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Brainstorming meeting: "Trying to gauge NPM Impact"

7-8 September 2017

Council of Europe, 55 Avenue Kléber, Room 2, 75016 Paris, France

Findings

1. The meeting held in Paris on 7 and 8 September 2017 focused on the issue of how to assess the impact of an NPM on changes in the situation of persons deprived of their liberty in the relevant country, and was a follow-up to the meeting held by the Council of Europe in Strasbourg on 1 June 2017 between European NPMs and members of the association, NPM Obs, during which several NPMs had indicated their desire for in-depth discussion of this issue.
2. The representatives of six European mechanisms (Albania, Czech Republic, France, Germany, Poland and Serbia), who were invited by the Council of Europe for this purpose, were able to present during one and a half days, their respective thoughts and/or practices and exchange ideas on this matter with members of the SPT, the Council of Europe and NPM Obs.
3. As a follow-up to this meeting, the opinions and prospects for the future presented below will be communicated to all European NPMs, as requested by all the participants.
4. **State of play.** Although unanimously convinced of the need for each NPM to pay attention to the impact of its work on the situation of persons deprived of their liberty in its country, and being proactive in this regard, the NPMs gathered were nevertheless at very different stages of reflection, as practices were, with one exception, still in their infancy. As such, they are probably a representative cross-section of the range of situations that can be seen among European NPMs.
5. **Concepts.** During their presentations and discussions, the participants found it necessary to examine the very notion of impact, by seeking to establish its scope and key aspects.
6. **Definition.** Trying to gauge the impact of an NPM means attempting to assess (as precisely, objectively and scientifically as possible) the effect (in the short, medium and long term; direct or

indirect; alone or in combination with other factors) that it has on the changes occurring in its country in the situation of persons deprived of their liberty in terms of the prevention of torture and ill-treatment.

7. **Rationale.** The impact of an NPM on the conditions of deprivation of liberty in its country is an issue worth examining for several reasons: to verify the application of the OPCAT, to ensure the effectiveness of the improvement of rights, to justify the means used, prevent backsliding, etc.
8. **Methodology (1).** The impact of an NPM can be evaluated in the light of developments that can be seen on several levels: that of the situation of persons deprived of their liberty (changes in their treatment and rights), that of their places of detention (changes in local regimes) and that of the system (changes in policies put in place, in existing legislation and the material and human resources allocated).
9. **Methodology (2).** If it is to be thorough, assessment of the impact of an NPM must include an analysis of the results (quantitative and qualitative changes produced directly or indirectly by its work) which are directly related to its other activities; the effects (impact of the work on the legislative, material and human environment in which it operates) which combine the results of its activities and the other dynamics or constraints typical of the setting in which they are carried out; and the impact – in the strict sense of the term – analysis of which takes into account other potential factors separate from the activities of the NPM, which might be combined with the results and effects of its work.
10. **Methodology (3).** The participants agreed that the impact of an NPM could only be assessed after a few years of actual activities, as it had to have and be able to assert a fully developed and known “doctrine”. In other words, it must have had the time to carry out enough visits to enable it to acquire sufficient knowledge of places of deprivation of liberty and to identify good practices, as well as to formulate and publish its set of recommendations.
11. **Methodology (4).** The participants nonetheless considered that a number of preliminary measures could, in due course, facilitate the evaluation of the impact of an NPM in optimal conditions. In particular, they stressed the need for each NPM, when initially organising and defining its working methods, to include a mechanism enabling it to carry out periodic reviews of its recommendations, observations, proposals and opinions.
12. The aim of such a mechanism would be to compile and organise all useful data and information arising both from the constructive dialogue engaged in with the authorities (declarative follow-up) and from the monitoring visits carried out in the establishments already visited (in situ monitoring). To that end, a number of precautions to be taken (at the beginning of the monitoring) have been identified: classifying the recommendations by type of place of detention and theme rather than in chronological order; including the responses or observations made by the addressees (recognised appropriateness and relevance, deadlines and persons or entities tasked with implementation, acceptance or refusal, etc.); announcing the monitoring procedure in advance (which encourages the authorities themselves to take stock of the recommendations

made to them and to arrange follow-up of their implementation and which, ultimately, facilitates ownership of the recommendations).

13. **Methodology (5).** Beyond the measures mentioned previously which were its responsibility alone, the participants were of the view that the perception of an NPM by its international or national peers, institutions, associations or the media could usefully contribute to an evaluation of the impact of its activities on the situation of persons deprived of their liberty.
14. They stressed, in particular, the importance of seeking and gathering the points of view of regional and international institutional stakeholders (such as the CPT and the SPT), regarding the work of the NPM (for example, their respective opinions on the extent to which the NPMs take into account the norms laid down at UN or European level, or the opinion that the SPT may form in the light of the replies that it receives in the context of the self-evaluation it has suggested to the NPMs).
15. In addition, the participants mentioned the unique role of national parliaments, which may have different relationships with NPMs depending on the country (hearings of NPMs on the occasion of their annual reports or draft legislation, calling on their expertise prior to visits to places of detention by members of parliament, parliamentary intermediaries for NPMs' proposals, etc.), and which sometimes involve a reciprocal assessment dimension (that of parliaments by NPMs regarding the results and effects of their activities on the legislative work of parliaments, and that of NPMs by parliaments on organisation, functioning and use of resources).
16. Moreover, the participants examined the issue of assessment of impact from the perspective of the relationship between the NPM and the executive, as well as the central administration of places of detention (lines of communication between the NPM and the ministers concerned, established principle of systematic responses to reports, recommendations being included in action plans and internal memoranda, incorporation of the recommendations into the administrations' internal audit requirements, etc.).
17. Regarding the opinion which society (in general) has of the work carried out by NPMs and their impact on the situation of persons deprived of their liberty, the participants stressed that the changes that can be seen in public opinion concerning some misconceptions (prison as the only useful penalty, detained persons not being perceived as human beings or persons who are ill, etc.) could be considered as a factor when assessing the broader impact of NPMs together with the coverage that they manage to achieve in the media (every year at the time of publication of the annual reports, reports made after visits, those concerning thematic work, etc.). According to the participants, the opinion of human rights NGOs concerning the results and effects of NPMs' work should, clearly, be part of the evaluation of their impact, over and above mere analysis of the relationship established (integration, co-ordination, interaction, etc.).
18. More generally, the participants considered that in order to make a fair and objective assessment of the impact of an NPM, it should not be viewed as an "isolated entity" but as an

element – admittedly a key one – in a “chain of values”, which would involve identifying and taking into account its exact place in the human rights protection ecosystem in its country.

19. Similarly, the participants were of the view that beyond measurable and observable quantitative and qualitative data (the visible), it was crucial to include in the evaluation of the impact of an NPM dimensions which were less easy to assess (the invisible), but were nonetheless essential (such as changes in the attitudes of staff in places of detention, the improvements in daily life resulting from oral communication between an NPM and those in charge of the establishments visited which were not mentioned in any reports, or the fact that detained persons were freer to speak through their letters or personal accounts, etc.).
20. In the participants’ view, the assessment of an NPM’s impact on the situation with regard to torture and ill-treatment in its country must inevitably be linked both to the evaluation of its work (working methods, quality of its observations and recommendations, mechanism for monitoring the implementation of its recommendations, etc.) and to the conditions in which it exercises its mandate (legal status and scope of its mandate, its powers and human, budgetary and material resources, the authorities’ attitude and that of other national stakeholders, etc.).
21. The participants believed that the reflection undertaken should be continued in the near future. They therefore asked the Council of Europe to consider holding a fresh meeting, to which all European NPMs and relevant institutions and associations would be invited. The SPT member, who was participating in his personal capacity, underlined the high standard and importance of the discussions which he had attended and said that he would mention the initiative during the Subcommittee’s November session.