THE ILL-TREATMENT OF PRISONERS IN EUROPE: A DISEASE DIAGNOSED BUT NOT CURED?

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UDK: 343.261:343.615(4)
Ur.: 21. svibnja 2009.
Pr.: 5. studenog 2009.
Pregledni znanstveni rad

Sažetak

Zlostavljanje zatvorenika u Europi: dijagnosticirana, no ne i izliječena bolest?

U radu su prikazana razmatranja problema kako prevenirati zlostavljanje zatvorenika unutar sustava Vijeća Europe za zaštitu ljudskih prava. Autorica je odlučila pisati o ovoj temi iz razloga što su se uvele određene velike promjene u zaštiti zatvorenika u posljednjih deset godina. Europski sud za ljudska prava (ECtHR) i Odbor za sprečavanje mučenja (CPT) preuzeli su najveću ulogu u stvaranju bolje zaštite. ECtHR je proširio interpretaciju članka 3. Europske konvencije za zaštitu ljudskih prava (ECHR), dok je CPT postavio neke nove standarde koji sada izravno utječu na rad ECtHR. Sud nije bio spreman primijeniti članak 3. u slučajevima čiji se predmet odnosio na uvjete pritvora i na preventivnu zdravstvenu zaštitu u zatvorima. Uvijek se usredotočio na slučajeve namjernog zlostavljanja pritvorenika od strane službenih osoba. Okolnosti su se promijenile u zadnjih deset godina. Sud je drastično proširio svoju interpretaciju svega onoga što čini povredu članka 3. te se sada oslanja na CPT-ova izvješća prilikom utvrđivanja zlostavljanja. Ovaj novi pristup u ECtHR-ovoj sudskoj praksi pruža potencijalni alat za uvođenje nekih novih prava iz članka 3., kao što je to pravo na programe o štetnosti dijeljenja igala između zatvorenika koji intravenozno uživaju droge.

S druge strane, Sud je preopterećen sa slučajevima budući da broj zahtjeva konstantno raste posljednjih godina, a čini se kako postoji velika vjerojatnost da se ovaj problem neće riješiti u skorijoj budućnosti. ECtHR treba hitnu reformu kako bi se mogao nositi s trajnim porastom broja upućenih zahtjeva. Ovo je bio glavni razlog za donošenje nacrta Protokola br. 14. koji su ratificirale sve članice Vijeća Europe izuzev Rusije. Rusija stoga predstavlja glavni zastoj u reformiranju sustava Konvencije kao i pojačanju zaštite zatvorenika. Protokol br. 14 je trenutno za Vijeće Europe jedino dostupno rješenje kojim bi se smanjio broj podnesenih zahtjeva ECtHR-u povodom kojih postupak još nije pravomoćno okončan. U isto vrijeme, najveći je broj onih slučajeva pred Sudom koji su pokrenut protiv Rusije, a Rusija i dalje ima znatne teškoće pridržavati se

postavljenih standarda u zaštiti ljudskih prava. Prosperitet ECtHR-a i njegove uloge kao najučinkovitijeg suda za ljudska prava su ozbiljno ugroženi.

Ključne riječi: *Europski sud za ljudska prava, članak 3. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda, zlostavljanje zatvorenika, Odbor za sprječavanje mučenja, Protokol br. 14.*

Chapter 1: Introduction

The Council of Europe is best known for its work in the area of human rights. The first significant European document in this area was the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[1], which is still the most important document for human rights protection in Europe. This treaty contains guarantees of general applicability which apply to "everyone within a state jurisdiction".[2] Only the provision of Article 5's concerning the protection of liberty and security of persons directly refers to detainee's rights. However, the ECHR is a fundamental document for protection of persons deprived of their liberty, especially because of the work of the European Court of Human Rights (ECtHR, the Court), which provides a purposive interpretation that has advanced the protection of detainees to an extent not surpassed at any other regional level or in international law.[3] Another significant document of Council of Europe for protection of detainees is the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (hereinafter ECPT).[4] This Convention owes its origin to the obligation contained in Article 3 of the ECHR[5], but its main purpose was to establish the European Committee for the Prevention of Torture (hereinafter CPT). The CPT examines the treatment of persons deprived of their liberty with a view of strengthening, if necessary, the protection of such persons from torture and from inhuman and degrading treatment and punishment.[6] The main focus of this paper is on the protection of prisoners from ill-treatment as well as from torture, inhuman and degrading treatment provided for within the Council of Europe's documents and bodies. The main positive developments in the protection of prisoners resulted from the cumulative work of the ECtHR and the CPT, which have created new standards for the treatment of prisoners and their detention conditions. Only a decade ago, the ECtHR was reluctant to even consider detention conditions when deciding about the ill-treatment of prisoners. Nowadays the ECtHR is prepared to choose a more active approach as a result of the development. Even issues such as providing needle

1 Signed in Rome 4 November 1950 and entered into force 3 September 1953
2 ECHR, Article 1
3 J. Murdoch, *The treatment of prisoners, European standards*, Strasbourg: Council of Europe Publishing, 2006, 31.
4 Signed in Strasbourg 26 November 1987 and entered into force 1989
5 ECHR, Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
6 ECPT, Article 1.

exchange programmes in prisons have been raised before the Court. However, irrespective of all the positive improvements in its work and less reluctant approach to various applications, it might be said that today the ECtHR has become a victim of its own success. The Council of Europe now consists of 47 Member States with 800 million citizens. The number of applications in front of the Court is constantly growing and because of that it takes a long time for the Court to produce judgements and decisions. This was the reason for drafting Protocol 14 which brings important changes to the Convention and its control mechanism. Although Protocol No. 14 would not solve the problem of the growing number of applications before the Court, it is essential for the continued effectiveness of the ECHR system. So far, 46 Member States of the Council of Europe have ratified Protocol No. 14; in other words, all but Russia. Russia represents the main holdback for reforming the Convention system, while at the same time over one-quarter of the applications pending before a decision body are against Russia. The problems with Russia do not stop with the number of pending applications. Russia is a country with the highest percentage of incarcerated persons, while the conditions of their detention facilities are far below any European standard. Neither the Court nor the CPT have lowered their standards in order to facilitate Russia's position, however the Russian prison system is still not recording any significant progress. Their non-implementation of judgements is creating difficulties for the Committee of Ministers, which is in charge of the execution of ECtHR judgements. Because of Russia's prison situation and the attitude of the Russian authorities, Russia is likely to endanger not only the viability of the ECtHR, but the new developments in protecting prisoners from ill-treatment as well.

Chapter 2: The ECHtR and the application of Article 3 to the treatment of prisoners

Article 3 is one of the few ECHR articles that contains an absolute prohibition of the rights (principles) it protects. There is no second paragraph of this Article which would allow for exceptions, and the rights contained in it cannot be derogated from at any time, even "…in time of war or other public emergency threatening the life of the nation…"[7] The context in which most violations of Article 3 occur concerns the treatment of detainees. The obligations stipulated under Article 3 are most relevant in this respect. Detainees are under the full control of the state authorities and are therefore at risk of abuse of being abused by them.

The ECtHR and the application of Article 3 in general

When the ECtHR determines whether Article 3 has been breached there are two essential questions that need to be posed: First, does the treatment complained of meet the minimum level of severity required to give rise to the application of

7 The ECHR, Article 15 (1)

Article 3; and second, what is the appropriate label to be applied to the treatment?[8] Whether the treatment constitutes a minimum level of severity must be judged by the circumstances of each case individually since it depends on various elements. The ECtHR pointed out this opinion and stated: "…The assessment of this minimum is, in the nature of things, relative; it depends on all circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim."[9] In the *Soering* case the ECtHR added that severity "depends on all the circumstances of the case, such as the nature and the context of the treatment or the punishment, the manner and method of its execution"[10], as well as the factors mentioned above. These words have been repeated by the ECtHR in numerous cases.[11]

Determining whether a reported treatment met the minimum level of severity under Article 3 proceeds by assessing the degree or intensity of the suffering inflicted. Since the Convention itself does not define the terms *torture, inhuman and degrading treatment*, the ECtHR undertook to define the terms in question. In one of the major cases concerning the ill-treatment of detainees, the ECtHR made a clear distinction between the concept of torture and that of inhuman or degrading treatment or punishment. The ECtHR defined thus provided the following definitions: *Torture*: "deliberate inhuman treatment causing very serious and cruel suffering"; *Inhuman treatment or punishment*: "the infliction of intense physical and mental suffering"; *Degrading treatment*: "ill-treatment designed to arouse in victims feelings of fear, anguish, and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance".[12] The absence of any evidence of a positive intention to humiliate or debase the individual does not rule out a violation of Article 3, in terms of inhuman or degrading treatment.[13] Ill-conceived or thoughtless action on the part of the state authorities can also meet the minimum level of severity for a violation of Article 3. As regards torture there are three essential elements of torture that can be extracted: 1) infliction of severe mental or physical pain or suffering; 2) the intentional or deliberate infliction of pain and 3) the pursuit of a specific purpose, such as gaining information or intimidation. It represents the most severe and intense form of ill-treatment, wherefore the ECtHR is very reluctant to make judgements that a certain treatment constitutes torture, and does so only in drastic cases.[14] Most of the violations against Article 3 represent inhuman or degrading treatment, i.e., a treatment

8 Murdoch, *The treatment of prisoners, European standards*, 116.

9 *Ireland v. United Kingdom,* (1979-1980) 2 E.H.R.R. 25, para. 162.

10 *Soering v. United Kingdom,* (1989) 11 E.H.R.R. 439, para. 100.

11 For example, *Valašinas v. Lithuania,* judgement of 24 July 2001, No. 44558/98, para. 101; *Keenan v. United Kingdom* , (2001) 33 E.H.R.R. 38, para. 109; *Labita v. Italy,* (2008) 46 E.H.R.R. 50, para. 120; *Tekin v. Turkey,* (2001) 31 E.H.R.R. 4, para. 52.

12 *Ireland v. Unitd Kingdom,* (1979-1980) 2 E.H.R.R. 25, para. 167.

13 *Peers v. Greece,* (2001) 33 E.H.R.R. 51, para. 74.

14 For example, in the case *Akkoc v. Turkey* the victim had been subjected to electric shocks, hot and cold water treatment, blows to the head, threats concerning the ill-treatment of her children and many other things (paras. 24 and 25).

that does not have sufficient intensity or purpose to be categorised as torture.

The interpretation of the Convention text is dynamic. Therefore, the notion of what constitutes *torture, inhuman and degrading treatment* has changed over time within the ECtHR's jurisprudence. It is important to read the Convention in terms of current expectations, as heightened standards may at present more readily lead to the conclusion that certain ill-treatment that might have been labelled as inhuman treatment now justifies the application of the label torture, or that the treatment of prisoners or detention conditions that used to be labelled as merely unsatisfactory might now be regarded as a violation of Article 3. For example, in the case *Selmouni v France*, the ECtHR stated: "Having regard to the fact that Convention is a 'living instrument which must be interpreted in the light of present-day conditions', the ECtHR considers that certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies."[15]

Article 3 and the ill-treatment of prisoners

The starting point for assessing whether any ill-treatment of detainees has taken place is to determine whether any physical force has been used against the prisoner. The ECtHR has set up the rule that recourse to physical force which has not been made strictly necessary by the detainee's own conduct is in principle an infringement of the right set forth under Article 3.[16] Where a detainee shows signs of injuries or ill-health, the burden of proof will be on the detaining authorities to establish that the signs or symptoms are unrelated to the period or fact of detention[17], or if there has been use of force that it was not excessive.[18] The ECtHR will have to distinguish treatment or conditions that are part of incarceration, and such treatment and conditions which impose an unacceptable detriment on detainee.

In the context of detention, the potential for violations of Article 3 arises at each stage of detention; from the moment a person is placed under detention to the time when a person is released. Ill- treatment may be inflicted during arrest,[19] during interrogation and police detention[20] and it may also be the consequence of various detention conditions. What is of particular interest for this article are the conditions of detention and how they can amount to inhuman and degrading treatment in the context of Article 3.

15 *Selmouni v. France,* (2000) 29 E.H.R.R. 403, para. 101.
16 *Ribitsch v. Austria,* (1996) 21 E.H.R.R. 573, para. 38.
17 *Tomasi v. France*, (1993) 15 E.H.R.R. 1, paras. 108-111.
18 *Rehbock v. Slovenia*, (1998) 26 E.H.R.R. CD120, para. 72.
19 *Rehbock v. Slovenia,* paras. 71 and 72.
20 *Aksoy v. Turkey, Akkoc v. Turkey, Selmouni v. France*

Conditions of detention refer to the general environment in which persons are detained, to the prison regime and specific conditions in which inmates are kept, and to the specific circumstances of the prisoner. This is an area marked by a continuous evolution in the basic standards, since in earlier case-law the ECtHR and the former Commission seemed reluctant to conclude that conditions of detention violated Article 3.[21] First implication that poor physical conditions of detention can constitute degrading treatment even if there was no intention to humiliate detainees appeared in 2001 in the judgement of *Dougoz v. Greece*. In this case a convicted foreign drug offender was held for 10 months in Drapetsona detention centre and for eight months in Alexandras Avenue police headquarters. Both of the locations were severely overcrowded and there were no beds, mattresses or blankets. The ECtHR unanimously held that the conditions of detention of the applicant at the Alexandras police headquarters and the Drapetsona detention centre, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period during which he was detained in such conditions, amounted to degrading treatment contrary to Article 3."[22] Shortly afterwards the ECtHR found another breach of Article 3 in *Peers v. Greece*. The applicant was a British drug addict who was detained in a segregation unit for two months while he underwent drug withdrawal treatment. The ECtHR determined: "…The ECtHR is of the opinion that the prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. In sum, the ECtHR considers that the conditions of the applicant's detention in the segregation unit of the Delta wing of Koridallos Prison amounted to degrading treatment within the meaning of Article 3 of the Convention".[23] This new, more critical approach was subsequently confirmed in numerous other cases.[24]

Article 3 and the right to health care in prisons

Although the Convention does not guarantee the right to health care or the right to prisoners' health care, the ECtHR (and the former Commission) have developed certain standards through jurisprudence. First; prison authorities are under a positive obligation to protect the health of persons deprived of their liberty, whereas the

21 See case *Kröcher and Möller v. Switzerland* where there have been acknowledged violations of international standards of detention, but no violation of Article 3 was found. *Kröcher and Möller v. Switzerland,* (1984) 6 E.H.R.R. CD395, paras. 60-77.

22 *Dougoz v. Greece*, (2002) 34 E.H.R.R. 61, paras. 46 and 48.

23 *Peers v. Greece*, (2001) 33 E.H.R.R. 51, para. 75

24 For example *Price v. United Kingdom,* (2002) 34 E.H.R.R. 53 (detaining a severely disabled person in dangerous conditions), *Kalashnikov v. Russia,* (2003) 36 E.H.R.R. 34 (overcrowded cell and unsanitary environment while some of the inmates had serious contagious diseases), *Poltoratskiy v. Ukraine,* (2004) 39 E.H.R.R. 43 (general detention conditions- restricted living space, no access to natural light, no provision for any outdoor exercise)

lack of appropriate medical care may amount to treatment contrary to Article 3.[25] In addition, delay of providing medical help may constitute a violation of Article 3.[26] The practical impact of this kind of opinion was limited. In case *Kudla v. Poland* the applicant claimed that he had not been given adequate psychiatric treatment despite a report indicating that his continued imprisonment posed the likelihood that he would attempt suicide, but the ECtHR did not find a violation of Article 3 since it concluded that the applicant received frequent psychiatric assistance.[27] On the other hand, in that same case, the ECtHR stated: "…(U)nder this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity…and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance...".[28] Securing health and well-being has become one of the ECtHR's principles when deciding about violation of Article 3 regarding health care in prisons and nowadays the state's responsibility to ensure the health and well-being of all the prisoners is being considered with much greater care.[29] In *Melnik v. Ukraine* the ECtHR emphasized three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: "(a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant".[30] In *Yakovenko v. Ukraine* the applicant complained that he had not received adequate medical assistance for his HIV and tuberculosis. The ECtHR stated: "In the ECtHR's view, the failure to provide timely and appropriate medical assistance to the applicant in respect of his HIV and tuberculosis infections amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention".[31]

Article 3 permits no qualification, therefore explanations to the effect that inadequate conditions are the result of economic or other inherited organizational or endemic factors will not justify failings. As the ECtHR stated: "The ECtHR has also borne in mind, when considering the material conditions in which the applicant was detained and the activities offered to him, that Ukraine encountered serious socio-economic problems in the course of its systemic transition and that prior to the summer of 1998 the prison authorities were both struggling under difficult economic conditions and occupied with the implementation of new national legislation and related regulations. However, the ECtHR observes that lack of resources cannot in

25 *Hurtado v. Switzerland,* Series A no. 280- A (Opinion of the Commission), para. 79.
26 For example *Ilhan v. Turkey*, (2002) 34 E.H.R.R. 36, paras. 86 and 87.
27 *Kudla v. Poland*, paras. 96- 100.
28 *Kudla v. Poland*, para. 94.
29 For example, *Alver v. Estonia* (2006) 43 E.H.R.R. 40*, Khokhlich v. Ukraine,* judgement of 29 April 2003, No. 41707/98
30 *Melnik v. Ukraine*, judgement of 28 March 2006, No. 72286, para. 94
31 *Yakovenko v. Ukraine,* judgement of 25 January 2008, No. 15825/06, paras. 90-102.

principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. Moreover, the economic problems faced by Ukraine cannot in any event explain or excuse the particular conditions of detention which it has found in paragraph 145 to be unacceptable in the present case."[32]

The difficult issue of whether there is a positive obligation to take all reasonable steps to prevent the spread of infectious diseases is now coming before the ECtHR.

Right to needle exchange programmes in prisons

The evolution of the ECtHR's Article 3 jurisprudence provides a potential tool to advocate some new rights, such as the right to sterile syringes for prisoners who inject drugs.[33] This way of thinking has been generated through recent ECtHR's case-law, CPT Reports and of the Recommendations of the Council of Ministers together with the growing drug injections problems and spread of transmittable diseases in prisons followed by awareness of the possibility for their successful prevention. As stated by the Court, the ECHR "compels the authorities of the Contracting States not only to refrain from provoking such treatment (inhuman and degrading), but also to take the practical preventive measures necessary to protect the physical integrity and health of persons who have been deprived of their liberty…(and)it is sufficient for an applicant to show that the authorities did not do everything that could reasonably have been expected of them to prevent the occurrence of a definite and immediate risk to his physical integrity, of which they knew or should have known."[34] This shows a state's positive obligation not only to protect prisoners' health and well-being, but also to make all the possible preventive measures to secure prisoners health. A state's obligation to protect prisoners' health is not alleviated in any way by the detainee's behaviour, even when his behaviour is unlawful or violates prisons rules. ECtHR.[35] When it comes to case-law regarding the spread of transmittable diseases, the ECtHR has already made a judgement where it found that "prison conditions leading to spread of disease can contribute to circumstances amounting to breach of Article 3."[36] However, contracting tuberculosis while in prison, on its own, is not sufficient to establish a violation of Article 3[37]; nevertheless, tuberculosis contagion while in prison together with the inadequate medical treatment can and does constitute

32 *Poltoratskiy v. Ukraine*, para. 148.

33 R. Lines, *Injecting Reason: prison syringe exchange and Article 3 of the European Convention on Human Rights*, E.H.R.L.R. (1) 2007, 66-80., 66.

34 *Pantea v. Romania,* (2005) 40 E.H.R.R. 26, paras. 189 and 190.

35 Vlasov v. Russia , judgement of 12 June 2008, No. 78146/08, para. 79; *Rodic and three Others v. Bosnia and Herzegovina*, para. 66; *Labita v. Italy* (2008) 46 E.H.R.R. 50, para. 120.

36 Lines, *Injecting Reason: prison syringe exchange and Article 3 of the European Convention on Human Rights*, 69., regarding case *Kalashnikov v. Russia* where the applicant contracted a series of skin and fungal infections while incarcerated in a overcrowded prison cell

37 *Khokhlich v. Ukraine*, judgement of 29 April 2003, No. 41707/98, paras. 183-196.

violation of Article 3.[38] And when we talk about diseases like HIV, that are incurable but preventable, the state's obligation to take all possible preventive measures should be expressed even more. These judgments show not only developments in prisoners' health protection, but represent also direct arguments in favour of a prisoners' right to effective measures for prevention of transmittable diseases. Another case in favour of a prisoners' right to needle exchange programmes is *McGlinchey v. United Kingdom,* where the ECtHR found that a failure of authorities to provide Ms McGlinchey appropriate medication for her heroin withdrawal symptoms and preventing her from suffering or a worsening of her condition, contravened the prohibition against inhuman or degrading treatment contained in Article 3 of the Convention.[39] The ECtHR treated heroin addiction as a special vulnerability which even increases a state's obligations under Article 3, and this can have "significant implications for the possibility of a successful application on the issue of prison syringe exchange."[40]

To date, only one case arguing that a state's obligation to protect prisoners' health includes providing access to needle exchange programmes has been brought before the ECtHR. In 2006 applicant John Shelley brought a complaint before the ECtHR claiming that the health of prisoners who injected drugs was being jeopardised by a lack of access to syringe exchange programmes and that the authorities in the UK had failed in their positive obligation stipulated under Article 3 to adequately secure his health and well-being.[41] The ECtHR declared this application inadmissible, mainly because of the fact that the applicant has not specified whether he is at any real or immediate risk of becoming infected through unclean or shared needles, nor has he claimed to use drugs himself.[42] "…(I)t (the ECtHR) is not satisfied that the general unspecified risk, or fear, of infection as a prisoner is sufficiently severe as to raise issues under Articles 2 or 3 of the Convention."[43] The Court also found that the difference in prison treatment "falls within the margin of appreciation and considers that it may be regarded, at the current time, as being proportionate and supported by objective and reasonable justification."[44] Nevertheless, the *Shelley* case highlighted major concern for the denial of prisoners (in most countries) of effective preventing measures from HIV and other transmittable diseases, placing them at risk of transmittable diseases infection and it also indicated that the ECHR can be used to advocate in favour of prison syringe exchange programmes as a proven preventive measure.

38 *Hummatov v. Azerbaijan,* judgement of 29 November 2007, No. 9852/03 and 13413/04, paras. 108-122.
39 *McGlinchey v. United Kingdom,* (2003) 37 E.H.R.R. 41, paras. 47-58.
40 Lines, *Injecting Reason: prison syringe exchange and Article 3 of the European Convention on Human Rights*, 70.
41 *Shelley v. United Kingdom,* (2008) 46 E.H.R.R. SE16
42 *Shelley v. United Kingdom,* 207.
43 *Shelley v. United Kingdom,* 207.
44 *Shelley v. United Kingdom* ,207.

Chapter 3: The CPT-working methodology and its impact upon the ECtHR's jurisprudence

Recent developments in the ECtHR's willingness to find violations of Article 3 based solely upon poor prison conditions are highly influenced by the work of CPT.

The CPT was established under the European Convention for the prevention of Torture and Inhuman and Degrading Treatment (ECPT), which has been ratified by all Member States of the Council of Europe. The work of the CPT is designed to be an integrated part of the Council of Europe system for the protection of human rights, establishing a proactive non-judicial mechanism.[45] Under the ECPT, the CPT is set up to conduct periodic and *ad hoc* visits in any places under the jurisdiction of a contracting state where persons are deprived of their liberty to see how they are treated and, if necessary, to recommend improvements. The CPT produces two categories of documents: the annual general reports that describe its work during the past year and may also contain some substantive issues and general standards, and individual country reports arising out of the CPT's programme of visits. The CPT is composed as of many independent and impartial experts as there are States Parties, drawn from various professions.

Working methodology and standards of the CPT

The essential feature of the ECPT is the principle of co-operation between the CPT and the State Parties. Each State Party must permit visits and no reservations are allowed in respect of the provisions of the ECPT. When carrying out visits, the CPT enjoys extensive powers under the ECPT such as access to the territory of the State and the right to travel without restrictions, full information concerning places where persons deprived of their liberty are being held, unlimited access to any place where persons are deprived of their liberty, including the right to move inside those places without restrictions and access to all information available to the States which is necessary in order for the CPT to carry out its task.[46] Another essential principle of the CPT is that of confidentiality. After each visit, the CPT draws up a report on the visit and detailed recommendations. The report includes a "request for written response from the State, setting out measures taken to implement the recommendations made, reactions to comments made and replies to requests for information."[47] That report is confidential, unless the concerned Party requests its publication (even in that case the personal data must remain confidential, except when the concerned person gives an express consent). Another exception is when a state refuses to co-operate. However,

45 The CPT Standards, "Substanstive" sections of the CPT's General Reports, http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf, 4.

46 ECPT, Article 8(2)

47 Preventing ill-treatment, *An introduction to the CPT*, (CPT, About the CPT, http://www.cpt.coe.int/en/documents/ENG-booklet-scr.pdf), 9.

the only sanction available to the CPT is the power to make a public statement on a state's continuing failure to take steps to address CPT concerns. Only five such public statements have been made to date; two of them in respect of Turkey and the three most recent ones concerning the Chechen Republic of the Russian Federation (in 2001, 2003 and 2007).[48] In practice the need for confidentiality has very much been diluted by the states which have proved remarkably willing to place most of the dialogue into the public arena. The need for principles of confidentiality and co-operation is of crucial importance for the work of the CPT, since it is not a judicial body and cannot bring any binding decisions. Furthermore, the CPT's visit represents simply a stage in an ongoing dialogue, whereas its reports mark the beginning of the process and not the end of it.

During its visit the CPT is likely to focus on two issues: Whether there are indications suggesting that violence or unnecessary force have been used against detainees, and whether detention conditions and treatment regimes are adequate. Since it is not the role of the CPT to establish whether there has been a breach of Article 3, the CPT has not found it necessary to provide a clear definition of the terms *torture or inhuman or degrading treatment*. *Torture* is almost exclusively used to refer to premeditated, physical ill-treatment employed instrumentally by the police with a view to extracting information or confessions or the attainment of other specific ends.[49] The CPT has used the term *torture* in relatively few country reports and the usage of the term has often been linked to severe ill-treatment.[50] The terms *inhuman and degrading* have been reserved for forms of environmental ill-treatment, chiefly concerning the conditions in which groups of prisoners are housed.[51]

The CPT has also developed a set of standards that are employed during its visits and which apply to all prisoners in all prisons. These CPT standards are promulgated in its annual/general reports and in country reports. The first established CPT standards were published in the 2nd General Report and they have been further developed over time. Those rights are: the right of those concerned to inform a close relative or another third party of their choice of their situation; the right of access to a lawyer and; the right of access to a doctor. "They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which

48 12th General Report on CPT Activities (2001), appendix. 6: *Public statement concerning the Chechen Republic of the Russian Federation* (CPT: Annual General Reports, http://www.cpt.coe.int/en/annual/rep-12.htm); 13th General Report on CPT activities (2002-2003), appendix. 7: *Public statement concerning the Chechen Republic of the Russian* Federation, (CPT: Annual General Reports, http://www.cpt.coe.int/en/annual/rep-13.htm); 17th General Report on CPT activities (2006-2007), appendix. 9: *Public statement concerning the Chechen Republic of the Russian Federation* (CPT: Annual General Reports, http://www.cpt.coe.int/en/annual/rep-17.htm)

49 R. Morgan and M. Evans, *Combating torture in Europe: the work and standards of the European Committee for the Prevention of Torture (CPT)*, Strasbourg: Council of Europe Publishing, 2001, 63.

50 For example, 17th General Report on CPT activities (2006-2007), appendix. 9: *Public statement concerning the Chechen Republic of the Russian Federation*, para. 54

51 Ibid., para. 66

should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned."[52] Some of the standards that the CPT has developed concern living accommodation and basic needs[53]; staffing selection, training and management[54], provision of an adequate regime of activities[55] and provision of health care in prisons[56]. As regards living accommodation and basic needs, the CPT has established some rough guidelines, especially concerning the size of cellular space[57], but they are open to discretionary domestic interpretation and the overall regime whereas the period of time that prisoners can spend in a facility is also of relevance. In addition, health care in prisons is of crucial importance. The importance of health care lies "both in a making positive contribution to the quality of prison life and also in helping combat infliction of ill-treatment".[58] In its 3rd General Report CPT explained in detail its expectations regarding the medical care of prisoners and has thus been devoting a certain portion to health care matters in every country report ever since. The cardinal principle for prisoners is their right to health care and "conditions comparable to those enjoyed by patients in the outside community".[59] However, prison health care services should achieve even more than just replicate outside community standards, mostly because of the vulnerable position in which prisoners are and their very often unstable psychological and physical health. Other principles stressed in the 3rd General Report are: Access to a doctor; Patient's consent and confidentiality; Preventive health care; Humanitarian assistance; Professional independence and Professional competence.[60] When it comes to transmittable diseases they have become an issue with AIDS, tuberculosis and hepatitis being of considerable concern. The CPT covered these issues mainly in its 11th General Report. CPT has expressed its concern regarding the spread of transmittable diseases in prisons and pointed out that "…regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment."[61]

52 2nd General Report on CPT Activities (1991) (CPT: Annual General Reports, http://www.cpt.coe.int/en/annual/rep-02.htm), para. 36

53 CPT Report to the Polish Government on the visit to Poland carried out by the CPT from 30 June to 20 July 1996 (CPT, States: Documents and Visits, http://www.cpt.coe.int/documents/pol/1998-13-inf-eng.htm, para. 70; 2nd General Report on CPT Activities (1991) , paras. 49 and 50

54 2nd General Report on CPT Activities (1991), paras. 59 and 60.

55 2nd General Report on CPT Activities (1991), paras. 47 and 48.

56 3rd General Report on CPT Activities, (CPT: Annual General Reports, http://www.cpt.coe.int/en/annual/rep-03.htm), paras. 30-77

57 CPT Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001 (CPT, States: Documents and Visits, http://www.cpt.coe.int/documents/rus/2003-30-inf-eng.pdf), para. 32.

58 Murdoch, *The treatment of prisoners, European Standards,* 222.

59 3rd General Report on CPT Activities (1992), para. 38.

60 3rd General Report on CPT Activities (1992), para. 32.

61 11th General Report on CPT Activities (2000), para. 31.

The Relationship between the CPT and the ECtHR

The Explanatory Report to the ECPT indicated that the CPT itself was not to "seek to interfere in the interpretation and application of Article 3."[62] However, in reality there is a two-way relationship between the ECtHR and the CPT. Decisions made under the ECtHR guide the CPT, and the findings of the CPT may both stimulate petitions and even directly influence the application of Article 3.[63] When challenging the detention conditions as incompatible with Article 3 requirements applicants have sought to rely upon the CPT findings in two situations: When establishing the factual background to conditions of detention and in an attempt to persuade the Court to condemn the treatment of the applicant through finding a violation of Article 3.[64] The first sustained attempt to draw on the CPT reports occurred in *Delazarus v. United Kingdom* and *Raphaie v. United Kingdom*.[65] Subsequently, the 1993 CPT Report on Greece has been drawn in on number of applications brought against Greece, but it was not until 1998 and the *Peers v. Greece* case when the Commission declared a complaint concerning the general prison conditions admissible, and appended sections of the CPT reports to its decision.[66] *Aerts v. Belgium* was the first case in which the relevance of the CPT's work has been most directly at issue, albeit it was only a partially successful use of the CPT reports in influencing the interpretation of the ECHR. The Commission concluded that conditions of detention did indeed violate Article 3, and furthermore referred to the CPT report on Belgium of 1994.[67] Although the ECtHR did not endorse this decision, ever since the *Aerts* case the ECtHR has become willing to accept the assistance of the CPT expertise and to refer to CPT reports when assessing the impact of conditions of detention upon the applicant.[68] For example, in the case *Kalashnikov v. Russia* the ECtHR evaluated the question of the adequacy of cellular accommodation by referring to CPT standards[69], whereas in *Poltoratskiy v. Ukraine* the ECtHR considered that the findings of the CPT delegates relating to the conditions of the applicant's detention on death row should be relied upon.[70] Nowadays, the majority of ECtHR's judgements concerning

62 ECPT, Explanatory Report (CPT: Reference Documents, http://www.cpt.coe.int/en/documents/explanatory-report.htm) , para. 27.

63 Morgan and Evans, *Combating torture in Europe: the work and standards of the European Committee for the Prevention of Torture (CPT)*, 59.

64 Murdoch, *The treatment of prisoners, European Standards*, 47.

65 (Unpublished cases)- R. Morgan, and M. Evans, *Protecting Prisoners, The Standards of the European Committee for the Prevention of Torture in Context*, Oxford: Oxford University Press, 1999, 89.

66 (Unpublished Commission decisison)- Morgan and Evans, *Protecting Prisoners, The Standards of the European Committee for the Prevention of Torture in Context*, 90.

67 *Aerts v. Belgium,* para. 81.

68 For example *Dougoz v. Greece* (2002) 34 E.H.R.R. 61*, Mouisel v. France* (2004) 38 E.H.R.R. 34*, Kalashnikov v. Russia* (2003) 36 E.H.R.R. 34*, Poltoratskiy v. Ukraine* (2004) 39 E.H.R.R. 43

69 *Kalashnikov v. Russia*, para. 97.

70 *Poltoratskiy v. Ukraine,* para. 136.

detention conditions are supported by CPT reports, both general reports and reports regarding a specific country.[71] Even if the CPT delegation has not visited the actual detention centre where the applicant has been held in, the ECtHR can (and does) use the findings made by the CPT upon its visit to the facility similar to the one where the applicant is being held.[72] All of this suggests that the work of the CPT makes a significant and crucial contribution in the area of treatment of persons deprived of their liberty and the ECtHR now has the opportunity of understanding the long-term impact of poor detention conditions upon individuals. However, the ECtHR is still an independent body and it can always disagree with the CPT. Moreover, even if it agrees with the CPT's findings it can choose not to take them into consideration when making a judgement. The reason for that is that the CPT mostly considers the treatment of prisoners and detention conditions applying generally, while the ECtHR's task is to consider whether the particular individual has been subjected to ill-treatment. Furthermore, when the ECtHR is in a position to make its own assessment of the treatment of a prisoners' without referring to the CPT findings, it will do so. Nevertheless, the contribution of the CPT in protection of prisoners is incontestable and extremely important. Its cooperation with the state authorities and with Non-Governmental Organisations, its unrestricted access to all states' detention facilities and all detainees and the high impact CPT has on the ECtHR's judgements, has made the CPT an important contributor to the protection of prisoners in Europe.

Chapter 4: The ECHR: a victim of its own success?

What is apparent from the last two Chapters is that the protection of prisoners from ill-treatment was going through an ascending path and the Court heightened its standards when determining whether ill-treatment occurred. The ECtHR became willing to find a violation of the Article 3 based solely on poor prison conditions, imposing positive obligation on states to secure adequate health care, including preventive health care and well-being of prisoners and it has been relying on the CPT reports when deciding whether ill-treatment has occurred. Those are all positive steps in the protection of prisoners and they became standards that cannot be derogated from, since Article 3 does not allow any limitations or qualifications. Everything written so far creates an impression that the situation concerning prisoners and their protection is a bright one. Nevertheless, this is only one side of the coin. It might be said that the ECtHR has become a victim of its own success. At present, it is facing serious problems, most of which started after 13 new states (for the most part ex-communist states from Eastern Europe) joined the Council of Europe. Russia as one of those states represents the main obstacle to any improvements in human rights protection, including the improvement in the treatment of prisoners. Russia

71 For example, *Alver v. Estonia* (2006) 43 E.H.R.R. 40, *Fedotov v. Russia* (2007) 44 E.H.R.R. 26, *Khokhlich v. Ukraine* judgement of 29 April 2003, No. 41707/98

72 For example, *Dougoz v. Greece,* (2002) 34 E.H.R.R. 61

joined the Council of Europe in 1996 and ratified the ECHR in 1998, even though it was evident that given its underdeveloped democratic and legal institutions, Russia was by no means ready to comply with the international or European human rights requirements. One of the big concerns of scholars like Mike Janis was that Strasbourg institutions would permit a two-tier legal order, with lesser expectations for Russia.[73] However, 12 years after Russian accession to the Council of Europe it appears that the ECtHR has not lowered the bar. Its decisions clearly confirm that.[74] But, the high volume of cases concerning Russia that are submitted to the ECtHR and the Russian refusal to ratify Protocol No. 14 of ECHR are placing the effectiveness of the whole ECHR system at risk.

Protocol No. 14

On 1 November 1998 Protocol No. 11 came into force and became an integral part of the ECHR. It provided for a complete makeover of the Strasbourg system, the most important features of which are: a) dissolution of the European Commission of Human Rights; b) transformation of the ECtHR into a truly permanent, professional judicial body and; c) compulsory jurisdiction of the ECtHR, without any special declaration, over all individual applications against State Parties to the ECHR.[75] Despite the positive effects of Protocol No. 11, it streamlined the Court's procedures and ensured greater coherency in its case-law, it soon became evident that further reform would be necessary. The main reasons for necessity of the new reform are that there are 13 new state parties to the Convention (extending its application to a further 240 million people, consisting now of 800 million potential clientele for the Court) and an ever-increasing number of applications, from within both existing and new state parties.[76] The Council of Europe adopted various principles instruments after Protocol No. 11, which all together represents a package that eventually led to the adoption of Protocol No. 14. On 12 May 2004 the text of Protocol No. 14 was approved for signature. It was designed to give the ECtHR an important tool in order to cope with its increasing case load and it has now been accepted by 46 Member States of the Council of Europe, all except Russia, meaning that the Russian stance alone is preventing the reforms set out in the Protocol from being brought into effect.[77]

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73 M. Janis, *Russia and the 'Legality of Strasbourg' Law*, (1997) E.J.I.L. 93-99, 94.

74 *Ilascu and Others v. Moldova and Russia,* (2005) 40 E.H.R.R. 46; *Kalashnikov v. Russia,* (2003) 36 E.H.R.R. 34; *Timishev v. Russia*, (2007) 44 E.H.R.R. 37

75 L. Caflich, *The reform of the European Court of Human Rights: Protocol No. 14 and beyond*, H. R. L. Rev. 6(2) (2006), 403-415, 403.

76 Explanatory Report to the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system to the Convention, (Council of Europe, Explanatory Report to the CETS 194, www.conventions.coe.int), para. 6

77 M. O' Boyle, *On Reforming the Operation of the European Court of Human Rights*, E.H.R.L.R., 2008, 1, 1-11, 1.

Protocol No. 14 brings three main changes to the Convention and its control mechanism: 1) In clearly inadmissible cases, admissibility decisions will be taken by a single judge, taken from the bench of one-per-member State, instead of the current committee of three judges. The single-judge formation will be assisted by rapporteurs drawn from the Court's Registry. The idea of this provision is to increase the Court's filtering capacity, since between 90-95 % of applications received are inadmissible; 2) A new, additional admissibility criterion is inserted in Article 35 of the ECHR, empowering the Court to declare inadmissible applications where the applicant has not suffered a significant disadvantage, or when in terms of respect for human rights do not otherwise require an examination on the merits by the Court and; 3) Expansion of the powers of the three-judge Committees. For repetitive cases a committee of three judges could both rule on admissibility and give judgement under a simplified summary procedure. Under the current system, judgements can only be rendered by seven- judge chambers.[78] On 15 November 2006, the Group of Wise Persons set up by the Committee of Ministers presented its final report on the long term effectiveness of the Convention control mechanism. They recommended: greater flexibility for reforming the judicial machinery of the Court; establishment of a new judicial filtering mechanism, enhancing the authority of the Court's case-law, improvement of domestic remedies and greater use of friendly settlements and alternative dispute resolution mechanisms.[79] As David Milner, Directorate General of Human Rights and Legal Affairs of Council of Europe pointed out at a meeting in Moscow on 12 February 2008, the Wise Persons Report is explicitly based on a situation in which Protocol No. 14 has come into force and the Council of Europe has no Plan B. He also stressed that in the Court's assessment, Protocol No. 14 will increase its casework capacity by at least 25%. This will not solve the problem entirely, but it will certainly help in preventing the situation from getting much worse.[80] Without a Plan B and without Russian ratification of Protocol No. 14, positive developments in human rights protection do not seem possible; moreover, it is more likely that the Court's difficulties will only increase. Hence, it is the more evident that the Council of Europe will have to find some other solution to decrease the number of cases and speed up the ECtHR judgement making process, so that it can continue its work of strengthening the human rights protection. Therefore, the ECtHR's status as a most effective institution for the protection of human rights is at present seriously jeopardised.

78 Explanatory Report to the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system to the Convention, paras. 61-85.

79 Committee of Ministers Documents, 979bis Meeting of Ministries Deputies, 15 November 2006, Report of the Group of Wise People to the Committee of Ministers, (Council of Europe, Committee of Ministers Documents, www.coe.int)

80 *Reforms of the European Court of Human Rights: implemented, planned and proposed changes in the organisation and functioning of the Court*, Presentation by David Milner, Directorate General of Human Rights and Legal Affairs, Council of Europe, Moscow, 12 February 2008 (The Norwegian Helsinki Committee, Reform of the European Court of Human Rights, www.nhc.no)

Chapter V: Conclusion

After looking at all the presented facts and figures, what can be foreseen as a way forward for institutions of the Council of Europe? The ECtHR's interpretation of Article 3 has been going through an ascending path with its case-law in terms of protection of prisoners, but can we still expect this trend to continue? In my opinion we cannot expect further interpretative progress and there are two main reasons for that attitude which are clearly connected, namely, the current situation with Russia and Russia's refusal to ratify Protocol No. 14, and the growing number of applications pending before the Court.

When Russia joined the Council of Europe it had underdeveloped democratic institutions and human rights awareness. Over the last twelve years, there has been a certain progress in the authorities' attitude towards human rights and the halting development of democratic institutions. However, Russian citizens are becoming increasingly aware of their rights and the role of the ECtHR in protecting them, wherefore the number of applications against Russia is constantly growing. Unfortunately, the circumstances in numerous prisons are still inconsistent with most of the human rights standards. Although the Russian authorities are making certain efforts regarding prison conditions and training of their staff, the situation is still far from satisfactory. On the other hand, the Russian government is still not accepting the role of the Council of Europe's role in the protection of human rights as they are supposed to, as they contest judgements or refuse to ratify Protocol No. 14, all because of Russia's belief in the political background of that judgement and the Protocol.[81]

What are the possible solutions for the Council of Europe in dealing with Russia?

One of the solutions might be to amend Protocol No. 14 and to apply its procedures only to the states that have ratified it. This kind of situation would be a novelty for the Council of Europe and it is not quite clear whether it would be possible. It would require a resolution of the Committee of Ministers that would authorise the Court to engage a single judge, instead of the current committee of three judges and a three-judge formation instead of seven-judge chambers in all the cases but the ones against Russia. However, such a resolution would still require Russia's consent and it remains difficult to imagine such an arrangement. For the latter would mean that the new admissibility criterion would not apply to applications against Russia, thus creating great difficulties for the Court while disturbing the unity and harmony within the Council of Europe's judicial system. Finally, such a resolution

81 Vladimir Putin at the meeting with the Council to Promote Development of the Civil Society Institutions and Human Rights on 11 January 2007 stated: "Unfortunately, our country is coming into collision with a politicisation of judicial decisions. We all know about the case of *Ilascu*, where the Russian Federation was accused of matters with which it has no connection whatsoever. This is a purely political decision, an undermining of trust in the judicial international system." http://www.publications.parliament.uk (original Russian page unavailable)

would remove any possibility of Russia to ratify the Protocol No. 14 and Council of Europe wants to avoid that.

Another possible solution for the Council of Europe would be to suspend Russia from membership until it has ratified Protocol No. 14. According to the Statute of the Council of Europe: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and *collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I*"[82] and "Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine."[83] However, the Council of Europe is very reluctant to suspend a country from its rights of representation and it does so only in severe cases of human rights violations, rather than because of a refusal to ratify a document, irrespective of the importance of the document in question. Russia has already escaped suspension in 2000 when the Parliamentary Assembly called upon the Committee of Ministers to suspend Russia unless it immediately halted human rights abuses in Chechnya. Even then, after a meeting in Strasbourg, the Council's Committee of Ministers welcomed Russia's efforts to respond to Western criticism of its conduct and made no mention of possible sanctions. It seems very unlikely that the Committee of Ministers will suspend Russia simply because of its refusal to ratify Protocol No. 14.

It is obvious that the Council of Europe will have to look for solutions outside Protocol No. 14 in order to preserve the ECtHR's status of being the most effective institution for the protection of human rights and to find an answer to the increasing number of applications. At this moment, it appears that an impasse has been reached by the Council of Europe and the ECHR in particular.

82 Statute of the Council of Europe, London, 5.V.1949, (Council of Europe, Treaties, http://conventions.coe.int/Treaty/EN/Treaties/Html/001.htm), Article 3

83 Ibid., Article 8.

Summary

This article considers of the issue of preventing prisoners from being ill-treated within the Council of Europe's system for the protection of human rights. The reason for tackling this topic lies in the fact that there have been some great changes in regard to the protection of prisoners within the last 10 years. The European Court of Human Rights (hereinafter ECtHR) and the Committee for the Prevention of Torture (hereinafter CPT) played an important role in improving the protection of prisoners. ECtHR has extended the interpretation of Article 3 of the European Convention for Human Rights (ECHR), while the CPT has generated some new standards that now directly influence the work of ECtHR. The Court has been reluctant to engage Article 3 to address the question of conditions of detention and preventive health care in prisons; it has always focused on cases of deliberate ill-treatment by authorities towards detainees. However, the situation has changed within the last decade. The Court has drastically extended its interpretation of what constitutes violation of Article 3 now relies on CPT reports when determining whether ill-treatment occurred. This new approach in the ECtHR's jurisprudence now provides a potential tool to endorse some new rights under Article 3, such as the right to needle exchange programmes for prisoners who inject drugs.

On the other hand, the Court is overwhelmed with cases and the number of applications has been growing constantly during last years, wherefore it does not seem very likely that this problem will be solved in the near future. The ECtHR needs an urgent reform to deal with the continuing increase in the number of applications. This was the main reason for drafting Protocol No. 14 which has been ratified by all Member States of the Council of Europe except Russia. Russia thus constitutes the main holdback for reforming the Convention system and consequently strengthening the protection of prisoners. Protocol No. 14 is currently the only solution available to the Council of Europe in order to reduce the number of applications pending before the ECtHR. At the same time the majority of cases before the Court are against Russia, and Russia still finds it very hard to comply with the human rights standards. The prosperity of the ECtHR and its role as the most effective human rights court are seriously jeopardised.

Key words: *European Court of Human Rights; Article 3 of the European Convention for Human Rights; ill-treatment of prisoners; Committee for the Prevention of Torture; Protocol No. 14.*

Riassunto

Maltrattamento dei detenuti in Europa: una malattia diagnostica, ma non curata?

Nel lavoro si riflette su come prevenire il maltrattamento dei detenuti all'interno del sistema del Consiglio d'Europa ai fini della tutela dei diritti dell'uomo. L'autore ha scelto di occuparsi di questo tema, poiché sono stati introdotti alcuni rilevanti cambiamenti nel contesto della tutela dei detenuti negli ultimi dieci anni. La Corte europea dei diritti dell'uomo ed il Comitato europeo per la prevenzione della tortura e delle pene o trattamenti inumani o degradanti (CPT) ricoprono un ruolo fondamentale nella creazione di una tutela più efficace. La Corte ha esteso l'interpretazione dell'art. 3 nei casi in cui la questione verte sulle condizioni della detenzione e sulla tutela sanitaria preventiva nelle carceri; mentre, il Comitato ha imposto nuovi *standards*, i quali ora influiscono direttamente sull'operato della Corte. La Corte non era pronta ad applicare l'art. 3 nei casi nei quali la questione si riferiva alle condizioni di detenzione ed alla tutela sanitaria primaria nelle carceri; si focalizzava, piuttosto, sui casi di maltrattamento volontario del detenuto da parte del personale. Le circostanze sono cambiate negli ultimi dieci anni. La Corte ha considerevolmente esteso il raggio interpretativo dell'art. 3, appoggiandosi ora ai rapporti del Comitato, ogniqualvolta deve accertare un maltrattamento. Questo nuovo approccio nella giurisprudenza della Corte europea dei diritti dell'uomo potenzialmente offre gli strumenti atti a riconoscere nuovi diritti ex art. 3, quali il diritto nascente dalla campagna sulla dannosità della distribuzione di aghi tra i detenuti, che assumono per vena sostanze stupefacenti.

D'altra parte, la Corte è oberata di casi, poiché il numero di ricorsi negli ultimi anni è in costante crescita, per quanto sia molto probabile che tale problema non trovi soluzione nel futuro più prossimo. La Corte necessita, pertanto, una riforma urgente, al fine di potere sostenere il costante aumento delle domande alla medesima indirizzate. Questa è la ragione fondamentale dell'emanazione del disegno del Protocollo n. 14 ratificato da tutti i paesi membri del Consiglio d'Europa eccetto la Russia. Di conseguenza, proprio la Russia rappresenta il principale freno alla riforma del sistema della Convenzione, come pure al rafforzamento della tutela dei detenuti. Il Protocollo n. 14 rappresenta al momento l'unica soluzione per il Consiglio d'Europa per diminuire il numero delle domande rivolte alla Corte ed ancora pendenti. Allo stesso tempo, il maggiore numero di casi è costituito proprio da quelli contro la Russia; eppure questo Stato continua ad avere notevoli difficoltà nel rispettare gli *standards* imposti dalla tutela dei diritti dell'uomo. La prosperità della Corte europea dei diritti dell'uomo, intesa quale organo giudicante più efficace in materia di diritti dell'uomo, rischia di essere seriamente compromessa.

Parole chiave: *Corte europea dei diritti dell'uomo, art. 3 della Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, tortura dei detenuti, Comitato europeo per la prevenzione della tortura e delle pene o trattamenti inumani o degradanti, Protocollo n. 14.*