



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

APT Submission

Council of Europe seminar on combating torture in the early stages of police custody and pre-trial detention, Copenhagen – 22/23 March 2018

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During its chairmanship of the Council of Europe Denmark decided to make torture a thematic priority, recognising that all members States of the Council of Europe (CoE) had committed to prevent torture with the ratification of the European Convention for the Prevention of Torture. In this context, a seminar on combating torture in the early stages of police custody and pre-trial detention will bring together representatives from the 47 CoE member States. Recognising that the risk of torture is higher in the first hours following arrest, this seminar intends to share good national practices and challenges on two key areas proven to have an impact in reducing the risks of torture: methods of police interviewing by the police and the implementation of safeguards to prevent torture.

On the occasion of the forthcoming seminar, the Association for the Prevention of Torture (APT)¹ is pleased to present this paper on the relevance of safeguards and interviewing for torture prevention, with a view to contributing to the discussion and making recommendations in three key areas.

This submission contains recommendations addressed to Member States of the CoE on three key areas, encouraging them to support the development of a set of guidelines on non-coercive interviews and associated safeguards, to adopt and effectively implement safeguards from the outset of deprivation of liberty, as well as to strengthen detention monitoring mechanisms.

A Timely Meeting

The CoE has traditionally been at the forefront of efforts to strengthen human rights and the rule of law. The role of the European Court of Human Rights in enhancing the rights of European citizens is undeniable, including on the prohibition of torture and the rights of persons deprived of liberty.

¹ The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva. We work for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.

To achieve this vision, we:

- Advocate for strengthened legal and policy frameworks.
- Promote improved detention practices.
- Advise on effective public oversight.

When it comes to safeguards in the first hours of police custody, the role of the European Committee for the Prevention of Torture (CPT) needs to be highlighted. In its first annual report in 1991, the CPT highlighted the importance of three specific safeguards for torture prevention, namely “the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities)”. This trinity of rights is also complemented by the right to be fully informed of one’s rights. The effective implementation of these safeguards is part of the standard recommendations made by the CPT following its visits, and a measurable improvement at the national level can be observed.

The key relevance of safeguards in preventing torture, which was recognized as essential by the CPT early on, was recently confirmed by empirical research commissioned by the Association for the Prevention of Torture that examined 16 countries over a 30-year period (1984-2014). The main findings of the research—*Does Torture Prevention Work?*—highlight that safeguards, when applied in practice, have the highest impact in reducing the risks of torture. Safeguards in the first hours of police custody and methods of police interviewing have also been the subject of in-depth discussions at the United Nations level over the past two years. In March 2016 the UN Human Rights Council adopted torture resolution A/HRC/RES/31/31, sponsored by Denmark, on safeguards to prevent torture in police custody and pretrial detention. Later that year, the former UN Special rapporteur on Torture, Juan E. Méndez, in his last report to the UN General Assembly in October 2016, called on States to develop a set of universal guidelines on non-coercive interviews and attendant legal safeguards. In this context, the CoE’s seminar is timely and has the potential to build and strengthen key recent developments and synergies in ongoing efforts to combat and prevent torture.

Convinced that the operationalization of safeguards requires a holistic intervention, the APT has included a specific strategy on "strengthening legal and procedural safeguards during the first hours of police custody" in its Agenda for Change (Strategic Plan 2016-2019). The three key areas outlined below have, in particular, emerged as key priorities in the pursuit/implementation of this strategic objective.

A. Support the development of a set of guidelines on investigative interviewing and safeguards

As mentioned above, the former UN Special Rapporteur on Torture recently called for the adoption of a universal set of guidelines on non-coercive interviews and safeguards. Since then, several expert and high-level meetings on this topic were organised, and the APT and the Anti-Torture Initiative are now leading a team of experts and practitioners (law enforcement officials, psychologists, medical doctors, and lawyers), to develop the set of guidelines by 2020. A Steering Committee of fifteen experts will oversee the work of drafting groups comprised of technical experts. An Advisory Council will also be set up to accompany and provide assistance to the Steering Committee in its strategic decisions. Member States of the Council of Europe have a unique opportunity to support this endeavour and, ultimately, to endorse the guidelines.

Recommendations

- **Members States of the Council of Europe should support the process to develop a set of guidelines on non-coercive interviews and legal safeguards.**
- **When the guidelines will be finalised, Member States of the Council of Europe should endorse them.**

B. Adopt and implement safeguards from the outset of deprivation of liberty, with a specific focus on persons in situation of vulnerability

Adopting and implementing strong legal and procedural safeguards from the outset of deprivation of liberty is fundamental to reduce the risks of torture. While many States do have legal safeguards in law, their implementation in practice is sometimes lacking. Many civil society organisations work on the monitoring of the effective implementation of legal and procedural safeguards. States are encouraged to rely on the work of civil society organisations to strengthen the implementation of safeguards to prevent torture.

Persons in situation of vulnerability need additional and strengthened safeguards to respond to their specific needs. Without being exhaustive, the following persons might be subject to a heightened risk of abuse and discrimination when deprived of their liberty and specific safeguards should be afforded to reduce those risks:

- Children are among the most vulnerable persons when deprived of liberty because of the state of physical and emotional development and age-specific needs and even brief periods of detention are proven to cause long-term damage to their well-being and development. To reduce such risks, children must be afforded additional safeguards, particularly in terms of immediate notification to parents, caregivers, or other appropriate persons and provision of legal assistance in cases of arrest.
- Women represent a small but growing percentage of persons deprived of liberty, which makes them particularly vulnerable to mistreatment in settings designed primarily for men. Gender-sensitive safeguards such as the option of being examined by a female doctor are highly recommended.
- People with disabilities also face some specific challenges and risks when arrested. Necessary adjustments need to be made to facilitate communication with relatives or third parties, as well as when a person is informed of his/her rights. In the undertaking of medical examinations, the specific needs of persons with disabilities should be taken into account, reasonable accommodations should be provided, and the informed consent must be sought and guaranteed.
- LGBTI persons are particularly at risk of discrimination and abuse upon arrest and throughout detention. To reduce such risks, the detained person should be permitted to express a preference to be examined by a female or a male doctor.
- In some countries foreign nationals are overrepresented in detention. One of the biggest challenges in such cases is a potential language barrier. It is therefore essential that interpreters are able to assist foreigners in detention, for instance when they consult with their lawyers or when they are informed of their rights. They should also be able to contact their consular services if they wish so.

Recommendations

- **Member States should adopt strong legal and procedural safeguards that apply from the outset of deprivation of liberty in law, without exception.**
- **Member States should ensure the effective implementation of those safeguards in practice.**
- **Member States should ensure that persons in situations of vulnerability are protected by additional and specific and appropriate safeguards in both law and practice.**

C. Strengthen detention monitoring mechanisms

The APT has been instrumental in setting up an international and regional system of monitoring of places of deprivation of liberty. APT founder Jean-Jacques Gautier's proposal to open places of detention up to independent oversight led to the adoption by the CoE of the European Convention for the Prevention of Torture and the creation of the CPT. Later on, at the international level, the Optional Protocol to the UN Convention against Torture was adopted and led to the establishment of new monitoring mechanisms: National Preventive Mechanisms (NPMs) at the national level, which have the power to visit at any time any place of deprivation of liberty, and the UN Sub-Committee on Prevention of Torture.

Monitoring the way in which legal and procedural safeguards are applied in practice is essential to ensuring their effective implementation. NPMs, given their powers of access to all places, to all persons deprived of liberty, as well as to all relevant information (including registers, legal files) and given their mandate to identify risk factors and address root causes leading to the mistreatment of persons of liberty, have a key role to play in this regard. Monitoring the actual implementation of safeguards requires a combination of knowledge and methodology.

Given the unique role of the CPT in monitoring places of detention in the CoE region and strengthening the application in practice of legal and procedural safeguards, States should take advantage of the automatic publication procedure where visits reports of the CPT are automatically published. This would lead to more transparency and would enable increased improvements in conditions of detention and treatment of persons deprived of liberty.

Recommendations

- **Member States should ratify OPCAT and establish independent and effective NPMs, with adequate resources and powers.**
- **Member States should adopt the "automatic publication procedure" of the CPT, by which all future visit reports will automatically be published, as recommended by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe.**