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Working Session 6 : Methods to prevent and combat torture
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Distinguished delegates,

It is a particular honour for me to be addressing this important Human Dimension Implementation Meeting on behalf of the European Committee for the Prevention of Torture again. The CPT is grateful to the organisers of this meeting for this invitation and the opportunity to exchange views on a subject of great interest and importance to the CPT's work.

Co-operation between the CPT and OSCE field missions

Let me first of all stress that there have been several examples during the last twelve months of good cooperation between CPT visiting delegations and OSCE field missions. In preparing its periodic and ad-hoc visits to inspect places of detention with the aim to improve the situation of persons who are deprived of their liberty, the CPT relies on different sources of information. The OSCE field offices are uniquely placed to monitor matters directly relevant to the CPT's mandate on a continuing basis and are thus important partners for the CPT. CPT representatives have also participated in training activities for national officials organised by the OSCE. (Examples)

Membership in the CPT

On 5 October 2004, the Principality of Monaco became the 46th member of the Council of Europe, and the Monegasque Government has undertaken to sign and ratify the European Convention for the Prevention of Torture within one year of joining the Organisation. Plans are already being made for the CPT's first periodic visit to Monaco in 2006.

With Monaco's ratification of the Convention, the CPT's natural constituency will be almost fully represented. However, there remains one notable exception, namely Belarus. Belarus is not a member of the Council of Europe. However, that does not mean it cannot become a Party to the European Convention for the Prevention of Torture. The Council of Europe's Committee of Ministers is empowered – and on its own initiative – to invite any non-member State to accede to the Convention. When the time is ripe from a political standpoint, such an invitation to Belarus could be both a sign of the wish to forge closer links with that country and a reminder of the obligations which membership of the Council of Europe entails. The CPT will welcome such a development.

Implementation of the CPT's recommendations

On-site monitoring of the treatment of persons deprived of their liberty is not an end in itself; to be worthwhile, it must be accompanied by effective means of ensuring the implementation of recommendations made. It is first and foremost for Parties to the Convention to take decisive action to improve the situation in the light of the CPT's recommendations. However, it is also incumbent upon the Committee itself to explore all avenues to promote the taking of such action by the Parties.

Reference was made in the 14th General Report to the idea of organising a pilot project in a limited number of countries amongst those experiencing difficulties with the implementation of the CPT's recommendations, especially those requiring significant financial investment (cf. CPT/Inf (2004), paragraph 13). A document fleshing out this proposal should shortly be presented to the Committee of Ministers, and the CPT hopes that it will be viewed favourably; it could do much to ensure that the Committee's recommendations lead to tangible results.

Monitoring places of detention: The new system under the OPCAT and CPT

Reference should also be made to the Optional Protocol to the United Nations Convention Against Torture, which is expected to enter into force in 2006. This will lead to the setting up of a Sub-Committee on the Prevention of Torture as well as national preventive mechanisms. The Optional Protocol explicitly encourages the Sub-Committee and regional bodies such as the CPT to "consult and cooperate with a view to avoiding duplication". That process of consultation and cooperation would be facilitated if a proposal made by the CPT more than ten years ago, in its 3rd General Report, were to be accepted. The proposal was that Parties to the Convention establishing the CPT which also ratify the Optional Protocol agree that visit reports drawn up by the CPT in respect of their countries, and their responses, be systematically forwarded to the Subcommittee on a confidential basis. In this way, consultation between the Subcommittee and the CPT could be held in the light of all the relevant facts. In the CPT's view, implementation of this measure should not require an amendment of the Convention.

In the meantime, the CPT stands ready to share its experience with those responsible for setting up the new mechanisms foreseen by the Optional Protocol. Representatives of the Committee have already participated in meetings on this subject organised by the Association for the Prevention of Torture in association with the Office of the UN High Commissioner for Human Rights. In these meetings the President of our Committee Dr. Silvia Casale has stressed that from the CPT's point of view the most interesting element in the OPCAT is the development of national monitoring mechanisms. The CPT has long been recommending independent complaints mechanisms and independent inspection mechanisms. They are part of its standard jurisprudence for all custodial settings, including but not limited to police and prison settings. So far these are in most states in the embryonic stage as far as full independence and as far as application to all custodial settings are concerned. However, there is great potential for a major advance in human rights protection, if these mechanisms become fully operational. International mechanisms such as the CPT visit infrequently compared with national monitoring mechanisms which would be involved more often. At their best, they would provide a much fuller and more holistic picture of the scope and efficacy of human

rights safeguards than is currently possible. This would in turn greatly enhance the prospects for improving protection of persons deprived of their liberty and reducing ill-treatment.

In relation to the future work of the Subcommittee the CPT wishes to stress the importance of the principle of universality of standards and that the CPT will hold to its standards and maintain the evolution of its jurisprudence, towards continuingly rigorous standards for protection against ill-treatment of all persons deprived of their liberty, including in the context of the fight against terrorism.

Protection of human rights and the fight against terrorism

In the preface to its 15th General Annual Report raises the question whether states in their fight against terrorism will find the way to fulfil the obligation to protect their citizens whilst at the same time upholding the basic values which form part of their foundations. It comes to the conclusion that there are clear indications that, to date, the right way has not always been found. Evidence continues to come to light of resort to torture and inhuman or degrading treatment in various places, in the context of the fight against terrorism. To give a concrete example, in the CPT's opinion, to immerse persons under water so as to make them believe they might drown is not a professional interrogation technique, it is an act of torture. But there can be little doubt that such methods are on occasion being used by agents of democratic societies, including in certain parts of Europe. Of course, resolute action is required to counter terrorism; but that action cannot be allowed to degenerate into exposing people to torture or inhuman or degrading treatment. The CPT calls upon democratic societies committed to the rule of law to remain true to the values that distinguish them from others.

Diplomatic assurances

The potential tension between a State's obligation to protect its citizens against terrorist acts and the need to uphold fundamental values is well demonstrated by the current controversy over the use of "diplomatic assurances" in the context of deportation procedures. The prohibition of torture and inhuman or degrading treatment encompasses the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to such methods. In order to avoid such a risk in given cases, certain States have chosen the route of seeking assurances from the country of destination that the person concerned will not be ill-treated. This practice is far from new, but has come under the spotlight in recent years as States have increasingly sought to remove from their territory persons deemed to endanger national security. Fears are growing that the use of diplomatic assurances is in fact circumventing the prohibition of torture and ill-treatment.

The seeking of diplomatic assurances from countries with a poor overall record in relation to torture and ill-treatment is giving rise to particular concern. It does not necessarily follow from such a record that someone whose deportation is envisaged personally runs a real risk of being ill-treated in the country concerned; the specific circumstances of each case have to be taken into account when making that assessment. However, if in fact there would appear to be a risk of ill-treatment, can diplomatic assurances received from the authorities of a country where torture and ill-treatment is widely practised ever offer sufficient protection against that risk ? It has been advanced with some cogency that even assuming those

authorities do exercise effective control over the agencies that might take the person concerned into their custody (which may not always be the case), there can be no guarantee that assurances given will be respected in practice. If these countries fail to respect their obligations under international human rights treaties ratified by them, so the argument runs, why should one be confident that they will respect assurances given on a bilateral basis in a particular case?

In response, it has been argued that mechanisms can be devised for the post-return monitoring of the treatment of a person deported, in the event of his being detained. While the CPT retains an open mind on this subject, it has yet to see convincing proposals for an effective and workable mechanism. To have any chance of being effective, such a mechanism would certainly need to incorporate some key guarantees, including the right of independent and suitably qualified persons to visit the individual concerned at any time, without prior notice, and to interview him in private in a place of their choosing. The mechanism would also have to offer means of ensuring that immediate remedial action is taken, in the event of it coming to light that assurances given were not being respected.

It should also be emphasised that prior to return, any deportation procedure involving diplomatic assurances must be open to challenge before an independent authority, and any such challenge must have a suspensive effect on the carrying out of the deportation. This is the only way of ensuring rigorous and timely scrutiny of the safety of the arrangements envisaged in a given case.

The CPT intends to follow closely developments in States Parties to the European Convention for the Prevention of Torture in relation to the practice of diplomatic assurances. The Committee would also be happy to contribute to any consideration of this subject at the Council of Europe and within the OSCE. The time would indeed seem ripe for a collective discussion of all the issues involved, in order to ensure that current practice is in full conformity with the obligations which flow from the prohibition of torture and inhuman or degrading treatment.