

**Report following the seminar organised by the Council of Europe on the
compatibility of the Armenian legislation with the requirements of OPCAT,
Yerevan, Armenia, 11-12 December, 2007**

Prior to the seminar, the experts were provided with the suggested amendments in the Law on the Human Rights Defender as well as with the original Law itself, the suggested amendments in the Criminal-Executive Code and in the Law on the Maintenance of Arrested and Detained Persons.

The analysis of these amendments revealed that the proposal was not compatible with the requirements of the OPCAT and the reasons why were highlighted in detail in my report which was produced prior to the seminar.

During the seminar it became very apparent that these amendments, which were produced by the Office of the Human Rights Defender, had not been discussed with the relevant stake-holders of the civil society and thus there were some rather heated debates as to how these amendments had come about. It was emphasized by the representatives of the civil society, that on 12-13 November 2007 a roundtable was organised by the Armenian Helsinki Committee, Bulgarian Helsinki Committee and Open Society Institute Assistance Foundation and in which the Office of the Human Rights Defender participated. In that seminar the agreement was reached on the main guiding principles regarding the process of the establishment of the national preventive mechanism (NPM) which is the main obligation of the state under the provisions of OPCAT. One of the key aspects of this agreement was that the process of establishment must be transparent and inclusive, and must include all the relevant stake-holder. It must be noted here that this is also a requirement of the OPCAT itself (Article 18 (4)). The amendments that were submitted for the discussion to the present seminar were new to the civil society and it was evident that no discussion had taken place among the relevant stake-holders.

As was highlighted in my report submitted prior to the seminar, that the provisions of OPCAT do not prescribe a certain model of NPM but rather leave three options to the states parties: they can either establish a new institution(s), maintain the existing ones if these comply with the requirements of OPCAT or designate some existing institution(s), making the necessary amendments in their powers so as to make them OPCAT-compliant. While this is an obligation that is imposed upon state party and not civil society, the state is not entirely free when exercising this obligation: Article 18 (4) of OPCAT makes it clear that when establishing NPMs, state must have due regard to the Paris Principles, which in turn require open, transparent and inclusive process, which would involve all the relevant stake-holders, also the civil society. Just by inviting the representatives to a discussion is only paying a lip-service to the requirements of Paris Principles and OPCAT. The process of establishment of NPM must have a meaningful input from all the relevant stake-holders and thus it is an obligation of the state to engage into a dialogue with all the relevant stake-holders, like civil society and the existing statutory visiting bodies, when establishing an NPM. The seminar in Yerevan showed that this has not been the case in Armenia so far.

The rationale behind not prescribing a certain model of NPM in the OPCAT itself is rather clear: different states may have different institutions that may be already carrying out the duties prescribed in the OPCAT whilst others may need to create new ones. The reasoning of the drafters was thus to ensure that each country has such NPM which is suited for its specific needs and corresponds to its special geo-political, cultural and social circumstances. The seminar in Yerevan showed that

there are some visiting mechanisms that are already operating in Armenia, albeit not without difficulties. It would thus be of utmost importance to not to duplicate the work carried out by these bodies and it would be counter-productive not to draw upon their expertise. The implementation of OPCAT and creating on NPM thus presents a perfect opportunity to audit the existing mechanisms, to strengthen their powers and to expand the system of preventive visits to other places of deprivation of liberty.

The existing law on the Human Rights Defender lacks preventive mandate as required by the OPCAT. The seminar in Yerevan also showed that in practice while the Office is doing its utmost to engage in preventive work, it lacks the capacity to do that as required by the OPCAT and thus currently is more re-active body, responding to the complaints.

In such a situation it appears that the solution would be to combine the capacity of the existing visiting mechanisms, of the Human Rights Defender's Office and add the lacking elements, like system of visits to psychiatric hospitals and social homes, for example. This, however, must be done in the way that would ensure the impendence of the NPM not only in law, but also in practice.

On the second day of the seminar, the representatives of the civil society presented their view on the way Armenian NPM should look like. The Ombudsman expressed his willingness to discuss this model and the agreement was reached that the discussion will take place on 19 December, 2007. Following this meeting, the proposed model along with the legal texts will be sent to the Council of Europe experts for their consideration. It was suggested that the training seminar which the Council of Europe was planning for the end of January 2008, should instead focus on finalising the NPM model in Armenia as training *per se* would most certainly be premature.

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