



CDDH(2019)31Addendum
8/11/2019

**STEERING COMMITTEE FOR HUMAN RIGHTS
COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME
(CDDH)**

**DRAFTING PROPOSALS RECEIVED FROM MEMBER STATES
PROPOSITIONS DE REDACTION RECUES DES ÉTATS MEMBRES**

Drafting proposals received from member States (Poland, Switzerland and Turkey) on the draft feasibility study of a legal instrument to strengthen international regulations against trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty received from, and information provided by the Secretariat in respect of such proposals.

Propositions de rédaction reçues des Etats membres (Pologne, Suisse et Turquie) sur le projet d'étude de faisabilité d'un instrument juridique en vue de renforcer les règlements internationaux pour l'interdiction du commerce de biens utilisés pour la torture ou d'autres traitements ou peines cruels, inhumains ou dégradants et pour la peine de mort, et informations fournies par le Secrétariat à l'égard de ces propositions.

POLAND

The Polish authorities transmitted the following proposals. The Secretariat accommodated all of them in the current text CDDH(2019)31.

46. [...]:

47.

- (a) The provisions of the EU **Anti-Torture Regulation** are directly applicable to all (currently 28) **EU member States**, and therefore provide a shared minimum standard for regulating trade in a common list of goods.

<i>Comment: We propose to use such an abbreviation in the whole text of the feasibility study.</i>
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[...]

- Of the 14 EU member States respondents to the CDDH questionnaire:

- None reported the presence of any companies exporting goods currently prohibited under the EU Torture Regulation to law enforcement agencies for torture or other ill-treatment.¹
- Five EU member States (~~Czech Republic, Denmark, France, Germany and Poland~~) reported the presence of companies manufacturing or supplying certain law enforcement equipment —~~controlled under the EU Torture Regulation~~— that if used responsibly could have legitimate law enforcement purposes but which potentially could be misused for torture or other ill-treatment. **Their operation is however subject to control regime set up in accordance with the EU Anti-Torture Regulation and is limited by relevant criminal sanctions.** Another EU member State [(UK)] provided details of licenses issued for such controlled law enforcement equipment, noting the exporter/broker may not necessarily be the manufacturer, but may instead be a wholesaler, distributor or re-seller.

<i>Comment: The reference to five EU member states seems out of context and as such may be misleading. The law enforcement equipment referred to here is produced in practically all or vast majority of CoE states having law enforcement bodies and not only in these five states (mentioned here probably only because they duly and exhaustively replied to the questionnaire). In case of Poland (similarly as other EU countries) one should however recall also the context of the presence of these companies, namely that all equipment of this kind is subject to adequate control regime set up in accordance with the EU Anti-Torture Regulation and its use is limited by the relevant criminal law provisions. As we informed in our reply to the questionnaire, Poland fully complies with the aforementioned EU Regulation.</i>

- ~~One EU member State (Poland) reported the presence of a number of legally operating entities offering training in combat techniques or use of direct coercive measures, providing such training to foreign police and military services.~~

[...]

<i>Comment: This example seems redundant and out of context and could suggest that the training practices presented here are something unusual or problematic. In fact, however, Poland is not the only CoE country where there are legally operating entities offering training in <u>lawful</u> combat techniques or <u>legitimate</u> use of direct coercive measures. Actually, such training is even necessary and of vital importance to avoid torture and excessive use of force by law enforcement services. As in our reply to the questionnaire, we stress once again that there is no information about the organisation in Poland of training in the use of torture or ill-treatment, or the organisation of such training abroad by Polish entities.</i>

SWITZERLAND

The Swiss authorities transmitted proposals concerning the form in order to make the text more consistent and readable. The Secretariat accommodated these proposals in the current text CDDH(2019)31.

TURKEY

The Turkish authorities asked not to mention several ECHR judgments concerning their country and gave the reasons appearing below. As requested, the Secretariat deleted such references in the current text CDDH(2019)31.

- Le Gouvernement turc propose la suppression de l'arrêt « Ocalan c. Turquie » dans la 90^{ème} note en bas de page et la suppression des arrêts « Aksoy et Aydın c. Turquie » dans la 91^{ème} note en bas de page (Appendix I, page 28) pour les raisons énoncées ci-dessous:
- Le 29^{ème} paragraphe du document (Appendix I, page 28) mentionne d'une détermination de la Cour Européenne des Droits de l'Homme (la Cour) (« *The European Court of Human Rights has determined that...* ») en faisant la citation directe provenant d'une déclaration de « IRCT » (International Rehabilitation Council for Torture Victims), donc une source en dehors de l'arrêt de la Cour.
- Notre Gouvernement considère que la référence à un arrêt de la Cour doit être faite en utilisant uniquement le texte de l'arrêt et en indiquant les paragraphes pertinents. Le cas contraire pourrait induire en erreur les lecteurs du document concernant une conclusion de la Cour.
- A la lumière de ces considérations ci-dessus, il convient de préciser qu'en ce qui concerne l'arrêt « Ocalan no. 46221/99 » du 12 mars 2003, la Cour ne parvient pas à une conclusion telle qu'elle est décrite (*The European Court of Human Rights has determined that blindfolding a detainee constitutes cruel or inhuman treatment when used in combination with other interrogation or detention methods*) dans le 29^{ème} paragraphe du document.

Dans le 222^{ème} paragraphe de l'arrêt, la Cour utilise le mot « *may* » et considère que : « *...It must examine the effect of that treatment in the special circumstances of each case* »

Dans le 224^{ème} paragraphe de l'arrêt, la Cour considère que :
 « *...The Court accepts the Government's explanation that the purpose of that precaution was not to humiliate or debase the applicant but to ensure that the transfer proceeded smoothly and it acknowledges that, in view of the applicant's character and the reactions to his arrest, considerable care and proper precautions were necessary if the operation was to be a success* ».

La Cour dans la 228^{ème} paragraphe conclut qu'il n'y avait pas de violation concernant l'article 3 de la Convention.

En outre, l'affaire fut examinée par la Grande Chambre. La dernière, dans son arrêt du 12 mai 2005 parvint aussi à la conclusion de non violation concernant l'article 3 de la Convention.

Nous présentons ci-dessous les paragraphes pertinents dudit arrêt :

"222. The Court further considers that artificially depriving prisoners of their sight by blindfolding them for lengthy periods spread over several days may, when combined with other ill-treatment, subject them to strong psychological and physical pressure. It must examine the effect of that treatment in the special circumstances of each case (see, mutatis mutandis, Salman v. Turkey, [GC], no. 21986/93, § 132, ECHR 2000-VII).

224. As regards the blindfolding of the applicant during his journey from Kenya to Turkey, the Court observes that that was a measure taken by the members of the security forces in order to avoid being recognised by the applicant. They also considered that it was a means of preventing the applicant from attempting to escape or injuring himself or others. The applicant was not questioned by the security forces when he was blindfolded. The Court accepts the Government's explanation that the purpose of that precaution was not to humiliate or debase the applicant but to ensure that the transfer proceeded smoothly and it acknowledges that, in view of the applicant's character and the reactions to his arrest, considerable care and proper precautions were necessary if the operation was to be a success.

The Court's view on this point is not altered by the fact that the applicant was photographed wearing a blindfold in the aircraft that took him back to Turkey. It points out that there had been fears for the applicant's life following his arrest and the photographs, which the Government say were intended for use by the police, served to reassure those concerned about his welfare. The Court notes, lastly, that the applicant was not wearing a blindfold when he was photographed in Turkey shortly before his transfer to the prison.

228. That being so, the Court considers that it has not been established "beyond all reasonable doubt" that the applicant's arrest and the conditions in which he was transferred from Kenya to Turkey exceeded the usual degree of humiliation that is inherent in every arrest and detention or attained the minimum level of severity required for Article 3 of the Convention to apply. Consequently, there has been no violation of that provision on this point."

- Quant à l'arrêt « Aksoy c. Turquie no. 21987/93 » du 18 décembre 1996, la Cour dans son exposé de motif n'invoque pas une considération telle qu'elle est décrite dans le 29^{ème} paragraphe de l'Appendix I du document. (voir les paragraphes 60-64 de l'arrêt).
- Il en est de même pour l'arrêt « Aydın c. Turquie no. 23178/94 » du 25 septembre 1997. (voir les paragraphes 84-88 de l'arrêt).