

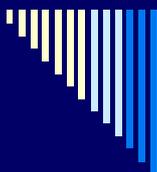
CPT European Committee for the Prevention of Torture
and Inhuman or Degrading Treatment or Punishment



The CPT standards and practice of monitoring immigration detention and forced return

Prof. Dr. Anton van Kalmthout

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Aim of the CPT

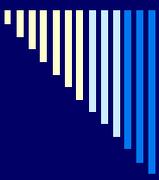
Preventing torture and inhuman or
degrading treatment of punishment
(ill-treatment) of persons deprived of their
liberty in Europe

Working Area of the CPT



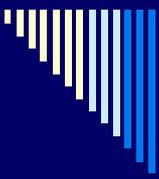
What are the instruments of the CPT to prevent torture and other forms of ill-treatment?

- A. Acting as monitoring body,
- B. Acting as standard setting body,
- C. Acting as advisory body in cooperation with other Council of Europe/EU/UN or national bodies, e.g.:
Penological Council, Frontex, ECtHR, SPT, NPM's, CoE Commissioner/UN Special rapporteur on Human rights.



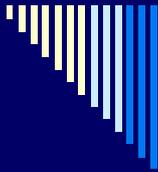
CPT as monitoring body -1-

- The CPT organises visits to **places of detention**, in order to assess how persons deprived of their liberty are treated. These places include not only **penitentiary institutions** but also **transit and international “zones” at airports, police stations, holding and detention centres for immigration detainees, airplanes** carrying out removal flights, etc.
- **CPT delegations have unlimited access** to places of detention and all files and documents (even medical files). They have the right to move inside such places without restriction, to interview persons deprived of their liberty in private, and to communicate freely with anyone who can provide information.
- Visits are carried out by **multi-disciplinary** teams (including medical/psychiatric experts).



CPT as monitoring body -2-

- If necessary, the Committee may immediately communicate **observations** to the competent authorities of the Party concerned.
- Visits are in majority **unannounced**.
- After each visit, the CPT sends a detailed **report** to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information. The CPT also requests a detailed **response** to the issues raised in its report. These reports and responses form part of the **ongoing dialogue** with the States concerned.
- If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide by a majority of two-thirds of its members to make **a public statement** on the matter (10,2 procedure).



CPT as standard setting Body

*In its 25 year of operating the CPT has developed a wide set of standards that according to the CPT should be the minimum norms for the CoE member states to prevent ill-treatment when depriving a person of his liberty.

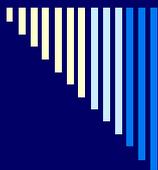
*These standards are no static but dynamic, living instruments.

Standards are primarily based on:

- 1) CPT's own experience and findings during its **monitoring activities**,

but are also influenced by:

- 2) other **international guiding principles, jurisprudence of the ECtHR and scientific research.**



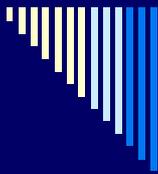
CPT standards on immigration detention

CPT standards on immigration detention can be found in:

- 1) **Country Reports, send to the governments and published on the website:** www.cpt.coe.int,

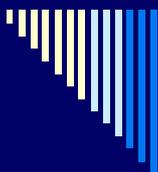
- 2) **CPT's annual General Reports**

- CPT 7th General Report 1997 on "**Foreign nationals detained under aliens legislation**",
- CPT 13th General Report 2003 on "**deportation of foreign nationals by air**",
- CPT 19th General Report 2009 on "**Safeguards for irregular migrants deprived of their liberty**".



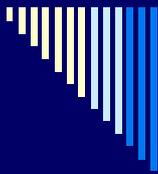
CPT standards on immigration detention

1. The CPT Standards on immigration detention have to be considered as complementary to the general standards that apply to all forms of deprivation of liberty,
2. The specific standards regarding immigration detention can be divided in standards/guiding principles related to a.o.:
 - a) Detention facilities and detention circumstances/conditions,
 - b) Basic rights at the initial stage of deprivation of liberty,
 - c) Safeguards and basic rights during deprivation of liberty,
 - d) Specific health related safeguards and additional safeguards for children,
 - e) Specific safeguards before removal/expulsion,
 - f) Safeguards in the context of expulsion procedures,
 - g) Risks of ill-treatment after expulsion



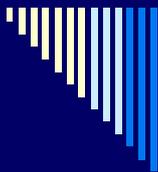
Example of standards: detention facilities and detention circumstances/conditions

- 1) **Point of entry holding facilities, airport lounges and police stations** are in general **inadequate to accommodate persons**, more in particular for extended days,
- 2) **Also a prison is by definition not a suitable place** in which to detain someone who is never convicted nor suspected of a criminal offence,
- 3) If detention is deemed needed, they should be **accommodated in centres specifically designed for that purpose**, avoiding as far as possible **any impression of a carceral environment** and offering **material conditions and a regime** appropriate to their legal situation and staffed **by suitably-qualified personnel**,
- 4) **Conditions of detention** should reflect **the nature of their deprivation of liberty**, with **limited restrictions** in place and a **varied regime of activities**. For example, detained irregular migrants should have every opportunity to remain in **contact with the outside world** (telephone/visits) and should be restricted in their freedom of movement within the detention facility as little as possible.



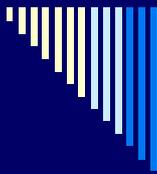
Example of standards: Basic rights at the initial stage of deprivation of liberty

- 1) Detained irregular migrants should, from the very outset of their deprivation of liberty, enjoy **three basic rights**, in the same way as other categories of detained persons. These rights are: a) to have **access to a lawyer**, 2) to have **access to a medical doctor** and 3) to be able to **inform a relative or third part of one's choice** about the detention measure,
- 2) When irregular migrants are not able to appoint and pay for a lawyer themselves, they should **benefit from access to legal aid**,
- 3) **All newly arrived detainees** should be **promptly examined by a doctor or by a fully-qualified nurse reporting to a doctor**.
- 4) It is essential that newly arrived irregular migrants be immediately **given information on these rights in a language they understand**. To this end, they should be systematically provided with a document, available in the languages most commonly spoken, explaining the procedure applicable to them and setting out their rights in clear and simple terms.



Example of standards: Safeguards and basic rights during deprivation of liberty -1-,

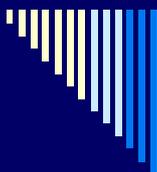
- 1) Every instance of deprivation of liberty should be covered by a **proper individual detention order**, readily available in the establishment where the person concerned is being held,
- 2) Detained irregular migrants should benefit from an **effective legal remedy** enabling them to have the lawfulness of their deprivation of liberty decided speedily by a judicial body. This judicial review should entail **an oral hearing with legal assistance, provided free of charge** for persons without sufficient means, and interpretation (if required). Moreover, detained irregular migrants should be expressly informed of this legal remedy. The need for continued detention should **be reviewed periodically by an independent authority**.
- 3) Prolonged detention without a time limit and with unclear prospects for release, could easily be considered as amounting to inhuman treatment.
- 4) If **members of the same family** are deprived of their liberty under aliens legislation, every effort should be made **to avoid separating** them.



Example of standards: Safeguards and basic rights during deprivation of liberty -2-

4) It is in the interests of both irregular migrants and staff that there be **clear house rules** for all detention facilities, and copies of the rules should be made available in a suitable range of languages. The house rules should address the widest range of issues, rights and duties which are relevant to daily life in detention. They should also contain disciplinary procedures and provide detainees with the right to be heard on the subject of violations that they are alleged to have committed, and to appeal to an independent authority against any sanctions imposed. Without such rules, there is a risk of an unofficial (and uncontrolled) disciplinary system developing.

5) **Independent monitoring of detention facilities** for irregular migrants is an important element in the prevention of ill-treatment and, more generally, of ensuring satisfactory conditions of detention. To be fully effective, monitoring visits should be both **frequent and unannounced**. Further, monitoring bodies should be empowered **to interview irregular migrants in private** and should **examine all issues related to their treatment** (material conditions of detention, custody records and other documentation, the exercise of detained persons' rights, health care, etc.).

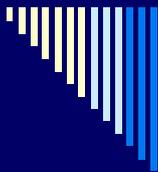


Example of standards: Specific health related safeguards,

1) **The assessment of the state of health** of irregular migrants is an essential responsibility in relation to each individual detainee and in relation to a group of irregular migrants as a whole. The mental and physical health of irregular migrants may be negatively affected by previous traumatic experiences, the loss of accustomed personal and cultural surroundings and uncertainty about one's future,

2) **As a minimum, a person with a recognised nursing qualification must be present on a daily basis** at all centres for detained irregular migrants. Such a person should, in particular, perform the initial medical screening of new arrivals (in particular for transmissible diseases, including tbc), receive requests to see a doctor, ensure the provision and distribution of prescribed medicines, keep the medical documentation and supervise the general conditions of hygiene.

3) Medical confidentiality should be observed in the same way as in the outside community; in particular, irregular migrants' medical files should not be accessible to non-medical staff. All **medical examinations** should be **conducted out of the hearing** and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial staff.

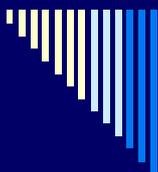


Example of standards:

Additional safeguards for children -1-

- 1) The CPT considers that every effort should be made **to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor**. Detention of children, including unaccompanied and separated children, is rarely justified and can certainly not be motivated solely by the absence of residence status.
- 2) When, exceptionally, a child is detained, the deprivation of liberty should be **for the shortest possible period of time**; all efforts should be made to allow the immediate release of unaccompanied or separated children from a detention facility and their **placement in more appropriate care**.
- 3) As soon as possible a professionally qualified person should **conduct an initial interview, in a language the child understands**. An assessment should be made of the child's **particular vulnerabilities, including from the standpoints of age, health, psychosocial factors and other protection needs**, including those deriving from violence, trafficking or trauma. Unaccompanied or separated children deprived of their liberty should be provided with prompt and free access to legal and other appropriate assistance, including the **assignment of a guardian or legal representative**. Review mechanisms should also be introduced to monitor the ongoing quality of the guardianship.

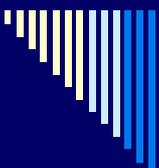
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Example of standards:

Additional safeguards for children -2-

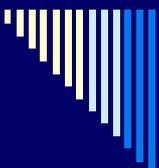
- 4) Steps should be taken to **ensure a regular presence of, and individual contact with, a social worker and a psychologist** in establishments holding children in detention. Mixed-gender staffing is another safeguard against ill-treatment; the presence of **both male and female staff** can have a beneficial effect in terms of the custodial ethos and foster a degree of normality in a place of detention. Children deprived of their liberty should also be offered a **range of constructive activities** (with particular emphasis on enabling a child to continue his or her education).
- 5) In order to limit the risk of exploitation, special arrangements should be made for living quarters that are suitable for children, for example, by **separating them from adults**, unless it is considered in the child's best interests not to do so. This would, for instance, be the case when children are in the company of their parents or other close relatives. In that case, every effort should be made to avoid splitting up the family.



Example of standards:

Safeguards before removal

- 1) Irregular migrants should have **ready access to an asylum procedure (or other residence procedure)** which guarantees both confidentiality and an objective and independent analysis of the human rights situation in other countries; an **individual assessment of the risk of ill-treatment** in case of deportation to the country of origin or a third country should be carried out. Limiting the time-limit for submitting an application for asylum to a number of days from the date of arrival in the country or in a detention facility or not considering applications submitted after the deadline increases the possibility of persons being sent to a country where they run a real risk of being subjected to torture or other forms of ill-treatment.
- 1) In this context, the CPT has also grave misgivings about the policy adopted by certain countries of intercepting, at sea, boats transporting irregular migrants and returning the persons concerned to North or North-West Africa. A practice with similar implications allegedly takes place at certain European land borders.
- 3) **Removal orders** should be issued in each and every case based on a decision in accordance with international human rights obligations. The removal order should be handed over in writing to the person concerned. Moreover, there should be the possibility **to appeal against the order**, and the deportation should not be carried out before the decision on any appeal has been delivered. The **assistance of a lawyer and an interpreter** should be guaranteed also at this stage of the procedure.

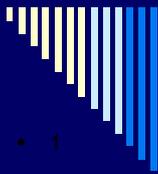


Example of standards:

Safeguards in the context of expulsion procedures

- 1 -

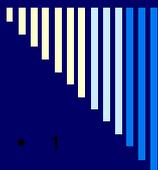
- 1) It is entirely unacceptable for persons subject to a deportation order to **be physically assaulted** as a form of persuasion to board a means of transport or as a punishment for not having done so.
- 2) If staff are, on occasion, obliged to use force and means of restraint in order to effectively carry out the deportation, the **force and the means of restraint used should be no more than is reasonably necessary**.
- 3) The use of force and/or means of restraint capable of **causing positional asphyxia** should be avoided whenever possible and any such use in exceptional circumstances must be the subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned. For this reason the CPT has systematically recommended **an absolute ban on the use of means likely to obstruct the airways (nose and/or mouth) partially or wholly**.
- 4) Operations involving the deportation of immigration detainees must be preceded by **measures to help the persons concerned organise their return, particularly on the family, work and psychological fronts**.
- 5) It must be possible to **remove immediately any means restricting** the freedom of movement of the deportee, upon **an order from the crew**.



Example of standards: Safeguards in the context of expulsion procedures

-2-

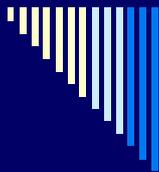
- 6) Security considerations can never serve to justify escort **staff wearing masks during deportation** operations. This practice is highly undesirable, since it could make it very difficult to ascertain who is responsible in the event of allegations of ill-treatment.
- 7) **The use of incapacitating or irritant gases to bring recalcitrant detainees under control** in order to remove them from their cells and transfer them to the aircraft entails manifest risks to the health of both the detainee and the staff concerned. Staff should be trained in other control techniques (for instance, manual control techniques or the use of shields) to immobilise a recalcitrant detainee.
- 8) Certain incidents that have occurred during deportation operations have highlighted the importance of allowing immigration detainees to **undergo a medical examination before the decision to deport them is implemented**. This precaution (**so called fit-to-fly certificate**) is particularly necessary when the use of force and/or special measures is envisaged.
- 9) Similarly, all persons who have been the subject of an **abortive deportation operation must undergo a medical examination** as soon as they are returned to detention (whether in a police station, a prison or a holding facility specially designed for foreigners).



Example of standards: Safeguards in the context of expulsion procedures

-3-

- 10) The **administration of medication** to persons subject to a deportation order must **always be carried out on the basis of a medical decision** taken in respect of each particular case. Save for clearly and strictly defined exceptional circumstances, medication should only be administered **with the informed consent of the person concerned**.
- 11) **Escort staff must be selected with the utmost care and receive appropriate, specific training** designed to reduce the risk of ill-treatment to a minimum.
- 12) The importance of **establishing internal and external monitoring systems** in an area as sensitive as deportation operations by air cannot be overemphasised.
- 13) Deportation operations must be **carefully documented**.



Impact of CPT recommendations and standards

1. Acceptance of recommendations by the Member States
2. Jurisprudence of the European Court of Human Rights
3. Impact on CoE and EU bodies
4. Influence on UN-bodies
5. Influence on national inspectorates/NPM's