

CPT and Standards on Combating Impunity

Guarantees and General Prevention

The CPT at 25: taking stock and moving forward

E. Svanidze
Strasbourg
2 March 2015

Outline

- **Contribution of the CPT to the advancement of standards**
- **Interrelation between ECtHR case law and CPT jurisprudence**
- **Recommendations for advancement of the CPT and ECtHR standards**
- **Implications for the scope of the CPT activities**
- **Two areas formally beyond the procedural limb**
 - **Guarantees against ill-treatment**
 - **General Deterrence / Prevention**

Guarantees/Safeguards

Safeguards / Rights

Procedural Guarantees

- Notification of custody
- Access to a lawyer
- Access to a doctor
- Information on rights

+

- Communication with outside bodies

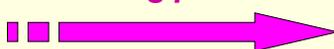
Automatic Guarantees

- Custody records
- Duties of prosecutors and judges in reacting to indications
- Duties of public officials
- Role of prison service

Rationale of procedural guarantees

- CPT = dissuasive effect
- Not enough to ensure adequate investigation
- Handle procedures (introduce safeguards) so that they prevent “*any appearance of collusion in or tolerance of unlawful acts*” ***Bati and Others v. Turkey, 2004***
- Communication of allegations and indications to a competent body

Preceding period



Investigation



Effects/Accents

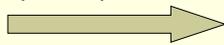
- **Preventive aspect**
 - Those minded to ill-treat should be aware that information will reach the competent bodies
- **Practical aspect**
 - Secure opportunity for victims of ill-treatment to communicate with the competent bodies and trigger investigations

Specificity of the case-law on the guarantees

- **Interrelation with other rights (Articles 5, 6)**
 - Orhan v. Turkey, 2002*
 - Pishchalnikov v. Russia, 2009*
- **Evidential implications**
 - Vergelskyy v. Ukraine, 2009*
 - Breabin v. Moldova, 2009*
- **Failure to secure such safeguards may in itself amount to a violation of the duty to carry out an effective investigation**
 - Mammadov (Jalaloglu) v. Azerbaijan, 2007*

Access to a Lawyer

- Lawyer of the detainee's choice
- Confidential meetings
- **Before the first interrogation** (informal talk)
(Article 6 of the ECHR)
- **As from the moment of actual detention**
(CPT)



ECtHR case law

Pishchalnikov v. Russia, 2009 Pavlenko v. Russia, 2010

- Attend interrogations
- Availability of legal aid for persons unable to pay for legal representation

Savitskyy v. Ukraine, 2012

Access to a doctor

- Two main purposes
 - communication of information
 - securing evidence
- CPT standards  case law
of the Strasbourg Court under Article 3
of the ECHR

Mehmet Eren v. Turkey, 2008

Vergelskyy v. Ukraine, 2009

Access to a doctor

- Doctor of own choice (+ provided by detaining authorities)
- On admission (24 hours) + on request
- Out of earshot and sight
Salmanoglu and Polatas v. Turkey, 2009
- Accurate documentation
- Availability of medical records
- Doctor of own choice = forensic doctors without delays
Valeriu and Nicolae Rosca v. Moldova, 2009
- Reporting obligation ***Taraburca v. Moldova***

Notification of Custody

- Notification of relatives or any third party of detainees choice
- CPT standards on acceptable limitations (delays):
 - Written decision
 - Up to 48 hours
 - For the sake of legitimate interests of the investigation
 - Approved by prosecutor/judge
 - Appealable
- No spelled out ECHR standards, but: ***burden of proof (providing evidence of notification Pavlenko v. Russia, 2010)***

Practical Guarantees

- Comprehensive custody records

Breabin v. Moldova, 2009

- Prosecutors and judges should seek to provide for the communication of information and evidence relating to ill-treatment. They must take resolute action in response to information that ill-treatment may have been experienced by persons brought before them

Taraburca v. Moldova, 2011

- Particular role of penitentiary establishments

Taraburca v. Moldova, 2011

- *CPT and ECtHR mutually contributed to reinforcement of the guarantees*

Obligation to Deter

- “Preventive effect of the prohibition of ill-treatment”

The Court has completed a “loop” of interrelation between the substantial standards and procedural aspect of the prohibition of ill-treatment. It has emphasized that the obligation to combat impunity is an indispensable prerequisite of its prevention.

Valeriu and Nicolae Rosca v. Moldova

- Legislation passed specifically to address ill-treatment
 - Special corpus delicti
 - Appropriate gravity

Paduret v. Moldova

Obligation to deter

- **Properly applied**

- classification of acts of ill-treatment
- adequate punishment

Valeriu and Nicolae Rosca v. Moldova

Okkali v. Turkey

- Amnesties or pardons frustrate the aims of effective investigation and adequate punishment and should be avoided

Enukidze and Girgvliani v. Georgia, 2011

Implications for the CPT work

- Would deal with the general legal framework and substantial legislation, as well as statistics but not in the indicated details
- Need to catch up the indicated developments
- Details of the substantial legislation (torture+ deliberate inhuman or degrading treatment)
- In-depth examination of the effectiveness of judicial deterrence/practice, policies applied