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association pour la prévention de la torture
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Proceedings

The Prevention of Torture in Central Europe

Acts of the Seminar organised by
the APT and COLPI in Budapest, Hungary
18-19 June 1998

Founded in 1977
by J.-J. Gautier

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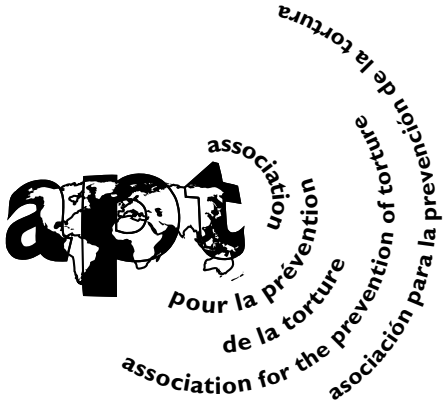

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LIST OF ABBREVIATIONS

APT Association for the Prevention of Torture

CAT Committee against Torture

CE Council of Europe

COLPI Constitutional and Legal Policy Institute

CPT European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECHR European Convention on Human Rights and Fundamental Freedoms

ECPT European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ERRC European Roma Rights Center

EU European Union

HHC Hungarian Helsinki Committee

HOST Citizens' Solidarity and Tolerance Movement

MEJOK Centre for the Protection of Human Rights – Hungary

NATO North Atlantic Treaty Organisation

NGO Non-governmental organisation

PC Polish constitution

PSD Public security detention (Hungary)

UK United Kingdom

UN United Nations

UNCAT United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UNHCR Office of the United Nations High Commissioner for Refugees

EDITOR'S NOTE

The Association for the Prevention of Torture (APT) is an international non-governmental organisation based in Geneva with the mandate to prevent torture and ill-treatment. It was at the origin of the European Convention for the Prevention of Torture. This Convention, adopted by the Council of Europe in 1987, established the European Committee for the Prevention of Torture (CPT), which is authorised to visit any place of detention at any time on the territory of each State Party to the Convention.

The organisation of a sub-regional seminar for Central Europe is a result of a joint APT/Council of Europe regional seminar held in Strasbourg in 1994, where it was decided to convene sub-regional seminars on the prevention of torture. As the unique mechanism which the CPT embodies deserves to be better known and understood, the APT identified a need to inform and train concerned circles of professional people. Two such sub-regional seminars already took place in 1997. The first one was held in Spain, in April, to assess the work of the CPT in Southern Europe. The second one took place in September, in London, and covered Northern European countries.

This third seminar on the prevention of torture dealt with Central Europe. Its aim was to assess the work of the CPT in five countries: Hungary, the Czech Republic, Poland, the Slovak Republic and Slovenia. The first day of the seminar dealt mainly with the work of the CPT in Central Europe and an overview of its functioning. A presentation of national visiting mechanisms and of ways of improving the collaboration between them and the CPT followed. The second day was dedicated to a comparative analysis of the impact of the CPT's recommendations and their implementation in the five Central European countries. Although some of the CPT reports were not yet available at the time of the event, our association was still concerned with the implementation of the Committee's work. Police custody and detention of minors were the two themes chosen with respect to the implementation of the CPT's recommendations.

The Seminar on the Prevention of Torture in Central Europe was organised by the APT and the Constitutional and Legal Policy Institute (COLPI) and held on 18-19 June 1998 at the Petnehazy Hotel in Budapest, Hungary. Our association is very grateful to the Institute as well as to Károly Bárd and Ágnes Kövér, with special thanks to the latter for her invaluable support in co-editing. This event would not have been possible without their help. In this regard, the APT would especially like to thank Zsuzsanna Sereny for her hard work. We also want to express our appreciation to the CPT for participating: Günther Kaiser's presence was particularly active.

In our view, the seminar was a success. The participants took a very active part in the discussions. Our special thanks go to the experts for all they did to prepare for the fruitful discussions.

Special thanks are likewise due to the rapporteurs, Ursula Kriebaum, Lene Johannessen-Wendland and Malcolm Evans, who had a particularly difficult task to fulfil. Without them it would have been impossible to edit these proceedings.

Audrey Vogel, Programme Officer for Europe, APT

INTRODUCTION

1) OPENING ADDRESS

by Marco Mona, President of the APT

It is indeed a great honour and pleasure for me to open this Seminar on the Prevention of Torture in Central Europe. I speak on behalf of the Association for the Prevention of Torture, the international NGO which, together with COLPI, organised this meeting.

Some of you will remember our Strasbourg seminar in 1994 on the implementation of the European Convention for the Prevention of Torture. One of the decisions taken at that meeting was to hold sub-regional seminars in a simpler context, not so much to identify common sub-regional patterns as to exchange experiences and ideas about what happens in our countries before, during and after a visit by the CPT: in other words, about what is done in concrete terms to prevent torture and ill-treatment, and what salt and pepper we might want to add to the recipe.

In April 1997 we held the first seminar in the Basque Country, at Oñati's International Institute of Sociology of Law, with representatives of six Southern European countries. The second one followed in September 1997 in London, organised jointly with the British Institute of Human Rights, to address the countries of Northern Europe. And now we are here, at the third sub-regional seminar, which brings together representatives of five countries whose common denominator may be adherence to the European Convention after its entering into force.

I should like to underline that events like this seminar are only possible given a happy combination of conditions. One such condition is a smooth collaboration with a national NGO able and willing to make an essential contribution to the organisation and setting up of the programme. Let me say that here in Budapest we are in the ideal situation of being able to rely on a group of dedicated friends and a national NGO. I want to thank you, our friends from COLPI, for making this possible. You've given me a great feeling of being at ease among friends, and I hope that everyone here shares this feeling with me.

What is the special interest of the APT in these matters? What legitimation do we have to invite people to this seminar? Let me say a few words about our organisation, although I think that most of you know us already. I'd also like to invite you to grab any publications in dark blue print on the table. We published this material for you, and we still have a demanding publications programme ahead of us.

The APT is, to my knowledge, the only international NGO focusing exclusively on prevention of torture and ill-treatment. We played a special role in the creation of the European Convention, and we consider our work toward the implementation of the Convention, carried out together with many other NGOs on the international level, a most important part of our activity – a part, by the way, which has been acknowledged by the CPT itself.

The idea that torture and ill-treatment can and should be prevented from happening by means of a system of expert visits to all places of detention was first formulated by our founder, the Geneva banker and humanist Jean-Jacques Gautier, some 21 years ago. An obvious idea, one would say today – why not focus on prevention as much as on denunciation and reparation? – but realisation of the idea was harder than you would think. You know, however, that the best attributes of human rights NGOs are impatience and determination (which I like most in combination with stubbornness), and Gautier and his friends were not to be dissuaded by the crowd of more or less

friendly "realists". By 1987, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was ready for signature, one practical tool for prevention which is working today. Others have still to follow.

This is, very briefly, why we are here: APT is the NGO which took over Gautier's idea and which carries it on today. Naturally I need not remind you that the dynamism and capacity to adapt – in short, the prerequisites for survival – of an NGO like ours depend on its members and friends. I therefore invite all of you to join the APT on a personal basis and/or as a consultant NGO member. We'd be honoured to count you among our membership.

You'll have your own ideas about the aims of this seminar. Here are some of ours which I hope will be useful:

- To establish links between NGOs and private individuals committed to prevention of torture, between NGOs and persons dealing with our topics on an official level, internationally or within national administrative structures;
- To look for ways to disseminate the idea of prevention of torture and its existing instruments as well as those yet to be invented;
- To examine and compare other instruments of prevention existing in our countries, and to look into possibilities of working efficiently with the CPT reports on our countries, both to implement the CPT's work and to ensure that the CPT visit is not an isolated event but the beginning of an ongoing process.

There's one thing I'd like to make clear: We're not divided into teachers and pupils here. Rather, we all have experiences to share, and that's what this seminar is all about.

Once again, I'd like to thank our friends from COLPI for the work they did in advance of the seminar and for accompanying us through these days in Budapest. Thanks to the CPT and its dedicated and competent member, Professor Günther Kaiser, for sharing our efforts and thus demonstrating a concrete interest in how the NGOs respond to the CPT's work. Thanks to the experts and rapporteurs who are attending this seminar. Allow me to mention two of them in a special way: Rod Morgan and Malcolm Evans have been a mainstay of this series of seminars; Rod Morgan was already present in Strasbourg; both Rod and Malcolm were in Oñati, in London and now in Budapest. We depend on such faithful friends and of course on their very thorough knowledge of the system.

Finally, let me recognise the work done by our staff at the APT: Barbara Bernath did most of the background work from the start of our preparations for this seminar. She is a very fine and competent researcher and organiser. The reason she's not with us today is simple. She gave birth to her son Gaspard one month ago; isn't that a valid excuse not to be here? But she'll start to work again at the APT very soon, so ask for her when you get in touch with us in Geneva and tell her whether or not you liked the seminar. And here is Audrey Vogel, the APT's Programme Officer for Europe, who did and does a marvellous job. Most of you have already met her. She's the one who answers your questions, and she'd obviously like to hear your comments on the seminar. Finally, here is Lene Johannessen, who is assisting Audrey Vogel and doing part of the rapporteurs' work.

Let me close by sharing with you a quite strange experience I had last week. I was attending, on behalf of the APT, a hearing before the Steering Committee for Human Rights of the Council of Europe in Strasbourg on what is called the 12th Protocol to the European Convention on Human Rights (ECHR). This protocol deals with the rights of persons deprived of their liberty, a protocol with

a very long and difficult gestation period. At a certain moment I felt called on to tell the audience that the human rights we were talking about were absolute rights that lie beyond all question. This was a reaction to contributions to the discussion made by two honourable delegates of very honourable member States who told the audience that before talking about the rights of persons deprived of their liberty, one should recall that most such persons had themselves grossly violated the rights of other people. . . Your human rights and mine are not what we were talking about – your rights and mine are fine – but the rights of marginal individuals, maybe even individuals who have grossly offended against the rights of others. Quite an odd situation, you'll agree: How can an NGO representative invited to a hearing before such a distinguished group dare to say such obvious things? My conclusion is that there is nothing so obvious that it doesn't have to be repeated ever again, be the audience modest or distinguished. Perhaps this is a good principle for our work.

I'm happy to be here with you and to be able to take a few steps forward with you on the path in which all of us have such a passionate interest.

2) OPENING ADDRESS
by Günther Kaiser, Member of the CPT

1) The conviction that the rights of man would also be granted to prisoners some day dates back about 200 years – almost to the first declarations of human rights and the outset of the reform of the modern prison sentence. The renaissance of torture and inhuman and degrading treatment of criminals, of members of the political opposition and of minorities, particularly under the National Socialist regime during the Second World War, shocked the entire international community and intensified efforts toward recognition and protection of human rights. Since that time, the prohibition of torture can be considered as binding international common law. Already and above all, the UN Universal Declaration of Human Rights of 10 December 1948 launched the combat against torture. However, infractions of the human rights of detainees are still not unusual, even in Europe, and in some parts of the world they are an everyday occurrence. It is especially the non-governmental organisations, so-called NGOs, which keep on drawing the public's attention to acts of torture. Some police and criminal investigation measures, especially when a confession is being sought, still do not meet international standards of human rights protection. Thus an ongoing need to focus on human rights still exists wherever citizens are confronted with highly developed powers of government and wherever protection of human rights seems to be endangered most, e.g. in places where persons are deprived of their liberty by a public authority.

In particular, Art. 7 of the International Covenant on Civil and Political Rights of 19 December 1966 and Art. 3 of the ECHR of 4 November 1950, which have legal force in all European countries, both serve to prevent infractions from occurring by explicitly guaranteeing the protection of detainees from torture and inhuman or degrading treatment or punishment. In order to assure the fundamental freedoms under the conditions of deprivation of liberty, the adoption of a supplementary protocol to the ECHR intended to strengthen the legal position of detained persons is currently under discussion. As most member States of the Council of Europe have not only ratified the Convention, but also admitted individual applications pursuant to Art. 25, thereby submitting to the case law of the Strasbourg human rights bodies, one might wonder what tasks remain to be accomplished by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. All the more so because a UN Committee against Torture (CAT) based on Art. 17 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was established in 1987 in addition to the UN Commission on Human Rights of 1947 with a possible "Special Rapporteur" and the "Human Rights Committee". Moreover, the European Committee for the Prevention of Torture came into being in Strasbourg in 1989. Therefore, it seems useful to examine here, after more than eight years, the jurisdiction, organisation, working methods, experience and above all possible effects of the Committee more closely. The European Convention naturally neither intends to declare single States guilty of abuses nor to discriminate against them. Moreover, the visits conducted by a delegation or individual Committee members are not considered primarily as an external "control measure" directed against the State concerned. Rather, the Committee's task is to prevent possible unacceptable conditions by way of an ongoing dialogue, mutual co-operation and conflict avoidance instead of confrontation. This is the purpose of the various kinds of visits (periodic, *ad hoc* or follow-up visits) as well as of the ensuing CPT reports and the various kinds of responses issued by the States visited (interim and follow-up reports).

2) More than 40 published visit reports and 7 annual reports drawn up so far by the European Committee for the Prevention of Torture have confirmed the assumption that there is a justified need for external control by a special visiting system. Hence, the implementation of Art. 3 of the ECHR and of the European Convention for the Prevention of Torture, which is subject to Art. 3, and partially also

of the European Prison Rules of 1987, depends essentially on the activities of the European Committee for the Prevention of Torture. Besides the overriding objective of prevention, the Committee's main task is to establish, document and assess facts in the light of the ECHR. Moreover, the European Prison Rules are assigned a certain guiding function, as an infraction of them might be an indication of danger to the human rights of persons deprived of their liberty. It is essential to take precautions against such risks. The State visited is given recommendations with respect to improvements in the protection of persons detained on its territory. Confidentiality is the prime necessity in this connection, a fact also reflected in the contents of the reports drafted and published annually by the Committee (Art. 12 of the Convention).

Naturally, the question is whether certain thematic points of focus or "sensitive" areas have crystallised within the 8-year period of experience since November 1989. Despite the fact that some subjectivity and prejudice may be involved in the answer, it can generally be said that such areas are: police custody, solitary confinement, conditions of accommodation (in particular as regards overcrowding), hygiene, work, recreational and other activities, daily outdoor exercise, contact with the outside world and shortcomings of the treatment regime. Moreover, the rather sharp restrictions imposed upon remand prisoners, internal and external control measures relating to custody and imprisonment, the right of access to a doctor and lawyer, the right of persons taken into custody to notify their next of kin, and information concerning the right to silence have been examined. In recent times, the different aspects of the treatment of aliens, especially asylum seekers, have come to the forefront. Aliens are now receiving more attention than they did at the beginning of the CPT's work, perhaps due to the increasing volume of migration during the last few years.

In the overwhelming majority of member States of the Council of Europe, however, experts and members of the fact-finding delegations of the Committee have rarely uncovered firm indications of methods of torture such as hanging persons up by their arms and legs (so-called Palestinian hanging), electric shock, caning on the soles of the feet (*falaka*), or confinement in an unlighted cell over a longer period of time. But ill-treatment by police officers has been discovered in a number of countries. It might be surprising to the careful reader of the CPT's reports that nearly none of them document cases or even systematic practices of torture, with the exception of the public statements concerning the widespread practice of torture and ill-treatment of persons held in police custody in Turkey. There is obviously a certain discrepancy in fact finding. Apparently we need different procedures or patterns of definitions related to degrees of torture and ill-treatment. For overall, the CPT's reports seem hesitant to characterise forms of ill-treatment as torture and rather attest to the conviction that prevention can be achieved more effectively by cautious mutual co-operation and conflict avoidance.

Observations of the Committee have shown that the risk of ill-treatment by prison personnel is considerably lower in quantitative and qualitative terms than of that by the police. In most countries, even including Turkey, no or few complaints were lodged concerning ill-treatment by prison officials. Nevertheless, individual cases of ill-treatment have come to the CPT's knowledge. Although there has been no indication of systematic ill-treatment in the cases mentioned and documented, certain circumstances do seem to increase the risk of ill-treatment. An unfavourable atmosphere between law enforcement personnel and detainees also serves to increase the risk of uncalled-for violence. As regards penal detention, the Committee stresses the need for effective appeal proceedings and suggests that inspections be conducted regularly by independent persons.

As was to be expected, the European countries vary regarding the material and physical conditions of detention. Some States have a relatively high standard of accommodation (i.e. single and adequately sized cells throughout). In addition, inmates often have access to generous recreational facilities. As a rule, toilets and showers can easily be made accessible, by use of an intercom, to occu-

pants of cells lacking sanitary facilities. In spite of widespread tendencies toward opening up penal institutions to the outside world and adapting the conditions of detention if necessary, the question arises whether the price to be paid for liberalisation on the whole or for normalisation for the majority of inmates is not too high, as these objectives are not infrequently realised at the expense of a minority considered to be dangerous.

The general objective of accommodation in single prison cells in accordance with the principle of "one man, one cell" comes up against considerable difficulties in the case of overcrowding. Overcrowding influences life within a penal institution in its entirety and is therefore considered a problem directly relevant to the Committee's mandate. Carrying out sentences in a constructive manner represents a problem, particularly on account of an almost extreme degree of overcrowding combined with poor hygienic and sanitary conditions. In a number of institutions visited, plastic buckets occasionally serve as cell toilets, a condition which can only be described as humiliating.

The Committee pays special attention to solitary confinement or isolation of dangerous or problem inmates and their (repeated) transfer from one institution to another. Under certain circumstances such as continued isolation, solitary confinement may result in inhuman or degrading treatment. The same applies to repeated transfer, which may be detrimental to the detainee's mental and physical well-being. In addition, it renders the maintenance of adequate relationships with the detainee's family and lawyer difficult. In this respect, repeated transfer of a prisoner might also result in inhuman or degrading treatment under certain circumstances. Nevertheless, the related prison regime might be generally characterised as positive, when the work available is adequate, constructive, and rounded off with physical exercise and tuition to create a well-balanced day offering inmates much time outside their cells. Other prison regimes, in contrast, are largely merely custody-oriented. The work and recreational activities available are completely unsatisfactory, many prisoners being forced to keep to their cells for a major part of the day, not seldom for 23 hours. The discussion on penal detention attaches much importance to the areas of work and remuneration. In Germany, for example, a complaint of unconstitutionality is pending regarding the low level of wages, although an international comparison of remuneration in German penitentiaries reveals that it is not much below the average. So far, the Strasbourg human rights bodies have dealt with this problem only rarely. Nor does the CPT often go into the matter of remuneration in the countries visited, particularly since the widespread unemployment of detainees already generates serious problems.

Detention of foreigners presents considerable difficulties, in particular with respect to equal treatment and the prohibition of discrimination. Penitentiaries in European capitals or large cities with an international airport frequently harbour detainees from more than 30 to 40 countries. Overall, these circumstances are rendering communication, treatment, assurance of basic rights such as visits, exchange of letters and telephone contact difficult, in particular as regards members of foreign cultures. Foreign nationality, assumed dangerousness – of drug dealers, for example – and the risk of attempted escape fairly often entail separation, segregation and isolation of prisoners as well as restrictions on them. Restricted communication with the outside world, denial of training or further education and refusal of privileges imposed by the prison administration for security reasons are concentrated upon foreign prisoners and may amount to discriminatory measures. The dangers of tension within the institution, of interpersonal violence among detainees, and ethnic conflicts between different groups of foreign inmates exist as additional aggravating circumstances.

Accommodation of prisoners belonging to the organised crime scene makes high demands on prison administration and law enforcement personnel alike. Such prisoners, as well as drug dealers and detainees who are strongly suspected of planning to escape, are usually either detained in so-called high-security institutions according to the principle of concentration, or distributed over sev-

eral penitentiaries in small groups consisting of two to six persons and transferred from one penal institution to another periodically in accordance with the principle of de-concentration. The objective of these strategies is to reduce the dangerousness of the group of inmates concerned in order to lower both the risk of escape and the staff's exposure to danger. In this respect, the liberal and progressive penitentiary systems in Western and Northern Europe, in particular, are beset with difficulties in their attempts toward a satisfactory solution.

Accommodation and treatment of young and female detainees constitute a further complex of problems. It is well known that female prisoners are not granted the same opportunities as male inmates. Vocational training and supplementary educational programmes are more keyed to male prisoners and hence not suited for women. The principle of equality, however, demands that prison authorities treat male and female prisoners alike. Mainly because the proportion of female prisoners as compared with the male prison population is extremely low (5% at the most), female detention is mainly oriented to the needs of male detention. It therefore comes as no surprise that there are but few women's prisons in existence. As a consequence, female prisoners are often detained far away from their homes and families. Classification of detainees, as is the practice in male detention, is hardly feasible in small women's penitentiaries.

3) Now, looking more in detail at the potential impact of the CPT's activities on European standards of deprivation of liberty: Since the European Committee for the Prevention of Torture commenced its activities back in 1989, we are now able to make some assessment of its effectiveness and the impact of its work on the Europe-wide conditions of deprivation of liberty and penal detention. In any event, according to the first seven annual reports drawn up, the Committee has to date conducted periodic visits to nearly all the 40 member States of the Council of Europe. The interim and follow-up reports of the countries visited not only testify to their unbroken willingness to co-operate, but also to their willingness to consider, take up and implement the Committee's recommendations as far as possible. This applies in particular to countries where the CPT has deemed "immediate observations" pursuant to Article 8, par. 5V of the Convention imperative. In part, the reports and recommendations drawn up by the CPT, which are not published without the member States' consent, even serve to promote the resumption and completion of reforms formerly envisaged but not carried through. In many countries, due to a lack of financial resources as well as of competent and well-trained law enforcement personnel, the pressures of migration and overcrowding obviously allow only gradual reforms extending over considerable periods of time. Some States Parties apparently have difficulties in following and adopting the CPT's recommendations on certain aspects (e. g. electronic recording of police interrogations; developing a so-called code of conduct), be it for practical or financial reasons. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) constitutes a novel instrument in the fight against torture which is intended to eliminate the scourge altogether. In this respect it fulfils a pioneer function. But useful though a regional convention against torture is, future development should not be confined to Europe. The establishment of a universal visiting system on the model of the European Convention is as necessary as ever. One can assume, however, that the standards set by international legislation on criminal proceedings and penal detention have the biggest chance of exerting influence in Europe, where a "pan-European standard" has already begun to emerge under the rule of the European Convention on Human Rights and the Strasbourg human rights bodies. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment will serve to enhance this impact.

In achieving this aim, the attempt should also be made to develop and apply measures common to both Western and Eastern Europe in order to avoid double standards. The Committee was therefore quite justified in incorporating the objective of a gradual compilation of a corpus of

specific minimum rules and conditions on the treatment of prisoners in its first general report. It can be expected that the first stock-taking of the standards set by the Committee will be finished and published in the near future. Nevertheless, detention-related tasks of law enforcement personnel and the relevant services need to be tackled now rather than in the future. Hence the Committee attaches increasing importance to the training of prison officials in human rights, in accordance, *inter alia*, with the relevant recommendations of the United Nations, which passed a resolution in 1979 on a "Code of Conduct for Law Enforcement Officials", Articles 5 and 6 of which explicitly refer to the treatment of prisoners and the prohibition of torture. No doubt this serves the Committee's main objective of preventing inhuman treatment and accommodation under the conditions of deprivation of liberty most effectively. However, it cannot be ignored that members of police and prison staff are at present very often so exhausted that they sometimes find no other relief than to get ill. Statistics on staff illness may therefore point out possible limitations of law enforcement personnel training. Further, we might expect that the presentations, statements and discussions of the seminar will underline or criticise the CPT's impact on the European countries. This is to be hoped for, especially as most of the seminar participants are not immediately involved in the work of the CPT. Views with more distance and independence than I myself possess will almost surely help us analyse and evaluate the CPT's activities with greater accuracy. And therefore I'm looking forward to the following presentations with great interest. Finally, let me thank the Association for the Prevention of Torture as well as the Constitutional and Legislative Policy Institute for setting up the seminar and creating the possibility for a critical analysis and stock-taking.

Part I

The Work of the CPT in Central Europe

I FUNCTIONING OF THE CPT: NATURE AND MODUS OPERANDI

by Rod Morgan, Professor of Criminal Justice at the University of Bristol,
Ad hoc *expert advisor to the CPT, United Kingdom*

1 Introduction

The European Committee for the Prevention of Torture (CPT) is the creation of a Convention of the same name which came into force in February 1989. The Convention does not establish any new norms, but aims to strengthen the obligation found in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3, namely, that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The Convention does so by non-judicial means of a preventive nature. A State Party to the Convention for the Prevention of Torture agrees to a system of visits carried out by the CPT to "any place within its jurisdiction where persons are deprived of their liberty by a public authority". The system is based on the twin principles of co-operation and confidentiality. At the time of writing (July 1998) 39 countries are bound by the Convention and more have committed themselves to joining the Convention system in the near future.

The work of the CPT revolves entirely around organising visits, preparing for visits, undertaking visits, reporting on visits and following up visits. These sub-headings are used below briefly to describe the methodology of the Committee.

The CPT comprises one person from each member State elected by the Committee of Ministers of the Council of Europe. Members "shall be independent and impartial" (Art. 4(4)), and they "shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention" (Art. 4(2)). There are currently 31 members of the CPT. They include lawyers with varied backgrounds and experience, medical doctors including psychiatrists, parliamentarians and persons with experience of penal administration. The Committee elects a central bureau (a president and two vice-presidents) and is served by a secretariat, currently comprising eleven staff, based in Strasbourg.

Information about the CPT and its working methods is available from a variety of sources. The Council of Europe produces information leaflets on the work of the Committee. The CPT itself produces an annual report which describes the activities it has undertaken in the previous year and, from time to time, the methods it employs and the standards it looks to when conducting visits and the safeguards against torture and inhuman or degrading treatment or punishment that it generally promulgates in visit reports. Of particular importance for NGOs are the second, fourth and seventh annual reports, which describe in some detail the CPT's standards regarding police and prison custody, medical matters and the detention of foreign nationals respectively.

2 Organising visits

CPT visits comprise periodic and *ad hoc* or follow-up visits. Periodic visits are those regularly planned by the Committee and which the Explanatory Report to the Convention envisaged would be made "as far as possible on an equitable basis". The CPT initially hoped that this would mean each country being visited every two years, but it is clear that that is not feasible within existing resources and that every four or five years is now a more realistic target. *Ad hoc* and follow-up visits are "those required in the circumstances" either to investigate allegations, to clarify situations or to see if situations in previously visited institutions have improved or recommendations been implemented. Hitherto most visits have been periodic, and generally six or seven have been planned for each year. But now that most States Parties have been visited at least twice (except for those that have recently ratified the Convention) *ad hoc* and follow-up visits are becoming more common and may come to dominate the Committee's programme.

The first round of visits to all countries was determined by lot and was completed in 1990-1993. Since then countries have been selected according to assessed need and equity. This means that countries exhibiting major problems may be visited much more frequently than every four years. Turkey, for example, has already been visited on at least six occasions.

3 Preparing for visits

The Strasbourg-based CPT secretariat receives information relevant to the CPT's mandate from any number of sources – the press, official sources, NGOs and individual informants. All communications prepared for and sent specifically to the CPT are acknowledged by the secretariat and notified to CPT members when meeting in plenary session. Receipt of general mailing list material is not acknowledged, although if it is judged important, it is brought to the particular attention of CPT members when meeting in plenary session. Generally speaking, the CPT does not solicit information and its rules of confidentiality absolutely prevent it from telling correspondents how the information they have sent has been acted on. Correspondents may be able to infer that their information has been acted on only by reading the press releases issued by the Council of Europe shortly after visits have taken place (which list all custodial institutions visited) or the report on a visit made, providing the government of the country concerned authorises its publication. This one-way communication system concerns some NGOs, but it is central to the CPT's confidential method required by the Convention.

Once the CPT has decided in the autumn of each calendar year what its programme of periodic visits is to be for the following year, it informs the countries concerned and shortly thereafter issues a press release naming the countries. The exact timing of visits is kept secret. Meanwhile the bureau, together with the secretariat, formulates a plan for the timing and duration of all visits and the composition of visiting delegations.

The shape of this plan is constrained by budgetary considerations, by the need to ensure that all CPT members equitably take part in visits, and by the need to ensure that all delegations are balanced in terms of expertise, experience and linguistic compatibility. Because they are in short supply, for example, members with medical expertise have tended hitherto to undertake an above-average numbers of visits. Most delegations are led by a member of the bureau and members do not visit their own countries.

When this plan has been approved by the CPT meeting in plenary session, the members selected to form the delegation meet and begin to plan the detail of the visit. Such matters as: Which institutions to visit? Will the delegates need to be assisted by experts during the visit? If so, by what sort of expert and by whom? Should an approach be made to an NGO to meet them during the course of the visit? And so on. To assist in this task the secretariat prepares a dossier of information received about the country on the basis of which proposals are made as to which institutions should be visited.

About two weeks before the visit is due to take place the country is informed of the proposed date and duration of the visit, as well as the identities of the Committee members, experts and interpreters making up the delegation. Finally, a few days before the visit commences, a provisional list of places to be visited is sent to the country. This procedure is designed to give the country time to make necessary practical arrangements: prepare information about the institutions notified; fix meetings with officials, and so on. The notification period is, arguably, too short to allow the authorities time to make significant changes of condition or regime at the places to be visited. However, it should be noted that the CPT always reserves the right to visit places not notified and invariably does so, particularly small establishments like police stations and immigration holding centres.

4 Making visits

The size of visiting delegations and the duration of visits depends on the size of the country being visited and the complexity of the issues which it is anticipated have to be addressed. Visits typically last ten to twelve days, though periodic visits to very small countries and *ad hoc* or follow-up visits may be as short as three or four days. Delegations on longer visits typically comprise four or five members of the CPT accompanied by one or two *ad hoc* experts recruited for the purpose, generally two interpreters and two members of the secretariat. Most delegations include two medically qualified members, one of whom is generally a CPT member and one an *ad hoc* expert.

Periodic and longer visits tend to follow an established pattern. They generally begin on a Sunday with private meetings with local NGO representatives or individuals who it is felt can advise the delegation about recent developments that the delegation may wish to take into account when deciding on possible last-minute alterations to its programme. The discussions may also concern recent cases of alleged ill-treatment that the delegation may decide to follow up. On the following day meetings are typically held with ministers and officials responsible for the institutions to be visited. But most members of delegations are only briefly involved in these formal exchanges. Delegations quickly get on with the principal business of visits, going to places where persons are held in custody – police stations, prisons, youth detention facilities, closed psychiatric hospitals, immigration detention centres and so on – looking closely at the conditions in which detainees are held, scrutinising custody records and, above all, talking to prisoners about their experience in custody, both that where they are currently held and other places where they may have been.

The CPT enjoys considerable powers when carrying out a visit. It has: unlimited access to the territory of the State concerned and the right to travel without restriction; unlimited access to any place where people are deprived of their liberty, including the right to move inside such places without restriction; access to full information on places where people deprived of their liberty are being held, as well as other information, including medical records, available to the State which is necessary for the Committee to carry out its task. The CPT is entitled to interview in private any persons deprived of their liberty (though such persons may of course refuse) and to communicate freely with anyone else who the Committee believes can supply relevant information about the treatment of persons deprived of their liberty. The Committee sets great store by having immediate and unrestricted access to places of detention, and all areas within them, and published CPT reports testify to the fact that the Committee is insistent on compliance with this letter of the Convention. From annual and published country reports it appears that the CPT has so far always prevailed in gaining access to persons or documents.

The CPT concentrates its attentions on relatively few places of custody, which are looked at rather thoroughly. During the course of a periodic visit a CPT delegation will typically visit perhaps half a dozen police stations (some of which will have been notified, but others not), two or three prisons, a psychiatric hospital, a youth facility and an immigration holding centre. The precise balance of institutions will depend on the country, the problems it presents and whether it has been visited previously. CPT delegations often split up when carrying out visits. This is particularly the case in large countries where different regions are being visited.

Finally, visits end as they formally begin, with a meeting with ministers and representative senior officials responsible for the places visited. At this meeting the head of the delegation provides an oral summary of the delegation's preliminary findings and, if any, its immediate concerns.

Shortly after the delegation has left the country, the CPT issues a press release announcing that the visit has taken place. This press release provides details of the membership of the delegation and the places visited; there is no reportage on the Committee's findings. The CPT tries to avoid publicity during its visits and enjoins those NGO representatives with whom delegations have contact during the visits to help preserve its usual virtual public invisibility for the course of the visits.

5 Reporting on visits

The CPT strives to transmit its reports on visits, the text of which is agreed at full plenary meetings of the Committee, to the governments of member States within six months of visits taking place. This target used usually not to be met, but the CPT's record is improving. Many reports are now transmitted after about six months.

Following a visit the secretariat prepares a draft report which is based on delegation members' field notes. The visiting delegation, including the *ad hoc* experts, then meets to agree a final text for submission to the next plenary meeting of the CPT. Once approved by the CPT, the report is sent in strict confidence to the government concerned.

CPT reports have gradually assumed a more or less standardised format and are typically 70-80 pages long, though those stemming from *ad hoc* or follow-up visits may be shorter. Reports are clearly designed with publication in mind. The facts of the visit are set out in full, followed by the Committee's findings and concluding with recommendations, comments and requests for information.

The overwhelming majority of member States have published their CPT reports (about 50 visit reports at the time of writing), but the manner in which they have emerged has varied as has the time they have taken to emerge. We can distinguish four responses to date. First are the States which authorise publication very soon after they receive the report, about six to nine months after the visit. Second are the States which authorise publication simultaneously with their response, which may take a considerable time (eighteen months to two years after the visit is typical). Third are those States which for reasons that are usually obscure, and no doubt vary, authorise publication of the CPT report, and possibly their response, long after they were received from and transmitted to Strasbourg. In one instance this happened five years after the visit. Finally, there are those few countries that after a long interval have still not authorised publication – currently Poland and Turkey – although, given the third category, it is always possible that they may.[1]

6 Following up the visits

The CPT has always emphasised that a visit, periodic or *ad hoc*, is but a stage in an ongoing dialogue. The dialogue is conducted on the basis of co-operation and in confidence and is designed to prevent ill-treatment of persons in custody taking place. The purpose of the exercise is not to condemn States but to work toward prevention in the future. It follows that country reports represent the beginning of a process, not the end of it.

The CPT asks each member State to submit an interim response to a visit report within six months of receipt and a final response within twelve months of receipt. Most States have met these deadlines, but a minority have failed to do so. Government responses are then considered by the Committee, following which observations, in the form of extended letters, are sent to the governments concerned. These observations are, like the CPT's original reports, sent in confidence, though they could be published were the recipient governments to authorise publication. In practice this has seldom happened because most governments have authorised publication of their interim and final responses at the same time as they have submitted them, that is, well before receipt of the CPT's observations.

1 Poland was visited in July 1996, but no report has yet appeared. None of the reports arising out of the many visits to Turkey going back to 1990 have been authorised for publication.

The distinction between comments, recommendations and requests for information in CPT visit reports is important, because the Convention refers only to recommendations, failure to respond to which may lead to the CPT's only sanction being triggered. If a member State fails to co-operate with the CPT or refuses to improve the situation regarding torture or inhuman or degrading treatment or punishment in the light of the CPT's recommendations, then the Committee may, by a two-thirds majority vote, decide to make a public statement on the matter (Article 10(2)). It should be stressed that in this event, it is not the report of the CPT which is made public – that remains confidential – but a statement on the matter. Article 10(2) has to date been invoked twice, with regard to Turkey, in December 1992 and December 1996.

Because no State Party has made available all the communications between itself and the CPT, it is difficult to judge the adequacy of the dialogue that takes place following visits. However, the CPT has itself admitted that its own contribution to the dialogue is less than satisfactory because the CPT secretariat has not the resources to devote to dialogue processes that the Committee considers it should. This probably means that there are long intervals between letters from Strasbourg pressing governments regarding the implementation of CPT recommendations. These long intervals put at risk, as the CPT recognised in its 5th general report, both the credibility and the effectiveness of the Convention because the momentum generated by visits is likely to be frittered away.

7 Conclusion

The latter observation highlights a more general lesson to be learnt from the CPT's operations. The CPT has, according to most observers, been a conspicuous success in the sense that the Convention is working and the work of the Committee is widely respected. Visits take place, access to places of detention hitherto often regarded as highly secret locations is obtained, prisoners are interviewed in confidence, evidence of ill-treatment is found, and reports that consistently apply what are in many respects radically high standards are written, published and responded to. Nevertheless the CPT can undertake visits only infrequently, and when it visits a country it can self-evidently see only a small proportion of establishments and prisoners. It follows that the CPT should at best be regarded as a recent, albeit very valuable, small mechanism in the armoury of mechanisms designed to prevent torture and inhuman or degrading treatment or punishment. It would be naive to view the CPT as a panacea or imagine that the Committee alone could prevent ill-treatment.

Ultimately, the best means of preventing torture and other forms of ill-treatment in custody will be to build up civil society structures within States and make more procedurally accountable the organs of the State created ostensibly to protect citizens but which simultaneously have the capacity to oppress them. There is a need for professional and vigorous NGOs that can continuously monitor what States are doing in their citizens' names. CPT reports constitute a vital resource for such NGOs because the CPT enjoys rights of access to places of detention that few groups enjoy either domestically or internationally. The need is for the CPT and local NGOs to develop a more effective partnership, for NGOs to supply to the CPT the information which the Committee needs to do an effective job, and for NGOs closely to monitor what is happening locally in the wake of CPT findings and recommendations.

II THE CPT AND ITS PARTNERS IN CENTRAL EUROPE: THE CASE OF NATIONAL VISITING MECHANISMS

1) MONITORING DETENTION BY THE POLICE: EXPERIENCES WITH CIVILIAN OVERSIGHT OF LAW ENFORCEMENT AGENCIES

by Ferenc Köszeg, Executive Director of the Hungarian Helsinki Committee, Hungary

1 Introduction

Even following the political changes in 1989, the Hungarian police continued to resist making their activities more open to the public eye. The practice that only officials directly subordinated to the National Chief of Police could provide information to the public survived and was even confirmed by the orders of that official. The civilian oversight of police activities, as practised by the parliamentary Committee for Internal Affairs, has been rather formal. The two organisations empowered to control the police, the Minister of the Interior and the public prosecutor's office, have also remained secrecy-loving. But even when the Police Act[2] was being enacted, it was only after a long dispute that the police agreed to inclusion in the bill of a provision that data gathered by secret means which are not used for initiating a criminal procedure can be examined by a public prosecutor. It is worth mentioning that in 1993, following the act establishing the institution of ombudsman in this country, the police insisted that the ombudsman – elected by a two-thirds majority of the parliament – should apply for the consent of the National Chief of Police – a civil servant appointed by the government – if she/he wanted to examine cases related to the operation of the police. (This provision was deleted from the law following the 1994 general elections.[3])

2 A breakthrough

In this context, the visit of the Committee for the Prevention of Torture to Hungary in the fall of 1994 was a real breakthrough. According to the report issued by the CPT: "Some delay was experienced in gaining access to a detained person whom the authorities considered to be particularly dangerous." On other occasions, information was disclosed "after the timely intervention of the government's liaison officer", despite the fact that "according to Art. 8, par. 2 (d) of the Convention, the State Party is obliged to provide the CPT with information available to that Party which is necessary for the Committee to carry out its task".[4] It seems that some officers simply did not want to believe that civilians, even more, foreigners had been allowed to enter police detention facilities and contact detainees.

The Hungarian Helsinki Committee (HHC), jointly with the Constitutional and Legislative Policy Institute, started its Police Cell Monitoring Programme in February 1996. The programme was funded by the Open Society Institute, Budapest, and the Hungarian Soros Foundation. The Committee was encouraged to submit a proposal to the Minister of the Interior by a statement of the minister before the parliament's Human Rights Committee. The minister, who belonged to the liberal party (Alliance of Free Democrats), announced his support for a civilian oversight by organisations supervised by the Ministry of the Interior.

The Police Cell Monitoring Programme was preceded by a fact-finding mission conducted by three NGOs (HHC, Centre for the Protection of Human Rights – Hungary (MEJOK) and the Veritas Foundation, which works for the rehabilitation of torture victims) to the alien police deportation camp in Kistarcsa in early 1995. Both the fact-finding mission and the ministerial statement marked a change in attitude. Earlier, the Kistarcsa camp had been closed to public eyes. The press was sometimes invited to press conferences orchestrated by the police.

2 Act XXXIV of 1994
3 Act LIX of 1993, Art. 18, par. 7, amended by Act LXV of 1995, Art. 33
4 Report of the CPT on Hungary, 1994, p. 15, par. 7

The framework of the Police Cell Monitoring Programme was outlined by a circular issued on 22 February 1996 by the Deputy Head of the Police responsible for all police detention facilities in this country. According to this agreement, members of monitoring groups possessing a letter of authorisation were entitled to enter police facilities at any time, day or night, without previous announcement, to interview detainees upon their agreement, to fill out questionnaires with them, and to use tape recorders. Medical doctors belonging to the monitoring group had the right to conduct medical check-ups with the consent of detainees, and to look at their medical records. However, the monitors were requested not to intervene in the criminal procedure or provide legal counselling to detainees. In order to use a camera or video recorder, they had to apply for a special permit from the police.

The agreement specified that the monitoring activity was, *inter alia*: "the oversight of the physical conditions of the buildings, of the area of buildings where detainees were kept, the treatment of detainees and the conditions of detention, the implementation of detainees' rights, the way their physical and special – such as medical and hygienic – needs were satisfied, and the quality of their relationship with their guards".[5] The permits issued to the monitoring teams were limited in time and space, since they expired after the first half of 1996 and were limited to Budapest and four counties. Later the permits were prolonged until the end of the year 1996 and four other counties were included in the geographical scope. The result was that police jails were monitored in Budapest and its surroundings (Pest County) from February to December 1996, while altogether eight counties of Hungary were monitored for almost a half-year each.

Monitoring teams usually had three members, headed by an attorney and generally including a physician. Altogether 43 persons participated in the Police Cell Monitoring Programme. During 1996, monitoring teams conducted 216 visits to police jails, 218 interviews with detainees, and had 473 detainees fill out questionnaires. In the second half of 1996, an additional questionnaire was prepared for police officers on duty in jails. Forty such completed questionnaires were received by monitoring teams. Monitoring teams sent reports following each visit to the Hungarian Helsinki Committee, and urgent problems were immediately signalled to National Police headquarters by the HHC. The final report based on the 1996 experience of the Police Cell Monitoring Programme was published in the form of a book entitled *Punished Before Sentence* in Hungarian (1997) as well as in English (1998).

3 Legal debate on civilian oversight

Despite the agreement and the authorisation given by the Deputy Head of the National Police, the legal basis of the monitoring programme had been debated from the very beginning. In fact, the whole programme was based on a single provision of the 1995 ministerial decree regulating police detention facilities.[6] The decree gives a list of persons with whom detainees may communicate without police supervision. These are the defence lawyer, the public prosecutor, the UN Human Rights Commission, the European Commission and Court of Human Rights, the CPT and "organisations entitled by Hungarian law to protect human rights". It was impossible, however, to give a clear interpretation of this provision, for apart from the ombudsman (who has the right to control police jails based on another provision of the same decree[7]), there is no organisation entitled by law to protect human and citizens' rights. The Prosecutor general's Office interpreted this wording as meaning organisations having the right to monitor police jails, and consequently argued that the police authorisation to the HHC to enter police jails lacked a legal basis. At the end of 1996, the license for the programme expired, and the HHC wished to renew it. As the previous leadership of the police had been replaced by new persons, the HHC asked for the official opinion of the Prosecutor general's on the Police Cell Monitoring Programme. The Deputy of the Prosecutor general's responsible for crim-

5 Quotation from the circular of the National Police Chief
6 Decree of the Minister of the Interior no. 19/95 (December 13) Art. 3, par. 4 (b)
7 Decree of the Minister of the Interior no. 19/95 (December 13) Art. 35, par. 1 (b)

inal investigation confirmed his previous opinion that the license to the HHC to monitor police cells was illegal. At the same time, he suggested amending the decree of the Minister of the Interior to create a legal basis for civilian oversight programmes.

Contrary to the opinion of the Prosecutor general's Office, the Hungarian Helsinki Committee argued that, based on its by-laws, which are registered by the court, it is mandated to protect and monitor human rights guaranteed by the Helsinki Final Act and the European Convention on Human Rights. Furthermore, the HHC recalled that in the draft of the bill on asylum prepared by the Hungarian government (passed in this form in December 1997), the criteria set out for safe countries of origin include the observance of the right of domestic and international human rights NGOs to monitor the enforcement of human rights.[8] The same approach was supported by the ombudsman, who concluded that the civilian monitoring initiated by the police themselves in Heves County, and blocked by the public prosecutor, was legal and constitutional.

The Minister of the Interior submitted a draft amendment to the decree, according to which "detainees can contact members of external organisations under the necessary control". In his argument for the amendment the minister referred to Art. 43(1) of recommendation no. R/87/3. of the Council of Europe's Council of Ministers. The recommendation stipulates that "prisoners shall have the right to contact members or representatives of external organisations, but this right is subordinated to the requirements of safety and order". The Prosecutor general's rejected the draft, pointing out that the recommendation concerned convicted persons and not those in pre-trial detention. He referred to Art. 92(2) of the same recommendation, which concerns pre-trial detainees. According to this article, the right of persons in pre-trial detention to contact external organisations can be restricted, as long as it is justified by the interests of the criminal justice system. In the prosecutor's opinion, contact with external organisations without special guarantees and legal authorisation might affect the criminal procedure adversely. Due to the resistance of the public prosecutor, the Minister of the Interior gave up on the amendment of the decree.

A less sophisticated reason why the public prosecutor so severely opposed the monitoring activities was that earlier it had been the prosecutors' exclusive right and duty to control all closed institutions such as prisons and detention facilities. This monopoly was broken by the right of the ombudsman and also by the right of organisations like the CPT or the Human Rights Commissions of the UN and the CE to enter such institutions. Still, the regular oversight of these institutions had been left untouched. The HHC reported human rights violations in specific police departments where previously public prosecutors had not found any breaches of the law. For example, in the holding cell of the Ajka City Police, there was neither natural nor artificial lighting and detainees were sitting or lying in a dark, unheated cell on benches covered by dirty rugs. The Hungarian Helsinki Committee's report was dated 18 April 1996. The county prosecutor's representative had visited the same place three days earlier and found conditions in the jail to be in order. Based on the immediate report of the monitoring group, the Deputy National Chief of Police ordered the cell to be closed down. The public prosecutor later explained the unsatisfactory information in his report by stating that he had already reported about the state of the cell in January and did not want to repeat his findings.[9] Later, when the monitoring continued, the monitoring teams were strictly forbidden from looking at the prosecutors' reports or jail logs in which prosecutors wrote their remarks.

The necessity of conducting regular visits to all prison establishments was emphasised by the CPT's report,[10] although supervisory visits by prosecutors also existed at that time. The CPT pointed out that visiting authorities "should make themselves 'visible' both to the prison authorities and staff and to the prisoners themselves".[11] According to the responses to questionnaires filled out during the Police Cell Monitoring Programme, 57.3 percent of 439 respondents claimed that "they did not

8 Act CXXXIX of 1997 on Asylum, Art. 2, par. (d)
9 Cf. *Punished Before Sentence*, Hungarian Helsinki Committee and COLPI, 1998, p. 109.
10 Report of the CPT on Hungary, 1994, p. 55., par. 138
11 Report of the CPT on Hungary, 1994, p. 55. par. 141

see the prosecutor during their detention" and 49.2 percent had "never heard of the prosecutor's visits and inspections while in jail". This lack of awareness may be a consequence of the fact that detainees are hardly in the position to identify a visitor as the prosecutor in the process of supervising conditions of detention.[12]

Having acknowledged that monitoring might strengthen the enforcement of detainees' rights in jails and prisons, the Minister of the Interior and the police leadership agreed to allow the monitoring activity to continue. After the effort to amend the ministerial decree had failed, the police signed an agreement with the HHC in August 1997 quite similar in content to the previous unwritten one. The new agreement emphasised more sharply that members of the monitoring teams were not to touch upon topics in connection with the crime underlying the criminal procedure and custody in their conversations with detainees. Lawyers representing defendants resident in a certain jail were not permitted to participate in the monitoring programme in that jail. After eight months of delay, the agreement made it possible to carry on with the monitoring. Since that time, the public prosecutor has raised no further objections to it.

At present, the monitoring of police cells is less intensive than it was in 1996. At that time the aim was to make a general survey of the state of police cells and to give a concise report of the findings. Nowadays, the aim is to follow up on changes, if any, and to maintain the awareness on the part of the police that they are being overseen. The police are now accustomed to civilian review. In previous years they often observed that nothing happened when the HHC criticised them.[13]

4 Treatment of detainees in police jails

The survey was conducted between 15 February and 15 December 1996 in Budapest and in nine of the 19 counties of Hungary. The focus of the monitoring was police cells, but monitoring teams also paid some visits to detention facilities maintained by the prison authorities. The teams reported on the number and size of the cells, the hygienic facilities (lavatories and bathrooms), the amount of time spent in the open air, and the number and quality of medical examinations before and during detention.

According to the rules in force, pre-trial detention should be carried out in the penal institutions, but such detainees can be kept in police cells on an exceptional basis. The police insist on detaining a relatively large number of suspects, and judges readily accept the recommendations of the prosecution to hold suspects in custody. The police, for practical reasons, also prefer to keep detainees in their own cells, and therefore suspects are regularly kept in police facilities during investigation and only moved into the prison system when the investigation is closed. All this means that almost half of those in pre-trial detention are kept in police detention facilities. On 31 December 1996 there were 3,253 persons in police jails, while 3,455 were held in prison facilities. These 6,708 pre-trial detainees comprised 42 % of a total prison population of 16,016. In comparison with other European countries, this percentage is high.[14] In the present system, pre-trial detention cannot be avoided by putting up bail, while other alternative measures, such as the designation of a compulsory residence, are rarely applied. The length of pre-trial detention and that of police detention are currently unlimited. According to the survey of our monitoring groups, 40 % of detainees spent more than three months in police detention.[15] Experts working on the draft of the new law on criminal procedure have suggested that a European model prohibiting pre-trial detention in police facilities be introduced. This suggestion was allegedly opposed by police experts. Internal debate led to a compromise which limited detention in police facilities to a maximum of 60 days.[16] The new law, passed by the parliament in early 1998, will take effect on 1 January 2000.

12 Cf. *Punished Before Sentence*, pp. 107-108
13 Upon the results of the 1998 parliamentary elections, the new government appointed the former (until 1996) police chief as Minister of the Interior, and the leadership of the National Police was replaced. Despite these changes, the Police Cell Monitoring Programme has been able to continue.
14 Not counting those detained in police jails, in Hungary there are 127 persons in prison per 100,000 inhabitants. The corresponding numbers as of 1 September 1994 are for Austria: 85, France: 90.3, England and Wales: 96, Germany: 83, Poland: 162.6, The Czech Republic: 181.6, Russia: 443. Source: Council of Europe, SPACE 94,1
15 Cf. *Punished Before Sentence*, p. 16.
16 Act XIX of 1998 on the Criminal Procedure Code, Art. 135, par. 2

The scope of the present paper does not permit a detailed summary of the report on the Police Cell Monitoring Programme, as published in the book already mentioned. Here I shall focus on a single problem: the ill-treatment of detainees.

Out of 473 detainees who responded to our questionnaire, 159 (33.6%) answered that they had been ill-treated by police officers at least once in their lives. 110 respondents (23.3%) stated that the police had used physical force during arrest, while 96 (20.3%) said that they had been ill-treated in an earlier procedure. In the opinion of the police, these data are based exclusively on statements of detainees and are therefore without credit. Undoubtedly, the number of police officers convicted of forced interrogation or ill-treatment during official procedures is quite low in comparison with the above figures. Of the annual average of 1,200-1,300 reports on forced interrogation or ill-treatment during official procedures, no criminal investigation is initiated in one-third of the cases; about 80% of the investigations which are started are terminated without issue; and not more than 50-80 cases per year end with an actual conviction in court. In most cases the investigating bureau of the prosecutor's office will terminate the investigation even if there are medical records to prove that force was used, accepting the standpoint of the police that violence was necessary due to the suspect's resistance. A very high proportion of these crimes committed by police officers remains unreported. Persons in pre-trial detention – with very few exceptions – do not file reports on ill-treatment, as they see no chances for success in such a course. No doubt many statements by detainees remain unproved, but the number of incidents of ill-treatment is surely higher than that of convicted police officers.

This assumption is founded on – unfortunately realistic – responses by detainees to a question about methods of ill-treatment on the questionnaire used during the monitoring activity: 75 respondents stated that during their current arrest, they had been kicked, hit with fists and slapped; 6 persons recounted that their heads had been beaten against the ground or the wall; 3 had had a gun pointed at them or been hit with a gun; 7 said that they had been beaten with either a truncheon, a cable, a chair leg or a stick. Juveniles, Roma and foreigners in particular often become victims of ill-treatment.

The above findings, based on a wider sample, confirm the CPT's description of four cases where forensic reports had documented injuries. In one case, a criminal investigation of the suspected police officers was set in motion, while in the other three "the senior police officer had certified that the force which had been used on arrest was lawful and no disciplinary or criminal action had been taken against the police officers concerned".[17]

5 Present experience of the Police Cell Monitoring Programme

Since the Police Cell Monitoring Programme got off to a fresh start in September 1997, the Hungarian Helsinki Committee has regularly notified the police of such anomalies as delayed delivery of letters, unlawful hindering of family visits and unsatisfactory nutrition of detainees. An astonishingly high number of complaints was registered in respect of foreign nationals. Their correspondence with family members is delayed mainly because of the long translation procedures required to control the contents of their letters. These detainees are also hindered in consulting their government-appointed attorneys, for interpreters are only provided during interrogation. In some cases, the objections were accepted and the HHC was promised a future change of practice, but for the most part the police rejected them on grounds of lack of financial resources and personnel.

If the violation of the law can be justified neither by a special interpretation of the law nor by lack of funds or personnel, the police try to deny what monitors have seen with their own eyes. The case described below is a good example of monitoring activity methods as well as of police response to discovered violations of rights.

17 Report of the CPT on Hungary, 1994, p. 21, par. 21

On 28 October 1997 a monitoring team of the Police Cell Monitoring Programme, while visiting the Budapest 6-7th district police detention ward, heard a loud bang followed by a man's wailing from behind a closed iron door. The detention ward captain opened the door and the monitors saw a handcuffed man with several head injuries being "escorted" to the cell by Sergeant József H. and Tibor B. In front of the surprised detention ward captain on duty and the three monitors, H. repeatedly punched the Ukrainian man's head with his fist and shoved him to the ground, where Tibor B. kicked him in the stomach several times. At that point the leader of the monitoring team announced that they were the police cell monitoring team of the Hungarian Helsinki Committee. The detention ward captain on duty declared that he could not check the man into detention in such a condition. The two police officers hastily left and took the handcuffed Ukrainian in the lift to the officer on duty on the ground floor. A few minutes later the monitors followed them. When they saw the Ukrainian again, he was without handcuffs, and the three police officers were trying to press him against the wall next to the coffee machine. Four other officers were attempting to put handcuffs on another, brown-haired Ukrainian man whom they were trying to push to the floor. Once the man was down, Sergeant Viktor E. trampled on his head with his left foot. At that point the monitors asked the officer on duty to inform his superior about the event and to take the necessary steps for the victim's medical treatment. The next day both Ukrainians were released, but the police refused to disclose their personal data. The Hungarian Helsinki Committee filed a report with the investigating office of the Budapest Public Prosecutor's Office for the well-founded suspicion of the crime of ill-treatment during an official procedure. The head of the metropolitan police, General Attila Berta, in his letter (25 November) to the Hungarian Helsinki Committee, denied the ill-treatment and stated that force was applied because the suspects violently attacked the police officers and resisted handcuffing. As a matter of fact, the suspects were already handcuffed before arriving at the police station. It is quite unlikely that they were not handcuffed at the time of their arrest and that they offered no resistance on their way to the police station, but only attacked the police officers once inside the building. It is also unusual for foreigners arrested for crimes of violence to be released immediately, and for no warrant of arrest to be issued when they do not appear for interrogation.

The two Ukrainians, also suspected of a violent crime, were most likely allowed to leave the country. Ill-treatment by the police is very rarely witnessed by disinterested third parties. And when there are witnesses, the police make sure that there are no victims.

2) ASSESSMENT OF THE EFFECTIVENESS OF VISITS MADE BY THE POLISH OFFICE OF THE COMMISSIONER FOR CITIZENS' RIGHTS

by Piotr Sobota, Chief Specialist of the Office of the Commissioner for Civil Rights Protection, Poland

1) The institution of the Commissioner for Citizens' Rights – the Polish ombudsman – was created by a law of 15 July 1987. In practice, the activities of the Commissioner began in January 1988.

In accordance with the law, the Commissioner stands in defence of the rights and freedoms of the citizens of the country, as outlined in the constitution of the Republic of Poland and other provisions of law.

The constitution of the Republic of Poland, adopted in 1997, confirmed the role of the Commissioner for Citizens' Rights in society and made the position a permanent element of the democratic rule of law in the country.

The Commissioner begins investigations after receiving information concerning the infringement of the rights or freedoms of a citizen. Such information may come from one of the parties involved, as an appeal from a local government authority, from the press, etc. The Commissioner begins to act upon a matter by initiating his own investigation or by appealing to one of the specialised supervisory bodies, the national and social inspection institutions, or even to the prosecutor's office. Each separate complaint can be investigated on location. Among the rights enjoyed by the Commissioner and his representatives are the rights to enter detention facilities at any time, to move about freely within these areas, to conduct conversations with individuals, to review documentation concerning them, and to demand explanations from the administration for any discrepancies which are discovered.

Since the office began its operations, it has received complaints from various detained individuals who felt that their rights and freedoms had been infringed. The number of such cases handled has grown from 800 in 1988 to 4,000 in 1997. When dealing with these complaints, it became apparent that investigation of the accusations made in them would only be possible on the spot. Moreover, the accusations often concerned not only the author of the complaint, but an entire group of individuals placed in a single institution or an entire group of individuals in the same legal situation. In order to ensure that the rights of such groups of detainees were being respected, a wider range of investigations became necessary in the places where they were held. It was in this way that the idea of visiting prisons and other institutions where persons are deprived of their liberty originated.

The Commissioner for Citizens' Rights extended his activities to include all cases in which, on the basis of the respective legal provisions, the authorities have restricted the freedom of certain individuals. These include persons convicted by a court, those under temporary arrest, those serving a sentence imposed by a misdemeanour board, those serving a military sentence, minors placed in correctional institutions and shelters for minors, adults being held under police arrest and minors being held in police shelters for juveniles, individuals held in detoxification centres, patients in psychiatric hospitals, and soldiers serving basic military service.

Visits to places of detention are made in the following situations:

- when the Commissioner for Citizens' Rights receives a complaint or complaints concerning the violation of the rights of detainees in a given institution,
- during the routinely conducted monitoring of the conditions of detention in specific institutions,
- under the thematic studies conducted in connection with the specific problems of detainees.

The first two types of visits are made without notice or are only announced the day before. They are made by representatives of the Office of the Commissioner from the appropriate working groups, and are conducted according to a standardised scheme which is similar for most types of institutions visited. They begin with a conversation with the director of the institution, who is familiarised with the purpose of the visit and how it will be conducted. The director has a chance to point out the kinds of problems that the institution faces as well as its accomplishments in the field of protecting its inmates' rights. Next, the living space and facilities are inspected, including primarily: sleeping quarters, day rooms, kitchens, bathrooms, walking spaces, sports fields, health facilities, viewing rooms, facilities for work and training, etc. Then the inspectors choose a group at random from the alphabetical list of inmates representing at least 10% of the institution's population. These individuals are interviewed in private, and questionnaires are filled out which include questions on their basic rights. In addition, conversations are held with individuals who express a wish for them. This method of conducting interviews ensures that the Commissioner's representatives take contact not only with those who have lodged complaints and are therefore dissatisfied with the current conditions or who have a personality clash with the personnel, but also with those who have better relationships with the administration and are therefore less disposed to criticism of conditions in the institution. During the conversations held with the randomly selected persons as well as with those who request such interviews, the representatives of the Commissioner note any complaints and answer any questions related to the persons' internment in the institution. In prisons and other institutions of detention, the documentation concerning the use of violence or physical force against detainees, the placement of and conditions in their cells, and the conditions of solitary confinement are inspected. After all of this is completed, another meeting is held with the director and other members of the administration at which the findings and remarks of the Office of the Commissioner are presented without reservation. The director and the other individuals present have a chance to respond to these remarks in a straightforward way, and decisions are taken on those problems found within the institution which can be solved in that setting.

The course is somewhat different in the case of visits to detoxification centres and military institutions. The visits to detoxification centres are usually made at 0600 hours, just as detainees are being released. Thus, interviews are conducted with detainees and questionnaires filled out at the start. In the case of military institutions, the Commissioner's representatives interview soldiers in basic military training without the involvement of their superiors as well as any other soldiers who express an interest in a one-on-one meeting.

Visits of the third type take place when the Commissioner for Citizens' Rights organises studies on the condition of specific groups of detainees (such as women, repeat offenders, juveniles, those serving long-term sentences, persons under temporary arrest, patients in psychiatric hospitals, etc.) or including certain specific problems connected with incarceration (such as assistance after release, the food in penal institutions, employment, education, etc.). These activities are concentrated on the issue being studied. If necessary, interviews are held with detainees (always without third-party involvement) during which matters unrelated to the topic of the study can be aired.

A detailed report is then drawn up on the basis of the material gathered during the course of the visits which presents the overall findings. If appropriate, the report also formulates some proposals, either on how to deal with the problems uncovered – i.e. the situations in which the activities or the negligence of the institution's administration have led to violation of detainees' rights – or with issues which do not themselves amount to infringement of detainees' rights but which could ultimately lead to such infringement if left unattended.

This report is sent to the visited institution as well as to its supervisory bodies. In accordance with the law on the Commissioner for Citizens' Rights, the addressee of such a report has 30 days in which to take a position on the information and proposals contained in it.

In addition to the above-mentioned forms of visiting by his own representatives, the Commissioner can also cause some specific aspect of a given institution to be examined by specialised government agencies. For example, in the case of sanitary conditions, he may call for the assistance of the sanitary and epidemiological inspection services, or with respect to labour conditions he may ask for an investigation by the national labour inspectors. At times the employees of these services may take part in the inspections conducted by the Commissioner himself; this is significant, for these agencies have legal authority in their fields and thus the institutions examined must comply with their orders. The ombudsman does not himself possess such authority.

There is another type of visit as well in which the Commissioner for Citizens' Rights makes use of highly trained professionals (doctors): to investigate complaints about medical care. The doctors examine the detainees on site, in the institutions where they are held, and provide proper documentation concerning their medical treatment.

2) In the ten years that the Office of the Commissioner has been in operation, its activities in the field of protecting the rights of detainees have primarily concentrated on the most numerous group, i.e. those in penal and remand custody (convicted by a court, those under temporary arrest, and those serving sentences imposed by a misdemeanour board). During this time, 123 institutions have been visited (11 of which two or more times) and more than 7,000 prisoners interviewed. In addition, 140 police cells, 20 correctional facilities and shelters for minors, 15 juvenile shelters operated by the police, 16 psychiatric institutions, 18 detoxification centres, 72 military units, and 2 deportation facilities have been visited.

Practice has shown that the visits conducted by the Office of the Commissioner for Citizens' Rights are positive and effective. The very fact that a given institution may undergo detailed inspection at any time by an independent body must itself have a positive effect on the respect paid to the rights and freedoms of the detainees in that institution. During the course of each visit the Commissioner and his representatives are able to look at the activities of the institution from an independent perspective. Many practices which seem perfectly natural to those who have "always" worked in such institutions may strike visitors as a violation or something which could lead to a violation of detainees' rights, or simply as unnecessary or burdensome. Many of these practices have been discontinued as a result of steps taken by the Office of the Commissioner. As an example, the ombudsman's representatives visited a particular detoxification centre and found an awful stench in the detention halls. It turned out that the construction of the windows prevented them from being opened. Once attention was drawn to this problem, it was promptly solved. It should be mentioned here that these visits deal with many issues important to individual prisoners or groups of prisoners. The recommendations drawn up by the Commissioner provide a stimulus for the supervisory bodies of the institutions to take a closer look at the places where such problems have been identified. Very often this leads to additional funds being provided to the institutions in order, for instance, to carry out a necessary renovation, as well as to organisational assistance in solving the problems plaguing them.

The studies of various problems prepared by the office are also of importance. We should first of all mention the three-volume publication "The State of the Polish Prison System and Related Crucial Problems", based primarily on empirical material gathered during visits to penal and detention facilities, which lists 55 issues specifically concerning the rights of detainees in these institutions. These studies describe the existing state of affairs in Poland on the one hand, and on the other they discuss the potential threats to detainees' rights and how they can be eliminated.

We can state with satisfaction that the activities of the Commissioner for Citizens' Rights in the field of protection of detainees' rights have been highly effective. At the same time, the openness of the administrations of the institutions to the office's criticisms should be recognised, as should their readiness to co-operate. This does not of course mean that all of the Commissioner's recommendations have been implemented; a lack of funds usually stands in the way. However, as some examples of the positive effects brought about at the ombudsman's urging, we can list the following:

- changes in the standards of population concentration in penal and detention institutions in terms of cubic space allotted to each prisoner (the previous norms of cubic space, especially in old facilities with high ceilings, brought about situations in which once the area occupied by the bunk beds was subtracted from the total, the remaining area was at times less than 1 square metre per prisoner);
- the closure of many police detention facilities as a result of their not meeting basic requirements for habitation, as well as discouraging detention of persons under temporary arrest and convicted persons in such facilities for longer than 24 hours;
- the liquidation of selected wings of several detention facilities managed in practice not by the Prison System Authority, but by the Ministry of Internal Affairs;
- raising in some cases the wages paid to prisoners for their work, and ensuring that prisoners who work full-time are not paid less than the national minimum wage;
- publication of new provisions concerning the protection of mental health, in particular dealing with the issue of patients forced to stay in psychiatric hospitals;
- publication of new provisions concerning the use of security measures with respect to minors placed in correctional facilities and shelters for juveniles;
- modernisation from the ground up of two correctional facilities previously equipped as prisons and therefore unsuitable for their function;
- elimination of the provisions in the Criminal Code obliging courts to apply drastically harsher sentences to repeat offenders;
- facilitating the ability of prisoners to use a pay phone at their own expense.

Among the cases in which the Commissioner for Citizens' Rights has identified violation of detainees' rights but where his recommendations have not been implemented, we should mention the following:

- the unacceptable living conditions in many penal institutions, (in addition to the already high degree of overpopulation),
- insufficient lighting and bad ventilation,
- the continued operation of several penitentiaries which do not meet basic requirements for habitation (primarily due to lack of sanitary facilities in the individual cells),
- the unsolved problem of the high level of unemployment among prisoners and those under temporary arrest,
- the violation of the rights of persons confined in detoxification centres to appeal to the court against the decision to place them there.

The activities of the Office of the Commissioner for Citizens' Rights in the field of the protection of detainees' rights fall under the same categories as the CPT's. However, the office's aims are wider in that it has an obligation to react not only to incidents of torture and inhuman or degrading treatment or punishment, but also to any objectionable actions or negligence on the part of the administrations of institutions in which detainees are held. At the same time, it seems that there is much scope for co-operation between the two entities, especially in the areas of exchanging information and experience. The contributions of the Commissioner to this co-operation could primarily include:

- systematising the methods of informing the CPT on the practices applied in detention facilities, on the recommendations made by the Commissioner in this field, and on the methods by which these recommendations are implemented,
- monitoring the implementation of the CPT's recommendations regarding Polish detention institutions.

The part played by the CPT could for example include:

- systematising the methods of informing the Commissioner for Citizens' Rights on the general conclusions which result from visits conducted by the CPT to places where individuals are detained,
- sending the Office of the Commissioner evaluations and reports dealing with the improvement of visitation methods as well as concerning European trends in the conditions in places of detention.

3) THE WORK OF THE OMBUDSMAN AS REGARDS PERSONS DEPRIVED OF THEIR LIBERTY

by Ales Butala, Deputy Ombudsman, Slovenia

The Slovene Human Rights Ombudsman is an institution designed according to the classic model of the national parliamentary ombudsman and has broad powers in relation to government bodies and other statutory authorities. The basis for the establishment of the office of Human Rights Ombudsman lies in the constitution of the Republic of Slovenia. In September 1993, Slovenia's parliament passed the Law on the Human Rights Ombudsman. The ombudsman officially commenced work on 1 January 1995.

The institution of ombudsman was introduced because of the needs of certain individuals. Its function is to prevent and identify breaches of human rights and other irregularities and to rectify their consequences. It is therefore of fundamental importance that the institution be accessible to all who wish to have recourse to it. This particularly applies to persons deprived of their liberty such as prisoners, other detainees, persons in police custody and persons held against their will in psychiatric hospitals. We devote special attention to these individuals. In most cases the persons involved have been pushed onto the margins of society and are particularly vulnerable and powerless. Public interest in the conditions in which they live, and in their rights and freedoms, is slight and related mainly to certain notorious and sensational cases. They live out their lives behind closed doors far from the eyes of the public, who perhaps frequently view many of them with mistrust and a lack of understanding. For persons deprived of their liberty our permanent presence, care and simple accessibility frequently constitute the only effective and unbiased help they have. We not only pay attention to individual cases but attempt through our work to contribute to the improvement of the work of the government bodies responsible for the proper and humane treatment of the individuals affected.

In 1997 the ombudsman received 128 written applications from persons complaining about problems relating to the deprivation of liberty. To this figure we need to add a great number of telephone calls and 219 personal conversations with convicted prisoners and other detainees. Frequent prison visits allow prisoners to take direct contact with the Human Rights Ombudsman and his colleagues. Such a method of work helps speed up procedures and often also contributes to the effective solution and rectification of identified irregularities and inadequacies. Experience shows that prisoners trust the ombudsman. There have been several examples of prisoners requesting our intervention or at least our co-operation in settling contentious relations with the Ministry of Justice or the National Prison Administration.

In 1997 we carried out 19 visits to prisons all around Slovenia. Some of them were made on the basis of our regular programme (periodic visits), but on occasion we visited an individual prison at the suggestion of detainees in order to deal with their complaints. The seven detailed inspections we carried out in Slovene prisons are worth mentioning. We made two visits to Dob prison, the largest prison in Slovenia, and one visit each to the prisons at Maribor, Murska Sobota and Koper. We paid special attention to the young offenders' prison at Celje and the women's prison at Ig, near Ljubljana. After each of these visits we prepared an extensive report containing our findings and recommendations for the improvement of conditions. Copies of the reports were sent to the prisons concerned and to the Ministry of Justice. Some of the recommendations were of a nature that allowed the prisons to act on them immediately and incorporate them into working practice, while others were of a more long-term nature and will require appropriate measures at the level of the National Prison Administration or the Ministry of Justice.

We have also sometimes encountered difficulties in contacts between the Human Rights Ombudsman and persons deprived of their liberty. In some cases we found that judges were opening letters and in this way controlling the correspondence of detainees with the Human Rights Ombudsman. We were surprised when the Ljubljana prison director referred to verbal instructions of the Ministry of Justice that even letters from detainees to the ombudsman should first be sent to the court for inspection. According to Article 27 of the Law on the Human Rights Ombudsman, persons deprived of their liberty have the right to send applications to the ombudsman in a sealed envelope. This naturally means that a detainee's correspondence may only be read by the person to whom it is addressed and not by a prison director or judge. The protection of privacy of the post is guaranteed by the constitution and exceptions to constitutionally protected rights need a restrictive interpretation. The Law on Criminal Procedure does in fact make a single exception, for correspondence between a detainee and his counsel. However, the right of a detained person to correspond with the Human Rights Ombudsman without supervision by the court derives from the quoted article of the Law on the Human Rights Ombudsman and from the very purpose of the institution.

On several visits to prisons we have also encountered the position that contact between detainees and the ombudsman should be conditional on the prior knowledge of the investigating judge or president of the senate (trial judge). Our opinion stressed that the view that a visit by the Human Rights Ombudsman or a conversation between him and a detainee requires prior notification of the court has no basis in law. According to Article 42 of the statute, the ombudsman has the right to conduct a conversation with persons deprived of their liberty without the presence of other persons. The law therefore places no restrictions or conditions on contact between the ombudsman and persons deprived of their liberty.

Notifying the judge of a visit by or conversation with the ombudsman is also questionable on the logical level. A detainee's application for contact with the ombudsman is as a rule linked to criticism of the treatment (also of omissions in the case of a slow court procedure) accorded by the investigating judge or president of the senate. In such a case it would be necessary to notify the very person against whom the complaint is directed of contact between the detainee and the ombudsman. This could have a negative influence on the detainee, as the individual involved, and, because of the fear of possible harmful consequences in the legal procedure, deter him/her from seeking contact with and complaining to the Human Rights Ombudsman.

In order to avoid any misunderstandings about the powers of the ombudsman, we proposed to the Ministry of Justice an amendment to the Law on Criminal Procedure which clearly sets out the right of the Human Rights Ombudsman to communicate without hindrance or supervision with detainees. The ministry accepted our recommendation. For the second parliamentary reading of the proposed amendments to the Law on Criminal Procedure, a new paragraph was added stipulating that the Human Rights Ombudsman or his deputy shall visit detainees and correspond with them without prior notification or supervision of the investigating judge. Mail sent by detainees to the ombudsman may not be examined by any other party.

We feel that the proposed amendment to the Law on Criminal Procedure is needed to remove the possibility of an alternative or narrow interpretation of the powers of the Human Rights Ombudsman in relation to detained persons.

The ombudsman may conduct inspections of prisons and other places where persons deprived of their liberty are held. These places of detention also include detention centres, police stations, the transit centre for aliens (where asylum seekers and people who have entered the country illegally are held), psychiatric hospitals, social security institutions and military barracks.

Visits by the ombudsman are usually announced in advance. This guarantees that the visit will proceed without problems and that the responsible persons will be present. Persons deprived of their liberty are not obliged to state the subject which they wish to discuss in their application for a conversation with the Human Rights Ombudsman. This is another way of ensuring the confidentiality of the conversation, which takes place face to face. During visits to prisons and detention centres we frequently contact members of the detainees' families and their lawyers in order to obtain useful information, for example, in order better to assess the alleged irregularities. In talks with persons deprived of their liberty we deal with specific complaints and also with general circumstances having a bearing on the rights of persons deprived of their liberty, such as the material conditions of detention (cell size, light, ventilation, food), the detention regime (opportunities for work and other activities, contact with the outside world such as visits, telephone calls, etc.) and legal safeguards (contact with lawyers, access to a lawyer from the beginning of police custody). Following the conversations, we examine in particular those premises to which the persons to whom we have talked have drawn our attention, or those connected with the processing of complaints. Naturally, we have unrestricted access to all rooms containing persons deprived of their liberty and can move about in them without restriction. During a prison visit we inspect, for example, a few randomly selected cells, sanitary facilities, the dining room, visiting rooms, the solitary confinement cells where disciplinary sentences are carried out, etc. During the course of the visit we usually also try the food served to detainees.

After completing the conversations and inspection of the premises, we conclude the visit with a meeting at which the governor or director and other responsible officers of the institution are present. A representative of the National Prison Administration also usually takes part in the meetings. We present our assessment of facts and circumstances and at the same time immediately propose a suitable way of doing away with any irregularities we have identified. Assuming our findings, conclusions and recommendations are accepted, we are thus able to solve the majority of open questions or at least set a deadline for solving them at the meetings which end these visits. Over a period of a few weeks we also prepare a written report containing proposals on how, in our judgement, the identified irregularities can be corrected and the existing situation improved – or the possibility of ill-treatment in future reduced. Depending on the nature of the matter, we set a deadline within which the individual institution or the responsible ministry must deal with our report and recommendations and respond to it. We expect the response to specify the steps to be taken by the responsible government bodies to rectify identified irregularities.

The Human Rights Ombudsman's visit reports are later also the subject of a discussion with the responsible representatives of individual ministries. Some of these meetings, for example the one with the National Prison Administration, have already become traditional and contribute significantly to the faster and more effective settlement of open questions.

Moreover, the Human Rights Ombudsman informs the public about visits to sites at which persons deprived of their liberty are detained. In some notorious cases we have called press conferences at the location itself on conclusion of the prison visit. Extracts from the report are published in a special Human Rights Ombudsman information bulletin designed for the general public. The ombudsman's findings and conclusions also form part of his annual report.

In substantiating his proposals and recommendations, particularly with regard to prisoners, the Human Rights Ombudsman tends not to refer much to domestic legislation, since the Law on the Implementation of Penal Sanctions is out of date, unsuitable and in many places not yet in harmony with the new socio-political and legal order. We do, however, frequently refer to the international agreements signed and ratified by Slovenia, particularly those concerning protection of human rights and fundamental freedoms, the most important being the European Convention for the Protection of Human Rights and Fundamental Freedoms. We call attention to the provisions of the

UN's Standard Minimum Rules for the Treatment of Prisoners of 1955 and above all to the European Prison Rules of 1987. Both of these international instruments prescribe minimum standards for the treatment of prisoners and serve as a useful guideline for the treatment of persons serving prison sentences in Slovenia. We also refer to the standards developed by the CPT. Another useful guide is the report submitted to the government of Slovenia by the CPT after its visit to the country in February 1995. Slovene law contains, for example, no precise stipulations on the material conditions of detention in police custody or on providing food to persons in police custody. For this reason we refer to the CPT's report on its visit to Slovenia when stressing that cells must be of a suitable size for the number of persons living in them, suitably lighted (wherever possible with natural light) and ventilated, and that persons in custody must be given food at appropriate times, including at least one full meal a day. Despite the recommendations made by the CPT after its 1995 visit to Slovenia, the situation in these areas is still not entirely satisfactory.

The effectiveness of the visits is apparent both at the legislative level and in the everyday practice of prisons and other places of detention.

A visit to Ljubljana prison in 1995 brought to light a problem associated with detention of minors. We drew attention to the fact that a fifteen-year-old boy was in detention together with several adult detainees. Article 473 of Slovenia's Law on Criminal Procedure does not provide absolutely that juveniles be detained separately from adults, as would be in the minors' best interests. We therefore requested the Constitutional Court to carry out an assessment of the conformity of the provisions of this legal norm with point C of Article 37 of the United Nations Convention on the Rights of the Child and point B of Article 10, par. 2 of the International Covenant on Civil and Political Rights. The Covenant requires that accused juvenile persons, without exception, be separated from adults. The Convention contains the same requirement and only permits an exception if separating a detained minor from adults can be shown to be contrary to his/her best interests. The Constitutional Court found, with a majority ruling, that the provision of Article 473 of the Law on Criminal Procedure was not in contravention of the United Nations Convention on the Rights of the Child, but it did not assess the conformity of the disputed provisions with the Covenant, reasoning that the Convention is more recent than the Covenant and is a special international agreement. The more recent special regulation thus annuls the older, general one. The Constitutional Court stressed that the legal provision which permits a juvenile to be detained together with adults derives from the assumption that for a juvenile in detention isolation is harmful, especially if it lasts too long. Therefore the law makes it possible for a judge to order a minor to be detained with an adult under the condition that this has no harmful effect on the minor. The purpose of this exception can only lie in the prevention of the potential consequences of isolating the juvenile offender, and not in solving the problem of possible overcrowding in prisons. Notwithstanding the ruling of the Constitutional Court that this domestic regulation is not contrary to an international agreement, the Ministry of Justice has proposed amendments to Article 473 of the Law on Criminal Procedure so that in practice a juvenile can only be detained together with an adult under exceptional circumstances and on the condition that such common detention is exclusively in the juvenile's best interest and for his/her benefit.

During a visit to Maribor prison we inspected a typical cell. A narrow room with a surface area of roughly 8 square metres furnishes accommodation for two prisoners. Two small barred windows afford poor ventilation. The wall cupboard is too small to hold the prisoners' personal effects (such as clothes). The prisoners therefore keep their effects in travelling bags "stored" under the table. The toilet is only separated from the rest of the room by a curtain. We pointed out that the cell was of a size suitable for one prisoner but not for two. Every prisoner should be provided with a cupboard big enough to hold clothes and other personal effects. The principle of separating smokers and non-smokers is not always consistently observed. Thus a smoker and a non-smoker can find themselves

in the same cell. In our discussion with the prison director we received the assurance that all of our proposals would be taken into consideration, but of course the difficulty is the problem of overcrowding caused by the large number of remand prisoners.

On our visit to Murska Sobota prison we found that prisoners do not have an opportunity to work. The prisoners, some of whom are serving long sentences, are thus deprived of the right to work while serving their sentences. We received an assurance that this irregularity would be rectified as soon as possible.

At Celje detention centre several remand prisoners complained that the food they received in their cells was already cold. We pointed out that this was unacceptable. Detainees must be provided with cooked meals served at the proper temperature. A few months later the National Prison Administration reported that Celje detention centre had purchased a trolley which enables food to be kept at a suitable temperature while being transported, with the result that all detainees now get suitably hot food.

In 1997 we devoted special attention to accidents which occur in the working units of prisons. Prisoners drew our attention to the difficulties they encounter in asserting their rights, including the right to compensation. On the basis of our recommendation the National Prison Administration, in co-operation with the National Labour Inspectorate, has drawn up appropriate guidelines on the investigation of working accidents in prisons. All cases of accidents which we pointed out during our prison visits have subsequently been investigated and the key circumstances identified, and prisoners have been helped to reparations for harm incurred or in assertion of their rights.

During our visit to Dob prison, the largest prison in Slovenia, we regularly encountered the complaint that prisoners have to wait six or more months to talk with the prison director. We warned that complaining to the director is the prisoner's right and that complaints must be dealt with quickly and fairly. The National Prison Administration assured us that the appointment of a new director of Dob prison has done away with this irregularity.

While visiting prisons in Koper we found that detainees working on the afternoon shift were given a hot snack at 1730 hours along with their dinner, i.e. two hot meals at the same time. Unless they eat the snack along with their dinner, it gets cold. Serving two meals simultaneously is at the very least inappropriate. We could therefore only agree with the prisoners' suggestion, hitherto ignored, that workers on the afternoon shift be given their snack in the morning. Prisoners could choose to have a dry snack which they could eat while working. Acceptance of our recommendation has led to proper observance of the regulation with regard to an additional meal.

Our reports on the visit to the psychiatric hospital at Ormoz drew attention to inadequacies in the legal supervision of non-voluntary hospitalisation and had a considerable echo in the press and among the professional and lay public. This may contribute to the passing of new, more appropriate legislation in this area, and to more consistent implementation of the applicable regulations to the advantage of the affected individuals and their rights relating to hospitalisation and treatment.

We could mention several other cases of successful intervention by the Human Rights Ombudsman to improve conditions in prisons, detention centres and other places of detention. Many such cases are presented every year in the ombudsman's annual report. We feel that our activities in this field have enjoyed a favourable reaction. There is also increasing public interest and more space is being devoted by the media to issues relating to the protection of personal freedom.

III THE CPT AND THE QUESTION OF MINORITIES IN CENTRAL EUROPE

by James A. Goldstone, Legal Director of the European Roma Rights Center, Hungary

1 Introduction

I have been asked to address the topic "The CPT and the question of minorities in Central Europe". Before I begin, let me note two things. First, I am not an expert on the CPT; nor am I an expert on minorities or on the particular minority to which I will devote the bulk of my discussion – the Roma. Rather, I am a lawyer with experience as a federal prosecutor and a human rights litigator. Second, I ask your indulgence to stretch the borders of Central Europe a bit to include a number of countries which are not represented here. Those of you who watch the French television station TV5 will know that, on its weather map, there is no Eastern Europe – just Western Europe, Central Europe and Asia. So for purposes of this discussion, please allow me to adopt the TV5 view of Central Europe.

I'd like first of all to talk about the overall context in which the question of one minority – the Roma (or Gypsies) – arises. Then I shall make a few comments on the relevance of minorities to the CPT.

2 Overall context

In many parts of the former Communist bloc, the Roma are on the run. They are not the voluntary nomads of popular belief, but just ordinary people who fear for their lives. Let me give a few examples to illustrate this point:

- In mid-May, a 15-year-old Romany boy in downtown Sofia was attacked by skinheads wielding knives and truncheons, dragged to the second-story window of a building, and thrown to his death.
- The same night, several hundred kilometres away, skinheads attacked and killed a 40-year-old Romany man in the north-eastern Moravian town of Orlova.
- In early May, a 22-year-old Romany man was detained by the police in Belgrade. He was told that he would be imprisoned and his wife raped if he did not provide information about persons in his neighbourhood who were allegedly engaged in criminal activity. According to the victim, he was beaten on his arms, knees and back with night-sticks, struck on the head with a chair, and had his head forcibly and repeatedly banged against a wall while in police custody. The police finally placed a bag over his head and beat him until he lost consciousness.
- In February, skinheads in two different parts of the Czech Republic fire-bombed the home of one Romany woman, leaving her in critical condition, and assaulted another Roma woman, afterwards throwing her into a river where she drowned.

More generally, tolerance of racist attitudes is widespread, and anti-Roma violence continues without any swift and certain remedy. In May of this year, the mayor of one Czech town announced plans to build a 13-foot-high wall to keep Romany "troublemakers" away from other residents. In March, Czech government officials reporting to the United Nations Committee on the Elimination of Racial Discrimination blamed high levels of Roma unemployment on the "lower level of social adaptability of Romanies" and their "frequently negative approach to work of any kind". In the Slovak Republic, three years after a Romany teenage boy was soaked in gasoline and burnt alive by skinheads, his family has yet to receive compensation. And numerous lawsuits arising from the expulsion of scores of Romanian Roma from their homes by raging mobs in the early part of this decade remain stalled indefinitely.

Since 1989, hostility and violence against Roma throughout Europe have intensified. The manifestations of racism – skinhead violence, police abuse of detainees, refusal of entry to restaurants, pubs and other public accommodations – are troubling in their own right. All the more so is the fact that if these acts are left unpunished, they contribute to an atmosphere in which ethnic hatred is considered acceptable.

The case of Assenov v. Bulgaria – which has wended its way through the Strasbourg organs – arose from just such routine abuse: the police beating of a 14-year-old boy. It began one morning in September 1992, when young Assenov was running a penny-ante shell game, a low-level form of gambling, in the central square of provincial Shoumen. Arrested and taken to the local police station, he was handcuffed to a radiator for two hours, while police officers spewing racial epithets beat him with a truncheon and a pistol butt. A medical certificate issued two days after his release documented large bluish-purple bruises on the boy's head, chest and right arm, which the examining physician viewed as consistent with the alleged police ill-treatment.

Normally, that would have been the end of the matter. Most Roma are too smart to complain; they know that the likely result will be just what happened in Assenov's case at the start: nothing. But, defying the odds, Anton and his parents filed a complaint with the police. The police conducted a cursory investigation and concluded, not surprisingly, that their colleagues had done nothing wrong. Undaunted, the family then asked for a formal criminal investigation. The prosecutors refused, asserting first that the boy had been beaten by his own father (who was arrested at the same time), then – when proof of police violence became incontrovertible – that "even if blows were administered on the body of the juvenile, they occurred as a result of disobedience to police orders". In other words: Yes, the cops beat him, and he deserved it.

When the family filed an application with the European Commission of Human Rights, the police harassed them, arresting the boy again and threatening to keep him in detention until their international petition was withdrawn. And yet they persisted. Their complaint was ruled admissible by the European Commission, which found violations of Articles 5, 13 and 25 of the Convention and, when no friendly settlement was reached, referred the case to the European Court. Next Thursday, on June 25, the Court will for the first time in its history entertain oral arguments in a case brought by a Roma applicant from Central or Eastern Europe.

As the first of its kind, a favourable decision in the Assenov case could well have an impact beyond the courtroom. This is particularly so at a time when the European Court's pronouncements carry great weight in countries aspiring to EU/NATO membership. First, it would highlight the existence of the Roma as an underprivileged group and underline the importance of their inclusion, on an equal basis, in the community of Europe. Second, it would contribute to the collective self-esteem of a deprived people and give impetus to the nascent movement for racial equality. Finally, it would make clear that the much talked-about rule of law protects even the most despised citizens from abuse by organs of government.

Of course, litigation like the Assenov case, which reached the European Court, is only one of several means of addressing the problem of official violence against minorities. Other methods of combating this problem include the myriad inter-governmental mechanisms of the United Nations and the Council of Europe, of which the CPT is one – and a very important one, as we have heard today.

It is here that I wish to turn briefly to the role of the CPT in the question of minorities. In doing so, I shall distinguish among three terms: 1) "ECPT" to refer to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 2) "European Convention" to refer to the European Convention for the Protection of Human Rights and Fundamental Freedoms; and 3) "the Committee" to refer to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

3 The CPT and minorities

When I was asked to make this presentation, my initial reaction was, in all candour: What does the CPT have to do with minorities? Looking at the text of the Convention, one sees no reference to minorities as such. Article 1 makes clear that the Committee is concerned with the treatment of "persons deprived of their liberty". So we must ask: Why should minorities even be a concern of the Committee for the Prevention of Torture?

On reflection, I think the organisers of this seminar demonstrated great wisdom by suggesting that such a topic be included. There is ample reason to believe that mistreatment of minorities falls within the CPT's competence and preventive function:

a) First of all, the Convention for the Prevention of Torture makes clear right in its preamble that it arises out of the European Convention on Human Rights, in particular Article 3. And it is well known that the thrust of the European Convention as a whole is the protection of minorities in at least two senses – one broader, one more specific. In the broader sense, the European Convention, like almost all international human rights instruments, is designed to protect the rights of those who lack sufficient political power in legislatures to protect themselves through the democratic process and who thus must turn to courts and international mechanisms for protection. And in the more specific sense, it was the vast destruction wrought upon racial, ethnic and religious minorities in World War II – among them Jews and Gypsies – which provided much of the impetus for the promulgation and ratification of the European Convention, including Article 3. Thus minorities are within the ambit of the CPT because they and their treatment lie at the core of the document – the European Convention – which underpins the CPT.

b) Why else should the CPT be concerned with the question of minorities? Well, the CPT is designed explicitly to strengthen the protection of detained persons against treatment in contravention of Article 3 of the European Convention (Art. 1). And it just so happens that in Europe – and very much so in Central Europe (at least Central Europe as per TV 5) – racial, ethnic and religious minorities are well represented today, in some countries, disproportionately so, among persons deprived of their liberty who are subjected to Article 3 violations. To take one example, that of the Roma: Along with widespread discrimination, unpunished police violence – most of it occurring in custody – is the single most serious human rights problem today. Moreover, complaints of police ill-treatment of the Roma all too commonly meet with indifference, neglect and even hostility on the part of investigative authorities. There are few hard data, but anecdotal evidence suggests that members of the Roma minority are substantially over-represented in pre-trial detention cells and in prisons in a number of countries in Central Europe, and that ill-treatment of the Roma in some of these facilities is more than incidental. Indeed, in certain instances, the CPT has itself recognised this in its reports (cf. the CPT's report on Bulgaria of March 1997, p. 41, par. 104: "At Pazardjik Prison . . . most of the prisoners [complaining of verbal abuse and rough treatment] belonged to ethnic minorities, which made up approximately 80% of the prison population").

Let me just look at a few countries where I happen to have some first-hand evidence.

Bulgaria

The police ill-treatment of Anton Assenov – and the failure of local reviewing bodies to provide redress – is far from unique. Since 1992, 14 Romany men in Bulgaria have died after having last been seen alive in police custody, or as a result of the unlawful use of firearms by law enforcement personnel. Monitoring organisations have documented dozens of other instances of Bulgarian police misconduct resulting in physical injury to Romanies. In an *amicus curiae* brief the European Roma Rights Center (ERRC) submitted to the European Court in the Assenov case, we presented documentary evidence of 45 cases of police abuse resulting in death or serious physical injury to Roma, all of which were alleged to have occurred between 1992 and 1997. In each of these cases, we possess documentation showing that written complaints of the alleged abuses were filed with, and received by, the Bulgarian law enforcement authorities. Nonetheless, in the overwhelming majority of the cases, the authorities have failed to conduct any investigation at all. In some cases, the authorities have never responded to the written complaints, even though as many as four years have passed since the complaints were submitted. In sum, only 2 of 45 cases of documented police abuse of Roma resulted in indictment and were brought to trial. Both resulted in convictions, though one is scheduled for re-trial. A copy of our brief, together with other materials, is available on the table.

Police violence against Roma has been documented by governmental bodies as well. In January 1996, the Special Rapporteur on extra-judicial, summary or arbitrary executions expressed concern "about reports indicating that persons belonging to the Roma minority are the main victims of police violence, in particular of violations of the right to life".

Czech Republic

Since 1989, Roma in the Czech Republic have been subjected to a wave of unchecked violence by government officials and private individuals. According to monitoring NGOs, 1,250 racially-motivated attacks have taken place in The Czech Republic since 1991, the majority against Roma. Moreover, during this time, ten Roma, one Turk mistaken for a Rom and one Sudanese student have been killed in racially-motivated violence.

Perhaps the most famous case of police abuse of Roma in custody is that of Martin Cervenák. On 8 June 1994, Cervenák was arrested in the village of Jenikovice, near the town of Horovsky Tyn in the western part of The Czech Republic. At 1530 hours he was seen being brought to a hospital. When his family phoned, the police gave two conflicting explanations: first that he had fallen on a rock, then that he had fallen on a heater. Cervenák died of a gunshot head wound shortly thereafter. A government report dated 30 September 1994 absolved the police of any wrong-doing in the incident. However, no thorough investigation has ever been carried out to dispel persisting suspicion of police responsibility for the death.

But Cervenák is not alone. In May 1997, the Ad Hoc Working Group for Romany Nationality Affairs of the Council of Nationalities – a Czech government body – reported on three cases of physical abuse of Roma by the police. According to the Working Group, as of the end of 1997, not a single police official had been disciplined or charged with any offence.

Macedonia

ERRC has documented numerous cases in which the police have subjected Roma detainees to physical abuse, obtained statements under threat, and denied access to counsel.

Notwithstanding the frequency of police abuse, and the numerous avenues for legal redress when such cases are reported, the number of investigations – let alone cases in which disciplinary or criminal code sanctions have been imposed – is small. To date, the Ministry of the Interior has proved reluctant to discipline its employees, prosecutors have resisted pressing charges against police officers, and several courts have refused to convict police implicated in violence despite abundant evidence.

4 Reported cases of police violence against Roma in detention

- In late August 1996, a 17-year-old Roma man was taken to the police station in the central Macedonian town of Tip. There he was allegedly interrogated, in the absence of counsel, and then told to sign a statement which he was not given time to read. He was told that if he refused to sign, he would be "taken down to the cell". In the course of his detention, the man was beaten with truncheons by six policemen, and held for more than 24 hours in a cell without food or water.
- In March 1998, a 27-year-old Romany man was arrested by police officers and taken to the station, where policemen spitting racist epithets broke his arm and beat him with sticks and fists until he was bloody.
- A Roma man reported being beaten following his arrest in December 1997. His testimony was as follows: "They drove [me] to the police station where they started to torture me. They took me into a room alone, made me squat and when I was down with my knees bent, one of them kicked me in the chest and blood came out of my mouth. Then one of the policemen took me by the hair and pulled me up violently. Then he started to hit me on the head with a truncheon. Late in the evening three new officers came in and continued to beat me. They beat me in turns during the period between midnight and 5 a.m. and afterwards they took [me] to another office for questioning. They let me go at 11 a.m. the next morning and I went to the hospital." The man was so badly hurt by blows in the face that his speech was still impaired four months later.
- An 18-year-old Romany man from Kocani reported that, in August 1996, after being hospitalised after a street fight with several non-Roma, the police took him out of the hospital and brought him to the police station for interrogation. There he was beaten with sticks on his back, sides and ribs. Several hours later he was released. He was never charged with any crime.
- A 14-year-old Romany boy from Ohrid was arrested following a street fight in July 1997 and taken to the police station. There he was interrogated without a lawyer, beaten, and held the entire night. During his interrogation, the boy was threatened that if he reported his ill-treatment, he would be beaten again and sent to prison. The boy's parents were not notified of his arrest until the following morning, when he was released.

So we see that the CPT must be concerned with minorities because, in the course of its visits to places of detention in Central Europe, it will be sure to find that a substantial proportion of the complaints of inhuman treatment that it receives comes from minority detainees.

Indeed, the CPT's reports to date make it clear that this is so. The CPT's report on Bulgaria (par. 23) refers to claims at Pazardjik Regional Investigation Service by "several detainees of Roma origin . . . to have been ill-treated, in the form of blows struck with a plastic pipe"; in other countries, e.g. Spain, the CPT has made specific mention of foreigners.

More generally, although the Committee's mandate is universal and applies to all persons deprived of their liberty, the CPT has not hesitated to call attention to the problems experienced by particular groups of detainees whenever such problems give rise to concerns under Article 3 of the European Convention. Its June 1996 visit report on Slovenia made specific reference to the placement of minors in adult prisons. In its 7th general report on activities of the year 1996, the Committee devoted an entire section to the treatment of "foreign nationals detained under aliens legislation". In that report, the CPT explained that it was focusing on what it termed "immigration detainees" in order to "give a clear advance indication to national authorities of its views concerning the treatment of immigration detainees and, more generally, to stimulate discussion in relation to this category of persons. . . ." In the same way, in countries where it is appropriate, the Committee might take it upon itself to focus on the question of detained minority members to stimulate discussion about their treatment in detention.

5 Why else is the question of minorities of particular interest to the CPT?

As we have noted, the CPT is grounded in large part on Article 3 of the European Convention. In considering the CPT's role in protecting minorities, it is thus significant that the Strasbourg organs have recognised that government policies or practices which discriminate on the basis of race against members of certain minority groups may, under certain circumstances, so affront the dignity of these persons as to constitute "degrading treatment" under Article 3 of the European Convention. I note in particular the European Commission's decisions in the East African Asians Case in 1973, and in the case of Arthur Hilton v. UK in 1976. All this suggests that the treatment of racial and ethnic minorities is anything but irrelevant to the CPT.

Since racial discrimination may amount to degrading treatment under Article 3 of the European Convention under certain circumstances, it should be clear that discrimination against racial or ethnic minorities among persons who are deprived of their liberty – imposing sub-standard conditions of detention on minorities, for example, or granting them equal material conditions but segregating them on the basis of racial or ethnic origin – constitutes one form of "inhuman or degrading treatment or punishment" from which the Committee, under Article 1 of the ECPT, is obliged to protect them.

Again, the question of minorities is relevant to the CPT because minorities may be subject to a kind of inhuman and degrading treatment which other detainees do not experience: racially-motivated abuse. All else being equal, a given level of physical abuse is more likely to constitute degrading or inhuman treatment or punishment when motivated by racist animosity or coupled with racist epithets than when racial considerations are absent. Expressions of racial hatred on the part of law enforcement authorities contribute to the degradation and inhuman treatment of minority detainees in particular. In custodial settings, the use of racist language emphasises the vulnerability of and humiliates and degrades detainees. In this regard, it may be helpful to note that, in construing Article 3 of the European Convention, the Strasbourg organs have made clear that the level of ill-treatment required to be degrading depends, in part, on the vulnerability of victims to physical or emotional suffering. Thus, like minors or the physically infirm, members of racial or ethnic minority groups may well be subject to Article 3 violations in circumstances where other detainees would not be. In fact, we receive reports that Roma detainees in particular are subject to racially-motivated abuse – both verbal and physical – on the part of law enforcement officers. This is surely of relevance to the Committee in carrying out its responsibilities under the ECPT.

Finally, mistreatment of minorities is of particular relevance to the Committee for two other reasons, one relating to the institutional interest of the Committee in efficiently rationing its resources, a second concerning the nature of the issue *per se*.

First of all, as the brief information I have related indicates, this is a systemic problem in a number of countries and precisely the sort of problem that the CPT's preventive mechanism was designed to address. In this sense, focusing on the ill-treatment of minorities in detention is of fundamental institutional interest to the CPT in terms of how it allocates its necessarily limited resources and energy. In addressing the systematic mistreatment of minorities the CPT will focus on a problem with the potential for the Committee to have a substantial impact.

Secondly, racially-motivated ill-treatment of detainees is precisely the sort of problem the CPT should deal with, because the racism underlying such ill-treatment is most often a product not of law, but rather of a whole range of policies, practices and behaviour on the part of government officials; these are exactly the kinds of variables that CPT intervention in a country can affect. Just as the CPT has, and has regularly exercised, the authority to encourage prison officials to instruct their staff that physical abuse will not be tolerated, so it might also recommend instruction aimed at eliminating expressions of racial or ethnic intolerance or hatred since these are similarly unacceptable.

6 Conclusion

In conclusion, I'd like to suggest that the question of minorities is of great relevance to the ECPT and to the Committee in several different respects which may have implications for the Committee's work.

1) When credible reports emerge indicating that members of a minority group are more likely to be subjected to ill-treatment in detention than are other detainees, even when such ill-treatment is not clearly the product of racial or ethnic animosity, the Committee may well wish to raise this issue in the course of its examination and when making country visits.

2) When reliable evidence suggests that persons deprived of their liberty have suffered physical or other abuse motivated in part by racial animosity, the CPT might address in its dialogue with the government and its recommendations for reform not only the fact of physical ill-treatment, but also the racist motivation underlying it.

Thus, when evidence suggests that members of a minority group are the objects of racist epithets by prison officials or other government agents, the CPT might recommend that the prison administration or other relevant government officials make clear to their staffs that expressions of racial hatred are intolerable and unacceptable.

Furthermore, the Committee might ask governments for statistics concerning the ethnic composition of detainees in closed institutions.

3) Finally, in view of the widespread reports of ill-treatment of the Roma in detention facilities, the CPT might create a working group to consider how the Committee could specifically address what seems to be a serious problem in more than one country in the region.

4) Before I conclude, let me simply note that we have received numerous allegations that the Roma, in particular, who have been deprived of their liberty have been arrested, charged, convicted, and sentenced at least in part on the basis of their ethnicity. Such allegations are most difficult to verify. If they could be verified, the fact of imprisonment in part on the grounds that the prisoner is a member of a particular minority group would almost certainly violate Article 5(1) of the European Convention. However, I wonder whether this would not also give rise to an argument that such a person – imprisoned in part because he/she is a minority group member – was suffering "inhuman

or degrading treatment or punishment" in violation of Article 3. If so, it seems to me, it might fall within the scope of the ECPT and the Committee. The principal counter-argument, I suppose, would be that this particular violation of Article 3 would require that the Committee investigate the reason for detention to determine whether in fact racial bias played a role in it. And normally the Committee limits itself to investigation of the physical conditions of detention. Nonetheless, it might be that racial bias in the decision to detain – a form of racial discrimination which is widely alleged in many countries in the region but which has yet to be conclusively proved – would similarly indicate that persons deprived of their liberty were being subjected to inhuman or degrading treatment or punishment and hence warrant the CPT's attention.

Part II

The Implemention of the CPT's Recommendations in Five Central European Countries

1) REPORT ON THE CZECH REPUBLIC

by Miroslav Krutina, Czech Helsinki Committee, Czech Republic

1 Introduction

The CPT visited the Czech Republic on 16-26 February 1997 and sent its report to the Czech government in the following June.

During its visit the Committee inspected seven police facilities, two prisons and two juvenile penal institutions. Apart from the Minister of Justice and deputies of the Ministers of Interior Affairs, Defence and Health, the CPT met a number of other government officials as well as some NGOs (among which the Czech Helsinki Committee).

2 Conclusions of the CPT

a) The police facilities

The CPT did not receive any information alleging torture of persons held by the police in the Czech Republic and no evidence of such treatment was discovered during the visit.

The Committee met several persons who claimed that they had been struck with an open palm or a fist while in detention at a police station. Similar indications were also obtained from other sources. None of the persons met by the Committee, however, had any signs of injuries that would confirm these claims. Nonetheless, sufficient time had almost certainly passed since the alleged ill-treatment for any injuries suffered to have healed.

The CPT recommended that the police authorities emphasise to their subordinates that ill-treatment of detained persons is unacceptable and might result in severe punishment. With regard to prevention of ill-treatment, the CPT recommended that interrogation of prisoners be carried out in prison and not in police stations (with some exceptions if allowed by a judge).

The Committee pointed out the situation of foreigners awaiting expulsion while being detained for up to 30 days under the Police Law. The cells at police headquarters in Prague provide no access to daylight, and there is no possibility for physical exercise or work there. The CPT challenged the Czech authorities to provide substitute premises.

In the framework of prevention of ill-treatment, the CPT seeks to ensure the right of detained persons to a) inform their close relations and friends, b) contact attorneys, and c) contact a doctor of their own choice, including the guarantee of medical confidentiality, the results of any medical examination being given to the persons examined.

The CPT recommended that detained persons be immediately provided with a form, in a language which they understand, informing them of their rights.

The Committee pointed out the unsuitable status of the police facilities in Prague for accommodation of detained persons overnight. It also qualified the practice of attaching detainees to pieces of furniture, sometimes even on publicly accessible premises, as inadmissible.

b) Prisons

The Committee did not receive any information on torture and did not discover any evidence of such in the prisons of the Czech Republic. It did, however, obtain some allegations of the use of unnecessary force (striking with an open palm or a fist, kicking) and especially of the usage of strait-jackets by prison guards, even on prisoners who were fully under control at the time. This was confirmed by documentation as well, including medical reports.

The use of strait-jackets cannot be justified in the case of prisoners who, although rebellious, are already under control.

The CPT recommended that prison guards be apprised of the inadmissibility of such treatment and of the strict punishment which it will entail.

The CPT had a number of reservations with regard to how prisoners' complaints about the inappropriate use of force are handled.

The examination and ruling on complaints lie with the prison administration. From 1995 to the middle of 1996, none of the complaints were found to be well-grounded, and all prisoners in the Mírov prison who had filed complaints withdrew them. The CPT recommended that the current system be reviewed with the aim of providing prisoners with a guarantee of impartial and independent examination of their complaints and of not preventing detainees who might have suffered ill-treatment from proceeding with their complaints.

The CPT stressed the importance of appropriate training of prison guards and of building positive relations between them and detainees.

The material capacity of the prisons might have been called adequate had they not been overcrowded. This is a result of insufficient application of alternative punishments.

Disciplinary cells still lack mattresses.

The CPT recommended increasing the current norm of 3.5 square metres per person. Only one prisoner should occupy a cell of up to 8 square metres. Cells of less than 6 square metres should not be used for prisoners' accommodation at all.

The CPT recommended that daily regime programmes be worked out to positively and proactively counteract the de-socialising effects of long-term imprisonment. The regime should provide possibilities for work, sports, time outside the cell, and walks of at least an hour per day. Prisoners should have access to a telephone. The opportunities for unhindered visits should also be widened.

The Committee was satisfied with the standard of medical care, but considered the observance of medical confidentiality to be insufficient.

c) Juvenile facilities

The CPT found no indication of torture of detainees in the facilities it visited and received no information alleging such torture in any similar facility in the Czech Republic.

The Committee received communications from several girls detained in the penal institution at Moravsky Krumlov alleging beating, rude treatment, and the receipt of lecherous notes from personnel and the head of the facility which were made public.

The CPT recommended that physical punishment and humiliating treatment of minors be prohibited.

The material, educational, rehabilitation and medical needs of detainees in the visited facilities were being met in a satisfactory manner. The CPT did consider, however, that certain procedures in these facilities could be improved, in particular by developing moral guarantees for juveniles and by recording disciplinary measures imposed.

3 Measures taken by the Czech government

a) The police facilities

For the purpose of placement of foreigners awaiting expulsion, a building with a capacity for 80 persons is being renovated. A new law regulating the status of foreigners in the country is currently being prepared.

At a meeting of regional directors of the police administration, the inadmissibility and the strict punishment of ill-treatment of detainees were stressed.

Whether the transfer of prisoners to police stations for interrogation is justified is determined by a director of the individual investigation unit. The required approvals by judges have so far proved to be administratively impossible.

The draft amendment to the Police Law includes a stipulation that special premises suitable for the detainee be provided.

Both the right to inform relatives of detention and to be examined by a freely chosen doctor will be contained in a new codification of criminal procedure laws in 1998.

A form apprising defendants of their rights will be provided in all major languages. In 1998 the president of the police will introduce a unified system for recording all information on persons dealt with by law enforcement officers.

The right to contact an attorney immediately upon detention figures in the Charter of Fundamental Rights and Freedoms. The instructions given to the police on this subject will be reconsidered in this light and worked into the Police Law.

b) Prisons

At the meeting of prison directors, it was ensured that prison guards would be instructed about the inadmissibility of ill-treatment of prisoners.

The above-mentioned poor manner of dealing with complaints will be examined by the Ministry of Justice in 1998.

The recommended norms of accommodation (8 and 6 square metres) are considered to be a goal. A strategy for achieving the goal will be worked out in 1998.

Activities in the context of a daily regime will be preferentially ensured for prisoners serving long sentences (Mírov).

Measures to improve the daily regime of (especially) juveniles have been taken in the prison of Praha-Pankrác.

Medical examinations of prisoners will be carried out privately at the request of a doctor.

The widening of opportunities for visits will be dealt with through legislation in 1998-1999. At present visits may be made at three-week intervals.

The Director General of the Prison Service notified the directors of individual prisons of the need to observe the daily walks provided for by law.

Furnishing disciplinary cells with mattresses will be made compulsory in 1998.

In the framework of drafting a new penal law, suggestions have been made to provide for an outside oversight of prisoners by independent judges.

c) Juvenile facilities

Directors of all facilities have been notified that physical punishment and public humiliation of juveniles must be avoided. The Ministry of Education will be responsible for staff selection in these facilities.

Improvement of inspections carried out by qualified experts will be ensured by legislation.
The Ministry of Education will ensure that physical exercise forms a substantial part of the daily regime.

An appropriate procedure for dealing with disciplinary offences, including possibilities of appeal, will be set up in the Law on Social and Legal Protection of Minors, to be enacted in 1998.

4 Practice of the Czech Helsinki Committee

The Czech Helsinki Committee currently carries out the monitoring of human rights in Czech prisons. In our experience there have been a number of complaints about the conduct of government bodies in the restriction of personal freedom.

Examples:

- May 1998: Complaints were lodged about violence committed against participants of a rally who were arrested in Prague, Vodickova Street, during their transport and at police stations (hitting with open palms and with fists, kicking).
- May 1998: A man complained about a brutal beating carried out in the presence of small children by policemen who, without a warrant, penetrated a flat he was visiting. The man

was hospitalised for a long time and his health has been permanently affected. As in several other cases handled by the Czech Helsinki Committee, this man was also accused of attacking an official.
- In Horovsky Tyn Martin Cervenák was detained in connection with the theft of a television set. During interrogation the detainee was shot dead. Although it is well known that the police often threaten detainees with a gun, in this case the investigating body came to the conclusion that Mr Cervenák injured himself with a gun he snatched from the officers. According to information obtained from another NGO (HOST) his wrists were marked with traces of cords with which he was attached to a chair during questioning.
- Frantiek Kahánek, suspected of murder and molestation of an 11-year-old boy (son of a Prison Service employee) died after six hours in jail. His fellow inmate, originally willing to testify to the fact that Kahánek was beaten to death, eventually said in front of the TV cameras that he would not testify for fear of his life. The guards suspected of Kahánek's murder were acquitted.
- Radek Príhoda was severely beaten while detained at Brno, leaving him with a broken rib, cuts and other injuries. The head of the prison found the steps taken by the guards to be justified and appropriate.

5 Statistical data

The number of detainees in The Czech Republic continues to soar. The most recent number is 22,065 persons, or 220 per 100,000 inhabitants, and it is expected to reach 25,000. Alternative punishment makes up just 12 % of the total. Standing in the way of applying the modern alternative penal procedures enacted in our law is a lack not only of good will and experience, but also in particular of material and human resources.

Prison overcrowding: 115 %

Deficit of accommodation: 3,000 places

The number of complaints about the conduct of prison guards in 1997: 1,494. Found to be justified: 10 percent.

Taking into account the prevention of detainees from proceeding with their complaints and of the partiality of investigators toward the prison and its employees, it is obvious that these official data do not correspond to reality.

In the Mírov prison, a large number of prisoners are placed in one cell. Violence in such sites is endemic.

In the first half of 1997, a total of 348 measures of constraint were applied in Czech prisons, out of which 12 % (43) occurred in the prison of Brno, which contains only 4 % of all prisoners.

The number of suicides in prisons in 1997: 16

Note: There are many indications that order and obedience are highly stressed in Czech prisons, and it can be observed that the Prison Service is becoming more and more military. The practice in prisons seems to be returning to the pre-1989 status, the Pardubice prison being an example of an especially alarming deterioration.

2) REPORT ON HUNGARY

by Ágnes Kövér, Staff Attorney of the Constitutional and Legal Policy Institute, Hungary

1 General approach of the CPT's activity

1.1 Problem of interpretation

Hungary adopted the ECHR in 1987, of which Article 3 contains the prohibition of torture and inhuman or degrading treatment or punishment. Although the prescription of Article 3 seems clear and obvious at first sight, the content of the expressions and their interpretation are subject to debate. In implementation of legal norms, the task is to examine how the written law correlates with reality. Here the question is: What cycle of events in real life constitutes either torture or inhuman or degrading treatment or punishment? Raising this question is not merely a semantic exercise or a word game; it points to the essence of the problem. The interpretation of Article 3 has become particularly significant since a committee was created in 1989 to prevent the article from being included in the Convention. The ECPT established the CPT, which is authorised to visit the member States to monitor the status of persons deprived of their liberty, and if necessary to shore up their protection against torture or inhuman or degrading treatment of punishment. Since this Committee's activity began, the interpretation of Article 3 has become extremely significant, inasmuch as during its visits it examines institutions and institutional practices and refers its findings to the prohibition in the article.

1.1.1 The target group to be protected

The task is to interpret the circle of "persons deprived of their liberty by a public authority". As the Explanatory Report highlights under point 30: "Visits may be organised in all kinds of places where persons are deprived of their liberty, whatever the reasons may be. The Convention is therefore applicable, for example, to the places where persons are held in custody, are imprisoned as a result of conviction for an offence, are held in administrative detention, or are interned for medical reasons or where minors are detained by a public authority. Detention by military authorities is also covered by the Convention." Pre-trial detainees, convicted persons, asylum seekers kept in community shelters, detainees in any kind of closed institutions and psychiatric patients are all covered. In my view, the mandate inherently covers more than this list, namely persons whose pre-trial detention has not yet been determined, or never will be determined, but who are being legally held for a shorter or longer term. According to Hungarian law, such detention may fall under the following heads: criminal detention (for 72 hours: par. 91 of the Act on Criminal Procedure), administrative detention (for 24 hours: par. 38 of the Act on Criminal Procedure), and public security detention (for 8+4 hours: par. 33 of the Police Act).

This statement suggests that deprivation of liberty of any length should provide enough ground for the Committee to examine its implementation and conditions. That is to say, all of the places listed above should be visited and all detainees examined independently of the length of deprivation of their liberty.

1.1.2 Interpretation of torture and inhuman or degrading treatment or punishment

What are the foundations of inhuman or degrading treatment and torture? Reports of the visits to Austria in 1990 and 1994 indicate that the risk of ill-treatment in Austria is fairly high, but the likelihood of torture low. These conclusions of the Committee were based on the testimony of inmates and were supported by medical records and reports that bear witness to physical abuse. The cases did not indicate the presence of any "quasi-legal" practices or procedures that would amount to torture.

The situation in Greece, which the Committee visited in 1993, is different. The report concluded that "there is a high risk of ill-treatment and occasionally some accepted procedures lay the foundations for ill-treatment and torture". This statement was based on the discovery of a certain method of interrogation applied during police procedures. The method was described independently by a number of inmates in great detail and consisted of the use of electric shock during interrogation. The testimony of the inmates was found to be valid when, in one of the police stations, the equipment used for administering the electric shock was left on display by accident. Legal regulations do not refer to this practice, and it is illegal. It is no accident, however, when this and other such methods are widely used in a country.

Statements like "the risk of serious ill-treatment and torture is high" can be found in the reports on Cyprus, Bulgaria and Turkey. The Committee, for instance, discovered the use of a traditional method of physical abuse in Bulgaria: *falaka*. *Falaka* is the systematic beating of the sole with a stick or metal bar, and its use is commonly accepted during police procedures and following imprisonment in case of disciplinary action. The use of electric shock was also documented in Bulgaria.

Based on the above examples, one might ask: What is the difference between ill-treatment and torture? When does ill-treatment turn into torture? The origin of the word *torture* goes back to the 13th century, when the only way to acquire evidence was to force the suspect to confess. The accepted way to do this was the use of torture, as decreed by the fourth Lateran Council. Some maintain that torture exists only when physical abuse is applied to elicit a confession. The study by Rod Morgan and Malcolm Evans states that any abuse or ill-treatment amounts to torture when applied according to an accepted (mostly illegal) practice.

The report on Hungary mentions "several" "exceptionally consistent" statements that point to "precise forms of ill-treatment". Although the Committee found various forms of physical abuse in Hungary and described these practices in its report (e.g. tying up persons unable to defend themselves; physical assault with fists, sticks or feet in order to elicit a confession) it did not judge these to be "serious ill-treatment or torture", as these expressions are absent from the report.

1.2 Question of double standards Western standards vs. Eastern conditions

At this point, we should reflect on the excuses of the so-called realists. We cannot ignore the increasingly wide gap between the standards in the societies of Eastern Europe and international standards. Nor can we ignore the economic realities in these societies in our expectations for improvement of conditions in them. Can we accept exceptional cost considerations, or do other considerations have priority?

1.2.1 Cost vs. value considerations

Some fundamental questions must be answered before identifying the cost elements or accepting the financial excuses of the so-called realists. One of the questions is whether the implementation of a prison sentence or other form of punishment can be approached using financial or business criteria. One might easily argue that if only financial considerations are taken into account, then the simplest and most efficient form of punishment is the death penalty, or in minor cases the physical punishment of the offender. A serious beating or mutilation costs the community less than the maintenance of closed institutions, especially if these institutions are managed according to European standards. Whenever we get lost in the maze of financial and efficiency considerations, it has to be clearly stated that the principal concern about the quality of penal institutions – even in times of economic hardship – is not linked to costs but to values. This means that the quality of the penal system, as well as the nature and extent of

rights, declared and observed, depends fundamentally on the choice of values. Only after the choice has been made about values and the system to be established can the question of costs be addressed. This is not to imply that cost and financial considerations are unimportant; on the contrary, and especially in Eastern and Central Europe, they are crucial to the rational management of institutions and the evaluation of their efficiency. A clear distinction has to be made, however, between questions of values and cost or financial considerations.

Value and cost considerations may strengthen or weaken each other. The people of these countries are familiar with situations where legislation reflecting our values is not implemented due to the lack of funds. Such a situation results in the deterioration of values as well as of the authority of legislation. The irrational and inefficient functioning of institutions, on the other hand, undermines our conscious choice of values. The same applies when everyday practice tolerates elements contrary to our choice of values and uses funds in improper ways. The cost-oriented analysis is therefore essential, but one has to note that its validity is limited to the boundaries defined by our choice of values.

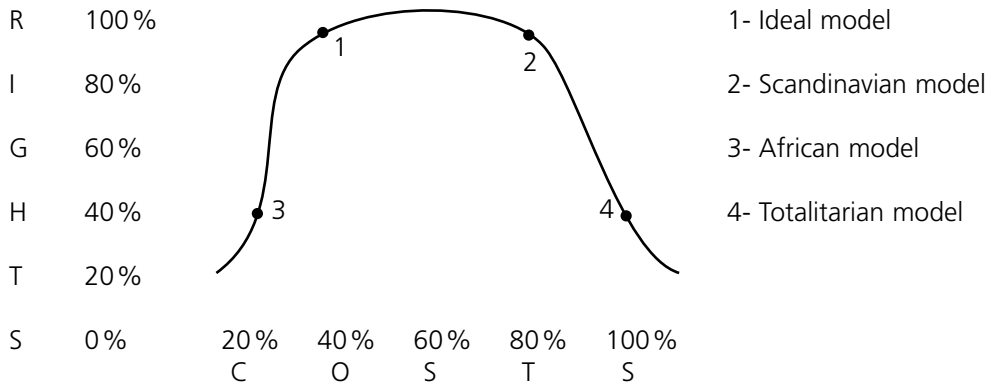
The cost-oriented approach to closed institutions and analysis of the costs associated with implementation of rights in the institutions provide a useful tool for the support of our choice of values. In most cases they favour consideration of community-based service as opposed to time spent in closed institutions. At first sight, a community-based system (especially its introduction) requires a greater investment than the maintenance of closed institutions. But the figures show that this is only a myth. If long-term effects and social costs are taken into account, the financial benefits of community-based service are even more accentuated. The only question is whether we can afford long-term thinking.

1.2.2 Rights-cost matrix

The model presented here attempts to demonstrate the possible relation between rights and costs within closed institutions. Costs are represented on the horizontal axis, and rights on the vertical axis, within a 0-100% range. According to this model, which is obviously idealistic, the following configurations are possible:

- The best possible realisation of human rights with the lowest costs is the ideal model, which is likely to be difficult to create. Theoretically, however, it is a possibility.
- Low costs and a low degree of human rights realisation could be called the African model, as in many poor countries of Africa the funds available for closed institutions are very limited and realisation of human rights is also severely limited.
- The Scandinavian model is where rights are realised to a high degree, but where costs are very high.
- The last possibility is the totalitarian model, where costs are fairly high, possibly as high as in the case of the Scandinavian model, but the realisation of rights is very limited. Dictatorial and military regimes belong to this category. Direct and indirect personnel costs are very high; closed institutions have high rates of utilisation, and their system is very rigid. In many cases, the realisation of rights is not targeted. The system serves the interests of the power structure rather than functional objectives.

The graphical representation of rights-costs relations



The former socialist countries were close to the totalitarian model with respect to rights and costs. The reason for this is that the system of closed institutions (principally prisons) traditionally functioned as a part of the political establishment and centralised state bureaucracy and was not merely a symbolic but rather a practical and direct extension of power (for instance, guards were part of the military). As such, it absorbed large amounts of funds.

The change required is, of course, a move toward the ideal model. This means the establishment of a cost-efficient system that conforms to human rights. Some basic questions must be reviewed in order to make this possible. Some of the most important questions are how much closed institutions really cost these societies, what values should guide cost rationalisation, and what working alternatives can be offered to replace the inefficient system of closed institutions.

1.2.3 Does poverty preclude the realisation of human rights?

One further argument that has to be faced is that economic realities in Central and Eastern Europe do not allow the realisation of human rights and the implementation of European standards in closed institutions; therefore, both rights and their realisation must be limited. This argument is problematical and false in many respects. Firstly, one has to consider whether a double set of measurements may be used with respect to universal international standards and values, whether one has the right to have different expectations from countries on the western and eastern ends of Europe. The fundamental elements of human rights are expressed in very general and abstract terms in the documents of the UN and the CE. These are for the most part not expectations but recommendations. The countries that wish to join in the acceptance of these standards intend to become part of the international community in other respects as well. A double set of standards is not accepted in financial or economic questions, and it must also be rejected in the field of human rights. The institutional framework of any society necessarily reflects the democratic or anti-democratic nature of that society. In many cases institutions can be democratic without any especially demanding economic and material conditions; what is required is simply a rational and systematic reorganisation of the whole institutional system, a rethinking of objectives and measures, definition of certain fundamental values, and a more rational apportionment of funds in relation to values chosen. As we progress toward democracy, it is essential that we seize the historic opportunity before us and critically examine the elements of traditional institutions from the point of view of costs. This analysis might well demonstrate that it makes no sense to neglect new human rights elements because of their costs, but good sense to abolish or reform traditional elements that are wasting resources.

A further question is how receptive closed institutions are toward human rights considerations. Critical criminology holds that closed institutions are based on a hierarchical model that naturally suppresses rights but attempts to hide this deficiency behind a certain terminology and a superficial working mode. This criticism of closed institutions is based on the fact that they are among the most difficult to access and place under public oversight, since most of the information on their operations, including budget data, is classified. In many cases special power groups and configurations may well be present in these institutions whose interests are contrary to efficiency.

A strange phenomenon common in countries with a struggling economy is that wages in closed institutions are very low as a result of the lack of funds, but that this is made up for by giving staff the false impression that they have intimate ties to those in power. As a result, these institutions bear the characteristics of a power structure and are inclined to function inefficiently. The introduction of rights and the mechanisms necessary for their implementation is a precondition for a democratic state and society, where these rights have a so-called "secondary" function; they not only bring the system into line with international requirements, but they also play a role in actively shaping the way the society functions. The promulgation and realisation of rights play an important role in the shaping of the community's expectations, duties, and wishes as well as the efficiency of its activities. These rights act beneficially from "deep under the skin" of society, out of sight but with a great deal of impact.

Since the political transition, the countries of Central and Eastern Europe have made efforts to implement human rights and build them into their legal systems. In many cases, however, this is limited to formal promulgation of rights and political rhetoric. The actual realisation of human rights cannot be achieved without substantial reforms and a move toward more open and transparent institutions receptive to such rights.

2 Reflections on the Hungarian report

The CPT visited Hungary on 1-14 November 1994. The mission had a considerable impact on the democratic transformation and humanisation of the Hungarian criminal justice system, particularly on pre-trial detention implementation, imprisonment, and on the other forms of deprivation of liberty. Apart from the fact that the CPT's work cannot be appreciated highly enough, this paper critically reviews the CPT's report to the Hungarian government and offers an assessment of the consequences of its mission. Reflecting on Rod Morgan and Malcolm Evans's study on the main standards applied by the CPT, and in light of the Hungarian visit, this paper recommends reviewing some of the interpretations of the standards and some of the methods used by the CPT during its visit.

2.1 General observation on the allocation of on-site investigations

On initial review, it is difficult to understand why the Committee visited only police cells and prisons in Budapest (excepting the youth prison in Tokol and the community shelter for immigrants in Kerepestarcsa).

An investigation limited to institutions in Budapest and its environs cannot provide a comprehensive picture. Hungary tends to be overly centralised, and there are significant social and economic differences among its various regions. This has several consequences: 1) The capital, as the centre, has priority when funds are distributed among institutions. 2) Due to regional differences, the conditions of detainees held in the capital are sometimes more favourable than elsewhere. 3) The individual regions have fewer opportunities to put forward their interests than does the capital. In order to present an accurate national picture of the situation, an investigation like the CPT's would have to investigate several regions of the country, including the wealthier counties in the west and the poorer ones in the east and south.

2.2 Reflections on the reported material

Establishments under the Ministry of the Interior's authority

2.2.1 Forms of detention
(The CPT report on Hungary, par. 14.)

Unfortunately, the Committee was not sufficiently familiar or comfortable with the Hungarian law on forms of detention. Although the report mentions the two main legal sources of regulations (the Police Act and the Act on Criminal Procedure), it does not deal with the real and overly complicated ways in which arrest and detention are applied in Hungary. In this section of the CPT report, a portion of par. 33 of the Police Act is quoted, although it is just one of several passages concerning short deprivations of freedom without court supervision. The cited passage concerns public security detentions (PSDs) and reads: "Police officers may apprehend persons for the purpose of bringing them before the competent authority."[18] But the Committee failed to note section 2 of the Act, which states that "any ordinary citizen can be presented before the police authorities *in the interest of public security* in the following cases: if a person cannot identify him- or herself, or refuses to show his/her identity papers; if a person is suspected of having committed a crime; if a person is obliged to subject him/herself to a blood or urine test to determine the level of alcohol in his/her blood; and if a person continues to commit an offence in violation of the Misdemeanour Code in spite of prior warning".[19]

The length of PSD is eight hours and can be extended for an additional four hours. The extension process is not controlled either legally or administratively, so the length of PSD is in fact 12 hours. In a second type of public security detention, the length can be for 24 hours. Persons held in PSD are placed in separate cells, in a different part of the building from where pre-trial detainees are held. PSD cells were not visited at all by the Committee, even though they are located in the same police stations where pre-trial detainees are kept, and although there is a significant number of police stations where only PSD cells are found. The physical conditions of these PSD cells are much worse than those of the police cells where pre-trial detention is implemented. But even the conditions of the latter were unsatisfactorily described in the Committee's report. The status and conditions of PSD cells are fully within the definition of "inhuman and degrading treatment". The estimated number of individuals held in these places is several hundred thousand per year. According to police registries, in an average district police station in the capital, approximately 15-20 persons are held daily. During PSD implementation, several basic rights of detained persons are routinely violated. The police, considering the relatively "short time" of detention, do not allow the application of the right to notify close relatives or third parties, in spite of the regulation in the Police Act, section 1, par. 18. Persons held in PSD are not informed at all of the reasons for their arrest or of any charges against them. This practice is in accord with the regulation in the Police Act, section 4, par. 33, which prescribes that detained persons must ask in order to learn the cause of their PSD; but the cause for detention is not offered by the police without a request from detainees.

Neither the legal regulation nor the practice accords with Article 5(2) of the European Convention, which states that any person taken into custody must be "informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him".[20] Unfortunately, the supervision of public prosecutors covers neither the legal nor the physical status of PSDs; nor does it deal with detained persons.

The legal regulations authorising deprivation of liberty should be examined more carefully, not only because at times the devil is in the details, but because these short deprivations of freedom, as in Hungary, often involve not just suspects of criminal offences but ordinary citizens as well. And, since PSDs are largely unmonitored, the scope for police abuse remains large.

18 CPT Report to the Hungarian government, p. 13, par. 14. The quotation is from the Police Act (Act 32) of 1994, section 1, par. 33.
19 Police Act (Act 32) of 1994, section 2, par. 33
20 Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950)

The point in time when rights come into force

In Hungary, there are other forms of short detention besides the PSD. They are: criminal detention for a length of 72 hours, according to the Act on Criminal Procedure, par. 91; and public security detention for 24 hours, according to the Police Act, section 1, par. 38. According to the latest regulation (which was changed after the Committee's visit), the length of the various criminal detentions cannot be extended beyond a 72-hour maximum without judicial review. Nevertheless, the detained person's basic rights, e.g. to notify family or a third party, to have access to a lawyer, to be apprised of his/her rights, and to be notified of the cause of his/her arrest are not implemented, because this "short" detention is not defined as a criminal detention. Hence, in Hungary, it is legally possible for there to be no external control over the first 24 hours of detention. Being held for a day (or days), if not longer, creates such a high level of unnecessary insecurity that it is inherently inhuman and degrading. (This situation is worse in the case of immigrants, who can spend five days in detention without judicial review.[21] The regulation on psychiatric patients' detention is in accordance with European standards.)

The Committee should consider applying the notion of "inhuman and degrading treatment" to at least the right to be informed promptly of the cause of arrest or deprivation of freedom, and this at the time of arrest or deprivation of freedom.[22]

The place and the length of pre-trial detention during police investigation (Report on Hungary, par. 15.)

In Hungary, departing from the general European practice of implementing pre-trial detention, the first part of the pre-trial detention process, which covers the entire length of the police investigation, is implemented in police cells. The Committee reported: "The delegation found that, in practice, it was common for persons to be held on remand in police establishments for several months."[23] This practice is implemented under the regulation of an exceptional rule in the Act on the Implementation of Punishments (Act 32, section 3, par. 116, 1993). According to the principal rule (section 1, par. 116 of Act 11 of 1979, amended by Act 32 of 1993), pre-trial detention must be implemented in a remand prison.

Unfortunately, the Committee did not refer to statistical records, even though these are obviously available and record the exact number of people in police cells and the length of pre-trial detention implemented in police cells. In 1996, of the 6,704 pre-trial detainees, 3,500 were kept in police cells, and in 1994, of the 8,442 pre-trial detainees, 4,398 were kept in police cells. All pre-trial detainees, 100%, are kept in police cells during the police investigation process. The average length of detention in police cells is between three and six months. Approximately 10% of detainees spend eight to twelve months in police cells that were designed for much shorter stays.

Accelerating the preparation of the criminal procedure law was one of the most significant effects of the CPT's fact-finding visit to Hungary. It is intended that the new regulation will make basic changes to current practice. According to the original draft law, after the first 72 hours, pre-trial detention must be carried out in remand prison cells without exception. Finally, the draft proposed to the government extended to 30 (in exceptional cases to 60) days the possible length of detention in a police cell.[24]

21 Act 86 of 1993, on the Entry, Stay in Hungary and Immigration of Foreigners
22 European Convention, Article 5(2)
23 Report on Hungary, p. 14, par. 15
24 Draft of Criminal Procedure Law, section 2, par. 135

Some reflections on the Committee's remarks on the length of pre-trial detention

In Hungary the length of pre-trial detention is unlimited. In cognisance of this fact, the Committee's report includes several critical statements on the undesirably long period of pre-trial detention. The report remarks that the long duration of detention increases the risk of conflicts between prisoners and guards. For this reason, it would be worthwhile to investigate the trends shown by the data on detentions.

In 1990, 51.7 % of all detentions were between 0-2 months, but by 1994 this category had declined to 35 %. Detentions of four to six months, on the other hand, which had comprised 8.9 % of the total in 1990, had risen to 18 % in 1994, and detentions of six to eight months had risen from 2.3 % to 7.4 %. The most interesting figures, however, are those for the periods of 8-10 months and 10-12 months. The former category rose over the past four years from 0.5 % to 2.5 %, and the latter from 0 to 2.1 %. Expressed in absolute numbers, this last percentage means that there are currently approximately 170-180 persons who have been held in detention for nearly a year or more. The proportion of detainees as a percentage of all prisoners showed no major change, declining from 11.3 % in 1990 to 10.3 % today. In absolute numbers, however, there was a significant increase, from 6,200 to 8,442. This, of course, means that the absolute number of all prisoners also increased significantly (from 54,918 to 82,073). Further, whereas 61 % of all detentions in 1990 ended after the first trial, the proportion was significantly lower, 44 %, in 1994. This reduction is presumably closely linked to judicial control of detention.

It is also interesting to examine the proportion of prison sentences as a percentage of all sentences: In 1990 this was 22.5 %, and in 1994 only 12.6 %. This 12.6 % was restricted almost entirely to those held in pre-trial detention. In other words, the tendency is for courts to give non-custodial sentences to persons not held in pre-trial detention. Finally, the number of persons detained in police cells in 1990 was 1,303; by 1994 it had increased to 1,345.

Perhaps the notion "inhuman and degrading treatment" can be extended to apply to an unreasonably long period of pre-trial detention. According to Article 9(3) of the Covenant on Civil and Political Rights, the right to trial within a reasonable time is guaranteed. The resolutions of the Human Rights Committee might provide standards for us in determining what constitutes a "reasonable time". For example, in reviewing the national legislation of one country, the Committee implied that a six-month limit on pre-trial detention was too long to be compatible with Article 9(3) of the Covenant.[25] Construing the right "to trial within a reasonable time or to release pending trial" under Article 5(3) of the European Convention, the European Court has held that the reasonableness of the length of detention is to be assessed independently of the reasonableness of the delay before trial, and though the length of time before trial may be "reasonable" under Article 6(1) of the Convention, the length of detention may not be.[26]

Preventing ill-treatment
(Par. 16-26.)

With respect to physical ill-treatment applied by the police, the report says the following: "Naturally, one of the most effective means of preventing ill-treatment by police officers lies in the diligent examination of complaints of such treatment and, where appropriate, the imposition of suitable disciplinary and penal sanctions." The Committee requested statistical data from the authorities on the number of complaints of ill-treatment by the police lodged and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints, as well as an account of disciplinary/criminal sanctions imposed because of ill-treatment by the police. The Hungarian Helsinki

25 Official Records of the General Assembly, Forty-fifth Session, Supplement no. 40, vol. I, par. 47 (Democratic Yemen)
26 Neumeister case, European Court of Human Rights, Series A, no. 8, p. 37, par. 4.; Matznetter case, *ibid*., no. 10, p. 34, par. 12

Committee suggests that a comparison be made of public prosecutors' willingness to prosecute police officers who have committed severe ill-treatment with their willingness to prosecute private citizen offenders. In the case of typical police crimes (ill-treatment during official procedure, forced interrogation, and unlawful detention) the rate of terminated investigations, usually above 80 %, is much higher than for the total number of crimes. In 1994, 38.3 % of all investigations were terminated because the perpetrator could not be identified or it could not be proved that the suspect was the person who had committed the crime (2 %). Only 6.5 % of all investigations were ended because the act could not be identified as a crime. In cases where police officers were investigated for brutality or other abusive behaviour, the statistics give a different picture. Of 952 investigations commenced because of alleged police abuse, in 683 cases (71.7 %) the investigation was terminated on the grounds that the police behaviour did not constitute a crime. A mere 19.7 % of the petitions filed against police officers are actually prosecuted, whereas the rate is more than 40 % for all other cases.

The Committee, in the course of a visit, could assess the prosecutors' readiness to investigate police cases and prosecute police officers by comparing the figures on prosecution of the police with those for ordinary cases and obtain an idea of how serious the discrepancy is.

Procedural safeguards on police custody
(Par. 40-48.)

Access to legal counsel: A significant external control over the police could be obtained by allowing regular visits by lawyers. This would enable detainees to give their lawyers information not only about the facts of their cases, but also about the circumstances of their detention and treatment. If necessary, the lawyers could raise these issues with the proper authorities. Such a possibility, however, is largely theoretical. In cases where detainees do not have the financial resources to employ a lawyer of their choice (fairly common in the socio-economic groups to which most detainees belong) and where an official lawyer is appointed for their defence, not only is oversight of their conditions of detention lost, but also their basic right to legal protection. In most cases, the lawyer has no contact with his/her client in the course of the pre-trial investigation, or even later. The first personal meeting between them takes place in court, at the trial, without the lawyer having spoken to, or even seen, the defendant beforehand. According to data from the Supreme Court in one county surveyed, only nine of 139 detainees had been visited before trial by their appointed lawyers. Surveys carried out since have shown that this practice is very widespread. During the Police Cell Monitoring Programme (conducted in 1996 by COLPI and HHC) only 71 of 483 detainees asked reported that they had met with their appointed lawyers before trial.

Unfortunately, the CPT was unable to check the reliability of information on the realisation and implementation of the right to legal defence or access to legal counsel in Hungary. In accordance with the constitution, every person charged with a crime is entitled to legal representation. As noted, this right is not always fully implemented in practice. Although the law formally grants pre-trial detainees the right to a lawyer appointed by the government, 80-90 % of such defendants do not enjoy representation. There are of course many reasons for this, including the extremely low fees for appointed counsel (2,000 forints per case, equivalent to 13 USD), long delays in payment, the substantial expense an attorney must incur to obtain copies of official documents, and the fact that many essential costs incurred in the defence of a client – including travel to and from penitentiaries and police stations where pre-trial detainees are held – are not reimbursed at all. As a result, it is virtually impossible for many lawyers to visit pre-trial detention centres and police cells to speak with their clients. The fact is that the government has made the right to legal defence untenable. This is particularly important in Eastern Europe (if not elsewhere), where one of the typical double binds is legislation of rights issues on the highest level while disregarding the financial consequences involved.

By international standards, access to counsel must be provided soon after detention to make the right to legal assistance (cf. the Covenant on Civil and Political Rights, Article 15(3), points b., d.). Interpreting the right to counsel under the European Convention, the European Commission has held that it is not enough for the government to appoint defence counsel for indigent defendants. It must also provide *effective* counsel, and it has an obligation to see that the appointed lawyer carries out his/her duties. The authorities must supervise the appointed counsel, require him/her to fulfil the duties adequately, or replace him/her.[27] The Committee's report did not mention the reality of the right of access to legal counsel in Hungary; nor did it remind the government of its obligations based on international rules.

The Human Rights Committee has indicated that the right to choose one's counsel must be available immediately upon detention. The Committee noted the need to clarify the precise moment at which the right of access to a lawyer becomes effective in Hungary. Unfortunately, the law is not sufficiently clear in this respect.

Perhaps in those cases where the Committee interprets its standards in accordance with the standards or decisions of other international human rights bodies, it could draw certain lessons by doing so and thus render its work more effective.

Physical conditions of police cells

A comparison of the Committee's report with the reports prepared by the Penal Supervision Department of the Chief Public Prosecutor's Office a few years earlier (based on investigations conducted in 1991-1992) shows that considerable progress has been made. The Penal Supervision Department has been in charge of the legal supervision of police cells since 1990, and its inspections have resulted in continuous improvement of both the conditions of cells in particular and of detention in general. Following its first reports, 35 % of the cells inspected were deemed unfit for human habitation and closed, and 25 % are still not used.

External supervision

Making the conditions of detention subject to inspection, or rather observation, by external organisations is another way of establishing a sense of ongoing supervision. This function could be most appropriately carried out by NGOs and human rights groups, but local government bodies could also exercise supervisory powers, as they do in Western European countries. Points 29-81 of the UN Standard Minimum Rules for the Treatment of Prisoners concern detainees' relations with the outside world and the role of NGOs in closed institutions. The importance of both items is also emphasised by the Council of Europe's recommendations to member States on European prison regulations. In most European countries, these regulations are the basis for regular observation of the treatment and living conditions of detainees by independent human rights organisations.

Programmes such as these are carried out by trained professionals who visit police cells and are able to interpret and assess what they see. Even if the police authorities seek to present more favourable conditions than actually exist, in the long run they will not be able to disguise the reality. The work of international human rights organisations such as the CPT could be supplemented and made more complete by the regular participation of local and national organisations. They could provide continuous information to international organisations, and they could also make the most effective use of their findings in the local political context, in order to change conditions.

27 *Human Rights and Pre-trial Detention*, United Nations, New York-Geneva, 1994. Cf. Application no. 9127/80 (6 October 1981), *Strasbourg Digest of Case Law*, vol. 2, p. 846.

Public opinion and the media play an essential part in the work of national organisations. They regularly inform not only the relevant authorities and official bodies about the results of their visits, but also the local and national press. They pass on information to the community about the conditions inside closed institutions and the current status of basic human rights.

The closed institutions most commonly investigated are prisons (penitentiaries) and the places where custody, arraignment, and detention take place, that is, police cells and detention centres. From a human rights point of view, the greatest problems are presented by the latter, i.e. the detention centres and police cells. Despite the Europe-wide acceptance of the UN Minimum Standards and the Council of Europe's recommendations, the physical conditions of these facilities and the way persons detained in them are treated by the police fall well below the standards practised in prisons and those expected by the international community. This is the case even when the local and national laws governing the operations of these institutions and police practice are wholly in accordance with international expectations and recommendations.

The Committee should also encourage governments to adopt the system of lay visitors to police stations, in accordance with its second general report, par. 41.

2.2.2 Institutions under the Ministry of Justice

A surprising omission is found in section B, subsection 4e, which deals with suicide and self-mutilation in prisons. Here the report fails to mention the Hungarian practice of responding to attempted suicide (which is becoming rare in Eastern Europe) with disciplinary action. This practice has become less rigid. For instance, if family matters are thought to have played a part in the desire to commit suicide, the prisoner is not punished. In any other case, however, the institution regards attempted suicide as an attempt by the detainee to escape punishment, and he/she is therefore subjected to disciplinary action. There is in my view a great difference between what the Committee recommends for such cases, i.e. "counselling, support and appropriate association," and the reality in Hungary, viz. punishment. It is neither justifiable nor acceptable for attempted suicide or self-mutilation to be "dealt with" by disciplinary action. There is no example of this in the prisons of Western countries, either. It would have been important, therefore, for the Committee to take up the matter of this inappropriate practice upon its detection.

3 General comment

As this paper has outlined, the opinions expressed in the Committee's reports have an enormous impact on domestic legal regulation and everyday practice of deprivation of liberty. This is why it is so important for the Committee's remarks to be very well argued, based on an accurate picture of domestic realities, and grounded in legal substance. Without such rigour, governments will continue their undesirable practices and the Committee's findings might even be used to oppose and obstruct local reform efforts.

In this final comment I should like to emphasise again the importance of reviewing the CPT's activities and scope for action. As I stated before, the extended interpretation of Article 3 of the European Convention ("inhuman or degrading treatment" being a collective notion) necessarily covers other provisions of the Convention. The Committee should therefore not hesitate to extend its investigations to the violation of other articles, such as 5(2), 5(3), 5(4), 6, 8, 10, and 11, since the violation of these rights obviously constitutes "inhuman or degrading treatment".

3) REPORT ON POLAND

by Monika Platek, Associate Professor at the Institute of Penal Law, Faculty of Law, University of Warsaw, Poland

I had no access to the CPT's recommendations to the government of Poland, and specifically to those concerning places of detention or facilities for juveniles operated by the police. Since I was asked to focus especially on police establishments and in particular those for juveniles, I shall present a short introduction and thereafter some information on the law and practice in this area in Poland.

1 Introduction

The new Polish constitution of 1997 states in Art. 9 that "the Republic of Poland shall respect international law binding upon it". The provisions of the constitution apply directly, unless the constitution provides otherwise (Art. 8.2 of the Polish constitution (PC)).

On 11 July 1994 Poland signed and on 10 October 1994 ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Convention entered into force on 1 February 1995. In the chapter on "Personal Freedoms and Rights", the Polish constitution of 1997 states *expressis verbis*: "No one may be subject to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment is prohibited."

The constitution also ensures personal inviolability and security and states that any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute and not by any legal instrument below statute level (Art. 41.1 PC). The same constitutional rules specify the conditions under which a person can be deprived of liberty or detained. "Anyone deprived of liberty, except by sentence of court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. Any deprivation of liberty shall be immediately made known to the family, or a person indicated by the person deprived of liberty" (Art. 41.2 PC).

"Every detained person shall be informed, immediately and in a manner comprehensible to him/her, of the reason for such detention. The person shall, within 48 hours of detention, be brought before a court for consideration of the case. The detained person shall be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him/her within forty-eight hours of the time of being brought before the court" (Art. 41.3 PC).

"Anyone deprived of liberty shall be treated in a humane manner" (Art. 41.4 PC).

"Anyone who has been unlawfully deprived of liberty shall have a right to compensation" (Art. 41.5 PC).

In one of its decisions, the European Court on Human Rights describes torture as especially intense inhuman or degrading treatment. In fact, inhuman treatment is always also degrading. The European Commission of Human Rights defines inhuman treatment as conscious application of at least physical or mental pain which in the particular situation is unjustifiable. The cases decided by the European Court on Human Rights and examined by the Commission give a concrete context to the terms we use and build up standards and limits for legal norms and actual behaviour. The CPT's activity should therefore be especially useful in developing criteria of evaluation. What causes certain behaviour to be perceived as degrading and inhuman in one place and as quite acceptable in another depends not only on written law, and not only on the level of social awareness, but on the everyday practical implementation of the legal rules. The Committee's visits and its examination of

the way persons deprived of their liberty are treated are building up a common understanding of how accepted legal rules should be applied in practice.

The CPT's periodic visit to Poland was carried out from 30 June to 12 July 1996. Police stations and police facilities for juveniles were included on the list of places of detention visited by the CPT delegates.

2 Police stations

In assessing prison conditions – not only in Poland – the CPT emphasised once again "the evils of prison overcrowding, a phenomenon which blights penitentiary systems across Europe. Overcrowding is often particularly acute in prisons used to accommodate remand prisoners (i.e. persons awaiting trial); however, the CPT has found that in some countries the problem has spread throughout the prison system".

To address the problem of overcrowding, Poland undertook to reform its penal system, stressing the need to decriminalise some detainees and to limit the punishments of others. But at the same time, the respective changes to the law led to the problem of police stations.

Up to 1990, in accordance with Art. 209 of the penal code, not only persons arrested by the police for up to 24 hours but also pre-trial detainees for up to three months could be held in police stations. There were, however, cases where persons were held for more than three months. It also happened that persons sentenced to terms of up to six months, with court authorisation, spent this time in police stations.

The conditions of police custody were appalling by any measure. The ombudsman's 1989 report was very critical. Criticism also came from the Polish Helsinki Committee (in Polish "Patronat", an NGO dedicated to helping incarcerated persons and ex-prisoners) and other Polish and international NGOs which visited these places of detention after 1989. The Ministry of the Interior responsible for police custody took steps to improve the situation.

At the end of February 1989, detainees were held in 1,650 police stations, of which 72 fell in the first category, 148 in the second and 1,430 in the third or poorly equipped category. According to data of 15 October 1990, the number of police stations holding detainees had decreased to 798, of which 19 belonged to the first category, 78 to the second and 701 to the third.

In Warsaw five police stations were reclassified from first to second category, five from second to third, one was closed and four underwent total renovation.

According to the law, most persons detained in police stations are either suspected of having committed a crime or are intoxicated and are kept for up to 24 hours. The law of February 1990 instituted a major change by excluding the possibility of detaining persons under arrest and those already sentenced by a court in police stations.

This changed to some extent the number of persons in police custody, but as far as the conditions of detention were concerned the evaluation made by the Polish ombudsman showed that they were far from good. Many police stations had cells below ground level. The amount of light was insufficient for reading; hygiene was poor. In many cases persons under arrest lacked a place to sleep. Many slept together on wooden benches and not all of them were given blankets for the night. A natural consequence of such conditions was the skin diseases that spread among detainees in police stations. The condition of toilets, showers and sanitary areas was appalling in most places. The premises were not cleaned with any regularity, and the whole area was not given adequate care.

Some of us are of the opinion that the level of civilisation and of actual treatment of human beings can be measured by the intensity of the smell in public places and sites run by the public administration.

A hundred years ago, placing two strangers in the same hotel bed would not have been strange at all. Today our notions of privacy are far more sophisticated. What might have been acceptable a hundred years ago would tend to be seen in terms of today's standards as inhuman and degrading treatment. The same applies to food, medical care and access to courts of law. The 1990 report made it clear that hardly anything was up to standard.

When we allow standards to be neglected, this leads to their being lowered. There are many ways of dealing with overcrowding in penal institutions: The Polish lawmakers chose the most expensive (from the point of view of social costs) method, but at the same time the one with which they were most familiar.

Only five years after abolishing police custody as appropriate for persons awaiting trial and those already sentenced, the possibility to hold these persons in police detention came back into the penal code. It is stressed that such detention should only be exceptional, for up to five days during trial or until any obstacles to transport elsewhere have been removed (and for the latter case the law prescribes no time limit).

The bad practice of allowing legal standards and the law itself to deteriorate was continued and extended into the new reformed penal code effective on 1 September 1998. The same norms allowing persons under court arrest to be kept in police custody are repeated in it. In addition, the time limit is practically eliminated; the detainee can be held as long as needed due to court activity. Since there are already sentenced persons who have been kept in court detention centres for years without an additional court warrant, we have no assurance that a similar bad practice will not develop under the new law; the presently existing rules were originally thought of as exceptions to the rules.

3 Police facilities for juveniles

Police facilities for juveniles represent an even bigger problem since juveniles as well as women are treated as marginal and stimulate only a marginal public interest. Few people are interested in this topic, and far fewer studies have been devoted to incarceration of women and minors, especially of minors in police custody. In addition, much of the study concerning women is still concentrated on the wrong question (e.g. "to what extent does women's behaviour cause rape?"). Similarly, the interest in youthful offenders concentrates on symptoms rather than on the causes of deviation (how to punish effectively rather than how to use preventive methods to achieve positive effects).

A treatment of juveniles oriented toward prevention and re-socialisation is set out in the Juvenile Act of 26 October 1982. Separate, specialised institutions were created to perform the following functions: detection of danger and manifestations of social maladjustment, diagnosis and guidance, decisions on the nature and measures of treatment to be applied, protective and educational treatment. The notion of "juvenile" is a basic one, for the whole act is structured in terms of different age groups: The upper age limit is 18 when the goal is to prevent and combat delinquency; legal proceedings are initiated when persons between ages 13 and 17 commit punishable acts; the upper age limit is 21 for application of educational and corrective measures.

The Polish legislators considered the use of penal measures for juveniles as contradictory to the principles of humanism and educationally false. The notion of delinquency used as a new concept in the law signifies a state or process characterised by a juvenile's negative attitudes and behaviour in relation to the basic norms and principles of conduct in force in society. Although an exemplified catalogue of circumstances and types of behaviour manifesting juvenile delinquency is included in Article 4, par. 1 of the Act, there are many others whose identification will depend on judges' attitudes toward the persons concerned and their social environment.

In what cases can the police be called upon to deal with a juvenile? According to the law of 7 May 1983 regulating the detention of juveniles by the police, minors between ages 3 and 17 can be detained if they are suspected of having committed illegal acts and those between ages 13 and 18 if they require immediate care and it is not possible for such care to be provided by parents.

As we can see, in the first case the police are dealing with innocent persons whose guilt has yet to be proved, and in the second there is no question of guilt at all, but only of care. Despite this, it often happens that on mere contact with the police, juveniles are treated as wrongdoers. Moreover, the police often act in accordance with stereotyped patterns and treat juveniles as criminals simply because most of the persons with whom they deal are criminals. The time a minor can spend in police detention is limited to 72 hours, or with court consent up to 14 days (Art. 102; cf. also Art. 40 of the Juvenile Act of 1982).

The conditions in these places of detention were observed by the CPT as well as by the Polish ombudsman. The ombudsman, just as in the case of police detention of adults, not only found the conditions of detention to be far below the required standard but also came upon cases of actual abuse of detained juveniles.

There are 30 places of detention for juveniles operated by the police, of which the ombudsman visited 15. He found several cases where the length of detention of the juveniles had exceeded the statutory limit. Moreover, the conditions of police custody did not meet European standards.

4 Adolescents and the law

It was reported recently that an emergency service ignored a call to a seriously ill mother made by a fifteen-year-old daughter. The woman died, and the emergency service explained that young people often played pranks on it. That may well be so, and some adults probably do the same. A fifteen-year-old wanted to buy a video recorder. He was refused on the ground that the law forbids such important purchases without adult consent. According to the newly adopted criminal code, that same fifteen-year-old could be prosecuted and tried as an adult if he committed a serious crime.

It is clear that changes in the law and in social mentality are needed. The constitution stipulates that the Republic of Poland shall ensure the protection of the rights of the child. Everyone shall have the right to demand that organs of public authority defend minors against violence, cruelty, exploitation and actions which undermine their moral sense (Art. 72.1 PC).

Further, the Convention on the Rights of the Child, an international agreement adopted by the UN in 1989 and ratified by Poland in 1991, stipulates that the child/student is protected by internationally recognised civil, economic, social and cultural rights. When a child/student comes to the conclusion that his/her rights are being violated, however, it turns out that the procedures for enforcing them are quite ineffective. It is customary for such disputes to be resolved by independent and impartial courts. Everyone, even a child and regardless of age, can appeal to the European

Commission on Human Rights and the European Court of Human Rights in Strasbourg. (With due respect to these institutions, it is worthwhile to consider that even if the case makes it to the Court, a student, for example, will have graduated before it is settled. On average it takes five years before a case is tried). But prior to such appeal, all available domestic procedures must be exhausted, and here the problems begin. In order to file a case in court, one must be entitled to carry out legal activities.

Juveniles, however, enjoy no legal rights until they are thirteen. Before that age they have no competence regarding their rights and duties. Between the ages of thirteen and eighteen, they have only limited legal ability. The carrying out of important legal activities or conclusion of a contract requires the agreement or confirmation of their legal representative (Art. 17-21 of the criminal code). An important purchase can only be effected if the father endorses the minor's choice. Between ages thirteen and eighteen young people can dispose of their earnings without the consent of parents or wardens, unless a court decides otherwise. A full right of purchase is obtained when the minor comes of age and thereby becomes an adult.

Recently, in order to fight crime among the young, the Governor of Warsaw ordered that juveniles up to the age of 18 not be allowed on the street between 2300 and 0600 hours. This curfew, which is not permitted by the constitution, represents an evident breach of law and results in more juveniles being subject to police custody. Yet the police give it as their opinion that the curfew brings fewer juveniles into police custody than were there before it. In May 1998, the police checked out over 300 juveniles: 47 were put into police detention, 20% fewer than in May 1997.

The Governor's action creates an additional reason for a CPT response. It promotes inhuman and degrading treatment and treats the entire youthful population as a potential danger to law and order. Such an attitude can work as a self-fulfilling prophecy and act as a stimulus for further deterioration of social standards as far as treatment of citizens is concerned.

4) REPORT ON THE SLOVAK REPUBLIC
by Zuzana Szatmary, Charta 77 Foundation, Slovak Republic

The Charta 77 Foundation was asked by the CPT in 1995 to assist as a consulting agency in its research. The report on the Slovak Republic was delivered to our organisation in April 1998 and at the same time we were asked to comment on it from our point of view.

After a detailed review of the report, the following topics were chosen for study, having regard to the agenda of our Legal Defence Fund and to the short notice we were given by the CPT.

1 The Diagnostic Centre for Young Persons in Zahorska Bystrica (Ministry of Education)

2 Adamov-Gbely Holding Centre for Asylum Seekers
(Ministry of the Interior)

3 Other establishments under the authority of the Ministry of the Interior:
Osvetova Street Police Station, Bratislava
Sasinkova Street Police Station, Bratislava
(Ministry of the Interior)

Following the structure of the report, the above places were visited and the relevant persons contacted. The results of the visits were discussed with the NGOs involved.

The majority of the visits and discussions were very open and the persons contacted co-operative. Regular visits to prisons were agreed with the directorship of Slovak prisons.

1 The Diagnostic Centre for Young Persons in Zahorska Bystrica

On 26 June 1998 we were able to move freely through all the facilities and talk to any boy. The findings of our visit were the following:

- No "Scottish shower" exists.
- There is no register on use of coercion; teachers and boys said that none was being used.
- The isolation rooms were utilised twice.
- Boys in isolation rooms are allowed to go outside in the open air daily.
- There is no reading material in the isolation rooms; teachers say that there would be no interest anyway.
- One member of night staff is qualified as a nurse.
- Isolation rooms are equipped with a bed, table and chair.
- Common rooms are well furnished. Bedrooms had not changed: no pictures, etc. The administration says there is no need because they are only used for temporary stays.
- Sports activities and computer games are organised; there are no "cultural activities".
- There is unlimited access to a telephone in the corridor / to use of a telephone card.
- Toilets are catastrophic, of the "Turkish" type. This was accounted for by lack of money; a renovation has just begun.
- The capacity of the home is insufficient and not effective in combating juvenile criminality. There are 30 places for the whole of the Slovak Republic. It would be useful to have another centre in Eastern Slovakia.

Note: We agreed three dates to visit the Re-education Home in Hlohovec, but each time the institution found some reason to cancel.

2 Adamov-Gbely Holding Centre for Asylum Seekers

- Men and women are strictly separated. Families live together. Persons with emotional or cultural ties are allowed to live together.
- The holding centre in Adamov serves also for quarantine. A refugee camp is located in Brezova pod Bradlom. There are rooms in Adamov with 6 beds, each with separate entrance, shower and WC.
- Asylum seekers are given information on the conditions of their stay immediately on arrival. The internal rules are posted on the walls in Slovak, Russian, French, Arabic and Persian. A list of refugee NGOs with their addresses and that of the Office of the United Nations High Commissioner for Refugees (UNHCR) is available.
- During quarantine, asylum seekers may take a Slovak language course as well as play volleyball, basketball and various table games.
- In the common room they can watch television. The camp is building a children's playground and a small sports field.
- Social and legal services are provided to asylum seekers throughout their stay by NGOs.
- Psychiatric and psychological assistance is provided by local or regional doctors. There are no internal camp doctors. The refugee's right to see a physician is observed. NGOs also furnish psychological aid.
- Renovation of the centre was completed on schedule in 1995. Additional construction now taking place, including a playground and laundry, is being carried out by the Immigration Office. The capacity of the camp is now 200 persons.
- A common room was built and is used daily.
- Facilities are available for treatment of HIV-positive refugees. So far only one case has been recorded, and the person died very soon after arrival.
- Asylum seekers can obtain legal services through NGOs and the UNHCR. If a reason for asylum can be documented during the asylum-seeking process, the persons concerned obtain refugee status.

According to the Refugee Law of 1 January 1996, Art. 4, par. 8, no one seeking asylum can be returned to the country of origin if there is a risk of torture or inhuman treatment in that country.

The whole process should be monitored by the UNHCR and by NGOs.

At present, two NGO lawyers are being paid by the UNHCR. In theory, they should visit the camp weekly in order to keep abreast of the situation there. But the actual practice is otherwise: Lawyers' visits are very rare and it devolves on the refugees, on the basis of information provided by the camp, to contact the lawyers. Many refugees are looking for other lawyers and this fact is reportedly being misused by some members of the profession to charge high fees.

The Immigration Office asked the UNHCR to represent all refugees, and the request was refused. It is reported by refugees as well by NGOs that the UNHCR shows a lack of enthusiasm and activity.

The biggest problem in the asylum-seeking process is political evaluation of so-called risky countries, whereas former Soviet bloc countries, for instance, are considered as safe.

The majority of refugees do not want to stay in the Slovak Republic and view the country as a mere transit stop.

Another problem is constituted by "illegal immigrants", those who enjoy no legal aid. This issue falls within the competence of the Alien Police and these people are held temporarily in the Medvedov Camp.

3 Other establishments under the authority of the Ministry of the Interior

a) Osvetova Street Police Station: Bratislava District II

- Contact person: Director Huba
- Education: The curriculum at the Police Academy contains human rights as well as additional training courses under the auspices of the Ministry of the Interior.
- Recording of interrogations: Visual recording is used only in individual cases according to the technique of interrogation being employed. This might constitute a violation of the Slovak constitution.
- All use of restraint is registered on a special form and justified by a person in authority.
- Disciplinary sanctions: The director stated that no sanctions have been imposed on police officers because of ill-treatment during the last two years.
- Prosecutors' initiatives: The director confirmed that co-operation with prosecutors is good and that the police fulfil their duties in this respect.
- Holding room: The administration said that the holding room had not served well and was no longer used. After interrogation, detainees are taken to a central place of detention operated by the police. The original holding room is now used for storage.
- Foreigners: The police have problems with interpreters and thus use other foreign-language speakers after suitable instruction.

b) Sasinkova Street Police Station: Bratislava District I

- Contact person: Deputy Director Bardon
- Education: The same applies as for Osvetova Street. Major Bardon confirmed that there are no specialised psychological training courses.
- Recording of interrogations: The director and his colleagues would like to have the possibility of regular electronic recording of interrogations, but a lack of funding for the police does not permit it.
- Disciplinary sanctions: No disciplinary sanctions were imposed during the last year.
- Prosecutors' initiatives: There is good co-operation with prosecutors, the usual practice being consultation several times a day.
- Holding rooms: The two holding rooms were newly furnished and we were invited to inspect them. The rooms fulfil all requirements of the CPT's report.
- Medical care is provided by an external hospital when needed. Every detainee is allowed to call his/her own doctor. The administration says that detainees are allowed to contact lawyers and relatives upon being detained.

Bad economic conditions account for the lack of technical equipment and the low quality of the equipment in place, the extremely low salaries, the lack of police officers, the weak legal defence aid available to the police themselves, political intervention in police activity, followed by passivity, fear of police officers, and corruption.

c) Ministry of the Interior: Department of the State Secretary

- Contact person: Mr Kotuliè: Director of the Department of European Integration
- Education: The Council of Europe organises specialised workshops, for instance on medical care, persons in holding rooms, or protection of witnesses. Human rights are included in the curriculum of the Police Academy and other police schools. The department is translating documents of the Council of Europe and case studies for distribution to persons of all educational levels.
- Psychological tests: These tests are part of the acceptance process for every future police officer.
- Disciplinary sanctions: Every citizen can complain against the police – directly at a police station or through the inspection service of the Ministry of the Interior. The Ministry of the Interior has its own department to oversee the police. Records of disciplinary sanctions are regularly evaluated by the Ministry and publicised.
- Prosecutors: The law allows every prosecutor to visit a police station at any time without regard to his/her current interrogation. Prosecutors do not, however, use this right to make additional visits.
- Holding rooms: There is a ministerial regulation on holding rooms laying out standards of quality, location and order. We saw specialised brochures on the rules of interrogation. The Ministry would prefer electronic recording of interrogations; we were told that a video camera is sometimes used in individual cases in specialised interrogation rooms.

Notes:

The Ministry would prefer to have medical doctors on its own staff. The bad economic conditions of the police and the lack of legal protection of police officers are also subjects of concern.

The attitudes of those police officers who went through training courses in the West are almost identical with ours and with those of colleagues from Western countries (average salary in the police sector: 250 USD/monthly).

5) REPORT ON SLOVENIA

by Neva Miklavcic Predan, Director of the Helsinki Monitor of Slovenia, Slovenia

1 Introduction

The 1995 recommendations to the Slovene authorities by the Committee for the Prevention of Torture, published in 1996, have been adequately addressed through engagement of the Ombudsman's Office. In its agenda for 2000 the Ombudsman's Office reported that the greatest number of complaints received comes from prisons and other places of detention.

Early this year a public debate was opened in the Slovene media on cases of abuse in psychiatric asylums. Thus far the Helsinki Monitor of Slovenia has not been able to march onto these two battlefields for human rights, being overburdened with other kinds of human rights violations.

2 Detention problems

The only kind of detention problems our organisation has worked on are those of detention homes for aliens in Ljubljana and at the Hungarian border at Prosenjakovci. Detention homes for aliens are departments of the Ministry of the Interior, the executor of the governmental policy of constituting the national body of the new state of Slovenia by eliminating from it a considerable number of former permanent residents of Slovenia and co-citizens of the once common state of Yugoslavia, who are not ethnic Slovenes. The procedure can be adequately defined as administrative ethnic cleansing.

Prior to secession, Slovenia, a nation of two million inhabitants of mainly Slovene ethnic origin, had approximately 300,000 permanent residents of non-Slovene or mixed ethnic origin. Slovenia declared its independence on 25 June 1991, but its national body was not transparently defined by the authorities or through any public discussion.

Through numerous interviews with victims of human rights violations and through documents collected, the Helsinki Monitor discovered that after independence the population of Slovenia was being segregated by ethnic origin. It quickly became obvious that the authorities envisaged accepting as automatic citizens and members of the new country's national body only ethnic Slovenes plus others declared to be such by statements of parents or nurses on their birth certificates. All others had to apply for Slovene citizenship between the day of independence, 25 June 1991, and 31 December 1991, that is, before Slovenia had become an internationally recognised state and a legal subject. These non-Slovenes were therefore expected to apply for citizenship of an internationally non-existent state. 170,000 non-Slovene residents were accepted as citizens on such a "legal" basis, while the remaining 130,000 were secretly erased from the register of permanent residents of Slovenia on 26 February 1992.

The Southerners were designated as "foreigners" by the Ministry of the Interior led by Igor Bavcar, now Minister for European Affairs in the process for EU membership. The erasure was executed without any decree and without the consent or knowledge of the people in question. As a consequence, these people were no longer legal residents of Slovenia and lost their civil, social and political rights. Their valid Slovenian identity cards and passports have systematically been confiscated by the Ministry of the Interior at counters and in offices, by the police on the street, and in the raids of secretly planned police actions called Migrant 1 and Migrant 2 in 1994 and 1995. In this way, several thousand former citizens remained without any document of identification, unable to function or even exist in Slovenia. Tens of thousands of these persons have left their homes and become

refugees from Slovenia in other countries. An unidentified number remained in Slovenia as illegal residents, deprived not only of human rights but also of food, medical care and in some cases shelter. It has been estimated that the remaining number of these people is 25 to 40 thousand.

A certain number of them – mainly less educated workers, alcoholics, persons not wholly capable of taking care of themselves, and persons without families – were sent to police detention homes. They lost their freedom of movement, the right to vote, their jobs and lodging. Some were separated from their families and became detainees of the detention homes for foreigners. Many of them have now been there for several years. The Helsinki Monitor has reports from the police detention homes of hunger strikes, suicide attempts, police-ordered abortion, ill-treatment (the case of the late Jadranko Resznikov is still being investigated) and illegal deportations.

3 Individual cases

Panto Milovanovic, 65, a retired worker, a permanent resident of Slovenia since 1945, lived alone in a workers' housing block. He was unaware that he was one of the erased citizens until his Slovenian documents were confiscated by the police. The same police then established that he was an illegal resident in Slovenia without any identification documents, arrested him, and placed him in a detention home for foreigners. Last year it was announced that he was to be deported to Bosnia-Herzegovina, where he was born before World War II and where he now has no relatives. The director of the detention home in Ljubljana, Mr Dovzan, explains that these people are all foreigners and should go southwards where they belong. In such cases he invariably suggests that the individuals apply for citizenship of some other country, not Slovenia, on the basis of registering an illegal address there.

This is a common policy of the Ministry of the Interior, which is now developing legal means for deportation of foreigners. For that purpose Panto Milovanovic was given a document to sign which he could not read, since he is illiterate. After intervention by the Helsinki Monitor he was not deported. Our organisation assisted him in applying for citizenship of Slovenia, where he spent all his active life. His first requests were rejected at the counter level. His present application, on the basis of Article 10 of the Law on Citizenship, may well be rejected too, because he no longer has a legal permanent residence and because with his bad health, lack of money and disoriented emotional state he cannot undertake a series of trips to Bosnia-Herzegovina to obtain various documents demanded by the Ministry.

Jadranko Resznikov died at age 50 in a detention home at Prosenjakovci last year. An investigation of his ill-treatment at Prosenjakovci is still underway. One of the erased and denied citizens of Slovenia, he also had his Slovenian personal documents confiscated and was then taken to the police detention home for inquiries about his identity. He was kept there for several years and in the meantime lost his flat in Koper since he no longer occupied it and was unable to pay the rent. The Helsinki Monitor helped him to regain his flat through the court and to obtain the assistance of Ms Darja Peharc, a lawyer of the detention home in Ljubljana. He did not live to see a solution to his case, in which the deputy director, Ms Alexandra Hojvik, was also engaged.

An erased husband of a Slovene citizen was also detained for years in the detention home for foreigners in Ljubljana. One day he was suddenly allowed to go home. Among many others, the police have arrested and taken to the detention home an erased father and his child born in Slovenia, and **Budimir Vukovic**, a taxi driver who lost his business due to being held in the detention home for foreigners for several years. He was released after a highly publicised hunger strike in 1996, internationalised through the Helsinki Monitor. But he has not yet succeeded in regaining his citizenship and Slovenian personal documents, and has thus joined the army of illegal workers without any health and pension insurance.

4 Conclusion

These are the lives of those who have been locked in. But those tens of thousands of erased persons who have been locked out are not much better off. It is torture and inhuman and degrading treatment to be erased, to become non-existent, to be a permanent alien in one's own country, to be forcibly alienated from the community in the name of the national interest. To lose one's job, pension, health insurance, not to be allowed to get married, to be buried, to acknowledge paternity, or to travel.

Old Procrustes had his notorious bed for foreigners. He did not expect an *ad hoc* visit by the CPT.

Luckily, several employees of the police detention homes strongly disagree with the national policy described above which they are expected to carry out; they are unable to be unfeeling witnesses of such a devastation of human lives. But unfortunately they cannot do much for the detainees who are waiting there for Godot while life goes by. They are waiting to be deported by Big Brother to the countries of their ancestors, to the new nations which emerged from former Yugoslavia. Many of them have already been deported, illegally thrown over the Croatian border with the help of bus drivers, sent off by ferry to Montenegro and by plane to Macedonia. It must be noted that there have been no international agreements on deportation with these countries (but one was signed with Macedonia in spring 1998), which means that the deportations were illegal.

The Helsinki Monitor obtained an internal document of the Ministry of the Interior dated 4 March 1996 acknowledging *inter alia* the need to deport these people and the fact of their erasure from the register of permanent residents on 26 February 1992.

Part III

Conclusions by the Rapporteurs

1) THE WORK OF THE CPT IN CENTRAL EUROPE

by Ursula Kriebaum, University Assistant at the Institute of Public International Law and International Relations, University of Vienna, Austria, and by Lene Johannessen-Wendland, APT Consultant, Switzerland

1 Introduction

The speed at which the territorial applicability of the Convention has grown is remarkable. On 1 September it will cover countries from the Atlantic coast to the Japanese Sea.

This seminar's task was to look not only at the functioning of the Committee but also at national visiting mechanisms existing in Central European countries, the impact of the CPT's recommendations at the national level and a possible coverage of the problem of minority issues by the CPT:

- Functioning of the CPT;
- National visiting mechanisms;
- The impact of the CPT's recommendations on the legislative reforms in Central Europe;
- The CPT and the question of minorities in Central Europe.

2 Functioning of the CPT

It was stressed that the CPT visits are primarily conducted to prevent possible unacceptable conditions by way of an ongoing dialogue and mutual co-operation rather than confrontation. Concerning the impressive body of standards developed so far by the Committee (some of which have been laid down in the 2nd, 3rd and 7th general reports), the problem of a possible risk of double standards was raised right in the opening statement and finally addressed at the end of the seminar, being one of the most important questions linked to the recommendations concerning Eastern European countries, especially those which acceded most recently, e.g. Ukraine and Russia.

There has been a fruitful relationship between the organs of the ECHR and the CPT. The latter's findings have been used by the European Commission of Human Rights in asserting the facts of a case as well as in its legal reasoning.[28]

As for the CPT's membership, the body's composition is now better balanced than it was at the beginning, both by professional background and by gender. The predominance of periodic visits has shifted somewhat toward *ad hoc* visits, which are much shorter and more focused on specific topics. This was partly a consequence of limited resources and the increased number of States Parties. These visits are an effective means of assessing the implementation of the Committee's recommendations and can speed up actions on the part of the authorities concerned.

It was stressed that only information which is specially prepared for and specifically sent to the CPT by NGOs is acknowledged by the Committee's secretariat. Mailing list information is nevertheless brought to the attention of the CPT members if it is judged important.

Reports on the visits are now mostly transmitted within six months after the visit to the respective country, this being the goal as from the beginning of the Committee's operation. Since most of the reports and the responses to them are published, it has once more been underlined that each government, if it intends to have the report published, must notify the secretariat of the authorisation to publish the report and the responses.

28 See e.g.: S., M. and M. T. v. Austria, Appl. no. 19066/91, Decision of 5 April 1993 on the admissibility of the application, DR 74, 179 at 183ff., 186.

Four types of government publication policies have been described:

- authorisation immediately after receipt of the report;
- authorisation of publication together with the response;
- authorisation at a later unknown date;
- no publication.

There is no clear delimitation between the last two categories. Apart from Turkey, which so far has not authorised the publication of any report at all, Poland has been mentioned as one of the countries where it is unclear whether and when there will be an authorisation to publish the report and possibly the response. It has been suggested that parliamentarians be urged to ask the competent minister for an official explanation of why publication has not been authorised so far. This suggestion was immediately taken up as far as Poland is concerned.

Due to a lack of resources, long gaps arise in the ongoing dialogue following the Committee's visits. This leaves the CPT in an unsatisfactory position, since dialogue is an important tool for reaching the goal of prevention.

Finally, it was underlined that the CPT occupies a unique position in that it is the only international body enjoying a right of access to every place where persons are deprived of their liberty at any time. At the same time, the following limitations to the CPT mechanism were pointed out: The CPT can exercise pressure only to a limited extent after its visits, a country cannot be visited very often, and the CPT cannot speak to a large number of prisoners. Therefore the vital need for co-operation with NGOs and the need for national systems monitoring the implementation of the CPT's recommendations have been stressed. Thus the CPT and NGOs have complementary and not duplicate tasks to perform and different tools at their disposal.

3 National visiting mechanisms

Three national implementation systems were presented (Hungary, Poland, Slovenia): one of them being NGO-based (Hungary; COLPI and HHC), the two others being national ombudsmen (Poland, Slovenia).

Whereas the Hungarian project was limited in time and is now functioning on a less intensive level to allow for the follow-up, the others are permanent institutions.

In Hungary, national bodies raised concerns about conditions of detention in police cells and proposals were put forward as regards a visiting mechanism at the national level. The final breakthrough in the Hungarian project occurred after the CPT's visit to Hungary, where the Committee had also underlined very strongly the problem of conditions of detention in police facilities. The mandate was first based on an oral agreement, which was followed by a written one, and it covered the conditions of detention in police cells. It was limited to two terms of six months and confined to Budapest plus four counties during the first term and to Budapest plus five other counties during the second term. The delegations of the NGO-based mechanism were composed of one lawyer, one clerk, one physician and/or one social worker and undertook fact-finding missions.

The powers of all three organs – the other two being established by the constitutions of Poland and Slovenia – are similar to those of the CPT:

- access to detention facilities,
- free movement within them,
- possibility of confidential conversation with detainees,
- possibility to issue recommendations.

It was stressed by the Slovenian ombudsman that he frequently referred to international standards since they were more suitable than domestic legislation, the most important being the ECHR. He also invoked instruments such as the Standard Minimum Rules for the Treatment of Prisoners,[29] the European Prison Rules[30] and CPT standards, especially those contained in the report addressed to the government of Slovenia after the CPT's visit in 1995. Reference was not only made to legal standards but also to standards for the material conditions of detention.

The reports of all three bodies contain the results of their fact finding and also recommendations. These recommendations have been made available to the public. The Hungarian project has been published; the Slovenian ombudsman's findings are published in special bulletins and in the annual reports of the ombudsman.

In both systems, there are deadlines within which authorities must respond to the findings and recommendations of the ombudsmen. As far as the Polish ombudsman is concerned, the institution as well as the supervisory body to which the report is addressed have 30 days to express their views on the information and proposals contained in the respective reports. The reports of the Slovenian ombudsman to the institutions concerned also contain a deadline for the latter or the competent ministry to respond to them and deal with the recommendations.

The periods of time within which States should respond to the CPT reports are considerably longer than those of the national systems. States Parties are asked to provide an interim report within six months, giving details of how they intend to implement the CPT's recommendations, and to submit a follow-up report within twelve months providing a full account of action taken to implement the recommendations. In cases where the delegations make "immediate observations" on particularly urgent matters, the State concerned is requested to submit a report on the issue in question within a specified time-limit of usually three months.[31]

Evaluation: The Polish ombudsman considers the mechanism to be positive and effective for the reason that the very possibility of an inspection has a positive impact on the behaviour of the authorities. Despite the criticism presented by his office to the authorities, there was good co-operation with his office, which does not mean that all of his recommendations were followed. He identified several fields where changes took place as well as fields where this was not the case. The Hungarian project achieved legal improvements. Recommendations have often not been implemented. This has been justified on the one hand by existing legal provisions and on the other by financial constraints. The monitoring project was considered not to have initiated much change in the conditions of police cells.

All three speakers stressed that their perception of the relationship between the CPT and national monitoring mechanisms is one of co-operation and a division of tasks rather than of competition. The CPT's recommendations were perceived as a very valuable source of inspiration for them. The national inspection mechanisms can provide the Committee with information on the implementation of the CPT's recommendations. It was also mentioned that there is little knowledge about the CPT within NGOs as well as within government agencies.

29 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955, and approved by the Economic and Social Council, Res. 663 C (XXIV) of 31 July 1957 and Res. 2076 (LXII) of 13 May 1977.
30 Recommendation no. R(87) 3 of the Committee of Ministers to Member States on the European Prison Rules, 12 February 1987
31 CPT/Inf(95)10, par. 9 (5th General Report on the Activities of the CPT)

4 The impact of the CPT's recommendations on the legislative reforms in Central Europe

Ms Szatmary, representing the Charta 77 Foundation in the Slovak Republic, stated that the legal system posed no problem and that her organisation considered 90 % of the CPT's recommendations as being implemented. She mentioned two problems concerning the availability of CPT reports to the institutions visited by the CPT. The first is that national dissemination is not effective. The second problem is linked to the translation of the reports, which is primarily a duty of the State Party. It has nevertheless been considered that the most appropriate way to solve this problem would be to have the translation done within the Council of Europe's administration in order to minimise the risk of errors. The fine nuances of language employed by the CPT have not always been translated correctly.

Neither the question whether the three fundamental safeguards in police custody, which should apply from the very outset of custody,[32] are granted in practice, nor whether the legal amendments proposed by the CPT in its report[33] have been undertaken was addressed.

Ms Platek, of the Institute of Penal Law in the Faculty of Law at the University of Warsaw, Poland, concentrated in her paper on changes within penal institutions and mentioned that access to prisons in Poland was no longer limited. This provoked a change in staff attitudes, since the work of prison employees had become transparent. She stressed the problem of inhuman and degrading treatment of detained persons by the courts and in the courts. This matter falls within the mandate of the CPT, as its competence is only linked to the fact of detention and not to specific places where persons are deprived of their liberty. Another problem raised was the indefinite period of pre-trial detention for persons who have already been convicted for another offence.

In Hungary, as was stated by Ms Kövér of COLPI, several press conferences took place together with the publication of the CPT's report, the translation of which gave rise to criticism. She pointed to the variety of CPT recommendations, from pragmatic to legal ones, and gave the example of the right to outdoor exercise, which has been increased from half an hour to one hour per day as a consequence of the CPT's recommendations. Most of the legal changes recommended by the CPT have been made. But, for example, the problem of extremely long periods of pre-trial detention in police facilities – addressed by the CPT only at the oral discussion with the authorities but not contained in its report – has only been partly solved, since the time limit is now 30 days and can be prolonged for another 30 days by the public prosecutor. Human rights education has been introduced into the curriculum of police academies. But the three fundamental safeguards in police custody have not been granted by the new regulations.

Mr Krutina of the Czech Helsinki Committee pointed out that the CPT's delegation did very valuable work during its visit and mentioned a number of promises made by the Czech government in its non-published response to the CPT's report, especially concerning legal changes. None of them has taken place as yet.

According to the Helsinki Committee's experience, the conditions of detention in prisons have become worse since the visit by the CPT. He further stressed the great importance of the CPT's recommendations for improvements at the national level and pointed especially to the higher credibility of the Committee at the national level.

For Slovenia, the ombudsman reported that especially the cost-free recommendations have been implemented, whereas others have not been followed up so far.

32 The right of persons deprived of their liberty by the police to inform a close relative or other third party of their choice; the right to access to a lawyer; the right to request a medical examination by a doctor of their choice. CPT/Inf(92)3, par. 36 (2nd General Report on the Activities of the CPT); CPT/Inf(97)2, par. 36 (Report to the government of the Slovak Republic)

33 CPT/Inf(97)2, par. 39-44 (Report to the government of the Slovak Republic)

Mr Morgan mentioned that it is not surprising that most prison administrations welcome visits. They expect to get more resources by doing so, and the living conditions of the prisoners are the working conditions of the staff. Generally there is great reluctance toward changes in structures and criminal procedure.

Due to the different approaches taken by the speakers, it is not possible to compare the impacts of the recommendations on the different legal systems in the countries under review at the seminar.

5 The CPT and the question of minorities in Central Europe

The example of the Roma shows that minorities face serious problems in Central European countries, but that the problems are by no means confined to those countries. The question arose as to how far the CPT could address this issue. Despite the over-representation of members of minority communities in prisons, the CPT cannot address the issue of the reasons for detention, for this is not covered by its mandate.

The suggestion that the CPT should handle assaults and other practices of racial discrimination against members of a certain minority by qualifying those acts as "degrading treatment" poses a problem, because the CPT uses the term "inhuman and degrading treatment" exclusively for the material conditions of detention. A special qualification would only be justified if the discriminatory acts reached a level where they could be considered as "torture or ill-treatment". Such a qualification, however, has never occurred so far.

Mr Morgan pointed out that the CPT can issue recommendations when it comes across certain discriminatory practices vis-à-vis members of a given minority. One can visualise the CPT's referring to this problem, if necessary, by using the risk evaluation it usually makes in its reports at the beginning of the section covering police custody. There it could make a qualification as it has done concerning specific places[34] or types of crimes[35] or detainees[36] and indicate that members of minorities run a special risk of being ill-treated in certain places of detention.

But such a use of the risk evaluation technique would require that a pattern of discrimination be detected. So far the CPT has not made such an evaluation at all concerning establishments under the authority of ministries of justice, although there is usually a chapter covering torture and ill-treatment in such establishments.

It has been agreed that the CPT should deal with ill-treatment in the form of discrimination in prisons. This should mainly be taken into account in its recommendations.

6 Conclusion

There are various methods in which monitoring of the implementation of the CPT's recommendations at the national level can be undertaken. On the one hand, it is possible for a national organ to undertake inspections of detention facilities by itself and evaluate the conditions found not only in the places that have been visited by the CPT but nation-wide or in a certain part of the national territory. Another possible approach is to investigate to what extent the recommendations in the CPT report have been implemented in practice. Examples of both possibilities were given during the seminar. The Hungarian project as well as the two systems of ombudspersons followed the first one, whereas Charta 77 tried to determine to what extent the recommendations have been followed.

34 See e.g.: CPT/Inf(96)11, par. 22 (2nd Report to the government of the United Kingdom).

35 See e.g.: CPT/Inf(94)20, par. 25 (Report to the government of Greece): "In the light of all the information at its disposal, the CPT has been led to conclude that certain categories of persons deprived of their liberty by the police in Greece (in particular persons arrested for drug-related offences; persons arrested for serious crimes such as murder, rape, robbery, etc.) run a significant risk of being ill-treated, and that on occasion resort might be had to methods of severe ill-treatment/torture."; CPT/Inf(95)1, par. 23 (Report to the government of Italy): ". . . le CPT a été amené à conclure que des personnes privées de leur liberté par les forces de l'ordre, et surtout des personnes appartenant à certaines catégories particulières (. . . personnes arrêtées pour des délits liés aux stupéfiants, etc.) courent un risque non négligeable d'être maltraitées."

36 See e.g.: CPT/Inf(95)1, par. 23 (Report to the government of Italy): ". . . le CPT a été amené à conclure que des personnes privées de leur liberté par les forces de l'ordre, et surtout des personnes appartenant à certaines catégories particulières (étrangers, . . . , etc.) courent un risque non négligeable d'être maltraitées."

One of the essential results of the first day was to recognise the importance of a fruitful co-operation between the CPT on the one hand and NGOs and national monitoring mechanisms on the other. The contribution of the CPT is its unique opportunity to undertake on-site visits. This enables it firstly to give an accurate picture of the different detention facilities which it visits and secondly to develop a corpus of standards for detention facilities and legal safeguards for persons deprived of their liberty. Both the facts found and the corpus of standards can be used by national authorities and the NGO community. Even if the authorisation for publication of a particular report is delayed or denied by a particular government, the body of standards – at least for police stations, prisons and to a certain extent psychiatric institutions – is already very well developed. NGOs can therefore rely on these standards in assessing existing conditions and legal provisions.

On the other hand, NGOs, national monitoring mechanisms and the academic community can contribute in a very valuable way to the CPT's work by:

- monitoring the implementation of the CPT's recommendations at the national level and reporting back to the CPT,
- informing the CPT about evolving problems in the country and suggesting places of detention which should be visited or problems which should be addressed by the CPT,
- pointing out problems within the legal system which should be taken up by the Committee.

Only this interactive approach, with the CPT acting on the international level and NGOs and the academic community on the national one, can increase the effectiveness of prevention of torture, for such an approach bridges the gap between international norms and national reality.

2) THE IMPLEMENTATION OF THE CPT'S RECOMMENDATIONS IN FIVE CENTRAL EUROPEAN COUNTRIES

by Malcolm D. Evans, Lecturer in International Law at the University of Bristol, United Kingdom

1 Introduction

This seminar has examined the work of the CPT in relation to five countries: Hungary, Slovenia, the Slovak Republic, Poland and the Czech Republic. All of these countries ratified the ECPT in what might be called the "second wave" of membership in 1994 and 1995. In the light of its expansion into Central and Eastern Europe, the CPT announced in its 4th general report that it would endeavour to visit all new member States within "a matter of months" of their joining the Convention system.[37] Four of the five States now under consideration were indeed visited within a year and the fifth, the Czech Republic, was visited within 14 months. CPT visits may take a number of forms, but the first visit to a State almost invariably is a so-called *periodic* visit which lasts in the region of 10-14 days and conforms to a well established pattern.[38] In the wake of a visit, the CPT submits a visit report to the State and requests an *interim* and a *follow-up* report setting out the response of the State to the *recommendations* which it makes, reactions to any *comments* and replies to *requests for information* contained in the report. Although labelled interim, it is this first response which tends to be the most complete reaction to the CPT's report, the follow-up response tending to merely reiterate and supplement what has gone before. The CPT will, however, usually have written to the State in the wake of the interim report, and this may also give rise to further exchanges at the follow-up report stage.[39]

As is well known, the reports arising out of CPT visits are confidential and remain so unless the State in question authorises publication of the material, or the Committee releases the flavour of its findings in the context of a "public statement" issued under Article 10(2) of the Convention.[40] It should be said at the outset that no public statements have been issued with regard to any of the States now under consideration.[41] The general practice concerning publication varies: Some States authorise publication of reports immediately upon receipt, but the majority tend to do so shortly after the submission of their interim report, which is published at the same time. Others have authorised publication of the visit reports together with one or both responses some time after the exchange has been completed. However, one point is clear: Whatever pattern is adopted, all States Parties, with the sole exception of Turkey, have ultimately authorised publication of CPT visit reports and most have authorised publication of at least some element of their response. It is, then, to be expected that the work of the CPT in Central Europe will pass into the public domain. But when?

On average, reports arising out of periodic CPT visits take at least six months to be written, adopted and transmitted to the State. The CPT requests that the interim and follow-up reports be submitted within six and twelve months respectively. Even if these deadlines are met, then, a period of eighteen months will elapse before the "formal" elements of the dialogue arising out of a visit are completed, although one might legitimately anticipate the publication of material about twelve months after a visit if doubts about the intention to publish are not to be raised. The experience of the region has been as follows:

a) Hungary

The Convention entered into force for Hungary on 1 March 1994 and the CPT visit took place on 1-14 November 1994. The visit report was transmitted in July 1995, a little over seven months later. The report was published, along with a series of "comments" on the report, on 1 February 1996, that is, some 15 months after the visit.[42] The undated "interim response" was published on 18 April 1996.[43] No further material has been made available.

37 4th General Report, CPT/Inf (94) 10, par. 23
38 The working practices of the CPT are set out in detail in the earlier chapter in this volume written by Rod Morgan. For a more detailed account, see Evans, M.D. and Morgan R.: *Preventing Torture* (Oxford, Clarendon Press, 1998), chapter 5.
39 Some States have chosen to publish such letters from the CPT along with their final reports.
40 Article 10(2) provides: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its view, by a majority of two-thirds of its members to make a public statement on the matter."
41 The CPT has so far issued two public statements, both concerning Turkey, in December 1992 and December 1996.
42 See CPT/Inf (96) 5.
43 See CPT/Inf (96) 15.

b) Slovenia

The Convention entered into force for Slovenia on 1 June 1994 and the CPT visit took place on 19-28 February 1995. The visit report was transmitted in July 1995, a little over four months later. The report was published together with the interim report on 27 June 1996, some 14 months after the visit[44] and no further material has been made available.

c) The Slovak Republic

The Convention entered into force for the Slovak Republic on 1 September 1994 and the CPT visit took place from 25 June to 7 July 1995. The visit report was transmitted in December 1995, some five months later. The report was published together with the interim and follow-up reports on 3 April 1997, some 19 months after the visit.[45]

d) Poland

The Convention entered into force for Poland on 1 February 1995 and the CPT visit took place from 30 June to 12 July 1996.[46] At the time of writing, some two years later, no material arising out of this visit has been made public.

e) Czech Republic

The Convention entered into force for the Czech Republic on 1 January 1996 and the CPT visit took place on 16-26 February 1997.[47] At the time of writing, some 16 months later, no material arising out of the visit has been made public.

It does, then, seem that it is not unreasonable to hope for the publication of a report and interim response to be authorised within a period of 18 months from the date of the visit.[48] Against this background, the non-appearance of both the Polish and Czech reports[49] is a cause of some concern, which will mount until they do in fact appear.

Be that as it may, and perhaps surprisingly for some, publication of reports and responses is not an absolute prerequisite for an examination of the work of the CPT. It is, of course, possible that informed parties might have had "sight" of an unpublished report (as is the case with the Czech report). Members of NGOs and government officials will have met with the CPT in the course of a visit and may have had ongoing contact, the content of which has been revealed. Other agencies or bodies may have reason to refer to the CPT in the course of their work. But above all else, there is no great mystery surrounding the core standards which the CPT applies to key areas. These have been articulated by the CPT itself in its general reports,[50] elaborated upon in published visit reports and have increasingly become the subject of scrutiny by observers of the CPT. In consequence, even where there is no report, there is a solid basis upon which to proceed. Of course, we do not know the CPT's assessment of compliance with its standards, and the extent to which special factors might also give rise to concern. But where the basic contours are clear, they provide a template against which issues connected with detention can be examined from the perspective of the CPT.

44 See CPT/Inf (96) 18 (report) and CPT/Inf (96) 19 (interim response).
45 See CPT/Inf (97) 2 (report) and CPT/Inf (97) 3 (interim and follow-up reports).
46 See Press Release no. 410 (96) and 7th General Report, CPT/Inf (97) 10, pp. 4 and 26.
47 See Press Release no. 117 (97).
48 It might also be noted that these are the dates on which transmission or publication takes place. There is always a short time lag (in the order of 2-3 weeks) between the adoption of a report and its transmission. In addition, it must be remembered that reports are adopted by the plenary sessions of the Committee, which now occur only three times per year, typically in February, June and November/December. The process of adoption can be retarded or accelerated depending upon the overall timetable of CPT activities: For example, external evidence suggests that the report on the Czech Republic was adopted in June and transmitted in July 1997, only 4 months after the visit, an almost identical time scale to that of Slovenia the previous year. By the same token, publication of reports and responses by the Council of Europe is not instantaneous: For example, publication of the Slovenian material was authorised on 19 April 1996, two and a half months prior to its publication. This is unlikely to be unusual.
49 Given that they are known to have been received in July 1997.
50 See 2nd General Report, CPT/Inf (92) 3, par. 35-60, "Some Substantive Issues: Police Custody and Imprisonment"; 3rd General Report, CPT/Inf (93) 12, par. 30-77, "Health Care Services in Prisons"; 7th General Report, CPT/Inf (1997) par. 24-36, "Foreign Nationals Detained under Aliens Legislation".

The second day of this seminar focused upon three areas of concern to the CPT: police custody in general, the detention of minors and the position of asylum seekers and illegal immigrants. It might be said that while the basic standards concerning police custody are indeed well developed and well known, the second and third areas are less developed and an assessment of the relevance of, and compliance with, CPT recommendations must be a more "case-specific" matter.[51] In any case, it is not intended here to recapitulate the specific findings and conclusions of the country rapporteurs which appear elsewhere in this volume. Rather, it is to focus upon the general themes which have emerged from them. These will be considered below.

2 Does the CPT address the most appropriate issues?

There are certainly some advantages in the fact that the CPT tends to work to a standard template: For the Committee, it means that a body of "jurisprudence" and "precedent" is built which it can draw upon if necessary. It eases the task of compiling reports and provides a ready focus for the planning and conduct of visits. For the States, knowledge of the CPT's priorities should make it easier for them to prepare in a constructive fashion for the visit, as well as meaning that it is unnecessary for them to wait for a visit, or receipt of a visit report, before addressing relevant concerns. For NGOs and other "CPT watchers", it means that they can forward information to the Committee which they can be confident will be of use to it and that they can assess the post-visit reactions of a State before the report has passed into the public arena.

There are, however, disadvantages, the chief of which is that by following a standard pattern, the CPT might fail to raise, or give due prominence to, what are in fact the most pressing issues in a particular State, or give undue prominence to a comparatively marginal problem. Either way, should the State respond "positively" to the CPT's recommendations under such circumstances, the net result might be a poor allocation of resources, at best a missed opportunity and at worst negatively affect the overall position of detainees.

Against this background it is disquieting to note that, while not denying the importance of many of its recommendations, a number of participants considered that the CPT had failed to address some important issues. In Hungary, for example, the visit was focused almost exclusively on Budapest. While this conformed to the normal CPT practice of concentrating on the capital and its environs on a first visit, it was felt that this resulted in a peculiarly lopsided view of the situation in Hungary. A further problem was that the CPT did not seem to have acknowledged the problems attached to "public security detention", which is not addressed in the report at all.

A variant of this problem was raised in relation to Slovenia: It was argued that one of the most pressing problems concerned "erasure" – the practice of removing (or not confirming) the citizenship of members of certain ethnic groups. Although the CPT would naturally address issues which are of practical relevance to those disadvantaged by "erasure" (for example, in terms of access to legal advice and the general treatment of detainees and conditions of detention), such tangential references within the CPT's "standard template" approach meant, in practice, that they would not figure prominently in any dialogue surrounding ill-treatment.

Against this background, it will be interesting to see whether, and how, the report on the visit to Poland deals with the well known problem of the conditions at correctional centres for young people: Will this receive the degree of attention within the context of the overall report which informed observers consider appropriate?

51 Although the CPT's 7th General Report did include a section on foreign nationals detained under aliens legislation, this tends to be little more than a restatement of standards of general application in this particular context, and does not seem to take the matter much further.

These problems have added significance now that the time gap between periodic visits has extended to at least four years. They might be addressed if *ad hoc* or follow-up visits were conducted in the interim, but this is likely to be the exception rather than the rule. Certainly, it seems likely that at least four years will have elapsed since its first visit before the CPT visits again. It might also be noted in passing that in the meanwhile the terms of office of all the members who conducted the visit have expired, and so there is no "carry-over" of experience within the Committee.[52]

The underlying concern is that not enough is being done to ensure that CPT reports are tailored to "fit the country" and that there is a tendency to tailor the countries to "fit the reports". Material is sorted and presented in accordance with a common format and reflects the CPT's standard agenda. It might be more beneficial if the focus of the visit and the presentation of its findings in the report were adapted to reflect the priority of concerns within each particular country visited. Although this may be difficult and time consuming, it should be remembered that if a report is not factually accurate, or accurately reflective of local concerns, then it is likely that the value of the report will diminish in the eyes of the recipients. This will lessen its impact and influence.

A further point concerns the extent to which it is possible for the CPT to think through the consequences of its recommendations in the context of the situation in the country as a whole. For example, it may well be the case that, from a human rights perspective, remand prisoners should be held in prisons rather than police stations, but if the immediate implementation of such a recommendation were to lead to a further overcrowding in the prison system and deleterious consequences regarding prison regime activities, the net result might be no (or little) better than before. Similarly, the closure of the Kerepestarcsa Community Hostel in Budapest for those detained under the aliens legislation (which, while not called for by the CPT, could hardly have been a matter for criticism in the light of the CPT's findings and recommendations)[53] resulted in the dispersal of those held to a number of isolated facilities on the borders of Hungary and has made communication and monitoring much more difficult. This is a classic dilemma: Having addressed a situation known to be unacceptable, is the result simply a situation which is equally unacceptable from another standpoint? The point is particularly acute if a considerable period of time elapses before further visits take place.

3 What is the scope of the CPT's mandate?

Perhaps there is a broader question underlying the points mentioned in the previous section and one which goes to the heart of the work of the CPT: What does the CPT understand itself to be doing, and is this the same as what those who receive CPT visit reports understand the CPT to have been doing? The concern manifested itself in a number of ways.

a) The CPT and Article 3 of the ECHR

As far as most recipients of reports are concerned, the focus of the CPT's work (at least with regard to policing) is Article 3 of the ECHR and the prohibition and prevention of torture and inhuman or degrading treatment or punishment. Given that this is recited in the preamble and alluded to in Article 1 of the Convention, this is hardly surprising.[54] It was clear from the presentations at the seminar that those country rapporteurs who had seen the relevant reports both noted, and considered it noteworthy, that the CPT had stated that there were no allegations or evidence of "torture". This tended to confirm the expectation that the CPT was working within the framework and shadow of Article 3.

52 The two members of the secretariat who accompanied the mission are, however, still in place.
53 CPT/Inf (96) 5, par. 57-86. The CPT had concluded that "the living conditions of the persons held there were inhuman and degrading".
54 Perhaps unwittingly, it is also reinforced by the preface to each visit report which, by attempting to distance the two instruments from each other by explaining the differences between the ECPT and the ECHR, also indicates their "family relationship".

To an extent, this is, of course, true. However, it fosters the impression that the Committee would then go on to consider whether there was evidence of "inhuman or degrading" treatment or punishment with regard to the physical treatment of those in police custody. However, it does not do this. Instead, it abandons the language of Article 3 and uses the language of a "risk continuum" which describes the situation as one in which there might be a "risk", a "risk not to be discounted", a "not negligible risk", a "significant risk", a "not inconsiderable risk" or "serious risk" that a person in detention might suffer "ill-treatment".[55]

This is problematic on at least three fronts. First, the risk assessment seems to be based upon an interplay of numbers of allegations of ill-treatment, medical evidence and supporting "discoveries" in the course of visits. The manner in which these combine to produce the result is opaque, to say the least, and produces an unreliable result. Secondly, the subtle gradations of language which result are lost on the recipients of reports who simply do not understand the message which the CPT is attempting to convey. Indeed, it may be virtually impossible for them to understand the message because it is only decipherable in the context of a comparative analysis of other reports and findings. It is unreasonable to expect recipients to do this, and even more implausible when it is recalled that most reports are only available in English or French and the all-important nuances may not fully survive the translation into other languages. Finally, no reference is made to "inhuman or degrading" treatment at all in this context. This is particularly confusing and flies in the face of the expectations of recipients, who have been encouraged in their expectations by the CPT's own earlier findings in relation to torture.

The result is that some recipients consider the Committee to have been giving the State a cleaner "bill of health" than was intended. For example, it is perfectly possible to see why some could think that a finding of "a not inconsiderable risk of ill-treatment" (a fairly strong censure in the language of the CPT) was a finding of levels of abuse which were still *de minimis* as regards Article 3 and so were located at the very least on, if not on the right side of, the "cordon sanitaire" which the Committee is endeavouring to construct.

A related point is that the failure of the Committee to include certain points in its reports can also have an important impact. For example, it was reported that the CPT had questioned the use of police cells for holding remand prisoners in Hungary in the discussions held at the end of the visit but that this was not expressly condemned in the report. When future policy on this issue was discussed in Hungary, the Committee's failure to condemn this practice outright in the report was noted and used to justify the continuation of the practice. This reinforces the point made earlier that there is a danger that the Committee may not fully appreciate the manner in which the report may be interpreted and used within the domestic setting.

b) What should fall within the remit of the CPT?

The open-ended nature of the Convention text gives the Committee great freedom to determine which issues to address when fulfilling its mandate, and the manner in which it exercises this discretion is a matter of legitimate debate. Some take the view that the CPT should proceed cautiously, focusing on physical ill-treatment, basic safeguards and general environmental conditions. Others wonder why the CPT does not question the appropriateness of the use of imprisonment in the first place. For example, if, as in Hungary, juveniles are liable to imprisonment for first-time property related offences, contrary to the Beijing rules, why is that not a legitimate matter for comment? Why cannot the very fact of imprisonment, under certain circumstances, be considered inhuman or degrading? The best way of ensuring that individuals are not subjected to inhuman or degrading treatment, it was argued, is to work toward their being kept out of the custodial system altogether.

55 For a more detailed examination and criticism of the "risk continuum" see Evans and Morgan, *op.cit.*, pp. 222-233.

Although inhuman and degrading treatment does not embrace the degrees of humiliation which a person may feel as a consequence of lawful sanction, this does not prevent the lawfulness of the sanction itself from being considered.

No matter what focus is preferred, the CPT can adopt a variety of responses to what it finds. For example, it was suggested that, rather than merely note the existence of overcrowding in prisons, the Committee could suggest that the prison population be reduced. For some, this would overstep the limits of the Committee's legitimate role since, having identified the problem, it is not for the Committee to prescribe the answer; building extra capacity would solve the problem equally well. The difficulty with this rather doctrinaire *non licet* response is that the Committee does indicate a variety of "strategies" which might be adopted to achieve certain ends and clearly has certain preferences. Moreover, in other spheres, such as the provision of legal safeguards, the CPT does prescribe approved solutions to the problems. This once again merely underlines the extent to which the Committee is free to adopt whatever approaches it feels fit – and again underlines the importance of scrutinising the work of the Committee and engaging in dialogue with it in order to inform and influence the direction of its work.

Against this background, one particularly important issue emerged from the seminar which appears to have passed without notice hitherto. The Committee has never raised any questions concerning the provision of religious facilities and services in custodial institutions. Given the detail which is devoted to the physical well being of detainees, either through the general environmental conditions or with regard to the provision of health care services, the total neglect of matters to do with the spiritual well-being is, to say the least, striking – all the more so given that many of the earliest applications made to the European Commission of Human Rights under Article 9 of the ECHR concerned the rights of prisoners.[56] Although the CPT considers dietary questions, these seem to be concerned only with special diets occasioned by medical conditions, rather than by religious beliefs. These are all questions of fundamental importance and the failure of the Committee to have commented on them in any way after ten years of operation needs explaining and addressing.

4 The application of CPT standards in Central Europe

Perhaps the most important question regarding the work of the CPT in Central Europe concerns the extent to which the Committee seeks to apply the same standards as it does in Western and Southern Europe. It is apparent from all that has gone before that the CPT has not altered or abandoned its existing core standards as its work has progressed eastwards across the continent. Indeed, it is evident that there would be no justification for this. It was pointed out that many of the concerns raised in reports are common to most, if not all countries in Europe, although different priorities may attach to them. The problems may differ in scale, but not in nature. Moreover, all countries will exhibit certain features which are a legacy of their historical, cultural and legal background. There is no reason to apply different standards in Central Europe from those applied in any other part of the continent.

That being said, there is room for debate over the manner in which progress toward the achievement of these common standards is made. It has been argued that financial constraints do not necessarily impede the realisation of human rights and that so-called "realist" arguments are unconvincing. Others point out that quality costs: not only (or necessarily) in terms of physical conditions of detention but, perhaps more importantly, in the quality of staffing; it takes time and money to acquire a well-trained staff. Other questions feeding into this debate concern the level of security under which individuals are held, but it may be a mistake to think that low security levels reduce costs. Moreover, the CPT itself is increasingly raising the question of the duty of care which is owed to detainees to be protected from inter-prisoner violence. This may necessitate more intrusive, and more expensive, practices.

56 See, for example, *X v. Austria*, no. 1753/63, 8 *Yearbook of the European Convention on Human Rights* 174, (Decision, 1965); *X v. FRG*, 23 *Collected Decisions* 1, (Decision, 1967); X v. UK, No. 6886/75, 5 *Decisions and Reports* 100 (Decision, 1976); X v. UK, no. 8231/78, 28 *Decisions and Reports* 5 (Decision, 1982). See further G. J. H. Van Hoof and P. Van Dijk: *Theory and Practice of the European Convention on Human Rights*, 2nd ed. (Deventer, Kluwer, 1990), pp. 403-404.

The response of the CPT is currently less than clear. It was intimated that the Hungarian report was less robust in stating its findings and in its recommendations than might have been expected because it was the first visit to a former Communist country and there was a perceived need to "test the waters". Would perhaps a more forthright report be written if the same visit were undertaken today?[57] The CPT certainly appears to find some difficulty in pressing the case for "Western standards" in prisons when similar "Western standards" are unattainable for the population at large. While "Western standards" need putting over, too much cannot be expected too soon. Such attitudes would certainly seem to explain the lower levels of expectation which seem to pervade many of the recommendations and comments in, for example, the Slovenian report.

The views expressed at this seminar would suggest that the CPT ought to take a fairly robust attitude and not allow States too much latitude. It was generally felt that it was important to set out the same levels of expectation and, to the extent that any process of relativism was necessary, that this be reflected in the identification of priorities rather than in phasing the expectation of attainment in the light of the general economic, cultural and political climate.

At the same time, it should be remembered that the extension of the work of the CPT into Central Europe has, perhaps, prompted not so much a dilution of existing standards as a renewed importance for themes which were previously underdeveloped, and these concerns have been – or should be – carried back into the work of the CPT in other areas. The principal example of this is the increased prominence given to the practice of holding remand prisoners in police custody. Another is the increased attention given to issues connected with asylum seekers and illegal immigrants, concerns which have been considered at length by the country rapporteurs elsewhere in this report and will not be dealt with again at this point. What needs emphasising here is the reciprocal nature of the impact.

5 Enhancing compliance

As might be expected, the country rapporteurs record a mixed reaction by States to the recommendations made by the CPT. No global assessment of the degree of compliance is either possible or desirable. What is clear, however, is that the CPT is taken seriously by the States in question and genuine efforts have been made to address its concerns. This is not to say that there is wholesale agreement with the recommendations – and the country rapporteurs record areas of disagreement and of failure to comply – but the general response so far can only be described as positive and encouraging.

In a sense, this is not surprising. No one has yet claimed that the CPT has alerted the States in question to practices or circumstances which were not known to be in need of attention, either by the officials or by the NGOs. What the CPT has done is to add a new impetus and focus to the debate. The key question really concerns what happens next. Many speakers at this seminar have pointed out that the presence of legal safeguards and appropriate procedures is meaningless if they are not followed in practice. It is, then, vital that the CPT be able to monitor what actually happens, rather than what is said to happen. Naturally, the CPT is well aware of this problem, but it cannot address it unaided.

It is, then, appropriate to conclude this report by stressing the importance of projects to monitor compliance undertaken by those best placed to observe and comment on developments – that is, those who currently work within the countries in question. Such work can be undertaken at a variety of levels. First of all, a vital role is played by the formal monitoring mechanisms established by the State itself: The first day of this seminar considered the role of the national mechanisms, and

57 For example, it might be argued that the forms of purposive ill-treatment which were identified in Hungary (tethering and beating) and which led to the conclusion that persons deprived of their liberty by the police in Budapest "run a not inconsiderable risk of ill-treatment" (see CPT/Inf (96) 5, par. 17-24) could have equally well been categorised as acts of "severe ill-treatment/torture", akin to the practice of *falaka* which was categorised as such in Bulgaria (see CPT/Inf (97) 1, par. 27. The "testing the waters" argument does not, however, explain why an alleged incident of dogs being set on a handcuffed detainee in Bratislava once fell short of the "severe ill-treatment/torture" threshold (see Report on the Slovak Republic, CPT/ Inf (97) 2, par. 16(v) and 18.

in particular the ombudsman who, in a number of the countries under consideration, has the capacity to play a valuable role. The inspectoral role currently entrusted to independent prosecutors and judges also has the potential to be a valuable safeguard, although there are doubts concerning the extent to which it is effective in its current guise. It seems likely that the CPT will continue to press for the development of inspectoral bodies and this should help bolster its own work.

In addition to these formal offices, however, a vital role is played by NGOs and others in the monitoring of compliance. Indeed, this seminar has revealed a richness of the experience and varieties of models which could usefully be considered and emulated by others. First, the Hungarian Helsinki Committee has shown the fruits of its police monitoring project undertaken in co-operation with the Hungarian authorities.[58] Secondly, in the Slovak Republic Charta 77 has demonstrated the manner in which a CPT report can be used as a means to gain access and initial dialogue within a State, while at the same time verifying in detail the extent to which the recommendations have been adhered to. This is a level of monitoring compliance which is most valuable and currently beyond the ambition of the CPT itself. It goes without saying that this APT seminar and others like it are themselves a further vital component of the drive to enhance an understanding and improve the effectiveness of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

58 The fruits of this project are published in *Punished Before Sentence: Detention and Police Cells in Hungary, 1966,* (Budapest, COLPI/Hungarian Helsinki Committee, 1998)

Annexes

1) PROGRAMME

Day One	**A) The Work of the CPT in Central Europe**
0900-0930	Registration
0930-1000	Opening Session *Marco Mona, President of the APT* *Károly Bárd, COLPI* *Günther Kaiser, CPT Member*
1000-1100	I) Functioning of the CPT: Nature and Modus Operandi *Rod Morgan, University of Bristol*
	Discussion
1100-1130	Coffee Break
1130-1300	**Round Table** II) The CPT and its Partners in Central Europe: The Case of National Visiting Mechanisms *Chair: Günther Kaiser, CPT Member* *Ferenc Köszeg, Hungarian Helsinki Committee, NGO* *Katalyn Gönczöl, Hungary, Ombudsperson* *Piotr Sobota, Poland, Ombudsperson* *Ales Butala, Slovenia, Ombudsperson*
	Discussion
1300-1430	L U N C H
1430-1600	The Impact of the CPT's Recommendations on the Legislative Reforms in Central Europe *Moderator: Károly Bárd, COLPI* *Contributions from Country Rapporteurs*
Discussion	
1600-1630	Coffee break
1630–1800	III) The CPT and the Question of Minorities in Central Europe *James Goldstone, European Roma Rights Center* *Contributions from Country Rapporteurs*
	Discussion

Day Two	**B) The Implementation of the CPT's Recommendations in Five Central European countries** *Chair: Marco Mona, APT* *Country Rapporteurs:* *Czech Republic: Miroslav Krutina, Czech Helsinki Committee* *Hungary: Ágnes Kövér, COLPI* *Poland: Monika Platek, University of Warsaw* *Slovak Republic: Zuzana Szatmary, Charta 77* *Slovenia: Neva Miklavcic Predan, Slovenian Helsinki Monitor*
0930-1030	**Round Table 1** CPT Recommendations and their Implementation: Theme 1) Police custody
1030-1115	Discussion
1115-1145	Coffee Break
1145-1245	**Round Table 2** CPT Recommendations and their Implementation: Theme 2) Detention of minors
1245-1315	Discussion
1315-1430	L U N C H
1430-1530	**Round Table 3** General evaluation of the validity and relevance of the CPT's recommendations in the five countries
1530-1615	Discussion
1615-1630	Coffee Break
1630-1700	Reporting *Rapporteur for Day 1: Ursula Kriebaum, University of Vienna, Lene Johannessen-Wendland, APT* *Rapporteur for Day 2: Malcolm Evans, University of Bristol*
1700-1715	Closing session *Günther Kaiser, CPT Member* *Marco Mona, APT* *Károly Bárd, COLPI*

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3) CPT VISITS TO CENTRAL AND EASTERN EUROPEAN COUNTRIES
(as of 28 February 1999)

Date of visit	State Party	Type of visit	Publication of report
1994			
01.11.1994 - 14.11.1994	Hungary	1st Periodic	01.02.1996
1995			
19.02.1995 - 28.02.1995	Slovenia	1st Periodic	27.06.1996
26.03.1995 - 07.04.1995	Bulgaria	1st Periodic	06.03.1997
25.06.1995 - 07.07.1995	Slovak Republic	1st Periodic	03.04.1997
24.09.1995 - 06.10.1995	Romania	*Ad hoc*	19.02.1998
1996			
30.06.1996 - 12.07.1996	Poland	1st Periodic	24.09.1998
1997			
16.02.1997 - 26.02.1997	Czech Republic	1st Periodic	-
13.07.1997 - 23.07.1997	Estonia	1st Periodic	-
09.12.1997 - 20.12.1997	Albania	1st Periodic	-
1998			
08.02.1998 - 24.02.1998	Ukraine	1st Periodic	-
17.05.1998 - 27.05.1998	Macedonia*	1st Periodic	-
20.09.1998 - 01.10.1998	Croatia	1st Periodic	-
11.10.1998 - 21.10.1998	Moldova	1st Periodic	-
16.11.1998 - 30.11.1998	Russia	1st Periodic	-

* (Former Yugoslav Republic of)

1999			
24.01.1999 - 03.02.1999	Latvia	1st Periodic	-
24.01.1999 - 06.02.1999	Romania	2nd Periodic	-

4) PLACES OF DETENTION VISITED BY DELEGATIONS OF THE CPT IN CENTRAL AND EASTERN EUROPE

ALBANIA

Year 1997
Police establishments
- Elbasan Police Headquarters
- Fier Police Headquarters
- Tiranë Police Headquarters
- Police Station No.4, Tiranë

Prison establishments
- Burrel Prison
- Lushnjë Prison
- Prison No. 313, Tiranë
- Prison No. 325, Tiranë
- Prison Hospital, Tiranë

Psychiatric establishment
- Elabasan Psychiatric Hospital

BULGARIA

Year 1995
Police establishments and National Investigation Service
- Pazardjik Regional Police Directorate and Investigation Service
- Pleven Regional Investigation Service
- Investigation Service detention facility at Razvigor Street, Sofia
- 3rd District Police Station and Investigation Service, Sofia
- 6th District Police Station and Investigation Service, Sofia
- Centre for the Temporary Placement of Adults in "Drouzhba – 2", Sofia
- Stara Zagora Regional Police Directorate
- Stara Zagora Regional Investigation Service
- Detention facility for escort purposes at Stara Zagora railway station

Prisons
- Pazardjik Prison
- Stara Zagora Prison

Psychiatric establishments
- Lovetch Prison Hospital (psychiatric section)
- Lovetch Neuropsychiatric Hospital (closed ward for the criminally irresponsible)
- Radnevo Psychiatric Hospital

CZECH REPUBLIC

Year 1997
Establishments under the authority of the Ministry of Justice
- Mirov Prison
- Prague-Pankrác Remand Prison

Establishments under the authority of the Ministry of the Interior
- Police holding facilities, Bratislavaká 13-15, Brno
- Police Headquarters, Kongresová 2, Praha 4
- Jizní Mesto I Police Station, Steinerova 604, Praha 4
- Kosire Police Station, Ostrovského 3, Praha 5
- Smíchov Police Station, Stefánikova 13, Praha 5
- District Investigation Department, Frantiska Krizka 24, Praha 7
- Police Headquarters, Havilickova 10, Sumperk

Establishments under the authority of the Ministry of Education, Youth and Sport
- Brno-Hlinky Diagnostic Institute for Children
- Moravsky Krumlov Educational Institute for Children and Minors

CROATIA

Year 1998
Police establishments
- Sisak Police Station, Sisak-Moslavacka Police Administration
- Police Station No.1, Split, Split-Dalmatia Police Administration
- Police Station No.2, Split, Split-Dalmatia Police Administration
- Makarska Police Station, Split-Dalmatia Police Administration
- Sinj Police Station, Split-Dalmatia Police Administration
- Knin Police Station, Sibenik-Knin Police Administration
- Sibenik Police Station, Sibenik-Knin Police Administration
- Headquarters of the Criminal Police, Sibenik (Mandalina), Sibenik-Knin Police Administration
- Crnomerec Police Station, Zagreb Police Administration
- Tresnjevka Police Station, Zagreb Police Administration
- Trnje Police Station, Zagreb Police Administration
- Unit for Detention, Escort and Security, Dordiceva 4, Zagreb Police Administration

Prisons
- Lepoglava State Prison
- Split County Prison
- Sibenik County Prison
- Zagreb County Prison
- Hospital for Persons Deprived of their Liberty, Zagreb

Establishment for young offenders
- Institution for the Re-education of Minors, Turopolje

ESTONIA

Year 1997
Establishments under the authority of the Ministry of the Interior
- Harju Police Headquarters, Saue
- Ida-Viru Police Headquarters, Kohtla-Järve
- Jõgeva Police Headquarters
- Laane-Viru Police Headquarters, Rakvere
- Narva Police Headquarters
- Tallinn Police Headquarters (Arrest Houses Nos. 1 and 2)
- Tartu Police Headquarters
- Viljandi Police Headquarters
- Elva Police Station
- Lasnamäe Police Station, Tallinn
- Border Guard detention facilities, Narva

Establishments under the authority of the Ministry of Justice
- Central Prison, Tallinn
- Tallinn Prison
- Viljandi Juvenile Prison

Establishment under the authority of the Ministry of Defence
- Military detention facility, Tallinn

HUNGARY

Year 1994
Budapest
- Budapest Remand Prison, Nagy Ignác u., 5–11 and Gyorskocsi u. 25-27
- Police Central Holding Facility, Gyorskocsi u. 31
- Pest County Police Holding Facility, Aradi u. 21–23
- 3rd District Police Station, Timár u. 9/a
- 5th District Police Station, Szalay u. 11–13
- 6th and 7th Districts Police Station, Dózsa György u. 18–24
- 8th District Police Station, Vig. U. 36
- Kerepestarcsa
- Community Hostel of the Kerepestarcsa Police Regiment, Deák Ferenc, 1-3

Tököl
- Tököl Prison and Remand Centre for Adolescents, Ráckevei u., 6.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Year 1998
Establishments under the authority of the Ministry of the Interior
- Bitola Police Station
- Gostivar Police Station
- Kumanovo Police Station

- Medzitlija Border Police Station
- Prilep Police Station
- Bit Pazar Police Station, Skopje
- Centar Police Station, Skopje
- Gazi Baba Police Station, Skopje
- Tetovo Police Station

Establishments under the authority of the Ministry of Justice
- Idrizovo Prison
- Skopje Civil Hospital Closed Unit
- Tetovo Educational-Correctional Institution

Establishment under the authority of the Ministry of Health
- Demir Hisar Psychiatric Hospital

Establishments under the authority of the Ministry of Defence
- Medzitlija Border Guard Station
- Sopok Border Guard Station

LATVIA

Year 1999
Establishments under the authority of the Ministry of the Interior
- Gogola and Matisa Street Police Stations
- General Police Board Detention Facility, Aspazijas Street
- Police Sobering-up Centre, Pupolu Street
- Illegal Immigrant and other Unidentified Persons Accommodation Centre, Gaizina Street
- Preventive Care Centre for Minors, Alises Street
- Pre-Trial Investigation Centre and Short-Term Detention Isolator, Brivibas Street
- Central Prison
- Ilguciema Prison

Establishments under the authority of the Ministry of Defence
- Garrison Detention Facility

Establishments under the authority of the Ministry of Welfare
- Neuropsychiatric Hospital

Establishments under the authority of the Ministry of Education
- Naukseni Educational and Correctional Institution for Girls

MOLDOVA

Year 1998
Establishments under the authority of the Ministry of the Interior
- District Police Headquarters and Pre-trial Prison, Stefan cel Mare Street, Balti
- Centre for Vagrants, Maria Cibotaru Street, Chisinau
- Ciocana Police Station, M. Dragan Street, Chisinau

- Department for the Fight against Organised Crime and Corruption, Chisinau
- Pre-trial Prison, Tighina Street
- District Police Headquarters and Pre-trial Prison, 31 August Street, Criuleni

Establishment under the authority of the Ministry of Justice
- Prison No. 3, Bernardazzi Street, Chisinau

Establishments under the authority of the Ministry of Health
- Psychiatric Hospital No. 2, Churchi (Orhei)
- Ward for arrested persons under forensic assessment and Ward for compulsory treatment, Chisinau Psychiatric Hospital, Costujeni Street
- The delegation also interviewed a number of patients at the Pruncul Republican Prison Hospital.

POLAND

Year 1996
Police and Border Guard establishments
- Provincial Police Commands in Opole, Walbrzych and Wroclaw
- District Police Commands in Bydgoszcz-Wyzyny, Grudziadz, Opole, Torún, Walbrzych, Warsaw-Praga Poludnie, Warsaw-Praga Pólnoc, Warsaw-Sródmie scie and Wroclaw-Sródmie scie
- Local Police Station Warsaw-Praga Pólnoc, Targówek 1
- Local Police Station Warsaw-Praga Pólnoc, ul. Motycka 15
- 4th Police Station in Torún
- 1st Local Police Station in Walbrzych
- Police establishments for children in Bydgoszcz, Torún, Walbrzych and Warsaw
- Police detention facilities in Warsaw and Wroclaw for foreigners awaiting deportation
- Border Guard detention facilities at Warsaw International Airport

ROMANIA

Year 1999
Police establishments
- County Police Headquarters
- General Directorate of the Bucharest Municipal Police
- Police Divisions Nos. 5, 6, 7 and 8
- Holding Area for foreigners at Bucharest-Otopeni International Airport
- Otopeni Holding Centre for Foreigners
- County and Municipal Police Headquarters
- Holding Camp for Foreigners
- County Police Headquarters

Prisons
- Bucharest-Jilava Prison and Bucharest Prison Hospital
- Codlea Prison
- Craiova Prison
- Gaiesti Re-education Centre for Minors

Psychiatric Hospitals
• Poiana Mare Psychiatric Hospital, Dolj County

In addition, the delegation visited an establishment under the authority of the Bucharest City Council, namely "Ciresarii 1" Centre for the Reception and Allocation of Minors.

RUSSIA

Year 1998
• Pre-trial establishments (SIZO)
• SIZO No. 2 ("Butyrka"), Moscow
• SIZO No.1, Nizhnyi Novgorod
• SIZO No.1, Saratov

Establishments under the authority of the Ministry of Internal Affairs
• Temporary Holding Facility (IVS) at Moscow City Directorate of Internal Affairs (Petrovka Street)
• Moscow City Regional Directorate for Combating Organised Crime
• Kazanski Railway Station Division of Internal Affairs, Moscow
• Divisions of Internal Affairs at Sheremetevo – 1 and 2 Airports, Moscow
• 11th Division of the Militia, 2nd District Command of Internal Affairs (Barrikadnaya St.), Moscow
• 5th Division of the Militia, 3rd District Command of Internal Affairs (Gorky St.), Moscow
• 68th Division of the Militia, 7th District Command of Internal Affairs (Myasnitskaya St.), Moscow
• Alekseevskee District Division of Internal Affairs (Novoalekseevskaya St.), Moscow
• Otradnoe District Division of Internal Affairs (Olonetskaya St.), Moscow
• Temporary Holding Facility (IVS) (Dekabristov St.), Moscow
• Izmailovo District Division of Internal Affairs (Izmailovskaya Square), Moscow
• Temporary Holding Facility (IVS) (Parkovaya St.), Moscow
• Kon'kovo District Division of Internal Affairs (Profsoyuznaya St.), Moscow
• Strogino District Division of Internal Affairs (Tvardovskovo St.), Moscow
• Avtozavodskoe District Division of Internal Affairs, Nizhnyi Novgorod
• Nizhegorodskoe District Command of Internal Affairs (N. Volzhskaya Naberezhnaya St.), Nizhnyi Novgorod
• Volgo-Vyatskoe Regional Directorate for Combating Organised Crime, Nizhnyi Novgorod
• Engels City Command of Internal Affairs (Telegrafnaya St.), Saratov
• 3rd, 4th and 5th Divisions of the Militia, Engels, Saratov
• Saratov City Command of Internal Affairs (Moskovskaya St.)
• Leninskoe District Command of Internal Affairs, Saratov (Ippodrumnaya St.)
• Zavodskoe District Command of Internal Affairs, Saratov (Entuziastov Av.)
• "KOBRA" unit, Sarato

Other establishments
• Moscow City Hospital No. 20 (Security Ward)
• Transit Zone at Sheremetevo-2 Airport, Moscow
• Holding facility for Aliens at Sheremetevo Hotel, Moscow

SLOVAK REPUBLIC

Year 1995
Prisons
- Bratislava Prison
- Leopoldov prison

Police establishments
- Bratislava Municipal Command of the Police Corps, Racianska Street, Bratislava
- Local Division of the Police Corps (Staré mesto-vychod), Sasinskova Street, Bratislava
- Local Division of the Police Corps (Ruzinov-vychod), Osvetova Street, Bratislava
- Local Division of the Police Corps (Dúbravka), Saratovská Street, Bratislava

Other establishments
- Holding Centre for Asylum Seekers, Adamov-Gbely
- Youth Re-education Home, Hlohovec
- Diagnostic Centre for Young Persons, Záhorská Bystrica

SLOVENIA

Year 1995
Prisons
- Dob Prison
- Ljubljana Prison
- Re-education Centre for Young Persons
- Radece Re-education Centre

Police establishments
- Kranj Police Station, Stritarjeva ulica 6, Kranj
- Criminal Investigation Department, Presernova cesta 18, Ljubljana
- Police holding facilities, Povsetova ulica 5, Ljubljana
- Ljubljana-Bezigrad Police Station, Posavskega ulica 3, Ljubljana
- Ljubljana-Centre Police Station, Trdinova ulica 10, Ljubljana

UKRAINE

Year 1998
Establishments under the authority of the Ministry of Internal Affairs
- Kirovskyi District Command of Internal Affairs, Dnipropetrovsk
- Zhovtnevyi District Command of Internal Affairs, Dnipropetrovsk
- Centre for the Reception and Allocation of Vagrants, Dnipropetrovsk
- Centre for Administrative Detention, Dnipropetrovsk
- Militia Central Holding Facility (IVS), Dnipropetrovsk
- Treatment and Labour Detention Centre for the Compulsory Treatment of Alcoholics (LTP), Dnipropetrovsk
- Frounzenskyi District Command of Internal Affairs, Kharkiv
- Kievskyi District Command of Internal Affairs, Kharkiv
- Pre-trial Prison No. 313/203, Kharkiv

- Darnitzkyi District Command of Internal Affairs, Kyiv
- Moskovskyi District Command of Internal Affairs, Kyiv
- Shevchenkivskyi District Command of Internal Affairs, Kyiv
- Zaliznichnyi District Command of Internal Affairs, Kyiv
- Central Railway Station Division of the Transport Militia, Kyiv
- Boryspil Airport Division of the Transport Division, Kyiv
- Centre for the Reception and Allocation of Minors, Kyiv
- Centre for the Reception and Allocation of Vagrants, Central Railway Station, Kyiv
- Militia Central Holding Facility (IVS), Kyiv

Establishments under the authority of the Ministry of Health
- National High Security Psychiatric Hospital, Dnipropetrovsk
- Centre for forensic psychiatric assessment, Kyiv
- Secure Ward at Kyiv Emergency Hospital

Establishment under the authority of the State Security Service of Ukraine
- State Security Service Pre-trial Prison, Kyiv

Establishment under the authority of the State Committee for the Protection of National Borders
- Detention facilities at Boryspil Airport, Kyiv