

PARTNERS TO THE COMMITTEE FOR THE PREVENTION OF TORTURE: COOPERATION AND CONFIDENTIALITY

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1. Introduction

This article will focus on the specific relations between the CPT and its partners, as two round-tables in the framework of the seminar on the Prevention of Torture in Southern Europe (Onati-seminar 1997) have been devoted to this topic. One round-table dealt with the formal partners to the CPT, with reports given by an ombudsman for the police from Portugal (Antonio Rodrigo Maximiano), a penitentiary judge (Remei Bona i Puigvert) and a representative of the police (Miguel Martin Pedraz), both from Spain, under the chair of Malcolm Evans (UK). I myself chaired the other round-table, which focused on the experiences of informal partners to the CPT in the Mediterranean States. Eva Falcaö from Portugal spoke on behalf of the Forum Justica e Liberdades, a national Non Governmental Organisation (NGO); Inigo Elkoro Aiastul from Spain, who works with TAT (Group Against Torture), an organisation involved in the human rights protection of Basque prisoners, represented the group of defence lawyers; and Jean-Pierre Restellini, a physician from Switzerland who gained experience as a frequent expert with the CPT, spoke from the point of view of a medical doctor. A representative of the media (Stephania Miloti from Italy) had been invited but unfortunately could not attend the meeting. In the following, some main features of the European system on the prevention of torture will be looked at in more detail to illustrate the fundamentals and existing obstacles as regards the relations between the CPT and its partners.

2. The principles of cooperation and confidentiality: A contradiction in terms?

Two aspects are essential to understanding the system laid down in the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). First, it is not a repressive judicial system that is applied after human rights of individuals have been violated. On the contrary, it is a system that aims at preventing human rights violations in special situations at risk of ill-treatment, namely at places where people are kept in detention against their will. Second, the system is based on visits that closely follow the procedure and methodology developed and carried out by the International Committee of the Red Cross (ICRC). Therefore, the CPT's working method is to start and continue a dialogue with each of the contracting parties following the main principle of cooperation. In addition, the rule of confidentiality is laid down as the basis and precondition for a successful task. Confidentiality is lifted as soon as the government concerned authorizes the publication of the CPT's findings or if the Committee itself, in case of lack of cooperation from the government's side, makes a public statement. This happened twice with Turkey.

In the first General Report on the CPT's Activities it is stressed that in its relations with other bodies, the CPT is bound by its obligation of confidentiality, and that consequently the flow of information has to be mainly a one-way process. The principle of confidentiality is seen as the natural corollary to the spirit of mutual understanding and cooperation upon which the Convention is founded¹, but as it turned out in practice also as its main barrier! During a seminar in Strasbourg in 1994 on the implementation of the ECPT after five years of activities of the CPT, it was pointed out that the most fundamental impediments concerning cooperation are confidentiality as well as the lack of resources.² In the same way, during the seminar in Onati, criticism was raised and suggestions were made to improve the situation.

¹ Cf. Paragraph 64 of the Explanatory Report on the Convention.

² See Silvia Casale, Conclusions and Suggestions of the Seminar, in: apt (ed.), Acts of the Seminar of 5 – 7 December in Strasbourg, p 304.

3. Formal and informal partners to the CPT: Identification and role

In order for CPT to base its work on cooperation partners are needed! A distinction is made between formal, that means official and informal or non official partners.

Formal partners to the CPT are the government itself, represented by one or more liaison officers, who have to be designated according to the Convention (art. 15). The nomination of several liaison officers is recommended, when the country has a federal structure or when different ministries are concerned. The tasks of the liaison officers are crucial at all stages of the CPT's work. First, they must provide the CPT with the information required under article 8 of the Convention, i.e. on the places where persons deprived of their liberty are being held (para.2.b), as well as on applicable rules of national law and professional ethics (para.2.d). Second, they have to make the CPT known within the country. That means that information on the existence, mandate and powers of the Committee must reach those in charge of persons deprived of their liberty and naturally the detainees themselves. On 4 March 1994, the CPT invited the liaison officers to an exchange of views of the Parties to the Convention on the CPT's activities and to provide a forum for addressing practical issues arising out of the Committee's visits.³ In the course of this meeting it was agreed, inter alia, that States should update information, in particular regarding places of detention within their jurisdiction on an annual or biannual basis. Furthermore, there was general agreement on the importance of circulating information on the CPT's mandate and the related obligations of the State, as experiences had shown that problems of access to medical records and other documents often originated from a lack of knowledge on the part of those concerned.

Important formal partners to the CPT are also those persons who are responsible, in the first place, for the execution of detention, such as policemen, penitentiary judges and personnel of penitentiary establishments as well as supervisory bodies like ombudsmen or national visiting committees. They can give information on the specific situations and problems of detention in a respective State.

³ A summary on this meeting is given in the 5th General Report on the CPT's Activities, CPT/Inf (95) 10.

In return, these groups must be specifically informed of the standards and recommendations issued by the CPT to be able to implement them.

Another important group of formal partners are parliamentarians at European as well as national level. The Parliamentary Assembly has not only decisively contributed to the creation of the CPT within the Council of Europe system, but further supported its functioning and improvement. Of great significance in this respect is the Committee on Legal Affairs, which only recently submitted a report on strengthening the machinery of the ECPT.⁴ The national delegations to the Parliamentary Assembly play a crucial role regarding the effective implementation of the Convention, as they are mainly responsible for the nomination of the right candidates to the CPT. National parliamentarians could also play an important role by urging governments to make the report of the CPT as well as the responses of government public. Further, the national parliament could supervise the implementation of the CPT's recommendations as well as the improvements promised by the respective government.

Informal partners are, first of all, Non Governmental Organisations (NGOs) at national or international level, such as the Association for the Prevention of Torture (APT). Besides, all individuals who have any contact with or knowledge about persons deprived of their liberty are asked to cooperate with the CPT. These are, for example, lawyers, doctors, nurses, social workers, visitors of prisons, chaplains, friends and families of the detainees and, last but not least, the detainees themselves! Further, academics and the media are of utmost importance for the CPT as they can provide a more widespread knowledge and understanding of its mandate and work. These various informal partners to the CPT have to fulfill different functions within the process of cooperation.

4. Communicating information to the CPT

What sort of information should be communicated to the CPT? Reliably attested information on cases of torture and inhuman or degrading treatment or punishment that have already occurred, as well as information on situations in places of detention that may lead up to violations of human rights of detainees. The distinction

⁴ Parliamentary Assembly Doc. 7784 from 26 March 1997.

between torture cases and cases of ill-treatment may be relevant as regards the distinction between regular visits and visits “required in the circumstances”. The latter will be instigated more likely if allegations of torture or serious cases of ill-treatment that may come close to torture will be brought to the knowledge of the Committee.

But what are torture cases and what is ill-treatment? Bent Soerenson, former vice-president and member of the CPT, makes a clear distinction and calls them two different things.⁵ On the one hand, torture is defined by the UN Convention against Torture under art.1 and is condemned universally. Therefore torture is usually practiced secretly, without the consent of the government concerned and occurs mainly in the primary stage of detention during police investigation. Examples of modern torture methods are solitary confinement, falaka – beating on the soles of the feet – burns on the buttocks and cigarette burns, Palestinian hanging – a form of vertical suspension – often combined with electric shocks. As regards inhuman or degrading treatment of detainees, there is no definition and its existence may be acknowledged and admitted by the State itself as well as some parts of the public. Ill-treatment is perpetrated more frequently in prisons, refugee camps, psychiatric hospitals etc.

Whereas torture is easier to identify, ill-treatment raises the question of standards and whether there could be differences in their application within the various member states. Answers can be found in the Convention (ECPT) and its Explanatory Report as well as in the General Reports on the CPT’s Activities. The preamble of the Convention states that the system laid down operates in relation to persons who allege that they are victims of violations under article 3 of the European Convention on Human Rights (ECHR). Following the Explanatory Report, case-law of the European Court and Commission of Human Rights will provide a source of guidance for the CPT. At the same time it is stressed that the Committee’s activities are aimed at further prevention rather than the application of legal requirements to existing circumstances. The CPT itself interprets its mandate as follows: “In carrying out its functions the

⁵ Prof Bent SOERENSEN, First Vice-President of the CPT, Member of the UN Committee against Torture, Rehabilitation Center for Torture Victims in Copenhagen, devoted his contribution in the framework of the Strasbourg seminar to the precise definition and description of torture on the one hand and ill-treatment on the other with indications why, when, how, where and to whom they may occur. See the Apt publication, pp 259 – 265.

CPT has the right to avail itself of legal standards contained not only in the European Convention on Human Rights but also in a number of relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case-law of judicial or quasi-judicial bodies acting in the same field, but may use this as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries". (First General Report, § 5). And in the same report a gradual compilation of a corpus of standards is envisaged: "...the CPT considers to develop its own *measuring rods* and may decide to make them public, so as to offer national authorities some general guidelines in relation to the treatment of persons deprived of their liberty" (§ 95). The second General Report already contains some substantive issues pursued by the CPT during visits as regards police custody and imprisonment, and the third Report lays down standards relating to health care services in prisons. This codification of standards will be continued in the seventh General Report regarding the detention of foreign nationals.⁶

In this context, Claude Nicolay, at that time president of the CPT, raised two crucial questions in the framework of the Strasbourg seminar, the first being whether this standard setting by the Committee, which is not expressly laid down in the Convention, may be seen as an excess of mandate by the States Parties, and secondly, if standards developed in the context of Western Europe could be applied in the same way to the new members of Central and Eastern Europe.⁷ The same question may be raised as regards the Mediterranean states.

The CPT focused on the problem of different standards already in its first Report, stating: "...often one cannot understand and assess the conditions under which persons are deprived of their liberty in a given country without considering those conditions in their general (historical, social, economic) context. Although human dignity must be effectively respected by all Parties to the Convention, the background of each of these countries varies, and can account for differences in their response to human rights issues. It follows, that, to fulfill its tasks of preventing abuses, the CPT must often look

⁶ See Rod Morgan above in his introduction and footnote 7.

⁷ See Claude Nicolay, *Five Years of Activities of the CPT: And Now?*, in : *Act, Acts of the Seminar of 5 to 7 December in 1994 Strasbourg*, pp 221 – 228.

into the underlying causes of general or specific conditions conducive to mistreatment". (§ 49) References to prevailing material conditions can be discovered among the standards already established, when it is for example stated that there should be 'equivalence' of health care between prisoners and the general community. But it is a very sensitive issue to accept different standards between member states to one and the same convention, even if there may be and are big differences within the legal systems, the political and especially economic situations as well as the cultures regarding the protection of human rights between North and South, and even more so, the Eastern European countries. It is doubtful if the application of a national margin of appreciation can be granted with respect to standards in the field of the protection of human rights!

Communication of information raises further the question of first and second source information. The problem is that NGOs, for example, often have no access to places/situations at risk and therefore first source information, while those who are working at the fore-front do not obtain or are often not prepared to pass on information to the CPT. A further obstacle to an appropriate transmission of information to the CPT is the total lack of response to the information received. It has already been questioned whether the principle of confidentiality has to be understood in this strict sense. At least, a formal communication through the secretariat that the information brought forward will be taken into account, would satisfy the informant and could be done without big efforts. There would also be the possibility to ask for further particulars. In this context, it has been suggested that the CPT should elaborate a questionnaire identifying and structuring the basic and most important information required.

5. Making the CPT known and understood

One of the main tasks of NGOs, parliamentarians, academics and the media is to provide information and education for the so-called target groups, i.e. persons having regular contact with detainees, such as policemen, prison guards, prosecutors, doctors and others. The problem and illegitimacy of torture and inhuman and degrading treatment must become common knowledge and ways and means to improve given situations should be disclosed. In this respect, it is important to inform on the existence and functioning of the CPT, its working methods and the standards it applies for the treatment of detainees.

6. Supporting the publication of the reports and the implementation of the recommendations

Partners to the CPT should also work towards a quick authorization of the publication of the CPT's report and the State's responses, if possible within a period of one year after the visit has taken place. This means putting pressure on the responsible government to deliver its response in due time and to authorize immediate publication. Subsequently proper implementation of the recommendations must be supported by the external partners, which could be done by instigating parliamentary questions to the government, public discussion, media campaigns etc.

The CPT report, after having been published, may still lack understanding because of its language and wording. In terms of language this means that these reports are given in English or French only, one of the official Council of Europe languages and not in any other national or minority language. In terms of wording, the report and especially the recommendations themselves may be difficult to understand as it is a diplomatic language using stereotypes with a special meaning that may be unknown even to the public officials concerned. It is therefore sometimes useful and even necessary that NGOs, lawyers and academics make the essence of the CPT's findings more transparent by translating them into practical terms.

7. Keeping up the dialogue with the government to improve situations at risk

The limited resources of the CPT as well as the increased membership of participating states limit the CPT's opportunities to maintain an ongoing dialogue with its formal partners. Therefore it would be important that national NGOs and individual professionals build up contacts with the government and try to improve situations that have been criticized by the CPT.

8. Suggestions made during the Onati seminar

8.1. Concerning the relations between the CPT and formal partners

Maria José Mota da Matos, liaison officer at the Ministry of Justice of Portugal since 1992, summarized his personal experiences as follows: there are four liaison officers appointed in Portugal, in the Ministries of the Interior, Justice, Health and Defence. Only two of

them – Interior and Justice – were involved in the preparation of the visits by sending material requested by the CPT and giving information at the initial meetings that took place immediately before the visits. During the visits (two periodic visits in 1992 and 1995 as well as one ad hoc visit in 1996) there was no contact between the CPT and the liaison officers. After the visit and once the CPT report was received, the liaison officers had to coordinate the work of compiling information in order to ensure the preparation of the Government's response. The liaison officers themselves had the impression that their role should be more active and should have a continuing character. The problem may perhaps be due to the fact that in the context of the Convention no specific functions are assigned to the liaison officers and this absence of detailed regulations may lead to an absence of activities. Therefore, the meeting between the CPT with the liaison officers in Strasbourg in 1994 was judged very positively. There it was possible to discuss the main difficulties in an open and informal way and to establish some guidelines. It was, however, critically pointed out that, although one of the conclusions of the participants was precisely the advantage of holding such meetings on a regular basis, none has taken place since then. The CPT is therefore asked to organize another meeting as soon as possible.

8.2. Concerning the relation between the CPT and informal partners

Eva Falcão from Forum Justica e Liberdades, a Portuguese NGO the statutory objectives of which are primarily the defense of civil rights and liberties, characterized the relations of her organisation to the CPT as “sporadic” and “non-integrated”. There have been no regular or periodical meetings, scheduled and planned in order to coordinate their work with that of the CPT. They have been contacted only when the CPT was in place and they got the impression “that CPT members only went to Portugal, saw, inquired and reported”. From the point of view of Forum Justica e Liberdades it would therefore be very important to establish regular contacts with the CPT, for instance trimestral meetings. In this context CPT should ask for information and should also demand specific actions and investigations, concrete tasks – for example, appealing to them to make the first contacts with any prisoner or other allegedly victims of torture who might have already contacted the CPT. In this way, the national NGOs could act as local agents for the CPT. Joint meetings should also serve to elaborate “rights charters” based on

real situations, since different countries and societies have different and specific needs and the CPT should work locally!

Forum Justica e Liberdades had never received the CPT's reports directly, or any other briefings or working material. As regards reports, Eva Falcão suggested that the CPT should arrange a "distribution agreement" with governments as it would be of great interest for her organisation to receive CPT reports through the Portuguese government. This kind of triangle – NGOs, CPT and governments – should be stimulated, as NGOs could function as mediators between the CPT and local authorities, due to being faster and nearer. General reports and other materials should be supplied regularly to certain NGOs by the CPT itself, in order to update their collaborators.

8.3. Concerning the standards

Jean-Pierre Restellini first raised the question of how a health professional working in an environment at risk can make use of the CPT. He pointed out that, first of all, it would be extremely important that the professional in question can refer to internationally recognized prescriptions in order to uphold a professionally ethical position. In this respect, the standard setting already done by the CPT, for instance in its third General Report, defining the professional ethical rules of the prison health services is very useful, as it strengthens the position of the professionals when they find it necessary to act in opposition to the written guidelines or attitudes of the prison authorities. In the same context it would, from his point of view, be important to have access to information on national legal provisions and practice as regards medical ethics in neighbouring countries in Europe. A responsible doctor could more effectively defend his position vis-à-vis the police or jail administration if there is evidence that specific proposals have already been concretely adopted with no particular difficulty in countries of similar democratic and humanitarian tradition. This aim could also be achieved by organizing national or international meetings of health professionals working in environments at risk. One such meeting of the Turkish Medical Association was already held under the auspices of the Council of Europe. Further meetings should be supported at least morally if not financially by the CPT.

8.4. Concerning the recommendations of the CPT

According to Restellini, it may happen that the recommendations the CPT makes to the authorities of the country visited are not

applicable for legal or technical reasons. This can be due to a lack of adequate information and the limited time available during the visits. Therefore he proposed that non-official external partners who are convinced that the CPT was mistaken in its suggestions should directly contact the CPT and ask for immediate amendment. It would be important that the CPT accepts such a criticism and corrects its recommendations, thus effectively practicing the principle of cooperation.

8.5. *Concerning the principle of confidentiality*

Inigo Elkoro, member of TAT (Euskal Herria's anti-torture group) who spoke on the lawyer's role in the work of the CPT, raised some pertinent questions as regards the strict application of the principle of confidentiality in the CPT's working methods. He asked himself why the evidence the CPT gains on cases of torture and ill-treatment cannot be obtained for use in national legal proceedings? Why cannot the CPT draw the attention of any alleged breach of Art. 3 of the ECHR to its conventional bodies? And why should the reports of the CPT be confidential? Could they not be published automatically, or on the expiry of a time-limit, with the Committee then being empowered and obliged to make a public statement? All these questions have to be answered in the negative for the time being as there are clear provisions in the Convention itself. From a long-term perspective, it may be desirable to amend the ECPT-system and to loosen the principle of confidentiality in practical and, as a precondition, in legal terms.

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