

COMMENTS of the NPM of the Kyrgyz Republic

on the Draft General Comment No. 1 on places of detention (Article 4) of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- 1) The Law of the Kyrgyz Republic¹ "On the National Center of the Kyrgyz Republic for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (hereinafter, the NPM Law) in Article 1 defines two categories of places falling under the mandate of the Kyrgyz NPM - "places of detention" and "places of restricted freedom".

Place of deprivation of liberty - a place intended for holding a person subjected to administrative detention or arrest, detained on suspicion of committing a crime, imprisoned in connection with charges of committing a crime, serving a sentence of imprisonment by court order

Place of restriction of liberty - any place, which by its characteristics is not classified as a place of deprivation of liberty, where a person stays or may stay by order of a public authority (official) or with its knowledge, which he cannot leave at his will.

Having studied the Draft General Comment No. 1 (Article 4 of the OP CAT), the National Centre agrees with the introduction of a general concept of "places of deprivation of liberty", without singling out a separate category of places of detention, based on the criterion of inability to leave this place by the will of the person held there.

- 2) The same Article 1 of the NPM Law provides a clear list of places of deprivation of liberty and places of restriction of liberty.

Places of deprivation of liberty include:

- temporary detention cells, temporary detention isolators and investigative isolators;
- penal colonies, correctional colonies, educational colonies, and prisons;
- reception centers of internal affairs bodies;
- brig;
- premises of border service agencies for the detention of persons subjected to administrative detention;
- reception and temporary accommodation facilities for internally displaced persons and asylum seekers.

The law refers to places of confinement as:

- location and facilities of law enforcement agencies;
- centers for adaptation and rehabilitation of minors;
- military units of internal affairs, defense, national security, penal system and the authorized state body in the sphere of prevention of emergency situations;
- psychoneurological institutions;

¹Law No. 104 of July 12, 2012 (as amended by Law No. 53 of June 30, 2022).

- specialized institutions for compulsory treatment of patients with mental illnesses, alcoholism, drug addiction and substance abuse;
- state and non-state medical and social institutions for the elderly, minors and persons with disabilities (homes for the elderly, orphanages, etc.);
- special institutions for children and adolescents in need of special upbringing conditions.

The NPM of Kyrgyzstan considers it possible to combine these types of institutions into one category of places of detention.

- 3) In terms of belonging to public or private facilities, the NPM Law of Kyrgyzstan makes a reservation only in relation to medical and social institutions. Thus, as noted above, Article 1 of the Law specifies "state and non-state medical and social institutions for the elderly, minors and persons with disabilities (homes for the elderly, orphanages, etc.)". It follows that all other places of deprivation and limitation of liberty falling under the NPM mandate should be under the jurisdiction of state bodies.

The NPM of Kyrgyzstan believes that it would be advisable to amend the national law in this regard by making the reservation "public and private" in relation to all places of deprivation of liberty.

- 4) Regarding the list of places of deprivation and restriction of liberty of the Kyrgyzstan NPM absolutely agree with the proposed Draft to include in the NPM mandate:
- religious schools - madrasas;²
 - places of quarantine and isolation due to COVID-19;
 - vehicles (e.g., prisoner transport vehicles).

However, the National Center would like to suggest that the wording "places of quarantine and isolation" should not be linked only to COVID-19, but should specify a broader wording "places of quarantine and isolation in connection with the epidemic, including COVID-19".

- 5) Regarding the inclusion of places of detention under the NPM mandate as places of "house arrest".

In the opinion of the NPM of Kyrgyzstan, the practical implementation of this provision would be very difficult, as it would be necessary to visit persons detained in their homes, in relation to whom the court ordered a measure of restraint in the form of house arrest.

- 6) In paragraph 38 of the Draft Amendments the list of places of detention after the words "Police training schools" is proposed to be supplemented with the words "*training centers for rescuers³, special forces fighters of the law enforcement and armed forces system*".

²The NPM of Kyrgyzstan had this issue in 2017, and after consultation with SPT member Arman Danielyan, it was decided to conduct preventive visits to madrasahs.

³This refers to the training of future employees of the Ministry of Emergency Situations.