



Complaints mechanisms

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For the purpose of this section, the term “complaints” refers to all formal complaints lodged by, or sometimes on behalf of, persons deprived of their liberty against decisions, actions or lack of official action on a variety of issues, in particular: staff misconduct, inadequate protection from other persons deprived of liberty who may cause them harm, poor material conditions, lack of activities or insufficient provision of health care. “Complaints” qualify as such irrespective of the seriousness of the issues complained of and whether or not they could amount to ill-treatment. As is the case in several countries, the term “complaints” may include actions aimed at challenging decisions taken by the relevant complaints bodies. The right to complain or to challenge these decisions is often referred to as an “appeal”. At the same time, legal action aimed at challenging decisions on deprivation of liberty/placement is not covered in this section.

Introduction

68. In the CPT’s view, complaints mechanisms constitute a fundamental safeguard against torture and inhuman or degrading treatment of persons deprived of their liberty by a public authority, regardless of the place or situation concerned (police stations, prisons, penal institutions for juveniles, immigration detention centres, psychiatric hospitals, social care homes, military detention facilities, forced return flights, etc.). Such mechanisms can not only allay tensions between persons deprived of their liberty and staff but also, by ensuring that complaints are taken seriously, contribute to building positive relationships.

69. However, on a number of occasions, the CPT has found that complaints mechanisms were either non-existent or displayed major shortcomings. These concerned in particular an insufficient legal basis, lack of, or inadequate, provision of information about complaints bodies or procedures, undue delays in initiating the examination/ investigation of complaints, lack of thoroughness in the examination/investigation of complaints, lack of independence or impartiality of the officials dealing with complaints, or insufficient protection against intimidation and reprisals.

During its visits, the Committee has encountered many persons deprived of their liberty who were unaware that they had the possibility to complain, who had found it very difficult to make complaints or who had refrained from making a complaint out of fear of reprisals. Others lacked trust that their complaints would be considered credible and/or be examined in a fair manner.

Type, capacity and nature of complaints mechanisms

70. It is crucially important that, in each place of deprivation of liberty, there is an effective **internal complaints mechanism**. This can help not only to identify and resolve problems as soon as they arise but can also assist the management and frontline staff to prevent abuses. Such a mechanism should be immediately accessible. Complaints may initially be made orally, and recorded by a member of staff on duty to whom the complaint is made, unless the complaint is about that member of staff (in which case it should be made confidentially to the senior member of staff on duty or the next available supervisor). Such a complaint should be responded to quickly, i.e. within a narrowly defined time span. If not resolved, the complaint should be formulated in writing by the complainant and taken to the next hierarchical level of staff who should also respond in writing. All decisions should indicate the subsequent steps to be taken if the complainant is not satisfied. More sensitive and/or serious complaints should be submitted, by a separate internal procedure, directly to the person in charge of the establishment. It is also important for managers to enter into direct contact with persons deprived of their liberty on a regular basis in order to provide them with opportunities to complain to them freely and confidentially. In the CPT's view, it is also advisable that external complaints bodies maintain oversight on internal complaints mechanisms.

71. Naturally, complainants should be able to turn to **external complaints bodies** directly. There is a variety of models in Council of Europe member states, ranging from general complaints bodies (e.g. national ombudsman institutions, administrative courts) to specialised agencies (e.g. independent police complaints bodies, prosecutors or judges specialised in penitentiary matters, prisons ombudsman institutions, special complaints boards or commissions).¹ Their powers may also vary considerably and their decisions may or may not be binding. In the context of its visits, the CPT has often found that complaints bodies which were not empowered to make binding decisions faced problems in having their recommendations or opinions followed up by the relevant authorities.

72. It should also be stressed that the **capacity** of complaints bodies to carry out their task depends largely on the allocation of adequate resources to their functioning, including human resources. Staff working for these bodies should receive appropriate training and be sufficient in number. Where necessary, they should be able to call on consultants or independent specialised support staff.

73. In the CPT's experience, it is inadvisable for **national preventive mechanisms or other similar monitoring bodies** also to deal directly with formal complaints. Where the same institution is designated to handle complaints and to monitor places of deprivation of liberty, both functions should preferably be kept separate and performed by clearly distinct entities, each with its own staff.

74. Complaints bodies should also be conceived as offering **supplementary protection**. They should not be considered as a substitute for criminal and other legal remedies that should be available to persons deprived of their liberty.

¹ An overview of prison complaints mechanisms is provided by Dirk Van Zyl Smit and Sonia Snacken, *Principles of European Prison Law and Policy. Penology and Human Rights*, New York: Oxford University Press 2008, pp. 308-310.

Basic principles

75. The proper handling of complaints made by persons deprived of their liberty, irrespective of the place or situation in which they are held and the legal framework applicable to their deprivation of liberty, requires the observance of certain basic principles: availability, accessibility, confidentiality/safety, effectiveness and traceability. The presentation of these principles is mainly based on views expressed by the CPT in its visit reports, in the light of its findings on the ground. It does not aim at establishing an exhaustive set of standards on all aspects of the operation of complaints mechanisms.²

1. Availability

76. It is widely recognised that every person deprived of his or her liberty should be **legally entitled to lodge formal complaints with bodies designated for this purpose**. It is crucial that both internal and external complaints mechanisms are genuinely available.

77. **Other interested parties** (such as close relatives and friends) should be able to act on behalf of the person concerned, as a rule with her or his consent and close co-operation.

78. Complaints which do not concern ill-treatment or other serious human rights violations may be dealt with through **alternative dispute resolution mechanisms** such as mediation, subject to the complainant's agreement.

2. Accessibility

79. Persons deprived of their liberty should promptly receive **information, both orally and in writing, about all avenues of complaint** (including appeal procedures), both internal and external to the places in which they are being held. They should also have a clear understanding of the modalities for exercising their right to lodge a complaint. For this purpose, appropriate information tools should be developed (e.g. posters in communal areas, a section on complaints procedures in the establishment's house rules, information leaflets issued by complaints bodies, information videos) and made available to them, in straightforward, user-friendly and non-legalistic formats.

80. All **information provided about avenues of complaint** – whether upon arrival in a place of deprivation of liberty or at a later stage – should also be available **in a language which persons deprived of their liberty understand**. In this context, written information on complaints bodies and procedures should be available in the languages most commonly spoken.

81. In order to facilitate access to external complaints mechanisms, it would be highly desirable that **appropriate standard complaints forms** be made available. Nevertheless, the fact that a complaint has been lodged on a non-standard form should not prevent it from being examined.

82. As regards **indigent persons**, measures should be taken to provide them with **writing material, envelopes and postage free of charge**.

83. Specific regard should be had to the age, gender, state of health, any disability, or any circumstances which render certain persons deprived of their liberty particularly vulnerable.

² For more details about police complaints systems in particular, see also the Opinion of the Commissioner for Human Rights of the Council of Europe concerning independent and effective determination of complaints against the police ([CommDH\(2009\)4](#)).

This implies that special measures should be taken to make complaints mechanisms more accessible for persons with particular needs, such as **juveniles**,³ **persons with psychosocial and/or learning disabilities**,⁴ or persons having problems with understanding, speaking, reading or writing the official language(s) of the country concerned, including foreigners.

It should also be stressed that access to the complaints bodies should not be contingent on **legal competence**. For instance, the fact that a person benefits from legal representation should not affect his or her own right to make complaints. Like any other complainant, he or she should be heard in person. It is also important that, whenever necessary, **appropriate support** is provided. In particular, it is advisable that juveniles, persons with disabilities, including psychosocial and/or learning disabilities, or foreigners deprived of their liberty have the possibility of being assisted by a person or body that can help them understand and exercise their rights. In addition, it is important that the professionals concerned receive **specialised training** in the handling of such complaints.

3. Confidentiality / safety

84. **Direct and confidential access** to complaints bodies should be secured (e.g. by installing locked complaint boxes accessible to complainants in appropriate locations, to be opened only by persons specially designated to ensure the confidentiality of the complaints). Staff who have persons deprived of their liberty directly in their charge should not be in a position to filter complaints.

85. The necessary efforts should also be made to ensure that complainants remain **free from intimidation and reprisals**. In this connection, staff at all levels should receive the clear message that any kind of threats, attempts to prevent complaints from reaching the relevant complaints bodies, or intimidatory or retaliatory action will not be tolerated and will be the subject of appropriate sanctions.

4. Effectiveness

86. Effective complaints mechanisms should process complaints **promptly, thoroughly and expeditiously**. They should also contribute to preventing further rights violations and, where appropriate, may offer compensation.

Complaints that are upheld should lead to any rights violations identified being **remedied, responsibility** for any such violations being determined and, if necessary, a **suitable sanction** imposed upon those responsible. When required, **legal assistance** should be provided to complainants. Complaints bodies should also be entitled to initiate *ex officio* **proceedings** (i.e. without a formal complaint being lodged) whenever there are indications of serious rights violations. In this context, the adequacy of the investigations into complaints (or any other information indicative) of torture and other forms of ill-treatment has been the subject of an extensive case-law of the European Court of Human Rights and has been dealt with at length in the CPT's 14th General Report.

87. In the CPT's experience, the **perceived fairness of a complaints system** is also crucial to its effectiveness in combating impunity and promoting a safe environment in the institutions concerned. The system should inspire public confidence and its operation should not dissuade the persons in question from making complaints. In this context, **independent** complaints bodies

³ See also paragraph 131 of the CPT's [24th General Report](#) and [Recommendation CM/Rec \(2008\) 11](#) of the Committee of Ministers of the Council of Europe on the European Rules for juvenile offenders subject to sanctions or measures.

⁴ See, in this connection, paragraph 76 of the judgment of 19 February 2015 of the European Court of Human Rights in the case of [M. S. v. Croatia \(No. 2\)](#), which became final on 19 May 2015.

should be unconnected and separate from the agencies responsible for persons deprived of their liberty. It is essential that they are, and are seen to be, independent. In several countries, the CPT reached the conclusion that it was necessary to set up an independent agency specialising in the investigation of complaints against police or prison officers, which is demonstrably separate from the authorities having the complainants under their responsibility and from the prosecution services.

88. Whenever a **complaint is considered inadmissible**, complainants should be informed of the reasons by the competent complaints body and, where applicable, provided with further options for addressing their concerns.

89. Regardless of the outcome of the complaint, it is also important to ensure that complainants are not subjected to **any financial or legal sanctions**.

5. Traceability

90. Each establishment concerned should keep a **record of complaints** in a specific register, giving due consideration to the above-mentioned principles of confidentiality and safety. Such a register should include the names of the complainants, the type and the subject of complaints, the outcome of the complaints procedure and of any appeal procedure, follow-up action taken to remedy the situation complained of and any compensation provided to the complainants. These records should serve as a management tool; for instance, it may be the case that many of the complaints relate to the same members of staff, or that certain categories of persons deprived of their liberty hardly ever lodge formal complaints.

91. In each area of competence (police, prisons, immigration detention, psychiatric and social care, etc.), a national **system for compiling statistics** on complaints, relevant proceedings and outcomes should be established. If the data are correctly gathered and analysed, it becomes possible to identify trends and develop future policies aimed at improving the functioning of the complaints mechanisms and the accountability of the authorities entrusted with the supervision and care of persons deprived of their liberty. In this context, the absence of complaints should not be necessarily considered as positive. On the contrary, in the CPT's experience, this is often indicative of an unsafe environment in the establishments concerned or of a lack of trust in the complaints system.