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## **Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches**

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### **Introduction**

61. In the course of the last three decades, the CPT has regularly reviewed the manner in which persons are treated by the police in European countries.<sup>1</sup> It is therefore in a unique position to assess the extent of torture and other forms of ill-treatment by police officers in the whole Council of Europe area.

62. At the outset, it must be underlined that, in the overwhelming majority of Council of Europe member states, most persons met by CPT visiting delegations who were, or had recently been, in police custody have not alleged to have suffered any kind of police abuse. Indeed, they considered that they had been treated correctly by the police officers who had apprehended them, escorted them to police establishments, kept them in custody, or interviewed them. Further, it is noteworthy that, in a few countries, police ill-treatment has not been a concern since the CPT started carrying out visits in the early 1990s. In some other states, police reforms have led to significant improvements.

63. At the same time, the CPT continues to encounter cases of police ill-treatment in a number of European countries, under various circumstances and involving different law enforcement agencies.

64. In several Council of Europe member states, police ill-treatment mainly occurs during the high-risk period around the time of **apprehension of persons** suspected of having committed criminal or other offences. CPT delegations have heard many accounts according to which the force used by police officers upon apprehension or shortly after was unnecessary or excessive. In particular, they heard allegations of punches, kicks, truncheon blows or use of pepper spray whilst the person concerned displayed no resistance or had already been brought under control. At times, such allegations were supported by convincing medical or other evidence. In some instances, the alleged misconduct was the result of action during crowd control operations or special interventions carried out by police officers who could subsequently not be identified (due to them wearing face-concealing hoods and the absence of any identification number on their uniforms). As highlighted

<sup>1</sup> Since its first visit in 1990, the CPT has carried out about 440 country visits, in the course of which the members of its delegations have spoken in private with tens of thousands of persons who were or had recently been detained by the police. It also reviewed the relevant documentation, including of a medical nature, in police and prison establishments.

by the European Court of Human Rights in its case-law, it may be legitimate for police officers to resort to force in the context of an apprehension. However, such force should be used only if it is lawful and strictly necessary, and it should not be excessive. Failure to meet these basic requirements may amount to a violation of Article 3 of the European Convention on Human Rights.<sup>2</sup> It should also be noted that CPT delegations have frequently found evidence of unduly tight handcuffing, which can have serious medical consequences. In addition, on many occasions they have heard allegations of verbal abuse, including racist remarks. The CPT has also observed that certain categories of person (such as persons with mental health problems and juveniles) could run a higher risk of ill-treatment during apprehension due to their specific vulnerabilities.

65. The infliction of ill-treatment during or in the context of **police interviews** remains a very serious problem in a significant number of Council of Europe member states. Within the last ten years, the CPT has received credible allegations, and gathered forensic medical and other evidence, of police ill-treatment which could be qualified as torture in almost one-third of Council of Europe member states. The alleged ill-treatment consisted *inter alia* of the infliction of electric shocks, blows to the soles of the feet, suspension or hyperextension by means of handcuffs, infliction of burns to various parts of the body, asphyxiation with a plastic bag or a gas mask, handcuffing of detained persons in stress positions for hours on end, severe beatings and mock executions. The CPT also continues to hear accounts of other forms of police ill-treatment, from slaps to more brutal forms of abuse. The deliberate nature of such treatment is evident. The treatment alleged was often applied by apprehending/operational officers in the initial period of custody and prior to a first formal police interview, for the purpose of obtaining a confession or other information. The CPT's findings suggest that, in some cases, police crime investigators have condoned or even encouraged such practices. In this connection, the possibility for police officers of inviting or summoning persons for "informal talks", "collecting information" or "explanations" is provided for in a number of countries under a simplified procedure. The CPT has on numerous occasions noted that the risk of ill-treatment was higher precisely in situations of this kind and that informal questioning of "persons of interest" was abused in order, *inter alia*, to deny procedural safeguards that would apply to persons formally considered as criminal suspects.

## Professional policing

66. As part of its preventive mandate, the CPT has consistently highlighted the importance of **three procedural safeguards**, namely: the right of access to a lawyer, the right of access to a doctor and the right to have the fact of one's detention notified to a relative or another third party of one's choice. This presupposes that persons deprived of their liberty are duly informed of these rights, both orally upon apprehension and, as soon as possible, in writing (e.g. through a "letter of rights" or other document setting out the rights of persons in police custody) in a language they understand.<sup>3</sup> This "trinity of rights" should apply as from the very outset of deprivation of liberty by the police – that is, when the person concerned is obliged to remain with the police. The main reason for this has repeatedly emerged from the CPT's findings: it is during the first hours of deprivation of liberty by the police that the risk of ill-treatment is at its highest.

67. The CPT has progressively developed additional safeguards (such as appropriate record-keeping and the establishment of a single comprehensive custody register), as well as other specific

<sup>2</sup> Reference can be made, for instance, to the judgments *Bouyid v. Belgium [GC]*, no. 23380/09, §§ 100-113, ECHR 2015, *Rehbock v. Slovenia*, no. 29462/95, §§ 71-78, ECHR 2000-XII, and *Layijov v. Azerbaijan*, no. 22062/07, §§ 39-48, 10 April 2014.

<sup>3</sup> See also *Directive 2012/13/EU* of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, and *Directive 2013/48/EU* of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

safeguards for vulnerable groups, such as juveniles, persons with mental health problems or foreign nationals.<sup>4</sup>

68. The CPT has noted with satisfaction that many states have followed its recommendations by incorporating procedural safeguards into their legislation. Nevertheless, the Committee has also found that, despite the existence of detailed legal provisions, the **practical implementation** of these safeguards frequently displays serious shortcomings. For instance, the Committee has observed undue delays in access to a lawyer (in particular, it is often the case that legal aid lawyers see their clients only after a first police interview or even not until the time of the first court hearing, thereby depriving the detained persons concerned of an important safeguard against police ill-treatment). In addition, medical examinations of persons in police custody are often carried out in a superficial manner and/or in the presence of police officers. Further, in a few countries, the introduction of procedural safeguards has led to the emergence of unwanted police practices, such as the questioning of suspects in unofficial places of detention, without the very fact of their deprivation of liberty being recorded and/or without any possibility of them being able to exercise any of the above-mentioned rights.

69. The introduction of legal safeguards is thus not an end in itself; experience has shown that in practice they can be circumvented as long as police officers – with the sanction of senior police officials – believe that ill-treating apprehended persons and suspects is an acceptable or even necessary and efficient way of carrying out police activities.

70. Practitioners in countries that have come a long way in overcoming police ill-treatment often refer to a **change of police culture**, or even a change of culture within the criminal justice system as a whole, as the key factor. In a number of states, the CPT is indeed pleased to witness positive developments in the manner in which persons in police custody are treated. It has even observed and supported significant culture changes within police services, such as in Georgia.

71. A change of mindset starts with competitive and rigorous recruitment processes based on strict selection criteria, ensuring that the composition of the police force reflects the diversity of the population.<sup>5</sup> In this connection, adequate remuneration of police officers is an important tool to attract the best candidates and retain highly competent staff. The development of appropriate police education, initial preparation and ongoing training in the application of human rights standards, national norms and safeguards are also key to improving police practices. In the CPT's experience, professional policing goes hand-in-hand with adequate training on the use of force in compliance with the principles of lawfulness, necessity and proportionality. Training should also provide opportunities to acquire appropriate investigative skills, taking due account of the age, gender, state of health, any disability or any other circumstances which may render certain persons under investigation particularly vulnerable. Moreover, no significant change can be expected without strong police leadership and management which scrupulously supervise the observance of procedural safeguards and convey firm and unambiguous messages of zero tolerance of police ill-treatment. Greater police accountability is indeed a crucial factor. Police officers should always be identifiable<sup>6</sup> and clear reporting procedures and “whistle-blower” protective measures should be put in place. Any allegation or other information indicative of police ill-treatment should be effectively investigated and any perpetrators of police ill-treatment be brought to justice.<sup>7</sup>

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<sup>4</sup> See substantive sections of previous general reports of the CPT on police issues: [CPT/Inf \(92\) 3, paragraphs 36 ff.](#), [CPT/Inf \(2002\) 15, paragraphs 34 ff.](#), and [CPT/Inf \(2015\) 1, paragraph 98](#).

<sup>5</sup> See in particular [General Policy Recommendation No. 11 of the European Commission against Racism and Intolerance \(ECRI\) on combating racism and racial discrimination in policing](#).

<sup>6</sup> For instance, members of specialised police forces and uniformed police officers should always wear a clearly distinctive insignia and a prominent identification number on the outside of their uniform/on their helmet.

<sup>7</sup> See, in this respect, the 14<sup>th</sup> General Report of the CPT: [CPT/Inf \(2004\)28, paragraphs 25 ff.](#)

72. Last but not least, the setting-up and development of effective – internal and external – monitoring mechanisms, in particular national preventive mechanisms (NPMs) established under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), can contribute to a significant change in police culture.

## Investigative interviewing – a paradigm shift

73. In countries where the CPT receives allegations of torture and other forms of ill-treatment in the context of police interviews, the Committee generally finds that criminal investigations are too often geared towards the objective of obtaining confessional evidence or other information. In criminal justice systems that place a premium on confessions, the risk of ill-treatment and other unlawful action in the context of police interviews is increased. Indeed, the focus on confessional evidence has led to wrongful convictions. Moreover, in a few countries it has become apparent that key performance indicators for police officers are heavily based on high “clear-up” rates, which may have a negative effect on police behaviour when carrying out interviews.

74. Since its inception, the Committee has placed particular emphasis on the development of clear rules or guidelines on the carrying out of police interviews. More specifically, the CPT has repeatedly stressed that the aim of police interviews must be to obtain accurate and reliable information in order to seek the truth about matters under investigation and not to obtain a confession from a person already presumed, in the eyes of the interviewing officers, to be guilty. The CPT has underlined the importance of the principle of proceeding “from the evidence to the suspect” rather than “from the suspect to the evidence”. Such an approach must prevail in the daily practice of all those involved, from apprehending officers to police investigators, as well as other actors of the criminal justice system such as prosecutors and judges.

75. This “non-accusatory” approach captures in essence the PEACE<sup>8</sup> model for **investigative interviewing**, which the police service of England and Wales adopted in the early 1990s as the methodology for interviewing suspects, as well as witnesses and victims. Introduced in the context of larger reforms, this methodology changed entirely the procedures applied when interviewing suspects and, in the longer term, the mindset of individual police officers and the police service at large.

76. More recently, during its 2018 periodic visit to Norway, the CPT also examined the techniques of investigative interviewing applied by the Norwegian police (the so-called KREATIV<sup>9</sup> model). Since 2004, the KREATIV course has formed part of the syllabus for university training programmes for police officers.<sup>10</sup>

77. The aim of training in investigative interviewing is to help police officers to carry out interviews in a systematic manner with an open mind, avoiding common pitfalls associated with relying on preconceived conclusions.<sup>11</sup> Equally importantly, it facilitates communication and the information flow, and consequently the detection of crime. Furthermore, it reduces the risk of human error and false confessions, which can occur with techniques designed to make the suspect confess. Research into the causes of wrongful convictions has documented that problems associated with “tunnel vision” or “confirmation bias” (i.e. an unconscious tendency to seek out only

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<sup>8</sup> The acronym PEACE stands for “Planning and preparation, Engage and explain, Account, Closure and Evaluation”.

<sup>9</sup> The Norwegian acronym stands for “(K) Communication, Rule of law, Ethics and empathy, Active awareness, Trust through openness, Information, (V) Scientific anchoring”.

<sup>10</sup> See [CPT/Inf \(2019\) 1, paragraph 28](#).

<sup>11</sup> In this connection, see “[A brief introduction to investigative interviewing – A practitioner’s guide](#)”, Council of Europe, October 2018.

information that “fits” and to ignore or explain away information that does not confirm what the interviewer believes to be true) are the underlying causes of miscarriages of justice in most cases.

78. Police interviewers with an open mindset are far more effective; they apply in practice the presumption of innocence by generating and actively testing alternative hypotheses through systematic preparation, empathic rapport-building, the use of open-ended questions, active listening, and strategic probing and disclosure of potential evidence.

79. Unsurprisingly, the investigative interviewing approach – combined with the practical operation of procedural safeguards as from the very outset of deprivation of liberty – is gradually achieving broad acceptance at universal level.<sup>12</sup> It features a number of advantages: it dismantles the myth of the effectiveness of harsh interrogation methods (including ultimately torture), and replaces it with more effective methods of preventing, detecting, investigating and solving crime. It is also seen as one of the most effective approaches to counter terrorism when compared with traditional methods still applied by many police forces. This in turn has a positive impact on the outcome, fairness, efficiency and reliability of any subsequent criminal proceedings, and on how the general public perceives the police service.

80. The investigative interviewing approach has clearly inspired the CPT in its monitoring work. The Committee considers that all the police officers concerned should receive detailed guidance on how interviews with suspects should be carried out. This can be achieved through legislation, regulations or a set of rules, procedures or practices. By way of illustration, the CPT considers that, in principle, there should be no more than two interviewing officers. The authorised duration of an interview, the rest periods between interview sessions and breaks during an interview should also be clearly specified (for instance, interviews should last no more than two hours at a time and suspects should be allowed, within a time span of 24 hours, a continuous period of at least eight hours for rest, free from questioning or any activity in connection with the investigation). Police interviews should as a rule be carried out in rooms specifically designed and equipped for the purpose. The CPT has also recommended that a mechanism for the ongoing monitoring and systematic review of these police interviewing standards, procedures or practices be established. Further, the development of adequate initial and ongoing professional training on interviewing techniques is key in the effective implementation of any such framework for police interviewing.

81. The CPT has also stressed the importance of accurate recording of all police interviews (including the start and end times and the names of all persons present during the interview). The electronic recording of police interviews (with audio/video-recording equipment) has also become an effective means of preventing ill-treatment during police interviews whilst presenting significant advantages for the police officers involved. Electronic recordings should be kept securely for a reasonable period, be made available to the detained persons concerned, and/or their lawyers, and be accessible to representatives of international and national monitoring bodies (including NPMs), as well as to any officials responsible for investigating allegations or reports of police ill-treatment.<sup>13</sup>

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<sup>12</sup> See in particular the interim report of the United Nations Special Rapporteur on Torture ([A/71/298](#), 5 August 2016), who made a convincing case for the benefits of investigative interviewing and called for the development of a universal protocol identifying a set of standards for non-coercive interviewing methods and procedural safeguards.

<sup>13</sup> In parallel, the CPT considers that greater emphasis should be placed on a physical evidence-based approach and on modern, scientific methods of criminal investigation, namely seizure, retention, packaging, handling and evaluation of forensic exhibits and the chain of custody. In addition, ready access to up-to-date scientific tools, such as DNA technology and automated fingerprint identification systems, should be ensured (if necessary through investment in equipment).

## Centralised police detention and designated custody officers – a promising practice

82. In a number of countries, the CPT has observed and encouraged a trend consisting of keeping persons in police custody in **centralised police detention facilities** rather than in police cells located in smaller establishments or special operational departments.

83. The CPT has frequently gained a positive impression of the functioning of such central police detention facilities, which can also provide better material conditions for persons in police custody.<sup>14</sup> It has also noted the clear benefits of having **designated staff who exclusively fulfil the role of custodial officers**. In terms of resources, a division of labour between operational officers, custodial officers and investigators can lead to greater specialisation, professionalism and efficiency. By contrast, police officers who have to fulfil dual or even triple roles of apprehending persons suspected of criminal or other offences, looking after the well-being and rights of those who have been apprehended (possibly under difficult circumstances), and interviewing these persons in relation to an offence, will often find it personally challenging to assume all of these roles in a professional manner.

84. A separation of the different police tasks and the creation of a specialised group of custody officers may therefore lead to an enhanced sense of responsibility of such officers for the persons in their charge. It may also possibly break the harmful *esprit de corps* that often prevents officers from speaking out against their colleagues in cases of ill-treatment. This presupposes that custody officers are empowered by a working environment that acknowledges their important contribution to the professional functioning of any police service. Clear and consistent custody guidelines, which exist in a number of countries, are an important tool for professionalising the implementation of custody.<sup>15</sup>

85. Introducing designated custody officers could also strengthen the **practical implementation of various procedural and other safeguards**. While it remains incumbent on the apprehending officer(s) to inform detained persons of their rights, designated custody officers can double-check upon admission to the custody facility whether the detained person has actually been informed of all their rights, has understood and is able to exercise them. They may also provide the first opportunity for a detained person to make a formal complaint against apprehending officers, for example, regarding excessive use of force upon apprehension. The CPT has noted that, in certain states, every apprehended person has to be presented immediately to a designated, experienced, custody officer, before any other procedural steps can be taken. This custody officer is responsible for checking the psychological or physical integrity of the apprehended person, including whether they need to see a health-care professional, and for offering them the possibility to inform a third party of their choice of their situation and to contact a lawyer. Designated police officers are properly trained to pose the appropriate questions and to recognise and record indicative signs of a person in need of particular support and care. This is clearly good practice.

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<sup>14</sup> The CPT has generally found that basic material conditions, such as sanitary facilities, outdoor yards, meeting rooms for lawyers and medical examination rooms, as well as food, can be better provided in larger, specialised custody facilities than in small district police stations. It should be noted, however, that the existence of designated police custody facilities should not lead to the detention of persons remanded in custody in these facilities, as is still the case in several Council of Europe countries.

<sup>15</sup> One example is the England and Wales [Police and Criminal Evidence Act \(PACE\) Code C](#) – Code of Practice for the detention, treatment and questioning of persons by Police Officers (Home Office of the United Kingdom, revised, 26 July 2018). In some countries, the role and tasks of custody officers are specified in the national legislation (see, for instance, Section 212 of the Ukrainian Code of Criminal Procedure).