



HREIT

HUMAN RIGHTS AND EQUALITY
INSTITUTION OF TÜRKİYE

THE NATIONAL PREVENTIVE MECHANISM



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WHAT ARE THE DUTIES OF THE HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE (HREIT)?

According to the Law No. 6701 on the Human Rights and Equality Institution of Türkiye, the HREIT has three main duties:

- To protect and promote human rights,
- To combat torture and ill-treatment and in this context, to act as the National Preventive Mechanism (NPM),
- To fight against discrimination.

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WHAT IS THE NATIONAL PREVENTIVE MECHANISM (NPM)?

National Preventive Mechanism is an independent national institution that regularly visits places where people are deprived of their liberty to prevent torture and ill-treatment under the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Türkiye signed the OPCAT in 2005, the Protocol was ratified and entered into force in 2011 and thus, became binding for Türkiye. The NPM started its work in 2014. In 2016, with the Law No. 6701, the Human Rights and Equality Institution of Türkiye was designated as the NPM of Türkiye.



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WHAT IS THE OPTIONAL PROTOCOL TO THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (OPCAT)?

OPCAT is an international convention to which Türkiye is a party and aiming to establish a system in which independent international and national bodies will regularly visit places where persons are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The national body of the system established by this Convention is NPM, and the international body is United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT).

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WHAT IS THE SUBCOMMITTEE ON THE PREVENTION OF TORTURE (SPT)?

The SPT is an international convention body established by the OPCAT. The function of the SPT is twofold:

- To examine the treatment of persons held in places of detention within the jurisdiction of States Parties to the OPCAT by visiting the places and accessing information about the places; to make recommendations to the States Parties in this context,
- To assist States Parties in establishing NPMs and strengthening their capacity, communicating directly with NPMs and supporting their work by providing advice and observations to NPMs.



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WHAT IS TORTURE AND ILL-TREATMENT?

“Torture” refers to

- any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as;
 - obtaining from him or a third person information or a confession,
 - punishing him for an act he or a third person has committed or is suspected of having committed, or
 - intimidating or coercing him or a third person,
 - or for any reason based on discrimination of any kind,
- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

“Ill-treatment (other cruel, inhuman or degrading treatment or punishment)” refers to

- acts that do not reach the level of torture and
- performed by, or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; and
- for an act to be considered as ill-treatment, contrary to the act of torture, it does not need to be performed intentionally and for a specific purpose.



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WHAT IS DEPRIVATION OF LIBERTY?

According to the OPCAT, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

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ACCORDING TO THE OPCAT, WHAT ARE THE PLACES WHERE PEOPLE ARE DEPRIVED OF LIBERTY (PLACES OF DETENTION)?

According to the OPCAT, places of detention refer to any place under the States 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

These places are generally;

- Prisons,
- Custody centres,
- Mental and psychiatric health hospitals,
- Removal centers,
- Transit zones at airports,
- Detention vehicles,
- Waiting areas of the courthouses reserved for the prisoners.

However, the places where people are deprived of their liberty are not limited to the ones listed above. Any place where



conforms to the definition of the OPCAT can be visited as a place of detention.

It is accepted that NPMs can visit not only places where people deprived of their liberty are held, but also places where people with special needs and vulnerable situations are taken under protection. These places are generally;

- Care centers for people with disabilities,
- Nursing homes and elderly care and rehabilitation centers,
- Children's homes and child support centers,
- Temporary accommodation centers,
- Places of refuge.

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WHAT DOES REGULAR VISIT MEAN?

As an NPM, the HREIT visits places where people are deprived of their liberty and taken under protection by preparing a visit schedule every year, and makes follow-up visits to previously visited places at intervals determined according to the characteristics of these places.

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WHY ARE REGULAR VISITS MADE?

The idea behind the regular visits within the framework of a program is to make the places that are far from the surveillance of the society, due to their institutional structure, as open and transparent as possible to the outside world in order to provide an assurance against possible abuses.



With these regular visits;

- The living conditions and treatment of those who stay in places where people are deprived of their liberty and taken under protection are examined,
- A constructive dialogue is being developed with the managers of these places and the authorities responsible for their management, supervision and control,
- Changes that occurred in these places after previous visits are being monitored,
- Both detained persons and staff who cooperated with the NPM delegation are protected from reprisals,
- As an external mechanism constantly monitors these places, a deterrent effect is created on the occurrence of rights violations.

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WHAT IS THE VISIT SCHEDULE?

As an NPM, the HREIT visits places where people are deprived of their liberty and taken under protection within the framework of a pre-arranged visit schedule in the light of the following

-These places'

- Types,
- Numbers,
- Sizes and
- Geographical distributions as well as



- Regarding these places;
 - News in the media,
 - Reports of organizations operating at national and international levels,
 - Applications made to the HREIT and
 - Information obtained from the HREIT's previous visits.
- The visiting schedule is an activity program prepared by the NPM in accordance with the criteria listed above before each calendar year to conduct regular visits.

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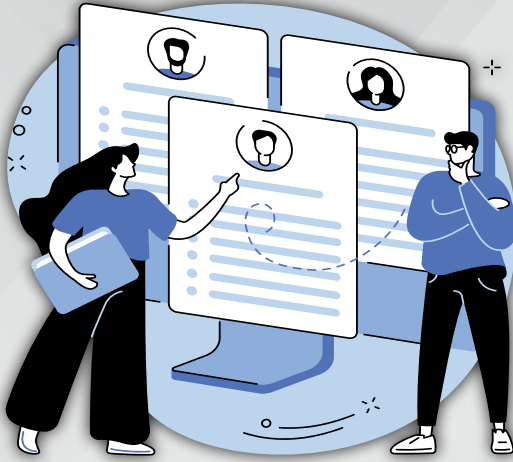
ARE THE VISITS ANNOUNCED IN ADVANCE?

As a rule, visits are carried out without prior notice. However, it is possible to announce the visits in advance in some special cases, such as when the follow-up visit is announced in order to ensure that the recommendations given after the previous visits are implemented.

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WHO CONDUCT THE VISITS ? HOW ARE THE VISITS CONDUCTED?

The visits are carried out by the HREIT as an NPM. In case of need, participants such as psychologists and doctors, whose expertise is needed from the relevant institutions, can also take part in the visiting delegation. Similarly, it is also possible to join representatives from relevant non-governmental organizations into the delegation.



NPM visits begin with a meeting with the officials of the institution visited. In this meeting, the authorities are informed about the duties and powers of the NPM, the purpose of the visit and how it will be carried out, and the information needed such as the number of persons at the institution or room placement plans is obtained from the authorities before the visit.

Then, the visiting delegation, in the light of the principles and standards within the framework of national and international law;

- Meets privately and in groups with the persons chosen by them among both those deprived of their liberty or taken under protection and the personnel,
- Visits rooms of those deprived of their liberty and taken under protection, and common places of the institution,
- Examines various files and records. Finally, the delegation meets again with the authorities to share their initial findings and observations, conveys the problems that need urgent solutions, and concludes the visit by stating that the report to be prepared will be submitted to them and the relevant authorities, and to express the information that the cooperative dialogue will continue.

During the visit, at the meetings with the authorities, the confidentiality of the information provided by the interviewees and the security of these persons are observed, and necessary precautions are taken to ensure that these persons do not suffer any harm due to the visit.



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WHAT KINDS OF TOPICS ARE EVALUATED IN NPM VISITS?

- Torture and ill-treatment,
- Physical conditions,
- Attitude of management and staff,
- Access to complaint and claim mechanisms,
- Contact with the outside world,
- Event possibilities,
- Access to healthcare services and
- Other human rights issues.

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HOW TO PREPARE VISIT REPORTS?

After the visits, the NPM prepares a report based on the observations and findings it has obtained in the light of the interviews and investigations it has conducted within the scope of the visit. In addition to observations, findings and evaluations in the reports, recommendations on the issues that need to be changed, corrected or improved regarding the institution visited and examples of good practice are included. The NPM's assessments and recommendations are guided by the national legislation and case-law as well as by the principles and standards set forth in international and regional conventions and mechanisms in the field of torture and ill-treatment.

In this context, NPM reports frequently include the decisions of the Constitutional Court, the provisions of the conventions within the framework of the United Nations and the Council of Europe, and the comments, recommendations and case-law of the convention bodies. Visit reports are shared with the visited institution and all other relevant authorities and made available to the public by publishing them on the HREIT website.



15 **HOW TO FOLLOW THE IMPLEMENTATION OF THE RECOMMENDATIONS STATED IN REPORTS; ARE THE NPM'S RECOMMENDATIONS BINDING?**

Feedback on the implementation of the recommendations is requested while the reports are forwarded to the institution visited and the relevant authorities. Thus, the implementation of recommendations through correspondence is monitored by the NPM.

In addition, the NPM can conduct follow-up visits to the relevant institution at regular intervals to examine whether the recommendations are implemented or not.

It is legally obligatory to submit the information and documents requested by the NPM through stating its reasons regarding the subject of investigation and examination, within thirty days from the date of notification of this request.

16 **WHAT ARE THE DUTIES OF THE HREIT AS AN NPM?**

As an NPM, the primary duty of the HREIT is to prevent torture and ill-treatment before it occurs, by regularly visiting places where people are deprived of their liberty and taken under protection, and by giving recommendations on the problems observed during these visits. In support of this basic task, the duties of the HREIT are as follows:

- To monitor and evaluate the legislative works on torture and ill-treatment, to inform the relevant authorities about its opinions and recommendations,
- To make regular, announced or unannounced visits to the places where persons deprived of their liberty or taken under protection,
- To convey the reports of these visits to the relevant institutions and organizations, and to disclose them to the public if deemed



necessary by the Human Rights and Equality Board of Türkiye,

■ To examine and evaluate visit reports of the penitentiary institutions and prisons monitoring boards, provincial and sub-provincial human rights boards and other persons, institutions and organizations,

■ To prepare annual reports to be submitted to the Presidency of the Republic of Türkiye and the Bureau of the Grand National Assembly of Türkiye,

■ To provide information to the public opinion, publishing special reports on matters falling under its mandate in addition to regular annual reports when deemed necessary.

■ To monitor and evaluate international developments in the field of torture and ill-treatment, and to cooperate with international organizations in the field within the framework of relevant legislation,

■ To cooperate with relevant public institutions and organizations, non-governmental organizations, professional organizations and universities,

■ To monitor the implementation of the relevant international human rights conventions to which Türkiye is a party; to submit opinions during the process of preparation of the reports which the State is under the obligation to submit to review, monitoring and supervisory mechanisms established by these conventions, by also making use of relevant nongovernmental organizations; and to participate in the international meetings where such reports are to be submitted, via sending a delegate.

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WHAT ARE THE POWERS OF THE HREIT AS NPM?

The powers given to the NPM by Law No. 6701 in order to fulfill its duties are as follows:



- To request, examine and take samples of relevant information and documents from all public institutions and organizations and other real and legal persons,
- To receive written and verbal information from the relevant parties,
- To visit places where people deprived of their liberty or taken under protection; to make examinations and to prepare the necessary minutes,
- To meet with the person or persons alleged to have been ill-treated.

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DOES THE NPM RECEIVE APPLICATIONS?

NPMs mainly carry out preventive activities. However, inquiring into, examining, taking a final decision on and monitoring the results of applications filed by persons deprived of their liberty or taken under protection falling into the scope of the National Preventive Mechanism is also among the duties of HREIT.

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WHICH APPLICATIONS ARE COVERED UNDER THE NPM?

For an application to be considered within the scope of NPM;

- It should be related to the conditions of detention of or the treatment against people deprived of their liberty or taken under protection at the place of detention.

Applications under NPM;

- It can be done by persons deprived of their liberty or taken under protection or by their legal representatives or proxies. In order for the applications under the NPM to be examined;



- They must not be related to legislative and judicial powers,
- They must not be related to the decisions of the Council of Judges and Prosecutors,
- They must not be related to acts that are excluded from judicial review by the Constitution,
- They must meet the pre-examination conditions.

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HOW SHOULD THE RELATIONSHIP BETWEEN THE HREIT AS NPM AND PUBLIC INSTITUTIONS AND ORGANIZATIONS BE?

As NPM, the HREIT performs a task based on a regular visit system established to prevent abuses by ensuring transparency in places of detention, and dialogue and co-operation with the addressee authorities. For this reason, the regular visits of the HREIT as NPM to places where people are deprived of their liberty and taken under protection should not be considered as “inspections”. However, in accordance with both the OPCAT and the Law No. 6701, public institutions and organizations and other natural and legal persons are obliged to facilitate the visits made by the NPM and to fulfill its demands without delay. The Law No. 6701 stipulates that an administrative fine will be imposed on individuals and organizations that do not comply with the said obligations within the specified time without a justified reason despite warnings.



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