

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

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Improving selection procedures for CPT members

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Erol Aslan Cebeci, Turkey, Group of the European People's Party

Summary

The European Committee for the Prevention of Torture (CPT), mandated to make periodic and ad hoc visits in all places of detention, makes an important practical contribution to the eradication of torture and inhuman and degrading treatment in all member states of the Council of Europe.

The CPT's continued authority depends on the moral standing, professional qualifications and personal implication of all its members – one from each contracting party.

The Committee on Legal Affairs and Human Rights finds that the procedure for the appointment of CPT members can be enhanced in practice by improving both

- national selection procedures, by ensuring their transparency and strengthening mechanisms designed to lead to the nomination of the most qualified candidates, and
- the procedure within the Assembly, by improving the information on the basis of which the Sub-Committee on Human Rights bases its recommendation, and by giving it the possibility, in appropriate cases, to interview short-listed candidates.

In the draft resolution, the Assembly Committee makes concrete suggestions to improve the selection procedure and to clarify criteria for the selection of candidates.

A. Draft resolution

1. The Parliamentary Assembly, recalling its Resolution 1248 (2001) and Recommendation 1323 (1997), stresses the high importance it attaches to the work of the Council of Europe's Committee for the Prevention of Torture ("CPT"), a monitoring body set up by virtue of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (herein after "the Convention"). This body, mandated to make periodic and ad hoc visits in all places of detention, makes an important practical contribution to the eradication of torture and inhuman and degrading treatment in all member states of the Council of Europe.

2. The CPT's continued authority depends on the moral standing, professional qualifications and personal implication of all its members – one from each contracting party.

3. The procedure of designation of CPT members is in part laid down in the Convention. Members are appointed by the Committee of Ministers following a proposal by the Bureau of the Assembly which, in turn, has delegated the examination of the shortlist of the three candidatures submitted by national delegations to the Sub-Committee on Human Rights of the Committee on Legal Affairs and Human Rights.

4. Without needing to amend the Convention, the procedure for the appointment of CPT members can be enhanced in practice by improving:

4.1. national selection procedures, by ensuring their transparency and strengthening mechanisms designed to lead to the nomination of the most qualified candidates;

4.2. the procedure within the Assembly, by improving the information on the basis of which the Sub-Committee on Human Rights bases its recommendation, and by giving it the possibility, in appropriate cases, to interview short-listed candidates;

4.3. communication between the Assembly and the Committee of Ministers.

5. To facilitate the selection of appropriate candidates at national level, the Assembly also wishes to clarify certain issues pertaining to different selection criteria.

6. The Assembly therefore:

6.1. invites all member states to review their national selection procedures in the light of the results of the comparative analysis carried out by the Rapporteur, and in particular to introduce:

6.1.1. public calls for candidatures;

6.1.2. consultations on suitable candidates with relevant state and non-governmental bodies (for example, Ministries of Justice, Interior and Health, prison administration, academic institutions and NGOs active in the fight against torture and in assistance to prisoners and inmates of psychiatric institutions);

6.1.3. interviews with short-listed candidates, to assess their qualification, motivation and availability, as well as language skills, possibly carried out by an independent panel of experts;

6.1.4. an active role, in the final phase of the process of pre-selection, for the national delegation to the Parliamentary Assembly;

6.1.5. the systematic use of the standard form curriculum vitae designed to provide all relevant information on the candidates to national authorities as well as to the different bodies of the Council of Europe involved in the selection procedure;

6.2. encourages its Sub-Committee on Human Rights to:

- 6.2.1. systematically invite the heads of national delegations to its meetings dealing with lists of candidates transmitted, in order to allow them to provide additional information on candidates and national selection procedures followed;
 - 6.2.2. collect, through its Chair, objective facts such as availability or language skills relating to the work of incumbents seeking re-election, in particular from the CPT's Bureau;
 - 6.2.3. reject lists of candidates when relevant information is missing even with regard to some candidates only, and when not all candidates fulfil the minimum requirements under the Convention;
 - 6.2.4. interview candidates on a case-by-case basis, if it finds that information provided in the curriculum vitae or by the Chair of the national delegation concerned is not sufficient in order to enable it to make a well-based choice, or if the national pre-selection procedures are considered not to be satisfactory (cf. paragraphs 6.1.1.-6.1.4. above);
 - 6.2.5. attach particular importance to the preferences expressed by national delegations when the national pre-selection procedures were satisfactory (cf. paragraphs 6.1.1.-6.1.4. above);
 - 6.2.6. give reasons, in a succinct form, for its recommendations to the Bureau of the Assembly;
- 6.3. invites its Bureau to provide succinct reasons for its recommendation to the Committee of Ministers;
7. As regards certain eligibility criteria for CPT candidates, the Assembly wishes to clarify that:
- 7.1. the independence of CPT members is not put into question by the mere fact that they are civil servants or otherwise employed in the public-sector. However, persons who are, at central government level, in charge of the definition of national policies in the sector concerned and who could be held politically responsible for any shortcomings, ought not to be members of the CPT;
 - 7.2. lists of candidates shall include, as a rule, at least one man and one woman; any exceptions from this rule must be duly justified, with reference to the purposes of the Convention and the specific situation of the country concerned. Unless the Sub-Committee on Human Rights decides by a two-thirds majority to accept the justification given, a list that does not include at least one man and one woman shall be rejected by the Bureau;
 - 7.3. in the case of dual nationality of a candidate, effective nationality for the purposes of the Convention shall be that of the country in which the candidate exercises his or her political rights;
 - 7.4. the Assembly considers Article 4(3) of the Convention, which precludes the presentation of candidates not having the nationality of the State presenting the list as outdated and encourages the Committee of Ministers to consider taking a unanimous decision to cease applying it;
 - 7.5. bearing in mind the time-consuming and physically demanding nature of the CPT's on-site visits, candidates should have sufficient time available for this work and possess the requisite physical capacity.

B. Explanatory memorandum, by Mr Erol Aslan Cebeci, Rapporteur

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I. Introduction

i. Proceedings to date

1. At its meeting on 17 December 2004, the Sub-Committee on Human Rights approved the main points of a memorandum¹ on the process of the appointment of the members of the European Committee for the Prevention of Torture ("CPT") and its possible evolution and invited its Chairperson to continue looking into other ways of improving the procedure for selecting the members of the CPT. One of the proposals in this regard was to look into the possibility of interviewing the CPT candidates.

2. A motion for a resolution by Mr Pourgourides and others on "Improving CPT selection procedures"² was transmitted to the Committee on Legal Affairs and Human Rights for report on 18 March 2005. On 6 April 2005, the Committee appointed Mr Eker as Rapporteur. At its meeting on 14 September 2005, it held a discussion on the basis of an introductory memorandum presented by the Rapporteur (AS/Jur (2005) 44).

¹ AS/Jur/DH (2004) 2.

² Cf. Doc 10471.

ii. *Summary of the current CPT appointment procedure*

3. The appointment procedure for the members of the CPT³ currently involves the following stages:

a. request addressed by the Secretary General of the Parliamentary Assembly (SGPA) to the Chairpersons of the Assembly's national delegations to nominate three candidates;

b. transmission of the three candidatures, through national delegations, to the Bureau of the Assembly, following an internal selection carried out at the national level;

c. review of the candidatures by the Sub-Committee on Human Rights, followed by the approval of a recommendation listing the three candidates in order of preference or inviting the national delegation to submit a new list if the proposed candidates do not meet the conditions laid down in the European Convention for the Prevention of Torture and Inhuman or Degrating Treatment of Punishment (herein after "the Convention"), and subsequent endorsement by the Committee on Legal Affairs and Human Rights;

d. transmission of the recommendation on the candidatures by the Committee on Legal Affairs and Human Rights to the Bureau of the Assembly, which then decides on its transmission to the Committee of Ministers or invites the national parliamentary delegation to submit a new list;

e. election of the CPT member by the Committee of Ministers.

iii. *Weaknesses of the existing selection procedure*

4. The existing selection procedure has not yet produced a satisfactory result in terms of a well-balanced composition of the CPT.⁴ There is scope for improvement at virtually every stage of the procedure described above.

5. In stage (a), the selection criteria and current needs of the CPT in terms of the necessary balance of professional qualifications, gender representation etc. may not be sufficiently clear in the communication addressed to national delegations.

6. In stage (b), national selection procedures are often murky. As the survey conducted by the Rapporteur has shown, only a minority of countries provide for public calls for candidatures and transparent selection procedures allowing for the selection of the best-suited candidates.

7. Stage (c) has repeatedly given rise to the Sub-Committee on Human Rights declaring itself dissatisfied with the fact that interviews with candidates are not foreseen, especially as information provided in curriculum vitae is often insufficient. The quality of the discussion in the Sub-Committee also suffers from the absence of well-defined, generally applicable selection criteria.

8. Stage (d) does not at present involve any explanation, to the Committee of Ministers, of the reasons motivating the Assembly's recommendation, even when the order of preference differs from the one that may have been indicated by national delegations.

9. The existing possibility for the Committee of Ministers to deviate from the order of preference indicated by the Assembly may give rise to a lack of understanding between the two bodies, especially in view of the lack of explanation of the Assembly's choice (paragraph 8 above).

10. The present report makes practical proposals aimed at improving all stages of the selection procedure, within the limits of the existing Convention.

³ Cf. Resolution 1248 (2001) and Recommendation 1323 (1997) on the composition of the European Committee for the Prevention of Torture.

⁴ In its Resolution 1248 (2001), the Assembly found that the "current composition of the CPT is not balanced, either from the point of view of the representation of women, or from that of the different professional backgrounds required of its members".

II. Considerations to be taken into account in proposing modifications to the existing procedure

i. Political considerations

11. The CPT is widely considered as a showcase example of concrete achievement of the Council of Europe in its core field of competence – the protection of human rights. Maintaining the CPT's excellent results – preventing persons from being tortured or otherwise being treated inhumanely and improving the conditions in which persons are deprived of their liberty – crucially depends on maintaining the professionalism and high moral standing of the CPT members.

12. The high standing of CPT members needs to be upheld for the future by appropriate selection procedures. According to the current CPT President Sylvia Casale,⁵ the increased involvement of the Parliamentary Assembly, as demonstrated by the Sub-Committee's willingness to interview candidates, would serve this purpose.

13. But there may also be a political risk for the Assembly in increasing its investment in the selection process in the face of the unfettered power of the Committee of Ministers to reject its recommendations, even when they are based on a strengthened selection process including interviews of candidates.

ii. Statutory constraints

14. The election of members by the Committee of Ministers (stage (e), paragraph 3 above) is mandated by the Convention itself: see Article 5 of the Convention.

15. The CPT appointment procedure is in some respects the mirror image of that for the election of the judges of the European Court of Human Rights, where candidatures are submitted to the Assembly by the Parties to the Convention. In the latter case, candidates are interviewed by the Ad hoc Sub-Committee on the Election of Judges. Judges are then elected by the Assembly on the basis of the Sub-Committee's recommendation transmitted by the Committee on Legal Affairs and Human Rights. The procedure does, however, fundamentally differ in that it is the Committee of Ministers and not the Assembly which elects persons to sit on the CPT.

iii. Practical considerations

16. According to the schedule adopted by the Committee of Ministers at its meeting on 21 February 2002,⁶ every other year, starting in 2006, some 20 countries will be called upon to renew their members on the CPT, involving the examination by the Sub-Committee of some 60 candidates each time. If interviews of the candidates were held, on the basis of a 20-minute interview per candidate, plus the time needed for deliberation, some 20 hours of meeting time would be required every other year.

17. At present, the Sub-Committee meets up to four times a year for one hour during the part-sessions in Strasbourg, and once or twice a year for short meetings before or after a plenary committee meeting. Interviewing CPT candidates would thus require, every other year, the Sub-Committee's current total meeting time to be doubled. In a context of "zero real growth", this needs to be given consideration, not to mention the extra funds needed to cover the travel and subsistence expenses for candidates called to an interview.

III. Specific proposals to improve the selection procedure for CPT members

18. In the light of the Committee's reaction to the proposals submitted for discussion at the September 2005 meeting, the Rapporteur suggests the following improvements:

⁵ Statement before the Committee on Legal Affairs and Human Rights on 24 June 2004.

⁶ CM(2002)7, see Appendix I.

i. Strengthening national pre-selection procedures

19. Longer-term benefit for the quality of candidatures would invariably be derived from an improvement of national selection procedures. In accordance with the Committee's wishes, I asked national delegations to provide information on the modalities followed for the selection of CPT candidates.

20. The answers received⁷ show that there is still much room for improvement in the national pre-selection procedures. Among the thirty countries participating in the survey, only four (Azerbaijan, Belgium, Georgia and the United Kingdom) organise some kind of a public call for candidatures (either through the media, or through relevant institutions and NGO's). Interviews with candidates are also organised only in less than half of the member countries participating in the survey.⁸ On a more positive note, some informal consultation with relevant institutions (ministries of justice and/or of the interior, universities, professional organisations or the like) is foreseen by a majority of countries having replied,⁹ and in most countries, the national delegation to the Parliamentary Assembly plays a substantial role in the pre-selection process, beyond acting merely as a conduit of transmission.¹⁰ Only in five countries¹¹ are consultations with NGOs foreseen. The one country whose procedure stands out as a model in terms of transparency and guarantee of the selection of the most qualified individuals is in my opinion the United Kingdom. Following a call for candidatures, disseminated among Government departments, independent expert bodies and NGOs working on criminal justice and torture issues, candidates are interviewed by an independent selection panel including both governmental and non-governmental experts in the field. The three best candidatures are then considered by the Foreign Secretary and the United Kingdom delegation to PACE, which then submits them to the Assembly. It is therefore not a surprise that this process has worked well in that it has led to the appointment of Ms Silvia Casale, whose professional and human qualities have made her a highly respected and successful chairperson of the CPT.

21. Whilst there is no statutory basis for imposing a uniform procedure, the Assembly should be allowed to formulate the following recommendations based on the experience of the United Kingdom and some other member countries, aimed in particular at increasing the transparency of procedures, and reducing the risk of favouritism.

22. The weight attached by the Sub-Committee on Human Rights to the choice of candidates submitted by national delegations will no doubt depend on the quality (transparency and fairness) of national pre-selection procedures. Basic information on the national selection procedure used should therefore be provided by the head of the national delegation in the letter transmitting the candidatures.

a. Public call for candidatures

23. As is the case in a number of countries, there should be a public call for candidatures, for example in the official journal, and/or relevant professional publications.

b. Panel for pre-selection

24. Candidates manifesting themselves following the call for candidatures should be pre-selected by a panel of recognised independent experts in the field, appointed for this purpose by the Minister in charge of the prison system.

⁷ My thanks go to the delegations of Andorra, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, Poland, Portugal, Romania, the Russian Federation, Slovenia, Sweden, Switzerland, Turkey and the United Kingdom, who have answered the request sent by the Chairperson on my behalf.

⁸ Andorra, Azerbaijan, Czech Republic, Finland, Georgia, Germany, Hungary, Ireland, Lithuania ("if necessary"), Luxembourg ("if necessary"), the Russian Federation, Sweden, and the United Kingdom.

⁹ Azerbaijan, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Liechtenstein, Poland, the Russian Federation, Slovenia, Switzerland, United Kingdom.

¹⁰ Andorra, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Italy, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Portugal, Sweden, Switzerland, Turkey, and the United Kingdom.

¹¹ Cyprus, the Czech Republic, Denmark, Estonia, and the United Kingdom.

25. The panel ought to be in a position to examine carefully the applicants' curricula vitae and interview all candidates who fulfil the minimum requirements under the Convention. It will then be up to the panel to select three candidates for submission to the Council of Europe, with or without expressing its preference in the form of a ranking. National delegations to the Parliamentary Assembly should either be represented on the pre-selection panel, or be informed by the panel of the reasons for its choice, as it will be for the national delegations to explain this choice to the Sub-Committee on Human Rights.

26. In order to facilitate the pre-selection process, national delegations of countries whose CPT membership comes up for renewal shall be provided with clear and timely information on selection criteria and procedures by members of the Assembly and CPT secretariats.

c. More complete information on candidates – insisting on a standard form CV

27. After a strengthened and more transparent national selection procedure, an improvement of the existing situation could be achieved by urging national delegations to provide more complete information on candidates, in a more structured way, by insisting on the use of the standard model for the presentation of the *curriculum vitae*, which is routinely transmitted as an appendix to the letter of the Assembly's Secretary General addressed to heads of national delegations. Such requests should also be made available to national selection panels.

28. Failure to provide sufficient information on each candidate should systematically lead to a rejection of the whole list by the Bureau – as was done several times in the past. This should be the case even if information is incomplete for only one of the candidates. Otherwise, there is a risk of manipulation of the Assembly's choice.

ii. Improving the procedure before the Sub-Committee on Human Rights

a. A briefing on the CPT's current needs

29. A briefing by the Executive Secretary of the CPT, orally or in the form of a short note, in terms of professional profiles in short supply that could be covered by new CPT members may be helpful to the Human Rights Sub-Committee in establishing its preferences among candidates with different professional backgrounds. The Executive Secretary should of course not be present when the Sub-Committee deals with the merits of individual candidates.

b. Need to interview the candidates?

30. On the one hand, interviews would provide an obvious improvement in that Sub-Committee members would be able to ask questions to the candidates themselves. This would fill any gaps in the information provided in the curriculum vitae, and Sub-Committee members would gain a personal impression of the personality, motivation, and – not least – language skills of the candidates. The Chair of the CPT, Sylvia Casale, has recently made public her view that at some stage of the selection procedure before the Council of Europe, candidates should be interviewed.

31. On the other hand, the investment of resources would be considerable, the most important being of course the time of Committee members.¹² The possible use of modern communication techniques that I looked into at the request of the Committee would reduce the expenditure of financial resources by minimising travel costs, but the burden on members' time budget would remain essentially unchanged. The political risk for the Assembly is also not negligible.¹³

32. On balance, the Rapporteur suggests a compromise solution along the following lines:

– Candidates from countries using a transparent national selection procedure, especially one that involves public calls for candidatures and interviews of candidates by a panel of independent experts in principle need not be interviewed by the Sub-Committee on Human Rights.

¹² Cf. above paragraph 16 (practical considerations).

¹³ Cf. above paragraph 13 (Committee of Ministers still in charge of the appointment/election).

– Candidates from other countries may be invited to be interviewed by the Sub-Committee on Human Rights on a case-by-case basis, if the Sub-Committee finds that information provided in the curriculum vitae or by the Chair of the national delegation concerned is not sufficient in order to enable the Sub-Committee to make a well-based choice.

c. Clarifying and making more explicit the selection criteria

33. Clarifying and making more explicit the selection criteria applied by the Sub-Committee on Human Rights in establishing its preferences would help rationalise and streamline the Sub-Committee's discussions and decisions. It would also help national delegations to identify appropriate candidates, and facilitate the decision-making process in the Committee of Ministers.

34. Substantive criteria for the selection of CPT members laid down in the Convention are rather general: CPT members must be "persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention"¹⁴. They are to "serve in their individual capacity", must be "independent and impartial" and "serve the Committee effectively"¹⁵. The Explanatory Report¹⁶ specifies that members "do not have to be lawyers", and that it would be "desirable that the Committee should include members who have experience in matters such as prison administration and the various medical fields relevant to the treatment of persons deprived of their liberty".

35. The Assembly, in its Recommendation 1323 (1997), invited the Committee of Ministers to "pay particular attention, when electing members of the CPT, to the criteria of professional background, gender and age, in order to ensure a more balanced composition of the committee, and, in particular, a greater participation of prison specialists and forensic scientists, as well as an increased number of women among its members; the criterion of availability should also be emphasised in order to ensure the committee's effectiveness."¹⁷

36. In the light of the discussion at the September 2005 meeting of the Committee on the basis of the introductory memorandum, the Rapporteur suggests the following clarifications with regard to issues that have arisen in the examination of candidatures in the Sub-Committee:

- Independence and impartiality of public officials

37. The question has arisen whether public officials should be excluded *ipso facto* as candidates for the CPT on the ground that they may lack the necessary independence or impartiality.

38. Experts in the forensic field, or in questions relating to prison administration, are typically career civil servants. Even academics, who enjoy a remarkable degree of independence, are employed as public servants in most Council of Europe countries. To exclude all those persons would amount to depriving the CPT of a large pool of potential candidates having the most pertinent professional qualifications.

39. But the statutory functions of the CPT include a peer review process of the results of on-site visits and a dialogue with the authorities of the countries visited in order to eliminate shortcomings for the future. Such work may result in conflicts of interest for senior officials in central government services who define national policies in specific sectors, in particular where they may bear responsibility for shortcomings. Whilst no CPT member is called upon to visit places of detention in his or her own country, all participate in the assessment and dialogue aspect of the CPT's work.

40. In view of the above, the Rapporteur suggests that public officials should not be excluded *per se*. But persons who are, at central government level, in charge of the definition of national policies in the sector concerned and who would be held politically responsible for any shortcomings ought not to be candidates for the CPT.

¹⁴ Article 4 (2).

¹⁵ Article 4 (4).

¹⁶ Paragraph 36.

¹⁷ Recommendation 1323 (1997), paragraph 10.v.

- Gender balance and all-male or all-female lists of candidates

41. The Assembly has stressed the importance of gender balance on numerous occasions.¹⁸ As regards candidates for judgeships at the European Court of Human Rights, the Standing Committee, at its meeting in March 2005, has allowed all-female lists as long as the share of women on the Court still falls short of the 40% target.¹⁹

42. As far as the CPT is concerned, even in view of the fact that the overwhelming majority of prison inmates are men, a mixed composition of visiting delegations has practical advantages from a psychological point of view. Women still number less than one third of CPT members.²⁰

43. The current CPT President, Silvia Casale (United Kingdom) has taken the view that “[p]ursuit of gender equality must not be at the expense of the quality of the CPT’s membership.” Whilst agreeing with the concept of “giving preference to applications from women with equal qualifications”, great care should be taken to avoid simply “giving preference to applications from women”.²¹

44. The Sub-Committee on Human Rights has occasionally been confronted with all-male and all-female lists. Two all-male lists have in the past been rejected or a decision postponed, but in these cases, the Sub-Committee also had other grounds for dissatisfaction than the fact that there were no women on the list.

45. The Rapporteur suggests to preserve the flexibility that the Sub-Committee is currently enjoying, by allowing it to base its decision on the professional quality of the candidates, whilst continuing to recommend the appointment of women candidates where they are equally qualified. The Sub-Committee may thus continue to accept all-male or all-female lists if it comes to the conclusion, in light of explanations provided by national delegations, that, following a transparent and fair national selection procedure, the three most qualified candidates have been included in the list.

- Availability and age

46. The special nature of the CPT’s tasks, especially the long and strenuous field missions to visit prisons, psychiatric hospitals etc., require that CPT members are sufficiently available, in view of their normal professional duties, and physically fit, which is often though not necessarily linked to the candidates’ age. Information on these important matters²² is difficult to ascertain in a purely written procedure, which could provide an argument for holding interviews at some stage.

- Language skills

47. For practical reasons, appropriate language skills (English and/or French) are very important for the contribution that a member can make to the work of the CPT. Again, these skills are difficult to ascertain in a purely written procedure. Ideally, self-assessments made in the *curriculum vitae* should be verified at some stage in an objective manner, either in an interview, or by reference to objective standards of language proficiency.²³ In order to exclude unsuitable candidates as early as possible

¹⁸ Cf. Recommendation 1323 (1997), paragraph 7.i and 10.v.; Resolution 1248 (2001) paragraphs 1 and 4.

¹⁹ Resolution 1426 (2005) adopted by the Standing Committee at its meeting in March 2005, paragraph 5: “Accordingly, the Assembly decides to introduce a special rule for considering candidatures for the European Court of Human Rights regarding the under-represented sex in the Court and to amend paragraph 3.ii of Resolution 1366 (2004) as follows:

“3. The Assembly decides not to consider lists of candidates where:

(...)

ii. the list does not include at least one candidate of each sex, except when the candidates belong to the sex which is under-represented in the Court, that is the sex to which under 40% of the total number of judges belong.”.

²⁰ Cf. Appendix II (table providing a breakdown of CPT membership by gender, age group and professional categories).

²¹ In her address to the Standing Committee in Istanbul (21-23 May 2001).

²² M.D. Evans and R. Morgan, in: “Preventing Torture: A Study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, Oxford 1998, paint a striking picture of the constraints facing CPT members (and its Secretariat), pages 147 pp.

²³ For example, TOEFL (test of English as a foreign language) scores.

and to avoid potentially embarrassing situations, such a verification should be made during the national selection procedure.

- Preference for incumbents?

48. On several occasions, the Sub-Committee has recommended the re-election of incumbents who proved to be both competent and sufficiently available during their previous mandate.

49. The issue is a delicate one, as the Sub-Committee on Human Rights needs to be informed in some way about the past performance of incumbents, in a way that respects the independence of CPT members. Information on the performance of incumbents must therefore be limited to objective facts and not imply any value judgments on the views taken by the member.

50. With the above proviso, it is the Rapporteur's view that it is legitimate for a member's ready availability and dedicated work to be rewarded by re-appointment, and a definite advantage that the CPT continues to benefit from the experience he or she has accumulated in the field and of the Committee's *acquis*. The need for regular renewal of the Committee over the long term is taken care of by the cap placed in the Convention on the number of terms of office (three).²⁴

- Nationality issues - interpretation of Article 4(3) of the Convention

51. Article 4(3) of the CPT Convention foresees that "no two members of the Committee may be nationals of the same State." The question has arisen whether this would exclude the appointment of a national of a state party, who is in addition a national of another contracting party, which is already represented on the Committee by another national.

52. In the Rapporteur's view, the nationality clause of Article 4(3) is outdated and causes practical problems, especially as regards small state parties, which may have difficulties finding three suitable candidates which have (only) their nationality. The nature of the contribution expected from CPT members concerning core human rights and humanitarian issues is such that "national" considerations should be given as little importance as possible.

53. Double nationality of candidates should therefore not be considered as a problem, even *de lege lata*. As made explicit in other, more modern international agreements,²⁵ the effective nationality for purposes of the CPT Convention could, by way of restrictive interpretation of Article 4(3), be considered as being that of the country in which the candidate exercises his or her political rights.

54. The presentation of candidates having (only) the nationality of another country than that presenting the list would exceed the scope of possible interpretation of Article 4(3). But the Committee of Ministers would be in a position to take an unanimous decision, by analogy with Protocol No 11 to the ECHR, not to apply Article 4(3) any more, as it corresponds to an outdated vision of the role of CPT members. The Assembly could give a signal to the Committee of Ministers that it would favour such a step.

iii. *To improve communication between the Assembly and the Committee of Ministers*

55. The letter by which the Committee of Ministers is informed of the Assembly's preferences (stage (iv), paragraph 3 above) should be made more informative by giving reasons for the Assembly's choice. The Sub-Committee could authorise its Chair to sum up the main considerations which have led to its recommendation, in particular if it deviates from the order of preference given by the national delegation. This information would be transmitted by the President of the Assembly to the Chair of the Committee of Ministers, which, in the light of this information, may be more inclined to follow the Assembly's recommendations.

²⁴ Article 5(3).

²⁵ e.g. the Statute of Rome establishing the ICC.

IV. Conclusions

56. In view of the practical and political considerations shown above, the Rapporteur makes a number of concrete suggestions detailed in the draft resolution aimed at improving the CPT selection procedure during all its stages – at the national level, and in the different instances of the Council of Europe, and at clarifying selection criteria for candidates on some issues that have given rise to uncertainty in the past.

Appendix I

Committee of Ministers Ministers' Deputies

CM(2002)7 (restricted) 23 January 2002

784 Meeting, 21 February 2002
Item 4: Human Rights

Implementation of Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Secretariat memorandum prepared by Directorate General II

1. From 1 March 2002, the rules governing the election of members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) will be modified by the entry into force of Protocol n° 2. The Protocol amends certain provisions of Article 5 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter "the Convention") as follows¹:

"3. The members of the Committee shall be elected for a period of four years. They may be re-elected twice. However, among the members elected at the first election, the terms of three members shall expire at the end of two years. The members whose terms are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.

4. In order to ensure that, as far as possible, one half of the membership of the Committee shall be renewed every two years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than four years but not more than six and not less than two years.

5. In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General, immediately after the election."

2. There are thus two changes to the rules governing the election of CPT members by the Committee of Ministers, namely:

Firstly, from 1 March 2002, CPT members may be re-elected twice by the Committee of Ministers, instead of just once, as has been the case up to now. As a result, CPT members may in future have three terms totalling twelve years, instead of the eight that have hitherto applied. The aim of this change is to ensure a certain continuity of experience of the CPT's particular activities.

The implementation of this change does not require any further decision on the Committee of Ministers' part.

Secondly, the new paragraph 4 of Article 5 establishes a system for renewing half the membership of the CPT every two years, to ensure a balanced renewal of the members of the Committee. To achieve this, before electing CPT members the Committee of Ministers may decide that one or more terms of office of members to be elected will be for a period other than four years, though this period cannot be more than six or less than two years². This procedure may be applied to any election from 1 March 2002 on. However, it does not affect the current terms of office of existing members of the CPT, or those of members to be elected before 1 March 2002.

The Committee of Ministers must decide on the modalities of the implementation of this new system.

3. Given the wide diversity of expiry dates of the current CPT members' terms of office (see Appendix I, which shows the list of members by order of precedence), the new system of biennial renewal, by half, of the membership of the CPT, as envisaged in the new paragraph 4 of Article 5 of the Convention, can only be implemented gradually over several years. Analysis of the different expiry dates of the terms of office shows that it would be advisable for the Committee of Ministers to divide the members into two groups ("A" and "B"), based on the dates 19 December 2005 and 19 December 2007. By choosing these dates, the Committee of Ministers would ensure that the members to whom the provisions of the new Article 5, paragraph 4, applied would have terms of office of between three and five years, thus restricting to a maximum the difference between these terms and CPT members' normal term of office (which is four years).

4. Group A, based on 19 December 2005 and subsequent four year periods (19 December 2009, 19 December 2013, etc.), would comprise the following 21 CPT members:

- the five current members whose terms of office expire in 2002, that is the members elected in respect of Croatia, Germany, Moldova, Slovenia and Ukraine;
- the nine current members whose terms of office expire in 2005, that is the members elected in respect of Austria, Bulgaria, Denmark, Georgia, Hungary, Luxembourg, the Netherlands, Switzerland and the United Kingdom;
- the two members whose election is scheduled for 30 January 2002, in respect of Estonia and Turkey (whose terms of office will expire on 29 January 2006);
- the members elected to the currently vacant seats in respect of France, Liechtenstein, Norway, Spain and Sweden.

Examples

- the member elected/re-elected in respect of Croatia from 5 June 2002 would be allocated a term of office of 3 years, 6 months and 15 days (until 19 December 2005);³
- the member elected/re-elected in respect of Austria from 4 October 2005 would be allocated a term of office of 4 years, 2 months and 16 days (until 19 December 2009);³
- the members elected/re-elected in respect of Estonia and Turkey from 30 January 2006 would be allocated terms of office of 3 years, 10 months and 20 days (until 19 December 2009)³;
- the members elected to the currently vacant seats in respect of France, Liechtenstein, Norway, Spain and Sweden would be allocated terms of office of more than 3 years (until 19 December 2005), so long as they were elected before 19 December 2002.

5. Group B, based on 19 December 2007 and subsequent four year periods (19 December 2011, 19 December 2015, etc.), would comprise the following 20 CPT members:

- the eleven current members whose terms of office expire in 2003, that is the members elected in respect of Albania, Cyprus, Finland, Ireland, Poland, Portugal, Romania, the Russian Federation, San Marino, the Slovak Republic and "the former Yugoslav Republic of Macedonia";
- the nine current members whose terms of office expire in 2004, that is the members elected in respect of Andorra, Belgium, the Czech Republic, Greece, Iceland, Italy, Latvia, Lithuania and Malta.

Examples

- the member elected/re-elected in respect of Albania from 29 July 2003 would be allocated a term of office of 4 years, 4 months and 21 days (until 19 December 2007);⁴

– the member elected/re-elected in respect of Andorra from 31 March 2004 would be allocated a term of office of 3 years, 8 months and 19 days (until 19 December 2007).⁴

6. In the case of CPT members elected in the future in respect of new Parties to the Convention (new Council of Europe member States that have ratified the Convention and non-member States that have acceded to the Convention following an invitation by the Committee of Ministers), the Committee of Ministers would allocate them on a case by case basis to one or other of the two groups of members, A and B, having regard to the objective referred to in the new Article 5, paragraph 4.

7. Consideration must also be given to the possible early departure of CPT members. Unlike judges of the European Court of Human Rights, a new CPT member elected to replace a member whose term of office has not expired does not complete his predecessor's term of office.⁵

It is important to ensure that the composition of the two groups formed for election purposes is not eroded over time as a result of members' premature departure. The Committee of Ministers can avoid such an eventuality by making use of the flexibility offered by the new Article 5, paragraph 4 of the Convention, that is by granting the member elected to replace a member who departs early a term of office of other than four years. In that way, the Committee of Ministers could ensure that the expiry date of the new member's term coincided with that of the other members of the group to which the replaced member had belonged.

Similarly, the flexibility offered by the new Article 5, paragraph 4 would enable the Committee of Ministers to retain intact the composition of the groups in cases where a seat was left vacant for a certain time, because of delays in forwarding candidate lists to the Committee.

8. The dividing up between the two above-mentioned groups of the members elected in respect of the existing 41 Parties to the Convention will not entail the drawing of lots, pursuant to Article 5, paragraph 5. Such a procedure would have been necessary if more than half of the CPT members had had the same term of office expiry dates or ones very close together (thereby necessitating the allocation of different terms of office in order to establish the two groups for election at two year intervals). This was the case when Protocol n°2 was being drawn up but is no longer the case.

With the approach proposed in this memorandum, the two groups would gradually be formed via elections concerning either a single member or small groups of two to three members who would be allocated terms of office of the same length. The question of allocating different terms of office at an election will therefore not arise.

Nevertheless, it might be necessary in the future to have recourse to the procedure of drawing lots, for example if, following further ratifications of the Convention, two or more CPT members were elected at the same time in respect of new Parties and different terms of office had to be allocated to maintain the balance of the composition of the two groups.

Appendix I

Members of the CPT listed in order of precedence (as at 16 January 2002) *

Name	Nationality	Term of office expires
Ms Silvia CASALE, President	British	18.12.2005
Mr Volodymyr YEVINTOV, Vice-President	Ukrainian	08.09.2002
Mr John OLDEN	Irish	21.03.2003
Mr Florin STĂNESCU	Romanian	21.03.2003
Mr Mario BENEDETTINI	San Marinese	21.03.2003
Mrs Jagoda POLONCOVÁ	Slovakian	21.06.2003

Mr Adam ŁAPTAŠ	Polish	30.11.2003
Mr Zdeněk HÁJEK	Czech	12.09.2004
Mrs Emilia DRUMEVA	Bulgarian	07.06.2005
Mr Pieter Reinhard STOFFELEN	Dutch	19.09.2005
Mr Pierre SCHMIT	Luxemburger	19.09.2005
Mr Ole Vedel RASMUSSEN	Danish	03.10.2005
Mrs Renate KICKER	Austrian	03.10.2005
Mr Davor STRINOVIĆ	Croatian	04.06.2002
Mr Aurel KISTRUGA	Moldovan	04.06.2002
Mr Rudolf SCHMUCK	German	08.09.2002
Mr Aleš BUTALA	Slovenian	09.11.2002
Mr Yuri KUDRYAVTSEV	Russian	12.01.2003
Mrs Veronica PIMENOFF	Finnish	28.07.2003
Ms Maria Teresa BELEZA	Portuguese	28.07.2003
Mr Fatmir BRAKA	Albanian	28.07.2003
Mr Nikola MATOVSKI	citizen of "the former Yugoslav Republic of Macedonia"	16.11.2003
Mr Petros MICHAELIDES	Cypriot	30.11.2003
Mr Marc NÈVE	Belgian	08.01.2004
Mr Eugenijus GEFENAS	Lithuanian	16.02.2004
Mr Antoni ALEIX CAMP	Andorran	30.03.2004
Mr Mario FELICE	Maltese	25.04.2004
Mr Pétur HAUKSSON	Icelander	18.07.2004
Mrs Ioanna BABASSIKA	Greek	12.09.2004
Mr Mauro PALMA	Italian	19.12.2004
Mrs Anhelita KAMENSKA	Latvian	19.12.2004
Mr Erik SVANIDZE	Georgian	17.07.2005
Mr Jean-Pierre RESTELLINI	Swiss	19.09.2005
Mr Laszlo CSETNEKY	Hungarian	30.10.2005

Appendix II

Summary of the composition of the two groups of CPT members for election purposes proposed in paragraphs 4 and 5 of document CM(2002)7

GROUP A	GROUP B
Based on 19 December 2005 and subsequent four year periods	Based on 19 December 2007 and subsequent four year periods
Members elected in respect of:	Members elected in respect of:
- Austria - Bulgaria	- Albania - Andorra

- Croatia - Denmark - Estonia - France - Georgia - Germany - Hungary - Liechtenstein - Luxembourg - Moldova - Netherlands - Norway - Slovenia - Spain - Sweden - Switzerland - Turkey - Ukraine - United Kingdom	- Belgium - Cyprus - Czech Republic - Finland - Greece - Iceland - Ireland - Italy - Latvia - Lithuania - Malta - Poland - Portugal - Romania - Russian Federation - San Marino - Slovak Republic - "the former Yugoslav Republic of Macedonia"
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Note ¹ The changes to Article 5 are underlined.

Note ² The system established by Protocol No. 2 largely resembles that introduced at the time by Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force on 21 December 1970. Protocol No. 5 modified Articles 22 (election of members of the European Commission of Human Rights) and 40 (election of judges of the European Court of Human Rights). The system was replaced by Protocol No. 11 which adopts a similar approach for the election of judges to the European Court of Human Rights.

Note ³ The calculations of these terms of office are based on the hypothesis that the lists of candidatures are received in time for the elections to take place before the expiry of the previous terms of office.

Note ⁴ The calculations of these terms of office are based on the hypothesis that the lists of candidatures are received in time for the elections to take place before the expiry of the previous terms of office.

Note ⁵ A provision to this effect was not included in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment because CPT members' terms of office are relatively short and moreover are limited in number (two in the past, three now). Under these circumstances it was not considered appropriate for the length of one of the terms of office to be reduced still further to the completion of that of a predecessor.

Note ^{*} At this date, the seats in respect of Estonia, France, Liechtenstein, Norway, Spain, Sweden and Turkey were vacant. It is foreseen that the election to fill the seats in respect of Estonia and Turkey will take place on 30 January 2002 (date of expiry of mandates: 29 January 2006).

Appendix II

CPT Membership

total	42
<u>Breakdown men / women:</u>	
Men	30
Women	12
<u>Breakdown by professional background:</u>	
Lawyers	18
Experts on prison matters / Prosecutors	7
Experts on prison medical services	1
Prison chaplains	1
Experts on human rights	2
Police officers	1
Medical members	12
<i>Doctors</i>	<i>(7)</i>
<i>Psychiatrists</i>	<i>(4)</i>
<i>Psychotherapist / Psychologist</i>	<i>(1)</i>

at 18/01/2007

Extract from the CPT's 16th General Report (of 16 October 2006)

31. As regards the spread of professional expertise within the CPT, a significant number of its current members have practical experience of prison work. However, the Committee requires more members with first-hand knowledge of the work of prosecution services or law enforcement agencies. The CPT would also benefit from the presence among its members of more doctors with relevant forensic skills, in particular as regards the observing and recording of physical injuries, as well as of more persons with specialised knowledge of immigration issues.

More generally, the CPT trusts that the relevant bodies within the Assembly and Committee of Ministers will continue to examine carefully the lists of candidates for membership of the Committee, in the light of the requirements laid down in Article 4 (paragraphs 2 and 4) of the Convention. The CPT's effectiveness will ultimately depend on the quality of its membership.

Extract from the CPT's 15th General Report (of 22 September 2005)

35. As regards current professional expertise within the CPT, there has been an increase in the number of members with practical experience of prison work; the Committee hopes this trend will continue. The CPT still requires more members with first-hand knowledge of the work of law enforcement agencies and of immigration issues. The psychiatric profession is currently well represented within the Committee, though additional expertise in child psychiatry would be useful. The Committee would also benefit from the presence among its members of more doctors with relevant forensic skills, in particular as regards the observation and recording of physical injuries.

Appendix III

CPT – National pre-selection procedures

Overview of replies received from national delegations

country	public call for candidatures	substantial role of national delegation	consultation with relevant state bodies	consultation with NGOs	interviews of candidates	Independent panel of experts
Andorra	no	yes	no	no	yes	no
Austria	no	yes	no	no	no	no
Azerbaijan	yes	yes	yes	no	yes	no
Belgium	yes	yes	no	no	no	no
Bulgaria	no	yes	yes	no	no	no
Croatia	no	yes	yes	no	no	no
Cyprus ²⁶	no	yes	yes	yes	no	no
Czech Republic	no	yes	yes	yes	yes	no
Denmark	no	yes	no	yes	no	no
Estonia	no	yes	yes	yes	no	no
Finland	no	yes	yes	no	yes	no
Georgia	yes	yes ²⁷	no	no	yes	no
Germany	no	yes	yes	no	yes	no
Hungary	no	no	yes	no	yes	no
Ireland	no	no	yes	no	yes	no
Italy	no	yes	no	no	no	no
Liechtenstein	no	yes	yes	no	no	no
Lithuania	no	yes	no	no	yes	no
Luxembourg	no	yes	no	no	yes	no
Monaco ²⁸	-	-	-	-	-	-
Netherlands	no	yes	no	no	no	no
Poland	no	no	yes	no	no	no
Portugal	no	yes	no	no	no	no
Romania	no	no	no	no	no	no
Russian Federation	no	no	yes	no	yes	no
Slovenia	no	no	yes	no	no	no
Sweden	no	yes	no	no	yes	no
Switzerland	no	yes	yes	no	no	no
Turkey	no	yes	no	no	no	no
United Kingdom	yes	yes	yes	yes	yes	yes

1 December 2006

²⁶ Reform of the internal selection procedure intended after 2006 election.

²⁷ Selection and interviews by the Georgian parliament's committees on legal affairs and human rights.

²⁸ Procedure not yet fixed at the time of the reply, will take into account recommendations made in the present report.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10471, Reference No 3066 of 18 March 2005

Draft resolution adopted unanimously by the Committee on 25 January 2007

Members of the Committee: Mr Dick **Marty** (Chairperson), Mr Erik **Jurgens**, Mr György **Frunda**, Mrs Herta Däubler-Gmelin (alternate: Mrs Angelika **Graf**) (Vice-Chairpersons), Mr Athanasios Alevras, Mr Miguel Arias, Mr Birgir **Ármannsson**, Mrs Aneliya Atanasova, Mr Abdülkadir Ateş, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Erol Aslan **Cebeci**, Mrs Pia Christmas-Møller, Mrs Ingrida **Circene**, Mr Telmo Correia (alternate: Mr João Bosco **Mota Amaral**), Mrs Lydie Err, Mr Valeriy **Fedorov**, Mr Aniello Formisano, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef Goris, Mr Valery Grebennikov, Mr Holger Haibach (alternate: Mr Jürgen **Herrmann**), Mrs Gultakin Hajiyeve, Mrs Karin Hakl, Mr Nick Harvey (alternate: Mr Christopher **Chope**), Mr Serhiy **Holovaty**, Mr Michel **Hunault**, Mr Rafael Huseynov, Mrs Fatme Ilyaz, Mr Kastriot **Islami**, Mr Želiko Ivanji, Mr Sergei Ivanov, Mrs Kateřina **Jacques**, Mr Antti Kaikkonen, Mr Karol Karski, Mr Hans Kaufmann, Mr András **Kelemen**, Mrs Kateřina **Konečná**, Mr Nikolay Kovalev, Mr Jean-Pierre Kucheida, Mr Eduard **Kukan**, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Humfrey Malins, Mr Pietro Marcenaro, Mr Alberto Martins, Mr Andrew McIntosh, Mr Murat Mercan, Mrs Ilinka Mitreva, Mr Philippe Monfils, Mr Philippe Nachbar (alternate: Mr Rudy **Salles**), Mr Tomislav Nikolić, Mrs Carina Ohlsson (alternate: Mrs Tina **Acketoft**), Mrs Ann Ormonde (alternate: Mr Paschal **Mooney**), Mr Claudio Podeschi, Mr Ivan **Popescu**, Mrs Maria **Postoico**, Mrs Marietta **de Pourbaix-Lundin**, Mr Christos Pourgourides, Mr Jeffrey Pullicino Orlando, Mr Valeriy **Pysarenko**, Mr François Rochebloine (alternate: Mr Michel **Dreyfus-Schmidt**), Mr Francesco Saverio Romano, Mr Armen **Rustamyan**, Mrs Rodica Mihaela **Stănoiu**, Mr Christoph **Strässer**, Mr Mihai **Tudose**, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mrs Renate Wohlwend, Mr Marco Zacchera, Mr Krzysztof Zaremba, Mr Vladimir Zhirinovsky, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Drzemczewski, Mr Schirmer, Mrs Maffucci-Hugel, Ms Heurtin