The Prevention of Torture in Europe

The CPT's Standards on Police and Pre-trial Custody

by Rod Morgan and Malcolm D. Evans

Brochure no 5

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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) together form a unique international system. The Committee's independent experts can go at any time to any country that has ratified the Convention and visit any place of detention there such as prisons, police stations and psychiatric hospitals. The CPT then reports its findings and makes concrete recommendations for preventing torture and ill-treatment.

This unique approach makes the system worthy of study by everyone concerned with or interested in the treatment of persons deprived of liberty and the conditions in which they are detained. The Association for the Prevention of Torture has therefore decided to publish a handbook on the CPT comprising about ten brochures giving a simple practical account of the Committee's work, mandate and operation, the standards it has built up and the prospects for its co-operation with NGOs.

Founded in 1977
by Jean-Jacques Gautier

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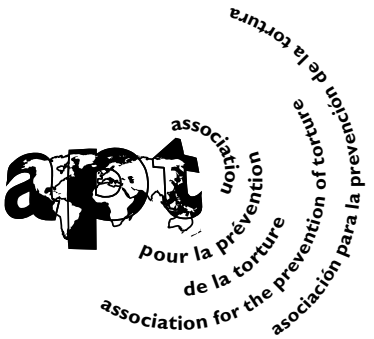

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FOREWORD

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 forty countries in Europe, but its work remains unknown and poorly publicised. This is the reason why the APT is elaborating 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 supposed 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 brochures, which can be used separately or as a whole, for example in the context of NGO seminars or training sessions for persons concerned. The brochures will be published gradually during the next three years and cover the following aspects of the CPT's activities:

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

The present brochure describes the standards on police and pre-trial custody developed by the CPT in its annual General Reports on activities as well as in the country visit reports. Initially, the brochure aims to identify fundamental and procedural safeguards for detainees and then goes on to describe standards relating to conditions generally.

AUTHORS' NOTE

The primary purpose of this brochure is to describe the standards relating to procedures and conditions developed by the European Committee for the Prevention of Torture (CPT) to safeguard persons detained in police custody and make less likely their ill-treatment. The principal source of these standards is the CPT's 2nd annual General Report paras. 35-60, but this initial statement has been developed in many subsequent country inspection reports, references to many of which are cited in the endnotes.

In most countries, custody in police establishments is very transitory – a matter of hours or a few days. However, in a minority of countries there are special police gaols in which pre-trial detainees may be kept for prolonged periods. This issue is addressed in Part IV of this brochure. This means that some issues relating to pre-trial custody – in most countries a matter for the prison authorities rather than the police – is dealt with in this brochure rather than Brochure Six which concerns prison conditions generally. Conversely, where the CPT has had particular things to say about persons detained under immigration provisions – which in most countries means detention in police establishments – this is dealt with in Brochure Seven which concerns particular categories of prisoners.

The content of this booklet has been adapted from the Council of Europe publication "Combating torture in Europe: the work and standards of the European Committee for the Prevention of Torture" (ISBN 92-871-4614-4). We are extremely grateful to the Council of Europe for permitting us to incorporate major elements of that work into our own.

INTRODUCTION

In all jurisdictions the police have the power, *de jure* or *de facto*, temporarily to detain persons they reasonably suspect of having committed a crime. The period of detention is generally strictly time-limited pending a criminal charge being laid, or a prosecutor being persuaded that there is sufficient evidence to warrant more prolonged detention for the purposes of investigation. Following the laying of a charge, or formal arrest by a prosecutor, there are further time-limitations upon the period within which the suspect must be brought before a court which will decide whether he or she should be released or remanded in custody while further investigations are conducted or until the accused is brought to trial. This is seldom the full extent of police powers, however. In many jurisdictions the police also have the power to detain various categories of persons not subject, initially at least, to criminal proceedings for administrative or procedural purposes: witnesses, persons whose identity is uncertain, drunks, persons held for various breaches of public order, and so on.

Whatever the reason, all these examples involve the temporary detention of persons by the police without any judicial imprimatur of approval and it is widely acknowledged that this is the period during which detainees are most vulnerable to ill-treatment at the hands of the police – a judgment with which the CPT agrees.[1] During the initial period of custody detainees are often in a state of shock and bewilderment, disoriented and feeling isolated, frightened and easily influenced, unaware of their rights, drunk or under the influence of drugs, or a combination of any of these. Even in the best regulated systems the police are apt to capitalise on this vulnerability in order to press home their advantage: now is the time to get the suspect to talk, to provide information, to confess.

In order to prevent this form of abuse of power and ill-treatment of detainees whilst in police custody and pre-trial detention, the CPT has developed standards concerning the required safeguards and conditions of detention. Part One of this Brochure examines the CPT's standards relating to the fundamental safeguards for detainees, such as access to a lawyer, access to a doctor and access to information on their rights. Part Two reviews the CPT's standards concerning other procedural safeguards which includes the keeping of custody records, the conduct of interrogations and accountability for violations. Part Three describes the standards developed by the CPT relating to the conditions of detention generally. Finally, Part Four considers issues relating to pre-trial detention in police custody.

I
FUNDAMENTAL SAFEGUARDS

I FUNDAMENTAL SAFEGUARDS

The power to detain temporarily granted to the police is itself a form of coercion judged necessary to combat crime and bring offenders to justice. However, in order that the presumption of innocence be respected, and the police be prevented from using their powers oppressively, it is generally recognised that police powers must be narrowly defined, limited and accompanied by certain safeguards for suspects. Ideally, such safeguards would reflect:

- the gravity of the offence of which the detainee is suspected (i.e., the more serious the offence, the greater are the police powers in many jurisdictions);
- the degree to which the suspect's liberty and freedom is interfered with (i.e., the greater the police powers to detain, the greater should be the safeguards that are provided);
- the vulnerability of the detainee (i.e., the more vulnerable the detainee, the more stringent should be the safeguards).

In practice, this is not always the case and such safeguards have proved to be the source of some of the most sensitive and difficult exchanges between the CPT and State parties, not least because the balances struck by the CPT are not necessarily endorsed by practice under the European Court of Human Rights.

The CPT attaches particular importance to three rights for persons detained by the police:

- the right of those concerned to inform a close relative or another third party of their choice of their situation,
- the right of access to a lawyer,
- the right of access to a doctor.

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of custody (that is, from the moment when those concerned are obliged to remain with the police).

As far as the right of third party notification and access to a lawyer is concerned, the Committee now expresses the view that:

> "all persons deprived of their liberty by the police – including those arrested, apprehended, taken into care or being questioned as potential witnesses – should be guaranteed [these rights], and that [they] should apply as from the moment when they are first obliged to remain with the police."
>
> The Committee also recognises that third party notification and access to a particular lawyer might exceptionally be delayed "in order to protect the

interests of justice," but any such limitations must be "clearly defined and their application strictly limited in time.[2]" Moreover, exercise of any power to delay notification or access should also be subject to safeguards: the reasons should be recorded in writing and the decision approved by a senior police officer, the prosecutor or by the judicial authorities.

In addition to these general points, the CPT has added further details to its understanding of what its fundamental safeguards require. These will be looked at in the following sub-sections but it should be noted at the outset that, though the general thrust of these standards has generally been endorsed, their detailed prescription by the CPT has encountered greater open resistance from State parties than almost all other CPT standards, not least because the Committee has repeatedly insisted on their binding nature, their formalistic implementation and their universal application.

1. Notification of custody

The Committee recommends that persons in police custody should have the right as from the outset of their custody to have the fact that they have been detained notified to their next of kin or another third party of their choice. It is clear that this includes the right to inform the third party of the place in which one is being detained. Foreign nationals should be entitled to have their consulates notified provided that their consent is obtained. Despite some initial uncertainty, it now seems settled that the safeguard extends only as far as ensuring that the authorities make the notification as requested.

The CPT accepts that it might be necessary to delay notification for a brief period "in the interests of justice." It has recently criticised provisions which permit delays of up to four and five days and is of the opinion that "a maximum period of 48 hours would strike a better balance between the requirements of the investigation and the interests of detained persons." It is also important that the grounds on which a request for a delay might be made are spelt out with sufficient precision. The CPT usually recommends that any such delay should "be recorded in writing together with the reasons therefore and to require the approval of a senior officer or public prosecutor." However, in a recent report the Committee was equivocal in its criticism of a situation in which a delay could be authorised by the police officer in charge of an investigation. The Committee limited itself to saying that "The CPT considers that it would be *highly desirable* for any delay in the exercise of a person's right to notify someone of his situation to be always subject to the approval of a senior police officer with the right to arrest.[3]" It remains to be seen whether this caveat has more general relevance.

2. Access to a lawyer

The rationale for this safeguard is that "the existence of this possibility will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.[4]" Access to a lawyer means access from the very first moment when a person is obliged to remain with the police. It extends to those who have been detained but not yet charged with an offence, or who are being held prior to their being questioned or who are not yet suspected of a criminal offence. The Committee has also had occasion to point out that it applies not only at the commencement of custody but continues to apply throughout its duration. The right of access to a lawyer applies equally to those in detention who neither have nor know a lawyer, the Committee recommending "that appropriate action be taken formally to guarantee the right of access for detained persons who do not have their own lawyer." In practice, this means putting schemes in place that will enable lawyers to be "on call." Hand in hand with this provision is the need to ensure that those detainees who lack financial means receive adequate assistance. Once again the Committee appears to be taking a more rigorous approach to this issue, and has recently said that "If the right of access to a lawyer is to be fully effective in practice, appropriate provision must be made for those who are not in a position to pay for legal services.[5]"

It appears that the CPT is taking an ever firmer line regarding the consequences of granting access. For some time it has been stressed that access includes "the right to contact and to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of their discussions) as well as, in principle, the right of the person concerned to have the lawyer present during interrogation.[6]" The first element of this formulation has recently been affirmed in terms of ensuring privacy rather than confidentiality: thus the Committee now says that "The right of access to a lawyer as from the outset of custody must include the right to talk to a lawyer in private.[7]" Such an approach has the advantage of simplicity and is less open to manipulation. Further, though access to a particular lawyer might be denied "in the interests of justice" there can be no justification for totally denying access to a lawyer. The CPT maintains that it should always be possible to arrange access to an independent lawyer "who can be trusted not to jeopardise the legitimate interests of the police investigation.[8]"

The Committee's approach to the presence of a lawyer during interrogation has also evolved. Whereas in earlier reports the Committee saw this as a "useful supplementary safeguard," it has progressively become more robust and in recent reports has adopted the position that:

> "persons detained by the police should be entitled to have a lawyer present during any interrogation conducted by the police (whether this be during or after the initial period of police custody). Naturally the fact that a detained person has stated that he wishes to have access to a lawyer

should not prevent the police from beginning to question him on urgent matters before the lawyer arrives. Provision might also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, though any such possibility should be closely circumscribed and made subject to appropriate safeguards.[9]"

It appears that the balance struck between the needs of investigation and the rights of the suspect have shifted from the former towards the latter.

3. Access to a doctor

The views of the CPT regarding access to a doctor are conveniently summarised in the following recommendation:

> "The CPT recommends that specific legal provisions be adopted on the subject of the right of access of persons apprehended/arrested by the police to have access to a doctor. Those provisions should stipulate inter alia that:
>
> - persons apprehended/arrested by the police have the right to be examined, if they so wish, by a doctor of their own choice, in addition to any medical examination carried out by a doctor called by the police authorities;
> - all medical examinations of persons in custody are to be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police officers;
> - the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the person in custody and his lawyer;
> - the confidentiality of medical data is to be strictly observed."

This does not mean that the person has the right to decline to be examined by a doctor who is not of his choosing: "the purpose of any such second examination is to provide an additional safeguard against ill-treatment, rather than to supplant the role of the officially appointed doctor.[10]" Moreover, it is clear that the apprehended person might be required to pay the cost of any such second examination.

4. Information on rights

The CPT takes the logical view that "it is axiomatic that rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence.[11]" And since the three fundamental rights should be available from the outset of custody then information regarding them must also be communicated to detainees at the outset of custody. Until recently, the CPT included a statement to this effect alongside its three fundamental rights and the most recently published first periodic report contained the fairly elaborate statement that:

> "Furthermore, in the view of the CPT, persons taken into police custody should be expressly informed, without delay and in a language they understand, of all their rights, including those referred to above.[12]"

The Committee gives detailed guidance on how best to convey information on procedural rights to detainees. It recommends that "a form setting out those rights in a straightforward manner be systematically given to [persons in police custody] at the very outset of their deprivation of liberty. The form should be available in an appropriate range of languages." It is important that a copy of the form be given, rather than merely read out. Whilst it is not necessary that forms be available in all languages that might potentially be used by detainees – and what is "appropriate" will depend on the local circumstances – it is clearly incumbent on the State to ensure the effective communication of such information in those cases where leaflets are not available. It is also important that the forms should include all of the rights.

To make it absolutely clear that detainees have been told their rights the Committee has hitherto recommended that "Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights," the argument being that this process protects both the interests of detainees and the police, who might subsequently be accused of not having informed their charges. However, recently published reports have not included this recommendation. It may be that this is no longer seen as an essential element of the protective scheme.

5. Implementation of these safeguards

Resistance to the detailed application of some of these recommendations has been inspired by a variety of very different considerations. In countries in North West Europe, for example, where the CPT has found little evidence of ill-treatment at the hands of the police, aspects of the standards are clearly considered unnecessary.

The CPT, concerned with conditions in Europe as a whole, has a different perspective to that of the civil servants and legal advisors with whom the Committee deals on behalf of governments. The CPT is concerned with preventing ill-treatment and sees the three fundamental safeguards outlined above as potent devices which contribute to that end. In countries where physical ill-treatment at the hands of the police is not a significant problem, however, the safeguards are probably seen in a different light. Third party notification may be thought of as something which normally happens and regarding which there is no need for elaborate procedures or hard-and-fast rules because initial custody is brief and because it is thought that the police must be given a discretion not to notify persons whom they suspect might subvert investigations or destroy evidence. Access to a lawyer may be thought of simply in terms of enabling suspects to prepare for their defence, in which case it will appear irrelevant for those who are detained by the police but not accused of crimes, such as the various classes of adminis-

trative detainees.[13] Moreover, in countries where statements made to the police before the prosecutor is involved in the investigation are of little evidential value, or where a premium is placed on oral statements made in court, little importance may be attached to ensuring that suspects have access to lawyers during their initial police custody.

Similarly, in such countries the right to have a medical examination by a doctor of one's choice may be seen as fanciful; something which is not objected to, but is unlikely to be realised in practice, largely superfluous and scarcely worth routine elaboration in order to ensure that the detainee knows that he or she enjoys such a right.

In other parts of Europe, the CPT's fundamental safeguards may be seen as a serious interference with the autonomy of the police and their ability to get on with their job, particularly with regard to serious crime. Several European countries, for example, grant the police power to detain certain categories of suspects for additional periods, during which third party notification or access to a lawyer may be circumscribed, delayed or denied, in order to combat the organised threat posed by groups allegedly engaged in terrorism, drug trafficking and the like. In this context the CPT's safeguards might be considered to undermine the capacity of the police to "lean" on suspects.

II
OTHER PROCEDURAL SAFEGUARDS

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The safeguards considered in the previous part take the form of rights which are to be granted to the detainee. The CPT also stresses the significance of a number of other procedural safeguards which, whilst not couched as rights, are examples of good practice aimed at enhancing the protective mantle cast around initial custody and are concerned with the conduct of law enforcement officers and the independent scrutiny to which the CPT considers they should be subject. Cumulatively, these provisions combine to form a sketch of a public accountability framework for police actions relating to custody. Elements in this framework are as yet poorly developed, though there is reason to believe that the Committee intends further to develop these aspects of its work. This is underpinned by a belief that accountability measures of this nature assist the police by establishing and/or buttressing the legitimacy of their work. There is an implicit suggestion that this works in two ways: by providing detailed accounts of their decision-making the police will demonstrate their commitment to safeguarding the interests of detainees; and the police will better be able to defend themselves against unwarranted allegations.

1. Custody records

Keeping adequate custody records is an essential element of any protective framework. From almost the outset of its work the Committee argued the case for a single and comprehensive custody record and took the view that:

> "fundamental safeguards offered to persons in police custody would be reinforced if a single and comprehensive custody record were to exist for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it; time of and reason(s) for the apprehension; when informed of rights; signs of injuries, mental disorder, etc.; contact with and/or visits by a relative, lawyer, doctor or consular officer; when offered food; when questioned; when brought before a judge; when released, etc.[14]"

Since no other international body or set of principles for the protection of detainees has stressed the merits of having a single comprehensive custody record (or electronically recording interviews), it is difficult to escape the conclusion that the CPT was inspired to do so by the practice in England and Wales where this is required by the Police and Criminal Evidence Act 1984. It would not have escaped the Committee's attention that the English statute was prompted by scandal regarding ill-treatment at the hands of the police at a time when police custody in England and Wales was little regulated and record-keeping was minimal. From CPT country reports it appears that although almost all countries record the principal aspects of custody, such as the time of arrest, time of arrival at the police station and start and finish times of formal interviews, these accounts are gener-

ally recorded in different documents, which makes them relatively difficult to collate, and many potentially important procedures, such as the provision of exercise or food, generally go unrecorded.

However, it seems that the CPT may be becoming less insistent that custody records take a particular bureaucratic form, possibly because the Committee considers it unwise to impose the heavy burden of new procedures and extensive paperwork on systems short of resources and struggling with other changes arguably more important. The Committee continues to pay close attention to record-keeping to ensure that it is undertaken consistently and accurately. It seems, therefore, that this is now seen as a practice to be commended, but not recommended.

2. Conduct of interrogations

The CPT's standards concerning this issue were addressed in the second General Report which said that there should be a code of practice governing the conduct of interrogations in every jurisdiction. In subsequent reports the Committee has regularly recommended that, where such codes are absent, they should be drawn up because, as the Committee has put it, such codes "serve to underpin the lessons taught during police training.[15]" The wording of the recommendation has changed very little and the most recent reports say that:

> "This code should deal, inter alia, with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interrogation; the permissible length of an interrogation; rest periods between interrogations and breaks during an interrogation; places in which interrogations may take place; whether the detainee may be required to stand while being questioned; the questioning of persons who are under the influence of drugs, alcohol, medicine, or who are in a state of shock... The position of particularly vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be the subject of specific safeguards.[16]"

Moreover, and recalling the importance attached to full and accurate record-keeping, the recommended code for the conduct of interviews with suspects incorporates the expectation that:

> "It should also be stipulated that a record be systematically kept of the time at which interrogations start and end, the persons present during the interrogation and of any request made by a detainee during the interrogation.[17]"

The Committee has also expressed its concern about the "highly intimidating nature" of certain interrogation rooms in Turkey,[18] and the period of time for which an interrogation can take place uninterrupted in Iceland: the Committee said that only under very exceptional circumstances might a detainee be interrogated for

six hours without a break. The Committee is also of the view that "it would be far preferable for further questioning of persons committed to prison to take place in prison rather than on police premises" and has recommended that any such removal back to a police facility should "require the express authorisation of the competent judicial authority.[19]"

3. Electronic recording and monitoring

The Committee "considers that the electronic (i.e. audio and/or video) recording of police interviews represents another important safeguard for detainees, as well as offering advantages for the police"[20] and that, "as a matter of principle," it "welcomes the use of closed circuit television to monitor custody areas in police establishments.[21]"

At first the Committee *recommended* that States "explore the possibility" of making electronic recordings of interviews with suspects, which is possibly the weakest of CPT formulations and in recent reports has been weakened further by merely "inviting" the authorities "to consider" it, a clear downgrading. It is not surprising, therefore, that several reports have made no reference to the desirability of electronically recording interviews.

As far as we are aware, England and Wales is the only country in Europe where all police interviews are routinely electronically recorded, and the introduction of such a system is relatively costly. It would appear that the CPT suggests the idea whenever they think the authorities might be receptive to it, but does not now press the matter strongly. Where provision is made for the use of audio-visual equipment in the criminal code, the Committee presses for information concerning its use. On this issue the Committee appears to push harder whenever it judges the door to be slightly ajar. Thus, in Northern Ireland in 1993, the Committee was concerned to learn that, though interviews with criminal suspects generally were recorded, those with persons suspected of terrorism and detained under the Prevention of Terrorism Act were not.[22] The Northern Ireland authorities were asked to reconsider the issue and to employ audio and/or video recording.[23] And in 1997 the Committee, noting the greater use of closed circuit television in custody areas in the Metropolitan Police Area than hitherto, wished to be informed whether CCTV monitoring was to be extended nationwide.

4. Accountability

With regard to police accountability, the CPT has stressed that "regular and unannounced visits by the prosecuting/judicial authorities to places where persons are detained by the police can have a significant effect in terms of preventing ill-treatment[24]" and "the existence of effective mechanisms to tackle police misconduct is another important safeguard against ill-treatment of persons deprived of their liberty.[25]" Its interest in these twin aspects of accountability has increased over

time and the Committee now regularly seeks information on the relevant mechanisms in the countries visited, recommending that the establishment of such systems be explored where they do not exist, and that they be established where there is evidence of ill-treatment having occurred, and examining the guarantees of their objectivity and independence where they do exist.

Visiting mechanisms should be conducted by an independent authority and "to be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private.[26]" In addition, the Committee is keen to ensure that managerial responsibility is fully exercised, and encourages senior police officers to themselves visit places of detention to ensure that the appropriate procedures are being adhered to.

Complaints procedures "must be, and be seen to be, independent and impartial." So it is "preferable for the investigative work concerned to be entrusted to an agency which is demonstrably independent of the police." Where there is evidence of wrongdoing, the Committee takes the view that "the imposition of appropriate disciplinary and/or criminal penalties can have a powerful dissuasive effect on police officers who might otherwise be minded to engage in ill-treatment.[27]" It has followed this up with a series of practical suggestions that are intended to make it easier for suspected police officers to be subjected to an appropriate sanction. For example, the Committee suggests that the civil (balance of probabilities) rather than the criminal (beyond reasonable doubt) standard of proof be applied in police disciplinary proceedings, and that the failure to secure a criminal conviction should not act as a bar to such disciplinary proceedings. Disciplinary proceedings should themselves be, and be seen to be, impartial and the CPT "considers that it would be preferable if the independent element on adjudication panels were to preponderate." Its more general concern that ill-treatment be investigated has recently caused the Committee to develop another complementary approach, arguing that "Even in the absence of an express complaint, action should be taken if there are other indications (e.g. lesions recorded in a forensic medical report; a person's general appearance) that ill-treatment might have occurred.[28]"

III
CONDITIONS OF DETENTION

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1. Material conditions

The CPT laid down its general expectations concerning the conditions in which suspects and other persons held initially in custody are to be held in its 2nd General Report.[29] The Committee takes the view that, in places of detention intended for short-term custody, the "physical conditions... cannot be expected to be as good... as in other places where persons may be held for lengthy periods.[30]" However, it soon became apparent that, simply because a police station is designed and equipped for short-term custody, this does not necessarily mean that it will only be used for such purposes. The Committee was soon drawn into criticising police accommodation which, had it been used only for the initial detention of suspects and other persons, would no doubt have been considered acceptable. Equally, the CPT has encountered conditions of detention in police stations which it is prepared to accept, provided the facilities are not used for periods of more than one or two days. This experience is now reflected in its standard approach, reproduced in most reports, which provides that:

> "Police cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets. Persons in custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Those detained for extended periods (twenty-four hours or more) should be provided with appropriate personal hygiene items and, as far as possible, be allowed to take outdoor exercise every day.[31]"

The application of many of these desiderata is inevitably relative and it is therefore not possible to explore these guidelines in any great detail. Moreover, it is the interplay between all these pertinent considerations that will ultimately determine the nature of any overall assessment that might be offered. It is, however, clear that the longer the period in which persons are held in police or equivalent facilities, the more exacting their application will be and, moreover, the question of regime activities may also arise.[32]

2. Cell size

A partial exception to this concerns the issue of cell sizes. Whilst confessing that it was "a difficult question," the Committee from the outset of its work has expressed its thoughts on what it considers to be a reasonable size for a police cell "intended for single occupancy for stays in excess of a few hours," this being a desirable objective, rather than a minimum standard. In early 1992 the CPT's view was that such cells should be of the "order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling"[33] and the Committee subsequently made cross-references to this statement. This standard has proved difficult to apply in conditions of long-term penal custody, let alone short-term police custody, and should probably be regarded as an ideal designed to get member States thinking and moving in the right direction. The Committee has subsequently accepted that cells substantially smaller than this are acceptable. In the past, the CPT's threshold of acceptability has appeared to lie between 4 and 4.5 square metres for overnight stays with cells smaller than 4 square metres being acceptable only for detainees waiting for a "few" hours. However, the Committee has more recently said that cells of 4.5 square metres are scarcely acceptable for overnight stays whilst cells of less than 5.5 square metres have been described as "far from ideal as overnight accommodation." Cells measuring 6 square metres have been described as "adequate" and 6.5 square metres as "acceptable." Waiting cells of less than 2 square metres have been judged totally unacceptable for even the shortest of periods and the CPT routinely recommends that those of 1.5 square metres or less be taken out of service immediately.

Useful guidance concerning multiple occupancy of police cells is found in a recently published report which says that holding up to two persons in cells of between some 9 – 14.7 square metres and up to three persons in around 23 square metres is, in principle, reasonable,[34] but holding more than one person overnight in cells measuring 9 square metres should be avoided as far as possible.[35]

Finally, when suspects are being detained, the CPT is of the view that premises must be permanently staffed, day and night: it is not sufficient that detainees have access to call systems enabling them to summon assistance from other facilities or police patrols.[36]

IV
PRE-TRIAL DETAINEES

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In addition to the period of initial police custody prior to charges being laid and/or suspects being brought before a court, all criminal justice systems provide for the remand in custody of persons awaiting trial. Remands in custody may be for a few days but usually last for several weeks or months and, in some countries, can last for as long as a year or more. It is normal for such custody to be in a prison. The European Prison Rules assume that this is the case[37] and it was probably the assumption that police stations would only be used for short-term custody that influenced the thinking of the CPT when it accepted that police custody would probably involve physical conditions of a lower standard than those to be found in, and expected of, prisons designed for prolonged custody. The problem is that police stations, though seldom designed for prolonged custody, are routinely or occasionally used for that purpose in a number of jurisdictions. Moreover, some countries employ a system of police gaols, which are quite distinct establishments, but often poorly equipped for their custodial purpose.

The CPT has encountered police stations being used to accommodate remand and administrative detainees and might well find them being used for sentenced prisoners. The CPT has repeatedly deplored this practice, since no police station or gaol is ever likely to be able to meet the standards of physical conditions and facilities which are required of prisons used for pre-trial custody.

The Committee concedes that, because of their more rapid turnover, it is unrealistic to expect remand prisoners to be provided with the "individualised treatment programmes of the sort that might be aspired to for sentenced prisoners." Nevertheless, remand prisoners cannot be allowed to "languish." They should be provided with a "satisfactory programme of activities (work, education, sport, etc.)" in which they can positively spend their time during the "8 hours or more" of each day that they should be out of their cells.[38] Further, the CPT's requirement that all prisoners be given the opportunity to take outdoor exercise daily for at least one hour applies to remand as well as sentenced prisoners.[39] Similarly, their outdoor exercise facilities should be sufficiently spacious for the prisoners "to be able to exert themselves physically"[40] and "whenever possible offer shelter from inclement weather.[41]"

Needless to say, such facilities and programmes are commonly lacking in police stations where prisoners are likely to be idle and confined to their cells almost permanently, with little or no possibility of exercise, outdoor or indoor. Wherever it has encountered such conditions the CPT has emphasised that the use of police stations is not appropriate for long-term custody and has recommended that, if the authorities decide that it is unrealistic to provide the appropriate level of facilities and regime activities, the use of police accommodation should cease.

Untried prisoners should also be permitted to wear their own clothes and there is some indication that the CPT considers that, to the extent that restrictions are

applied, they should have a more generous minimum entitlement to visits than convicted and sentenced prisoners.

A further aspect of pre-trial detention which has concerned the CPT involves restrictions being placed on contacts with fellow prisoners and other persons for purposes such as preserving evidence and preventing collusion or intimidation to subvert the prosecution case. The CPT has implicitly conceded that it may be legitimate for pre-trial prisoners' contacts to be restricted, but maintains that because "solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment[42]... [it should] be as short as possible.[43]" Moreover, it is clear that in some countries custodial restrictions are used by the police or prosecutors in order to exert psychological pressure on suspects to confess or provide information, a practice which is clearly unacceptable. In order to ensure that such restrictions are used parsimoniously, the CPT has recommended that the following principles be followed and procedural safeguards adopted:

I use and prolongation of restrictions should be "resorted to only in exceptional circumstances," be "strictly limited to the requirements of the case"[44] and be "proportional to the needs of the criminal investigation concerned";[45]

II that each particular restriction should be authorised by a court, the reasons recorded in writing and "unless the requirements of the investigation dictate otherwise, the prisoner [be] informed of those reasons";[46]

III that the imposition of restrictions or contact with others, and the justification for their continued application, should be regularly reviewed by the court;[47]

IV "that prisoners subject to restrictions have an effective right of appeal to a court or another independent body in respect of particular restrictions applied by a public prosecutor.[48]"

Even if they are legally justified, restrictions of this nature may nevertheless have harmful consequences and the CPT has therefore recommended the adoption of the following safeguard and compensating principle designed to reduce the likelihood of such an outcome:

I whenever a prisoner subject to restrictions (or a prison officer on the prisoner's behalf) requests an examination by a medical doctor, that the doctor be called without delay to carry out an examination and the results of that examination, including an account of the prisoner's physical and mental condition as well as, if need be, the foreseeable consequences of prolonged isolation, be set out in a written statement to be forwarded to the competent authorities;[49]

II "any prisoner subject to restrictions for an extended period is offered activities in addition to outside exercise and guaranteed appropriate human contact.[50]"

This means that, even though there will be occasions when it will be quite legitimate for pre-trial prisoners to be prevented from having contact with fellow prisoners, and not be allowed to receive visits or telephone calls, they should have human contact with staff in the context of in or out-of-cell activities which are specially designed to compensate for the fact that they cannot engage in mainstream inter-prisoner association. Compensating in or out-of-cell activities should be provided in proportion to the level of restrictions to which prisoners are subject.

1 See CPT 6th General Report, CPT/Inf (96) 21, para. 15, "The CPT wishes to stress that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest." This statement has been repeated in many country reports.
2 CPT 2nd General Report, CPT/Inf (92) 3, para. 37.
3 CPT/Inf (99) 9 (Finland), para. 30 (emphasis added).
4 CPT/Inf (99) 7 (Czech Republic), para. 30.
5 CPT/Inf (99) 15 (Ireland), para. 24. *Cf.* CPT/Inf (93)13 (Germany), para.35 where, once again, such schemes were "commended."
6 CPT 2nd General Report, CPT/Inf (92) 3, para. 38.
7 CPT/Inf (2000) 5 (Spain), para. 19. See also CPT/Inf (98)13 (Poland), para. 50; CPT/Inf (99) 9 (Finland), para. 32.
8 See, for example, CPT/Inf (94) 20 (Greece), para.40.
9 See, for example, CPT/Inf (98) 13 (Poland), para. 50; CPT/Inf (99) 9 (Finland), para. 33 (emphasis in original); CPT/Inf (2000) 5 (Spain), para. 19.
10 CPT/Inf (2000) 5 (Spain), para. 26.
11 CPT/Inf (99) 2 (Turkey), para. 26.
12 CPT/Inf (99) 7 (Czech Republic), para. 26. See also CPT/Inf (99) 2 (Turkey), para. 26, describing this as "imperative."
13 See CPT/Inf (2000) 5 (Spain), para. 21 where the Committee rebutted the argument that the gist of the right of access to a lawyer by a criminal suspect lay in the ability to prepare the defence to the charge, pointing out that the preventive role played by such access was wholly separate from the issue of criminal procedure.
14 This formulation is the most recently used and is found in CPT/Inf (98) 13 (Poland), para. 60 and CPT/Inf (99) 7 (Czech Republic), para. 35.
15 CPT/Inf (97) 9 (Germany), para. 38.
16 See CPT/Inf (98) 13 (Poland), para. 57; CPT/Inf (99) 7 (Czech Republic), para. 34: CPT/Inf (2000) 11 (Andorra), para. 25; CPT/Inf (2000) 5 (Spain), para. 32 (with insignificant variations in wording).
17 *Idem*.
18 CPT/Inf (99) 2 (Turkey), para. 74, recommending that the authorities "pursue their efforts" to withdraw such facilities from service.
19 CPT/Inf (99) 7 (Czech Republic), para. 15.
20 See, e.g. CPT/Inf (98) 13 (Poland), para. 58; CPT/Inf (2000) 11 (Andorra), para. 26.
21 CPT/Inf (2000) 11 (Andorra), para. 28.
22 The practice was not adopted on the grounds that it could not be guaranteed that "such a recording could not later come to be seen or heard by someone who had a punitive motive," CPT/Inf (94) 17 (UK), para. 18.
23 CPT/Inf (94) 17 (UK), paras. 82-90.
24 This view has been expressed in many country reports. See, for example, CPT/Inf (93) 2 (France), para. 53; CPT/Inf (95) 1 (Italy), para. 54; CPT/Inf (93) 8 (Finland), para. 51;CPT/Inf (97) 7 (Switzerland), para. 54.
25 See, for example, CPT/Inf (99) 1 (Iceland), para. 28; CPT/Inf (2000) 1 (UK), para. 9 and para. 164 (Isle of Man); CPT/Inf (99) 9 (Finland), para. 41; and, in similar but not identical terms, CPT/Inf (99) 4 (Sweden), para. 11. *Cf.* CPT 2nd General Report, CPT/ Inf (92) 3, para. 41 which described the need for *independent* rather than *effective* mechanisms as *essential* rather than as *important*.
26 CPT/Inf (2000) 11 (Andorra), para. 29; CPT/Inf (2000) 5 (Spain), para. 29.
27 CPT/Inf (99) 4 (Sweden), para.11; CPT/Inf (2000) 1 UK (Isle of Man), para. 164. For the same sentiment expressed in different language see CPT/Inf (99) 2 (Turkey), para. 44; CPT/Inf (2000) 5 (Spain), para. 14.
28 CPT/Inf (99) 2 (Turkey), para. 44; CPT/Inf (2000) 5 (Spain), para. 14. See also CPT/Inf (98) 13 (Poland), para. 24.
29 Initially described as "elementary requirements" in the CPT's 2nd General Report, CPT/Inf (92) 3, para. 42 and, e.g., CPT/Inf (99) 7 (Czech Republic), para. 18, these are now described as "general criteria which guide [the CPT] in its activities." See, e.g. CPT/Inf (99) 9 (Finland), para. 15.
30 CPT 2nd General Report, CPT/Inf (92) 3, para. 42.
31 This formulation seems to date from 1998 and is found in CPT/Inf (99) 1 (Iceland), para. 14; CPT/Inf (99) 4 (Sweden), para. 12; CPT/Inf (2000) 11 (Andorra), para. 9; CPT/Inf (99) 15 (Ireland), para. 29. The reference to personal hygiene equipment is an addition to the formula found in CPT/Inf (97) 2 (Slovakia), para. 24; CPT/Inf (92) 5 (Malta), para. 8; CPT/Inf (98) 13 (Poland), para. 25 and CPT/Inf (99) 7 (Czech Republic), para. 18, which was itself a development of the version found originally in the CPT 2nd General Report, CPT/Inf (92) 3, para. 42 and developed incrementally thereafter. The principal changes from the earliest formulation are the references to the cleanliness of cells, access to drinking water, and outdoor exercise.
32 See, for example, CPT/Inf (99) 9 (Finland), para. 16 where the CPT says that "Such persons are entitled to expect a better material environment than the elementary requirements described about, as well as an appropriate regime."

33 CPT/Inf (99) 9 (Finland), para. 43.
34 In CPT/Inf (99) 9 (Finland), para. 21 a double cell of 13 square metres is described as "entirely acceptable."
35 CPT/Inf (2000) 11 (Andorra), para. 11.
36 CPT/Inf (97) 7 (Switzerland), paras. 27-28.
37 The European Prison Rules, which include a section (Rules 91-98) on Untried Prisoners, throughout *assume* that the Rules will be applied by a *prison administration* employing *professional prison staff* (see, for example, Rule 54).
38 CPT 2nd General Report, CPT/Inf (2) 3, para. 47.
39 CPT 2nd General Report, CPT/Inf (2) 3, para. 48.
40 This phrase has repeatedly been used by the Committee when confronted with outdoor exercise areas it considers too small. See, for example, CPT/Inf (92) 4 (Sweden), paras. 51-2, where 6 by 2.5 metre exercise yards at the Stockholm Remand Prison were judged too cramped; as were concrete-walled enclosures measuring approximately 15 square metres at the Oslo Prison (see CPT/Inf (94) 11 (Norway), paras. 61 and 66) and triangular walkways some 14 metres by 4 metres, the central portions of which were incapable of being used for exercise – at Gherla Prison (see CPT/Inf (98) 5 (Romania), para.118).
41 CPT 2nd General Report, CPT/Inf (92) 3, para. 48.
42 Psychiatric experts assisting CPT delegations have found evidence of pre-trial prisoners kept more or less isolated for prolonged periods suffering adverse mental health as a consequence of their isolation. See CPT/Inf (94) 11 (Norway), para. 64.
43 CPT 2nd General Report, CPT/Inf (92) 3, para. 56.
44 CPT/Inf (91) 12 (Denmark), para. 29.
45 CPT/Inf (95) 5 (Sweden), para. 27.
46 That is, they should not be the decisions of police officers or prosecutors (*idem*).
47 It is not clear how frequently the CPT considers it necessary for reviews to take place. In Denmark they must be at least every 8 weeks (CPT/Inf (91) 12 (Denmark), Appendix 2, para. 11) and in Sweden at least every two weeks (CPT/Inf (95) 5 (Sweden), para. 25), neither of which intervals did the CPT criticise or recommend be changed.
48 In Sweden the use of restrictions is generally authorised by the court but the particular restrictions imposed lie at the discretion of the prosecutor in the particular case. See CPT/Inf (95) 5 (Sweden), paras. 25-7.
49 CPT/Inf (91) 12 (Denmark), para. 29. see also CPT/Inf (94) 11 (Norway), para. 65.
50 CPT/Inf (94) 11 (Norway), para. 65; CPT/Inf (95) 5 (Sweden), paras. 19-20; CPT/Inf (2000) 15 (Norway), paras. 37-40 and 47.