

Strengthening multilateral efforts to curb trade in torture and death penalty goods

Renforcer les efforts multilatéraux visant à limiter le commerce de biens utilisés pour la torture et la peine de mort



Proceedings of the Workshop on facilitating the implementation of the Committee of Ministers' Recommendation CM/Rec(2012)2 on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment

Strasbourg, 27 November 2024

Actes de l'Atelier sur la facilitation de la mise en œuvre de la Recommandation CM/Rec(2012)2 du Comité des Ministres sur des mesures contre le commerce de biens utilisés pour la peine de mort, la torture et autres peines ou traitements cruels, inhumains ou dégradants

Strasbourg, 27 novembre 2024

COUNCIL OF EUROPE



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**STRENGTHENING
MULTILATERAL EFFORTS TO
CURB TRADE IN TORTURE AND
DEATH PENALTY GOODS /**

*RENFORCER LES EFFORTS
MULTILATÉRAUX VISANT À
LIMITER LE COMMERCE DE
BIENS UTILISÉS POUR
LA TORTURE ET
LA PEINE DE MORT*

Proceedings of the Workshop

Actes de l'Atelier

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Preface / Préface



Strasbourg, 27 November / novembre 2024

The Workshop on Strengthening Multilateral Efforts to Curb Trade in Torture and Death Penalty Goods, organised by the Steering Committee for Human Rights (CDDH), provided an invaluable opportunity to reflect on the urgent need to continue the fight against the trade in goods used for the death penalty, torture, and other inhuman or degrading acts.

More than three years after the Committee of Ministers issued its Recommendation CM/Rec(2021)2 to member States on measures against this abhorrent trade, it is clear that significant challenges remain. As we learned during the Workshop, the trade in goods used for torture and the death penalty is far from eradicated, underscoring the need for sustained, coordinated multilateral efforts.

The Workshop, which brought together speakers from the Council of Europe, the United Nations, the European Union, and civil society organisations, reaffirmed the Council of Europe's commitment to fostering international dialogue and collaboration on this critical topic.

The ideas and recommendations that were presented should inspire us to take further action to eradicate this trade. By continuing to strengthen multilateral efforts and working together across all sectors, we can move closer to a world where the trade in goods used for torture and the death penalty is consigned to history.

A handwritten signature in black ink, appearing to read 'G. Esposito'.

Gianluca ESPOSITO

Director General, DGI Human Rights and Rule of Law
Directeur Général, DGI Droits humains et État de droit

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PROGRAMME

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<p>Introduction presentations</p> <ul style="list-style-type: none"> • Nicola WENZEL German representative within the CDDH • Michael CROWLEY Research Associate, Omega Foundation 	09:10	<p>Présentations introductives</p> <ul style="list-style-type: none"> • Nicola WENZEL Représentante de l'Allemagne au sein du CDDH • Michael CROWLEY Chercheur associé, Omega Foundation
<p>PANEL 1</p> <p>Implementation of the Council of Europe Recommendation: States and Civil Society perspectives</p> <p>Moderator: Nicola WENZEL</p> <ul style="list-style-type: none"> • Johannes RICKLER Federal Ministry of Economic Affairs and Climate Action, Germany • Fanny GALLOIS Head of the Freedoms Program, Amnesty International France 	09:30	<p>SESSION 1</p> <p>Mise en œuvre de la Recommandation du Conseil de l'Europe : perspectives des États et de la Société civile</p> <p>Modératrice : Nicolas WENZEL</p> <ul style="list-style-type: none"> • Johannes RICKLER Ministère fédéral d'Allemagne des affaires économiques et de l'action climatique • Fanny GALLOIS Responsable Programme Libertés, Amnesty International France
<p>COFFEE BREAK</p>	10:20	<p>PAUSE CAFÉ</p>

<p style="text-align: right;">PANEL 2</p> <p>Enhancing the multilateral impact: Developments in measures taken following the adoption of the Council of Europe Recommendation</p> <p>Moderator: Michael CROWLEY</p> <ul style="list-style-type: none"> • Alice Jill EDWARDS UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment • Laura AUGER-PEREZ Senior expert, Service for Foreign Policy Instruments (FPI) • Patrick WILCKEN Researcher, Arms Control, Security and Human Rights, Amnesty International 	<p>10:40</p>	<p>SESSION 2</p> <p>Renforcer l'impact multilatéral : évolutions des mesures prises suite à l'adoption de la Recommandation du Conseil de l'Europe</p> <p>Modérateur : Michael CROWLEY</p> <ul style="list-style-type: none"> • Alice Jill EDWARDS Rapporteuse spéciale des Nations Unies sur la torture et autres peines ou traitement cruels, inhumains ou dégradants • Laura AUGER-PEREZ Experte spécialisée, Services des instruments de politique étrangère • Patrick WILCKEN Chercheur, Contrôle des armes, sécurité et droits humains, Amnesty International
<p style="text-align: right;">PANEL 3</p> <p>Addressing death penalty challenges within the Framework of the Council of Europe Recommendation</p> <p>Moderator: Sébastien POTAUFU</p> <ul style="list-style-type: none"> • Gala VELDHOEN General Rapporteur on the abolition of the death penalty, Parliamentary Assembly • Dan DOLAN Director of Policy and Advocacy, Reprieve • Robin MAHER Executive Director, Death Penalty Information Centre <p style="text-align: right;">Closing remarks</p> <p>Krista OINONEN Chairperson of the Steering Committee for Human Rights (CDDH)</p>	<p>11:30</p> <p>12:20</p>	<p>SESSION 3</p> <p>Relever les défis liés à la peine de mort dans le cadre de la recommandation du Conseil de l'Europe</p> <p>Modérateur : Sébastien POTAUFU</p> <ul style="list-style-type: none"> • Gala VELDHOEN Rapporteuse générale sur l'abolition de la peine de mort, Assemblée parlementaire • Dan DOLAN Directeur des affaires politiques et plaidoyers, Reprieve • Robin MAHER Directrice exécutive, Death Penalty Centre <p>Allocution de clôture</p> <p>Krista OINONEN Présidente du Comité directeur pour les droits humains (CDDH)</p>

WELCOME ADDRESS

DISCOURS D'OUVERTURE



Gianluca ESPOSITO

Director General, DGI Human Rights and Rule of Law / *Directeur Général, DGI Droits humains et État de droit*

Good morning, everyone.

I am truly pleased to be here with you this morning.

First and foremost, I want to commend the initiative to organise this workshop focused on measures to counter the trade in goods that could be used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment.

As I was preparing for today's discussions, I was struck by the fact that, in the 21st century, we are still addressing the issue of trade in goods used for torture. I would have thought that, at least among Council of Europe member States, this issue would be entirely resolved. However, as we know, it is not - that is precisely why we are here today to have these important discussions.

I am very glad to see such a diverse group of experts gathered here, representing not only our member States but also the UN, the EU, and civil society. This morning, I was pleased to meet colleagues from Amnesty International and the Omega Research Foundation. By sharing our experiences and knowledge, I am confident that we can advance this vital agenda.

At the Council of Europe, our position is unequivocal. We are firmly committed to the prohibition of torture and inhumane or degrading treatment or punishment, as well as to the abolition the death penalty, an achievement the organisation takes great pride in.

The Council of Europe has adopted fundamental texts, which I need not repeat in detail, such as the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (which established the CPT), and the protocols to the European Convention that abolished the death penalty.

That said, I want to emphasise that we must never take these achievements, our acquis, for granted. They are not set in stone. As the European landscape evolves, our role is to ensure that these fundamental principles, which we have worked so hard to establish over the past decades, remain intact. It is essential that we do not risk backsliding on these core values.

In this regard, the Council of Europe is actively working to promote and implement these standards. This is evident in the work of the CDDH, particularly its standard-setting initiatives, as well as through our monitoring

bodies like the CPT. Additionally, our Coordinator for the abolition of the death penalty, Sebastien Potaufeu, who is with us today, is making vital contributions in this field.

I would also like to make a specific call to the four remaining Council of Europe member States that have not yet joined the Alliance for Torture-Free Trade. Joining this Alliance sends a strong message of commitment to combatting the trade in tools of torture. I look forward to seeing their efforts in this regard, as the Council of Europe should set the global standard in this area.

In conclusion, I would like to share that, at the Council of Europe and within my Directorate General, we are working hard to support this agenda. We are also striving to connect this work with broader discussions on business and human rights, both at the CDDH and in other parts of the Directorate. By bringing these initiatives together, we aim to strengthen our actions and increase their impact.

Thank you all for your attention. I wish you fruitful discussions throughout this workshop.

Thank you

Nicola WENZEL

German representative within the CDDH and former Rapporteur of the CDDH / *Représentante de l'Allemagne au sein du CDDH et ancienne Rapporteuse du CDDH*

Three years ago, I closely followed the “birth” of Recommendation CM/Rec(2021)2 as many others here as well. We, as CDDH members, are in a certain way the “parents” of this instrument. Today, it is time to see how our child is doing: Is it meeting the challenges? Is it well equipped? What obstacles is it encountering? This is the purpose of our workshop today.

My task to introduce the Recommendation. Before I do that, I would like to take a brief look back and examine how the Recommendation came into being because this process illustrates well what makes the Council of Europe successful.

1. Introduction

In 2018, the Parliamentary Assembly adopted Recommendation on strengthening international regulations against the trade in goods used for torture and the death penalty. This Recommendation is based on the understanding that the prohibition of torture and inhuman or degrading treatment or punishment in all circumstances is so strict as to require States to take into account consequences of their actions that may occur in other countries. PACE therefore encouraged the Committee of Ministers to consider adopting an instrument that sets out technical guidance for the establishment of an effective regulatory regime for the trade in goods used for torture and the death penalty. In response, the Committee of Ministers instructed CCDH to draft first a feasibility study and later a Recommendation. The details are not that important. What is important is that the process was based on three key principles:

1. A strong consensus in all organs of the Council of Europe – the Parliamentary Assembly and the Committee of Ministers – that the trade with tools of torture must end and that common efforts of States are needed.
2. A common understanding that the prohibition of torture does not only imply the obligation to abstain from torture, but also the obligation to take measures to prevent torture.
3. An agreement that involvement of civil society is essential. The Recommendation builds on consultations with civil society and their strong involvement in the drafting process. Michael Crowley acted as consultant expert and his expertise was essential in the process.

2. Main parameters of the Recommendation

The Recommendation is based on the concept of positive obligations: States are not asked to refrain from certain activities, but to take steps to rein in the trade in tools of torture, namely by setting up a framework that regulates the trade. As 27 of the 46 Council of Europe Member States are also Member States of the European Union, the framework the Recommendation sets out is heavily influenced by the EU Anti-Torture Regulation.

a) Scope and categories of goods

Three categories of goods are distinguished:

1. The trade with inherently abusive equipment is prohibited.
2. The trade with equipment that can have a legitimate function, but may be misused to torture and ill-treat people should be controlled through an authorisation/licensing system.
3. The trade with certain pharmaceutical chemicals that are used in lethal injection executions should be controlled.

The Recommendation contains a minimum list of goods covered in these different categories; Member States are invited to regularly revise their national lists.

b) Activities covered

Activities covered by the Recommendation are not limited to import, export and transit, but also include technical assistance, training, brokering, advertisement and promotion at trade fairs.

c) International obligations

The Recommendation itself embeds the Council of Europe regime in the international efforts in regulating the trade in tools of torture. It calls on Member States to join the Alliance for torture-free trade and to promote action in relevant international fora such as the UN.

3. Additional aspects

The Recommendation has to be seen against the background of international standards on human rights and business such as the United Nations Guiding Principles on Business and Human Rights and emerging European and national legislation on corporate human rights due diligence.

The Recommendation uses a different approach; it establishes a trade control regime. But it explicitly makes the link to the standards mentioned above by referring to CM Recommendation (2016)³ on human rights and business, thereby suggesting that these regimes may be complementary. That might be an issue for further discussion today.

1. Nature and scale of the trade

The Omega Research Foundation investigates the global manufacture, marketing, trade and use of law enforcement equipment, and works to promote effective regulation of such equipment by States to prevent its use in torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). Last year we provided technical assistance to the UN Special Rapporteur on Torture, Dr Alice Edwards, for her August 2023 report on the global torture trade, which found that “trade in equipment used for law enforcement and other public functions that can be deployed for torture or other ill-treatment is significant”¹. The industry comprises a diverse range of companies from around the world, involved in manufacturing, promoting and supplying law enforcement equipment and associated training. It includes small businesses operating within their own or neighbouring countries, as well as medium and large private and State-owned enterprises with subsidiaries, agents, or associated entities in multiple countries. Many of these companies conduct business on a regional or global scale. Although discussing the global trade, this presentation includes some relevant European examples.² In such cases “Europe” or “European” refer to the broad region as defined by the United Nations.³

¹ United Nations, UN Special Rapporteur on Torture, Dr Alice Edwards, Thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment, 24 August 2023, A/78/324, <https://www.ohchr.org/en/documents/thematic-reports/a78324-thematic-study-global-trade-weapons-equipment-and-devices-used>

² For further illustrative European examples and a discussion of European regional measures to address this trade see: Omega Research Foundation, Europe Regional Briefing on the trade in law enforcement equipment used for torture and other ill-treatment, October 2024, <https://omegaresearchfoundation.org/storage/2024/10/Europe-Briefing-2024.pdf>

³ United Nations standard country or area codes for statistical use (M49) used to define ‘Europe’ for the purposes of this briefing paper: Åland Islands, Albania, Andorra, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Holy See, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands (Kingdom of the), North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Svalbard and Jan Mayen Islands, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.

Law enforcement equipment used in torture and other ill-treatment can be divided into two categories:

- Firstly, Omega's research has uncovered the manufacture and promotion to the law enforcement community of a relatively narrow range of equipment that is designed or has no practical use other than for torture or other ill-treatment. Whilst a limited number of companies are involved in such activities, they operate in all regions of the world. The production, trade and use of all such inherently abusive equipment should be ended.
- A second category of goods of concern is law enforcement equipment which can have a legitimate function if used in compliance with international human rights law and policing standards, but which can and are readily misused for torture and ill-treatment. This encompasses a broad range of goods, many of which are produced and traded on a significant scale by a large number of companies throughout the world. The trade and use of all such goods should be strictly controlled with no transfers authorised to law enforcement agencies likely to misuse them for torture or other ill-treatment.

2. Inherently abusive goods

In her August 2023 report into this trade, the UN Special Rapporteur on Torture identified 20 types of inherently abusive law enforcement equipment. This includes:

- (a) **Body worn electric shock devices:** Intended for attachment directly to prisoners' bodies they can be activated by remote control; and include stun belts, stun vests and stun cuffs. They are worn, sometimes for many hours at a time, with the constant threat that they can be triggered at any moment. Whilst these devices currently are manufactured by companies in the Americas, Africa and Asia; Omega has recently identified at least one European company which promotes body-worn electric shock devices. Similarly non-European companies have promoted such goods in European trade fairs.
- (b) **A wide range of direct contact electric shock weapons and devices** have been developed and marketed by companies in all world regions, specifically for law enforcement use, including shock batons, stun guns and shock shields. And new products are coming onto the market all the time – such as electric shock gloves promoted by companies based in the Americas, Asia and Europe; and electric shock grabbing devices manufactured by companies in Asia, but which have also been promoted by non-European companies at a European arms fair.
- (c) **Mechanical restraints:** Certain restraints pose a heightened risk of serious injury or cause excessive or unnecessary stress or physical pain or mental suffering or are humiliating or degrading. They include restraint chairs with metallic restraints, leg irons/bar fetters, rigid bar combination

cuffs, cage or net beds, hoods and blindfolds. Certain forms, notably thumb-cuffs, gang chains, fixed restraints and weighted hand or leg restraints have been manufactured or promoted by European companies on the websites and/or at European arms fairs, in the last five years.

- (d) **Certain kinetic impact devices** are designed to increase, not minimize, the amount of pain and injury inflicted on subjects, and certain types can cause skin tearing and puncture injuries. They include spiked batons, spiked or serrated shields and spiked arm armour, whips, sjamboks, lathis. Although the spiked devices are manufactured by Asian companies, we have previously found them being promoted by non-European companies at a number of European arms fairs, and by at least one European company on its website.
- (e) **Multiple kinetic impact projectiles and launchers:** are unsafe to deploy. Because they are inaccurate, they hit targets indiscriminately and arbitrarily, and pose a significant risk to bystanders. Such projectiles can cause significant injuries, including to sensitive parts of the body such as the head or eyes. And they can provoke panic and dangerous stampedes. They are widely manufactured and promoted, including by companies in Europe.

3. Law enforcement equipment that can be misused for torture and other ill-treatment

In her August 2023 report, the UN Special Rapporteur on Torture identified 22 types of law enforcement equipment that can have legitimate purpose but can be readily misused for torture and other ill-treatment. This includes:

- (a) **Mechanical restraints:** These items include restraint chairs with non-metallic restraints, restraint boards with non-metallic restraints, handcuffs, leg cuffs, combination cuffs, and belly chains/restraint belts. They are widely manufactured including by European companies. If employed in conformity with international human rights standards, such devices can be legitimately used to ensure the safe arrest and restraint of prisoners. However, they can and are misused in prisons and by police throughout the world.
- (b) **Single projectile electric shock weapons:** commonly known as tasers, these are small weapons where darts connected by electrical wires deliver an incapacitating high-voltage electric shock at a distance, usually causing the person to lose muscle control and fall to the ground. Such weapons – which are manufactured by companies in the Americas, Asia and Europe and are widely promoted in all regions and employed by police forces around the world- should be strictly limited to “standoff” situations where the only alternative is the use of lethal force or firearms when a police officer is facing or trying to prevent an imminent threat of death or serious injury. Unfortunately, they are regularly used for torture and other ill-treatment.

- (c) **Kinetic impact weapons:** Companies throughout all regions of the world have manufactured or promoted hand-held kinetic impact (or striking) weapons, notably batons and truncheons; or launched kinetic impact weapons and projectiles such as plastic and rubber bullets. These weapons are widely employed by law enforcement officials in public order policing as well as in places of detention. While they can have a legitimate law enforcement role, human rights organisations have regularly documented their misuse to inflict unnecessary or excessive force, which has amounted in certain cases to torture or other ill-treatment or has resulted in serious injury or death.
- (d) **Chemical irritants (also known as riot control agents [RCAs]):** such as tear gas and pepper spray – are commonly used around the world for law enforcement purposes, notably for dispersing crowds as well as for facilitating arrest and restraint of individuals. However, they can easily be misused, including in prison cells and detention centres to ill-treat and torture individuals, and during policing of public assemblies, potentially to facilitate ill-treatment and punishment on a large scale. Whilst this is a global trade, Omega identified companies in over 20 European countries that over the last five years, have manufactured or promoted chemical irritants and associated delivery mechanisms, such as grenades and cartridges, hand held sprayers or projectile launchers that disperse limited amounts of chemical irritant over relatively short distances. Globally we have identified a growing range of systems capable of delivering far greater amounts of chemical irritants over wider areas or extended distances. These include European multi-barrel projectile launchers and tear gas dispensing drones.

4. Arms and security equipment trade fairs

Whilst global marketing of law enforcement equipment is of course conducted via the internet, there are numerous specialised arms and security equipment trade fairs and marketing events regularly taking place in all regions, sanctioned and/or facilitated by the host States. The UN Special Rapporteur's August 2023 report found that between January 2018 and June 2023 over 160 arms and security trade fairs and other related exhibitions took place in about 40 countries worldwide, including: 54 in Asia, 20 in North America, 12 in Latin America, 12 in Africa, and two in Oceania, and 66 in Europe.⁴

With regard to European trade fairs, both companies based in the region as well as foreign companies marketed their goods at such events, which were attended by the correctional and law enforcement communities from both European States and countries outside the region. At certain European trade fairs, foreign companies actively promoted inherently abusive equipment and weapons such as spiked metal batons, spiked shields; electric shock capture devices; electric shock ankle cuffs; metal interrogation chairs with metal hand and foot restraints, weighted leg irons, thumbcuffs and hoods connected to

⁴ United Nations, UN Special Rapporteur on Torture, (24 August 2023) *op.cit.*

handcuffs marketed for use on arrested individuals. Clearly it is vital that all arms and law enforcement equipment trade fairs are stringently regulated to prevent promotion of inherently abusive goods, and if discovered that such goods are immediately confiscated, the companies ejected and banned from future events. My colleague, Fanny Gallois, from Amnesty France, will explore the challenges involved in monitoring such events, and the potential role that civil society can play to aid effective oversight by trade fair organisers and States.

5. Training

A number of State entities notably certain national police forces, as well as commercial companies, provide technical assistance or training to law enforcement or correctional officials in their own countries, to States in their regions and more widely. Professional training of police and prison officials in the appropriate use of legitimate law enforcement equipment can reinforce and operationalize human rights standards and good practices. However human rights organisations, including Omega, have previously raised concerns that certain training risks directly or indirectly facilitating torture and other ill-treatment, and all such training needs to be stringently controlled.

Firstly, all training or demonstration to police and correctional officials in the use of inherently abusive equipment should be prohibited. For example, here are images of the demonstration by representatives of at least one commercial company, to European police officials attending a closed two day seminar in June 2023, of inherently abusive direct contact electric shock gloves and body worn electric shock equipment that can be attached to a prisoners arm or leg.⁵

Secondly, in certain cases, law enforcement officials appear to have been trained in inherently abusive or dangerous methods; such training, particularly if endorsed by senior law enforcement officials in recipient countries, risks entrenching potentially abusive practices, and should be prohibited. For example, one European company supplying security equipment also trains police forces in their use. This training has included employment of restraints to place prisoners in hyper-extended positions (hog-tying) and also in the use of batons for neck-holds. Such techniques are similar to those the European Committee for the Prevention of Torture recommended be halted. Images and videos on the company's website have shown training in such techniques to a range of police forces in Europe, Asia, Africa and the Americas.⁶

6. Conclusion

It is clear from Omega's ongoing research that the trade in law enforcement equipment used in torture and other ill-treatment is international in nature and is currently out of control. It is a global problem, requiring a global response from all States. Consequently, Omega strongly supports the Alliance for

⁵ Omega Research Foundation (October 2024) *op.cit*

⁶ Omega Research Foundation (October 2024) *op.cit*

Torture-Free Trade⁷, the ongoing attempts through the UN to examine international measures to tackle this trade; and we are advocating for the development and adoption of a legally binding international instrument: a Torture-Free Trade Treaty.

I want to conclude by acknowledging the significant advances that have been made by European States to bring this trade under control: notably through the introduction and subsequent strengthening of the EU Anti Torture Regulation⁸ and the adoption of the Council of Europe Committee of Ministers Recommendation (Rec2021)2⁹. To make a real difference both instruments must be fully implemented by all relevant member States. For our part, Omega will continue our investigations, bringing to light activities of concern in Europe and beyond and will seek to engage constructively with all States to effectively address this trade as part of the global effort to prohibit and prevent torture and other ill-treatment.

Thank you.

⁷ Alliance for Torture Free Trade, <https://www.torturefreetrade.org/>

⁸ European Union, Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1550829571808&uri=CELEX:32019R0125>

⁹ Council of Europe, Recommendation CM/Rec(2021)2 of the Committee of Ministers to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, 31 March 2021, [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a1f4e5%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a1f4e5%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})

PANEL / SESSION 1

Implementing the Council of Europe Recommendation: States and Civil Society Perspectives

*Mise en œuvre de la
Recommandation du Conseil de
l'Europe : perspectives des États et
de la société civile*



Johannes RICKLER

Federal Ministry for Economic Affairs and Climate Action,
Germany / *Ministère fédéral d'Allemagne des affaires
économiques et de l'action climatique*

Distinguished delegates, dear colleagues,

I am pleased to present to you today a country's perspective on the implementation of the Council of Europe Recommendation (2021) on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment.

Regulations on trade in goods that can also be used for torture purposes have been in place since 2005. As a member state of the EU, we implement the Council of Europe's Recommendation by applying the EU Regulation 2019/125 (EU Anti-Torture Regulation). The EU Anti-Torture Regulation is directly applicable and available in all official languages of the EU. The annexes to the EU Anti-Torture Regulation largely overlap with the annexes to the Council of Europe's Recommendation. The Recommendation is thus fully implemented by the EU Anti-Torture Regulation. The Anti-Torture Regulation creates two sets of rules for goods that have no purpose other than capital punishment, torture and other cruel, inhuman or degrading treatment or punishment and for goods that have a legitimate purpose but may be misused for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment.

Goods that have no other use than the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment are listed in Annex II of the EU Anti-Torture Regulation. These goods are subject to far-reaching restrictions: The export, import, technical assistance prohibited, transit, brokering services, displaying and offering for sale in an exhibition or fair taking place in the EU and advertising are prohibited.

Differentiated rules apply to goods that have a legitimate use but may be misused for torture or other cruel, inhuman or degrading treatment or punishment: Annex III of the EU Anti-Torture Regulation lists goods that serve legitimate purposes but can be misused for torture or other cruel, inhuman or degrading treatment or punishment. Annex IV of the EU Anti-Torture Regulation, on the other hand, lists goods that serve medical purposes but may be misused to carry out the death penalty. The transit of both classes of goods is prohibited if the person carrying out the transit knows that the goods will be misused by the end user for the purpose of capital punishment or torture. In addition, exports of both categories of goods require an export license.

When examining the export license application, it must be taken into account that exports are protected by fundamental rights. However, this fundamental right will be restricted if the goods may be misused for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. In such cases, no license will be issued. In order to determine the risk, however, a prognosis decision must be made. In doing so, the competent authority takes into account all relevant considerations, in particular whether an application of an essentially identical export has been denied by another EU Member State, available international court judgements, findings of the competent bodies of the UN, the Council of Europe and the EU, reports of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment and of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, national court judgements and reports or other information prepared by civil society organisations. With regard to a risk of diversion, the competent authority also examines contractual agreements and the end-use statement.

Violations of the EU Anti-Torture Regulation are criminal offences under German national law. In Germany, the competent authority for the implementation of the EU Anti-Torture Regulation is the Federal Office for Economic Affairs and Export Control (BAFA). Both legal and technical experts work at BAFA on the implementation of the EU Anti-Torture Regulation. Germany publishes an annual report on the licenses granted under the EU Anti-Torture Regulation. In addition, BAFA provides explanatory documents on the application of the EU Anti-Torture Regulation.

Thank you very much for your attention.

Fanny GALLOIS

Head of the Freedoms Program, Amnesty International France /
Responsable Programme Libertés, Amnesty International France

Bonjour et Merci de m'avoir invitée à vous parler de la réglementation des équipements de sécurité sur les salons professionnels. Je suis très heureuse de pouvoir vous partager les observations faites par Amnesty et La Fondation Omega avec laquelle nous travaillons sur ce sujet avec vous, comme l'a expliqué mon collègue Michael Crowley tout à l'heure.

Comme vous le savez, plusieurs États membres de l'Union européenne autorisent, facilitent ou coorganisent régulièrement des salons professionnels sur les armes et les équipements de sécurité sur leur territoire. Et à ces occasions, des entreprises basées dans l'UE, mais également dans des pays tiers, commercialisent leurs produits.

Ces salons sont fréquentés par les forces de l'ordre et les forces armées, mais aussi par d'autres acteurs du secteur de la sécurité.

Les entreprises qui commercialisent des équipements répressifs visés par le règlement européen participent à des dizaines de salons et expositions de ce type, organisés dans de nombreux États membres de l'Union.

Comme vous le savez également, depuis 2016, l'Union européenne interdit la promotion et l'exposition des équipements de torture dans ces salons professionnels. Et en vertu de l'article 8 du Règlement du 16 janvier 2019 concernant le commerce de certains biens susceptibles d'être utilisés en vue d'infliger la torture ou d'autres peines ou traitements cruels, inhumains ou dégradants, tous les États membres de l'Union européenne sur le territoire desquels se tiennent des salons de ce type ont la responsabilité de veiller à faire respecter l'interdiction « *d'exposer ou de proposer à la vente tout bien interdit figurant dans l'annexe II* ».

Malheureusement, bien que l'on ait observé sur ces salons, une réduction dans la commercialisation auprès des services répressifs des États, d'une série d'équipements interdits par le Règlement, tant par des entreprises basées dans l'Union que par des entreprises basées hors UE, des cas de promotion d'équipements interdits au titre de l'annexe II, ont malgré tout été constatés.

L'un des salons sur lesquels des observations de ce type ont pu être faites dès 2017 est le salon Milipol en France.

Il s'agit de l'un des plus grands salons mondiaux de la sûreté et de la sécurité intérieure des États, qui est organisé sous l'égide du ministère français de l'Intérieur, et qui se tient tous les deux ans à Paris.

Depuis 2017 donc, la Fondation de Recherche Omega et Amnesty International observent de manière indépendante la manière dont le Règlement européen sur le commerce de la torture est appliqué en France, notamment sur ce salon. Ce salon n'est évidemment pas le seul de l'Union européenne où des violations du Règlement européen ont cours, mais c'est l'un des seuls à nous avoir facilité l'accès et donné la possibilité d'observer la manière dont le respect du Règlement est assuré.

Alors, qu'avons-nous observé ?

Les organisateurs du salon Milipol Paris soumettent les exposants qui y participent à une « réglementation sur l'exposition des matériels de guerre » qui reflète la politique de l'État en matière de sécurité et les obligations de la France en vertu du Règlement européen sur le commerce de la torture. Dans cette réglementation, Milipol fournit une description détaillée des équipements interdits, très similaire à celle énoncée dans le Règlement européen lui-même.

Ce que nous avons pu constater lors de nos missions d'observation, c'est que cette réglementation est globalement bien respectée, ce qui tend à démontrer que les autorités nationales, et les organisateurs de salons, ont la capacité d'assurer le respect du Règlement européen sur ce type de salons. Cependant, nos observations nous ont également permis d'identifier un certain nombre de lacunes et de difficultés à la fois dans la mise en œuvre du Règlement européen, et dans une plus large mesure, en ce qui concerne le respect des préconisations de la Rapporteuse spéciale de l'ONU sur la torture.

En effet, en novembre 2017, lors de notre première mission d'observation sur le salon Milipol à Paris, nous avons découvert que des équipements de torture illégaux au regard du Règlement européen étaient mis en vente par cinq entreprises chinoises. Il s'agissait notamment de matraques à pointes, de fourches antiémeutes à pointes et à décharges électriques, de gilets en à décharges électriques et d'entraves pour les pieds. Certains de ces équipements figuraient sur des catalogues présentés sur le salon, d'autres étaient directement exposés sur les stands.

Après que nos experts ont signalé aux organisateurs du salon la présence de ces équipements interdits, les services de contrôle du salon ont ordonné la fermeture du stand de la société qui exposait des équipements interdits, tandis que les catalogues incriminés ont soit été retirés, soit déchirés aux pages indiquées.

Les marchandises qui étaient physiquement présentées sur stand n'ont toutefois – et on peut le regretter – pas été saisies par les douanes françaises. Suite aux infractions qui ont été constatées lors de cette édition, les organisateurs du salon et les autorités françaises ont pris plusieurs mesures :

- une plainte a été déposée à l'encontre de la société chinoise qui avait exposé des équipements interdits ;
- l'entreprise mise en cause a été définitivement bannie par Milipol de tous ses événements à venir
- et les quatre autres sociétés qui avaient fait la promotion de marchandises interdites sur catalogue ont reçu un avertissement formel en vue d'une prochaine participation.

Par ailleurs, au vu des infractions constatées lors de cette édition, les organisateurs du salon ont pris des mesures supplémentaires pour s'assurer que les exposants soient bien informés des restrictions sur les équipements.

Ainsi pour l'édition 2019 du salon Milipol, à laquelle Amnesty International et la Fondation Omega ont de nouveau participé :

- les organisateurs du salon ont requis des exposants qui s'inscrivaient, qu'ils s'engagent explicitement à ne pas faire la promotion d'équipement interdits par le Règlement.
- Les exposants issus de certains pays jugés sensibles, ont reçu une communication spécifique leur rappelant leurs obligations au regard du droit européen.
- Une partie des exigences ont été traduites en mandarin afin d'assurer une meilleure communication et une meilleure compréhension du Règlement.
- Certaines entreprises identifiées comme particulièrement à risque ont été contactées individuellement par les organisateurs du salon pour assurer la bonne compréhension du règlement en la matière.
- Une mention a aussi été ajoutée dans la réglementation interne du salon annonçant des contrôles quotidiens des matériels exposés sur les stands et du respect de la réglementation.
- Et enfin, le personnel alloué au « Bureau de contrôle » a été doublé, et est passé de quatre à huit personnes.

Malheureusement, malgré ces améliorations et malgré les efforts manifestes des organisateurs et des autorités françaises pour assurer un meilleur respect de la loi, plusieurs violations du Règlement anti-torture de l'UE ont une nouvelle fois été constatées sur cette nouvelle édition.

Des boucliers munis de pointes métalliques ont été soit présentés sur un stand, soit promus dans les catalogues de cinq sociétés chinoises. Parmi elles, trois avaient déjà fait l'objet de signalements aux autorités douanières françaises et aux organisateurs du salon lors de l'édition précédente. Le

bouclier exposé a tout de même pu être repéré avant l'ouverture du salon aux visiteurs, par les contrôleurs du salon, qui en ont assuré le retrait. Amnesty International a signalé les mentions dans les catalogues présentés sur les stands des autres entreprises à l'organisateur ainsi qu'aux autorités douanières, qui ont simplement recouvert les images représentant ces équipements dans les brochures, soit en les barrant manuellement, soit en les cachant à l'aide de papiers collés ou agrafés. Des mesures correctives dont tout le monde conviendra qu'elles étaient bien insuffisantes, et qui n'ont pas empêché les visiteurs de voir - s'ils le désiraient - l'image et les informations promotionnelles relatives à ces articles.

Lors de la dernière édition du salon, en 2023, d'autres équipements illégaux tels que des matraques à pointes, des menottes à pouces, ou encore des entraves pour les jambes ont été repérés par nos experts sur des catalogues. Après que nous le leur avons signalé, les organisateurs ont cette fois fait retirer les documents en cause.

Si elles s'avèrent encore insuffisantes, les mesures correctives prises au fil des ans par les organisateurs de Milipol France pour tenter d'améliorer le respect de la législation européenne, sont un exemple de bonne pratique que devraient sans aucun doute suivre d'autres salons.

Tous les salons d'armement et d'équipements de sécurité devraient introduire des mesures similaires, et les autorités nationales des Etats dans lesquels de tels salons sont organisés devraient veiller à ce que les organisateurs prennent des mesures pour prévenir les infractions et renforcer les moyens déployés pour assurer la conformité des exposants avec le Règlement européen.

Cependant, quand bien même la conformité des produits présentés par les exposants par rapport au Règlement européen serait pleinement assurée, une lacune majeure demeurerait.

En effet, le fait qu'à ce jour, le Règlement européen n'interdise pas l'usage et la commercialisation d'équipements pourtant considérés comme intrinsèquement cruels, inhumains ou dégradants, tels que les armes à impulsions électriques de contact ou les projectiles à impact cinétique multiples, rend son application insuffisante pour assurer que les salons professionnels ne promeuvent pas des équipements abusifs.

En octobre 2023, comme l'a expliqué Michael tout à l'heure, la Rapporteuse spéciale des Nations unies sur la torture, le Dr Alice Jill Edwards, a ainsi appelé tous Les États à interdire la fabrication, la promotion et le commerce de 20 types d'armes de maintien de l'ordre qu'elle considère comme intrinsèquement abusives.

Or, Amnesty International et la Fondation de recherche Omega ont retrouvé sur le salon Milipol des documents commerciaux d'entreprises américaines, chinoises, tchèques, françaises, israéliennes, italiennes, kazakhs, ou encore sud-coréennes, promouvant :

- des pistolets à impulsion électrique à contact direct,
- des matraques et des gants à impulsions électriques,
- des munitions à projectiles à impact cinétique multiples,
- des lanceurs de projectiles à impact cinétique à canons multiples

C'est-à-dire des armes qui entrent dans la catégorie des équipements dont la Rapporteuse spéciale a demandé à ce qu'ils soient retirés de la vente, de l'utilisation et de la production, mais contre la promotion desquels les organisateurs de Milipol n'ont pris aucune mesure.

Pour conclure, je voudrais donc rappeler : l'Union européenne – et c'est heureux - a ouvert la voie en prohibant certains équipements de torture. Aujourd'hui, il est nécessaire que l'Union et ses Etats membres élargissent la liste des équipements interdits, afin d'y inclure les équipements identifiés par la rapporteuse spéciale de l'ONU contre la Torture.

Il apparaît également indispensable de mettre en place un traité international pour interdire la production et le commerce des instruments intrinsèquement abusifs et réguler le commerce des équipements de maintien de l'ordre qui peuvent être utilisés pour infliger de la torture ou d'autres mauvais traitements, partout dans le monde.

Je vous remercie.

PANEL / SESSION 2

**Enhancing the multilateral impact:
Developments in measures taken
following the adoption of the
Council of Europe
Recommendation**

*Renforcer l'impact multilatéral :
évolutions des mesures prises
suite à l'adoption de la
recommandation du Conseil de
l'Europe*



Alice Jill EDWARDS

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment / *Rapporteuse spéciale des Nations Unies sur la torture et autres peines ou traitements cruels, inhumains ou dégradants*

Excellencies, distinguished delegates, ladies and gentlemen,

Thank you very much for the invitation, and to the Council of Europe for continuing to put this important subject on the top of your anti-torture agenda.

Why are we focusing on this issue today?

- Torture takes place in all different ways, in all different places, and in almost all countries. I acknowledge that there has been progress in many countries, but many serious challenges remain alongside and risks exist in all countries.
- Allegations of torture are extremely serious, because of the pain and suffering inflicted on the victim, but also because such violence is inflicted by state actors or by their oversight or complicity, that is, by national authorities.
- In many countries in the world, we have witnessed over the past year, police violence during protests and unrest and the use of weapons and technologies that turn what should only ever be defensive weapons into offensive weapons.
- Additionally, restraints, weapons and other tools of torture are being used or misused by the police during interrogation, in court rooms, in detention centres, medical facilities, and border settings.
- While it is true that one does not need specialist equipment to commit torture, that should not stop our resolve to tackle the types of torture perpetrated by problematic equipment or where ordinary equipment is being misused. We have a great opportunity here to be able to do something very concrete about this area of torture prevention and response.
- The obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment is universally accepted – and explicitly found in article 2 of CAT and is further implied in article 7 of ICCPR or article 3 of ECHR.

So what can we do about it?

- In October last year, I presented my thematic report to the UN General Assembly, in which I called for action to be taken (i) to regulate the “use, development and production, financing, promotion and lastly, trade” in law enforcement equipment that can be misused to commit torture or other ill-treatment, and (ii) to prohibit a list of 20 items from being put in the hands of public authorities.

- My prohibited list includes items that I have described as modern day torture tools, many as cruel as those being used in medieval times. They are on my list because either by design or by effect they are considered inherently torturous. The list includes:
 - Certain restraints such as cage beds, thumb screws, or tiger chairs.
 - Certain weapons such as spiked batons, weighted gloves, and direct-contact electric shock shields, batons and gloves.
 - Experimental directed energy weapons.
- What the research found is that these items are manufactured by more than 335 companies across 54 countries.
- The major exporters of these tools are in the EU, as well as China, US, Russia and Israel. Emerging exporters include Brazil, Türkiye, South Africa. And many countries are growing their domestic capacity to produce their own items, for their own domestic usage.

So what am I requesting of states?

- I am urging action at the national level, and at the international level.
- At the national level, I am urging immediate action to introduce domestic regulations and practices, stocktake weapons in use or production and immediately remove and destroy them, and introduce controls for ordinary law enforcement equipment and keep them under constant scrutiny, including oversight of companies developing and promoting such equipment.
- I welcome measures taken by many CoE Member States (and institutions such as the Committee on the Prevention of Torture in Europe) that are taking measures to do so, and many of which are reflected in responses to the CDDH questionnaire on implementing the CoE Recommendation.
- At the international level I am urging States to introduce international binding instrument, in my view preferably a treaty. The trade in law enforcement equipment is so extensively global that multilateral action is also desperately needed.
- Negotiations will refine the treaty's specifics. To assist in this, I have prepared preliminary lists of items which I believe are for global agreement, as none currently exists:
 - Category A: Immediate prohibition and decommissioning of items designed specifically for torture, with the list open to regular updating to keep pace with technological and other developments
 - Category B: Control and licensing of items with legitimate uses but a risk of misuse, including establishing an “early warning system” that requires States and operators to temporarily suspend or cancel trade if there is evidence of misuse to inflict torture or ill-treatment in the destination location.

- It is important to note that this treaty should not be solely about trade, but also about reinforcing obligations to eradicate the use, production, financing and promotion of these items domestically. Both of these strands are essential to eradicate torture by equipment.
- Our domestic authorities must be able to count on their governments that they are equipped with effective protective equipment that does not infringe the rights of those they are recruited to serve, the public.

So what next to advance this issue?

- Following on from the compilation as part of the CDDH review, it would be relevant to:
 - establish the current level of implementation in the CoE
 - examine how implementation can be strengthened
- For all Council of Europe Member States to join and be active in the Global Alliance on Torture Free Trade, and work with other states, and civil society actors, to lead and provide backing to this endeavour at the global level.
- I would like to see the CoE Recommendation Goods lists be expanded and strengthened to bring them in line with my report. [This should include considering:
 - Prohibiting: electric shock batons, shields and stun guns; multiple kinetic impact projectiles, automatic & multi-barrel launchers capable of firing kinetic impact projectiles
 - Controlling the export of: police batons, handcuffs, legcuffs and belly chains; ammunition containing single non-metallic projectiles]
- Call on states to raise continuous awareness raising regarding the CoE Recommendation for all relevant stakeholders; and provide training and guidance.
- Consider the development of best practice guidance for relevant state officials and CoE companies involved in the organisation of law enforcement equipment trade fairs to ensure effective monitoring/oversight of such events so as to prevent and if necessary address promotion of prohibited goods

I. EU Anti-Torture Regulation

1. Introduction

Initially adopted in 2005, the Regulation (EU) 2019/125 (the EU's 'Anti-torture' Regulation) is a **reflection of the EU's strong commitment to eradicating torture and the death penalty**. The Regulation introduced unprecedented, binding trade restrictions on a range of goods that could be used for capital punishment, torture or other cruel, inhuman, or degrading treatment.

One thing indeed that is interesting about this EU Regulation is that it is **the world's first legally binding regulatory instrument in this area**, that is to say it is legally binding and directly applicable in all EU 27 Member States.

2. Objectives and main provisions of the Regulation

The Regulation's objective is to prevent capital punishment, on the one hand, and torture and other cruel, inhuman, or degrading treatment or punishment in third countries, on the other hand.

To that end, the EU Regulation distinguishes two trade measures depending upon the category of the concerned goods: a **trade prohibition**, on one hand, and a **trade restriction**, on the other hand.

What does the Regulation essentially do?

1. It **prohibits** the export from and import into the EU of goods that have **no practical use other than** for the purposes of capital punishment or torture (*Ex: electric chairs*). This is a **total trade ban**: export, import, transit, brokering services, training, advertising, trade fairs - Annex II.
2. For goods that **could be used** for such purposes but that may also have other legitimate uses (*Ex: weapons and devices designed for the purpose of riot control or self-protection*), the Regulation requires **prior export authorisation**. An authorisation is **also** required for the supply of **technical assistance or brokering services** related to this category of goods - Annex III.
3. The EU legislation regulates the trade in other types of goods – **chemicals/pharmaceutical substances** - that could be used for the purpose of capital punishment (such as products which could be used

for the execution of human beings by means of **lethal injection**) - Annex IV.

- The Regulation also foresees a **mechanism to add goods and expand the scope goods that are prohibited or regulated** (a review is currently underway).

3. How is the EU 'Anti-Torture' Regulation enforced?

a) Implementation:

The **competent authorities in the EU Member States** are responsible for the implementation of the Regulation and for monitoring compliance with its prohibitions and licensing requirements.

The Regulation **places an obligation upon the exporters**.

The decisions to grant an authorisation or to dismiss an application (for goods listed in Annex III and Annex IV) are taken on a **case-by-case basis** by the competent authorities in the EU Member States, taking into account the following **criteria**:

- whether an application in respect of an essentially identical export has been dismissed by another Member State in the preceding three years,
- the intended end-use, and
- the risk of diversion.

What is interesting is the criteria for dismissing an authorisation to export. There is no need for hard evidence as such. The competent authority shall **not** grant any authorisation when there are **reasonable grounds to believe** that goods (listed in Annex III and Annex IV) **might be used for torture** by a law enforcement authority or **for capital punishment** in a **third country**.

b) Sources of information to guide the Member States decisions:

The Regulation foresees different sources of information to guide the **Member States**: international court judgements, findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment and of the UN Special Rapporteur on Torture and other cruel, inhuman, or degrading treatment or punishment. Other sources of information include national court judgement and reports by civil society organisations.

4. Ensuring accountability and transparency

a) Accountability and oversight:

There are accountability and oversight mechanisms between the EU and the Member States:

- **If a competent authority dismisses an application** for an authorisation or if it annuls an authorisation previously granted, **it must notify the other EU Member States and the Commission.**
- MS develop at national level **penalties applicable to infringements against the Regulation.** Such penalties shall be effective, proportionate, and dissuasive. They range from fines to imprisonment.
- Competent authorities in the EU Member States have the **obligation to report annually on their activities.** These reports provide the basis for the preparation of the EC Annual Report, which is made available to the European Parliament and the Council.

b) Reports:

Public annual activity report: Member States and the Commission must prepare annual activity reports. They must provide information on the number of applications received, as well as the goods and countries of export concerned. The **Commission produces its own annual report** that builds on information that it gathers from the competent authorities in the Member States.

The Commission adopted its **annual report for the year 2023** on 19 November 2024.

Report:

[COM_2024_529_1_EN_ACT_part1_v2.pdf](#)

Annexes

[COM_2024_529_1_EN_annexe_autre_acte_part1_v4.pdf](#)

In 2023, the total number of reported authorisations amounted to **214** with **11** Member States reporting that they had granted authorisations. Member States reported that they had **denied 6 applications** for an export authorisation in 2023.

The reported cases of denial concerned:

- goods described in Annex III code 3.1 (Portable weapons and equipment for administration or dissemination of a dose of an incapacitating or irritating chemical substance) intended for export to **Aruba, Chile, and Egypt.**
- goods described in Annex III code 3.4 (Mixtures containing at least 0,3 % by weight of PAVA or OC and a solvent (such as ethanol, 1-propanol, or hexane), which could be administered as such as incapacitating or irritating agents, in particular in aerosols and in liquid

form, or used for manufacturing of incapacitating or irritating agents) intended for export to **Egypt and the Russian Federation**.

5. Stakeholder engagement

There are two main discussion groups:

- **Anti-Torture Coordination Group:**

The **Anti-Torture Coordination Group** (ATCG) examines any questions concerning the application of the Regulation, including, without limitation, the exchange of information on administrative practices and any questions which may be raised either by the chair or by a representative of a Member State.

The ATCG also plays a pivotal role when preparing proposals to amend the Regulation. The Commission **conducts consultations with experts designated by each Member State** who are members of the ATCG before finalising any proposal to amend the Annexes to the Regulation.

- **Informal Experts Group**

The **Informal Experts Group** was established following the **2020 Commission review report** on the Regulation as a platform to **interact in a more systematic manner with a wide range of stakeholders**. Its function is **strictly advisory** and complementary to the one provided by the Anti-Torture Coordination Group (ATCG).

It provides **technical expertise** to the Commission in exploring avenues to strengthen the Regulation. The informal group comprises representatives from civil society, the Council of Europe and the UN Office of the High Commissioner for Human Rights (OHCHR).

The informal group has been instrumental in enhancing awareness of the Regulation also by **building bridges with the work of the United Nations** thereby providing an important link between the Regulation and international efforts to promote torture-free trade.

The work of the informal group has also been key in **providing technical expertise for reviewing the goods** within the scope of the Regulation. For example: the informal group held discussed weighted batons or gloves, certain type of whips, or kinetic impact projectiles which are inherently injurious. It also addressed new technologies such as optical light lasers, audible sound wave technology and malodorants, which have been used as extreme crowd control tools.

II. Amending the Regulation: making sure it stays fit for purpose.

The Regulation was designed to be a **"living instrument"**.

The list of goods described in the Regulation needs to stay up to date in order to respond, on the one hand, to **changes in the international security market** where technological and market developments are frequently occurring and, on the other hand, to **changes in use, and misuse, of law enforcement equipment** as noted in the Commission's 2020 review report. To remain fit for purpose, the Regulation also needs to respond to emerging trends and challenges observed in recent years as regards **extra-custodial torture and ill-treatment in the context of the repression of peaceful protests**.

The Commission is currently working on a proposal in that direction building upon the conclusions of the 2020 Commission Review Report, the work of the Commission's informal group of experts, the reports from the UN Special Rapporteur on Torture, the reports from organizations engaged in the protection of human rights as well as on relevant international standards in this field.

In that context, the Commission will invite in due time inputs from stakeholders through the portal **'have your say'**, where the European Commission can hear their views on laws and policies currently in development.

III. Conclusion:

To conclude, the Regulation has been instrumental in promoting **respect for human life and fundamental human rights**. It has made a **positive contribution** in meeting its main objective of taking effective, concrete measures against torture and other cruel, inhuman, or degrading treatment or punishment.

As the world's first legally binding regulatory instrument in this area, it has also served as an **example for the development of similar trade measures** by third countries and international organisations, like the Council of Europe.

Thank you for your attention.

Patrick WILCKEN

Researcher, Arms Control, Security & Human Rights, International Secretariat, Amnesty International / *Chercheur, Contrôle des armes, sécurité et droits humains, Secrétariat international, Amnesty International*

Many thanks to the CDDH and the secretariat for organising this vital workshop, to delegates attending and to my fellow panelists.

I have been working at Amnesty International for almost 20 years. In my first role I travelled across Brazil, visiting prisons, police lock-ups and other places of detention, interviewing detainees who had suffered sustained beatings with batons, electric shock and other forms of torture and other ill-treatment carried out using law enforcement equipment. Their often-harrowing testimonies showed the immense human toll that torture and other ill-treatment exacts, and the urgency of doing all we can to prevent it.

One area that we, along with our partners The Omega Research Foundation and a growing network of other civil society organizations, have focused on is the regulation in the production of and trade in law enforcement equipment that can be used for torture and other forms of ill-treatment. This work has supported the creation of regional control frameworks – such as the Committee of Minister's 2021 Recommendation that we are discussing today – but I wanted to briefly sketch out what has been happening at the international level.

For over two decades, the issue of regulating the production of and trade in the tools of torture has been repeatedly referenced in the UN by successive UN Special Rapporteurs on torture, several UN High Commissioners for Human Rights, the UN Committee Against Torture and in the UN General Assembly Omnibus Torture resolution.

In 2017, The Alliance for Torture-Free Trade was formed at the margins of the UN General Assembly, meeting at ministerial level the following year. At that meeting, EU Trade Commissioner Cecilia Maelstrom – who was very much the inspiration behind the creation of the Alliance - called for the establishment of a binding instrument, similar to the Arms Trade Treaty or The Convention on International Trade in Endangered Species, which would establish common binding international standards for the import, export and transfer of goods used for torture, or other cruel, inhuman or degrading treatment or punishment and capital punishment.

The Alliance for Torture-Free Trade now has over 60 members, including almost all Council of Europe member states; we urge the remaining states to join.

The formal UN process began in June 2019, when the UN General Assembly adopted [Resolution 73/304](#), *Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards*, which was followed by a survey of state opinions. 26 states, over half of those who responded, recommended the creation of a binding international instrument to control goods used for torture and other ill-treatment and the death penalty.

More recently, there have been two key developments which map out a clear pathway for the negotiation of such an instrument: firstly, the publication the UN General Assembly-mandated Group of Governmental Experts report in 2022; and secondly, the UN Special Rapporteur on Torture's thematic report on the issue presented to the UN General Assembly last year.

One of the options proposed by the Group of Governmental Experts report was that the General Assembly proceeds to negotiate an international legally binding instrument, either in the form of an optional protocol to an already existing treaty, or a new instrument; and that this instrument should cover both law enforcement equipment that has no other use than for torture or other ill-treatment; and goods that could be used in the commission of torture or other-ill treatment.

The Group of Governmental Experts report recommended that the issue of goods used to carry out the death penalty be treated separately, decoupling it from controls related to goods used for torture and other ill-treatment.

While recognising the importance of the issue of the death penalty, which Amnesty International has been working to eradicate since its inception, our organisation agrees that - *at the international level* – the regulation of the trade in goods used to carry out the death penalty should be treated separately in order to maximise consensus on a legally-binding instrument regulating goods used for torture or other ill-treatment.

The second major development was the UN Special Rapporteur on Torture's thematic report on the torture trade which was launched at the Third Committee of the UN General Assembly in October 2023 and which included, in annex, two lists of law enforcement equipment: firstly, goods that the Special Rapporteur on Torture considers to be inherently cruel and degrading and which therefore should be prohibited, such as spiked batons and direct contact electric shock equipment; and secondly, equipment which the Special Rapporteur on Torture considers has a legitimate function for law enforcement when used in strict accordance with international human rights law and standards; but which can be readily misused to torture or cause other forms of ill-treatment and the trade of which therefore needs to be controlled. This list contains standard law enforcement items such as pepper spray, ordinary batons and hand cuffs.

As noted by others, these lists are more comprehensive and progressive than the current lists in the EU Anti-Torture Regulation and the Committee of Minister's 2021 Recommendation on the issue. Amnesty International and the Omega Research Foundation believe that the Special Rapporteur on Torture's lists best represent the technologies currently being manufactured, their patterns of use, and the risks associated with their deployment and should be used as a basis for not only a future legally-binding international instrument, but also for updates to regional frameworks, including the Committee of Ministers' Recommendation.

Together, the UNGA-mandated Group of Governmental Expert's option for the creation of a legally-binding international instrument on the torture trade and the UN Special Rapporteur on Torture's suggested lists create a clear pathway forward for the creation of a robust Torture-Free Trade Treaty. Such a binding instrument can make a real and lasting contribution to the prevention of torture and other ill-treatment globally. The UN Special Rapporteur on Freedom of Peaceful Assembly and Association, the UN Special Rapporteur extrajudicial, summary or arbitrary executions along the current UN High Commissioner for Human Rights have all expressed their support for the creation of a Torture-Free Trade Treaty.

This pathway also has the full support of a growing civil society network over 80 NGOs worldwide working on torture prevention and police abuses. Amnesty International, The International Human Rights Clinic at Harvard Law School and the Omega Research Foundation, all of which are members of this civil society Torture-Free Trade Network, have published *The Essential Elements of a Torture-Free Trade Treaty* which provides a detailed outline of what such an international, legally-binding instrument could look like; last spring, civil society also organised a roundtable at the Geneva Academy of International Humanitarian Law and Human Rights with leading international human rights law experts to discuss how such an instrument could work in practice.

All this is to say that there is already a strong institutional, intellectual and practical foundation for the creation of a Torture-Free Trade Treaty, and a global civil society network ready to support and promote efforts at the UN. What is needed above all is state initiative, including active prioritisation, participation and promotion of the UN process as set out in 6.1 of the Committee of Minister's Recommendation. With state action, we can propel this process to the next stage: the tabling of a resolution in the UN General Assembly to begin negotiations for the establishment of a Torture-Free Trade Treaty.

While we live in uncertain times, in an era in which international law is coming under strain, the absolute prohibition on torture and other ill-treatment remains a cornerstone of international human rights law. Its strengthening, through the negotiation of a Torture-Free Trade Treaty at the UN, is a practical, concrete

step which would support efforts to prevent the scourge of torture and other ill-treatment globally. All the elements are in place. It is time for Council of Europe member states to fully engage with the UN process and make it happen.

PANEL / SESSION 3

Addressing death penalty challenges within the framework of the Council of Europe Recommendation

Relever les défis liés à la peine de mort dans le cadre de la Recommandation du Conseil de l'Europe



Gala VELDOEN

PACE General Rapporteur on the abolition of the death penalty */ Rapporteuse générale sur l'abolition de la peine de mort de l'APCE*

Good morning Madame Chair, honoured members of the Steering Committee for Human Rights, ladies and gentlemen.

I am honoured to participate today in this workshop, to discuss the ongoing efforts to combat the trade in goods that enable torture and the death penalty. These are issues that strike at the very heart of human dignity, and we, as Council of Europe, must continue to work relentlessly to ensure that we uphold this principle, not only on our continent, but also across the world. In accordance with the [Reykjavik Declaration](#), we must continue our fight “in favour of universal abolition of the death penalty, in all places and in all circumstances”.

Let me start by saying a few words about the pioneering role that the Parliamentary Assembly of the Council of Europe (PACE) has played in this area. For decades, PACE has been at the forefront of advocating for the abolition of the death penalty. The Assembly, through its resolutions and recommendations, has consistently called for action, requiring states to abolish capital punishment, or at least for the application of moratoria on executions. PACE was indeed at the origin of Protocols No. 6 (1986) and No. 13 (2002) to the European Convention on Human Rights (ECHR).¹⁰ In 1980 ([Recommendation 891 \(1980\)](#)), the Assembly asked for Article 2 of the Convention (right to life) to be amended so as to prohibit capital punishment in times of peace, paving the way for Protocol No. 6. In 1994 ([Recommendation 1246 \(1994\)](#)), it recommended that the Committee of Ministers draw up an additional protocol to the Convention, abolishing the death penalty both in peace and in wartime.

PACE takes pride in its decisive contribution to eradicating this inhuman and degrading punishment from almost all of Europe (death penalty-free continent), by establishing a practice whereby it required States wishing to join the Council of Europe (in the 90s and early 2000s) to undertake to apply an immediate moratorium on executions, to delete the death penalty from their national legislation and to sign and ratify Protocol No. 6.¹¹

¹⁰ Protocol No. 6 foresees the abolition of the death penalty in peacetime. Protocol No. 13 foresees the abolition of the death penalty in all circumstances, including in times of war.

¹¹ Russia's undertaking to abolish the death penalty, partly fulfilled through an initially *de facto* moratorium that was subsequently confirmed *de jure* by its Constitutional Court.

With its position, PACE has in turn contributed to the development of the case-law of the European Court of Human Rights in this area. The Court has referred to PACE resolutions and practice in its judgments concerning the death penalty. The Court has reiterated since 2010 that the death penalty is an unacceptable form of punishment in all circumstances, that it is no longer compatible with the right to life (art. 2 ECHR) and that it amounts to “inhuman or degrading treatment or punishment” (art. 3 ECHR).¹² This applies to all member States, irrespective of whether they have ratified Protocols 6 and 13.¹³

PACE has constantly regretted the fact that one European country – Belarus – still has not yet taken steps to dispense with this barbaric punishment.

PACE has also on several occasions taken a strong stand against executions in other parts of the world, and in particular in the Council of Europe observer states which retain the death penalty, namely Japan and the United States of America. It has also examined the situation of countries whose parliaments have had some form of co-operation status or agreement with PACE (Jordan, Morocco, Palestinian Authority, Kyrgyzstan and Kazakhstan). Kyrgyzstan (2007) and Kazakhstan (2021) have abolished the death penalty. The other partners have *de facto* moratoriums but have continued to pass death sentences.

The Assembly has a General Rapporteur on the abolition of the death penalty. I was appointed General Rapporteur last October, for a mandate of one year (renewable once). My mandate is to intervene in matters relating to the abolition of the death penalty in member and observer States, partners for democracy, and states applying for such a status. I report periodically to the Assembly’s Committee on Legal Affairs and Human Rights on the information collected and action taken.¹⁴ I also have the capacity to issue public statements, in reaction to executions in some States or worrying developments in different parts of the world, raising public awareness and maintaining pressure on some of our retentionist observer States. On the occasion of the *World Day Against the Death Penalty* (10 October), I published a statement in which I welcomed the fact the number of countries in the world that carried out executions had decreased in 2023 (16 compared to 20 in 2022) and that some countries, particularly in Africa, continue to take legislative steps to reduce the scope of the death penalty or to repeal it. I recalled however that in 2023 at least 1,153 executions had been recorded worldwide, making it the highest figure in seven years. I also drew particular attention to the troubling situation in our observer state the United States,

¹² *Al-Saadoon and Mufdhi v. the United Kingdom*, 2 March 2010, § 120; *A.L. (X.W.) v. Russia*, 29 October 2015, § 64.

¹³ As of today (27.11.2024), only Azerbaijan has not ratified Protocol No. 13; Armenia ratified it in 2023.

¹⁴ [AS/JUR \(2023\) 35](#), 8 December 2023, revised information note prepared by the former General Rapporteur Mr Aleksandar NIKOLOSKI, North Macedonia (EPP/CD).

which saw an increase in executions in 2023 and where some states introduced a highly controversial new method of execution using nitrogen hypoxia. The state of Alabama became the first state to execute an individual (Kenneth Smith) using this method, in January 2024. This year's theme, '*The death penalty protects no one*,' was a timely reminder of the persistent misconception that capital punishment makes society safer. It does not. There is no evidence of its deterrent value. Instead, the death penalty creates a breeding ground for human rights abuses and injustice under the guise of security.¹⁵

Let me now come back to the topic of today's workshop, how to fight against the trade in goods used for the death penalty (and torture). Governments of retentionist states continue to rely on trade in chemicals used in executions. In some cases, these goods are exported by companies based in European countries and other parts of the world. PACE made a significant contribution on this particular issue. In 2018, it adopted its [Recommendation 2123 \(2018\)](#), in which it called on the Committee of Ministers to adopt a recommendation to member States setting out technical guidance on how to establish and implement an effective regulatory regime concerning the trade in goods that may be used for such purposes.¹⁶ The Assembly considered that on the basis of the obligations imposed on States under the ECHR (Article 3 and additional Protocols), member States were legally required to take effective measures to prevent activity within their jurisdictions that might contribute to or facilitate capital punishment, torture and inhuman or degrading treatment or punishment in other countries, including by effectively regulating the trade in death penalty and torture goods. Drawing on the existing European Union regulation and definitions, the Assembly called on the introduction of legislation prohibiting trade in certain goods, namely goods specifically designed for the execution of human beings, and certain of their components (par. 8.1 of the recommendation); and requiring authorisation for the trade in other types of goods, namely products which could be used for the execution of human beings by means of lethal injection (par. 8.2). Such authorisation should be withheld when there are reasonable grounds for believing that these goods might be used for capital punishment in a third country.¹⁷ According to the Assembly, the recommendation by the Committee of Ministers should ultimately extend the scope of the approach taken by the EU regulation in this field to non-EU Council of Europe member States.

¹⁵ '[The death penalty does not make society safer](#),' says General Rapporteur.

¹⁶ The recommendation was based on a report prepared by an Azerbaijani member of PACE, Mr Vusal Huseynov (EPP/CD) for the Committee on Legal Affairs and Human Rights: [Doc. 14454 - Report - Working document](#).

¹⁷ "Trade" for the purposes of this recommendation should cover: the import and export, the transit through national territory, the brokering of transfers between third countries, the provision of technical assistance, the training in the use, the promotion at trade fairs, and the buying, from or selling to parties in third countries of any form of advertising for such goods

In reply to our recommendation, the Committee of Ministers instructed your committee (CDDH) to prepare a feasibility study on a legal instrument in this field (already in 2018). In March 2021, the Committee of Ministers (CM) adopted the [Recommendation](#) in question (CM/Rec(2021)2), the content of which has already been presented by other speakers. Let me just recall that when it comes to death penalty goods, the CM Recommendation follows the approach taken in our 2018 recommendation, therefore distinguishing between inherently abusive goods and equipment, which are subject to prohibition, and products which could be used for the execution of human beings by means of lethal injection, which are subject to regulation and licensing.¹⁸ At the same time, the CM Recommendation states that the States' action should not limit the trade in such chemicals for medical, veterinary or other legitimate purposes. This may raise some difficulties in the implementation, as shown by some of the replies to your questionnaire. It is also important to note that the lists recommended by the CM are not exhaustive and should be regularly reviewed and updated by member States in order to take account of developments.

The Assembly and myself as General Rapporteur stand ready to raise awareness about better implementation of the CM Recommendation, particularly where national parliaments (mostly outside EU) are called to enact specific legislation. We are also willing to contribute to any possible review of the recommendation, if necessary. I am looking forward to hearing the views of the civil society experts present in this session, particularly on whether such a review is necessary when it comes to death penalty goods.

The trade in death penalty goods is not an issue that can be solved by any one country alone. It requires a collective, coordinated effort. Governments, parliaments, international organisations, NGOs, and the private sector must all work together to ensure that the death penalty applied in some parts of the world is not facilitated by profit-driven trade, including by companies or individuals operating in our member States.

In closing, I want to emphasize that the fight against capital punishment is not just a political or legal issue; it is a moral issue that touches on our shared dignity as humans. The trade in goods that enable this practice must end, and it is our collective responsibility to ensure that it does.

Thank you for your attention.

¹⁸ The first list should include at least gallows, guillotines, blades for guillotines, gas chambers, electric chairs and automatic lethal injection systems designed for capital punishment (Appendix 1). The second list includes pharmaceutical chemicals, namely short and intermediate acting barbiturate anaesthetic agents (Appendix 2).

Dan DOLAN

Director of Policy and Advocacy, Reprieve / *Directeur des affaires politiques et plaidoyers, Reprieve*

Civil Society Perspective to the Implementation of the Council of Europe Recommendation and Pharmaceutical Trade / *Perspective de la société civile sur la mise en œuvre de la recommandation du Conseil de l'Europe et le commerce pharmaceutique*

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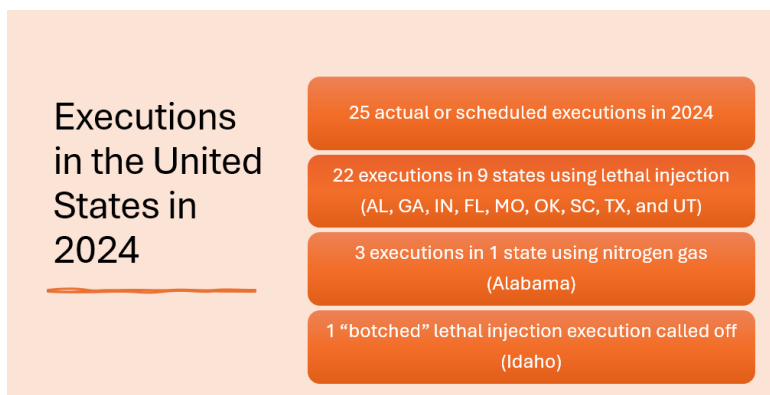
Executive Director, Death Penalty Information Centre / *Directrice executive, Death Penalty Information Centre*

Thank you very much for the opportunity to participate in this important discussion. I'm honored to be with you today.

I am the Executive Director of the Death Penalty Information Center in Washington, D.C. DPI is a national non-profit organization that provides information, data, and analysis to the media, elected officials, and the public about how the death penalty is used in the United States. We are not an advocacy organization, so we do not take a position about the death penalty itself, but we are critical of the many problems we see with its use.

Today I will report on the current methods of executions being used in the United States, and some of the problems that DPI and others have identified with those methods. I will also discuss the secrecy that many states now use to shield their policies and practices from public scrutiny; and the current legal framework surrounding method of execution challenges.

Methods of Execution in 2024



Nine U.S. states have or are scheduled to execute a total of 25 people by the end of this year. The majority of these prisoners, 22, have been or will be executed using lethal injection, which is the default method in almost all but one active death penalty state and the federal government, and is the method used most frequently.

Some states using lethal injection utilize a single drug, most commonly pentobarbital, and others use combinations of two or three drugs. Most three-drug protocols use an anesthetic or sedative, followed by a drug to paralyze the prisoner, and finally a drug to stop the heart. The one and two-drug

protocols typically use an overdose of an anesthetic or sedative to cause death.

At least one lethal injection execution effort this year can be characterized as a “botched execution”: Thomas Creech, age 74, is the longest-serving prisoner on the state of Idaho’s death row. On February 28, the execution team tried eight times to set an IV line and administer lethal injection drugs to Mr. Creech, inserting needles into his hands, feet, and legs, but each time his veins collapsed. The execution—the first one the state had attempted in 12 years—was eventually called off after over an hour. Mr. Creech’s attorneys had warned officials that his advanced age and medical conditions, including Type 2 diabetes, hypertension, and edema, could impact circulation and vein quality. Idaho has now revised its execution protocol to permit execution team members to access central veins deep in the groin, neck, chest or arm for executions if attempts to insert standard IV lines fail. Using a central venous line involves threading a catheter through deep veins until it reaches a location near the heart.

We expect to see similar age-related complications, like the ones that in Mr. Creech’s case, as the death row population grows older. This year, the prisoners who were executed were the average age of 52 years old and spent an average of 22.2 years on death row. The poor medical and mental health services in prison, and the extreme conditions of isolation and deprivation, only worsen ordinary age-related health conditions and will present additional challenges when these increasingly older men are set for execution.

In addition to lethal injection, three other methods of execution authorized for use in the United States are electrocution, firing squad, and lethal gas.

For the first time, the state of Alabama leads the country with the most executions this year, with six in total, three of which were carried out by suffocating prisoners using nitrogen gas. Prisoners were fitted with a respirator mask that was placed over their nose and mouth and then forced to breath pure nitrogen gas.

Authorized Methods

NOTE [Brackets] around a state indicate that the state authorizes the listed method as an alternative method if other methods are found to be unconstitutional or are unavailable/impractical. Click on the state to obtain specific information about the methods authorized.

Method	# of executions by method since 1976	# of states authorizing method	Jurisdictions that Authorize
Lethal Injection	1421	28 states* and U.S. Military and U.S. Gov't In South Carolina, lethal injection may be elected as an alternative method, if available. *includes 1 state that no longer have an active death penalty	Alabama, Arizona, Arkansas, California, Florida*, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire*, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, [South Carolina], South Dakota, Tennessee*, Texas, Utah, Wyoming, U.S. Military, U.S. Government *New Hampshire abolished the death penalty but the repeal may not apply retroactively, leaving a prisoner on death row facing possible execution. To find the drug protocols used by states, see State-by-State Lethal Injection .
Electrocution	163	8 states (in South Carolina, electrocution is the default method; the other 7 have lethal injection as default method).	[Alabama], [Arkansas], Florida, Kentucky, [Louisiana], [Mississippi], [Oklahoma], South Carolina, [Tennessee] The supreme courts of Georgia (2001) and Nebraska (2008) have ruled that the use of the electric chair violates their state constitutional prohibitions against cruel and unusual punishment. Virginia had authorized the electric chair as a method of execution in some cases, but it repealed the death penalty in March 2021.
Lethal Gas	14	8 states (all have lethal injection as default method)	[Alabama], Arizona, California, [Louisiana], [Mississippi], Missouri, [Oklahoma], [Wyoming] Four states (Alabama, Louisiana, Mississippi, and Oklahoma) specifically authorize execution by nitrogen hypoxia, though only Alabama has issued a protocol for its use. Alabama is the only state that has performed an execution by nitrogen hypoxia. The other states listed authorize "lethal gas," but do not specify what type of gas would be used.
Firing Squad	3	5 states (in South Carolina, electrocution is the default method; the other states have lethal injection as primary method)	[Mississippi], [Oklahoma], [Utah], [South Carolina], [Idaho]

Kenneth Smith, executed with nitrogen gas on 1/25/24

- Despite assurances from Alabama officials that he would be “unconsciousness in seconds,” Mr. Smith appeared awake for several minutes and “shook and writhed” for at least four minutes before breathing heavily for several more.
- “This was the fifth execution that I’ve witnessed in Alabama, and I have never seen such a violent reaction to an execution,” said media witness Lee Hedgepeth.
- Mr. Smith was declared dead 32 minutes after the execution began.



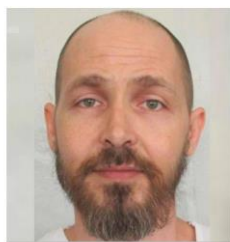
This was the first time this novel and untested method was used to execute a human being in the United States and, to our knowledge, anywhere in the world. For two of the men executed using this method, Kenny Smith and Alan Miller, this was the second time the state of Alabama attempted to execute them. Both previous execution attempts in 2022 had used lethal injection and ended in failure after hours of futile attempts to access veins in the prisoners. The United States Supreme Court declined to stop the executions despite arguments from both prisoners that a second attempt to execute them was unconstitutionally cruel and unusual punishment.

Reports from media representatives who attended all three of the Alabama nitrogen gas executions indicated that each of the prisoners experienced significant distress. Kenny Smith “shook and writhed” for several minutes during his execution; Alan Miller was observed “jerking and shaking” for over five minutes.

Carey Grayson, executed with nitrogen gas on 11/21/24

Media witness report:

“He rocked his head, shook and pulled against the gurney restraints. He clenched his fist and appeared to struggle to try to gesture again. His sheet-wrapped legs lifted off the gurney into the air at 6:14 p.m. He took a periodic series of more than a dozen gasping breaths for several minutes. He appeared to stop breathing at 6:21 p.m., and then the curtains to the viewing room were closed at 6:27 p.m.”



When Carey Grayson was executed just last week, a media witness reported:

“He rocked his head, shook and pulled against the gurney restraints. He clenched his fist and appeared to struggle to try to gesture again. His sheet-wrapped legs lifted off the gurney into the air at 6:14 p.m. He took a periodic series of more than a dozen gasping breaths for several minutes. He appeared to stop breathing at 6:21 p.m., and then the curtains to the viewing room were closed at 6:27 p.m.”

Alabama's use of nitrogen gas was controversial and attracted national and worldwide media interest. Following the execution of Kenneth Smith in January 2024, attorney general publicly invited other states to use nitrogen gas as an execution method. At least four other states accepted this invitation and introduced legislation to adopt nitrogen gas as an authorized method. But only the state of Louisiana, whose new governor has vowed to resume executions after a fourteen-year pause, adopted use of nitrogen gas as a new method this year. Louisiana also authorized use of the electric chair as a second alternative method of execution. Legislation in the state of Ohio to adopt nitrogen gas is still pending, where there is also serious opposition to use of the death penalty among elected officials. There are now a total of four states that specifically authorize use of nitrogen gas and four other states that authorize use of unspecified "lethal gas" as an execution method, for a total of eight states that could potentially execute prisoners using nitrogen gas.

Secrecy Provisions Prevent Complete Understanding and Scrutiny of Execution Methods



Increased Secrecy

On February 16, 2024, Utah Governor Spencer Cox signed a law preventing the public disclosure of any "identifying information" about individuals involved in carrying out executions, the procurement of drugs and supplies needed for executions, and any identifying information about those involved in the manufacturing or producing of the drugs and supplies.

Secrecy has been the front-line response of state officials since 2010, when the first media reports of botched executions resulted in public criticism and increased scrutiny. Every state that has executed someone over the past decade now has a secrecy statute or provision that limits public access to information about the identity and training of execution team members, the provenance of execution drugs, and other critical aspects of execution protocols. This information is not only unavailable to members of the public, but also frequently unavailable even to prisoners and their lawyers, who are forced to obtain court orders to access information about how they will be executed. This year, Louisiana made its records pertaining to executions confidential, adding an additional layer of secrecy. Utah also amended its statute just before resuming executions to make confidential many essential aspects of its execution protocol. Many of these same states now also limit or restrict access for media witnesses, who in the past have disclosed

problematic executions and raised public awareness, even while state officials refuse to acknowledge obvious problems.

United States Supreme Court has Largely Withdrawn from Enforcing Constitutional Protections in Methods of Executions



Standard for Legal Challenges to Methods of Execution

Prisoner must first show that a method chosen by the state “superadds” pain beyond that which is necessary for the execution

Prisoner must then propose a “readily available alternative method of execution that will significantly reduce a substantial risk of severe pain”

In the past, the United States Supreme Court has regulated methods of execution to ensure they do not run afoul of Constitutional prohibitions against “cruel and unusual punishment.” The current legal standard, however, only prohibits methods that intentionally “superadd” pain and suffering to an execution. That showing is also not enough; prisoners must also propose a readily available alternative method of execution that will result in significantly less pain than the state’s chosen method. This standard has proven impossible for prisoners to meet. The Supreme Court has never found a method of execution to be unconstitutional and has also rejected repeated recent requests by prisoners to intervene, even when a state use choose to use an untested, dangerous method such as nitrogen gas.

Several states now require prisoners to choose among available methods of execution. This is problematic for several reasons. First, death sentenced prisoners live in an inherently coercive environment while on death row and under sentence of death. It is unreasonable for them to be forced to choose how the state will put them to death. Second, lawyers representing prisoners must now counsel their clients about which method of execution they should choose – advice that contradicts their primary duty to use all available efforts to keep their client alive. Recently, the South Carolina Supreme Court held that providing prisoners with three choices of execution methods satisfies any concerns about a method being “cruel and unusual.” This year, a South Carolina prisoner refused to make a choice, citing his Muslim faith. His lawyer was then forced to make the choice for him, and he was executed using lethal injection.

Conclusion

The death penalty in American has increasingly become a local story, with state actors making decisions without fear of the traditional oversight they used to expect from the courts. Your continuing focus on methods of executions is critically important as some U.S. states attempt to push existing legal limits and risk the torturous and painful execution of prisoners.

I remain very grateful for your interest in this issue and your attention today.

Thank you.

CLOSING REMARKS

ALLOCUTION DE CLÔTURE



Krista OINONEN

Chairperson of the Steering Committee on Human Rights
(CDDH) *Présidente du Comité directeur pour les droits humains*
(CDDH)

Dear Participants,

As we bring today's workshop to a close, I want to extend my gratitude to all participants for their thoughtful contributions and shared expertise. Your active engagement has underscored the pressing importance of combating the trade in goods used for torture, the death penalty, and other forms of cruel, inhuman, or degrading treatment.

Throughout the morning, we have not only reflected on the significance of the Council of Europe's Recommendation [CM/Rec(2021)2] but also explored actionable pathways to its full implementation. This Recommendation serves as a cornerstone for our collective efforts, providing a robust framework for member States to regulate this trade effectively and safeguard human rights and human dignity.

The discussions today have shown that while some progress has been achieved, there remains an urgent need for consistent and comprehensive action across all member States. From regulating law enforcement equipment to addressing the pharmaceutical trade linked to execution techniques, the Recommendation offers practical measures that must now be translated into national policies, laws, and practices.

Our dialogue has also reaffirmed the critical role of multilateral collaboration. As emphasized by our speakers, success in this endeavor requires the concerted efforts of governments, international organizations, civil society, and the private sector. By working together, we can amplify the Recommendation's impact and address the challenges of enforcement and accountability.

The CDDH will produce a report on the examination of the implementation of the Recommendation next year that is 5 years after adoption of the recommendation. The CDDH should also examine the need to update the list of regulated goods in appendix to the Committee of Ministers' recommendation.

We will support the European Union in their review of the EU anti-torture Regulation and the United Nations for their efforts to have a new global legally binding instrument on anti-torture trade.

Let us leave here today with a renewed commitment to implement these measures fully. Every step we take to restrict this abhorrent trade brings us closer to a world free of torture and the death penalty.

I wish to thank all our speakers, moderators, and participants for their insightful contributions, and I extend my gratitude to the Council of Europe for its unwavering leadership in this critical area. Your dedication inspires us to continue advancing this essential work.

Thank you, and I look forward to seeing the outcomes of our collective efforts. Together, we can turn today's discussions into meaningful progress.

www.coe.int

The trade in goods used for the death penalty, torture, and other cruel, inhuman, or degrading treatment or punishment remains a pressing issue. This publication presents the proceedings of the Workshop on Strengthening Multilateral Efforts to Curb Trade in Torture and Death Penalty Goods, held in Strasbourg on 27 November 2024 during the 101st plenary meeting of the Steering Committee on Human Rights (CDDH). The Workshop brought together senior officials from the Parliamentary Assembly and the United Nations, experts from member States and the European Union, and representatives of civil society to discuss progress, challenges, and best practices in implementing Committee of Ministers' Recommendation CM/Rec(2021)2 to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment. Contributions from distinguished speakers, including the PACE General Rapporteur on the abolition of the death penalty and the UN Special Rapporteur on torture, provided invaluable insights into the need for enhanced international cooperation to eradicate this trade. The Workshop was recorded, and the video of the recording is available online on the webpage of the CDDH.

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

Le commerce des biens utilisés pour la peine de mort, la torture et autres peines ou traitements cruels, inhumains ou dégradants reste une question pressante. Cette publication présente les actes de l'Atelier sur le renforcement des efforts multilatéraux visant à limiter le commerce des biens utilisés pour la torture et la peine de mort, qui s'est tenu à Strasbourg le 27 novembre 2024, lors de la 101^e réunion plénière du Comité directeur pour les droits humains (CDDH). L'Atelier a réuni des hauts fonctionnaires de l'Assemblée parlementaire et des Nations Unies, des experts des États membres et de l'Union européenne, et des représentants de la société civile pour examiner les progrès, les défis et les meilleures pratiques en vue de la mise en œuvre de la Recommandation CM/Rec(2021)2 du Comité des Ministres aux États membres sur des mesures contre le commerce de biens utilisés pour la peine de mort, la torture et autres peines ou traitements cruels, inhumains ou dégradants. Les contributions d'orateurs éminents, dont la Rapporteuse Générale de l'APCE sur l'abolition de la peine de mort et la Rapporteuse spéciale des Nations Unies sur la torture, ont apporté un éclairage précieux sur la nécessité de renforcer la coopération internationale pour éradiquer ce commerce. La vidéo de l'enregistrement de l'Atelier est disponible en ligne sur la page web du CDDH.

Le Conseil de l'Europe est la principale organisation de défense des droits humains du continent. Il comprend 46 États membres, dont l'ensemble des membres de l'Union européenne. Tous les États membres du Conseil de l'Europe ont signé la Convention européenne des droits de l'homme, un traité visant à protéger les droits humains, la démocratie et l'État de droit. La Cour européenne des droits de l'homme contrôle la mise en œuvre de la Convention dans les États membres.