

# External Mechanisms and Prison Regimes: Assessing the Work of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

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## Abstract

This article evaluates the work of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and argues that the mechanism plays an important and effective role in preventing torture and degrading treatment, whilst exerting substantial influence on prison regimes. In addition, it points out the difficulties in measuring such influence, as well as the problems in the performance of the CPT that demand further reflection. To substantiate the arguments presented, this article will be based on research carried out and published on the work of the CPT and the reports of the Committee. The methodology used for this investigation is a wide range of articles on the subject that are focused on the Committee in Europe. As well as articles on the subject, the CPT's reports between 2007 and 2021 are analysed.

## Keywords

Human Rights, Prisons, Prison Regime, External Mechanisms, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT

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## 1. Introduction

It does not seem an exaggeration to say that deprivation of liberty, as a form of punishment, is a global phenomenon being widely used (Sparks & McNeill, 2009: p. 1; Van Zyl Smit, 2013: p. 11). Through prison, the individual's freedom is restricted and, as a consequence, certain human rights are weakened.

Prisons have the undeniable potential to be spaces for human rights viola-

tions. Historically, this is the reality in several places (Sparks & McNeill, 2009: p. 17). From the end of the 18th century, the main protective documents that marked the history of the limits to the imposition of inhuman punishments in the exercise of punitive power of the State appeared (Van Zyl Smit, 2013: p. 2). The growth of international regulation of the human rights of prisoners, and the expansion of the community's access and knowledge regarding this regulation, demand the need for accountability and the observance of protective norms. To some extent, the legitimacy of the existence and functioning of prisons depends on the fulfillment of these duties and "increasingly, considerations of human rights are central to determinations of the extent of that legitimacy, its deficits and crises" (Sparks & McNeill, 2009: p. 17).

Although the prohibition of inhuman and degrading punishment is much older, the human rights doctrine related to imposing limits on punishment is relatively recent and intensified after the Second World War (Van Zyl Smit, 2013). The prohibition of torture and cruel, inhuman and degrading treatment was included in the main international human rights treaties, with extensive supplementation by several other international documents (Van Zyl Smit, 2013: pp. 03-04, 14). Deprivation of liberty, when permitted, must be subject to limitations and restrictions, including the prohibition of torture, inhuman or degrading treatment or punishment (ECHR, Article 3).

Persons deprived of their liberty, be that in prisons or those subjected to other forms of confinement, constitute vulnerable groups. Historically, places of confinement are spaces where human rights are violated (Sparks & McNeill, 2009), which is why individuals deprived of their liberty receive special attention and protection through their human rights. Thus, people incarcerated or subjected to another type of confinement, in addition to the general protection granted to all, receive special protection due to their peculiar circumstance of being under the tutelage of the State (Coyle & Fair, 2018: p. 10).

In 1987, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was added to a set of other international human rights instruments. The ECPT entered into force on the 1st February 1989. However, it differs and stands out from them in that it does not establish norms. Its purpose was to create a Committee responsible for visiting places of deprivation of liberty in order to prevent torture and ill-treatment (Cassese, 1989: p. 150; Greer, 2006: p. 283; Rainey, Wicks, Ovey, White, & Jacobs, 2017: pp. 216-217). The work of the Committee (CPT) has great relevance in the area of human rights, especially the rights of people subjected to different forms of deprivation of liberty, constituting a pillar for international protection of human rights, and democracy itself (Council of Europe, 2021: p. 5).

This article aims to evaluate the work of the CPT as a mechanism for preventing torture and degrading treatment, a matter that continues to be neglected in academic research, and will argue that the mechanism plays an important and effective role in preventing torture and degrading treatment, while exerting substantial influence on prison regimes. The writing will point out the difficulties in

measuring such influence, as well as the problems in the performance of the CPT that demand further reflection. To substantiate the arguments presented, this essay will be based on research carried out and published on the work of the CPT and the reports of the Committee.

## 2. Notes on Methodology

Regarding the methodology used, the collection of information for this work involved research in DiscoverEd (The University of Edinburgh platform), Web of Knowledge, Google Scholar, and Microsoft Academic resources. For the searches, the terms used were “CPT”, “Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, “torture” and related terms such as “human rights” and “prisons”. The purpose of the search for related terms was to obtain better results catalogued using similar expressions. After procuring the results, the articles were briefly examined by reading their titles and abstracts in order to filter the articles obtained with the theme of this article. As well as articles on the subject, the CPT’s reports between 2007 and 2021 are analysed.

## 3. Understanding the CPT: An Overview of What the Committee Is and What It Does

The ECPT was adopted in June 1987 and, with it, the Committee for the Prevention of Torture was created. When the ECPT came into force, only 8 of the 23 members of the Council of Europe adopted it. Currently, all Council members have ratified the Convention, meaning 47 member states have adopted the ECPT and are subject to the work of the Committee (Bicknell & Evans, 2017: p. 14; Council of Europe, 2022).

The CPT is “concerned with the prevention of ill-treatment in detention” and “focused on measures that might be taken in order to ensure that ill-treatment does not occur, in the sense of detainees being treated in an inhuman or degrading fashion” (Bicknell & Evans, 2017: p. 12). An important aspect to note is that the work of the CPT is not restricted to prisons, but any place where there is deprivation of liberty, such as police stations, military detention facilities, psychiatric hospitals, social welfare homes, detention centers for juveniles and, more recently, immigration detention centres, carrying out approximately 18 visits annually (CPT, 2022; Kicker, 2012: p. 48). The Committee works as a preventive mechanism, composed of specialists on the subject carrying out regular visits. From these visits, reports and recommendations are produced to the member states, establishing a dialogue between the mechanism and the country (Bicknell, 2020: p. 181; CPT, 2022). It is the CPT’s prerogative to visit any place of deprivation of liberty, without the need for prior authorisation. The Committee carries out regular visits to all 47 ECPT member states, and may also carry out ad hoc visits when urgent situations so require. After the visits, a report is issued with observations and recommendations to the member state.

It is important to note that the Committee is not just a body that visits and maintains relations with states, but has a more complex and broader mission, as “its purpose is to bring about necessary change with a view to strengthening protection against ill-treatment” (Council of Europe, 2007: p. 27). The CPT, therefore, has a preventive, guiding role, in order to implement policies that seek to prevent the violation of human rights of people subjected to prison, by suggesting strategies and priorities (Bicknell & Evans, 2017: pp. 12, 19). The CPT seeks to interact with a set of human rights bodies that play a fundamental role in establishing rules and imposing limits on what is, or is not, possible in terms of punishment (Daems, 2017: p. 639). However, the CPT is not a judicial instrument of investigation and has no accountability for cases of human rights violations (Morgan & Evans, 2001: p. 160; Rainey, Wicks, Ovey, White, & Jacobs, 2017: p. 217; CPT, 2022), although it can interact with local organisations and register complaints during these visits. It acts in parallel with the human rights judicial mechanism, which is the European Court of Human Rights (Kicker, 2012: p. 48), which often makes reference to the CPT reports in its decisions (Rainey, Wicks, Ovey, White, & Jacobs, 2017: p. 217).

An important point, that highlights the importance of mechanisms for the protection of human rights, such as the CPT, is that the prison population is composed mostly of people from the most excluded social strata (Sparks & McNeill, 2009: p. 7). Thus, the committee, with its work, directs attention to a portion of the population that has historically been silenced and held back – inside and outside prisons.

#### **4. Difficulties in Assessing the Concrete Impact of the CPT’s Work**

The effectiveness of the CPT, for Bicknell & Evans (2017: p. 12), can be evaluated by “the extent to which they have been able to inculcate a similarly human rights-focused approach within domestic practice”. This is, though, not the only possible perspective for evaluating the effectiveness of the organisation, and there are those who think that evaluating the CPT “should include how people in prison see its work, its impact, its power to persuade, and its connection to the outside world” (O’Connell & Rogan, 2022: p. 1). For the purpose of this essay, the CPT’s effectiveness is analysed from the first perspective.

The impact of the CPT depends on the culture that exists within a community towards punishment, the offender, and the treatment they should receive (Garland, 1990: pp. 195-196). This includes general awareness of human rights within a member state, as the existence, or not, of a culture of respect for human rights (Pratt, 2007) is a factor that influences the success and repercussions of the Committee’s work (Van Reenan, 1999: p. 229).

Analysing the impact of the CPT’s work is a difficult task, especially the direct impact of the body’s recommendations on the implementation of changes in the country visited (Parmentier, 1999: p. 187; Morgan & Evans, 2001: p. 156; Greer,

2006: p. 285; Kicker, 2012: p. 62; Daems & Robert, 2017: p. 184). This difficulty is not just in relation to the CPT, but, more generally, in relation to the various international prevention mechanisms and research in this field is scarce (Carver & Handley, 2016: p. 4).

The CPT is part of a set of other bodies with the same preventive purpose. In general terms, the work of prevention mechanisms has contributed to the prevention of torture and degrading treatment (Carver & Handley, 2020: p. 61). In relation to the CPT, there are indications of improvements, although occasional and slow, in jurisdictions such as Belgium (Parmentier, 1999: p. 194), France (Bank, 1999: p. 205), Turkey (Gemalmaz, 1999: pp. 261-262) and Albania (Pali & Vocaj, 2017: pp. 107-115). However, there is a very optimistic assessment of the impact of the CPT in Hungary, in which it reported “an enormous impact on the domestic legal regulation and daily practice surrounding the deprivation of liberty” (Kover, 1999: p. 220).

One of the difficulties in assessing the influence of the CPT is that it would be necessary to analyse the decision-making process involved in the countries under supervision in the area of the human rights of persons deprived of their liberty. It is safer to say, therefore, that the work of the CPT is very relevant, but it adds to a series of other factors.

It is important to note that the positive impacts of the CPT’s work also occur indirectly, for instance, when the European Court of Human Rights uses the CPT’s reports and standards in its decisions. Morgan & Evans (2001: p. 185) point out that “in such cases, then, there is no direct impact of the CPT but its findings become important factual descriptions of the ‘truth’ of detention across Europe”.

What is perceived is that there are ups and downs, improvements and setbacks and, with regard to improvements, they usually take time to be implemented. “Europe’s main monitoring body is not always as effective in bringing about reform as it would like or as it is intended to do” (Daems, 2017: p. 628). This conclusion, due to the difficulty and slowness in implementing improvements, is reinforced by the CPT itself: “a considerable number of the countries visited over the last twelve months were found to have failed to implement recommendations on key issues made by the Committee after earlier visits” (Council of Europe: 2007, p. 8), which is one of the major challenges for the organisation’s self-criticism “the CPT does face in certain cases a persistent failure to implement recommendations on key issues” (Council of Europe, 2007: p. 27).

It is therefore appropriate to critically discuss some of the reasons that prevent faster advances.

## 5. Reflecting on the Weaknesses and Challenges of the CPT’s Work

Ratification of the ECPT is a condition for a country to become a member of the Council of Europe. Thus, the real intention to implement changes in the area of

human rights is not always verified when the Convention is signed. The commitments assumed, although enforceable, do not represent the State party's desire to protect human rights, but rather the acceptance of the condition imposed to be part of the Council. This lack of willingness and effective commitment is a factor that can influence the success of the CPT's recommendations. Therefore, this mandatory ratification can be considered both as a strong point, insofar as it is only by ratifying international human rights instruments that it is possible to be part of the Council of Europe, but, at the same time, it weakens the voluntariness of the commitment, since, as a condition, it does not mean that the country effectively cares about preventing torture and degrading treatment (Kicker, 2012: p. 45).

### **5.1. The Lack of Consequences or Sanctions for the Issues Reported by the CPT**

The lack of direct consequences in relation to compliance with the CPT's recommendations appears to be one of the biggest challenges to the effectiveness in the implementation of prison improvements. The possibility of sanctions, especially those that may impact the member state politically or economically, seems to be a way to make the CPT's work more effective and avoid recommendations being repeated.

In the case of Albania (Council of Europe, 2019), which wishes to join the European Union (European Union, 2022), such entry has been conditioned to the fulfillment of actions "in the area of human rights, including prisons and places of confinement", constituting "one of the 12 key priorities of the 2010 EC's Opinion on Albania's application for membership of the EU and it still remains part of Albania's necessary reforms towards EU Integration" (Pali & Vocaaj, 2017: p. 104). Thus, permanence, receiving financial resources, loans and aid in various ways by the European Union or by the Council of Europe to a member state, seems to be a viable path in order to accelerate the implementation of the CPT's recommendations.

### **5.2. Confidentiality and Delay in Issuing Reports**

The CPT reports enjoy great credibility (Morgan & Evans, 2001: p. 155) and are quite successful in pointing out legal and practice flaws (Carver & Handley, 2020: p. 54). However, the confidentiality of reports makes their publicity dependent on the authorisation of the State and, thus, ends up removing some power to impact their possible disclosure when not authorised. It can subject the work of the CPT to political interests and conveniences, for example in relation to Belgium, when the publication of the CPT report was avoided before the 1994 local elections (Parmentier, 1999: p. 181). In another case, even after several visits to Turkey, the local government worked to keep the information away from the public, taking advantage of the confidential nature of the reports (Gemalmaz, 1999: p. 260).

The issue of confidentiality also undermines the CPT's relationship and the sharing of information with other organisations working on the protection of human rights (Morgan & Evans, 2001: p. 44; Kicker, 2012: p. 59). Finally, the time elapsed between the visit and publication is another factor that requires improvement, as it takes about a year for the report to be published (Kicker, 2012: p. 53).

Publicity of the reports should be revisited. Currently, several countries already authorise the publication of reports in advance (automatic publication procedure), which is a significant step forward. To date, the authorities of the following countries have adopted an automatic publication procedure: Albania, Austria, Bulgaria, the Czech Republic, Denmark, Finland, Luxembourg, the Republic of Moldova, Monaco, Norway, Sweden, and Ukraine (CPT, 2022).

### 5.3. Frequency of Visits

As mentioned earlier, the CPT must carry out regular visits to all 47 ECPT member states, that is, it must periodically visit a considerable number of countries. The large number of countries and places to be inspected makes the interval between inspections long, and the frequency of visits can reach four to six years. "Intervals of up to six years in monitoring cycles are definitely too long for maintaining a proper dialogue between the independent expert body and the member State" (Kicker, 2012: p. 64).

In precise words, Morgan & Evans (2001: p. 47) describe the CPT's task as "an almost impossible inspection burden, forty-one countries, literally thousands of custodial establishments and more than two million detainees and prisoners – which it cannot shoulder alone". In 2001, the number of countries was 41. Nowadays, this number increased to 47 state-parties (Council of Europe, 2022).

Subsequent visits are of great importance, since it is not enough to detect the problems and point them out, but above all to verify that they have been corrected by the local governments. Evidently, this post-visit phase has become more important with the coming of age of the CPT (Daems, 2017: p. 628).

### 5.4. Non-Binding of Member States to the CPT Standards

The CPT standards, which include models and minimum standards to be observed by States Parties (police custody, basic standards in relation to imprisonment, health care services in prisons, use of means of restraint, etc.) compliance and observance are not mandatory. However, it seems important that the standards defined by the CPT are, in fact, mandatory, so that the States would be obliged to implement them, or face sanctions. These standards, however, have been used by the European Court of Human Rights as the basis for its decisions endorsing the CPT guidelines (Kicker, 2012: pp. 51-52).

When defining standards, it is necessary to be aware of the peculiarities of each country, so that standards are not defined that cannot be achieved or that would represent situations to which the non-prisoner population itself does not

have access. When monitoring compliance with the standards, the CPT must also be aware of local peculiarities.

## 6. Conclusion

Throughout its 34 years of existence, the CPT has played an important role in preventing torture, inhuman and cruel treatment, thus fulfilling its mission as a component mechanism of the international system for the protection of the human rights of persons subjected to deprivation of freedom. As highlighted, the success of the CPT's actions depends, to a certain extent, on factors closely related to the human rights culture in a particular country.

The academic production consulted in the research is conclusive in the sense that the actions of the CPT, added to other factors, exert substantial influence on prison regimes. However, the implementation of change is portrayed in academic and empirical research as a slow process due to several key factors, as highlighted in this writing: the lack of consequences or sanctions for the problems reported by the CPT; confidentiality and delay in issuing reports; the frequency of visits, with long intervals between them and; non-binding of member states to the CPT standards.

There are very few academic pieces of research specifically dedicated to the work of the CPT, and fewer still that analyse the effectiveness of its actions. The last CPT annual report (Council of Europe, 2021) was published in 2021 and referred to the period from 1st January to 31st December of 2020, a period marked by the COVID-19 pandemic (World Health Organization, 2021). Despite the pandemic, the CPT carried out periodic visits to Azerbaijan, Finland, Germany, Moldova, Monaco and Spain, in addition to ad hoc visits to Bulgaria, Croatia, France, Greece, Malta, North Macedonia, Ukraine and Kosovo. The impact of the pandemic on the work of the CPT is certainly a topic for future investigation.

## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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