁶⁶

Type of monitoring/places visited	2012	2013	2014	Total
Police	39 (36)	89 (87)	65 (60)	193 (183)
Retirement and nursing homes	20 (19)	106 (105)	89 (89)	215 (213)
Youth welfare	4 (4)	84 (82)	60 (58)	148 (144)
Institutions and facilities for persons with disabilities	9 (7)	67 (66)	79 (76)	155 (149)
Psychiatric wards in hospitals and medical facilities	13 (10)	63 (60)	23 (18)	99 (88)
Correctional institutions	17 (12)	52 (48)	35 (31)	104 (91)
Military barracks	0 (0)	4 (3)	5 (5)	9 (8)
(forced) Returns	21 (4)	28 (21)	22 (11)	71 (36)
Police operations (demonstrations, gatherings, events)	10 (2)	37 (19)	47 (16)	94 (37)
Other	-	-	3 (0)	3 (0)
Total	133 (94)	530 (491)	428 (367)	1091 (952)

As can be seen from the numbers given above, the vast majority of visits were unannounced. According to the NPM, such unannounced visits allow “to gain as genuine an impression as possible”.²⁶⁷

The commissions may conduct follow-up visits to institutions and have done so in relation to institutions having a high number of detainees, or where negative findings were made beforehand.

²⁶⁴ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014, p. 23.

²⁶⁵ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014, p. 24.

²⁶⁶ Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012, 2013*; Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014; Volksanwaltschaft, Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014, Band 2: Präventive Menschenrechtskontrolle, March 2015.

²⁶⁷ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014, p. 8.

4.1.3. SOURCES OF INFORMATION

The key source of information for the Austrian NPM is the information gathered by members of the NPM's commissions on-site at places, where persons are or may be deprived of their liberty. The commission members carry out interviews with staff and detained persons, and may further gain access to all relevant documents and files. To support this monitoring work and the related human rights assessment, a database is currently being developed, which provides "access [to] all visit reports, but also the international and national documents that are necessary for preparation and the human rights assessment."²⁶⁸

The AOB is entitled to initiate a written investigative proceeding with the competent ministries and supervisory authorities, particularly in case of alleged systemic shortcomings. These communications, however, are not available to the public and therefore it is not clear what sources of information are shared in the course of these procedures by the Ministries and the AOB.

Input by NGOs may be provided by way of the HRAC, which currently includes 16 (substitute) members representing NGOs. This input takes the form of advice to the AOB, e.g. when defining the focus areas of monitoring, or when providing human rights expertise. However, NGOs may also provide further input to the monitoring procedure of the Austrian NPM, particularly when it comes to the question which institutions and facilities should be selected by the NPM's commissions for monitoring and control visits. Yet, it is unclear to what extent this participation really happens in practice. In a report by the NPM it is stated that "[i]nformation from and contacts to NGOs constitute the indispensable foundation of the commissions' work. These contacts are also an essential source of information for the heads of each commission when planning their visits."²⁶⁹

4.1.4. PUBLICITY, TRANSPARENCY AND CONFIDENTIALITY

Confidentiality is an important principle of the working methods of the Austrian NPM. It is provided by law that the AOB and its commissions may publish personal data of persons affected only with their explicit agreement and that confidentiality has to be respected.²⁷⁰

²⁶⁸ Volksanwaltschaft, *Report of the AOB on the activities of the NPM 2012*, 2013, p.23.

²⁶⁹ Volksanwaltschaft, *Report of the AOB and its Commissions on the NPM 2013*, May 2014, p. 25.

²⁷⁰ Bundesgesetz über die Volksanwaltschaft, BGBl. Nr. 433/1982, § 19.

Moreover, the meetings of the AOB are not open to the public and participants of the meetings have to keep the professional secrecy in line with Article 148b (2) B-VG.²⁷¹

The commissions' visiting reports also remain confidential, as they are only forwarded to the AOB. The AOB, however, is obliged to present an annual report on its activities in Parliament according to Article 148d B-VG and § 3 (3) Act on the Austrian Ombudsman Board. The annual reports are then also distributed to the public as they are published on the website of the AOB. The NPM also has the obligation to submit the respective report to the SPT. While the annual reports do not contain a comprehensive list of the deficits reported by the commissions, they provide an overview of the most important structural deficits identified, the achievements made, as well as the legal measures proposed.

Numerous advisory statements issued by the HRAC are published on the website of the AOB.²⁷² However, apparently not all advisory statements are published. The AOB's annual report of 2014 clarifies that those statements, for which the HRAC has encouraged publication and for which it was decided by the NPM to publish them, are largely available in full text on the website of the AOB.²⁷³

4.2 NPM GERMANY

4.2.1. BASIC FEATURES OF THE MONITORING PROCEDURE

The procedure of a monitoring visit by the German NPM varies according to the place visited and the situation there. A visiting delegation normally is formed of two to four persons, whereby the NPM also contracts external experts. The Joint Commission of the States announces the visits shortly in advance at the relevant controlling institution. In 2014 visits in some police stations and one prison were also conducted unannounced.²⁷⁴ The national agency regularly announces the visits at less than 24 hours in advance, to guarantee that persons in charge are present. The SPT stated in its report to the German NPM in 2013:

“At the same time, the SPT noted the need for the Federal Agency and the Joint Commission to further elaborate a strategic development plan to reflect

²⁷¹ Geschäftsordnung der Volksanwaltschaft, BGBl. II Nr. 249/2012, §5 (1) and (2).

²⁷² Volksanwaltschaft, ‘Der Menschenrechtsbeirat’, available at: <http://volksanwaltschaft.gv.at/praeventive-menschenrechtskontrolle/der-menschenrechtsbeirat>.

²⁷³ Volksanwaltschaft, Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014, Band 2: Präventive Menschenrechtskontrolle, March 2015, p. 21.

²⁷⁴ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 14.

on their respective achievements and strategies to address the current challenges. In addition, the SPT recommends that both entities improve the preparations of their visits to be primarily unannounced and that they consider monitoring the material as well as legal conditions of deprivation of liberty since they are equally important.”²⁷⁵

The NPM answered to this statement by the SPT, that the federal agency and the joint commission conduct both announced and unannounced visits, depending on the situation in the respective case. The aim of the visit, as well as the added value of an announcement in a specific situation are factors of consideration.²⁷⁶ Furthermore the NPM stated that common internal rules have been adopted for the federal agency and the joint commission.²⁷⁷

A visit starts with an initial talk with the head of the institution. Afterwards the institution is inspected, regarding structure of the premises and treatment of the persons detained. The delegation holds confidential talks with persons deprived of their liberty and staff and looks into the personal files of the inmates and other files.²⁷⁸

The German NPM may make recommendations to the authorities to improve conditions for persons deprived of their liberty according to the Administrative Order. The NPM has set up a mechanism of institutionalised exchange, including direct contacts with the government. The dialogue is predominantly held with heads of departments of ministries. Immediately after a visit the NPM informs the relevant contact point on issues discussed with the head of institution.²⁷⁹

The NPM Germany is not entitled to receive individual complaints. Nevertheless, it received 24 such requests in 2014, all concerning institutions falling within the competence of the Joint Commission of the States. While the NPM is not authorised to act on those requests, the body uses this information as background information for visits to put special emphasis on certain topics.²⁸⁰

²⁷⁵ SPT, *Report on the visit to the NPM of the Federal Republic of Germany - Report to the NPM*, CAT/OP/DEU/2, p. 4.

²⁷⁶ SPT, *Report on the visit to the NPM of the Federal Republic of Germany - Report to the NPM: Addendum Replies of the national preventive mechanism of the Federal Republic of Germany to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its visit to Germany*, CAT/OP/DEU/2/Add. 1, p. 2.

²⁷⁷ SPT, *Report on the visit to the NPM of the Federal Republic of Germany - Report to the NPM: Addendum Replies of the NPM*, CAT/OP/DEU/2/Add. 1, p. 3.

Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 14.

²⁷⁹ Information received from a Member of NPM Germany per e-mail on 10th September 2015.

²⁸⁰ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 14 seq.

The NPM may make recommendations to the authorities to improve conditions for persons deprived of their liberty according to the Administrative Order. The NPM divides its recommendations in important recommendations and “further proposals for improvement”.²⁸¹ The authorities are obliged to answer to the recommendations according to Article 2 (3) of the State Treaty.

4.2.2. PERIODICITY OF MONITORING AND REACTIVE MECHANISMS

The German NPM, due to a lack of funding, does not conduct many visits per year. In 2013, for instance, the NPM conducted visits to only 36 institutions, with a focus on detention centres for persons awaiting removal or accompanying removals by aircraft²⁸², and in 2014 it conducted 58 visits, with a focus on detention centres for juveniles.²⁸³ The National Agency states in its annual report 2013, that due to the lack of funding it is not able to conduct its task according to the legal obligations. It reported further, that it is not able to monitor care facilities or facilities for older persons. In its annual report 2014 the NPM stated that due to the extension of members of the body from six to ten members as of 2015, the numbers of visits will increase and also other institutions apart from the judicial area will be visited.²⁸⁴

The NPM carries out follow-up visits if there have been specific negative findings in the institutions visited. In such cases, the NPM then exclusively focus on those aspects that have been identified earlier.²⁸⁵

4.2.3. SOURCES OF INFORMATION

The main source of information for the NPM is the information gathered by the visiting delegations during their on-site visits. The NPM has access to all information which relates to the number of persons detained and the places where persons are detained. Furthermore, it has access to all information which relates to the treatment of those persons and the conditions of

²⁸¹ See various reports available on the website of NPM Germany at <http://www.nationale-stelle.de/index.php?id=besuche>.

²⁸² Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 8.

²⁸³ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 5.

²⁸⁴ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 5.

²⁸⁵ SPT, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of the Federal Republic of Germany, Addendum, Replies of the Federal Republic of Germany to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its visit to Germany*, CAT/OP/DEU/1/Add.1, 18th February 2014, para. 50.

the deprivation of liberty. Also they have the right to talk to the persons deprived of their liberty confidentially.²⁸⁶

The NPM is open to information stemming from NGOs and actors of civil society, while always taking into account the necessity to guarantee its independence. The NPM holds regular contact with the German Institute for Human Rights and other NGOs, which deal with areas concerning the visits of the NPM. For example in 2013 the National Agency had intensive exchange of information with NGOs regarding the topic of detention pending removal, which was the main point of interest of the National Agency in 2013. Furthermore the NPM organises events with other stakeholders, like expert meetings and participation in workshops.²⁸⁷

In preparation to visits the National Agency consults publicly available material and information of NGOs and other actors of civil society. If those actors provide information about special peculiarities of the institutions visited, the National Agency focuses on these issues during visits.²⁸⁸

4.2.4. PUBLICITY, TRANSPARENCY AND CONFIDENTIALITY

In the beginning the National Agency did not provide visiting reports on its website. Since 2014 reports on visits as well as reactions of the authorities in charge are presented on the website.²⁸⁹ Furthermore annual reports are issued, giving insight on the work of the National Agency.

4.3. NPM SLOVENIA

4.3.1. BASIC FEATURES OF THE MONITORING PROCEDURE

There is a visiting programme adopted in cooperation with the contracted organisations. As already stated above, NGOs are part of the NPM in Slovenia. The programme of visits is designed by the Ombudsman together with the selected organisations. According to the cooperation contract, place and time of visits, as well as set up of visiting delegations is

²⁸⁶ Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2013*, p. 15.

²⁸⁷ Information received from the German NPM on 10 September 2015.

²⁸⁸ Information received from the German NPM on 10 September 2015.

²⁸⁹ Nationale Stelle zur Verhütung von Folter, 'Besuche', available at: www.nationale-stelle.de/index.php?id=besuche.

determined by the Ombudsman on a case-by-case basis according to the programme of visits.²⁹⁰ Normally, the visiting delegation consists of a mixed team of experts of the NPM and the organisations, in the case that no expert of NGOs is available on the day of visit, visits are carried out without them. Before each visit a consultation is carried out between NGO experts and the Ombudsman staff. Previous reports regarding the institution are checked as well as already existing complaints regarding this institution.

Most of the visits of the Slovenian NPM are done unannounced. In 2013 only eight of the total 48 visits were announced in advance.²⁹¹ During the visits initial talks with management are held, then the premises are visited and final talks with management are conducted to briefly discuss the findings.

In 2014, a total of 39 visits were conducted by the Slovenian NPM. 16 thereof took place at police stations, seven at prisons, five social care institutions were visited, two special social care institutions, four psychiatric hospitals, four institutions for the education of children and youth with emotional and behavioural disorders and the Alien Centre. Normally, the visits last for one day. Persons from the contracted NGOs participate in almost all visits, only two visits were conducted by Ombudsman personnel only; regarding participation of NGOs in visits, e.g. SKUP (Community of Private Institutes) participated in visits to 21 institutions. At least two representatives of different NGOs participated in the visits to prisons. The NPM tries to include a wide range of specialists in the visits. A contracted medical expert participated in 14 visits in 2014, most frequently in visits to social care institutions. Apart from two visits to prisons and one control visit to a police station all visits were conducted unannounced. Usually visits last for one day, sometimes visits to larger institutions may amount to two days.²⁹²

After each visit a report on findings, opinions and criticism and – when necessary – recommendations for improvement, is published. The Ombudsman holds general responsibility for those reports, but NGOs cooperate in drafting the reports. On a visit-by-visit basis the Ombudsman can decide whether an NGO member shall draft the report. For example

²⁹⁰ APT, 'Slovenia – NPM Working Methods', available at: www.apr.ch/en/opcat_pages/npm-working-methods-23.

²⁹¹ Human Rights Ombudsman of the Republic of Slovenia, *Implementation of the duties and powers of the NPM in 2013* (Human Rights Ombudsman of the Republic of Slovenia 2014), available at: www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Porocila/Porocilo_DPM_-_Varuh_-2014_-_dvostranska_postavitev.pdf, p. 10.

²⁹² Human Rights Ombudsman of the Republic of Slovenia, *Implementation of the duties and powers of the NPM in 2014* (Human Rights Ombudsman of the Republic of Slovenia 2015), available at: www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Porocila/Porocilo_DPM_-_Varuh_-2014_-_dvostranska_postavitev.pdf, p. 21.

in 2012 members of the NGO SKUP provided four reports.²⁹³ If externally contracted experts are present during a visit, his/her views are also included in the report. The report shall be addressed to the Ombudsman within eight days after the visit. In case the Ombudsman disagrees with the views of experts from organisations, their views can be presented as separate opinions.²⁹⁴ Visiting reports include information on the delegation, time of visit, visiting activities, findings and recommendations for improvement.

The report is submitted to the institution visited as well as the authority in charge (being the superior body of the visited institution), together with a request to comment on the statements or recommendations and submit this to the Ombudsman within a set deadline (usually 30 days). On the basis of the report, the response of the relevant authority and possible additional observations of the NPM a brief report is published on the website after each visit.²⁹⁵

If there were problems within one institution control visits are conducted. The annual reports do not give information about the periodicity of such visits.

4.3.2. PERIODICITY OF MONITORING AND REACTIVE MECHANISMS

The visiting programme foresees to visit each prison, psychiatric institution, aliens' centre and asylum home at least once a year. Police stations holding detention cells should be visited at least every two years.²⁹⁶

According to Article 7 of the Human Rights Ombudsman Act, the Ombudsman "may make suggestions and give recommendations, opinions and critiques to the bodies which are bound to consider them and respond within the deadline specified by the Ombudsman".²⁹⁷ The Act does not foresee any further definition on what is understood as recommendation, opinion or critique. Furthermore, Article 45 of the Human Rights Ombudsman Act foresees the right to submit initiatives for amending laws and other legal acts for the Ombudsman. As the

²⁹³ Sodja Katja (2012), SKUP- Skupnost privatnih zavodov: The role of NGO in NPM, The ways of collaboration with the Human Rights Ombudsman of Republic of Slovenia, available at: <http://webcache.googleusercontent.com/search?q=cache:JBuiJnUiEAkJ:www.skup.si/sites/default/files/THE%2520ROLE%2520OF%2520NGO%2520IN%2520NPM1.pptx+&cd=1&hl=de&ct=clnk&gl=at>.

²⁹⁴ Association for the Prevention of Torture, 'Slovenia – NPM Working Methods', available at: www.appt.ch/en/opcat_pages/npm-working-methods-23.

Human Rights Ombudsman of the Republic of Slovenia, *Implementation of the duties and powers of the NPM in 2014* (Human Rights Ombudsman of the Republic of Slovenia 2015), p. 15.

²⁹⁶ APT, 'Slovenia – NPM Working Methods', available at: www.appt.ch/en/opcat_pages/npm-working-methods-23.

²⁹⁷ Human Rights Ombudsman Act, available at: <http://www.varuh-rs.si/legal-framework/constitution-laws/human-rights-ombudsman-act/?L=6>, Art. 7.

Ombudsman was designated as the Slovenia's NPM (together with the NGOs, as mentioned above) those rules on the Ombudsman apply when he is acting in the role of NPM.

Implementing such recommendations is a commitment of the state party according to Article 22 OPCAT. The success of implementation is assessed by the NPM in its annual report.

4.3.3. SOURCES OF INFORMATION

For the Slovenian NPM the visit as such is the main source of information. Furthermore during those visits, talks to representatives of the institutions as well as files on persons act as sources. As the NPM is part of the Slovenian NHRI, which is also entitled to receive individual complaints, the information gained as NHRI, also may form a source of information.

According to information provided on the APT website, the Ombudsman prepared a questionnaire to foster understanding regarding visits to social care institutions (nursing homes). It is used in advance of visits to allow for the collection of information on the functioning of the institution and to foster understanding on which questions to concentrate during the visit.²⁹⁸

4.3.4. PUBLICITY, TRANSPARENCY AND CONFIDENTIALITY

The NPM writes a final report on the findings of each of its visits to a particular institution, including recommendations. If necessary also interim reports are drafted. The recommendations given are not prioritised, but listed in a random order at the end of the report. This final report is submitted to the relevant authority. On the basis of this final report, as well as based on the responses of the authority in question, a short final report is published on the NPM's website.²⁹⁹

²⁹⁸ Association for the Prevention of Torture, 'Slovenia – NPM Working Methods', available at: www.apr.ch/en/opcat_pages/npm-working-methods-23.

²⁹⁹ Human Rights Ombudsman of the Republic of Slovenia, 'Home', available at: www.varuh-rs.si.

The NPM's visits are all described in the Annual Reports, including date of visit, location, participants, name and main responsible person for each visit.³⁰⁰ Furthermore the responses of the institutions are also summarised in the Annual Reports topic wise.³⁰¹

4.4. NPM FRANCE

4.4.1. BASIC FEATURES OF THE MONITORING PROCEDURE

The CG may freely decide which places to visit. The visits can be conducted either announced or unannounced. In large institutions the visits are preferably announced to inform persons detained and allow them to prepare for meeting the inspectors. This is not done in all institutions systematically, especially if there is knowledge of problems known or the NPM has received information via letters regarding a specific institution. In smaller institutions visits are never announced.³⁰²

In its 2009 annual report the CG listed approximations on how long visits usually last. According to this source visits take five to eight days for medium size prisons (600 to 800 persons), around three days for health institutions and two days for police custody facilities.³⁰³

During the visits the CG shall be given all information, documents and objects which could be useful for thoroughly exercising its mandate. The authorities can only refuse disclosure of information for “reasons connected with national defence, public security, natural catastrophes or serious disturbance within the site visited, subject to providing the Contrôleur général des lieux de privation de liberté with justification for their objection”.³⁰⁴

At the end of a visit a discussion is held with the responsible person at the institution; first impressions are shared, which are also then taken up in the reports.³⁰⁵ An initial report is drafted by the visiting delegations, which is checked by the CG. This first version of the report is shared with the head of the visited institution in order to correct possible factual mistakes,

³⁰⁰ Human Rights Ombudsman of the Republic of Slovenia, *Implementation of the duties and powers of the NPM in 2014* (Human Rights Ombudsman of the Republic of Slovenia 2015), p. 137 et seq.

³⁰¹ See for example: Human Rights Ombudsman of the Republic of Slovenia, *Implementation of the duties and powers of the NPM in 2013* (Human Rights Ombudsman of the Republic of Slovenia 2014), at pp. 144 seq.

³⁰² Ludwig Boltzmann Institute, ‘Strengthening the effective implementation and follow-up of recommendations by torture monitoring bodies in the European Union’ (unpublished research paper on NPM France in the course of the research project “Enhancing Impact of National Preventive Mechanisms 2014), p. 2.

³⁰³ Le Contrôleur général des lieux de privation de liberté, *Rapport d'activité 2009* (Le Contrôleur général des lieux de privation de liberté 2010), available at: http://www2.ohchr.org/english/bodies/cat/opcat/docs/Annual_report_2009_fr.pdf, p. 26.

³⁰⁴ Loi No. 2007 – 1545 instituant un Contrôleur général des lieux de privation de liberté.

³⁰⁵ CG, *Rapport d'activité 2009* (CG 2010), p. 117.

include most recent developments or disagree with the findings of the NPM.³⁰⁶ Additional information as well as disagreeing opinions of the head of institution are then included in the report. Thereafter the report is revised and sent to the relevant Minister. According to Article 9 of the Act on the Contrôleur Général the NPM shall inform the concerned ministers on its observations. The CG makes recommendations to the responsible ministers, and all inspection reports are submitted containing such recommendations. Some of those are published in the *Journal Officiel*.³⁰⁷ The recommendations are divided according to different subject matters, e.g. amending the law to include essential general principles regarding waiting areas or issues regarding detention facilities for people entering France.³⁰⁸ The authorities are required to respond to the recommendations according to Article 5 of the Loi no. 2014-528.

As stated by the CG in its Annual Report 2013 it normally takes a substantial amount of time until a report is sent to the ministries. The reports of inspections of 2010 and 2011, for instance, were only sent to the Ministry in 2013. This is because the large number of visits, the preparation, the consultations with the institutions, as well as double proof-reading take a lot of time.³⁰⁹

The length of the NPM visits varies according to the types of places visited. Court cell visits were conducted in one day, police custody facilities within two days and closed educational centres within four days. Also the composition of the visiting delegations varies according to type and size of the institution visited.³¹⁰

4.4.2. PERIODICITY OF MONITORING AND REACTIVE MECHANISMS

The total amount of institutions where persons are deprived of their liberty amounts to ca. 5.000-6.000 places of deprivation of liberty in France. The French NPM conducts around 150 visits per year. Reading the reports it seems that especially institutions where there were concerns are visited quite frequently, at least annually.³¹¹

³⁰⁶ Le Contrôleur général des lieux de privation de liberté, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf, p. 64.

³⁰⁷ CG, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf, p.13.

³⁰⁸ CG, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf, pp. 20 seq..

³⁰⁹ CG, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf, p. 18 seq.

³¹⁰ Association for the Prevention of Torture (APT), 'France – NPM Working methods', available at: www.apr.ch/en/opcat_pages/npm-working-methods-33/.

³¹¹ CG, 'Rapport d'activité 2013', see for example p. 52.

In urgent cases, when the NPM considers that there has been a serious violation of fundamental rights of a person deprived of liberty, it shall communicate its observations to the competent authorities without delay, stipulating a time period, within which the authorities shall respond.³¹²

4.4.3. SOURCES OF INFORMATION

The visit as such is the main source of information for the French NPM. Furthermore during those visits, talks to representatives of the institutions as well as files on persons act as sources. The CG may also receive individual complaints. The CG has a special team of investigators (*charges d'enquêtes*) who investigate those individual complaints, which are received via letters or during personal interviews with persons deprived of their liberty.³¹³

4.4.4. PUBLICITY, TRANSPARENCY AND CONFIDENTIALITY

The Act of 30 October 2007 implementing the CG does not foresee the public announcement of the inspection reports. Only in case of serious violations, these observations could be published, although this is not compulsory. However, the publication of Annual Reports is obligatory due to this Act. The Annual Reports each year focus on a number of topics (for example in 2013 on the application of the prison act; architecture and places of deprivation of liberty, etc.), provides an overview regarding actions taken with regard to recommendations, opinions and cases taken up and a section on letters to the CG. The Annual Reports are rather long documents, for example for 2013 and 2014 each exceeding 300 pages.³¹⁴

Although not having an obligation to publish reports, the CG has systematically published reports, opinions and recommendations, but only after receiving comments from the responsible authorities. If the Minister does not reply within six months the report is published without replies by the CG. The French NPM furthermore lists all its recommendations starting with general recommendations leading to more specific ones but without prioritizing them on its website.

³¹² Loi No. 2007 – 1545 instituant un Contrôleur général des lieux de privation de liberté, Art. 9.

³¹³ APT, 'France – NPM Working methods'.

³¹⁴ CG, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf; Le Contrôleur général des lieux de privation de liberté, *Rapport d'activité 2014* ((Le Contrôleur général des lieux de privation de liberté 2015), available at: www.cglpl.fr/wp-content/uploads/2015/04/CGLPL_rapport-2014_version-web_3.pdf.

All visiting reports including recommendations are sent to the relevant ministers. Due to the number of inspections conducted, obligations of drafting documents, exchanging with the institutions, proofreading etc., it takes quite a long time to have the reports sent to the ministries. According to the Annual Report of 2013 the reports of 2010 and 2011 were only sent to the relevant ministers in 2013.³¹⁵ The CG regularly receives responses from the ministries. In 2013 there were 16 responses by the minister of social affairs, 36 by the minister of the interior, 23 by the minister of justice, as well as two responses by the minister of national education and the economy and finance minister.³¹⁶

Between the second half of 2008 and end of 2013 a total of 32 opinions and recommendations of the CG were published in the *Journal Officiel*. According to the Annual Report of the CG those texts of opinions and recommendations have the character of policy documents, those recommendations are those aspects judged as being most important by the CG.

Apart from these reports, the CG in 2014 published all of its recommendations of 2008 until 2014 in a compilation, together with APT, to reflect on the first six years of existence of the CG. This compilation shall act as a document of inspiration for other NPMs worldwide, to build on the extensive expertise of the CG and shows transparently the opinions of the CG on certain topics.³¹⁷

³¹⁵ CG, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf, p. 18.

³¹⁶ CG, 'Rapport d'activité 2013', available at: www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf, p. 64.

³¹⁷ Association for the Prevention of Torture (APT) and Le Contrôleur général des lieux de privation de liberté, *Opinions and Recommendations of the French 'Contrôleur général des lieux de privation de liberté' 2008 – 2014* (APT and CG 2014), available at: www.cglpl.fr/wp-content/uploads/2014/10/Avis-et-Recommandations-CGLPL_EN-for-web1.pdf. While not looking into these recommendations and opinions in detail at this point of research, relevant topics will be kept in mind and picked up in the second part of this project.

IV. RELATIONS BETWEEN THE SPT, THE CPT AND SELECTED NPMs

1. INTRODUCTION AND REMARKS ON THE METHODOLOGY

This chapter discusses the question whether and to what extent the monitoring bodies established at national, regional and international level have established relations with each other. A focus will be given on the relations the NPMs have established with the SPT and the CPT. Table 5 provides an overview of the topics and questions that will be discussed in this chapter.

Table 5: Questions addressed in Chapter IV

Relations between the SPT, the CPT and selected NPMs	<ul style="list-style-type: none">- What formal and informal ways of cooperation, coordination or further interaction (e.g., consultation, information exchange, trainings, etc.) have been envisaged and/or established thus far?- Are there any indications that the relations among the monitoring could mutually reinforce the monitoring procedures?- What challenges can be identified in the relations between the different monitoring bodies?
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The sources used for answering these questions are again the legal provisions governing the establishment and work of the monitoring bodies, internal rules of procedures and explanatory reports, the annual reports, the websites of the monitoring bodies, as well as academic literature.

2. THE RELATIONS BETWEEN THE SPT AND THE CPT

As part of its mandate, the SPT cooperates with other bodies working in the field of torture prevention and dedicates one section of its annual report to this issue. Usually the SPT discusses common issues with other international and regional bodies as well as with NGOs working in the field of torture. Likewise, the CPT explained in its 22nd General Report that it “[...] is incumbent on the CPT and the SPT to seize all opportunities for cooperation and the sharing of know-how, and in this regard there are regular exchanges of views between the two bodies and their respective secretariats.”³¹⁸

³¹⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 22nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment covering the period 1 August 2011 - 31 July 2012, CPT/Inf (2012)25 of 6 November 2012, pp. 15 et seqq.

Already in the beginning, the SPT met with the vice president of the CPT to discuss the consistency of standards, assistance in the implementation of recommendations and possible ways of cooperation, “including systematic transmission to the Subcommittee, on a confidential basis and with the agreement of the State concerned, of visit reports and Government responses of countries that are States parties to both the Optional Protocol and the European Convention for the Prevention of Torture”.³¹⁹

During SPT’s second year of operations, the contacts intensified to avoid duplication and optimize the work of the SPT and the CPT.³²⁰ Cooperation between the two bodies may have been facilitated by the fact that some of the members of the SPT, including its first president, were former members of the CPT.

The SPT and the CPT were active in the field of establishment and training of European NPMs in a project financially sponsored by the EU and organized by the CoE and the Association for the Prevention of Torture (APT).³²¹

3. THE RELATIONS BETWEEN THE SPT AND THE AUSTRIAN NPM

The SPT has been involved in the early stages of the creation of the Austrian NPM, where they took part in an OPCAT preparatory meeting organised by the Ministry of Interior.³²²

The AOB is obliged to submit its Annual Reports on the activities as NPM to the SPT according to §3 Act on the Austrian Ombudsman Board. Moreover, the AOB is explicitly allowed to maintain contact with the SPT, provide information to the SPT and hold meetings with the SPT.³²³ The AOB’s annual report of 2014 indicates that meetings are held with the SPT representative responsible for Austria, as it was stated that the NPM received important hints for the reporting to the SPT in a personal meeting.³²⁴

³¹⁹ SPT, *First Annual Report*, CAT/C/40/2, para 37.

³²⁰ SPT, *Second Annual Report*, CAT/C/42/2, para 54-55.

³²¹ The European NPM Project, aimed at creating a network to foster peer exchange among the newly established NPMs. It further provided a forum for discussion and cooperation with international actors, such as the SPT and the CPT.

Human Rights Centre of the University of Padova, ‘European National Preventive Mechanism against torture (NPM) Project’, available at: <http://unipd-centrodirittiumani.it/en/attivita/European-National-preventive-Mechanism-against-torture-NPM-Project/458>.

³²² SPT, *First Annual Report - Annex VIII*, CAT/C/40/2, p. 35.

³²³ Bundesgesetz über die Volksanwaltschaft, BGBl. Nr. 433/1982, §17.

³²⁴ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 23.

4. THE RELATIONS BETWEEN THE CPT AND NPMS

The CPT is well aware of the fact that its relation to NPMS requires a clarification. In its 22nd General Report, the CPT devoted a chapter to the “Relations between the CPT and National Preventive Mechanisms”.³²⁵ In this report, the CPT welcomes the establishment of “independent national structures that carry out visits on a regular basis to prisons, police establishments and the like” and mentions in particular the NPMS established under the OPCAT in this regard.³²⁶ The CPT also acknowledged that national monitoring bodies can intervene more frequently, and more rapidly, than any international body. For the CPT, the NPMS are “natural partners”, as the effectiveness of efforts “to assist states in Europe to prevent torture and other forms of ill-treatment will in future depend to a large extent on the quality of the interaction between the Committee and these mechanisms”.³²⁷

The CPT also tries to support NPMS, e.g. by reporting on the inadequacy of the resources provided for the NPMS in its state reports.³²⁸ The independence of the NPM, however, is a prerequisite for the CPT’s interaction with national monitoring mechanisms.³²⁹ There is also an exchange of knowledge going on between the CPT and NPMS with regard to both, preventive human rights standards and working methods. The most prominent example is the European NPM Project,³³⁰ which comprised thematic workshops and exchanges of experience. The CPT’s 22nd General Report further mentions that CPT members “have been involved in their private capacity in training activities in their own country and in third countries”, which has “resulted in valuable experience-sharing on prevention of torture and other forms of ill-treatment, and more specifically on the most effective methods of conducting visits to places of deprivation of liberty.”³³¹

The Committee also envisages regular exchanges of views on topical issues with representatives of established and operational NPMS.³³² Presuming that the NPMS will develop standards on substantive issues in the course of their work the CPT warns that diverging standards might be the result. Therefore, regular exchanges of views are suggested to counter this risk and to facilitate the coherence of actions for the prevention of ill-treatment. The CPT

³²⁵ CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, pp. 13 et seqq.

³²⁶ CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, pp. 15 et seqq

³²⁷ CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, p. 15.

³²⁸ CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, p. 16.

³²⁹ CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, p. 16.

³³⁰ For an evaluation of the European NPM Project see: Kedzia Zdzislaw and Jaraczewski Jakub, Evaluation of European Commission/Council of Europe Joint Programme: “Peer-to-peer II Project: Promoting independent national non-judicial mechanisms for the protection of human rights, especially for the prevention of torture (APT 2012), available at: www.apr.ch/content/files_res/evaluation-european-npm-project.pdf.

³³¹ CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, p. 17.

³³² CPT, *22nd General Report of the CPT*, CPT/Inf (2012)25, p. 17.

also envisaged making available internal tools it has developed for sharing experience and knowledge gathered from visiting the different types of places of deprivation of liberty.³³³

In relation to country visits, the interaction between the CPT and NPMs could take various forms according to the CPT. The information provided by NPMs might feed into the preparation phase of a CPT visits, particularly when identifying the themes of the visit and the places that should be visited, or might even trigger an *ad hoc* visit by the CPT.³³⁴

Meetings between the members of the CPT and the NPM are proposed at the outset of a visit in order to exchange recent information and to avoid visits of the two monitoring bodies to the same places. According to the CPT, the presence of a representative of the NPM is welcomed at the final talks, when the CPT provides its preliminary remarks and immediate observations to the national authorities.³³⁵

The CPT also underlines the role NPMs may have in monitoring the implementation of the CPT's recommendations. Such a follow-up, however, might in practice be hindered by the rules of confidentiality that apply to the CPT reports. The CPT thus encourages states to transmit the CPT's visiting reports to the NPMs "on the condition that it is treated as confidential until such time as the State has agreed to its publication."³³⁶

As the CPT usually does not intervene in cases of individual complaints of detained persons or their relatives, the Committee considered forwarding such cases to NPMs.³³⁷ It has to be noted, however, that not all NPMs may deal with such individual complaints.

Simultaneous membership of the CPT and an NPM is generally seen as unproblematic by the CPT, as a CPT member never takes part in a visit in his/her own country and does not intervene in the subsequent discussion of the draft visit report. The participation of a NPM member in a CPT visit in his/her own country, however, is not welcomed by the CPT, due to the strict rule of confidentiality, but also to implement the motto "United in our goals, distinct in our roles."³³⁸

³³³ CPT, 22nd General Report of the CPT, CPT/Inf (2012)25, p. 17.

³³⁴ CPT, 22nd General Report of the CPT, CPT/Inf (2012)25, p. 18.

³³⁵ CPT, 22nd General Report of the CPT, CPT/Inf (2012)25, p. 18.

³³⁶ CPT, 22nd General Report of the CPT, CPT/Inf (2012)25, p. 19.

³³⁷ CPT, 22nd General Report of the CPT, CPT/Inf (2012)25, p. 19.

³³⁸ CPT, 22nd General Report of the CPT, CPT/Inf (2012)25, p. 20.

5. THE RELATIONS BETWEEN THE CPT AND THE AUSTRIAN NPM

Meetings of different types take place between the CPT and the Austrian NPM. On the occasion of the CPT's sixth visit to Austria, the members of the delegation met the Austrian NPM for the first time in 2014. During this meeting, members of the AOB and two heads of the commissions informed the CPT about current deficits identified at places of detention and exchanged their opinions on national and international standards for the protection of human rights.³³⁹ Moreover, contacts and exchanges of thoughts with (former) experts of the CPT are organized occasionally. It was reported in the NPM's Annual Report on 2013 that the former President of the CPT provided an external view in respect of Austria's performance in implementing the UN Human Rights Conventions.³⁴⁰ The Austrian NPM's Annual Report of 2014 also indicates that working meetings have been held with members of the CPT.³⁴¹

From a substantial point of view, the Austrian NPM frequently refers to CPT standards in its Annual Reports. In the Annual Report of 2012, the Austrian NPM refers to observations made by the CPT when identifying structural deficits as a result of its monitoring activities. While apparently by mistake referring to the SPT instead of the CPT, the NPM reported that "[t]he UN Subcommittee on Prevention of Torture (SPT) [sic!] had already mentioned the long hours inmates are held in their cells with some concern (see Item 71 in the report on the visit to correctional institutions in Innsbruck and Vienna-Josefstadt in February 2009)."³⁴² In practice, also the regional Commissions of the Austrian NPM refer to prior recommendations given by the CPT and evaluate, if these recommendation have been implemented. An example can be found in the NPM's Annual Report of 2012 where it is stated – again by referring to the SPT by mistake – that "[t]he Commissions determined further that the SPT [sic!] recommendation [see SPT/Inf (2010) 5, margin no. 139] to set up a central register, in which all restrictions on freedom in psychiatric institutions be recorded centrally according to type, reason and duration, was not carried out seamlessly."³⁴³ It has thus become a common and very frequent practice for this NPM to cite or mention preventive standards as well as recommendations that have been issued by the CPT with regard to Austria.³⁴⁴ Apparently the

³³⁹ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014*, p. 24.

³⁴⁰ Volksanwaltschaft, *Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism 2012*, May 2013, p. 91.

³⁴¹ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014*, p. 24.

³⁴² Volksanwaltschaft, *Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism 2012*, May 2013, p. 24.

³⁴³ Volksanwaltschaft, *Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism 2012*, May 2013, p. 29.

³⁴⁴ Volksanwaltschaft, *Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013*, May 2014, Section 3.5; Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat, 2014*, Section 2.

CPT standards form an important basis for the NPM's evaluation of the situation of persons deprived of their liberty. Without giving further details, the AOB's Annual Report states that the NPM secretariat looks into international reports and documents, in order to provide the NPM with relevant information by similar institutions.³⁴⁵

CPT members also seem to provide training to the members of the Austrian NPM commission. The first annual report states that:

“[...] the AOB organised a shadow monitoring training module in collaboration with the Council of Europe. In this three-day seminar, the NPM shared its initial experiences with six experts from the Council of Europe. The methodology for preparing monitoring and control visits, conducting visits in six selected institutions and analysis of the findings were at the forefront of the training.”³⁴⁶

6. THE RELATIONS BETWEEN THE AUSTRIAN NPM AND FURTHER NPMS

The Austrian NPM is in contact with other NPMs via networks and bilateral contacts. Networks are intended to help developing comparable methods for monitoring activities.³⁴⁷ The AOB is a member of the “South-East European NPM network, whose purpose is to exchange experiences and mutually support the implementation of NPM tasks.”³⁴⁸ In 2014, the Austrian NPM participated in three meetings of this network comprising NPMs of Albania, Bulgaria, Croatia, Macedonia, Montenegro, Serbia and Slovenia, for the purpose of exchange of knowledge and experiences.³⁴⁹ Austria also holds the presidency of the South-East European NPM network in 2016. Members of the South-East Europe NPM Network discussed their annual reports and the effectiveness of those reports. After the meeting the Network addressed the SPT with a letter and the minutes of the meeting, asking the SPT about its approach to the matter, whether the Annual Reports sent to the SPT are assessed by the SPT and which methodology is applied. The head of the European Regional Team of the SPT answered, that due to the fact that the Annual Reports sent to the SPT vary in style and

³⁴⁵ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 13.

³⁴⁶ Volksanwaltschaft, *Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism 2012*, May 2013, p. 20.

³⁴⁷ Volksanwaltschaft, *Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013*, May 2014, p. 7.

³⁴⁸ Volksanwaltschaft, *Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013*, May 2014, p. 13.

³⁴⁹ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 22.

structure also the responses of the SPT are different.³⁵⁰ The Network also asked the SPT to keep up the dialogue not only with NPMs but also with the states, to foster implementation of recommendations. This was appreciated by the SPT but due to lack of institutional capacity this does not take place but will be kept in mind by the SPT for the future.

In 2014 the Austrian NPM also participated in a meeting with the NPMs of Germany and Switzerland, which pursued the aim to establish cooperation between these NPMs. The topics of effective prevention, successful working methods and promising practices were on the agenda of this meeting.³⁵¹ A second meeting took place in Vienna in 2015.³⁵²

The Austrian NPM has established various bilateral contacts at the international level. Examples of these contacts include working meetings to exchange experiences with the Federal Ombudsman of Belgium.³⁵³ The Austrian NPM also provided its expertise to Tunisia for its endeavour to establish an NPM, including advice on the financing of the NPM and the selection of NPM members.³⁵⁴ Exchanges with a delegation of the ombudsperson of Macedonia concerned the experience made with the establishment of the Austrian NPM, international and national human rights standards, contacts with Ministries and the role of civil society.³⁵⁵ At a workshop in Athens, an Austrian expert consulted the Greek Ombudsman-institutions, which are also tasked to implement the mandate provided for in OPCAT.³⁵⁶

³⁵⁰ South-East Europe NPM Network, Letter to the SPT and response of the SPT to it, available at: [www.varuh-rs.si/fileadmin/user_upload/NPM/SEE_NETWORK/2014 - LJ_meeting/letter-to-the-SPT-and-SPT-response.pdf](http://www.varuh-rs.si/fileadmin/user_upload/NPM/SEE_NETWORK/2014_-_LJ_meeting/letter-to-the-SPT-and-SPT-response.pdf).

³⁵¹ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 22.

³⁵² Nationale Stelle zur Verhütung von Folter, *Jahresbericht 2014*, p. 12 seq.

³⁵³ Volksanwaltschaft, *Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013*, May 2014, p. 14.

³⁵⁴ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 23.

³⁵⁵ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 23.

³⁵⁶ Volksanwaltschaft, *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat*, 2014, p. 23.

V. COMPARATIVE CONCLUSIONS

The comparative analysis of the SPT, the CPT and the four selected NPMs reveals that these international, regional and national monitoring bodies generally share the overall aim of preventing torture and cruel, inhumane or degrading treatment or punishment of persons that are deprived of their liberty. Yet, a closer look at the legal framework, the mandates, the composition, as well as the particularities of the monitoring procedures of these bodies makes it clear that there are some similarities and communalities, but also significant differences and particularities to be observed among these bodies.

1. COMMUNALITIES IDENTIFIED

The following communalities have been identified in the course of the comparative research.

Firstly, there are **significant similarities in the types of places monitored** by the SPT, CPT and NPMs. Within the margins defined by the legal basis and mandate the international, regional and national monitoring bodies define what is to be understood by ‘places where persons are deprived of their liberty’. The monitoring bodies analysed all differentiate between various types of places and establishments they are monitoring. Most commonly, the places monitored include police stations, detention centres, prisons, mental health care institutions, and social care institutions. It is worth noting that the CPT has in practice extended the places of detention visited throughout the years and meanwhile also monitors social welfare homes for mentally disabled or elderly persons. Therefore, it may well be concluded that the respective understandings of what places to monitor under the given mandate are not necessarily carved in stone. This does not alter the fact that significant similarities with regard to numerous types of places that are (at least potentially) visited by three monitoring bodies are already evident in practice and could imply overlaps. In Austria, for instance, the SPT, the CPT and the NPM all have the mandate to monitor police stations, detention centres and prisons, mental health care institutions, as well as social care institutions. Admittedly, this is a merely hypothetical overlap in respect to the SPT, as this monitoring body has not yet paid a monitoring visit to Austria. Yet, from an institutional point of view these similarities do exist and raise questions concerning meaningfulness and efficiency. It is a noteworthy peculiarity of the Austrian NPM that it also has been given the mandate to monitor executive bodies and officers of administrative authorities authorised to issue direct orders and carry out coercive measures, as well as to visit facilities and programmes designed to serve persons with disabilities in line with the provisions foreseen in the CRPD with the aim to prevent

exploitation, violence and abuse. The Austrian NPM may thus monitor all the places the international and regional monitoring bodies may visit, and may monitor further situations and establishments to prevent human rights violations. The mandate of the French CG likewise goes beyond the provisions foreseen in OPCAT, as this body is tasked to monitor the deportation of foreign nationals as well. The Austrian and the German NPMs consider this task to be inherent in their mandate.

Secondly, there are **similarities with regard to the main sources of information** used by the SPT, the CPT and the NPMs for the drafting of monitoring reports. All three bodies have been equipped with unlimited access to detention places by way of their legal basis. This is indeed a far-reaching mandate and enables all monitoring bodies to do fact-finding by way of own on-site inspections. In practice, this opportunity is used by the three types of bodies in a very similar manner, as they all conduct interviews with staff and persons deprived of their liberty and examine relevant files and documentation in the course of their visits. As a result, there are hardly any fundamental methodological differences to be observed when it comes to the sources of information used by the three monitoring bodies.

Thirdly, the three types of monitoring bodies are all entrusted with a genuine **preventive mandate**. The term ‘prevention’ makes it clear that the monitoring bodies aim at preventing any kind of breaches of the principle of the prohibition of torture, and aim at protecting persons deprived of their liberty by a public authority from ill-treatment in various places of detention. This implies that the monitoring bodies are not tasked to deal with complaints concerning alleged violations of Article 3 ECHR in an investigative manner. Rather, it is these bodies’ task to take action before human rights violations occur. The monitoring bodies are thus all non-judicial and proactive in nature.

This does not mean that individual cases of alleged human rights violations are irrelevant for the monitoring bodies. In fact, the three types of bodies are repeatedly confronted with individuals, who claim to be victims of human rights violations. The monitoring bodies under review address such cases differently according to their mandate. The French CG has been given the explicit mandate to take up individual complaints right from the outset of its activities as NPM. This, however, stands in contrast to the SPT’s guidelines on NPMs, which call for a separation of monitoring tasks based on the OPCAT and further activities, such as dealing with individual complaints. The institutional setup of the Slovenian NPM as ombudsman institution first implied that the same staff was responsible for monitoring activities and for dealing with individual complaints. This combination of two very distinct tasks, however, turned out to hold disadvantages and was amended for a test phase of

one year, during which monitoring tasks and processing individual complaints are completely separated. At the end of 2015 or the beginning of 2016 this trial phase will be re-assessed and a decision on further distribution of work will be taken. When acting as NPM, the AOB as well as the CPT do not accept individual complaints, but may regard reported individual cases as indicative for a deficit in the system, which again could constitute a latent risk for human rights violation. The same applies for the German NPM, which is not entitled to handle individual complaints, but uses them as sources of information. Thus, individual cases do occasionally matter in an indirect manner for the activities of the monitoring bodies under review.

Fourthly, the comparative analysis revealed that the **monitoring bodies all recognise the importance of having contacts established with civil society organisations** working in the field of human rights or torture prevention. For the SPT and the CPT such contacts usually take the form of briefings with civil society organisations at the beginning of a state visit held. The main purpose of such meetings is to gain relevant information from national experts and receive further information on topical issues in the country and on places that should be visited.

Yet, the way the relations between the monitoring bodies and the civil society are institutionalised varies in practice. On the one hand, it can be observed that the international and regional monitoring bodies refrain from an all too close partnership with civil society organisations, apparently for reasons of being bound to confidentiality. Some NPMs, on the other hand, have institutionalised their relation with civil society organizations. The most obvious example is the case of the Slovenian NPM, where NGOs cooperate on a contractual basis with the Ombudsman in execution of tasks and responsibilities of OPCAT, namely by conducting monitoring visits. The Austrian NPM attributed the NGOs an advisory role, by making them a part of the HRAC. Thus, it can well be concluded that particularly NPMs often do not refrain from maintaining close and institutionalized ties with the civil society as this is done by the CPT and the SPT.

Fifthly, when monitoring places where persons are deprived of their liberty, the question arises for all bodies under review, against which **preventive standards** the situations found have to be assessed. What are the substantive criteria or reference points that should serve as a basis for providing recommendations to states on how to prevent violations of human rights at such places? Certainly, the legal framework of the respective country under review constitutes an important reference point for evaluating the situation found. However, given the preventive mandate of all the monitoring bodies, a mere control of how or if legal

provisions are implemented in practice is inadequate for the monitoring bodies. Further standards are required that allow the monitoring bodies to formulate proactive conclusions and recommendations.

A comparative look at the legal bases governing the work of the monitoring bodies reveals that none of these bodies has an explicit mandate to develop any such body of preventive human rights standards. Yet, in practice they all formulate recommendations to state authorities on how to best prevent human rights violations in places where shortcomings or risks for future violations have been found. Some bodies even go a step further and compile their standard recommendations in a separate document. Most prominently, the CPT has developed the practice to summarise the substantive sections of annual reports in the so called 'CPT Standards'. Publishing and updating the CPT Standards certainly contributes to the transparency of this monitoring body's work. Meanwhile, this source has even become an important reference point for NPMs, as these bodies regularly refer to the assessments and explanations given by the CPT for many subjects of concern in their reports.

However, also at the national level, a trend can be observed among some monitoring mechanisms to compile findings that can be regarded as the key standards applied by them. Most prominently, the German NPM included standardised recommendations on various topics for the first time in its Annual Report of 2014. The French NPM, together with the APT, published all its opinions and recommendations of 2008 to 2014 in a joint publication. Thus far, no set of compiled standards has been made available by the Austrian NPM. The publication of the standards applied would certainly contribute to the transparency of the monitoring procedure.

2. PARTICULARITIES IDENTIFIED

Alongside these five communalities, the following particularities have been identified in the course of the comparative analysis of the SPT, the CPT and the Austrian, German, Slovenian and French NPMs.

Firstly, a fundamental difference between the SPT, the CPT and the NPMs relates to the **geographical scope of countries monitored**. The SPT may exercise its monitoring function in the state parties of OPCAT, i.e. currently 79 countries worldwide. The CPT has a regional focus as it monitors all 47 member states of the CoE. The NPMs, by design, have a clear national focus and therefore perform their monitoring activities in one country only. From these differences in the number of countries monitored two conclusions may well be drawn.

On the one hand, the NPMs may potentially concentrate more on the specific characteristics of the respective national human rights situation in more depth than those monitoring bodies having 47 or 79 countries under scrutiny. This is certainly not to say that the SPT and the CPT are not sensitive to the particularities of each and every country monitored. However, in practice, the NPM's focus on one country opens up the opportunity for more systematic and constant monitoring, which would certainly overstretch the capacities and resources of the SPT and the CPT. The number of annual visits conducted per country back this argument. While the SPT has not conducted a monitoring visit in Austria, the CPT has concluded six visits since its first visit in 1990. During these visits the CPT has monitored a total of 83 establishments. The Austrian NPM, active since 2012, has visited 923 establishments and has been active in further 168 cases, such as monitoring of (forced) returns and police operations. This results in a total number of 1091 instances of monitoring. Given the fact that the Austrian NPM started its monitoring activities only in 2012, the comparatively high number of institutions and establishments visited is an indeed impressive record.

On the other hand, the SPT and the CPT may benefit from monitoring different states, since they are able to bring in a comparative perspective into the dialogue with individual states. More specifically, this comparative perspective could potentially add to the expertise and the good practices that can be identified for preventing torture and inhumane or degrading treatment in places of detention that can be provided to state authorities.

Secondly, the three types of monitoring bodies are active since a significant different period of time and have accumulated a quite **different record of monitoring experience**. The CPT clearly has the most longstanding experience in monitoring places of detention as this body monitors places of detention since 1990 and has, since then, conducted a total of 378

state visits (224 periodic visits and 154 ad hoc visits) and has published a total of 326 reports.³⁵⁷ The SPT conducts monitoring visits since 2007 and has conducted a total of 31 visits (27 periodic visits and 4 follow-up visits). The Slovenian NPM started its monitoring activity in 2006, the French NPM in 2008, the German NPM in 2009 and the Austrian NPM in 2012. From this comparative perspective, the Austrian NPM thus appears to be rather a “newcomer” among the monitoring bodies mandated by OPCAT.

Thirdly, the monitoring bodies under review differ considerably in their size, namely in the number of persons appointed as experts. The CPT has one expert member per state party to the ECPT and thus nominally comprises 47 members. The OPCAT foresees a maximum of 25 members for the SPT, which makes it the largest UN treaty body. Concerning the NPMs, their size varies considerably. The commissions of the Austrian NPM currently comprise 52 expert members, the Slovenian NPM 5 members³⁵⁸, the German NPM 10 members and the French NPM 47 members (excluding administrative staff). It is also worth noting that “external experts” may support the elected expert members. This practice is, for instance, regularly applied by the CPT.

While a comparison of the number of experts appointed for the SPT, the CPT and the NPMs is not really meaningful, it may still be observed that NPMs are in need of a sufficient number of members, in order to fulfil their proactive mandate in a more continuous manner than this can be expected from the SPT and the CPT.

A difference among the composition of the monitoring bodies can also be noted in relation to the experts appointed. On the one hand, the SPT and the CPT are made up of an international team of renowned experts and their visiting delegations may not include experts from the country monitored. On the other hand, the NPMs usually comprise experts of the respective country. This is noteworthy as the national expert members will usually be able to conduct the visits without interpreters. Moreover, the members of the NPM potentially have vast experience and knowledge on national laws and the situation on the ground, and are therefore able to assess the situation over time and in all details. Yet, it is also important to note that the SPT and CPT through their international orientation are able to bring in a potentially broader experience and are able to share their understanding of standards, developed over the years.

³⁵⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), ‘The CPT in brief’, available at: www.cpt.coe.int/en/about.htm.

³⁵⁸ Information received from a member of the Slovene NPM per E-Mail on 21 August 2015.

However, fewer differences can be observed in relation to the professions the expert members of the monitoring bodies have. Usually, the bodies include lawyers, medical doctors, political scientists, psychiatrists, sociologists, specialists in forensic medicine, criminologists etc. Still it has to be mentioned that the method of “employment” of experts varies through the NPMs, while in France and Slovenia full-time or part-time staff is employed to conduct the NPMs tasks, in Germany all NPMs experts work on an unpaid basis and in Austria experts are contracted as members of the visiting commissions, who are paid per visit.

Fourthly, it can be observed that the monitoring bodies follow a **different policy when it comes to publishing their monitoring results**. While the monitoring procedures of all types of bodies include a confidential stage, the bodies’ reports are made accessible to the public to a different degree. While states usually agree to the publication of the CPT reports – albeit with a certain delay, only about half of the reports of the SPT are publicly available. When it comes to the NPMs analysed, a mixed picture emerges in this regard. The German NPM publishes its visiting reports and the respective reactions by competent authorities since 2014. The commissions’ reports of the Austrians NPM are not available at all, and only selected findings and recommendations are reproduced in this NPM’s annual report. The French NPM usually publishes its reports after the answers were received from the respective ministries. Due to several reasons this takes usually two to three years. The Slovenian NPM also publishes short summarised reports on the visits on its website.

Thus, the potential of disseminating the findings and recommendations with the aim to contribute to a transparent and fruitful national dialogue is currently not used by all monitoring bodies to the same extent.

3. COOPERATION AND INTERACTION AMONG THE THREE LAYERS OF MONITORING

For a long time, the CPT has been the only expert body active in the field of preventive monitoring in the CoE member states. With the successful ratification and implementation of OPCAT and the resulting establishment of NPMs in an ever growing number of European states, the national layer of preventive human rights monitoring in places of detention increasingly gained relevance over the recent years. It could clearly be shown that the monitoring bodies of the international, regional and national level interact in manifold ways and seek cooperation in order to improve the situation of persons deprived of their liberty. The NPMs' cooperation with the international and regional bodies seems to be becoming more and more tangible and yielding promising results, like exchanges or trainings on preventive human rights standards. However, the possibilities of a close cooperation between the different monitoring bodies at national, regional and universal level (although welcomed by all bodies in theory) is partly hampered by provisions governing their work, mainly by the principle of confidentiality.

For the CoE member states, in which NPMs have successfully been established under OPCAT, the question arises, if and to what extent the comparatively new layer of national monitoring results in a duplication of work. Concurrently the question arises, if a division of tasks among the various layers monitoring bodies is envisaged. Although such a distribution of tasks has not been officially agreed upon, some notable differences and particularities identified in the course of the comparative research suggest that the SPT, the CPT and the NPMs attain somewhat different roles in the complex process of preventive monitoring of the human rights of persons deprived of their liberty. At least it may be concluded that some features stand out for the SPT, the CPT and the NPMs, which indicate that each monitoring body is able to bring in an added value in a particular niche.

For the **SPT**, representing the international layer of monitoring, the advisory function to the NPMs stands out. While the mandate of all three types of monitoring bodies entails the possibility to monitor places of detention in the state parties, the SPT has a remarkable advisory mandate vis-à-vis the NPMs. This advisory function is not limited to supporting states in the establishment of the preventive mechanisms, but takes the form of an ongoing process to strengthen the functioning of the NPMs by way of training and technical assistance. The international and thus comparative perspective that can be brought in by the SPT for this endeavour is a particularly added value.

For the **CPT**, representing a regional layer of monitoring, the longstanding experience in monitoring places of detention stands out. The “CPT Standards” developed and amended over the years have become a substantive reference point for improving the situation of persons deprived of their liberty and are utilised by many states and NPMs. The CPT’s knowledge has also informed much of the work of the SPT in practice, as about half of the initial members of the SPT, including its first Chairperson, were former members of the CPT. Moreover, (former) members of the CPT continue to share their expertise during the training of members of the newly established European NPMs.

For the **NPMs**, representing the national layer of monitoring, the ability to concentrate all the monitoring activities on the specific situation and context in only one country stands out. Indeed, NPMs have the highest potential for more constant monitoring activities. According to their mandate, NPMs may also exert a strong influence on the national legislative framework. Although all monitoring bodies under review may suggest changes in legislation in order to fulfil its preventive mandate, the NPMs are explicitly equipped with this power by way of the OPCAT. It has to be noted though that NPMs are everything but uniform monitoring bodies in practice. The OPCAT leaves it up to the states to choose the most appropriate NPM structure, which provides states with a considerable flexibility to adapt the NPM structure to the requirements given in the respective domestic context.

The NPMs increasingly grow into their role as domestic monitoring bodies. This role allows them to conduct on-site monitoring more intense and more constantly than any other body is apt to. This does not imply, however, that the SPT or the CPT will automatically lose their importance in the overall system of preventive monitoring. In fact, these bodies may continue their monitoring tasks and additionally provide their international and regional perspectives and expertise to NPMs and thus even gain importance as “supervisors” of NPMs. States are encouraged to acknowledge that it is indeed merrier to have more monitoring bodies in place. Therefore, States are well advised take up their responsibility to further strengthen and support the NPMs and to enable them to improve the situation of persons deprived of their liberty.

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