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Contribution of the Council of Europe

I. INTERGOVERNMENTAL CO-OPERATION IN THE PRISON FIELD

The Council of Europe has been promoting legal cooperation to make prisons more humane and efficient since the early 60s. The intergovernmental activities in this field are coordinated by the European Committee on Crime Problems (CDPC), a body of specialised government representatives, which reports to the Committee of Ministers and is advised by the Council for Penological Cooperation.

Standard setting

The Council for Penological Co-operation (PC-CP) is an advisory body to the European Committee on Crime Problems (CDPC). It is composed of 9 members with renowned expertise and knowledge of penological issues. It collects information regarding penitentiary issues and the implementation of the Council of Europe recommendations in the field. It also drafts legal instruments, proposes revision and updating of existing ones and reports to the CDPC. To this effect a number of recommendations have been adopted on, for example, staff concerned with the implementation of sanctions and measures, the ethical aspects and organisation of medical treatment in prison, prison overcrowding and prison population inflation, the management of life sentence and other long-term prisoners and conditional release (parole); community sanctions and measures; juvenile offenders, etc. Most recently were adopted the updated European Prison Rules (contained in Recommendation (2006) 2 of the Committee of Ministers). They have an uncontested importance for all prison administrations in Europe and fuel reforms of national legislation and practice in the field. In conformity with their Rule 108 the PC-CP was entrusted with their regular revision in order to continue to take into account the latest developments in the penal field, namely the standards set by the Committee for the Prevention of Torture (CPT) and the case-law of the European Court of Human Rights (ECtHR).

Another very important recommendation which was adopted in 2006 is Recommendation (2006)13 on remand in custody, the conditions in which it takes place and the provision of safeguards against abuse. It builds on the European Prison Rules and complements it with some additional rules relating to the procedural rights and safeguards of pre-trial detainees.

The PC-CP has recently started its work on European Rules for Juvenile Offenders

subject to community sanctions or measures or deprived of their liberty. The text will take account of current trends in the field and will establish guidelines regarding the treatment of juvenile offenders in open and closed environment. The text should be finalised by the end of 2008.

The Committee of Ministers is expected to entrust the PC-CP with the task to deal with the role and place of probation and aftercare services in the European criminal justice systems. The work will start towards the end of 2007.

The Council for Penological Co-operation (PC-CP) is entrusted by the Committee of Ministers also with the task to organise regular Conferences of Directors of Prison Administration (CDAP). The next CDAP will be held jointly with the Austrian Federal Ministry of Justice on 19-21 November 2007 in Vienna and will deal with the management of prisons in an increasingly complex environment.,

Assistance activities

The co-operation programmes in this area are designed to assist prison authorities in improving the conditions of detention and treatment of prisoners, as well as the authorities' ability to set out and implement prison management strategies in conformity with European standards.

The Council of Europe implements several national programmes on penitentiary issues, in Bosnia and Herzegovina, Serbia, Montenegro and "the former Yugoslav Republic of Macedonia" , funded jointly by the Council of Europe and the European Agency for Reconstruction and by the Canadian International Development Agency (CIDA). In addition a Joint Programme CARDS Regional Project focuses on development of a reliable and functioning prison system respecting fundamental rights and standards, and enhancing of regional co-operation in Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia (including Kosovo, under international administration in line with UNSCR N°1244 of 10 June 1999) and "the Former Yugoslav Republic of Macedonia". The Joint Programme is funded by the European Commission and co-financed by the Council of Europe.

Prison Programme Management Meetings (PPMM), comprise Council of Europe representatives, representatives of the beneficiary country or region, experts appointed by the Council of Europe as well as representatives of other international organisations, bodies and consultants invited by the Council of Europe or the beneficiary country or region to attend as observers. These have been set up in a number of states (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, the Russian Federation, Serbia, Montenegro, Turkey and Ukraine) to assist with prison reform. They are particularly concerned with pre-trial detention, recruitment and training of prison staff, treatment of prisoners, overcrowding, preparation for release and health care in prisons.

The cooperation is based on an action plan (legal expertise, seminars, expert meetings and study visits) adapted to the needs of each country. Partnerships have also been established between prisons in these countries and in other Member States. Their objective is to facilitate the exchange of experience between prison staff of different countries and to contribute to the improvement of the material conditions of prisons in the countries concerned.

To an unprecedented extent, most member States are introducing non-custodial sanctions and measures as an alternative to imprisonment with the aim of facilitating rehabilitation and reducing overcrowding. Involvement of the probation services as well as of the local communities is a vital factor in implementing these measures. The Council of Europe is working with member states to develop such measures.

II. THE WORK OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

As mentioned above, the Council of Europe's efforts to protect persons deprived of their liberty against torture and other forms of ill-treatment have laid increasing emphasis on mechanisms for preventing violations rather than denouncing those which may have occurred. This was the idea behind the drafting of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Convention foresaw the establishment of a proactive non-judicial mechanism based on visits to places of deprivation of liberty. Such a mechanism would operate alongside the already existing reactive judicial mechanism of the European Court of Human Rights.

The Convention was opened for signature by the member States of the Council of Europe on 26 November 1987 and entered into force on 1 February 1989. The Convention has been ratified by all the 47 member States of the Council of Europe¹. Further, since 1 March 2002², the Committee of Ministers of the Council of Europe may invite any non-member State to accede to the Convention.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), set up under the Convention, met for the first time in November 1989. It is composed of one member in respect of each Party to the Convention, elected by the Committee of Ministers and serving in his or her individual capacity. The CPT's members are independent and impartial experts from a variety of backgrounds: they are for example lawyers, medical doctors, psychiatrists and specialists in prison or police matters.

The CPT's task is to examine the treatment of persons deprived of their liberty by a public authority (e.g. prisons and juvenile detention centres, police stations, immigration holding centres and psychiatric hospitals) in order to strengthen, if necessary, their protection from torture and inhuman or degrading treatment and punishment. However, the CPT is not empowered to deal with individual applications, as these are the responsibility of the European Court of Human Rights.

¹ Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

² Following the entry into force of Protocol No. 1 to the Convention.

The CPT carries out two types of visit: a rolling programme of periodic visits to each State Party – roughly every four years - and ad hoc visits which are those that appear to the Committee "to be required in the circumstances". To date the CPT has made 145 periodic and 90 ad hoc visits. Visits vary in length from a few days to more than two weeks. Visiting delegations are usually made up of four to five CPT members accompanied by one or two specialists (medical, legal, prison, police, etc.), members of the Committee's Secretariat and interpreters. However, the member elected in respect of the country being visited does not join the delegation. Information on the most recent visits carried out by the Committee can be found on the CPT's website.

Under the Convention, CPT delegations have unlimited access to places of deprivation of liberty and complete freedom of movement within them. They may interview detainees in private and have free access to anyone who can provide relevant information. The delegation's findings are subsequently set out in a report, which is adopted by the Committee during one of its three plenary sessions. The report includes concrete recommendations for improvements and forms the basis for an ongoing dialogue with the State concerned.

The CPT's work is guided by two fundamental principles – co-operation and confidentiality. In this respect, it should be emphasised that the role of the Committee is not to condemn States, but rather to assist them to prevent the ill-treatment of persons deprived of their liberty. The Committee meets *in camera* and its visit reports are, in principle, confidential. However, almost all States have chosen to waive the rule of confidentiality and publish the reports as well as the Government responses. At the time of writing, 184 visit reports drawn up by the CPT have been published; many of the remaining reports have only recently been forwarded to Governments and will in all likelihood be published in due course. The Committee's visit reports can be consulted on the CPT's website.

It should also be added that, in exceptional circumstances, if a country refuses to co-operate or fails to improve the situation in the light of the Committee's recommendations, the CPT may decide to make a public statement.

The CPT submits an annual report on its activities to the Committee of Ministers. The reports represent an opportunity to describe the standards developed by the Committee in relation to issues falling within its mandate, as well as an occasion to comment on other matters of relevance:

- police custody ³
- imprisonment ⁴
- health care services in prisons ⁵
- foreign nationals detained under aliens legislation ⁶
- involuntary placement in psychiatric establishments ⁷
- juveniles deprived of their liberty ⁸

³ cf. 2nd General Report (CPT/Inf (92) 3), updated description in 12th General Report (CPT/Inf (2002) 15)

⁴ cf. 2nd General Report (CPT/Inf (92) 3), updated description in 11th General Report (CPT/Inf (2001) 16)

⁵ cf. 3rd General Report (CPT/Inf (93) 12)

⁶ cf. 7th General Report (CPT/Inf (97) 10)

⁷ cf. 8th General Report (CPT/Inf (98) 12), updated description in 16th General Report (CPT/Inf (2006) 35)

- women deprived of their liberty ⁹
- deportation of foreign nationals by air ¹⁰
- combating impunity ¹¹.

A compilation of these "standards", as well as a set of other brochures describing the Committee's *modus operandi*, is available in English and French. Translations have been produced in Albanian, Bulgarian, Croatian, Czech, Estonian, German, Italian, Latvian, Lithuanian, Macedonian, Polish, Romanian, Russian, Serbian, Slovak, Spanish, Turkish and Ukrainian. These texts can be consulted on the CPT 's website (as well as on the CPT's CD ROM).

Further information may be obtained from:

- **Legal Affairs Website:** http://www.coe.int/T/E/Legal_affairs/
- **Prisons Website:**
<http://www.coe.int/T/E/Legal%5Faffairs/Legal%5Fco%2Doperation/Prisons%5Fand%5Falternatives/>
- **the CPT's Website:** <http://www.cpt.coe.int>
- **the Committee for the Prevention of Torture's Secretariat:**
tel. +33/(0)3 88 41 39 39; fax +33/(0)3 88 41 27 72; e-mail: cptdoc@coe.int

⁸ cf. 9th General Report (CPT/Inf (99) 12)
⁹ cf. 10th General Report (CPT/Inf (2000) 13)
¹⁰ cf. 13th General Report (CPT/Inf (2003) 35)
¹¹ cf. 14th General Report (CPT/Inf (2004) 28)