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Les conceptions du pouvoir, du droit et de l'ordre se réfèrent inévitablement à l'ensemble du système de représentations qu'est la culture de chaque société. Toute forme de culture ayant donc nécessairement une dimension politique et juridique, la collection «Cultures juridiques et politiques» publie des travaux, tels que des thèses, synthèses de recherches, ouvrages collectifs et actes de colloques, se proposant de faire connaître les systèmes politiques et juridiques des pays européens, d'évaluer les grandes tendances des processus d'intégration politique et d'harmonisation juridique en cours dans l'Union européenne et d'éclairer les interférences entre le politique, le juridique et les autres aspects «culturels» dans le contexte de ces processus.

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HUMAN RIGHTS ABUSES IN THE CONTEMPORARY WORLD

TRI-NATIONAL WORKSHOP,
TBILISI, SEPTEMBER 2011



PETER LANG

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of international humanism. Besides, it is considered as remains of communist legislation which on its part was a weapon in the hands of the then authorities in order to strengthen their ideology and to use it against those masses that had opposite opinion.

Also, there was a question on how the abolition of death penalty as the highest measure of punishment affected the criminal situation of the country. The questioner was interested whether this kind of abolition caused the worsening of the criminal situation and the increase of grave crimes. The presenter answered that heavy punishments don't always solve the problem and the fear towards the punishment doesn't force the criminal from refraining committing unlawful act. Concerning the criminal situation in Georgia after the abolition of death penalty it has not changed much. Moreover, if we compare the official statistics of the late 90s and present situation we'll see that the number of grave crimes, that according to the modern legislation presume live imprisonment, is considerably declined.

Prevention of torture in the Black Sea region – progress or stagnation?

An assessment of developments in Armenia, Bulgaria, Georgia, Turkey and Ukraine, 1990-2011

Ralf ALLEWELDT*

Is it possible to fight torture effectively? And if so, how? In this paper, I want to deal with this question, by examining approaches to the prevention of torture in the Black Sea region. This region is of particular interest for the participants of the workshop held in Tbilisi in September 2011 during which this paper was presented. At the same time, although many countries in the Black Sea region face similar problems concerning torture and its prevention, the approaches taken by governments show a remarkable degree of diversity.

I. The prohibition of torture

Torture is prohibited by international law. Article 7 of the International Covenant on Civil and Political Rights¹ states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. [...]

* Dr. iur., Interim Professor of Law, University of Munich, Germany.

¹ International Covenant on Civil and Political Rights of 16 December 1966, UNTS no. 999, p. 171.

A similar provision is contained in Article 3 of the European Convention on Human Rights². Since the phenomenon of torture was considered to be a particularly serious human rights problem, governments agreed to conclude a specific Convention against Torture in 1984³.

The prohibition of torture is a very unique human right, in that it allows for no exceptions or restrictions in the interests of the community. Even in times of war or other emergency situations threatening the life of a nation, no derogation is possible⁴. Specific rules against torture are dealing with certain situations in the context of armed conflicts, namely with regard to the treatment of prisoners of war⁵.

In spite of this very clear legal situation, torture and other forms of ill-treatment of detainees still persist in more than 100 countries⁶. Torture is a very serious violation of human dignity. It inflicts immediately very cruel suffering to the victims, and it causes serious long-term problems for their physical and psychological health. Some victims die under torture or a short time afterwards. Many survivors suffer from a trauma which makes it very difficult for them to enjoy life again, and which even may lead them to committing suicide⁷.

2 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ETS no. 5.

3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, UNTS no. 1465, p. 85.

4 Cf. Article 4 of the International Covenant on Civil and Political Rights, Article 15 of the European Convention on Human Rights, Article 2 of the Convention against Torture.

5 See the Regulations concerning the law and customs of war on land, 18 October 1907, Article 4.

6 A picture of the situation has been given recently by Manfred Nowak, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention. Addendum to the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 February 2010, UN Doc. A/HRC/13/39/Add.5, para. 9, including a number of proposals for action, paras. 140-166.

7 Typical consequences of torture and possibilities of rehabilitation are described by Manfred Nowak, Interim Report of the Special Rapporteur on torture and

Accordingly, many will understand the necessity that international law not only contains a prohibition of torture, but that it also provides for mechanisms and procedures for the implementation of this prohibition.

II. Individual complaint procedures: achievements and limitations

In Europe, including in all countries of the Black Sea region, all persons who feel that their human rights are violated are entitled to apply to the European Court of Human Rights. This court has the power to determine, in a binding judgment, whether human rights have in fact been violated and, if this is the case, to order the respondent State to provide the victim with "just satisfaction", usually in the form of a financial compensation for pecuniary and non-pecuniary damage⁸. The European system is considered to be one of the most effective international human rights protection mechanisms in the world. Individual complaint mechanisms in general reflect a revolutionary development in international law: individuals have human rights and may enforce them in the international sphere, even against their own government.

Victims of torture may use these individual complaint procedures, and in fact many cases alleging torture have been brought to the European Court in the last few years and decades⁹. Still, although these procedures are extremely important for human rights protection, they are not sufficient for eliminating torture effectively, because

other cruel, inhuman or degrading treatment or punishment, 10 August 2010, UN Doc. A/65/273, paras. 63 et seq.

8 Cf. Articles 41, 46 of the European Convention on Human Rights.

9 Starting from Ireland v. United Kingdom, judgment of 18 January 1978, Series A no. 25. For a list of recent cases see European Court of Human Rights, Annual Report 2011, pp. 91-93, 112-116, <www.echr.coe.int>.

cases of alleged torture differ considerably from other human rights cases.

We may understand that if we consider the typical emotional situation of someone who has recently been subjected to torture. The main emotion of such a person is likely to be fear: fear from taking any steps against their government, fear from being tortured again, fear from other reprisals. Indeed, cases have occurred where individual applicants in proceedings before the European Court of Human Rights have been killed or have died under unclear circumstances, or being subjected to pressure from government authorities to withdraw their application¹⁰. Understandably, governments object to allegations of torture. They will dispute the facts and may even prosecute the applicant for libel or similar offences. Since torture usually takes place in secrecy, victims typically have problems to prove their case. The European Court of Human Rights will find a violation of Article 3 if the underlying facts are proven "beyond reasonable doubt"¹¹. For individual applicants there is no certainty that those time-consuming procedures will be successful in the end. And, very practically, not all victims of torture are in a position and willing to pay the considerable cost of a competent lawyer to bring their case to Strasbourg.

For all these reasons, many victims of torture are reluctant to introduce any kind of application concerning their treatment, and, as stated by Antonio Cassese, the first President of the European Committee for the Prevention of Torture, it is likely that most cases of

10 See the judgments of the European Court of Human Rights in *Aksoy v. Turkey*, 18 December 1996, paras. 101 et seq., and *Bitiyeva and X. v. Russia*, 21 June 2007, paras. 3, 7, 127-136, as well as International Helsinki Federation for Human Rights (ed.), *The assault on human rights defenders in the Russian Federation, Belarus and Uzbekistan*, 2006, p. 16 et seq.

11 European Court of Human Rights, *Ireland v. United Kingdom*, judgment of 18 January 1978, Series A no. 25, para. 161; *Nachova and others v. Bulgaria*, judgment of 6 July 2005, Reports 2005-VII, para. 147.

torture or ill-treatment are never examined in any kind of legal or other procedure¹².

The most important reason why complaint procedures should be complemented by other mechanisms is, however, that any official finding that a person has been tortured will come, in a way, too late. The consequences of torture, as described above, cannot be removed by any kind of declaration or compensation. Even in those cases where a victim of torture receives compensation in a simple procedure, this will not remove the physical and psychological scars. Normally where the law is violated, restitution or compensation is possible, in particular where merely economic interests are at stake. Such compensation does hardly work for victims of torture. In these cases, typically either the law is respected or it is irreparably violated. Accordingly, in the fight against torture additional protection mechanisms are necessary which aim to prevent acts of torture from happening. In this context, "prevention is the key"¹³.

III. Mechanisms for the prevention of torture. The CPT

As a consequence, specific mechanisms for the prevention of torture have been created which have the right to visit places of detention, to examine the situation of the detained persons, and to give recommendations to governments how such persons can be protected effectively against torture and other forms of ill-treatment. The first and most important prevention mechanism is the European Committee for the Prevention of Torture (CPT). It was established through the

12 Antonio Cassese, *Inhuman States*, 1996, p. 17.

13 Antonio Cassese, "A new approach to human rights. The European Convention for the Prevention of Torture", *American Journal of International Law* 83 (1989), p. 128 (129).

European Convention for the Prevention of Torture (ECPT¹⁴) in 1987, and took up its activities in 1990. Following many years of negotiations, a similar institution was created at the universal level in 2006, namely the Sub-Committee for Prevention of the Committee against Torture of the United Nations (SPT). Its legal basis is the Optional Protocol to the UN Convention against Torture (OPCAT)¹⁵. This Protocol requires State Parties, in addition, to create National Mechanisms for the Prevention of Torture (NPMs).

The focus of this paper is on the activities of the European Committee for the Prevention of Torture, and I will concentrate on the problem of physical ill-treatment by the police and other security forces. This area is only part of the field of activities and recommendations of the CPT, the other important part being the conditions of detention and their improvement. I will examine the development of torture prevention in selected countries of the Black Sea Region, namely Georgia, Armenia, Turkey, Ukraine and Bulgaria.

The practical task of the CPT is to establish the relevant facts during visits to places of detention and, on this basis, to give recommendations as to the prevention of ill-treatment of the detained persons¹⁶.

CPT visits are carried out without a specific invitation of the government concerned. During the preparation of such a visit, non-governmental organisations may communicate their complaints or reports to the CPT. By these means, the committee may develop a concrete idea even before the visit as to where are the practical problems in a given country. During the visits, members of the visiting delegation conduct private conversations with detainees and carry out, if necessary, medical examinations. The CPT will consult

14 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, ETS no. 152. Website of the CPT: <www.cpt.coe.int>.

15 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002, UNTS no. 2375, p. 237.

16 See Articles 7-9 ECPT.

the custody register and any relevant medical records. The CPT is entitled to request and acquire any information concerning the conditions of detention and treatment of detainees which is necessary for assessing the situation. Sometimes the delegation of the CPT finds torture cells or tools for ill-treatment; such discoveries are of course a very credible basis for expressing convincing recommendations related to the prevention of torture towards the government¹⁷.

On the basis of the information obtained during a visit, the CPT gives recommendations to the government as to how to ensure human treatment of detained persons. Such recommendations are written down, together with a description of the facts found, in a report to the government. This report is confidential but may be published with the consent of the government. In the case of the CPT, such publication usually takes place one or two years after the visit. Publication is the rule now for all contracting states of the European Convention, with the important exceptions of Russia and, partly, Azerbaijan¹⁸.

Unlike court proceedings, the activities of the CPT are based on the principle of cooperation¹⁹, not confrontation. The success of the Committee is dependent on the attitude of the government. The Committee may issue recommendations, if necessary repeat them several times, but there are no means to enforce them and to ensure their implementation. The only thing the Committee may do if the government fails to cooperate or to improve the situation in the light of the recommendations of the CPT, is to issue a "public statement"²⁰. Such an event occurs very rarely; in the 25 years of the CPT's existence only six public statements were made.

In the following sections of this paper, I will describe the situation in the Black Sea Region countries under review at the beginning of the

17 See Antonio Cassese, *Inhuman States*, op. cit., p. 16; and, to give some examples, CPT, Public Statement on Turkey, 15 December 1992, CPT/Inf (93) 1, para. 20; Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, paras. 13; Report on the visit to Croatia in 1998, CPT/Inf (2001) 5, para. 22.

18 See Article 10 ECPT.

19 Article 3 ECPT.

20 Article 10, para. 2 ECPT.

CPT's activities, and subsequently I will compare this situation with the situation found during the latest visits made by the CPT. The first visits to these countries took place, dependent on the date of ratification of the Convention by the country in question, between 1990 (Turkey) and 2002 (Armenia). The latest reports refer to visits within the period between 2009 (Turkey) and 2011 (Ukraine).

IV. The beginning of the CPT's activities in the Black Sea region

When the CPT visited Turkey for the first time in 1990, it found that torture and other forms of severe ill-treatment where "important characteristics" of police custody in that country²¹. During its first visits to Bulgaria (1995), Ukraine (1998), Georgia (2001) and Armenia (2002), the CPT concluded in very similar wordings that persons deprived of their liberty by the police or militia in these countries run a "significant risk of being ill-treated" at the time of their apprehension or while in police custody, in particular when being interrogated, and on occasion resort may be had to severe ill-treatment or torture²².

The forms of ill-treatment, as alleged by the detainees, included slaps, punches, kicks, beating on the soles of the feet ("falaka"), blows with a truncheon or other hard objects, the infliction of electric shocks (all countries), asphyxiation by using a gas mask or plastic bag (Georgia, Ukraine), suspension by the body in an inverted position (Georgia, Ukraine), suspension by the arms or wrists, including behind the body (Turkey), squeezing of fingers with pliers (Armenia),

²¹ CPT, Public Statement on Turkey, 15 December 1992, CPT/Inf (93) 1, para. 4.

²² See the CPT Reports on the visits to Bulgaria in 1995, CPT/Inf (97) 1, para. 27; to Georgia in 2001, CPT/Inf (2002) 14, para. 23; to Ukraine in 1998, CPT/Inf (2002) 19, para. 28; to Armenia in 2002, CPT/Inf (2004) 25, para. 17, 19.

squeezing of the genitals (Turkey, Ukraine), sexual humiliation of women (Ukraine), severe psychological humiliation, hosing with pressurised cold water, threats of torture to the detained person or to others, incarceration for lengthy periods in very small, dark and unventilated cells (Turkey). This list is likely to be incomplete.

In sum, although the situation was not identical in all of the countries under review, it was to a large extent similar, and it may be fairly described as rather serious.

V. The present situation

If we compare the most recent CPT reports with those reports which were drawn up after the first visits, we may see that in some of these countries the treatment of persons by the police has improved considerably. In others, the CPT did not find any significant changes.

With regard to Ukraine and Armenia, the CPT in its latest reports uses more or less the same words as it did in 1995 and 2002. During the 2009 visit to Ukraine, the Committee again received "a substantial number of allegations of recent physical ill-treatment". Like 1995, some of the methods used could be described as torture (infliction of electric shocks; asphyxiation using a plastic bag or gas mask, with tear gas or cigarette smoke being poured into the mask; sexual humiliation, "falaka"; extensive beating while the person was handcuffed and suspended). The CPT found supporting medical evidence as well as some unusual objects which could be used for beatings (a baseball bat, a crowbar)²³. Apparently the situation had not changed by the time of a follow-up visit in late 2011²⁴. In Armenia, during the 2010 visit "a significant number" of credible and consistent allegations were made

²³ CPT, Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, paras. 12, 13.

²⁴ CPT, Preliminary observations by the delegation which visited Ukraine in 2011, CPT/Inf (2012) 8, p. 6.

of recent physical ill-treatment, consisting mainly of punches, kicks and blows inflicted with truncheons, bottles filled with water or wooden bats. Like in 2002, some of the methods used could be said to amount to torture (extensive beating; infliction of electric shocks with stun batons; blows to the soles of the feet)²⁵.

Apparently some change has been achieved in Bulgaria. During the CPT visit to this country carried out in 2006, the majority of the persons in police custody felt that they had been "correctly treated". Numerous persons with considerable experience of the police stated that there had been "a change for the better" in recent years as regards the manner in which they were treated by police officers. Still, a "significant number" of persons, including juveniles, complained about physical ill-treatment at the time of their apprehension or subsequent questioning by police officers. The ill-treatment alleged mainly consisted of kicks, punches, slaps and blows with truncheons or other hard objects. Some detained persons claimed to have been subjected to psychological pressure in order to make them confess to a crime²⁶. The findings following the CPT's visit to Bulgaria four years later, in 2010, were very similar, however, in addition, a small number of detainees complained about the use of electric shocks. In spite of positive developments, the CPT concluded that "the problem of police ill-treatment persists"²⁷.

The CPT found that significant developments had taken place in Georgia and Turkey.

During the visit to Georgia in 2010, the "great majority" of persons interviewed by the CPT indicated that they had been treated in a correct manner. The delegation received a few allegations of physical ill-treatment by the police, relating for the most part to excessive force (punches, kicks) at the time of apprehension, but including some allegations related to ill-treatment during questioning.

25 CPT, Report on the visit to Armenia in 2010, CPT/Inf (2011) 24, para. 12.

26 CPT, Report on the visit to Bulgaria in 2006, CPT/Inf (2008) 11, para. 12.

27 CPT, Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 9, paras. 13, 14.

The findings of this visit confirm, according to the CPT, the "generally positive impression" already obtained during the previous visit in 2007²⁸, that the situation as regards the treatment of detained persons in Georgia has "considerably improved", and this impression was confirmed by various interlocutors like NGOs and representatives of the Public Defender's Office. The CPT thinks that the "series of measures" taken over the last few years by the Georgian authorities are "bearing fruit"²⁹.

In the report on its 2005 visit to Turkey, the CPT stressed from the outset that the facts found in the provinces visited (Adana, Istanbul and Van) are "encouraging". The great majority of detainees stated that they had not been physically ill-treated, several of them emphasised the contrast with the situation some years ago. Various interlocutors like prosecutors, bar associations or non-governmental organisations indicated that torture was now "exceptional" and there had been a "very significant decrease" of other forms of ill-treatment. In the report on the 2009 visit, the Committee was "pleased to note" the continuing "downward trend" in the incidence of ill-treatment, and apparently the great majority of detainees stated that they had been treated correctly while in police custody. In one part of the country (area of Diyarbakır), however, detainees allegedly had been subjected to beatings during transportation, blows with batons and threats of a sexual nature, as well as cigarette burns.

If we come back now to our initial question whether the prevention of torture in the Black Sea region is in a state of progress or stagnation, we see that we cannot give a clear, uniform answer to this question. None of the countries can be described as ideal as regards the treatment of detained persons, and we may say that each country finds itself within a process from the rule of ill-treatment to the rule of fair treatment of detainees. Having said this, it appears clearly from the

28 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, paras. 6, 10-11.

29 CPT, Report on the visit to Georgia in 2010, CPT/Inf (2010) 27, paras. 13-14.

CPT reports that in some countries there is more progress and in others more stagnation as regards the prevention of torture.

In the following section, I want to look into the reasons for such differences, and to find out about typical steps that a government may take which may prove effective in the fight against torture. In particular, in order to find out how such progress might be connected to the activities of the CPT, I want to look into the typical recommendations given by the CPT and the degree to which they have been implemented in the countries in question.

VI. Analysis of typical CPT recommendations and their implementation

A. *The CPT standards*

The CPT has developed a "corpus of standards" regarding the treatment of persons in police custody. This is a set of recommendations which was originally contained in the annual general reports of the CPT, and they are part of almost each and every country report in countries where there is a problem concerning torture and ill-treatment by the police, including the countries which are under review in this article.

The first condition – which is not in itself sufficient, but absolutely necessary – is that the political leadership of the country gives a clear, audible message to all subordinates that torture and ill-treatment of detained person is a totally unacceptable behaviour, and that it will have negative consequences for any perpetrator, including such of a criminal nature. In short, the government should proclaim a "zero tolerance" policy as regards torture³⁰.

30 CPT, 14th General Report, CPT/Inf (2004) 28, para. 42.

The key recommendations on prevention are based on the experience that the period immediately following arrest is when the risk of physical ill-treatment is greatest³¹. At this point in time, the police has full control and power over the detained person and torture happens when this power is abused.

Effective prevention of torture accordingly requires that the opportunities for such abuse are reduced as far as possible. For this purpose the CPT recommends that the law should limit police custody to a relatively short duration (72 hours or less), and that authorities ensure that such rules are respected in reality³².

During detention, any contact with the outside world or other persons not belonging to the police forces contributes to prevention. The CPT recommends that any detained person should be brought promptly before a judge who should have the right, and duty, to order appropriate investigation and other measures if a person complains about ill-treatment, or if other evidence of ill-treatment, like visible injuries, come to light³³.

In addition, the CPT recommends to governments to adopt three fundamental safeguards against ill-treatment: the right of detainees, from the very beginning of custody, to inform a family member or friend about their detention, the right to access to a lawyer, and the right to request a medical examination by a doctor. All detainees should be expressly informed about these rights. Any possibility for authorities to delay the exercise of one of these rights should be clearly defined and limited in time. In order to exclude any possibility

31 CPT, 6th General Report, CPT/Inf (1996) 21, para. 15; 12th General Report, CPT/Inf (2002) 15, para. 41.

32 Cf. CPT, Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 9, paras. 10-11; Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, paras. 9-11; Report on the visit to Georgia in 2010, CPT/Inf (2010) 27, para. 10; Report on the visit to Armenia in 2010, CPT/Inf (2011) 24, paras. 9-10; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, para. 13.

33 CPT, 12th General Report, CPT/Inf (2002) 15, para. 45; 14th General Report, CPT/Inf (2004) 28, para. 28.

of retaliation in the context of medical examinations, they should take part out of the hearing and normally out of the sight of policemen³⁴.

I will now look into the question as to what extent the CPT's recommendations have been implemented in the countries under review in this article.

B. Developments in Turkey (1990 - 2009)

The most important activities taken by the Turkish government on the recommendation of the CPT may be summarized as follows³⁵:

The Turkish government repeatedly issued public statements about a "zero tolerance" policy towards torture³⁶. Many legislative reforms have taken place. In particular, the maximum period of police custody has been considerably reduced. In the beginning in 1990, it was in some cases admissible to detain a person up to 30 days before he or she was brought before a judge³⁷. This period has been reduced to 1 to 4 days³⁸. The right to notify a relative or friend is now established in Turkish law and, as a rule, respected in reality³⁹. The right to immediate access to a lawyer has been introduced in law, and increasingly, though not always, the police is complying with this

34 CPT, 2nd General Report, CPT/Inf (92) 3, paras. 36-38; 6th General Report, CPT/Inf (96) 21, paras. 14-16; 12th General Report, CPT/Inf (2002) 15, paras. 41-44.

35 See, in particular, CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, para. 12.

36 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, para. 16.

37 CPT, Public Statement on Turkey, 15 December 1992, CPT/Inf (93) 1, paras. 29-30.

38 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, para. 13; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, para. 13.

39 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, paras. 13, 22; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, para. 19.

requirement⁴⁰. There is also a system of medical examinations at the beginning and at the end of police custody, however, its implementation apparently leaves something to be desired⁴¹.

In contrast to the previous situation, there are now detailed custody registers⁴². Public prosecutors conduct monitoring visits to police stations in order to examine the treatment of detainees⁴³. Higher sentences have been introduced for officials who have committed the crime of torture⁴⁴. Finally, intense efforts have been made with regard to the professional training of policemen⁴⁵.

C. Developments in Bulgaria (1995 - 2010)

In Bulgaria, reforms in police training have taken place, as well as other legislative reforms⁴⁶. Independent monitoring of police stations is carried out by the Bulgarian Helsinki Committee and other actors⁴⁷. Regional commissions on human rights and police effects have been established and are working⁴⁸. Fundamental safeguards (information on family, access to a lawyer and a doctor) are in place legally, though

40 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, paras. 13, 23; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, paras. 20-22 with critical remarks about the introduction, in 2006, of exceptions to this right.

41 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, paras. 13, 26; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, para. 23.

42 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, paras. 13, 21; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, paras. 29-30 with some critical remarks.

43 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, paras. 13, 27; Report on the visit to Turkey in 2009, CPT/Inf (2011) 13, para. 35, including critical remarks as to the thoroughness of some of these visits.

44 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, paras. 13, 14.

45 CPT, Report on the visit to Turkey in 2005, CPT/Inf (2006) 30, para. 29.

46 CPT, Report on the visit to Bulgaria in 2006, CPT/Inf (2008) 11, para. 15; Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 09, para. 14.

47 CPT, Report on the visit to Bulgaria in 2006, CPT/Inf (2008) 11, paras. 15, 36; Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 09, para. 14.

48 CPT, Report on the visit to Bulgaria in 2006, CPT/Inf (2008) 11, para. 15.

they are not always implemented⁴⁹. In particular the CPT noted that it "is still rare for detained persons to benefit from a lawyer during police custody"⁵⁰. In addition, the CPT was concerned that the exact time of apprehension was not always recorded properly by the police⁵¹.

D. Developments in Georgia (2001 - 2010)

In Georgia, the CPT found that the 72 hours time limit for police custody is now generally respected⁵². A number of new staff in the field of internal affairs has been recruited and trained, including in areas relevant for the prevention of torture⁵³. A code of police ethics has been adopted⁵⁴. Modern equipment for interrogation had been acquired, including video and audio equipment⁵⁵. Standardised custody records have been introduced, as well as a special system to monitor injuries of newly admitted persons to a detention establishment⁵⁶.

Furthermore the reliance on confessions in the criminal procedure has been reduced. Important procedural reforms have been introduced, in particular a rule that information obtained during police interviews cannot be the basis of a conviction unless the relevant statement is repeated by the person in court⁵⁷. Independent monitoring of the

49 CPT, Report on the visit to Bulgaria in 2006, CPT/Inf (2008) 11, paras. 26-33; Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 09, paras. 20-25.

50 CPT, Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 09, para. 22.

51 CPT, Report on the visit to Bulgaria in 2010, CPT/Inf (2012) 09, paras. 11, 25.

52 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 9; Report on the visit to Georgia in 2010, CPT/Inf (2010) 27, para. 10.

53 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 12; Report on the visit to Georgia in 2010, CPT/Inf (2010) 27, para. 15.

54 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 12.

55 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 12.

56 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 12; Report on the visit to Georgia in 2010, CPT/Inf (2010) 27, para. 32.

57 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 12.

police is carried out by the public defender's office and non-governmental organisations⁵⁸.

E. Developments in Ukraine and Armenia (1998 - 2010)

In its latest reports concerning Ukraine and Armenia, the CPT considered it necessary to remind the respective governments that the principle of cooperation (Article 3 ECPT) requires decisive action to be taken on the Committee's recommendations. The CPT expressed its concern that "a number of positive developments is overshadowed by little or no progress in several key areas", including the treatment of persons detained by the police⁵⁹. While some developments were appreciated by the CPT, like the independent investigation of one particular case of alleged ill-treatment and death in custody (Armenia⁶⁰) and efforts in the field of training and supervision (Ukraine⁶¹), the Committee expressed its concern about other issues, such as the fact that in a number of cases the time of deprivation of liberty was not properly recorded in the custody register, and that such registers contained inaccurate or misleading information⁶². The CPT saw "hardly any improvement" concerning the fundamental safeguards against ill-treatment, including the right to notify a relative or third person of custody, the right to have access to a lawyer and a doctor, as well as the right to be informed about these rights⁶³.

58 CPT, Report on the visit to Georgia in 2007, CPT/Inf (2007) 42, para. 12; Report on the visit to Georgia in 2010, CPT/Inf (2010) 27, para. 9.

59 CPT, Report on the visit to Armenia in 2010, CPT/Inf (2011) 24, para. 6; similar words in the Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, para. 6.

60 CPT, Report on the visit to Armenia in 2010, CPT/Inf (2011) 24, paras. 21-22. See however the critical remarks about other investigations, paras. 23-26.

61 CPT, Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, para. 14.

62 CPT, Report on the visit to Armenia in 2010, CPT/Inf (2011) 24, para. 37; Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, paras. 10, 33.

63 CPT, Report on the visit to Armenia in 2010, CPT/Inf (2011) 24, paras. 28-36; similar criticism in the Report on the visit to Ukraine in 2009, CPT/Inf (2011) 29, paras. 26-32.

VII. Summing up: what works?

It was only possible, in the context of this paper, to give a sketchy overview of the developments in the region. For a comprehensive picture, a much more detailed analysis would be required. Some caveats are necessary: It is assumed that CPT reports are reflecting reality, at least to a large extent, but of course there can be no guarantee that this is always the case, that the CPT sees everything, that all available information in one particular country finds its way into one of the CPT reports. Even if in one country some progress is achieved as regards the treatment of detainees by the police, other problems, like prison overcrowding, may persist.

Still, even within these limitations, it emerges from our brief overview that there is, in all likelihood, a correlation between the extent to which CPT recommendations are implemented, and the subsequent improvements in the human rights situation in a given country. A variety of effective measures may be taken by governments in order to prevent torture. Public statements on "zero tolerance" are easy to implement, and they are relevant. They show that the government has recognised the treatment of detainees as a real problem, and they make clear that there is no acquiescence by the government as regards the use of torture. Another rather relatively simple way of preventing ill-treatment is to reduce the admissible period of police custody in the law and to make sure that such maximum period is effectively respected.

It appears that fundamental safeguards (information of the outside world, access to a lawyer and a doctor) can be very useful in preventing torture. These safeguards are not directly related to the ill-treatment of detainees, but their implementation creates a framework where it is much more difficult to carry out such treatment. Of course, the prohibition of torture and its prevention must be an important part of police training.

It is clear from this paper that the problem of torture and other ill-treatment has not yet been solved in the Black Sea Region. It shows,

however, that progress can be achieved: torture is a part of reality, but not a necessary one. Preventing torture effectively is not an ideal, but an imperative, even if it is sometimes difficult and time-consuming. The activities of the CPT and other institutions involved in the fight against torture show that torture and its prevention can be influenced by government policy. Governments may take a choice. They may choose not to subject themselves to international prevention mechanisms, or to ignore their recommendations, and their country is likely to remain a torture state. They may choose to implement such recommendations, to improve the situation of persons deprived of their liberty, and to prevent those willing to use torture from doing so. They may take a choice in favour of civilisation and humanity.