



## Visiting places of detention at the national level:

### Recommendations of the European Committee for the Prevention of Torture Considered in light of the OPCAT

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#### Introduction

Preventive visits to places of detention constitute one of the most effective ways to prevent torture. Based on this strong conviction, the Association for the Prevention of Torture (APT) has advocated for almost 30 years for the creation of independent visiting mechanisms for all places of detention. Initially, APT's focus was on the establishment of international visiting bodies. A first success was the European Convention for the Prevention of Torture (ECPT), establishing a Committee for the Prevention of Torture, the CPT, empowered to visit at any time any place where a person is deprived of liberty in any of the 46 member States of the Council of Europe.

However, with the adoption by the United Nations in December 2002 of the Optional Protocol to the Convention against Torture (OPCAT), the focus has shifted to embrace not only international but also national mechanisms for the prevention of torture. This new text is based on an innovative combination of both international and national visiting bodies. Preventive visits to all places of detention will be carried out both by a new UN Sub-Committee on Prevention and by National Preventive Mechanisms (NPM) that States Parties must designate or set-up. The OPCAT does not prescribe any particular form for NPMs but sets out a series of powers and guarantees required for their effective functioning.

The fact that national preventive mechanisms have now been incorporated in the OPCAT does not mean that the importance of visits at national level was not recognized before, quite the contrary. Indeed, the CPT has since its early years, proactively and consistently recommended the establishment of national inspection mechanisms for different types of places of detention and has developed some criteria for their effective functioning.

The European Committee's recommendations could therefore make a useful contribution to the debate on the establishment of NPMs, not only in the European States that are Parties to both ECPT and OPCAT<sup>1</sup>, but in any other State party to the OPCAT. The objective of the present paper is thus to look at these recommendations in the light of the OPCAT criteria. The objective is

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<sup>1</sup> Albania, Croatia, Denmark, Georgia, Malta, Poland, Spain, Sweden and United Kingdom.

also to see whether the CPT has taken OPCAT into account in drafting its recommendations. With the exception of Finland<sup>2</sup>, the CPT has until now not made any explicit reference to the OPCAT in its reports on States that have signed or ratified it<sup>3</sup>.

We will first look at CPT comments and recommendations regarding the creation of visiting bodies, then at its criteria regarding independence, followed by criteria for effective visits, and finally the mandate and visiting powers of the visiting bodies.

## 1. Creation of independent visiting bodies

CPT's recommendations concerning visits and inspection mechanisms recognise that "inspection procedures are fundamental safeguards against ill-treatment in prisons"<sup>4</sup>.

Accordingly, since its earliest visit reports, the CPT has proactively recommended that States "establish" or "explore the possibility of introducing regular visits by an independent body".

The CPT has done so separately for each category of place of detention. During the first years, the focus was mainly on prisons. In 1992, the 2<sup>nd</sup> General Report on Activities formulated the standard recommendation that "the CPT attaches particular importance to regular visits to each prison establishment by a independent body (eg. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoner and to inspect the establishment's premises."<sup>5</sup>

Later the CPT extended a similar recommendation to police stations, confirming later in its 12<sup>th</sup> General Report on Activities that "inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police, and more generally, help to ensure satisfactory conditions of detention"<sup>6</sup>. In 1998, the General Report on Activities contained a similar recommendation for psychiatric institutions<sup>7</sup>, and in 1999 for children homes<sup>8</sup>.

<sup>2</sup> Finland 2003 visit, CPT/Inf (2003) 38, § 19

<sup>3</sup> Austria (signed the OPCAT in September 2003): CPT visit in April 2004, report published in July 2005. Iceland (signed in Sept. 2003): CPT visit in June 2004 and report published in January 2006. Malta (ratified in Sept. 2003): CPT visit in January 2004, report published in August 2005. Norway (signed in September 2003): CPT visit in October 2005, report published in April 2006; Poland (signed in April 2004 and ratified in September 2005): CPT visit in October 2004 and report published in March 2006; Romania (signed OPCAT in September 2003): CPT ad hoc visit in June 2004, report published in January 2006; United Kingdom (signed in June 2003 and ratified in December 2003): CPT ad hoc visit in March 2004, report published in June 2005.

<sup>4</sup> Austria 2004 visit, CPT/Inf (2005) 13, § 107

<sup>5</sup> 2<sup>nd</sup> general report on activities, CPT/Inf(92)3, §54.

<sup>6</sup> 12th General report on activities (2002), CPT/Inf (2002)15, §50

<sup>7</sup> "The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an outside body (eg. A judge or supervisory committee) which is responsible for the inspection of patients' care. This body should be authorized in particular, to talk privately with patients, receive directly any complaints which they might have and make necessary recommendations ". § 55, 8th general report on activities CPT/inf (98) 12.

Until now the CPT has not issued consistent recommendations for the creation of inspection mechanisms regarding other types of places but is commenting on it on an ad hoc basis<sup>9</sup>. Hence, the CPT recommendations do not yet cover the full range of places that the OPCAT<sup>10</sup> requires be subject to visiting mechanisms.

The CPT has not recommended any specific organizational form for visiting mechanisms, instead focusing on their independence and powers. CPT recommendations have in different cases led to the creation of visiting bodies of diverse nature. For example, in Switzerland, a parliamentary committee to monitor places of detention has been set up in the Ticino Canton<sup>11</sup>. In Austria, a Human Rights Advisory Board (Menschenrechtbeirat) has been created with the mandate of visiting all places under the jurisdiction of the Ministry of Interior<sup>12</sup>.

When visiting bodies already exist, the CPT usually commends their existence, be they visiting boards, supervisory committees, human rights committees, Ombudsman, judges, prosecutors or NGOs<sup>13</sup>. A combination of different types of mechanisms within a single State has also been commended by the CPT<sup>14</sup>. It sometimes makes recommendations for improvement or extension of the mandates of already established mechanisms.

In more recent visit reports, the CPT has more closely examined mechanisms' mandate and analysed in detail the functioning of these bodies, and hence has also been more critical<sup>15</sup>. This is particularly the case regarding the work

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<sup>8</sup> "The CPT attaches particular importance to regular visits to all juvenile establishments by an independent body (for example, a visiting committee or a judge) with authority to receive - and, if necessary, take action on - juvenile's complaints and to inspect the accommodation and facilities", 9th general report of activities covering activities 1999, CPT/Inf (99)12, § 36.

<sup>9</sup> See for example Sweden 2003 visit, CPT/Inf (2004) 25, § 140 for detention facilities for substance abusers; Armenia 2002 visit, for visits to military facilities, CPT/Inf (2004)32, §. In the substantive part of its 7<sup>th</sup> general report on activities dealing with "Foreign nationals detained under aliens legislation", inspection mechanisms are not mentioned. CPT/Inf (97) 10.

<sup>10</sup> Art. 4.1 of the OPCAT reads "each State Party shall allow visits (...) to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or by its instigation or with its consent or acquiescence(...)"

<sup>11</sup> Switzerland 1996 visit, CPT/Inf (97)7, §121. The Committee has been set up in 2000.

<sup>12</sup> Austria, 1990 visit, CPT/Inf (91)10, §87 and 1994 visit, CPT/Inf(96)28, §94. The Menschenrechtsbeirat has been set up in 1999.

<sup>13</sup> For example in Hungary : "The CPT would also like to underline the importance of the routine external control and supervision activities performed in police detention establishments in Hungary by representatives of non-governmental organizations", Hungary 1999 visit, CPT/Inf (2001)2, § 37. See also Azerbaijan, 2002 visit: "Finally, the CPT invites the Azerbaijani authorities to introduce a system of independent visits to police establishments by NGOs, similar to the one applied vis-à-vis establishments under the Ministry of Justice", CPT/Inf (2004)36, §44.

<sup>14</sup> "In addition to inspections by penitentiary judges, prisons were visited by the staff of the Office of the Commissioner for civil Rights Protection and, upon authorisation, by certain NGOs. To sum up, the existing system of inspections seemed quite satisfactory". Poland 2004 visit, CPT/Inf (2006)11, § 138.

<sup>15</sup> See for ex. Austria, in its 1999 report the CPT stressed that the "Human Rights Advisory Board, if it operates efficiently, would constitute a significant safeguard against ill-treatment", CPT/Inf (2001)8, §18. In its 2004 visit, after meeting with senior members of the board, the CPT concluded that "the information gathered (...) suggest that certain aspects of the Boards statute diminish its effectiveness.", CPT/Inf(2005) 13, §20.

of some ombudsman offices, the CPT considering that the wide scope of the office's mandate combined with its limited resources, does not allow for the kind of regular monitoring foreseen by the CPT<sup>16</sup>.

## 2. Independence

Independence is an essential criterion for the effectiveness of a visiting body, and covers several aspects.

In its 1994 visit to Austria, the CPT mentioned that the effectiveness of an independent inspection body will depend "above all, on its capacity to be perceived as a body distinct from the police services"<sup>17</sup>. In 2004, the CPT has considered that the Austrian Menschenrechtsbeirat "cannot be seen as being truly independent, to the extent that its activities are financed by the Federal Ministry of the Interior and it is the Federal Minister of the Interior who selects three of the Board's members, chooses the NGO represented on the Board and can terminate the Board member's appointment"<sup>18</sup>.

Members of visiting mechanisms should be independent from the administration of the places visited. In Cyprus, the Director of the Psychiatric Hospital was a member of the Supervisory Committee and the CPT considered "that this may compromise the independence of the Committee"<sup>19</sup>.

As is clear already from the Austrian example, visiting mechanism appointment and dismissal procedures should not be the responsibility of the authorities supervised. In Ireland the Visiting Committees were criticized because the Ministry of Justice appoints the members and a prison officer serves as secretary.<sup>20</sup>

Finally, a visiting body should be an "independent outside body", not "organizationally and administratively placed under the auspices"<sup>21</sup> of a Ministry. This has been especially emphasized for psychiatric institutions, which are usually visited by social welfare boards/funds linked or affiliated with Ministries of Social Affairs or the Ministry of Health<sup>22</sup>.

The emphasis put by the CPT on the independence in practice of each visiting body is consistent with the requirements of "functional independence" under Article 18.1 of the OPCAT. In some respects, the OPCAT as well as the "Paris Principles" on National Human Rights Institutions contain more specific requirements, for example regarding adequate funding and membership.

## 3. Criteria for effective visits

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<sup>16</sup> Finland, 2003 visit, op.cit, §19; Denmark 2002 visit, CPT/Inf(2002)18, §25; Iceland 2004 visit, CPT/Inf (2006)3, §63 and 82.

<sup>17</sup> Austria, 1994 visit, CPT/Inf(96)28, §94.

<sup>18</sup> Austria 2004 visit, op. cit., §20

<sup>19</sup> Cyprus 2000 visit, CPT/Inf (2003),1, §66

<sup>20</sup> Ireland, 1993 visit, CPT/Inf (95)14, §157.

<sup>21</sup> Czech Republic 2002 visit, CPT/Inf (2004) 4, §102.

<sup>22</sup> Latvia 2002 visit, CPT/Inf(2005) 8, § 165,

The CPT has developed criteria for visits to be effective, underlining constantly that the two most fundamental criteria are for visits to be both **regular** and **unannounced**.

Under the term **regularity**, the CPT tends to understand a very high frequency of visits, based somewhat on the model of a “monitoring board” attached to one particular place. For this type of monitoring board, the CPT considers that weekly visits or at least monthly visits<sup>23</sup> are adequate. Visits to prisons once a year<sup>24</sup>, or twice a year to police stations<sup>25</sup> have been considered too infrequent, as limiting the effectiveness of the work. Visits to a prison by the deputy-Ombudsman at three-year intervals have been considered as “far from sufficient to ensure adequate continuous supervision by an outside body. Ideally such visits should take place on a monthly basis”<sup>26</sup>. In the case of a psychiatric establishment visited by the Parliamentary Ombudsman two years before, the CPT recommended that regular visits be organized.<sup>27</sup>

In Sweden, where a home for juveniles was visited every two years by members of the National Board for Institutional Care and was also visited by the Ombudsman but at longer intervals, the CPT considered that “no system of regular visits by independent inspection mechanism was in place”<sup>28</sup>.

The CPT has also recommended that visits, although regular, should take place at random intervals<sup>29</sup> and not at fixed periods.

Similar to the CPT’s recommended approach, the OPCAT also requires the NPM to “regularly examine” the treatment of persons deprived of their liberty (Art. 19 a). However, the type of “continuous monitoring”<sup>30</sup> advocated by the CPT, in particular for prisons, seems to be more difficult to apply in the context of broader NPMs. Regularity will have to be defined according to different criteria and the type of NPM is crucial in this regard. In the case where a State has a multiplicity of specialized NPMs each responsible for distinct places of detention, it will be easier to achieve a higher frequency of visits. On the other hand, where a State has a single general body in charge of visiting all types of places, this body may require substantially more resources in order to achieve a reasonable frequency. The specific objectives of the visit will also have to be taken into account, as a two-hour-long weekly visit by a member of a board of visitors is of a very different character than a one-week visit by a Prison Inspectorate multidisciplinary team visiting every

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<sup>23</sup> Turkey 2004 visit « There must be a regular presence – preferably weekly and at least monthly of one or more of their members in each establishments for which they have the responsibility », CPT/Inf (2005)18, § 94.

<sup>24</sup> Austria 2004 visit, op. cit., § 107.

<sup>25</sup> Turkey 2004 visit, op.cit, “In many cases, the prosecutor’s visits were not frequent (e.g. two or three times a year)”, § 21.

<sup>26</sup> Finland 2003 visit, CPT/Inf (2004) 20, § 95.

<sup>27</sup> Iceland 2004 visit, CPT/Inf (2006) 3, § 82.

<sup>28</sup> Sweden 2003 visit, CPT/Inf (2004) 32, §126.

<sup>29</sup> Bulgaria 2002 visit, CPT/Inf (2004) 21, §25

<sup>30</sup> Finland 2003 visit, op.cit., § 19.

five years only. Between these two extremes, there are many intermediary possibilities to carry out both regular and frequent visits, which each NPM will have to define according to its specificities.

“To be fully effective from the standpoint of preventing ill-treatment”, visits should be **unannounced**. The visiting bodies should be empowered to visit any place at any time. When this criteria is not met<sup>31</sup>, visits are not considered by the CPT as effective.

The criteria of unannounced visit is not expressly mentioned in the OPCAT. The APT however considers that the possibility for NPMs to carry out unannounced visits is fundamental for visits to really have a preventive effect<sup>32</sup>.

#### 4. Powers and visiting methodology

As mentioned earlier, the CPT’s standard recommendation on visiting bodies refers to the following powers<sup>33</sup>:

- to visit the premises
- to interview detainees in private<sup>34</sup>
- to receive – and, if necessary, take action on – prisoner’s complaints<sup>35</sup>
- to make recommendations.

Visiting bodies, in particular judges or prosecutors, should not limit their inspection to examining legal and administrative documents: the CPT has stressed that they should not only have the right to, but should, in fact, exercise the right to have **direct contact with detainees**<sup>36</sup> during each visit. The CPT also added that visiting bodies should “**not limit contacts to detainees that have expressly requested** to meet them but should take the initiative by entering into contact with inmates”.<sup>37</sup>

During such visits, the persons concerned should make themselves “**visible**” not only to the prison authorities and staff but also to the prisoners themselves<sup>38</sup>.

<sup>31</sup> Finland 2003 visit, op. cit. §19 and §95.

<sup>32</sup> The UK Parliament, Joint Committee on Human Rights, citing agreement by the Government, also recently affirmed that “the power of unannounced inspection is a vital safeguard” to the work of an NPM under the OPCAT: (20<sup>th</sup> Report of Session 2005-2006, 22 May 2006, pp. 17-20).

<sup>33</sup> For psychiatric establishments “Such bodies should be authorized, in particular, to talk privately with patients, receive directly any complaints, transmit them, if appropriate, to the competent authority, and make any recommendations. Further, the management of all psychiatric establishments should be duly informed of the results of any inspections carried out on their premises” Bulgaria 2002 visit, op. cit., § 158. Iceland 2004, op. cit., § 82

<sup>34</sup> In the report on visit to Slovenia, CPT mentions for the first time that “Prisoners should be seen out of hearing – and preferably out of the sight of the staff”. CPT/Inf (2002) 36, §88.

<sup>35</sup> This power is not expressly foreseen in the OPCAT but is not incompatible with the preventive function of visits and can be a positive complement.

<sup>36</sup> Lithuania 2004 visit, CPT/Inf (2006) 9, §113; Azerbaijan 2002 visit, op. cit., §44

<sup>37</sup> Lithuania 2004 visit, op. cit., § 113; Bosnia-Herzegovina 2003 visit, CPT/Inf (2004)40, § 115. Azerbaijan 2002 visit, op. cit., § 146.

<sup>38</sup> Azerbaijan 2002 visit, op. cit., § 146. Bulgaria 1999 visit, CPT/Inf (2002)1, § 159.

It is also important for the visiting bodies to be seen as independent during the visit. In Bosnia, where the prison personnel accompanied the judges during their visits, announced the arrival of the judges ahead of time, and asked prisoners if they wished to speak to them, the CPT recommended to change the procedure as the current arrangement was “potentially inhibiting prisoners from voicing grievances”<sup>39</sup>.

The visiting bodies should also have access to all categories of detainees within a place<sup>40</sup>.

Regarding the question of what to look for during a visit, the CPT has only provided information regarding visits to police detention facilities. In this case, it has stressed that the visiting body should “examine **all issues related to the treatment**: the recording of detention; information provided on the rights and the actual exercise of those rights; compliance with rules governing the questioning; and material conditions”<sup>41</sup>.

Finally, the CPT recommends that all types of visiting bodies should make **reports** of the findings and formulate **recommendations**. These should be communicated to the relevant authorities, not only at the national level but also to the authorities of the place that was visited<sup>42</sup>.

CPT recommendations concerning practice and powers are not as developed and as detailed as the requirements set out in the OPCAT, which clearly lists powers necessary for effective monitoring in practice.

## Conclusion

The inclusion of the concept of National Preventive Mechanisms in the OPCAT constitutes a unique opportunity to establish effective national visiting bodies and improve existing ones, reinforcing the CPT’s systematic recommendations of establishing inspection mechanisms.

The CPT, which to date has continued to make the same types of recommendations as those it made before OPCAT’s adoption, could better integrate the existence of the OPCAT in its recommendations and take into account the OPCAT criteria and guarantees, in particular regarding the powers and independence to be granted to visiting bodies.

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<sup>39</sup> Bosnia Herzegovina 2003 visit, CPT/Inf ( , §115

<sup>40</sup> When faced with mandates limited to specific categories of detainees, the CPT asked for extension. This was the case in the UK, where one Board of visitors have access only to residents placed in context of criminal proceedings (UK 2003 visit, CPT/Inf (2005)1,§195); in the Czech Republic, where judges can visit only sentenced prisoners (Czech Rep 2002 visit, op.cit., § 101) and in Armenia, where the mandate of prosecutors does not extend to persons under administrative arrest, 2002 visit, op.cit., § 40).

<sup>41</sup> 12<sup>th</sup> General report of activities, op.cit., §50; Latvia 2002 visit, CPT/Inf (2005) 18, § 17

<sup>42</sup> Bulgaria 2002, op. cit., §158

NPMs will also constitute an important source of information for the CPT and establishing direct contacts with them could represent an important potential for CPT's work in the COE countries.

Finally, the prospect of Europe having national, regional and international monitoring bodies should be seen as an exceptional chance for effective prevention of torture and ill-treatment.