



## **Explanatory Report to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

Strasbourg, 26.XI.1987

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1. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up within the Council of Europe by the Steering Committee for Human Rights and adopted by the Committee of Ministers, was opened for signature by the member States of the Council of Europe on 26 November 1987.
2. The text of the explanatory report has been prepared by the Steering Committee for Human Rights and submitted to the Committee of Ministers of the Council of Europe.

### **I. Introduction**

1. On 28 September 1983, the Consultative Assembly of the Council of Europe adopted Recommendation 971 (1983) on the protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment. In this text, the Assembly recommended, in particular, that the Committee of Ministers adopt the draft European convention on the protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment, which was appended to the recommendation.

The background to this initiative may be summarised as follows:

2. In January 1981, the Assembly adopted Recommendation 909 (1981) on the International Convention against Torture, in which it referred to the work undertaken in the framework of the United Nations and recommended that the Committee of Ministers invite the governments of member States to hasten the adoption and implementation of the draft convention against torture being prepared by the United Nations Commission on Human Rights. It also invited the governments of member States represented on that commission to do their utmost to ensure that it gave detailed consideration to the draft optional protocol to the convention (submitted by Costa Rica), as soon as the draft convention itself had been submitted to the United Nations Economic and Social Council.

3. In March 1981, two motions for resolutions on torture in member States of the Council of Europe were tabled in the Assembly: one by Mr Lidbom (Doc. 4718) and the other by Mr Jäger (Doc. 4730). These motions were transmitted to the Legal Affairs Committee which decided to study them together.

4. Consideration by the Legal Affairs Committee resulted in a report (Doc. 5099), drawn up on behalf of the committee by Mr Berrier and adopted on 30 June 1983. This report contained the draft of a European convention elaborated by the International Commission of Jurists and the Swiss Committee against Torture at the request of the Rapporteur.

In September 1983, the opinion of the Political Affairs Committee on the report was presented by Mr Dejardin (Doc. 5123).

5. It is to be noted in this context that similar work was being conducted in the framework of the United Nations, and that the text of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, referred to in Recommendation 909, was adopted by the General Assembly of the United Nations on 10 December 1984 and subsequently opened for signature. As to the draft optional protocol submitted by Costa Rica, it aims to establish a preventive mechanism of a similar nature to that foreseen in the draft convention appended to the Assembly's Recommendation 971.

6. Subsequent to the adoption of Recommendation 971, the Committee of Ministers conferred the following terms of reference on the Steering Committee for Human Rights (CDDH) at the 366th meeting of the Ministers' Deputies, in January 1984:

"Consider Assembly Recommendation 971 with a view to submitting to the Committee of Ministers, after consultation of the European Committee on Crime Problems (CDPC), the text of a draft convention or other legal instrument on the protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment."

7. The Committee of experts for the extension of the rights embodied in the European Convention on Human Rights (DH-EX), a subordinate body of the CDDH, was instructed by the latter (15th meeting, March 1984) to implement this work under the authority of the CDDH.

8. The DH-EX considered the draft convention appended to Recommendation 971 at its 19th to 25th meetings (May 1984 to June 1986). It took into account *inter alia* that:

- the Ministerial Conference on Human Rights (Vienna, 19 and 20 March 1985), in its Resolution No. 2, "urges the Committee of Ministers to have the work on a draft legal instrument on torture completed as rapidly as possible with a view to its adoption";

- the final communiqué of the 76th Session of the Committee of Ministers (25 April 1985) said that the ministers had "supported the conference's appeal";

- in the Assembly, three questions concerning the draft convention were put to the Chairman of the Committee of Ministers, one by Mr Berrier in January 1985, the others by Mr Arbeloa in April and September 1985;

- in the final communiqué of its 77th Session (20 November 1985), the Committee of Ministers reiterated its great interest in the early completion of the draft convention.

9. During its work, the DH-EX had occasion to consult the European Commission and Court of Human Rights. It also organised a hearing with representatives of the International Commission of Jurists, the Swiss Committee against Torture and the International Committee of the Red Cross. Other hearings took place with two experts in the psychiatric field. Before transmitting in June 1986 the preliminary draft convention to the CDDH, the DH-EX took into account the opinions of the European Committee for Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) which had been consulted by the CDDH.

10. In addition to the CDCJ and the CDPC, the CDDH also consulted the European Commission and Court of Human Rights. The text of the draft European convention for the prevention of torture and inhuman or degrading treatment or punishment was finalised at the CDDH's 21st meeting in November 1986 and then transmitted to the Committee of Ministers.

11. After having consulted the Assembly (see Opinion No. 133 of 27 March 1987), the Committee of Ministers adopted the text of the Convention on 26 June 1987. It was opened for signature by the member States of the Council of Europe on 26 November 1987. <sup>(1)</sup>

## II. Reasons for the elaboration of a new convention

12. Torture and inhuman or degrading treatment or punishment are prohibited in national law and by several international instruments. Experience shows, however, that there is a need for wider and more effective international measures, in particular to strengthen the protection of persons deprived of their liberty.

13. Within the Council of Europe, the supervisory system established by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, has achieved important results. It is considered that this system, which is based on complaints from individuals or from States claiming that human rights violations have taken place, could usefully be supplemented by non-judicial machinery of a preventive character, whose task would be to 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.

14. For these reasons the present Convention establishes a committee which may visit any place within the jurisdiction of the Parties where persons are deprived of their liberty by a public authority.

## III. Main features of the new system

15. As indicated in paragraphs 13 and 14 above, the committee's function is to carry out visits and, where necessary, to suggest improvements as regards the protection of persons deprived of their liberty from torture and from inhuman or degrading treatment or punishment.

16. The members of the committee will serve in their individual capacity and be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by the Convention. If the committee considers it necessary, it may be assisted by suitably qualified experts.

17. It is not for the committee to perform any judicial functions; it is not its task to adjudicate that violations of the relevant international instruments have been committed. Accordingly, the committee shall also refrain from expressing its views on the interpretation of those instruments either *in abstracto* or in relation to concrete facts.

18. When deciding whether there is a need for making recommendations, the committee will, of course, have to assess the facts found during its visits. As the committee is not competent to hear witnesses in conformity with general principles of judicial procedure, it will not have a sufficient basis for making recommendations if the facts are unclear and there is a need for further investigations. In such cases, the committee may then inform the State concerned and suggest that further investigations be conducted at national level and request to be kept informed of the results of the inquiry.

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(1) **Note by the Secretariat of the CPT in 2002:** On 4 November 1993, two Protocols amending the Convention were opened for signature. Protocol No. 1 "opens" the Convention by providing that the Committee of Ministers of the Council of Europe may invite any non-member State to accede to it. Protocol No. 2 introduces amendments of a technical nature. Provision is made for members of the CPT to be placed in one of two groups for election purposes, the aim being to ensure that one half of the Committee's membership is renewed every two years. The Protocol also provides that members of the CPT may be re-elected twice, instead of only once as at present. These Protocols entered into force on 1 March 2002..

19. As a follow-up, the committee may arrange for fresh visits to the places already visited.

20. In the application of the Convention, the committee and the State concerned are obliged to co-operate. The purpose of the committee is not to condemn States, but, in a spirit of co-operation and through advice, to seek improvements, if necessary, in the protection of persons deprived of their liberty.

#### **IV. Observations on the provisions of the Convention**

##### **Preamble**

21. The preamble sets out reasons which led the member States of the Council of Europe to adopt this Convention and States its purpose (see Chapters I to III above).

22. The reference to Article 3 of the European Convention on Human Rights will provide the committee with a point of reference for its consideration of situations liable to give rise to torture or inhuman or degrading treatment or punishment (see *infra*, paragraphs 26 and 27).

##### **Article 1**

23. This article establishes the body which is to carry out the visits, and the purpose of the visits. In this way it describes the principal functions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

24. The notion of "deprivation of liberty" for the purposes of the present Convention is to be understood within the meaning of Article 5 of the European Convention on Human Rights, as elucidated by the case-law of the European Court and Commission of Human Rights. However, the distinction between "lawful" and "unlawful" deprivation of liberty arising in connection with Article 5 is immaterial in relation to the committee's competence.

25. As already pointed out in paragraph 17, the committee shall not perform any judicial functions: its members will not have to be lawyers, its recommendations will not bind the State concerned and the committee shall not express any view on the interpretation of legal terms. Its task is a purely preventive one. It will carry out fact-finding visits and, if necessary, on the basis of information obtained through them, make recommendations with a view to strengthening the protection of persons deprived of their liberty from torture and from inhuman or degrading treatment or punishment.

26. The prohibition of torture and inhuman or degrading treatment or punishment is a general international standard which, albeit differently formulated, is found in various international instruments, such as Article 3 of the European Convention on Human Rights.

27. The case-law of the European Court and Commission of Human Rights on Article 3 provides a source of guidance for the committee. However, the committee's activities are aimed at future prevention rather than the application of legal requirements to existing circumstances. The committee should not seek to interfere in the interpretation and application of Article 3.

##### **Article 2**

28. By this provision, Parties to the Convention agree to permit visits to any place within their jurisdiction where one or more persons are deprived of their liberty by a public authority. It is immaterial whether the deprivation is based on a formal decision or not.

29. Visits may take place in any circumstances. The Convention applies not only in peacetime, but also during war or any other public emergency. The committee's competence is, however, limited as regards the places it may visit by the provisions of Article 17, paragraph 3 (see *infra*, paragraph 93).

30. Visits may be organised in all kinds of places where persons are deprived of their liberty, whatever the reasons may be. The Convention is therefore applicable, for example, to places where persons are held in custody, are imprisoned as a result of conviction for an offence, are held in administrative detention, or are interned for medical reasons or where minors are detained by a public authority. Detention by military authorities is also covered by the Convention.

31. Visits to places where persons are deprived of their liberty because of their mental condition will require careful preparation and handling, for example as regards the qualifications and experience of those chosen for the visit and the manner in which the visit is conducted. In carrying out its visits, moreover, the committee will no doubt wish to have regard to any relevant recommendation adopted by the Committee of Ministers.

32. Visits may be carried out in private as well as public institutions. The criterion is whether the deprivation of liberty is the result of action by a public authority. Accordingly, the committee may carry out visits only in relation to persons who are deprived of their liberty by a public authority, and not voluntary patients. However, in the latter case, it should be possible for the committee to satisfy itself that this was indeed the wish of the patient concerned.

### **Article 3**

33. As stated in the general considerations (see Chapters II and III above), the present Convention institutes a non-judicial system of a preventive character. It is not the task of the committee to condemn States for violations, but to co-operate with them in strengthening the protection of persons deprived of their liberty. In order to indicate the spirit of the relationship between the committee and the Parties, Article 3 contains a general provision on co-operation.

34. The principle of co-operation applies to all stages of the committee's activities. It is of direct relevance to several other provisions of the Convention, such as Articles 2, 8, 9 and 10.

It is expected that the committee will take advantage of national expertise made available to it by the Parties to assist its task, particularly during visits (see also *infra*, paragraphs 64 and 65).

### **Article 4**

#### *Paragraph 1*

35. The committee will be composed of a number of members amounting to the number of Parties to the Convention. This provision is inspired by the first part of Article 20 of the European Convention on Human Rights.

#### *Paragraph 2*

36. With regard to the qualifications of the members of the committee it is stated in paragraph 2 that they shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by the Convention. It is not thought desirable to specify in detail the professional fields from which members of the committee might be drawn. It is clear that they do not have to be lawyers. It would be desirable that the committee should include members who have experience in matters such as prison administration and the various medical fields

relevant to the treatment of persons deprived of their liberty. This will make the dialogue between the committee and the States more effective and facilitate concrete suggestions from the committee.

*Paragraph 3*

37. This provision corresponds to the last part of Article 20 of the European Convention on Human Rights.

*Paragraph 4*

38. This paragraph requires that members serve in their individual capacity and that they are independent and impartial, and are to be available to serve the committee effectively. Accordingly, it is expected that candidates who would have a conflict of interests or who otherwise might encounter difficulties in satisfying the requirements of independence, impartiality and availability will not be proposed or elected. It is also expected that a member of the committee who might have such difficulties with regard to an individual situation would not participate in any activity of the committee relating to that situation.

**Article 5**

*Paragraph 1*

39. The procedure for the election of members of the committee is basically the same as that laid down in Article 21 of the European Convention on Human Rights for the election of members of the Commission.

*Paragraph 2*

40. It is considered appropriate that the same electoral procedure should be followed for filling casual vacancies (death or resignation).

*Paragraph 3*

41. The term of office has been fixed at four years, with the possibility of re-election only once.<sup>(1)</sup>

42. Provision is made for the partial renewal of the committee after an initial period of two years. The procedure laid down is inspired by the corresponding provisions of Articles 22 and 40 of the European Convention on Human Rights.

**Article 6**

*Paragraph 1*

43. Having regard to the specific characteristics of the committee's functions as provided for in the present Convention, it is specified that the committee shall meet *in camera*. This provision complements the principle contained in Article 11 that the information gathered by the committee in relation to a visit, its report and consultations with the State concerned shall be confidential.

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(1) **Note by the Secretariat of the CPT in 2002:** With the entry into force of Protocol No. 2, members of the CPT may be re-elected twice.

44. Subject to the requirements laid down by Article 10, paragraph 2, the decisions of the committee shall be taken by a majority of the members present. The quorum has been fixed at a number equal to a majority of the members.

*Paragraph 2*

45. This paragraph provides, in accordance with international practice, that the committee shall draw up its own rules of procedure. They will regulate organisational matters normally found in such rules, including the election of the chairman.

*Paragraph 3*

46. This provision, specifying that the secretariat of the committee shall be provided by the Secretary General of the Council of Europe, is inspired by the usual practice of this Organisation.

**Article 7**

*Paragraph 1*

47. This paragraph provides that it is the responsibility of the committee to organise the visits to places referred to in Article 2 of the Convention. It also indicates that the committee may organise periodic visits as well as *ad hoc* visits.

48. With regard to periodic visits, if it is to be effective the committee will inevitably have to take into account the number of places to be visited in the States concerned. The committee should also ensure, as far as possible, that the different States are visited on an equitable basis. Furthermore, its programme of periodic visits should not imply, for practical reasons, systematic visits in all places where persons are deprived of their liberty. The committee should even accord a certain priority to *ad hoc* visits which appear to it to be required in the circumstances.

49. With regard to such *ad hoc* visits, the committee enjoys discretion as to when it deems a visit necessary and as to the elements on which its decision is based. Thus, whilst the committee should not be concerned with the investigation of individual complaints (for which provision is already made, for example under the European Convention on Human Rights), it should be free to assess communications from individuals or groups of individuals and to decide whether to exercise its functions upon such communications. It should enjoy similar discretion in the event of a Party expressing the desire that the committee should conduct a visit to places within its jurisdiction in order to investigate certain allegations and to clarify the situation.

*Paragraph 2*

50. The visits themselves need not necessarily be carried out by the full committee; it is indeed probable that a visit by the full committee would arise only in exceptional situations. Provision is therefore made in paragraph 2 for the visits to be carried out, as a general rule, by at least two members of the committee, acting in the name of the latter. Exceptionally, however, the committee may be represented by only one member, for example in *ad hoc* visits of an urgent nature when only one member is available.

51. If the committee considers it necessary, it may be assisted by experts and interpreters. The underlying idea is to supplement the experience of the committee by the assistance, for example, of persons who have special training or experience in humanitarian missions, who have a medical background or possess a special competence in the treatment of detainees or in prison regimes and, when appropriate, as regards young persons.

52. When organising a visit, the committee will take into account the need to have at its disposal sufficient knowledge of the State concerned and its language.

53. The member or members of the committee chosen to carry out a visit will enjoy the necessary authority for the contacts with the national authorities. They will have responsibility for the general conduct of the visit and for the findings submitted to the committee after the visit.

#### **Article 8**

54. With the exception of paragraph 1, in which the reference to "committee" means the plenary committee, references to "committee" in this article (as in Articles 3, 9, 14, paragraph 3, and 17, paragraph 3) include the delegation carrying out the visit on behalf of the committee.

#### *Paragraph 1*

55. By ratifying the Convention, the States are under an obligation to permit visits to any place within their jurisdiction. The purpose of the present provision is to specify the modalities by which a visit is initiated. Before a visit can take place, the committee shall notify the government of the Party concerned of its intention to carry out a visit (see Article 15). After such notification, it may at any time visit any place referred to in Article 2 of the Convention.

It will be essential for the committee and each Party to arrive at satisfactory arrangements as respects the credentials and means of identification of each person belonging to a visiting team.

56. This provision does not specify the period of time which should elapse (for example twenty-four or forty-eight hours) between the notification and the moment when the visit becomes effective. Indeed, exceptional situations could arise in which the visit takes place immediately after the notification has been given. However, as a general rule and taking into consideration the principle of co-operation set out in Article 3, the committee should give the State concerned reasonable time to take the necessary measures to make the visit as effective as possible. On the other hand, the committee should carry out the visit within a reasonable time after the notification.

57. In the same spirit of co-operation, in cases where the notification announces the intention of the committee to visit a State, without specifying the date and place of arrival, it is expected that the committee will provide such details subsequently, before the visit takes place.

58. The notification should, in addition to announcing the visit, contain the names of members of the committee and identify the experts taking part in the visit, the interpreters and other accompanying staff, as well as the places which the committee intends visiting. However, the fact that specific establishments are mentioned in the notification should not preclude the committee from announcing that it also wishes to visit other establishments in the course of the visit.

59. Finally, it is expected that the committee will bear in mind that visits to high-security prison establishments may require careful preparation.

#### *Paragraph 2*

60. It is understood, in view of the particular nature of the visits which the committee is required to make, that this paragraph applies equally before, during and after visits. The paragraph contains an exhaustive list of the facilities with which the committee is entitled to be provided by the Party. It is, however, understood that the Party should render the committee other necessary assistance to facilitate its work.



61. Under sub-paragraph *a*, which must be read in conjunction with Articles 2 and 16, conditions prescribed by Parties with respect to immigration (visas, for example) may not be invoked against members of the visiting team (subject to Article 14, paragraph 3, in respect of experts and other persons assisting the committee). It is understood that the right to travel without restrictions does not give the committee or its experts the general freedom to move within areas which are restricted for reasons of national defence (see Article 9).

62. Under sub-paragraph *b*, each Party must supply the committee on request with a list of the places under its jurisdiction where persons deprived of their liberty are being held, stating the nature of the establishment (prison, police station, hospital, etc.). It is understood that, in supplying a list, the State concerned may provide a general description of places where persons are capable of being held from time to time, for example, all police stations or all military barracks, in addition to a specific list of permanent places where persons are deprived of their liberty, such as prisons and mental health institutions. It is envisaged that the committee will eventually request a comprehensive list of places within a particular area which it intends to visit within the jurisdiction of the State. On the other hand, it is not necessary for the State to make a list of all detainees. If, for particular reasons, the committee wishes to obtain information about a specific person (including his or her place of detention), it may ask for it under sub-paragraph *d* of this paragraph 2.

63. Sub-paragraph *c* emphasises the freedom of movement of the members of the committee, particularly inside places referred to in Article 2. But this provision does not prevent the committee from being accompanied by an official from the visited State, in order to assist with the visit (see Article 15). The State may in particular require the committee to be accompanied by a senior officer in places which are secret for reasons of national defence or which enjoy special protection for reasons of national security (see Article 9). However, an accompanying person must not be present at the interviews in private mentioned in paragraph 3 of this article.

64. Sub-paragraph *d* obliges Parties to provide the committee with information available to them which is necessary for the committee to carry out its task. Access to information will clearly be of great importance to the committee. At the same time, it is acknowledged that particular rules concerning disclosure of information may be applicable in member States. Accordingly, the committee is for its part obliged, when seeking information from a Party, to have regard to applicable rules of national law and professional ethics (in particular rules regarding data protection and rules of medical secrecy). It is envisaged that possible difficulties in this field will be resolved in the spirit of mutual understanding and cooperation upon which the Convention is founded.

65. It is understood that it is for Parties to decide the form (for example, originals or copies of documents) in which the information requested by the committee shall be communicated.

### *Paragraph 3*

66. Under this paragraph the committee may conduct interviews in private. For the purpose of such interviews it can choose its own interpreters and must not be subjected to any time-limits.

The committee should take special care in connection with mentally disturbed patients over the number, qualifications and linguistic ability of the person or persons conducting the interview (see paragraph 31 *supra*).

67. It is understood that a person deprived of liberty is not obliged to agree to enter into contact with the committee. But the latter must be given the opportunity to satisfy itself that this is in fact the free decision of the person concerned.

*Paragraph 4*

68. When referring to persons with whom the committee may communicate, those drafting the Convention had in mind in particular the families, lawyers, doctors and nursing staff of the persons deprived of their liberty. But no private individuals can be obliged to communicate with the committee.

69. However, this right conferred on the committee does not authorise it to organise formal hearings in the legal sense with all the procedural conditions that this would imply. For instance, no one would be obliged to give evidence on oath.

*Paragraph 5*

70. This paragraph enables the committee to make certain observations during the visit itself. This possibility should only be made use of in exceptional cases (for example, when there is an urgent need to improve the treatment of persons deprived of liberty). It will not absolve the committee from making a subsequent report, as provided for in Article 10.

**Article 9**

71. This article recognises that, notwithstanding the obligations of a Party to permit visits by the committee, certain exceptional circumstances may justify a postponement of a visit or some limitation on the right of access of the committee as regards a particular place. Paragraph 1 specifies these exceptional circumstances, restricting the grounds on which the article may be invoked on any particular occasion to :

- safeguarding national defence ;
- safeguarding public safety which, it is envisaged, would include an urgent and compelling need to prevent serious crime ;
- serious disorder in prisons and other places where persons are deprived of their liberty ;
- cases where, having regard to the medical (including mental) condition of a person proposed to be visited, a visit at a particular time could prove detrimental to health ;
- avoiding prejudicing an urgent interrogation, and consequential investigation, relating to a serious crime.

72. A Party which wishes to invoke the provisions of Article 9 is required to make representations as to the relevant circumstances to the committee. The committee and the Party would then be required by paragraph 2 to enter into consultations to elucidate the circumstances cited by the Party and their bearing on the proposals notified by the committee pursuant to Article 8. The committee and the Party are also required (and this is a particular example of the co-operation enjoined by Article 3) to seek agreement on ways in which the committee will be able to perform its functions speedily and effectively. One possibility which is specified in the article is that if, for example, representations are made on national security grounds against a visit to a particular place, any person who is deprived of his liberty in that place shall be transferred to another place where he may be visited by the committee. This paragraph also provides that, when a visit to any place is postponed, the Party shall ensure that the committee is fully informed about the persons who are deprived of their liberty at that place.

## **Article 10**

### *Paragraph 1*

73. This paragraph deals with the report which the committee has to draw up following each visit. This will be based on the facts found during the visit and will take account of any observations which the State concerned might wish to make. The report will also contain the recommendations which the committee considers necessary, the object being in every case to strengthen the protection of persons deprived of their liberty. It is understood that the report transmitted to the State concerned will not necessarily contain all the information obtained by the committee on the occasion of its visits (records of certain interviews, for example).

### *Paragraph 2*

74. In certain eventualities referred to in this paragraph, the committee may, after the State concerned has had an opportunity to make known its views, decide to make a public statement. The exceptional competence of the committee to make a public statement can be used if the State fails to co-operate or refuses to improve the situation in the light of the committee's recommendations. Given the importance of such a decision, it may only be taken by a qualified majority. Before using this remedy in the case of a State's refusal to improve the situation, the committee should pay full regard to any difficulties in the way of doing so.

75. The committee will have a wide discretion in deciding what information to make public, but will have to take due account of the need to secure that information passed over in confidence is not revealed. It should also take into consideration the desirability of not revealing information in connection with pending investigations.

## **Article 11**

### *Paragraph 1*

76. This provision establishes the principle of the confidential nature of the committee's activities. The "information gathered by the Committee" may consist of facts it has itself observed, information which it has obtained from external sources and information which it has itself collected.

### *Paragraph 2*

77. This provision specifies that, whenever requested to do so by the State concerned, the committee is required to publish the report and any comments the State wishes to make. If the State concerned itself makes the report public, it should do so in its entirety.

### *Paragraph 3*

78. This paragraph provides that no personal data may be published without the express consent of the person concerned. But this might not exclude the publication of such data if the identity of the person concerned is not revealed or could not be discovered from the context.

## **Article 12**

79. Every year, the committee shall submit a general report on its activities to the Committee of Ministers. The report, which will be transmitted to the Assembly and made public, should contain information on the organisation and internal workings of the committee and on its activities proper, with particular mention of the States visited. When preparing its report, the committee must naturally comply with the provisions of Article 11 concerning the confidential character of certain types of information and data.

### **Article 13**

80. In accordance with this provision, members of the committee, experts and other persons assisting the committee are required to observe confidentiality, even after their term of office has come to an end. It relates to all facts or information which may have come to the notice of the committee members or such other persons during the discharge of their functions when visits are being effected, or at any other moment.

### **Article 14**

#### *Paragraph 1*

81. This provision lays down the principle that the names of persons assisting the committee shall be specified in the notification of a visit under Article 8, paragraph 1.

#### *Paragraph 2*

82. The experts shall be bound by the same duties of independence, impartiality and availability as the members of the committee (see Article 4, paragraph 4). They are subject to the instructions of the committee and shall act under its authority.

#### *Paragraph 3*

83. This paragraph sets forth the conditions in which a State may refuse to a person assisting the committee the possibility of participating in visits, or in a particular visit, to a place within its jurisdiction.

84. This right may be exercised only exceptionally and at the earliest opportunity. Thus a State, upon being given the relevant information, should only refuse such a person if, in its opinion, he fails to fulfil the requirements set forth in paragraph 2 of this article or in Article 13. This might be the case if the person concerned has manifested a biased attitude towards that State or if, on other occasions, he has broken the rule of confidentiality.

85. When a State declares that a person may not take part in a visit, the committee may wish to ask for the reasons, on the understanding that the enquiry and any response shall be confidential. Such an arrangement may be of assistance to the committee in appointing other persons to assist it.

86. If, in the course of the visit, a person assisting the committee behaves in a manner that the State concerned considers improper (for instance, if he makes political or similar public statements), it may request the committee to take all the measures the latter deems appropriate.

### **Article 15**

87. In order to facilitate the notifications under Article 8, paragraph 1, of the Convention, the present provision obliges Parties to inform the committee of the authority to which such notifications should be sent. A Party must also inform the committee of the name of any liaison officer it may appoint to facilitate the task of the committee when making a visit.

### **Article 16**

88. This article deals with the privileges and immunities of the committee, its members and experts. It is inspired by Article 59 of the European Convention on Human Rights and by the Second and Fourth Protocols to the General Agreement on Privileges and Immunities of the Council of Europe.

## Article 17

### *Paragraph 1*

89. This paragraph provides that the present Convention cannot be invoked as a justification for restricting the protection granted under other international instruments or at the domestic level. Indeed, the Convention is only one of several measures aimed at preventing torture and strengthening the protection afforded to persons deprived of their liberty.

90. The fact that national authorities may be empowered to conduct certain investigations in the places covered by the Convention is not sufficient to prevent the committee from deciding to conduct a visit. But in the spirit of co-operation which is to govern the application of the Convention, the committee may wish to enter into contact with such national authorities before making a decision (see paragraphs 33 and 34 above).

### *Paragraph 2*

91. This paragraph addresses the particular relationship between the new Convention and the European Convention on Human Rights, to which all member States of the Council of Europe are party and a connection with which is acknowledged in the preamble. The obligations of the Parties under the European Convention on Human Rights are not affected. Nor is the competence entrusted by that Convention to the European Court and Commission of Human Rights and the Committee of Ministers. Accordingly, in respecting the established competence of these organs, the committee set up by the present Convention will not concern itself with matters raised in proceedings pending before them, and will not itself formulate interpretations of the provisions of the European Convention on Human Rights.

92. In particular, the cardinal importance of the right of individual petition under Article 25 of the European Convention on Human Rights remains undiminished. Accordingly, it is not envisaged that a person whose case has been examined by the committee would be met with a plea based on Article 27, paragraph 1.b of the European Convention on Human Rights if he subsequently lodges a petition with the European Commission of Human Rights alleging that he has been the victim of a violation of that Convention.

### *Paragraph 3*

93. It follows from Article 2 that the Convention applies both in time of peace and in time of war. However, it appeared necessary to take account of the existence of other international instruments, in particular the Geneva Conventions of 12 August 1949 and the 8 June 1977 Protocols. In the case of armed conflict (international or non-international), the Geneva Conventions must have priority of application; that is to say that the visits will be carried out by the delegates or representatives of the International Committee of the Red Cross (ICRC)<sup>(1)</sup>. However, the new committee could proceed to visit certain places which – particularly in the event of non-international armed conflict – the ICRC does not visit "effectively" or "on a regular basis". On the other hand, visits to detainees made by the ICRC in time of peace in a specific country by virtue of bilateral agreements (outside the framework of the Geneva Conventions) are not covered by this provision. In such cases, the committee must decide what attitude to adopt, taking account of the situation and status of persons who might be the subject of a visit.

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(1) See in particular Article 126 of the 3rd Geneva Convention and Article 143 of the 4th Convention.

94. The drafters of the Convention decided to make a distinction with regard to the Geneva Conventions, not only because of the specific competence and experience acquired by the ICRC but also because the latter carries out functions and uses methods very similar to those of the new committee. Thus, it seemed particularly necessary to specify the respective competence of the two organs.

**Articles 18 to 23**

95. These articles, which contain the final clauses of the Convention, correspond to the model adopted by the Committee of Ministers of the Council of Europe.

As for Article 21, it should be noted that the option excluding the possibility of making reservations has been chosen.