

## European Committee for the Prevention of Torture

### 25<sup>th</sup> anniversary

Five years ago, in this very same place, on the occasion of the 20<sup>th</sup> anniversary, Trevor Stevens, to whom I should like to pay tribute on behalf of everybody here, said that we were not here to congratulate ourselves, but to look for ways of doing better.

Torture is indeed in such conflict with human rights that, even if it were perpetrated on a tiny scale, there would still be a lot for us to do.

But that is not even the case. Many people in our countries believe either that the way in which persons are treated is much improved and hardly any difficulties remain or that torture is not important if people are rightly being held at police stations, in detention centres or in prison.

Where persons act outside the law, there is no need for law.

Three matters need to be considered:

- the relations which should now be established between the Committee for the Prevention of Torture (CPT) and the National Preventive Mechanisms (NPMs) in the new context of implementation of the OPCAT;
- the relations which the Committee and NPMs should now maintain with states;
- the aspects of the treatment of detained persons which seem to require greater attention in our present period.

To guide us in this threefold consideration, we should take two precautions: in the same way as we need to ensure that rights are effective, we should ensure that what we are doing is effective and that we do not rest on our laurels in the light of praise, compliments and diplomacy. Allow me to say that my thoughts, which are entirely my own, are aimed at nobody else, but solely at my own failings.

## I. The CPT and NPMs

### A. A landscape richer in torture prevention instruments

It is 25 years since the CPT was set up, the first external and independent monitoring system.

NPMs were established in the 10 years after the adoption of the OPCAT, prompted by both the weaknesses of the 1984 Convention against Torture and the successes of the CPT in Europe.

These changes are meaningless unless they effectively lead to action.

However, there are some differences – to which I shall return– between the CPT and NPMs, which force the latter to give far more consideration to issues of little significance to the CPT. I shall confine myself to two essential questions.

a) Firstly, the question of the NPMs' independence.

- Independent from whom? From everybody.

Let us start with the government. That is not so easy. Many governments are willing to accept the independence of a body, provided that it does not criticise them. The idea of a state body which does not do what the public authorities tell it to is still a recent concept in many European states.

- Independent in what way? Independence must give rise to highly practical decisions:
  - the conditions of appointment of NPM members must be such that they do not appear to have been chosen by one party against another; members are not allowed to hold any political position whatsoever;
  - members may not be dismissed and they serve a single term of office;
  - the state must have no control over the NPM's functioning and activities (e.g. its programme of visits);

- officials of the NPM may not hold any position or role in the services monitored;
- there must be no confusion between the duties of the state and those of the NPM (at some meetings with detainees it had to be explained to them that we were not part of the Ministry of Justice), and participation in governmental activities must be refused.

But this independence must also apply to other public and private institutions, including the ombudsman's office, of which the NPM may be a part, public opinion and the press and even NGOs, notwithstanding any convergences that may exist.

b) Secondly, the question of the NPMs' credibility.

The NPM is permanently present in its own country, where it makes numerous visits (150 per year in France). It is one of the institutions. Visible results are expected of it.

There may be a discrepancy between its assiduous visiting of establishments and the slow rate at which changes occur at prisons and police stations. The requisite time has to be allowed for changes of rules, the training of new staff, new buildings to be put up, and so on.

In other words, the NPM must carry out its short-term action as part of a long-term effort. Otherwise, its members may lose heart and the expectations of public opinion may be disappointed.

B. This richer landscape means that thought needs to be given to the relations which may be established between the CPT and NPMs

In my view, far from being apparent rivals, the CPT and each individual NPM very much complement each other.

1. They are not rivals because their characteristics are different

In the fight to prevent torture, there is no place for disputes about the merits and advantages of each party. I shall highlight a few differences here.

The CPT, a European initiative, came first, and for a long time stood alone. NPMs were set up, of course, in the international context of the OPCAT, but also in the national political context of debate about places of detention,<sup>1</sup> the influence and habitual conduct of law enforcement agencies in community life and the role, membership and funding of NPMs. These matters have been the subject of public debate and of a vote in parliament. Previous discussions on the disastrous state of French prisons generated a favourable context for the rapid setting up of the NPM.

The CPT is the emanation of an international organisation. There is no question as regards its independence from the states that it visits. On the contrary, it is a legal body under international law which co-operates with those states. I shall not point out again that the issue of the NPMs' effective independence is crucial and that vigilance is necessary at all times.

More than 15 years separate the European Convention for the Prevention of Torture of 26 November 1987 from the signing of the OPCAT. A similar period of practice separates the CPT from European NPMs, and has enabled the CPT to accumulate unparalleled experience which nobody could ignore.

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<sup>1</sup> As at 01/09/2013, the prison population rate per 100,000 of the population was 64.1 in Sweden, 119 in France (including electronic tagging) and 475 in the Russian Federation (source SPACE I, Council of Europe).

2. These differences must be used to ensure that their roles are complementary and to improve the prevention of torture

The CPT and each NPM visit the same places, namely those “where persons are deprived of their liberty by a public authority” (Article 2 of the 1987 Convention). There may be a few differences in the definition of such places (for example where establishments for the elderly are concerned), but essentially the fields are identical.

We must conclude that, if we want to prevent two visits being carried out to one establishment within a short space of time (which reduces the efficiency of each of the visits), coordination is needed between the CPT and the NPM concerned, although without one undermining the independence of the other, by which I mean its free choice of work programme.

Methodological discussions are useful, and any obstacles encountered should be able to be assessed jointly. An NPM in particular, if it experiences difficulties, should tell the authorities that it may inform the CPT about them; such difficulties are, moreover, of interest when choosing places to visit.

The most useful complementarity, however, lies in the relationships with the state in which places are visited.

The CPT arrives in every country with the weight and force of an international organisation; the relations established between states and itself entail no constraints, but have the scope of diplomatic relations (Article 3 of the 1987 Convention). It also has the force of an exceptional, albeit regular, activity. It has direct access to government ministers. The choice of visits entails both concern to have a broader view of the situation in the country and, particularly when follow-up visits are made, the aim of visiting the most critical establishments. Finally, whenever the CPT visits any place, it can make comparisons with other places in other countries.

The NPM provides a presence which may be described as permanent. It is a national institution which ordinarily co-operates with ministers, but also directly with administrative authorities, trade unions, NGOs and the press. Its role is to visit all establishments as frequently and for as long as possible. The number of visits within the country is naturally far higher. Its teams are in

principle more numerous. It can make national comparisons, so can highlight a particular practice and give encouragement to the director of an establishment. It accumulates national information. It is expected to have an influence on political decisions and to educate public opinion, not forgetting the other roles which domestic law may ascribe to it (in France, for instance, any individual is allowed to complain in writing to the national preventive mechanism about anything that happens which he or she deems detrimental to the fundamental rights of a detained person).

I would like to quote the evidence collected by the French parliament in 2000 from a (French) member of the CPT. He criticised the state of French prisons, which were not changing much despite the Committee's visits. He said that "the CPT cannot be in a country all the time", adding that, following the publication of each of the Committee's visit reports, "the baton should be taken up by the national bodies". We have now reached that point.

The CPT and NPMs are like two artists contemplating the same landscape. One is familiar with the place. The other passes through from time to time. The pictures that they will paint will suggest a richer and more lively reality, all the more so if each, while retaining its own personality, can draw on the other's vision and efforts. In terms of torture prevention, that means greater efficiency.

## II. Relations with states

### A. The public policies of the day

#### 1. The temptation to put security first

I am speaking today in a country which, like others over the past 15 years, and many others occasionally over a longer period, has been hit by terrorist attacks with quite specific significance.

These events, and other things such as the increase in social problems and the immigration issue (which frightens so many of our contemporaries in western Europe), lead to a greater collective search for security than in the past. A number of politicians in France argue that security is the most important requirement of citizens. As if there were a need to determine which of the human rights are more important than others, in the same way as we choose between cheese and dessert at a restaurant. Democracy is not a choice from a broader or narrower selection of rights: that is a characteristic of authoritarian regimes. Democracy is a constant search for a balance between rights.

Whatever the case may be, this need often gives rise to the amendment of criminal law to make it harsher, increase the penalties available to the courts and make detention conditions more severe. In France, for example, it was decided last month, on an experimental basis, to group the prisoners termed "radical Islamists" all together in a single wing in three prisons.

There is a temptation in these conditions, particularly in the face of this shared concern, to grant more flexibility, close our eyes and strike a new balance between the imperatives of security and the rights of each individual.

It is out of the question to give in to this temptation. Article 3 of the European Convention on Human Rights, like the other international conventions on human rights, sets down an intangible and non-negotiable right: the right not to be tortured. As the European Court of Human Rights has stated, *"The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most*

*of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see the following judgments: Ireland v. the United Kingdom cited above, p. 65, § 163; Soering cited above, pp. 34-35, § 88; and Chahal v. the United Kingdom, 15 November 1996, Reports 1996-V, p. 1855, § 79).” (ECHR, 28 July 1999, Selmouni v. France, No. 25803/94, § 95).*

Thus the context requires no fundamental change on our part. It merely requires a greater educational effort when the risk of a failure to understand is greater.

### Budgetary difficulties

A different song is very frequently sung by the political authorities of states where facts and economic beliefs necessitate restrictive budgetary measures.

Lack of money rarely stands directly in the way of the needs which arise when dealing with human dignity. On the other hand, in the expression of opinions (listeners’ reactions, public forums, and so on), it is very often said that, in times when government funds are in short supply, there really are greater priorities than improving the lot of persons deprived of their liberty.

This is in fact a current version of the very old idea that there is no “law” for managing those who place themselves “outside the law”, and if those persons are not treated in a dignified way, it is their own fault.

There is a strong link between the lack of dignity of persons deprived of their liberty and inadequate funding. This is constantly attested by visits to premises where persons are deprived of their liberty. Inadequate staffing is the most obvious example: a prison officer’s job is not the same if he or she is responsible for 40 or for 100 inmates. In the latter case, authority will have to be exercised more forcefully, perhaps even more brutally. But there are plenty of other examples – we have found, in France, that the rate at which personal hygiene products are distributed to detainees has slowed considerably in order to make financial savings. Keeping clean is one element of dignity.



At all events, in this respect, there can be no more compromise because the prohibition in Article 3 is absolute, (ECHR, 15 October 2002, *Kalashnikov v. Russia*, No. 47095/99). That is why, for more than two years now, we have been asking during every visit for the budgetary documents of the establishments visited, so that we can gauge any cuts in funding and assess their effects (for example at Les Baumettes Prison in Marseilles).

## B. Staffing

### 1. The scope of the rules

- The rules which set standards (laws...)

I recently read that, in 2003, the US Congress adopted legislation against rape in prisons, but that the situation had not changed much subsequently.

This kind of thing happens in Europe as well; it means that we should take an interest in what changes the law brings about in places of detention. I consider the law to be weak. The French Parliament passed a law on places of confinement in 2009 covering the Council of Europe's main concerns about prisons. What has changed in practice in the ensuing years? Very little. In other words, making the law effective is even more difficult in places of deprivation of liberty than elsewhere.

I am not saying that law is unnecessary. I am saying that it is not enough. The relevant authority can ignore the law without anyone realising. The officials of law enforcement agencies readily substitute their own law for the adopted law, because they have to take care of their own security (cf. "Article 1: The prison officer is always right").

Supervisory bodies exist, not just to see whether a person deprived of his or her liberty has the right to do something, but whether he or she has effectively been able to take advantage of that right. My country, for example, provides a remedy for mental patients who are hospitalised without their consent. Other examples of a similar kind are plentiful. This is why, while we must applaud good laws, we must never be under any illusions about their scope.

- Indicative rules (codes of ethics)

In order to avoid asking staff to apply texts in which they do not believe, governments have tried out what is known as “soft law”.<sup>2</sup> In particular, staff have been invited to apply codes of ethics, for example where their attitude to persons deprived of their liberty is concerned. The results have been disappointing. Whether they are binding or not, staff do not spontaneously apply rules unless they are reminded of them by their supervisors (these staff members typically receive little support from their managers).

What should be done?

Something must be done about the duties for which staff are responsible and the numbers assigned to those duties. When visits are made, close attention should be paid to staff members’ working and housing conditions and to any protests about those conditions. We have been attentive during our visits to such important signs as sick leave and applications for transfers.

We should also ask questions about the hierarchical relationships prevailing in a place of deprivation of liberty. Career progress often means leaving the most difficult duties behind. Daily contact with persons deprived of their liberty is thus frequently left to younger or less motivated staff members.

The safety of staff in such establishments must be ensured. But much educational work needs to be carried out to show that safety cannot be based solely on force and intimidation, but requires constant dialogue and clear instructions. There is still far too much uncertainty about how to behave.

Finally, the responsibility imposed on staff also needs to be questioned, such as when detainees are taken outside for hospital treatment. The duty to prevent escapes places staff under an obligation to produce results which frequently gives rise to excesses.

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<sup>2</sup> See *Conseil d’Etat*, yearly survey 2013, no. 64, *Le droit souple* (soft law), Paris, *la Documentation française*, 2013.

### III. Information to be obtained from persons deprived of their liberty

Without making any claim to a comprehensive approach, I shall just mention three areas which, I believe, deserve more attention.

#### A. Reprisals

Many staff do not like persons deprived of their liberty complaining to outside parties. There is plenty of evidence of this, and there are many ways of showing it (at one of the establishments visited, for example, lists are drawn up every day of the inmates writing to the controller general of places of deprivation of liberty or the ombudsman). This is why silence is often chosen. The bodies which exist to prevent torture should be aware of this.

It is not so much what might be said that the staff are afraid of, but the challenging of their authority. The ideal way is not to intimidate people, but to ensure that they obey staff, and nobody else. Claiming a right means relying on the outside world, and this seems unacceptable to staff.

Visits to establishments may increase this temptation and lead to reprisals against persons deprived of their liberty who have approached the visitors. In establishments of this kind, reprisals may take many forms, from the innocuous ("forgetting" to take someone to a medical appointment) to constant pressure on a daily basis to make the person angry and punish him or her as regularly as possible.

#### B. Violence between persons deprived of their liberty

It is essential to concern ourselves with the violence inflicted by members of the law enforcement agencies on persons deprived of their liberty.

But a common feature of long terms of imprisonment or detention in psychiatric hospitals is routine violence between inmates. Rooms left open at night in hospitals, for instance, resulting in non-consensual sexual relations, about which little is done.

Contributory factors:

- the closed societies to which we carry out visits are places of material deprivation and poverty. The smallest possession represents a significant source of greater well-being;
- these societies are also places of great inequality, dating from either before or after admission to the establishment; these inequalities give rise to great tensions on the subject of drugs or illicit goods; debts are incurred and not repaid;
- there are a number of persons deprived of their liberty whose human experience is based on the usefulness and advantages of violence;
- the ways in which the establishment is managed may give rise to rivalry between persons deprived of their liberty who are seeking a post or a place in the infirmary or in education;
- finally, in places where persons are deprived of their liberty, and particularly prisons, antagonism from the outside world is sometimes continued (where France is concerned, hostility between young persons from different cities or neighbourhoods or rivalry between persons of Arab and of Balkan origin).

The indifference often shown by staff to such violence is striking. Some of the violence is of course not known about, since it is invisible, and the place of detention does not encourage victims to complain about their tormentors. But indifference also arises because there is no tradition of staff intervention. This may give rise to dangers and, in particular, to unnecessary complications (such as prison exercise yards where the staff do not go).

We thus have an extended paradox, in that places where members of the law enforcement agencies are responsible for public order round the clock are subject to what we might call "public disorder". The authorities thus bear some of the responsibility for the violence that occurs.

We should therefore pay attention not only to that violence that can be directly ascribed to the law enforcement agencies, but also to that which results from the actions of the persons deprived of their liberty themselves.

We must of course, however, grasp that, while the first kind of violence may be comparatively explicit, because, with the significant reservation of the aforementioned reprisals, there are benefits in revealing it, the second kind is very difficult to observe, as it is in everyone's interest to conceal it. That makes this a difficult subject to deal with.

### C. Difficulties of access to the outside world

The final matter for consideration that I would like to address is the issue of access to the outside world from places of deprivation of liberty.

a) It is in the nature of these places to keep persons very much detached from the outside world. However, this separation is of course never total other than during short periods during which it is necessary to sever all ties with the outside world, either for the purposes of investigation (as during police custody) or for health reasons (such as quarantine or seclusion for psychiatric reasons) or, lastly, for reasons of punishment (placement in a disciplinary cell).

Accordingly, outside such periods, there are contacts: family visits, letters, teachers, and so on. The likelihood of a successful release back into the outside world, following imprisonment, is even recognised to be linked to the extent of these relationships with the outside world. It is also true that staff are not in favour of increased openness, because it could potentially be dangerous and problematic.

The argument between openness and closure should therefore be one of the keys to the view we should take of places of deprivation of liberty. This debate is even more sensitive since – as I have just stated – it may vary with time and according to the nature of the places of detention, and it may require court intervention. The issue of the extent and type of these relationships is therefore significant, and perhaps greater precision is required from European standards on this matter.

b) If there is one area in particular where the balance between openness and closure should be redefined, it is the field of new information and communication technologies.

When the CPT was founded 25 years ago, the Internet was a recent invention and the "Big Four" (Google, Apple, Facebook and Amazon) did not exist. Mobile phone use was not widespread. Today, we know what the situation is and are aware of the type of transformations our societies are undergoing because of the use of these technologies: some of these changes are positive and others are endangering our freedoms.

This raises the question of the use of these technologies by persons deprived of their liberty. The approaches of European countries certainly differ on this matter, and the instructions for managers of places of deprivation of liberty vary.

There is no question that, firstly, imprisonment often brutally deprives prisoners of these communication tools and that, secondly, their illegal use is widespread: in one prison we visited in 2013 housing 1,700 prisoners, more than 1,100 mobile phones had been confiscated by staff in the previous year. New technologies are thus the subject of a new war between staff and persons deprived of their liberty and, naturally, among persons deprived of their liberty themselves.

In places of deprivation of liberty, as elsewhere, new technologies can be dangerous if visits are made to certain websites that are (literally and figuratively) dynamite. However, they can also be an extraordinary tool for preserving family ties and for giving responsibility (through education, recreational activities and searches for employment and accommodation) to each person deprived of his or her liberty.

Hence the need for practical reflection on this subject.

Torture and inhuman and degrading treatment continue to be practised. Their traditional image – squalid prisons, physical ill-treatment and unjustified seclusion – has not changed. However, there may also be new aspects, such as destruction of a computer memory for no reason, which I have witnessed, with damaging effects on a prisoner who had written eighty pages of an autobiography as a form of self-improvement therapy.

More than ever, each of us in our roles must maintain during visits our demands of the persons in charge of these places of detention, and also our requests to governments and our work to educate the public. Nevertheless, we must also move forward with greater impetus so as to be, together, more effective, more resolute and more convincing and to adapt our work ever more closely to the reality of the dark side of our societies.