

Brochure no 1



# The prevention of torture in Europe

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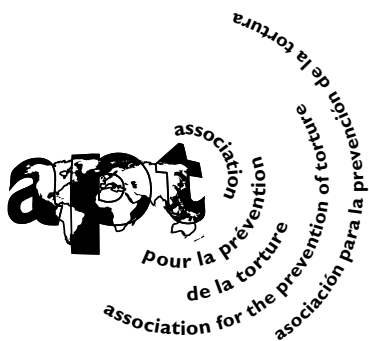
## Collected Texts

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The European Convention for the Prevention of Torture and its practical arm, the European Committee for the Prevention of Torture (CPT) constitute a unique system on the international level. This Committee of independent experts can at any time go to any country which has ratified the convention and visit any places of detention, such as prisons, police stations or psychiatric hospitals. The CPT then establishes a report with its findings and concrete recommendations aimed at preventing the risks of torture and ill-treatment.

Because of its unique nature, this system deserves to be better known by everyone concerned with or interested in the issues of treatment of persons deprived of liberty and conditions of detention. This is why the Association for the Prevention of Torture has decided to publish a handbook on the CPT. This handbook will be composed of about ten booklets that present in a simple and practical way the work of the CPT, its mandate and functioning, the standards it has developed and the possibilities for co-operation with NGOs.



# The prevention of torture in Europe

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## Collected Texts

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Geneva, December 1997



# COLLECTED TEXTS

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## FOREWORD

The Association for the Prevention of Torture (APT) is a non-governmental organisation based in Geneva, whose mandate is to prevent torture and ill-treatment. The APT seeks to ensure that norms forbidding torture are respected and to reinforce means for the prevention of torture, such as visits to places of detention. Thus, the APT is at the origin of the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ECPT) which was adopted by the Council of Europe in 1987 and entered into force in 1989. This Convention establishes the *European Committee for the Prevention of Torture* (CPT), an expert committee which can visit prisons, police stations, psychiatric hospitals etc. in different European countries and, on the basis of what it sees, make recommendations to the authorities so as to diminish the risks of torture and ill-treatment.

Since 1990, the CPT has visited places of detention in about thirty countries in Europe, but its work remains unknown and poorly publicised. This is the reason why the APT is putting together a practical handbook on the CPT. This handbook deals with the mandate and functioning of the CPT, the standards it has developed concerning the treatment of persons deprived of liberty and conditions of detention. It is intended to be useful to persons interested in or concerned by the questions of detention conditions and treatment of persons deprived of their liberty: policemen, prison personnel, NGOs, lawyers, chaplains, detainees and their families...

This handbook will be composed of about ten booklets, which can be used separately or as a whole, for example in the context of NGO seminars or training sessions for persons concerned. The booklets will be published gradually over the next three years and will cover the following aspects of the CPT's activities:

- Booklet 1: Collected texts
- Booklet 2: International and national framework for the combat against torture
- Booklet 3: Mandate and composition of the CPT
- Booklet 4: *Modus operandi* of the CPT
- Booklet 5: The CPT's standards for police custody
- Booklet 6: The CPT's standards for imprisonment
- Booklet 7: The CPT's standards concerning specific categories of detainees
- Booklet 8: Co-operation between NGOs and the CPT
- Booklet 9: Practical Guide: Visits to places of detention
- Booklet 10: Country by country: a comparative analysis of the CPT's recommendations

The present booklet is the first in the series and contains a compilation of texts useful for understanding the CPT, such as the Convention and the Protocols, the explanatory report and the rules of procedure. This collection of texts is supposed to be a reference booklet.







# **1. EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

The member States of the Council of Europe, signatory hereto,  
Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms,  
Recalling that, under Article 3 of the same Convention, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”;  
Noting that the machinery provided for in that Convention operates in relation to persons who allege that they are victims of violations of Article 3;  
Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,  
Have agreed as follows:

## **CHAPTER I**

### ***Article 1***

There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Committee”). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

### ***Article 2***

Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

### ***Article 3***

In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other.

## CHAPTER II

### **Article 4**

1. The Committee shall consist of a number of members equal to that of the Parties.
2. The members of the Committee shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention.
3. No two members of the Committee may be nationals of the same State.
4. The members shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

### **Article 5**

1. The members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.
2. The same procedure shall be followed in filling casual vacancies.
3. The members of the Committee shall be elected for a period of four years. They may only be re-elected once. However, among the members elected at the first election, the terms of three members shall expire at the end of two years. The members whose terms are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.

### **Article 6**

1. The Committee shall meet in camera. A quorum shall be equal to the majority of its members. The decisions of the Committee shall be taken by a majority of the members present, subject to the provisions of Article 10, paragraph 2.
2. The Committee shall draw up its own rules of procedure.
3. The Secretariat of the Committee shall be provided by the Secretary General of the Council of Europe.

## CHAPTER III

### *Article 7*

1. The Committee shall organise visits to places referred to in Article 2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.
2. As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

### *Article 8*

1. The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2.
2. A Party shall provide the Committee with the following facilities to carry out its task:
  - a) access to its territory and the right to travel without restriction;
  - b) full information on the places where persons deprived of their liberty are being held;
  - c) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
  - d) other information available to the Party which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.
3. The Committee may interview in private persons deprived of their liberty.
4. The Committee may communicate freely with any person whom it believes can supply relevant information.
5. If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned.

### **Article 9**

1. In exceptional circumstances, the competent authorities of the Party concerned may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.
2. Following such representations, the Committee and the Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, the Party shall provide information to the Committee about any person concerned.

### **Article 10**

1. After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by the Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.
2. If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

### **Article 11**

1. The information gathered by the Committee in relation to a visit, its report and its consultations with the Party concerned shall be confidential.
2. The Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.
3. However, no personal data shall be published without the express consent of the person concerned.

## **Article 12**

Subject to the rules of confidentiality in Article 11, the Committee shall every year submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Assembly and made public.

## **Article 13**

The members of the Committee, experts and other persons assisting the Committee are required, during and after their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions.

## **Article 14**

1. The names of persons assisting the Committee shall be specified in the notification under Article 8, paragraph 1.
2. Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Convention and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.
3. A Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction.

## **CHAPTER IV**

### **Article 15**

Each Party shall inform the Committee of the name and address of the authority competent to receive notifications to its Government, and of any liaison officer it may appoint.

### **Article 16**

The Committee, its members and experts referred to in Article 7, paragraph 2 shall enjoy the privileges and immunities set out in the Annex to this Convention.

**Article 17**

1. This Convention shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for persons deprived of their liberty.
2. Nothing in this Convention shall be construed as limiting or derogating from the competence of the organs of the European Convention on Human Rights or from the obligations assumed by the Parties under that Convention.
3. The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.

**CHAPTER V**

**Article 18**

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

**Article 19**

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 18.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

**Article 20**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.



2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

### **Article 21**

No reservation may be made in respect of the provisions of this Convention.

### **Article 22**

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the notification by the Secretary General.

### **Article 23**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) any date of entry into force of this Convention in accordance with Articles 19 and 20;
- d) any other act, notification or communication relating to this Convention, except for action taken in pursuance of Articles 8 and 10.

In witness thereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 26 November 1987, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

## **ANNEX**

Privileges and immunities (Article 16)

1. For the purpose of this annex, references to members of the Committee shall be deemed to include references to experts mentioned in Article 7, paragraph 2.
2. The members of the Committee shall, while exercising their functions and during journeys made in the exercise of their functions, enjoy the following privileges and immunities:
  - a) immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
  - b) exemption from any restrictions on their freedom of movement on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.
3. In the course of journeys undertaken in the exercise of their functions, the members of the Committee shall, in the matter of customs and exchange control, be accorded:
  - a) by their own Government, the same facilities as those accorded to senior officials travelling abroad on temporary official duty;
  - b) by the Governments of other Parties, the same facilities as those accorded to representatives of foreign Governments on temporary official duty.

4. Documents and papers of the Committee, in so far as they relate to the business of the Committee, shall be inviolable.  
The official correspondence and other official communications of the Committee may not be held up or subjected to censorship.
5. In order to secure for the members of the Committee complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.
6. Privileges and immunities are accorded to the members of the Committee, not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Committee alone shall be competent to waive the immunity of its members; it has not only the right, but is under a duty, to waive the immunity of one of its members in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.



## 2. EXPLANATORY REPORT

### I. INTRODUCTION

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

The background to this initiative may be summarised as follows:

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

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

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

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

5. It is to be noted in this context that similar work was being conducted in the framework of the United Nations, and that the text of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, referred to in Recommendation 909, was adopted by the General Assembly of the United Nations on 10 December 1984 and subsequently opened for signa-

ture. As to the draft optional Protocol submitted by Costa Rica, it aims to establish a preventive mechanism of a similar nature to that foreseen in the draft Convention appended to the Assembly's Recommendation 971.

6. Subsequent to the adoption of Recommendation 971, the Committee of Ministers conferred the following terms of reference on the Steering Committee for Human Rights (CDDH) at the 366th meeting of the Ministers' Deputies, in January 1984:  
"Consider Assembly Recommendation 971 with a view to submitting to the Committee of Ministers, after consultation of the European Committee on Crime Problems (CDPC), the text of a draft Convention or other legal instrument on the protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment."
7. The Committee of Experts for the extension of the rights embodied in the European Convention on Human Rights (DH-EX), a subordinate body of the CDDH, was instructed by the latter (15th meeting, March 1984) to implement this work under the authority of the CDDH.
8. The DH-EX considered the draft Convention appended to Recommendation 971 at its 19th to 25th meetings (May 1984 to June 1986). It took into account *inter alia* that:
  - the Ministerial Conference on Human Rights (Vienna, 19-20 March 1985), in its Resolution No. 2, "urges the Committee of Ministers to have the work on a draft legal instrument on torture completed as rapidly as possible with a view to its adoption";
  - the Final Communiqué of the 76th session of the Committee of Ministers (25 April 1985) said that the Ministers had "supported the Conference's appeal";
  - in the Assembly, three questions concerning the draft Convention were put to the Chairman of the Committee of Ministers, one by Mr Berrier in January 1985, the others by Mr Arbeloa in April and September 1985;
  - in the Final Communiqué of its 77th session (20 November 1985) the Committee of Ministers reiterated its great interest in the early completion of the draft Convention.
9. During its work, the DH-EX had occasion to consult the European Commission and Court of Human Rights. It also organised a hearing with representatives of the International Commission of Jurists, the Swiss Committee against Torture

and the International Committee of the Red Cross. Other hearings took place with two experts in the psychiatric field. Before transmitting in June 1986 the preliminary draft Convention to the CDDH, the DH-EX took into account the opinions of the European Committee for Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) which had been consulted by the CDDH.

10. In addition to the CDCJ and the CDCP, the CDDH also consulted the European Commission and Court of Human Rights. The text of the draft European Convention for the prevention of torture and inhuman or degrading treatment or punishment was finalised at the CDDH's 21st meeting in November 1986 and then transmitted to the Committee of Ministers.
11. After having consulted the Assembly (see Opinion No. 133 of 27 March 1987), the Committee of Ministers adopted the text of the Convention on 26 June 1987. It was opened for signature by member States of the Council of Europe on 26 November 1987.

## II. REASONS FOR THE ELABORATION OF A NEW CONVENTION

12. Torture and inhuman or degrading treatment or punishment are prohibited in national law and by several international instruments. Experience shows, however, that there is a need for wider and more effective international measures, in particular to strengthen the protection of persons deprived of their liberty.
13. Within the Council of Europe, the supervisory system established by the Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950, has achieved important results. It is considered that this system, which is based on complaints from individuals or from States claiming that human rights violations have taken place, could usefully be supplemented by non-judicial machinery of a preventive character, whose task would be to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.
14. For these reasons the present Convention establishes a Committee which may visit any place within the jurisdiction of the Parties where persons are deprived of their liberty by a public authority.

### III. MAIN FEATURES OF THE NEW SYSTEM

15. As indicated in paragraphs 13 and 14 above, the Committee's function is to carry out visits and, where necessary, to suggest improvements as regards the protection of persons deprived of their liberty from torture and from inhuman or degrading treatment or punishment.
16. The members of the Committee will serve in their individual capacity and be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by the Convention. If the Committee considers it necessary, it may be assisted by suitably qualified experts.
17. It is not for the Committee to perform any judicial functions: it is not its task to adjudge that violations of the relevant international instruments have been committed. Accordingly, the Committee shall also refrain from expressing its views on the interpretation of those instruments either *in abstracto* or in relation to concrete facts.
18. When deciding whether there is a need for making recommendations, the Committee will, of course, have to assess the facts found during its visits. As the Committee is not competent to hear witnesses in conformity with general principles of judicial procedure, it will not have a sufficient basis for making recommendations if the facts are unclear and there is a need for further investigations. In such cases, the Committee may then inform the State concerned and suggest that further investigations be conducted at the national level and request to be kept informed of the results of the enquiry.
19. As a follow-up, the Committee may arrange for fresh visits to the places already visited.
20. In the application of the Convention, the Committee and the State concerned are obliged to co-operate. The purpose of the Committee is not to condemn States, but, in a spirit of co-operation and through advice, to seek improvements, if necessary, in the protection of persons deprived of their liberty.



## IV. OBSERVATIONS ON THE PROVISIONS OF THE CONVENTION

### **Preamble**

21. The preamble sets out reasons which led member States of the Council of Europe to adopt this Convention and states its purpose (see Chapters I to III above).
22. The reference to Article 3 of the European Convention on Human Rights will provide the Committee with a point of reference for its consideration of situations liable to give rise to torture or inhuman or degrading treatment or punishment (see *infra*, paragraphs 26 and 27).

### **Article 1**

23. This Article establishes the body which is to carry out the visits, and the purpose of the visits. In this way it describes the principal functions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
24. The notion of “deprivation of liberty” for the purposes of the present Convention is to be understood within the meaning of Article 5 of the European Convention on Human Rights as elucidated by the case law of the European Court and Commission of Human Rights. However, the distinction between “lawful” and “unlawful” deprivation of liberty arising in connection with Article 5 is immaterial in relation to the Committee’s competence.
25. As already pointed out in paragraph 17, the Committee shall not perform any judicial functions: its members will not have to be lawyers, its recommendations will not bind the State concerned and the Committee shall not express any view on the interpretation of legal terms. Its task is a purely preventive one. It will carry out fact-finding visits, and, if necessary, on the basis of information obtained through them, make recommendations with a view to strengthening the protection of persons deprived of their liberty from torture and from inhuman or degrading treatment or punishment.
26. The prohibition of torture and inhuman or degrading treatment or punishment is a general international standard which, albeit differently formulated, is found in various international instruments, such as Article 3 of the European Convention on Human Rights.
27. The case law of the Court and Commission of Human Rights on Article 3 provides a source of guidance for the Committee. However, the Committee’s activities are aimed at future prevention rather than the application of legal requirements to existing circumstances. The Committee should not seek to interfere in the interpretation and application of Article 3.

## Article 2

28. By this provision Parties to the Convention agree to permit visits to any place within their jurisdiction where one or more persons are deprived of their liberty by a public authority. It is immaterial whether the deprivation is based on a formal decision or not.
29. Visits may take place in any circumstances. The Convention applies not only in peace time, but also during war or any other public emergency. The Committee's competence is, however, limited as regards the places it may visit by the provisions of Article 17, paragraph 3 (see *infra*, paragraph 93).
30. Visits may be organised in all kinds of places where persons are deprived of their liberty, whatever the reasons may be. The Convention is therefore applicable, for example, to places where persons are held in custody, are imprisoned as a result of conviction for an offence, are held in administrative detention, or are interned for medical reasons or where minors are detained by a public authority. Detention by military authorities is also covered by the Convention.
31. Visits to places where persons are deprived of their liberty because of their mental condition will require careful preparation and handling, for example as regards the qualifications and experience of those chosen for the visit and the manner in which the visit is conducted. In carrying out its visits, moreover, the Committee will no doubt wish to have regard to any relevant Recommendation adopted by the Committee of Ministers.
32. Visits may be carried out in private as well as public institutions. The criterion is whether the deprivation of liberty is the result of action by a public authority. Accordingly, the Committee may carry out visits only in relation to persons who are deprived of their liberty by a public authority, and not voluntary patients. However, in the latter case, it should be possible for the Committee to satisfy itself that this was indeed the wish of the patient concerned.

## Article 3

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

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

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

#### **Article 4**

##### Paragraph 1

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

##### Paragraph 2

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

##### Paragraph 3

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

##### Paragraph 4

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

## **Article 5**

### Paragraph 1

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

### Paragraph 2

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

### Paragraph 3

41. The term of office has been fixed at four years, with the possibility of re-election only once.

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

## **Article 6**

### Paragraph 1

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

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

### Paragraph 2

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

### Paragraph 3

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

## **Article 7**

### Paragraph 1

47. This paragraph provides that it is the responsibility of the Committee to organise the visits to places referred to in Article 2 of the Convention. It also indicates that the Committee may organise periodic visits as well as ad hoc visits.
48. With regard to periodic visits, if it is to be effective the Committee will inevitably have to take into account the number of places to be visited in the States concerned. The Committee should also ensure, as far as possible, that the different States are visited on an equitable basis. Furthermore, its programme of periodic visits should not imply, for practical reasons, systematic visits in all places where persons are deprived of their liberty. The Committee should even accord a certain priority to ad hoc visits which appear to it to be required in the circumstances.
49. With regard to such ad hoc visits the Committee enjoys discretion as to when it deems a visit necessary and as to elements on which its decision is based. Thus, whilst the Committee should not be concerned with the investigation of individual complaints (for which provision is already made, e.g. under the European Convention on Human Rights), it should be free to assess communications from individuals or groups of individuals and to decide whether to exercise its functions upon such communications. It should enjoy similar discretion in the event of a Party expressing the desire that the Committee should conduct a visit to places within its jurisdiction in order to investigate certain allegations and to clarify the situation.

### Paragraph 2

50. The visits themselves need not necessarily be carried out by the full Committee; it is indeed probable that a visit by the full Committee would arise only in exceptional situations. Provision is therefore made in paragraph 2 for the visits to be carried out, as a general rule, by at least two members of the Committee, acting in the name of the latter. Exceptionally, however, the Committee may be represented by only one member, e.g. in ad hoc visits of an urgent nature when only one member is available.
51. If the Committee considers it necessary, it may be assisted by experts and interpreters. The underlying idea is to supplement the experience of the Committee by the assistance, for example, of persons who have special training or experience of humanitarian missions, who have a medical background or possess a special competence in the treatment of detainees or in prison regimes and, when appropriate, as regards young persons.

52. When organising a visit, the Committee will take into account the need to have at its disposal sufficient knowledge of the State concerned and its language.
53. The member or members of the Committee chosen to carry out a visit will enjoy the necessary authority for the contacts with the national authorities. They will have responsibility for the general conduct of the visit and for the findings submitted to the Committee after the visit.

### **Article 8**

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

#### Paragraph 1

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

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

56. This provision does not specify the period of time which should elapse (for example twenty-four or forty-eight hours) between the notification and the moment the visit becomes effective. Indeed, exceptional situations could arise in which the visit takes place immediately after the notification has been given. However, as a general rule and taking into consideration the principle of co-operation set out in Article 3, the Committee should give the State concerned reasonable time to take the necessary measures to make the visit as effective as possible. On the other hand, the Committee should carry out the visit within a reasonable time after the notification.
57. In the same spirit of co-operation, in cases where the notification announces the intention of the Committee to visit a State, without specifying the date and place of arrival, it is expected that the Committee will provide such details subsequently, before the visit takes place.

58. The notification should, in addition to announcing the visit, contain the names of members of the Committee and identify the experts taking part in the visit, the interpreters and other accompanying staff, as well as the places which the Committee intends visiting. However, the fact that specific establishments are mentioned in the notification should not preclude the Committee from announcing that it also wishes to visit other establishments in the course of the visit.
59. Finally, it is expected that the Committee will bear in mind that visits to high security prison establishments may require careful preparation.

#### Paragraph 2

60. It is understood, in view of the particular nature of the visits which the Committee is required to make, that this paragraph applies equally before, during and after visits. The paragraph contains an exhaustive list of the facilities with which the Committee is entitled to be provided by the Party. It is, however, understood that the Party should render the Committee other necessary assistance to facilitate its work.
61. Under sub-paragraph (a), which must be read in conjunction with Articles 2 and 16, conditions prescribed by Parties with respect to immigration (e.g. visas) may not be invoked against members of the visiting team (subject to Article 14, paragraph 3 in respect of experts and other persons assisting the Committee). It is understood that the right to travel without restrictions does not give the Committee or its experts the general freedom to move within areas which are restricted for reasons of national defence (cf. Article 9).
62. Under sub-paragraph (b), each Party must supply the Committee on request with a list of the places under its jurisdiction where persons deprived of their liberty are being held, stating the nature of the establishment (prison, police station, hospital, etc.). It is understood that, in supplying a list, the State concerned may provide a general description of places where persons are capable of being held from time to time, for example, all police stations or all military barracks, in addition to a specific list or permanent places where persons are deprived of their liberty, such as prisons and mental health institutions. It is envisaged that the Committee will eventually request a comprehensive list of places within a particular area which it intends to visit within the jurisdiction of the State. On the other hand, it is not necessary for the State to make a list of all detainees. If, for particular reasons, the Committee wishes to obtain information about a specific person (including his or her place of detention), it may ask for it under sub-paragraph (d) of this paragraph 2.

63. Sub-paragraph (c) emphasises the freedom of movement of the members of the Committee, particularly inside places referred to in Article 2. But this provision does not prevent the Committee from being accompanied by an official from the visited State, in order to assist with the visit (cf. Article 15). The State may in particular require the Committee to be accompanied by a senior officer in places which are secret for reasons of national defence or which enjoy special protection for reasons of national security (cf. Article 9). However, an accompanying person must not be present at the interviews in private mentioned in paragraph 3 of this Article.
64. Sub-paragraph (d) obliges Parties to provide the Committee with information available to them which is necessary for the Committee to carry out its task. Access to information will clearly be of great importance to the Committee. At the same time, it is acknowledged that particular rules concerning disclosure of information may be applicable in member States. Accordingly, the Committee is for its part obliged, when seeking information from a Party, to have regard to applicable rules of national law and professional ethics (in particular rules regarding data protection and rules of medical secrecy). It is envisaged that possible difficulties in this field will be resolved in the spirit of mutual understanding and co-operation upon which the Convention is founded.
65. It is understood that it is for Parties to decide the form (e.g. originals or copies of documents) in which the information requested by the Committee shall be communicated.

#### Paragraph 3

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

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

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

#### Paragraph 4

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



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

#### Paragraph 5

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

### **Article 9**

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

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

72. A Party which wishes to invoke the provisions of Article 9 is required to make representations as to the relevant circumstances to the Committee. The Committee and the Party would then be required by paragraph 2 to enter into consultations to elucidate the circumstances cited by the Party and their bearing on the proposals notified by the Committee pursuant to Article 8. The Committee and the Party are also required (and this is a particular example of the co-operation enjoined by Article 3) to seek agreement on ways in which the Committee will be able to per-

form its functions speedily and effectively. One possibility which is specified in the Article is that if, for example, representations are made on national security grounds against a visit to a particular place, any person who is deprived of his liberty in that place shall be transferred to another place where he may be visited by the Committee. This paragraph also provides that when a visit to any place is postponed, the Party shall ensure that the Committee is fully informed about the persons who are deprived of their liberty at that place.

### **Article 10**

#### Paragraph 1

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

#### Paragraph 2

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

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

### **Article 11**

#### Paragraph 1

76. This provision establishes the principle of the confidential nature of the Committee's activities. The "information gathered by the Committee" may consist

of facts it has itself observed, information which it has obtained from external sources and information which it has itself collected.

Paragraph 2

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

Paragraph 3

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

**Article 12**

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

**Article 13**

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

**Article 14**

Paragraph 1

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

### Paragraph 2

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

### Paragraph 3

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

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

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

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

### **Article 15**

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

### **Article 16**

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

## **Article 17**

### Paragraph 1

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

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

### Paragraph 2

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

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

### Paragraph 3

93. It follows from Article 2 that the Convention applies both in time of peace and in time of war. However, it appeared necessary to take account of the existence of other international instruments, in particular the Geneva Conventions of 12 August 1949 and the 8 June 1977 Protocols. In the case of armed conflict

(international or non-international) the Geneva Conventions must have priority of application; that is to say that the visits will be carried out by the delegates or representatives of the International Committee of the Red Cross (ICRC)<sup>1</sup>. However, the new Committee could proceed to visit certain places where (particularly in the event of non-international armed conflict) the ICRC does not visit them “effectively” or “on a regular basis”. On the other hand, visits to detainees made by the ICRC in time of peace in a specific country by virtue of bilateral agreements (outside the framework of the Geneva Convention) are not covered by this provision. In such cases the Committee must decide what attitude to adopt taking account of the situation and status of persons who might be the subject of a visit.

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

### **Articles 18 to 23**

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

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

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







### **3. PROTOCOL No. 1 TO THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT<sup>1</sup>**

The member States of the Council of Europe, signatories to this Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed at Strasbourg on 26 November 1987 (hereinafter referred to as “the Convention”),

Considering that non-member States of the Council of Europe should be allowed to accede to the Convention at the invitation of the Committee of Ministers,

Have agreed as follows:

#### ***Article 1***

A sub-paragraph shall be added to Article 5, paragraph 1, of the Convention as follows:

“Where a member is to be elected to the Committee in respect of a non-member State of the Council of Europe, the Bureau of the Consultative Assembly shall invite the Parliament of that State to put forward three candidates, of whom two at least shall be its nationals. The election by the Committee of Ministers shall take place after consultation with the Party concerned.”

#### ***Article 2***

Article 12 of the Convention shall read as follows:

“Subject to the rules of confidentiality in Article 11, the Committee shall every year submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Assembly and to any non-member State of the Council of Europe which is a party to the Convention, and made public.”

#### ***Article 3***

The text of Article 18 of the Convention shall become paragraph 1 of that article and shall be supplemented by the following second paragraph:

“2 The Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe to accede to the Convention”.

#### ***Article 4***

In paragraph 2 of Article 19 of the Convention, the word “member” shall be deleted and the words “or approval,” shall be replaced by “approval or accession”.

1 This Protocol was adopted at the 479th meeting of the Ministers Deputies (6 to 10 September 1993) and opened for signature on 4 November 1993.

### **Article 5**

In paragraph 1 of Article 20 of the Convention, the words “or approval” shall be replaced by “approval or accession,”.

### **Article 6**

1. The introductory sentence of Article 23 of the Convention shall read as follows:  
“The Secretary General of the Council of Europe shall notify the member States and any non-member State of the Council of Europe party to the Convention of:”
2. In Article 23.b of the Convention, the words “or approval;”, shall be replaced by “approval or accession;”.

### **Article 7**

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:
  - a) signature without reservation as to ratification, acceptance or approval; or
  - b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 8**

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 7.

## **Article 9**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) the date of entry into force of this Protocol, in accordance with Article 8;
- d) any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at ... this ... day of ..., in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.



#### **4. PROTOCOL No. 2 TO THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT<sup>1</sup>**

The States, signatories to this Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed at Strasbourg on 26 November 1987 (hereinafter referred to as “the Convention”),

Convinced of the advisability of enabling members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (hereinafter referred to as “the Committee”) to be re-elected twice;

Also considering the need to guarantee an orderly renewal of the membership of the Committee,

Have agreed as follows:

##### ***Article 1***

1. In Article 5, paragraph 3, the second sentence shall read as follows:  
“They may be re-elected twice”.
2. Article 5 of the Convention shall be supplemented by the following paragraphs 4 and 5:  
“4. In order to ensure that, as far as possible, one half of the membership of the Committee shall be renewed every two years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than four years but not more than six and not less than two years.”  
  
“5. In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General, immediately after the election.”

##### ***Article 2***

1. This Protocol shall be open for signature by States signatories to the Convention or acceding thereto, which may express their consent to be bound by:
  - a) signature without reservation as to ratification, acceptance or approval; or
  - b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance of approval.

<sup>1</sup> This Protocol was adopted at the 479th meeting of the Ministers Deputies (6 to 10 September 1993) and opened for signature on 4 November 1993.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 3**

The Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 2.

### **Article 4**

The Secretary General of the Council shall notify the member States of the Council of Europe and non-member States Parties to the Convention of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) the date of any entry into force of this Protocol, in accordance with Article 3;
- d) any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at ... this ... day of ..., in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.







## **5. RULES OF PROCEDURE OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT<sup>1</sup>**

The Committee,

Having regard to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”);

Pursuant to Article 6, paragraph 2, of the Convention,

Adopts the present Rules:

### TITLE I. ORGANISATION OF THE COMMITTEE

#### **Chapter I Members of the Committee**

##### ***Rule 1 (Calculation of term of office)***

1. The duration of the term of office of a member of the Committee shall be calculated as from his election, unless the Committee of Ministers stipulates otherwise when proceeding to the election<sup>2</sup>.
2. A member elected to replace a member whose term of office has not expired shall be elected for a four year term of office.

##### ***Rule 2 (Solemn declaration)***

Before taking up his duties, each member of the Committee shall, at the first meeting of the Committee at which he is present after his election, make the following solemn declaration:

“I solemnly declare that I will exercise my functions as a member of this Committee honourably, independently, impartially and conscientiously and that I will keep secret all Committee proceedings”.

1 Adopted on 16 November 1989 and amended on 8 March 1990, 11 May 1990, 9 November 1990, 31 January 1991, 20 September 1991 and 12 March 1997.  
2 Paragraph amended by the Committee on 12 March 1997.

**Rule 3**  
**(Precedence)**

1. Members of the Committee shall take precedence after the President and Vice-Presidents according to the length of time they have been in office.
2. Members having the same length of time in office shall take precedence according to age.
3. Re-elected members shall take precedence having regard to the duration of their previous term of office.

**Rule 4**  
**(Resignation)**

Resignation of a member of the Committee shall be notified to the President, who shall transmit it to the Secretary General of the Council of Europe.

**Chapter II**  
**Presidency of the Committee**

**Rule 5**  
**(Election of the President and Vice-Presidents)**

1. The Committee shall elect from among its members a President and a first and second Vice-President.
2. The President and Vice-Presidents shall be elected for a term of two years. They may be re-elected. However, the term of office of the President or of a Vice-President shall end if he ceases to be a member of the Committee.
3. If the President or a Vice-President ceases to be a member of the Committee or resigns his office of President or Vice-President before its normal expiry, the Committee may elect a successor for the remainder of the term of that office.
4. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the members present.
5. If no candidate is elected after the first ballot, a second ballot shall take place between the two candidates who have received most votes; in the case of equal voting, the candidate having precedence under Rule 3 shall take part in the

second ballot. If necessary, a third ballot shall take place between the two candidates concerned. The candidate who receives the most votes in such a third ballot or, in the case of equal voting, who has precedence under Rule 3, shall be declared elected.

6. If there are only two candidates for a vacant office and neither of the candidates is elected after the first ballot, a second ballot shall take place. The candidate who receives the most votes in such a second ballot or, in the case of equal voting, who has precedence under Rule 3, shall be declared elected.

**Rule 6**  
***(Functions of the President)***

1. The President shall chair the meetings of the Committee and shall perform all other functions conferred upon him by these Rules of Procedure and by the Committee.
2. In exercising his functions, the President shall remain under the authority of the Committee.
3. The President may delegate certain of his functions to either Vice-President.

**Rule 7**  
***(Functions of the Vice-Presidents)***

The first Vice-President shall take the place of the President if the latter is unable to carry out his duties or if the office of President is vacant. The second Vice-President shall replace the first Vice-President if the latter is unable to carry out his duties or if the office of first Vice-President is vacant.

**Rule 8**  
***(Replacement of the President and Vice-Presidents)***

If the President and Vice-Presidents are at the same time unable to carry out their duties or if their offices are at the same time vacant, the duties of President shall be carried out by another member of the Committee according to the order of precedence laid down in Rule 3.

**Rule 9**  
***(Obstacle to the exercise of the functions of President)***

No member of the Committee shall preside when the report on a visit to the State Party in respect of which he was elected is being considered.

### **Chapter III Bureau of the Committee**

#### ***Rule 10***

1. The Bureau of the Committee shall consist of the President and Vice-Presidents. If one or more members of the Bureau are unable to carry out their duties, they shall be replaced by other members of the Committee in accordance with the rules of precedence laid down in Rule 3.
2. The Bureau shall direct the work of the Committee and shall perform all other functions conferred upon it by these Rules of Procedure and by the Committee.

### **Chapter IV Secretariat of the Committee**

#### ***Rule 11***

The Secretariat of the Committee shall consist of a Secretary and other staff members appointed by the Secretary General of the Council of Europe.

## TITLE II. WORKING OF THE COMMITTEE: GENERAL RULES

### **Chapter I Seat of the Committee and languages**

#### ***Rule 12 (Seat of the Committee)***

The seat of the Committee shall be in Strasbourg.

#### ***Rule 13 (Languages)***

The official and working languages of the Committee shall be English and French.

## **Chapter II**

### **Meetings of the Committee**

#### **Rule 14** **(Holding of meetings)**

1. The Committee and its Bureau shall hold such meetings as are required for the exercise of their functions.
2. Committee meetings shall be convened at dates decided by the Committee. The Committee shall meet at other times by decision of the Bureau, as circumstances may require. It shall also meet if at least one third of the members so request.
3. The Secretary shall notify the members of the Committee of the date, time and place of each Committee meeting. Whenever possible, such notification shall be given at least six weeks in advance.

#### **Rule 15** **(Agenda)**

1. Following consultation with the Bureau, the Secretary shall transmit to the members a draft agenda simultaneously with the notification of the meeting.
2. The agenda shall be adopted by the Committee at the beginning of the meeting.

#### **Rule 16** **(Meeting documentation)**

The Secretary shall transmit to the members of the Committee the working documents relating to the different agenda items, whenever possible at least four weeks in advance.

#### **Rule 17** **(Quorum)**

The quorum of the Committee shall be the majority of its members.

#### **Rule 18** **(Privacy of meetings)**

1. The Committee shall meet in camera. Its deliberations shall remain confidential.

2. Apart from members of the Committee, only members of the Committee's Secretariat, interpreters and persons providing technical assistance to the Committee may be present at its meetings, unless the Committee decides otherwise.

**Rule 19**  
**(Hearings)**

The Committee may hear any person whom it considers to be in a position to assist it in the performance of its functions under the Convention.

**Chapter III**  
**Conduct of business**

**Rule 20**  
**(Proposals)**

A proposal must be submitted in writing if a member of the Committee so requests. In that case it shall not be discussed until it has been circulated.

**Rule 21**  
**(Order of voting on proposals and amendments)**

1. Where a number of proposals relate to the same subject, they shall be put to the vote in the order in which they were submitted. In case of doubt, the President shall decide.
2. Where a proposal is the subject of an amendment, the amendment shall be put to the vote first. Where two or more amendments to the same proposal are presented, the Committee shall vote first on whichever departs furthest in substance from the original proposal, and so on until all the amendments have been put to the vote. However, where the acceptance of one amendment necessarily entails rejection of another, the latter shall not be put to the vote. The final vote shall then be taken on the proposal as amended or not amended. In case of doubt as to the order of priority, the President shall decide.
3. Parts of a proposal or amendment may be put to the vote separately.
4. In the case of proposal with financial implications, the most costly shall be put to the vote first.

**Rule 22**  
**(Order of procedural motions)**

Procedural motions shall take precedence over all other proposals or motions except points of order. They shall be put to the vote in the following order:

- a) suspension of the meeting;
- b) adjournment of the meeting;
- c) adjournment of discussion on the item in hand;
- d) closure of discussion on the item in hand.

**Rule 23**  
**(Reconsideration of a question)**

When a decision has been taken it is only re-examined if a member of the Committee so requests and the Committee accedes to this request.

**Rule 24**  
**(Voting)**

1. Subject to the provisions of Rules 44 (paragraph 1), 47, 48, 50 and 51, the decisions of the Committee shall be taken by a majority of the members present.
2. In matters other than elections, a proposal shall be regarded as rejected if the majority referred to in paragraph 1 is not obtained.
3. Subject to Rule 5, paragraph 4, the Committee shall normally vote by show of hands. However, any member may request that a vote be taken by roll-call; in this event, the roll shall be called in the alphabetical order of the names of the Committee's members, beginning with the letter 'A'.
4. After a vote has commenced, there shall be no interruption of the voting except on a point of order by a member in connection with the actual conduct of the voting. Brief statements by members consisting solely of explanations of their votes may be permitted by the President before the voting has commenced or after the voting has been completed.

## **Chapter IV**

### **Decisions and meeting reports**

#### ***Rule 25*** ***(Decisions)***

At the end of each meeting the Secretary shall submit to the Committee for its approval a list of the decisions adopted during the meeting.

#### ***Rule 26*** ***(Meeting reports)***

1. A draft report of the Committee's deliberations at each meeting shall be prepared by the Secretary. The draft report shall be circulated as soon as possible to members of the Committee, who will be given the opportunity to submit corrections within a prescribed time-limit.
2. If no corrections are submitted, the meeting report shall be deemed to be adopted. If corrections are submitted, they shall be consolidated in a single document and circulated to all members. In this latter case, the adoption of the meeting report shall be taken up at the next meeting of the Committee.

## **Chapter V**

### **Working parties**

#### ***Rule 27***

The Committee may set-up ad hoc working parties comprising a limited number of its members. The terms of reference of such working parties shall be defined by the Committee.

## **Chapter VI**

### **Communications containing information submitted for the Committee's consideration**

#### ***Rule 28***

1. The Secretary shall bring to the Committee's attention communications received containing information submitted for the Committee's consideration, unless the information in question relates to matters which manifestly fall outside its field of competence.



2. Such communications received by individual members of the Committee shall be forwarded to the Secretariat.
3. The Secretary shall keep a register of all communications received.
4. The Secretary shall send an acknowledgement of receipt to the authors of such communications.

## TITLE III. PROCEDURE CONCERNING VISITS

### **Chapter I** **Basic rules**

#### **Rule 29** ***(The principle of visits)***

Pursuant to Article 1 and 7 of the Convention, the Committee shall organise visits to places referred to in Article 2 of the Convention to examine the treatment of persons deprived of their liberty, with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

#### **Rule 30<sup>3</sup>** ***(Requests for information or explanations)***

1. Before deciding on a particular visit, the Committee or, if appropriate, the Bureau may request information or explanations as regards the general situation in the State concerned, as regards a given place, or as regards an isolated case concerning which it has received reports.
2. Following receipt of such information or explanations, details of remedial action taken by the national authorities may be requested.

#### **Rule 31** ***(Periodic visits)***

1. The Committee shall carry out visits of a periodic nature.
2. Before the end of each calendar year, the Committee shall establish a provisional programme of periodic visits for the following calendar year. In drawing up this programme the Committee shall ensure, as far as possible, that the different

<sup>3</sup> Rule inserted by the Committee on 8 March 1990.

States Parties to the Convention are visited on an equitable basis, regard being had to the number of relevant places in each State Party<sup>4</sup>.

3. The Committee may subsequently decide to modify the above-mentioned programme in the light of circumstances.
4. The Committee shall make public the names of the countries in which periodic visits are envisaged in a given year, after having informed the authorities of each of the States concerned of the likelihood of a visit<sup>5</sup>.

**Rule 32**  
**(Ad hoc visits)**

1. In addition to periodic visits, the Committee may carry out such ad hoc visits as appear to it to be required in the circumstances.
2. When the Committee is not in session, the Bureau may, in case of urgency, decide on the Committee's behalf on the carrying out of an ad hoc visit. The President shall report to the Committee at its next meeting on any action which has been taken under this paragraph.

**Rule 33**  
**(Follow-up visits)**

The Committee may carry out one or more follow-up visits to any place already visited in the context of a periodic or ad hoc visit.

**Rule 34**  
**(Responsibility for carrying out visits)**

1. As a general rule, visits shall be carried out by a delegation of the Committee consisting of at least two of its members. Exceptionally, visits may be carried out by the full Committee or by a single member thereof.
2. The members of the Committee with responsibility for carrying out a visit shall act in the name of the Committee.

**Rule 35**  
**(Notification of visits)**

1. The Committee or, if the Committee is not in session at the relevant time, its President shall notify the Government of the Party concerned of the intention to

4 Paragraph amended by the Committee on 31 January 1991.

5 Paragraph inserted by the Committee on 11 May 1990 and amended on 31 January 1991.

carry out a visit. The notification shall be sent to the authority referred to in Article 15 of the Convention.

2. The notification shall contain the names of the Committee members responsible for carrying out the visit and of all persons assisting the visiting delegation.
3. The notification shall indicate the places which the delegation intends to visit. However, this shall not prevent the visiting delegation from deciding to visit also places not indicated in the notification.
4. The notification of a visit in pursuance of paragraphs 1 to 3 may be given in stages.<sup>6</sup>

**Rule 36**  
**(Register of visits)**

The Secretary shall maintain a register of all visits carried out by the Committee.

**Chapter II**  
**Visiting delegations**

**Rule 37**  
**(Choice of members)**

1. The members of the Committee to carry out a visit shall be chosen by the Committee or, in case of urgency when the Committee is not in session, by the Bureau. Due regard shall be had to the nature of the visit in question, and in particular to the type of place or places to be visited, when the composition of the delegation is determined.
2. the member of the Committee elected in respect of the State to be visited shall not be chosen as a member of the visiting delegation<sup>7</sup>.
3. In consultation with the Bureau, the members of the delegation shall appoint one of their number as Head of the Delegation<sup>8</sup>.

**Rule 38**  
**(Assistants)**

1. The Committee or, in case of an ad hoc visit under Rule 32, paragraph 2, the Bureau, may decide that a visiting delegation shall be assisted by one or more experts or interpreters.

6 Paragraph inserted by the Committee on 8 March 1990.

7 Paragraph inserted by the Committee on 9 November 1990.

8 Paragraph amended by the Committee on 31 January 1991.

2. As a rule, a visiting delegation shall not be assisted by an expert who is a national of the State to be visited<sup>9</sup>.
3. At least one member of the Secretariat of the Committee shall accompany each visiting delegation.
4. All persons assisting a visiting delegation shall act on the instructions and under the authority of the Head of the delegation.

**Rule 39**  
**(Procedure for visits)**

1. Visiting delegations shall carry out visits in accordance with any general or specific instructions or guidelines issued by the Committee or, as the case may be, the Bureau.
2. A visiting delegation may immediately communicate observations to the authorities of the Party concerned.

**Rule 40**  
**(Visiting delegation reports)**

On the completion of its visit, a visiting delegation shall as soon as possible submit a report to the Committee. This report shall contain in particular:

- a description of the different stages of the visit;
- an account of the facts found during the visit and of consultations with the authorities of the Party concerned, that are of relevance for the Committee's report;<sup>10</sup>
- proposals for any recommendations which the visiting delegation considers should be addressed to the Party.

<sup>9</sup> Indent amended by the Committee on 31 January 1991.

<sup>10</sup> Indent amended by the Committee on 31 January 1991.

## TITLE IV. POST-VISIT PROCEDURE

### **Chapter I** **Reports and recommendations**

#### **Rule 41** ***(Preparation of the Committee's report)***

1. After each visit the Committee shall draw up, in the light of the visiting delegation's report, a report for transmission to the Party concerned. This report shall set out the facts found during the visit and contain any recommendations which the Committee considers necessary with a view to strengthening the protection of persons deprived of their liberty.
2. When drawing up its report, the Committee shall take account of any observations which the Party concerned might submit to it following a visit. Further, the Committee may on its own initiative seek observations or additional information from the Party.
3. After its adoption, the report shall be transmitted to the Party concerned by the President.

#### **Rule 42** ***(Confidential nature of the report)***

1. The report transmitted to a Party following a visit is and, as a rule, shall remain confidential. However, the Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.
2. If the Party itself makes the report public, but does not do so in its entirety, the Committee may decide to publish the whole report.
3. Similarly, the Committee may decide to publish the whole report if the Party concerned makes a public statement summarising the report or commenting upon its contents.<sup>11</sup>
4. Publication of the report by the Committee under paragraphs 1 to 3 of this Rule shall be subject to the provisions of Rule 45, paragraph 2.<sup>12</sup>

11 Paragraph inserted by the Committee on 20 September 1991.

12 Paragraph amended by the Committee on 20 September 1991.

**Rule 43**  
**(Subsequent consultations)**

After transmission of the Committee's report, the Committee and the Party may hold consultations concerning in particular the implementation of any recommendations set out in the report.

**Chapter II**  
**Public statements**

**Rule 44**

1. If a Party fails to co-operate with the Committee or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, by a majority of two-thirds of its members, to make a public statement on the matter.
2. Before a decision to make such a statement is taken, the Party concerned shall be given an opportunity to make known its views.
3. Subject to the provisions of Rule 45, paragraph 2, the Committee shall be released from the obligation of confidentiality set out under Title V when making a public statement.

TITLE V. CONFIDENTIALITY

**Rule 45**

1. Subject to Rules 42 and 44, information gathered by the Committee in relation to a visit, its report on that visit, and its consultations with the Party concerned shall be and shall remain confidential. The same shall apply to all Committee meeting reports and working documents.
2. No personal data shall be published without the express consent of the person concerned.

**Rule 46**

1. Members of the Committee, experts and other persons assisting the Committee are required, during and after their terms of office, to maintain the confiden-

tiality of the facts or information of which they have become aware during the discharge of their functions.

2. A provision to the above effect shall be inserted in the contracts of experts and interpreters recruited to assist the Committee.

**Article 47<sup>13</sup>**

If there are serious grounds for believing that a Committee member has violated the obligation of confidentiality, the Committee may, after the member concerned has had an opportunity to state his views, decide by a majority of two-thirds of its members to inform the Committee of Ministers of the matter.

**Article 48<sup>14</sup>**

1. If there are serious grounds for believing that a member of the Committee's Secretariat or an interpreter has violated the obligation of confidentiality, the Committee may, after the person concerned has had an opportunity to state his views, decide by a majority of its members to inform the Secretary General of the Council of Europe of the matter and request that appropriate measures be taken.
2. If there are serious grounds for believing that an expert has violated the obligation of confidentiality, the Committee shall, after the person concerned has had an opportunity to state his views, decide by a majority of its members on the measures to be taken.

TITLE VI. ANNUAL GENERAL REPORT OF THE COMMITTEE

**Rule 49**

1. Subject to the obligation of confidentiality set out under Title V, the Committee shall every year submit to the Committee of Ministers a general report on its activities, which shall be transmitted to the Consultative Assembly and made public.
2. The report shall contain inter alia information on the organisation and internal workings of the Committee and on its activities proper, with particular mention of the States visited.
3. Whenever possible, the report shall be adopted at the first meeting of the Committee in a given calendar year and cover the whole of the preceding

13 Rule inserted by the Committee on 9 November 1990.

14 Rule inserted by the Committee on 9 November 1990.

calendar year. The Secretary shall submit a draft report to the Committee in good time.

## TITLE VII. AMENDMENTS AND SUSPENSION

### ***Rule 50 (Amendment of the Rules)***

These Rules of Procedure may be amended by decision taken by a majority of the members of the Committee, subject to the provisions of the Convention.

### ***Rule 51 (Suspension of a Rule)***

Upon the proposal of a Committee member, the application of a Rule may be suspended by decisions taken by a majority of the members of the Committee, subject to the provisions of the Convention. The suspension of a Rule shall be limited in its operation to the particular purpose for which such suspension has been sought.







## **6. SOME ISSUES CONCERNING THE INTERPRETATION OF THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

### INTRODUCTORY NOTE

In the 1st and 2nd General Reports on its activities (cf. CPT (91) 3, paragraphs 74 to 77, and CPT/Inf (92) 3, paragraph 15, the CPT drew attention to certain legal issues which had arisen concerning the interpretation of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment. The issues in question related to the application of visa requirements to members of CPT visiting delegations, the giving of reasons when Article 14 (3) of the Convention is invoked (objections to an expert, or other person assisting the Committee, taking part in a visit), and the legal status of the Explanatory Report on the Convention.

At the suggestion of the CPT, the Committee of Ministers has decided to declassify the documents dealing with these matters.

The documents concerned are:

- a) A letter of 7 September 1990 from the President of the CPT to the Secretary General of the Council of Europe (visa requirements).
- b) A second letter, of 9 November 1990, from the President of the CPT to the Secretary General (Article 14 (3) of the Convention and legal status of the Explanatory Report)
- c) A report prepared by the Ministers' Deputies Rapporteur Group on Legal Co-operation (forwarded to the CPT on 3 June 1991)
- d) A letter of 10 July 1991 from the President of the CPT to the Chairman of the Ministers' Deputies.

**A. Letter of 7 September 1990 from the President of the CPT to the Secretary General of the Council of Europe**

Strasbourg, 7 September 1990

Dear Secretary General,

Subject: The application of visa requirements to members of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) and experts assisting the CPT as regards entry into the country in which they exercise their functions.

As you may well know, some member States of the Council of Europe impose a visa requirement on persons of certain nationalities travelling to their territories. The CPT is about to carry out a visit to one such member State, and the authorities of this country have advanced that a visa requirement it applies to British and Irish nationals travelling to its territory is also applicable to the visiting delegation. In concrete terms, this means that for one member of the delegation, an expert accompanying it and a member of the Secretariat, entry into the country concerned has been subject to obtaining a visa.

This raises a very important question of interpretation of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment.

Article 16 of the Convention provides that the CPT, its members and experts assisting the CPT "shall enjoy the privileges and immunities set out in the annex to (the) Convention". Among the privileges and immunities set out in the annex are to be found the following:

"2. ....

- b) exemption from any restrictions on their freedom of movement: on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions."

The CPT unanimously takes the view that the terms "exemption from any restrictions" on "entry into ... the country in which they exercise their functions" clearly rule out the application of a visa requirement to any member of the CPT or expert assisting it. This view is based on three considerations:

1. Under both customary law and the Vienna Convention on the Law of Treaties (Article 31, paragraph 1), in the interpretation of international treaties a literal construction should be given pride of place; in other words, treaty provisions

should be interpreted according to the ordinary meaning of their terms. Now, it is indisputable that the literal meaning of the provision referred to above entails that no visa requirements can be imposed.

2. The CPT's view is also supported by a logical construction of the provision at issue. Visa requirements are normally imposed for one or more of the following reasons: a) to check on foreign immigration; b) to check on the possible entry of persons suspected of having committed or being likely to commit a criminal offence; c) to retaliate against individual countries that have imposed a visa requirement on nationals of the State requesting possession of a visa. It is self evident that none of these reasons can apply to CPT members or experts working for the Committee. Indeed, when they enter a country for a visit, they accomplish, for a limited period of time, the specific mission provided for in the Convention and therefore act in an international capacity; their nationality does not and should not play any role whatsoever.
3. The view taken by the CPT about the interpretation of the Convention is also in keeping with the principle set out in the Vienna Convention on the Law of Treaties according to which a treaty is to be interpreted in the light of its object and purpose (Article 31, paragraph 1).

As indicated in its preamble, the object and purpose of the Convention is to strengthen the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment by non-judicial means of a preventive character "based on visits". The power of the CPT to carry out visits represents the very core of the Convention.

A number of situations can be envisaged in which the application of visa requirements to CPT members and experts could seriously hamper the exercise of the Committee's power to carry out a visit, and thereby undermine the effectiveness of the Convention as a whole.

I should like to add that, in the considered view of the CPT, it would be in accordance with the spirit of the Convention if members of the Secretariat and interpreters accompanying a CPT visiting delegation were also to be exempted from any visa requirements.

I would be most grateful if you could have the above matters raised before the Committee of Ministers at the earliest opportunity.

Yours faithfully

Antonio Cassese

## **B. Letter of 9 November 1990 from the President of the CPT to the Secretary General of the Council of Europe**

Strasbourg, 9 November 1990

Dear Secretary General,

On behalf of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), I wish to raise an important question relating to the interpretation and application of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, namely the legal status of the Explanatory Report on the Convention.

The CPT has found it necessary to comment upon this matter as a Party to the Convention recently called into question the importance to be attached to the observations in the Explanatory Report. In the context of the application of Article 14, paragraph 3, of the Convention, the Party in question argued:

- a) that the Explanatory Report has no legally-binding authority, and
- b) that even assuming the Report has some value as a supplementary means of interpretation, there is no need to resort to it for guidance if the meaning of the Convention provision to be interpreted is clear.

On the basis of these arguments, the Party concluded that despite what might be said in the Explanatory Report concerning Article 14, paragraph 3, of the Convention, there was no obligation for a Party to respond to a request from the CPT to be given the reasons when the Party invoked Article 14, paragraph 3, and declared that a person assisting the CPT may not be allowed to take part in a visit.

The CPT disagrees with this point of view and wishes to state its own opinion on both:

1. the general question of the legal status of the Explanatory Report, and
2. the specific question of the interpretation of Article 14, paragraph 3, of the Convention.
  1. The legal status of the Explanatory Report

As is apparent from the various meeting reports of the two intergovernmental bodies that drafted the European Convention for the prevention of torture, i.e. the

Steering Committee for Human Rights and the Committee of Experts for the extension of the rights embodied in the European Convention on Human Rights, the draftsmen decided to lay down in the Convention itself the general principles and rules governing the body to be established, namely the CPT, while setting out in detail in the Explanatory Report the manner in which the Convention's provisions were to be interpreted and applied. This compromise greatly facilitated the task of the draftsmen; it proved much easier to work out broad Convention terms and place in the Explanatory Report observations about the manner in which those terms should be applied. Detailed treatment of these matters in the Convention itself would have proved quite laborious and have rendered the text of the Convention too cumbersome.

As a result of the adoption of this approach, the various provisions of the Convention and the relevant parts of the Explanatory Report were always conceived of as two parts of a whole and, indeed, were agreed upon jointly.

The report of the 21st meeting of the Steering Committee for Human Rights, at which the texts of the Convention and the Explanatory Report were adopted and submitted to the Committee of Ministers, provides two clear examples of the above-mentioned duality.

In paragraphs 11 and 12 of the report, a proposal by the German expert to add an additional sentence to Article 17, paragraph 2, of the then draft Convention, spelling out the respective functions of the CPT and the organs of the European Convention on Human Rights, was discussed. All agreed that any overlap between the functions of the CPT and those of the Court and Commission had to be avoided. However, the proposal of the German expert was not accepted since "... the majority thought this idea (i.e. avoidance of overlapping) was already clearly enough expressed in the Explanatory Report and that there was no need for a provision to this effect in the Convention itself, especially as such a detailed provision... raised many substantive and drafting difficulties".

Later on, in paragraphs 32 and 33 of the same meeting report, several proposed amendments to the text of Article 8 of the Convention were considered. However, the proposals were not accepted "... since the relevant provisions of the Explanatory Report seemed satisfactory (see paragraphs 56, 62 and 64 of the Explanatory Report)".

In order to emphasise the special importance to be attached to the Explanatory Report when interpreting and applying the Convention, the Steering Committee for Human Rights inserted the following statement in the report of its 21st meeting:

“At the close of the discussion, the CDDH wished to draw the Committee of Ministers’ attention to the great importance which should be attached to the Explanatory Report in relation to the interpretation of the Convention by the Parties and the new Committee”.

It should be noted that in no other document or report relating to other Conventions or Protocols adopted within the framework of the Council of Europe can one find a similar statement concerning the special legal value to be attached to an Explanatory Report.

The significance of the Explanatory Report as regards the interpretation and application of the Convention is illustrated strikingly in relation to what is perhaps the most crucial of the Convention’s provisions, namely paragraph 1 of Article 8. This provision is a model of simplicity, merely stating as follows:

1. The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2”.

Read in isolation, this provision places an enormous power in the hands of the CPT. A single requirement is provided for, namely that a Party must be informed of the CPT’s intention to carry out a visit; once that requirement has been met, the CPT can apparently do whatever it wants, whenever it wants and however it wants.

It is only in paragraphs 56 to 59 of the Explanatory Report that the conditions under which this provision should be applied are spelt out. These paragraphs are not designed to clarify obscure words of the Convention; in fact, paragraph 1 of Article 8 could hardly be clearer. Rather, they set out the specific conditions under which that provision should be applied. To put it differently, they provide indispensable normative details for the application of Article 8, paragraph 1, of the Convention. I would add that when drafting its Rules of Procedure (see Rule 35) and developing its working methods in general, the CPT has paid scrupulous attention to the observations in paragraphs 56 to 59 of the Explanatory Report.

To sum up, the Explanatory Report is an indispensable element of the proper interpretation and application of the Convention. It is no accident that the phrase “This report does not constitute an instrument providing an authoritative interpretation of the text of the Convention...” traditionally inserted in the preface to an explanatory report is not to be found in the Explanatory Report on the European Convention for the Prevention of Torture. This latter Convention can only be interpreted and applied in the light of the observations provided in the Explanatory Report, which spell out the attention of the draftsmen with regard to each specific provision of the



Convention. Far from being merely a supplementary means of interpretation (cf. Article 32 of the Vienna Convention on the Law of Treaties), the Explanatory Report on the European Convention for the Prevention of Torture is to be considered as an agreement or instrument made in connection with the conclusion of the Convention (cf. Article 31, paragraph 2, of the Vienna Convention on the Law of Treaties).

## 2. The interpretation of Article 14, paragraph 3 of the Convention

Article 14, paragraph 3, of the Convention provides that “A Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction”.

The CPT takes the view that this provision involves an obligation for Parties to state the reasons for any refusal made under it, when requested to do so by the CPT or the relevant visiting delegation.

As pointed out above, each provision of the Convention has to be interpreted and applied in the light of the relevant passage of the Explanatory Report. As regards paragraph 3 of Article 14, paragraph 85 of the Report makes the following observation:

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

The CPT believes it cannot be reasonably argued that although the CPT can ask for the reasons for a refusal under Article 14, paragraph 3, there is no obligation on the Party concerned to provide such reasons. The weakness of such an argument is exposed by the comment made in the second sentence of paragraph 85 of the Explanatory Report. A failure to give reasons can (and in fact did in the particular case which gave rise to this letter) hamper the CPT in its efforts to appoint other persons. In other words, there is a clear practical and functional ground for the view advocated by the Committee. Seen in this light, an obligation to provide reasons is to be considered as flowing from the general principle of co-operation set out in Article 3 of the Convention, which applies to all stages of the CPT’s activities.

In any event, quite apart from anything said in the Explanatory Report, a literal and logical construction of Article 14, paragraph 3, alone leads to the conclusion that a Party must be prepared to disclose its reasons for invoking that provision. In this regard it should be noted that the said paragraph 3 only enables States “exceptionally” to refuse to allow an expert or other person assisting the CPT to take part in a visit.

The word “exceptionally”, if it is to have any significance, must imply that a Party may use its right of refusal only under the most particular circumstances. And it is only via an obligation to provide reasons for a refusal that one can be assured that such circumstances exist. To deny that there is an obligation to give reasons would be tantamount to attributing to each Party an absolutely discretionary power as regards the exercise of the right of refusal under Article 14, paragraph 3, thereby rendering the qualification “exceptionally” a dead letter. Similarly, the giving of reasons is the only means of ensuring that a Party does not abuse its right of refusal, in contravention of the principle of co-operation laid down in Article 3 of the Convention.

I would be most grateful if, as with my letter to you of 7 September 1990 on the subject of visas, you were to have the above matters brought to the attention of the Committee of Ministers.

Yours faithfully,

Antonio Cassese

### **C. Report prepared by the Ministers’ Deputies’ Rapporteur Group on Legal Co-operation**

1. The Committee of Ministers has been asked to interpret certain provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, by the Chairman of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter referred to as the Torture Convention Committee). The Deputies agreed to ask their Rapporteur Group on Legal Co-operation to examine these questions with a view to reporting back to them.

The Rapporteur Group met on 14 March 1991 and arrived at the conclusions set out in this Report.

2. As a first question, the Rapporteur Group examined whether the Committee of Ministers was empowered to interpret the treaties drawn up at the Council of Europe. To this end one has to distinguish between an “authoritative interpretation” binding on the Parties and a non-binding interpretation.
3. The Rapporteur Group unanimously agreed that the Committee of Ministers is not empowered to give an authoritative interpretation of a treaty drawn up at the Council of Europe.

- a) Article 31.3 of the Vienna Convention on the Law of Treaties provides that, for the purpose of the interpretation of a treaty, there shall be taken into account, "together with the context: (a) any subsequent agreement between the Parties regarding the interpretation of the treaty or the application of its provisions".

The Vienna Convention simply codifies the law on the subject, as laid down, in particular, by the Permanent Court of International Justice: "the right to give an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it"<sup>1</sup>.

- b) It is apparent from the foregoing that it is only for the Parties to the treaty to give the treaty an authoritative interpretation.
- c) A treaty prepared at the Council of Europe is not a legal instrument of the Organisation: once it has been adopted by the Committee of Ministers and opened for signature, it becomes a legal instrument in its own right. As a collegiate organ of the Organisation, the Committee of Ministers would not therefore be empowered to give it an authoritative interpretation.
4. A majority of the Group was of the opinion that the Committee of Ministers could give an interpretation of the Convention which would not be binding on the Parties<sup>2</sup>.
5. Whether the Committee of Ministers wishes to give such a non-binding interpretation is not a legal question and it is for the Committee of Ministers as a whole to decide on that.
- a) The following arguments were advanced in favour of giving such an interpretation:
- an interpretation by the Committee of Ministers would certainly have a certain moral and political weight;
  - a refusal by the Committee of Ministers to give such an interpretation might be regarded as unsatisfactory by the Torture Convention Committee.
- b) The following arguments were advanced against giving a non-binding interpretation:
- a non-binding interpretation of the Convention is of no great value, no Contracting Party is bound by it;

1 P.C.I.J., Series B, No. 8, Opinion of 6 December 1923, Jaworzina case.  
2 According to Article 12 of the Convention, the European Committee for the prevention of torture and inhuman or degrading treatment or punishment submits every year a general report on its activities to the Committee of Ministers. The need for an interpretation by the Committee of Ministers might for example be felt in this context.

- the practical problem arising will therefore not be solved by such an interpretation and that might be even less satisfactory for the Torture Convention Committee than not receiving an interpretation from the Committee of Ministers;
  - the Torture Convention Committee can always ask for a meeting to be convened of the Contracting Parties to the Convention which would be empowered to give an authoritative interpretation.
6. One of the arguments advanced by the Chairman of the Torture Convention Committee in favour of his interpretation of the treaty is the text of the explanatory report to the Convention.
  7. The Rapporteur Group unanimously agreed that the explanatory report is of great value for the interpretation of the Convention but that it does not have the same value as the text of the Convention. The explanatory report therefore has to be taken into consideration when giving an opinion. However, as set out above, any such interpretation cannot be an authoritative and therefore binding interpretation, regardless of the weight of the arguments based on the explanatory report.
  8. The first provision of the Convention to be interpreted is Article 16 of the Convention together with paragraph 2b of the Annex providing that the members of the Torture Convention Committee and accompanying experts enjoy “exemption from any restrictions on their freedom of movement: on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.”
  9. The Torture Convention Committee takes the view that the terms “exemption from any restrictions” on “entry into ... the country in which they exercise their functions” clearly rule out the application of a visa requirement to any member of the Torture Convention Committee or expert assisting it. The Rapporteur Group felt unable to agree to such a strict interpretation.
  10. The purpose of this provision of the Convention clearly is to enable members of the Torture Convention Committee and assisting experts to visit the territory of all Contracting Parties and to do so rapidly. To exempt them from visa requirements is one way of achieving this and the Rapporteur Group noted that several Contracting Parties, taking into account their own legislative and administrative arrangements, have provided for such an exemption in their law and have felt

this to be the appropriate way of meeting their commitments under Article 16 of the Convention. The Rapporteur Group was however of the opinion that other arrangements effectively enabling members of the Committee and assisting experts to visit rapidly the territory of a Contracting Party were also compatible with the Convention. In particular the possibility of granting multiple entry visas valid for a period of several years was mentioned. Such visas enable the Committee to carry out even "surprise" or "lightning" visits. The Rapporteur Group noted that national legislation foresee different methods of implementing similar privileges and immunities, with respect to other treaties. It furthermore noted that no practical difficulties had arisen and that visas requested had been granted the following day.

11. The other question of interpretation of the Convention to be examined by the Rapporteur Group concerns Article 14, paragraph 3, of the Convention. According to this Article "a Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction." The Torture Convention Committee maintains that any such refusal has to be motivated. Its argument is based, inter alia, on the relevant provision of the explanatory report.
12. The Rapporteur Group noted that paragraph 85 of the explanatory report is worded as follows:

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

It was argued that this wording does not imply a precise obligation to give reasons. It is only provided that "the Committee may wish to ask ..." and that "such an arrangement may be of assistance ...". On the other hand it was argued that Article 3 of the Convention, according to which "In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other", might require from the State concerned to give its reasons.

13. The Rapporteur Group noted that the Torture Convention Committee had to be enabled to appoint other persons replacing the persons to which entry had been refused and that hitherto the Torture Convention Committee had had no practical difficulties in doing so. In any case, the Rapporteur Group considered that the Torture Convention Committee could, if appropriate, underline in its request for

the reasons of refusal that this explanation would be useful for the choice of another person.

#### **D. Letter of 10 July 1991 from the President of the CPT to the Chairman of the Ministers' Deputies**

Mrs Irene LARSSON  
Extraordinary and Plenipotentiary Ambassador  
Chairman of the Ministers' Deputies

Strasbourg, 10 July 1991

Madam,

I have the honour to refer to your letter of 3 June 1991, by which you forwarded to me, at the request of the Committee of Ministers, the report prepared by the Ministers' Deputies Rapporteur Group on Legal Co-operation, concerning the issues raised in my letters of 7 September and 9 November 1990 to the Secretary General. Allow me at the outset to express the CPT's appreciation of the attention given by the Ministers' Deputies, and more particularly by their Rapporteur Group on Legal Co-operation, to this matter.

The CPT has noted the view of the Rapporteur Group that the Committee of Ministers is not empowered to give an authoritative interpretation of a treaty drawn up within the framework of the Council of Europe. The CPT was, of course, aware that under customary international law, as reaffirmed by the Vienna Convention on the Law of Treaties, only the Parties to a treaty are empowered to give such an authoritative interpretation. However, the CPT was of the opinion that constructions of the European Convention for the prevention of torture given by the Committee of Ministers would carry great weight: it is the organ that decided on the drafting of the Convention, examined and adopted the text prepared by its subordinate bodies and opened the Convention for signature by member States of the Council of Europe.

Despite being of the view that only the Parties to a treaty can provide an authoritative interpretation of the text, the Rapporteur Group was kind enough, in paragraphs 7 to 13 of its report, to examine the questions of interpretation of the Convention raised by the CPT as well as the related issue of the status of the explanatory report on the Convention. The Committee is very grateful to the Rapporteur Group for this. The CPT will, of course, take into account the views of the Rapporteur Group in its future work. However, it would like to take this opportunity to make a number of remarks in response to the Rapporteur Group's comments.

The CPT has noted with satisfaction the unanimous agreement within the Rapporteur Group that the explanatory report on the Convention is of great value for the interpretation of the Convention. As the Rapporteur Group correctly points out, the explanatory report “does not have the same value as the text of the Convention”; the CPT fully shares this opinion and never suggested anything to the contrary. The CPT’s position was, and remains, that the observations in the explanatory report are part of the context in which the meaning of the terms used in the Convention is to be ascertained (cf Article 31, paragraphs 1 and 2, of the Vienna Convention on the Law of Treaties).

On the question of visas, the Rapporteur Group disagrees with the opinion of the CPT that visa requirements may not be applied to members of the CPT and experts assisting it. The CPT is somewhat surprised that despite having earlier in its report unanimously agreed that the explanatory report is of great value for the interpretation of the Convention, the Rapporteur Group makes no mention of the explanatory report when expressing its view on the question of visas. The CPT would point out that it is stated expressly in paragraph 61 of the explanatory report that visa requirements may not be invoked against members of a visiting team.

However, the Rapporteur Group does recognise that members of the CPT and experts assisting it must be in a position to visit rapidly the territory of a Contracting Party, and makes certain practical suggestions in this regard. In particular, the Rapporteur Group mentions the possibility of granting multiple entry visas valid for a period of several years. Although the CPT still believes that the terms of the Convention rule out the application of visa requirements to the above-mentioned persons, it welcomes the comments made by the Rapporteur Group, which are clearly inspired by the principle of co-operation set out in Article 3 of the Convention. Nevertheless, it should be noted that the granting of multiple entry visas may well not prevent difficulties from arising, in particular insofar as experts assisting the CPT are concerned; such experts are appointed on an ad hoc basis for each visit.

As regards the question of interpretation raised concerning Article 14, paragraph 3, of the Convention, the wording of the Rapporteur Group’s report suggests that there was a fair degree of sympathy for the CPT’s view that a Party must state the reasons for any refusal by it to allow an expert or other person assisting the Committee to take part in a visit. However, the CPT would like, with respect, to rectify what is stated in paragraph 13 of the report, namely that hitherto the CPT had had no difficulties in appointing other persons to replace persons refused entry. To quote my letter of 9 November 1990 to the Secretary General, “A failure to give reasons can (and in fact did in the particular case which gave rise to this letter) hamper the CPT in its efforts to appoint other persons”.

The CPT welcomes the suggestion by the Rapporteur Group that the Committee “could, if appropriate, underline in its request for the reasons of the refusal that this explanation would be useful for the choice of another person”. The CPT will follow this suggestion in the future and trusts that Parties will respond accordingly.

More generally, the CPT is confident that through the full respect of the principle of co-operation set out in Article 3 of the Convention, it will be possible to resolve satisfactorily any difficulties that may arise in the future as regards the Convention’s application.

Please accept, Madam, the assurance of my highest consideration.

Antonio Cassese