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Working Session 8: 'Rule of Law'

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 a permanent advisory body to the European Committee on Crime Problems (CDPC). It collects information, prepares draft legal instruments, proposes revision and updating of existing ones and reports to the CDPC. It is responsible for promoting legal co-operation assistance in order to develop European standards as regards treatment of prisoners and community sanctions and measures. 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 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). The updating of the Rules was done following several vast consultations with the national prison administrations and the Ministries of Justice of the member-states.

Another very important recommendation is expected to be adopted by the Committee of Ministers by the end of 2006, namely on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

The PC-CP has recently started its work on European Rules for Juvenile Offenders deprived of their liberty or subject to community sanctions or measures. 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 CDPC has also entrusted the PC-CP with the task to deal with the role and place of probation and aftercare services in the European criminal justice systems. It is expected that work will start in 2007.

In collaboration with the Council for Penological Co-operation (PC-CP), the European Committee on Crime Problems organises regular Conferences of Directors of Prison Administration. The most recent Conference of Directors of Prison Administration (Rome, 2004) which for the first time associated also the Directors of probation services in the member states, addressed the Revision of the European Prison Rules (EPR), conditional release and long term prison sentences.

Assistance activities

The co-operation activities to strengthen the Rule of Law in this area are designed to make prison authorities aware of the action needed to ensure that prisoners are treated humanely, and prisons are well run.

Prison Programme Management Meetings (PPMM), comprising 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 a more creative approach to the problem of crime and punishment. Involvement of the probation services as well as of the local communities is a vital factor in implementing these measures. Therefore, the Council of Europe is working with member states to develop these measures. Its co-operation activities to strengthen the Rule of Law include multilateral and bilateral seminars to promote them.

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 now been ratified by the 46 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 Convention has been in force in respect of Montenegro since 6 June 2006³.

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.

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 135 periodic and 83 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

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, 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.

³ See decision CM/Del/Dec(2006)967/2.3bE of 16 June 2006.

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, 165 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 ⁴
- imprisonment ⁵
- health care services in prisons ⁶
- foreign nationals detained under aliens legislation ⁷
- involuntary placement in psychiatric establishments ⁸
- juveniles deprived of their liberty ⁹
- women deprived of their liberty ¹⁰
- deportation of foreign nationals by air ¹¹
- combating impunity ¹².

⁴ cf. 2nd General Report (CPT/Inf (92) 3), updated description in 12th General Report (CPT/Inf (2002) 15)

⁵ cf. 2nd General Report (CPT/Inf (92) 3), updated description in 11th General Report (CPT/Inf (2001) 16)

⁶ cf. 3rd General Report (CPT/Inf (93) 12)

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

⁸ cf. 8th General Report (CPT/Inf (98) 12)

⁹ cf. 9th General Report (CPT/Inf (99) 12)

¹⁰ cf. 10th General Report (CPT/Inf (2000) 13)

¹¹ cf. 13th General Report (CPT/Inf (2003) 35)

¹² cf. 14th General Report (CPT/Inf (2004) 28)

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, 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:**
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