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El Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes *

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Mandato
Por medio de visitas, este Comité examinará el trato dado a las personas privadas de libertad para reforzar, llegado el caso, su protección contra la tortura y las penas o tratos inhumanos o degradantes. *Artículo 1 del Convenio Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes*.

La prevención: una prioridad

En los últimos años, los esfuerzos desplegados por el Consejo de Europa para garantizar los derechos humanos se han orientado cada vez más hacia la prevención. El Artículo 3 del Convenio Europeo de Derechos Humanos establece que "nadie podrá ser sometido a tortura ni a penas o tratos inhumanos o degradantes". Ese artículo inspiró la adopción, en 1987, del Convenio Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes.

El Convenio prevé un mecanismo no judicial, de carácter preventivo, para proteger a las personas privadas de la libertad. Ese mecanismo se sustenta en un sistema de visitas efectuadas por el Comité Europeo

* Ponencia presentada Anhelita K. Miembra del Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes (CPT), durante el Seminario sobre los Instrumentos Nacionales e Internacionales para Prevenir, Investigar y Sancionar la Tortura. México, Distrito Federal, noviembre de 2004.

para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes (CPT). La Secretaría del CPT forma parte de la Dirección General de Derechos Humanos del Consejo de Europa.

Expertos independientes

Los miembros del CPT son expertos independientes e imparciales, procedentes de diversos ámbitos; incluye juristas, médicos y especialistas en cuestiones penitenciarias o policiales. Éstos son elegidos por el Comité de Ministros, el órgano decisorio del Consejo de Europa, por un período de cuatro años, y pueden ser reelegidos dos veces. Se elige un miembro por Estado Parte.

El sistema de visitas

El CPT visita lugares de detención (entre otros, prisiones, centros de detención de menores o extranjeros, comisarías de policía y hospitales psiquiátricos), con el fin de evaluar el trato proporcionado a las personas privadas de la libertad y, en caso necesario, recomendar a los Estados mejoras.

Las visitas son efectuadas por delegaciones, integradas normalmente por dos o más miembros del CPT, que son acompañados por miembros de la Secretaría del Comité y, si es necesario, por expertos e intérpretes. El miembro elegido a título del país que se visita no forma parte de la delegación.

Las delegaciones del CPT efectúan visitas periódicas a los Estados Parte, pero también pueden organizar visitas adicionales *ad hoc*, en caso de ser necesario. El Comité debe notificar al Estado interesado sobre su intención de realizar una visita, pero no tiene obligación de especificar el plazo en que se efectuará la misma que, en casos excepcionales, puede tener lugar inmediatamente después de la notificación. Las objeciones de un gobierno respecto al tiempo o lugar de la visita sólo pueden justificarse por motivos de defensa nacional, seguridad pública, desórdenes graves, por el estado de salud de una persona, o porque esté en curso un interrogatorio urgente con relación a un delito grave. En tales casos, el

Estado debe tomar inmediatamente las medidas pertinentes para que el Comité pueda realizar la visita lo antes posible.

Acceso ilimitado

El Convenio prevé que las delegaciones tengan acceso ilimitado a los lugares de detención y derecho a desplazarse, sin trabas, dentro de los mismos. Los miembros de una delegación entrevistan, bajo condiciones de confidencialidad, a personas privadas de la libertad y se ponen en contacto libremente con cualquier otra persona que pueda facilitarles información.

Las recomendaciones que pueda formular el CPT, sustentándose en las observaciones realizadas durante la visita, se incluyen en un informe que se transmite al Estado interesado. Ese informe constituye el punto de partida de un diálogo continuo con el Estado en cuestión.

Cooperación y confidencialidad

El CPT se inspira en dos grandes principios: la cooperación y la confidencialidad. La cooperación con las autoridades nacionales es un aspecto central del Convenio, ya que se trata de proteger a las personas privadas de la libertad y no de condenar a los Estados por los abusos cometidos. Por ello, el Comité se reúne a puerta cerrada y sus informes son estrictamente confidenciales. No obstante, si un país no coopera o se niega a mejorar la situación, a la luz de las recomendaciones formuladas por el Comité, el CPT puede decidir hacer una declaración pública. Por supuesto, el Estado interesado puede solicitar la publicación del informe del Comité, así como sus propias observaciones. Además, el CPT elabora todos los años un informe general de actividades que se hace público.

Ratificación

Hasta la fecha, el Convenio ha sido ratificado por los 44 Estados miembros del Consejo de Europa. Desde el 1 de marzo de 2002, fecha en que

entró en vigor el Protocolo número 1 al Convenio, el Comité de Ministros del Consejo de Europa puede invitar a cualquier Estado no miembro de la organización a adherirse al Convenio.

Estándares sobre el trato de los detenidos

Durante sus años de actividad sobre el terreno, el CPT ha desarrollado estándares relativos al trato de las personas privadas de la libertad. Esos estándares se han publicado en el prospecto "Normas del CPT" (www.cpt.) A continuación se enlistan los modos de operación del Comité,

> *Modo de operación del Comité Europeo para la Prevención de la Tortura y de las Penas o Tratos Inhumanos o Degradantes*
>
> *¿A quién atiende?*
> "A personas privadas de su libertad por parte de una autoridad publica".
>
> *¿En dónde?*
> • Comisarias de policía;
> • Prisiones;
> • Centros de detención de jóvenes ;
> • Centros de detención de extranjeros;
> • Establecimientos psiquiátricos;
>
> *¿En qué países?*
> • En 45 Estados miembros del Consejo de Europa que han ratificado la "Convención Europea para la Prevención de la Tortura y los Tratos o Penas Inhumanos o Degradantes".[1]
>
> *¿Para qué?*
> • Para *prevenir* los malos tratos;

[1] Since May 2002, Optional Potocol N° 1 is enforce that allows Committee of Ministers to invite non-member states, such as Mexico, to ratify the Convention.

• Para *complementar* los mecanismos judiciales (Tribunal Europeo de Derechos Humanos).

¿Cómo?
Por medio de visitas (inspecciones)
• Acceso ilimitado;
• Entrevistas (con detenidos) en privado.[2]

¿Con qué frecuencia?
• De 15 a 20 visitas por año;
• De 3 a 15 días por visita.[3]

Visitas recientes
• Turquía;
• Gran Bretana;
• Lituania;
• Andorra;
• Moldavia (Bender);
• Malta; y
• Azerbaijan.

¿Quién hace la visita?
Una delegacion integrada por :
• Miembros del CPT;[4]
• Expertos e intérpretes;
• Personal Directivo del Secretariado del CPT.

[2] CPT has unlimited access to 1) the state's teritory; 2) any place where persons deprived of liberty are being held; 3) full information on places where such persons are held; 4) access to information available to state authorities which is necessary for the CPT to carry out its task; 5) medical records of detainees (to compare wuth information gathered via medical examination nd verbal accounts of detainees, etc.).
[3] Visitas realizadas hasta ahora (184); visitas "periódicas" (117 hasta el momento); visitas "ad hoc" (67 hasta ahora); (ex.g. Turquía 17 visitas, Rusia 11 visitas –6 a Republica de Chechénia–).
[4] Miembros del CPT:
• Un miembro elegido por cada Estado;
• Miembros independientes.

¿Cómo se prepara una visita?
• En diciembre se anuncian las visitas periódicas;
• La fecha exacta se anuncia 10 días antes (en caso de visitas periódicas);
• La fecha exacta se anuncia poco antes (en caso de visitas *ad hoc*);
• La visita se prepara detalladamente (estudiando la legislación, la prensa, e información proporcionada por ONGs, entre otras fuentes).

¿Cómo se lleva a cabo una visita?
• Se realizan entrevistas confidenciales (con detenidos y personal directivo);
• Las entrevistas se realizan bajo estricta confidencialidad (los nombres nunca se mencionan).

¿Y entonces?
1. El Informe del CPT se envía a los gobiernos;
2. Los gobierno envían sus respuestas.

Principios esenciales
• Cooperación;
• Confidencialidad;
• Todos los informes de las visitas son confidenciales;
• Si existe falta de cooperacion se presenta una "Declaración Pública".

Publicaciones (1)
Los gobiernos pueden acordar la publicacion de:
• Los Informes del CPT y las Respuestas de los Gobiernos.[5]
El CPT puede decidir publicar:
• Las declaraciones públicas.

Publicaciones (2)
El CPT publica, en inglés y francés, sus Informes anuales (actividades, ratificaciones, etc.).

[5] El CPT ha presentado hasta ahora 134 Informes.

Publicaciones (3)
Se publican también:[6]
• Folletos informativos del CPT;
• La Convención del CPT; y
• Los Estándares del CPT.

Diferencias entre el CPT y la European Court of Human Rights (ECHR)[7]

CPT	ECHR
Prevención ("antes")	Reparación ("después")
Propia iniciativa	Después de la aplicación
Juristas, doctores, expertos en policía / cuestiones penales…	Juristas
Informe (recomendaciones)	Juicio (legalmente vinculante)

Extracto del 2º Informe General (CPT/Inf (92) 3)
I. Custodia policial

36. El CPT le da especial importancia a tres derechos que se les concede a las personas detenidas por la policía: *el derecho de la persona en cuestión a notificar los hechos de su detención a una tercera persona de su elección* (miembro familiar, amigo, cónsul), *el derecho a un abogado*, y el *derecho a solicitar un examen médico llevado a cabo por un médico de su elección* (además de cualquier examen médico realizado por un médico solicitado por las autoridades policiales).[8] Son, en opinión del CPT, tres garantías fundamentales contra los malos tratos de las personas detenidas, que deberían aplicarse desde el principio de la privación de la libertad,

[6] Estas publicaciones se editan en inglés, francés, alemán, español, ruso, turco, y muchos otros idiomas.
[7] Para obtener más información *cfr.* www.cpt.coe.int; e-mail: cptdoc@coe.int.
[8] Este derecho ha sido reformulado posteriormente como se indica a continuación: el derecho a acceder a un médico incluye el derecho a ser examinado, si la persona detenida así lo desea, por un médico de su propia elección (además de cualquier examen llevado a cabo por el médico dispuesto por las autoridades policiales).

independientemente de cómo pudiera describirse bajo el sistema legal competente (detención, arresto, etcétera).

37. Las personas que se encuentran bajo custodia policial, deberían ser expresamente informadas, sin demora, de todos sus derechos, incluyendo los que se recogen en el párrafo 36. Además, cualquier posibilidad ofrecida a las autoridades para demorar el ejercicio de uno o cualquiera de estos últimos derechos, con el fin de proteger los intereses de la justicia, debería quedar claramente definida y su aplicación estrictamente limitada en el tiempo. Por lo que respecta más particularmente a los derechos a acceder a un abogado y requerir un examen médico realizado por un médico distinto al dispuesto por la policía, los sistemas por medio de los cuales, excepcionalmente, los abogados y médicos pueden ser elegidos de entre unas listas preestablecidas –redactadas de acuerdo con las organizaciones profesionales competentes–, deberían eliminar cualquier necesidad de demora en el ejercicio de dichos derechos.

38. Para las personas que se encuentran bajo custodia policial, el acceso a un abogado debería incluir el derecho a contactar con un abogado y ser visitado por el mismo (en ambos casos bajo condiciones que garanticen la confidencialidad de sus argumentos), así como también, en principio, el derecho a que un abogado esté presente durante el interrogatorio.

Por lo que respecta al examen médico de las personas que se encuentran bajo custodia policial, dichos exámenes deberían ser realizados fuera de la vista de los agentes de policía. Además, los resultados de todos los exámenes, así como las declaraciones relevantes por parte del detenido y las conclusiones de los médicos, deberían ser registrados por el médico y estar disponibles para el detenido y su abogado.

39. Volviendo al proceso del interrogatorio, el CPT considera que deberían existir normas o directrices claras sobre la forma en que deben realizarse los interrogatorios policiales. Deberían recoger, entre otros, los siguientes asuntos: informar al detenido de la identidad (nombre y/o número) de los presentes en el interrogatorio; la duración legal del mismo; los períodos de descanso entre los distintos interrogatorios; los lugares en donde dicho interrogatorio puede desarrollarse; si se puede exigir al detenido que esté de pie mientras se le interroga; si el interrogatorio puede hacerse a personas que se encuentran bajo los efectos de las drogas, el alcohol, etcétera. Podría requerirse, además, que se

registrase sistemáticamente la hora a la que comienzan y finalizan los interrogatorios, y cualquier otra petición solicitada por el detenido durante el interrogatorio, así como el número de personas presentes durante cada interrogatorio. *El CPT añadiría que la grabación electrónica de los interrogatorios de la policía es otra salvaguarda útil contra los malos tratos de los detenidos (además de presentar ventajas significativas para la policía)*.

40. El CPT considera que las salvaguardas fundamentales garantizadas a las personas que se encuentran bajo custodia policial, se reforzarían (y el trabajo de los agentes de policía, posiblemente, se facilitaría en gran medida) si existiese una ficha policial única y exhaustiva para cada persona detenida, en donde se recogieran todos los aspectos de su custodia y las acciones llevadas a cabo relacionadas con los mismos (por ejemplo, cuándo se vieron privadas de la libertad y las razones para tomar dichas medidas; cuándo se les informó de sus derechos; señales de heridas, enfermedad mental, etcétera; cuándo contactaron con el pariente más próximo/cónsul y abogado, y cuándo fueron visitados por los mismos; cuándo les ofrecieron alimento; cuándo fueron interrogados; cuándo fueron trasladados o puestos en libertad, entre otros aspectos). Para varios asuntos (por ejemplo, las pertenencias personales, el hecho de que se le haya informado de sus derechos y los reclame o los rechace), se debería obtener la firma del detenido y, en su caso, debería explicarse la ausencia de la misma. Además, el abogado del detenido debería tener acceso a dicha ficha policial.

41. Además, la existencia de un *mecanismo independiente para examinar las quejas* sobre el trato recibido mientras se permanece bajo custodia policial, es una garantía fundamental.

42. La custodia policial tiene, en principio, una duración relativamente breve. Por consiguiente, no se puede esperar que las condiciones físicas de la detención en las comisarías de policía sean tan buenas como en otros sitios de detención donde las personas pueden ser retenidas durante largos períodos. Sin embargo, deberán cumplirse ciertos requisitos materiales elementales. Todas las celdas de la policía deberían tener un espacio razonable para el número de personas que suelen acoger, y disponer de una iluminación adecuada (es decir, suficiente para leer, excluyendo el tiempo para dormir) y ventilación; preferentemente, las celdas deberían tener luz natural. Además, las celdas deberían equiparse

con mobiliario de descanso (es decir, sillas o bancos fijos), y las personas obligadas a permanecer toda la noche bajo custodia deberían disponer de colchones y mantas limpias.

A las personas custodiadas se les debería permitir cumplir con sus necesidades fisiológicas cuando lo necesiten, en condiciones limpias y decentes, y se les deberían ofrecer instalaciones adecuadas en materia de higiene. Asimismo, se les debería proporcionar diariamente comida a las horas convenientes, incluyendo al menos una comida completa (es decir, algo más sustancial que un sandwich).[9]

43. La cuestión de cuál es el tamaño razonable para una celda policial (o cualquier otro tipo de alojamiento para el detenido/preso) es un asunto complicado. A la hora de realizar dicha valoración, se deben tener en cuenta algunos factores. Sin embargo, las delegaciones del CPT sintieron la necesidad de dictar una directiva preliminar que regulase esa materia. El siguiente criterio (visto más bien como un nivel deseable que como un valor mínimo) está siendo utilizado actualmente para valorar las celdas de la policía, previstas para que las ocupe una sola persona durante estancias superiores a unas pocas horas: alrededor de siete metros cuadrados, dos metros o más entre las paredes y 2.5 metros entre el suelo y el techo.

Extracto del 6º Informe General (CPT/Inf (96) 21)

14. El CPT acoge de buen grado el apoyo otorgado a su trabajo, expresado en la Recomendación de la Asamblea Parlamentaria 1257 (1995), sobre las condiciones de detención en los Estados Miembros del Consejo de Europa. Además, está complacido de saber que a raíz de la respuesta a la Recomendación 1257, el Comité de Ministros ha invitado a las autoridades de los Estados miembros a cumplir con las directivas sobre custodia policial tal y como se establecían en el 2º Informe General del CPT (*cfr*. CPT/Inf (92) 3, párrafos 36 al 43).

A este respecto, debería tenerse en cuenta que algunos Estados Parte de la Convención se resisten a implantar todos los puntos de las

[9] El CPT, además, es partidario de que a las personas detenidas bajo custodia policial durante 24 horas o más, se les ofrezca diariamente, en la medida de lo posible, ejercicio al aire libre.

recomendaciones del CPT, concernientes a las garantías contra los malos tratos de las personas bajo custodia policial y, en particular, a la recomendación de que a dichas personas se les conceda el derecho de acceder a un abogado desde el primer momento de su custodia.

15. El CPT desea recalcar que, de acuerdo con su experiencia, el periodo inmediatamente posterior a la privación de la libertad es el momento en que el riesgo de intimidación y maltrato físico puede ser mayor. Consecuentemente, la posibilidad de que durante dicho periodo las personas que se encuentran bajo custodia policial tengan acceso a un abogado, es una garantía fundamental contra los malos tratos. La existencia de dicha posibilidad tendrá un efecto disuasorio para aquellas personas que tengan la intención de maltratar a las personas detenidas; además, un abogado está bien preparado para actuar de forma adecuada en caso que se produjera realmente una situación de malos tratos.

El CPT reconoce que, con el fin de proteger los intereses de la justicia, pudiera ser excepcionalmente necesario aplazar durante cierto periodo el acceso al abogado particular elegido por la persona detenida. Sin embargo, ello no significaría la denegación total del derecho a acceder a un abogado durante el periodo en cuestión. En dicho caso, se tramitaría el acceso a cualquier otro abogado independiente, de confianza, que no pusiera en peligro los intereses legítimos de la investigación policial.

16. El CPT, en el 2º Informe General, subraya también la importancia de que las personas custodiadas por la policía fuesen expresamente informadas, sin demora, sobre todos sus derechos. Con el fin de asegurar que esto se cumpla, el CPT considera que, desde el primer momento de su custodia, a las personas detenidas por la policía se les debería entregar un formulario que establezca de forma directa esos derechos. Además, a las personas concernientes se les debería preguntar si desean firmar una declaración en donde testifiquen que han sido informadas de sus derechos. Las medidas anteriormente mencionadas serían fáciles de implementar, económicas y efectivas.

Anexo

Distinguished delegates. It is a particular honour for me to be addressing this important conference on behalf of the Council of Europe's Committee for the Prevention of Torture, which this year marks 15 th anniversary.

Within Europe the problem of combating torture, including related forms of ill-treatment, has been dealt primarily under the auspices of the Council of Europe. The European Convention on Human Rights with its Article 3 became the first binding regional international instrument that incorporated the prohibition of torture. It reads as follows:

> No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The norm is very general, but as in case of all other substantial articles of the ECHR, their content should be traced in the case-law of the Court of Human Rights.

The ECHR has been supplemented by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and correspondingly by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The ECPT was adopted by the Committee of Ministers of the Council of Europe on 26 June and opened for signature on 26 November 1987. It took only a year to get seven necessary ratifications and it entered into force on 1 February 1989. By now it has been ratified by all 46 member states of the Council of Europe.

Unlike the European CHR, CPT is not a judicial panel empowered to settle legal disputes concerning alleged violations of treaty obligations. CPT, first and foremost is a mechanism designed to prevent ill-treatment from occurring, although it may in special cases intervene. Its task is to inspect places of detention and make recommendations aimed at reinforcing, if necessary, the protection of detained persons against all forms of ill-treatment and subsequently monitor the implementation of these recommendations. The explanatory report of the European Convention for the Prevention of Torture (Art.17) stipulates that it is

not for the Committee to perform any judicial functions; it is not its task to adjudge that violations of relevant international standards. 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. It is not bound by the jurisprudence of the European Court of Human Rights, but is able to draw guidance from it. The Convention contains no definition of torture or inhuman or degrading treatment or punishment. It does not specify what is permitted and what is prohibited, and it creates no rights.

European HRC aims at conflict solution at legal level, CPT aims at conflict prevention a practical level. The Committee is concerned with prevention, with future rather than the past.

But before I speak in greater detail about CPT and pre-trial custody, I would like to give a brief overview of CPT's mode of operation.

On the basis of recommendations in reports to countries, CPT has developed standards in relation to pre-trial custody. I will start with those in relation to initial police custody.

CPT and Police Custody

In CPT's experience, *the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest.* Through visits the Committee has found the incidence of physical ill-treatment at the hands of police to be relatively commonplace or not rare in a large number of countries.

Therefore, 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;

CPT considers that these three rights are fundamental safeguards against ill-treatment of persons deprived of their liberty, which should apply from the very outset of custody (that is, from the moment when

the persons concerned are obligated to remain with the police). The involvement of a lawyer and a doctor, as well as o the family mitigates the vulnerability of the person when in the hands of law enforcement agencies.

Many states have taken steps to introduce or reinforce these rights, in the light of the CPT's recommendations. More specifically, the right of access to a lawyer during police custody is now widely recognised in countries visited by the CPT; in those few countries where the right does not yet exist, plans are to introduce it.

However, in a number of countries, there is considerable reluctance to comply with the CPT's recommendation that the right of *access to a lawyer* be guaranteed from the very outset of custody. In some countries, persons detained by the police enjoy this right only after a specified period of time spent in custody; in others, the right only becomes effective when the person detained is formally declared a "suspect".

Access to a lawyer will have a dissuasive effect upon those minded to ill treat detained persons; a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation.

For the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for a lawyer.

Persons in police custody should have a formally recognised right of *access to a doctor*. A doctor should always be called without delay if a person requests a medical examination; police officers should not seek

to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).

All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.

A detained person's *right to have the fact of his/her detention notified to a third party* should in principle be guaranteed from the very outset of police custody. CPT recognises that there might be certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons, and to require the approval of a senior police officer unconnected with the case or a prosecutor). In the cases of Finland and Spain, CPT criticized provisions that permit delays of up to 4-5 days and is of the opinion that "a maximum of 48 hours would strike a better balance between the requirements of investigation and the interests of detained person".

Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. CPT thinks it imperative that persons taken into police custody are *expressly informed of their rights* without delay and in a language which they understand. It recommends that a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.

The above-mentioned measures would be easy to implement, inexpensive and effective. Whenever persons are detained in a police establishment, for whatever reason or length of time, their fact of detention should be recorded without delay. CPT recommends a single

and comprehensive custody record, in which would be recorded all aspects of his-her custody and all the action taken*: time and reason of apprehension, when informed of rights, signs of injuries, mental disorder, contact with and-or visits by a relative, lawyer, doctor, when offered food, when questioned, when brought before a judge, when released*.

CPT country reports –most all record principal aspects of custody, but these accounts are in separate documents–. Countries –were already much paperwork, so Now more emphasis– that records are kept consistently.

CPT pays much attention to interrogation. The *questioning of criminal suspects* is a specialist task which calls for specific training if it is to be performed in a satisfactory manner. First and foremost, *the precise aim of such questioning* must be made clear: that *aim should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to obtain a confession from someone already presumed, in the eyes of the interviewing officers, to be guilty*.

Over the years, CPT delegations have spoken to a considerable number of detained persons in various countries, who have made credible claims of having been physically ill-treated, or otherwise intimidated or threatened, by police officers trying to obtain confessions in the course of interrogations. It is self-evident that *a criminal justice system which places a premium on confession evidence creates incentives for officials involved in the investigation of crime –and often under pressure to obtain results– to use physical or psychological coercion.* In the context of the prevention of torture and other forms of ill-treatment, it is of fundamental importance to develop methods of crime investigation capable of reducing reliance on confessions, and other evidence and information obtained via interrogations, for the purpose of securing convictions. Therefore, CPT has advocated that clear rules or guidelines exist on the way in which police interviews are to be conducted. Those rules should introduce a code of conduct for police interviews.

The *electronic (i.e. audio and/or video) recording of police interviews* represents an important additional safeguard against the ill-treatment of detainees. The CPT welcomes that the introduction of such systems is under consideration in an increasing number of countries. This can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment.

This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.

The CPT has on more than one occasion, in more than one country, discovered *interrogation rooms* of a highly intimidating nature: for example, rooms entirely decorated in black and equipped with spotlights directed at the seat used by the person undergoing interrogation. Facilities of this kind have no place in a police service.

> 1999 Latvia report –refers to a room located on the premises of Police Pre-trial Investigation Centre, which apparently could be used for interrogations–. Equipped with a thickly padded door and some furniture fixed to the floor, the room possessed a battery of five strong spotlights, each with a double bulb, directed towards one side of the table. Reddish brown stains were observed on the wall between 10 and 40 cm from the floor. Facilities of this kind have no place in a modern police force.

Turkey 2003 –interrogation facilities were gradually being brought in line with standards recently introduced–.

In addition to being adequately lit, heated and ventilated, interview rooms should allow for all participants in the interview process to be seated on chairs of a similar style and standard of comfort. The interviewing officer should not be placed in a dominating (e.g. elevated) or remote position vis-à-vis the suspect. Further, colour schemes should be neutral.

In certain countries, the CPT has encountered the practice of *blindfolding* persons in police custody, in particular during periods of questioning. CPT delegations have received various –and often contradictory– explanations from police officers as regards the purpose of this practice. From the information gathered over the years, it is clear to the CPT that in many if not most cases, persons are blindfolded in order to prevent them from being able to identify law enforcement officials who inflict ill-treatment upon them. Even in cases when no

physical ill-treatment occurs, to blindfold a person in custody –and in particular someone undergoing questioning– is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment. The CPT recommends that the blindfolding of persons who are in police custody be expressly prohibited.

It is not unusual for the CPT to find *suspicious objects* on police premises, such as wooden sticks, broom handles, baseball bats, metal rods, pieces of thick electric cable, imitation firearms or knives. The presence of such objects has on more than one occasion lent credence to allegations received by CPT delegations that the persons held in the establishments concerned have been threatened and/or struck with objects of this kind.

Example. Greece

A common explanation received from police officers concerning such objects is that they have been confiscated from suspects and will be used as evidence. The fact that the objects concerned are invariably unlabelled, and frequently are found scattered around the premises (on occasion placed behind curtains or cupboards), can only invite scepticism as regards that explanation. In order to dispel speculation about improper conduct on the part of police officers and to remove potential sources of danger to staff and detained persons alike, items seized for the purpose of being used as evidence should always be properly labelled, recorded and kept in a dedicated property store. All other objects of the kind mentioned above should be removed from police premises.

The CPT has stressed on several occasions *the role of judicial and prosecuting authorities* as regards combatting ill-treatment by the police.

For example, all persons detained by the police whom it is proposed to remand to prison should be physically brought before the judge who must decide that issue; there are still certain countries visited by the CPT where this does not occur. Bringing the person before the judge will provide a timely opportunity for a criminal suspect who has been ill-treated to lodge a complaint. Further, even in the absence of an express complaint, the judge will be able to take action in good time if there are other indications of ill-treatment (e.g. visible injuries; a person's general appearance or demeanour).

Naturally, the judge must take appropriate steps when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.

The diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officials and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.

When persons detained by law enforcement agencies are brought before prosecutorial and judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of an express complaint, these authorities will be in a position to take action in good time if there are other indicia (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred.

However, in the course of its visits, the CPT frequently meets persons who allege that they had complained of ill-treatment to pro-secutors and/or judges, but they have shown little interest in the matter, even when they had displayed injuries on visible parts of the body. The existence of such a scenario has on occasion been borne out by the CPT's findings. By way of example, the Committee recently examined a judicial case file which, in addition to recording allegations of ill-treatment, also took note of various bruises and swellings on the face, legs and back of the person concerned. Despite the fact that the infor-mation recorded in the file could be said to amount to *prima-facie* evi-dence of ill-treatment, the relevant authorities did not institute an investigation and were not able to give a plausible explanation for their inaction.

It is also not uncommon for persons to allege that they had been frightened to complain about ill-treatment, because of the presence at the hearing with the prosecutor or judge of the very same law enforcement officials who had interrogated them, or that they had been expressly discouraged from doing so, on the grounds that it would not be in their best interests.

It is imperative that prosecutorial and judicial authorities take resolute action when any information indicative of ill-treatment emerges. Similarly, they must conduct the proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated.

Finally, the *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. 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. Further, it should examine all issues related to the treatment of persons in custody: the recording of detention; information provided to detained persons on their rights and the actual exercise of those rights (in particular the three rights; compliance with rules governing the questioning of criminal suspects; and material conditions of detention).

Pre-trial prisons

It is to be borne in mind the fact that pre-trial custody facilities is the responsibility of different Ministries in different states. Persons, initially held at police stations may be transferred to other holding facilities after a short period (which ideally should be limited to 48 hours at a maximum). The second stage holding facilities are usually operated under the autority of the Ministry of Justice, but in some jurisdictions they fall under the Ministry of Interior.

As far as CPT is concerned, prevention of ill-treatment requires that the custodial function be carried by staff who see themselves as distinct from the police and regard their primary responsibility as the duty of care for persons deprived of liberty and not the obtaining of

confessions or otherwise actively assisting the investigation/prosecution process. This functional obligation is often best achieved by separation of the Ministries under whose authorities these functions are performed. If this is not the case, then special care is needed to ensure that the selection, training and operating practices of custodial staff emphasises and safeguards the distinction between the functions of the police and investigators and the functions of custodial staff.

As I mentioned that in CPT's experience the risk of ill-treatment is often the greatest at the beginning of custody, when a detainee is in the hands of the police. It is, therefore, vital that systematic medical screening occurs properly on entry of a person arriving in pre-trial detention facilities. As well as serving the important needs of general health (of prisoners and staff) and prevention of suicide and transmission of communicable diseases, systematic medical screening on entry can be a major safeguard against ill-treatment and an important factor in effective pursuit of those who ill treat persons in custody. It can also be a protection for custodial staff in pre-trial detention facilities against allegations of ill-treatment.

What does this mean in practise? CPT considers that every person arriving from police custody should be screened by a medically qualified professional upon reception in the facility, and in any case, within 24 hours. The screening should include medical examination to identify any injuries present upon arrival from police custody and their precise recording. The record should include all observations of injuries, account how they were sustained and the examining doctor's opinion as to the consistencies between the observed injuries and the account given.

Furthermore, there should be a system in place to communicate reports of injuries to the prosecutorial authorities.

Additional point to mention in this connection is the practise o returning persons in pre-trial detention to police custody. CPT considers that such practise should be very limited. The CPT is of the opinion that from the standpoint of the prevention of ill-treatment, it would be far preferable for such questioning to take place within the prison establishment concerned rather than on police premises. The return of remand prisoners to police custody for further questioning should only be sought and authorised when it is absolutely unavoidable. Upon return to pre-trial detention facility the person should again be medically screened.

CPT tends to find less frequent and less serious ill-treatment by custodial staff in pre-trial detention facilities than in police custody. However, the incidence tends to be higher in pre-trial detention facilities than in prisons for sentenced prisoners only. With some notable exceptions, it seems that the further from the outset of custody, the less risk of ill-treatment by staff. But there needs to be vigilance concerning ill-treatment by staff in custodial settings, since it is the nature of closed institutions for the risk ill-treatment to continue.