

The Council of Europe's Committee for the Prevention of Torture (CPT) 1989-99

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Work on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment began in June 1984. The Convention was completed and ready for approval by 26 November 1987.

It came into force when seven of the then 23 member states of the Council of Europe had ratified it, in February 1989. The Convention Committee had its first meeting on 13 November 1989, i.e. 10 years ago. At that time 15 countries had already ratified it. In summer 1999 the Council of Europe had 41 member states with a total of 850 million inhabitants. Ratification has taken place in 40 of these countries, and no. 41 is about to ratify.

With respect to ratification, CPT is thus a 100% success. There are now efforts to extend the field of its activities: addendum no. 1 allows for non-member states to become full members of CPT on invitation from the Council of Ministers. All 40 member states must accept addendum no. 1 before it can come into force, and that has not yet happened in three countries: Andorra, Croatia, and Ukraine.

The ideas of the Convention are initiated by a committee as stated in Article 1, which ends with a job description: "The Committee 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."

The mandate of the Committee is remarkable, probably being one the most powerful in an international context. The mandate is described in detail in Article 8, and can be summarized as follows:

- The Committee shall have "unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction".

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- The Committee may interview in private persons deprived of their liberty.
- It may see all buildings and installations – not only the cells.
- It may see all papers – not only the records of those detained.
- It may make unannounced visits and return for more visits.

It is important to emphasize that the whole work is based on Article 3: "In the application of this Convention, The Committee and the competent national authorities of the Party concerned shall co-operate with each other." The key word is therefore: "Co-operation" – the first C.

The Committee comprises one member from each country, selected by the Council of Ministers from a list of three names suggested by the individual countries. The members sit for four years and they can be re-elected once. The Committee has also decided that it should not be led by one president, but by a troika: a Bureau consisting of a President, a First Vice-President, and a Second Vice-President – thus reflecting the different, necessary fields of competence.

With respect to the qualifications of the members, the requirements are high (Article 4). They must:

- have "high moral character"
- be "known for their competence in the field of human rights or having professional experience in the areas covered by this Convention"
- "serve in their individual capacity"
- "be independent"
- be "impartial"
- "be available to serve the Committee effectively".

It is obvious that this type of person does not grow on trees. In general, however, the Committee consists of very high-quality individuals. Thus, the Bureau of the first four decisive years comprised three university professors, all internationally recognized for their various expertise:

- President: Professor Antonio Cassese, Professor of Human Rights and International Law at the European University at Florence (later President of the International War Crimes Court at the Hague.)
- First Vice-President: Bent Sørensen, Professor of surgery and expert in matters of torture.
- Second Vice-President: Jacques Bernheim, Professor of psychiatric forensic medicine and Head of the Medical Department at Geneva's largest prison.

Together with the secretariat, and in particular with its leader, Trevor Stevens (UK), the first Bureau planned the work, worked out rules of procedure, arranged training of the members, and wrote down guidelines and standards for visits and reporting.

CPT works exclusively with *prevention*. Thus, it cannot take on single cases and it cannot pass sentence. The work is part of the work of the Council of Europe, and it supplements the legal initiatives, in particular those of the Court. In short, the Court deals retrospectively with violations of established rights, while CPT works prospectively with identification of situations or conditions that may lead to misuse, and thus for the change of future regulations.

In practice the work falls into two categories: periodic visits, and "such other visits as appear to be required in the circumstances" (Article 7).

Periodic visits

The first notification procedure: At a certain time during the year the Committee decides which countries should have a periodic visit the following calendar year. These countries are informed, and the list is published about one month later. The various NGOs will then know from which countries CPT wants to obtain information during the coming year.

Two weeks before the planned visit the *second notification* is sent to the country's authorities, with the date of arrival of

Expansion of the CPT's field of operations: 1989-1999.

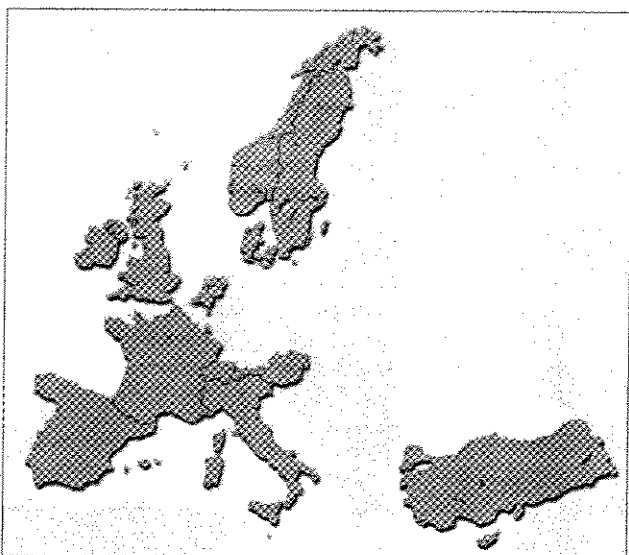


Figure 1. Situation as at 13 November 1989 (date of the CPT's first meeting).

States bound by the Convention: 15 States

Austria
Cyprus
Denmark
France
Ireland
Italy
Luxembourg
Malta
Netherlands
Norway
Spain
Sweden
Switzerland
Turkey
United Kingdom

Prison population: 292,250 prisoners

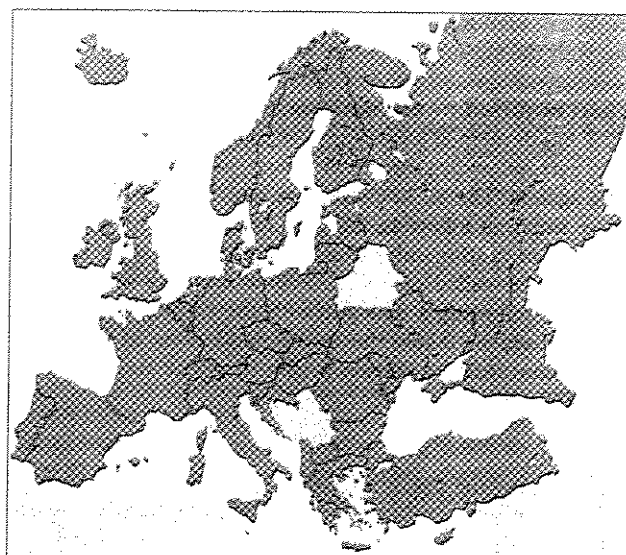


Figure 2. Situation as at 1 August 1999.

States bound by the Convention: 40 States

Albania	Iceland	San Marino
Andorra	Ireland	Slovakia
Austria	Italy	Slovenia
Belgium	Latvia	Spain
Bulgaria	Liechtenstein	Sweden
Croatia	Lithuania	Switzerland
Cyprus	Luxembourg	"The former
Czech Republic	Malta	Yugoslav Republic
Denmark	Moldova	of Macedonia"
Estonia	Netherlands	Turkey
Finland	Norway	Ukraine
France	Poland	United Kingdom
Germany	Portugal	
Greece	Romania	
Hungary	Russia	

Prison population: 1,881,500 prisoners.

(Source: <http://www.cpt.coe.fr/en/general/rep-9.htm>: It should be noted that the CPT's mandate covers also all other categories of places where persons are deprived of their liberty by a public authority: police establishments, detention centres for juveniles, military detention facilities, holding centres for aliens, psychiatric hospitals, etc.)

Note: This is an unofficial representation of States bound by the Convention. For technical reasons it has not been possible to show the entire territory of certain of the States concerned.)

the delegation, the possible duration of the visit, and the composition of the delegation, all named:

- about five members of CPT
- 3-4 experts
- a certain number of interpreters, depending on the country to be visited
- 1-3 secretaries.

The country's authorities can protest against the experts and the interpreters, but not against the visit of the CPT members or secretaries. In practice there are no more protests.

The *third notification* is sent 3-4 days before the expected day of arrival. It names the prisons, police stations, psychiatric departments, orphanages, etc. that the delegation wants to visit, and remarks that the delegation is free to visit any institution it may wish to, and to make the decision after its arrival. Furthermore, it is requested that information about the above-mentioned places should be available at the meeting with the authorities on the first day of the visit.

Visits required by circumstances

CPT has developed a practice in which such visits are part ad hoc, part follow-up, shorter or longer, often with a very specific agenda. The ad hoc visits are typically provoked by an acute situation following information that serious violations of the Convention might have taken place, such as mass arrests of so-called terrorists. Follow-up visits are typically arranged following a dialogue with the country, which may have refused to follow the recommendations of the Committee concerning a certain prison or police station, which the CPT will then revisit.

The visit

The visits in the various countries are the cornerstones of CPT's work. A periodic visit to a large country often lasts two weeks, in smaller countries ten days, and in very small countries, such as San Marino or Andorra, 1-2 days. As a basis for the work, the delegation first aims to obtain a complete overview of the country's penal codes, criminal laws, and statutory instruments.

Then always follow the visits to selected prisons and police stations, and other special institutions such as psychiatric departments, refugee camps, institutions for minors, etc.

In the following, prisons will be used as a model. It is CPT's policy always to make a very detailed and thorough examination of the selected prisons, since it is much more valuable to examine one or more prisons thoroughly than to examine many superficially. A visit to a large prison may well last up to four days.

The delegation splits up into sub-groups during the visit. They *inspect* all the premises, *examine* procedures (the reception and release of prisoners, punishment measures, possibilities of complaining, etc.), and *interview* all the relevant people, from the prisoners to the prison director. The delegation always comprises doctors to examine the medical treatment of the detainees and other relevant health conditions in the prison.

Following the visit, the delegation should have a complete picture of how the prison functions, and how current laws and regulations are adhered to, as well as an overview of situations or physical conditions that might lead to poor treatment or even torture.

Another important institution is the police. In countries that practise torture, the police, as a rule, are responsible, while the prison conditions may be inhuman or disgraceful. Visits to police stations are therefore a very important part of CPT's work against torture. As mentioned, individual police stations may have been informed about CPT's intended visit, but most will not have been informed. The visits therefore almost always come as a surprise, especially since CPT prefers to arrive at times when the station is under pressure with many detainees, typically on Friday or Saturday nights after midnight. It is often difficult for the local head of police to understand that the CPT people can enter all the cells without hindrance, and can demand to speak privately with the detainees. However, CPT has never given up and has always succeeded in entering the institutions it had planned to visit. Sometimes it has taken a few hours; for instance, it was necessary one Saturday night to contact a ministerial secretary to make him explain that particular right. To make it easier, all members of a CPT delegation are always given credentials signed by e.g. the minister of justice, containing the rights of the delegation, written in the local language.

Before the delegation leaves the country, a meeting is always arranged with the relevant authorities. The head of the delegation will give a short briefing of its findings, which will later be written in the report. At this briefing, however, it is possible to state "immediate observations" (Article 8.5). These concern conditions that require immediate intervention from the authorities, i.e. conditions unacceptable to the delegation and therefore requiring immediate change. The experience is that the authorities always take this seriously and often inform the Committee in Strasbourg that action was taken immediately, and in all cases the authorities have responded within the given deadline of three months.

The report

Based on the delegates' notes on their observations, the secretariat writes a report starting with the factual findings. Based on these, some questions may be asked, and comments and recommendations given. The report will be finalized in plenary meetings in CPT and sent confidentially to the government of the country in question.

This is the second C, "Confidentiality" (the first was "Cooperation").

Perhaps because of the confidentiality, the government usually considers the criticism as positive. It is requested to give an answer to the questions posed by CPT before a certain deadline. A dialogue is started between the government and CPT about how to improve conditions for those deprived of their liberty. An important part in this continuous dialogue is of course the subsequent periodic visits.

It takes about half a year for CPT to make the report and to have it approved in plenary meetings. The government concerned is requested to answer the posed questions, reply to the Committee's comments, and clarify how it has or intends to follow the recommendations. This first report is called the "Interim Report"; it is followed six months later, i.e. one year after receiving the CPT report, by a "Follow-up Report", in which the government explains its latest initiatives.

The CPT report and the government's reports are confidential. In practice, however, most countries have chosen to publish the CPT report and their own follow-up report. Thus, Denmark was the first country to publish its CPT re-

port in September 1991. At present it is almost customary to publish the report, but it should be stressed that it is up to the country concerned, not CPT, to decide whether the report should be published. However, in a few cases, when a country has published only *parts* of the report, CPT has published the *whole* report.

By August 1999 CPT had made 63 periodic visits and 27 ad hoc visits. A total of 59 reports have been published. Within the last years the reports have been available at the internet address <http://www.cpt.coe.fr>. This address also contains press announcements and more general information about CPT's work and its members.

CPT's development since 1989 is shown in Figs. 1 and 2. In 1989, 15 countries were members with a total of 292,250 prisoners; today the corresponding numbers are 40 countries and 1,881,500 prisoners.

CPT's forcible means

According to Article 10.2, if a country "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, by a majority of two-thirds of its members to make a public statement on the matter". These forcible means have only been used twice by CPT, in both cases concerning Turkey, in 1992 and 1996 respectively.

The results of CPT's work, according to us, are positive and large. Most of the countries are grateful for CPT's work and consider it a help in the work to improve conditions for people who have been deprived of their liberty. In this context it is important to stress that CPT should be, and is, a technical committee. It comprises people of vastly different competences. Among its members are lawyers, doctors (general practitioners and psychiatrists), experts in forensic medicine and torture, psychologists, prison experts, police experts, as well as priests. CPT's criticism is therefore objective, not political, and it is exclusively directed towards the future, without condemning the past.

This is probably one of the reasons why CPT's work has been so recognized and valued by all countries, as it is. Since the vast majority of the countries, as mentioned, in due course publish CPT's reports in connection with their own responses, the public is able to follow the work of CPT and check that its recommendations are put into force for the benefit of the people who have been deprived of their liberty.

The above article originally appeared in an abridged version in the Danish magazine "1949-99" published by Europabevægelsen (The Danish European Movement) on the occasion of the 50th anniversary of the Council of Europe.



Selected list of publications

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