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## SEMINAR REPORT

### Seminar on combatting torture during police custody and pre-trial detention 22-23 March 2018 in Copenhagen, Denmark

## 1 Introduction

The fight against torture in Europe was one of the priorities of the Danish Chairmanship of the Committee of Ministers of the Council of Europe. One of the main activities undertaken in this regard was a seminar held in Copenhagen on 22-23 March 2018. The seminar was opened by the Danish Minister for Foreign Affairs, Anders Samuelsen, and the President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Mykola Gnatovskyy, and was attended by 23 Council of Europe Member States from all parts of the region.

The seminar focused on **combatting torture and other inhuman or degrading treatment during police custody and pre-trial detention**. This theme had been chosen because police powers to apprehend, detain and question suspects bring with them an inherent risk for abuse. In fact, international research shows that the risk of police torture and ill-treatment is greatest during the first hours after a person has been apprehended.

Discussions at the seminar were divided into two sessions. The first session was devoted to addressing **safeguards against torture and ill-treatment** and it built on concerted efforts by both Denmark and the Council of Europe on the wider implementation and strengthening of safeguards in police custody and pre-trial detention. The second session was devoted to the concept of **investigative interviewing** as a method for police interviewing. This session also built on previous international efforts to promote the use of investigative interviewing, including by the UN Special Rapporteur on Torture in his 2016 [Annual Report](#).

This seminar report outlines and reflects the broad discussions and experiences shared by experts and Member States. It also integrates some of the findings of the background document prepared in advance of the seminar, which was very positively received by Member States.

## 2 Session I: Safeguards against Torture and Ill-Treatment

This session was introduced by Julia Kozma, Member of the CPT, and Richard Carver, co-author of the academic study 'Does Torture Prevention Work?'<sup>1</sup> Both the representatives of Georgia and Norway had been invited to present and share their national experiences. The session was chaired by Therese Rytter, Member of the CPT and legal director of DIGNITY, Danish Institute against Torture.

### 2.1 Safeguards at a glance

Since its inception three decades ago, the CPT has relentlessly advocated a trinity of rights as essential safeguards for persons detained by the police. These are the right of **access to a lawyer**, the right of **access to a doctor** and the right to **notify a third party of arrest**.

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<sup>1</sup> Richard Carver and Lisa Handley, *Does Torture Prevention Work?*, Liverpool University Press, Liverpool, 2016.

Richard Carver's academic research confirms the significance of these three rights, when implemented in practice. Furthermore, these are demonstrated as being most effective when implemented together with other interdependent rights, including meticulous registration of all arrested and detained persons (and thereby counteracting any unofficial detention); presentation before a judicial authority of any arrested person within a relatively short time after their apprehension; prompt transfer of detained persons to a pretrial detention facility; and specific safeguards for vulnerable groups, such as juveniles, persons suffering from a mental disorder or foreigners. Furthermore, an apprehended person obviously needs to be effectively, accessibly and promptly **informed about his or her rights** and how to invoke them in order to be able to exercise them.

Both CPT and the Convention against Torture Initiative's (CTI) have developed tools that explain and share good examples of how such safeguards have been implemented in practice by States. The CTI tool is available at [www.cti2024.org/en/cti-uncat-implementation-tools/](http://www.cti2024.org/en/cti-uncat-implementation-tools/) and CPT tools and standards are available at [www.coe.int/en/web/cpt/standards](http://www.coe.int/en/web/cpt/standards).

### Right to a lawyer

- To be effective, the right to a lawyer needs to be **extended to any person** under a legal obligation to attend or remain at a police establishment or any other place of detention, including for administrative purposes, **irrespective of precise legal status** (i.e. whether deemed a witness, formally declared a suspect or not).
- The lawyer should be able to **communicate privately with the detainee from the outset** of his or her custody, including before and during questioning, whether preliminary, informal or official. Access to a lawyer at the time of **trial preparation** is not sufficient.
- Effective **legal aid** covering these stages and not just at a court hearing needs to be provided to those who cannot afford to pay for a lawyer. There may be legitimate resource concerns regarding **extending this right to all detainees irrespective of the reason for their detention**, such as public intoxication or for identification purposes. The 'duty solicitor' scheme in the **United Kingdom** not only provided for an easier access by those detained to legal assistance in specific cases, but also a physical presence generally of external oversight on police activity.
- Another obstacle to accessing a lawyer is **nighttime interrogations**. In **Norway**, the possibility for nighttime calls to lawyers has recently been enhanced.

### Right to a doctor

- The right to a doctor upon request must be respected **without delay or limitations**. It should not be dependent on an assessment by the police on whether medical care is indeed needed. This right is **not the same as the provision of emergency care**.
- Medical examinations must be conducted by an **independent, competent health professional**, who properly documents and reports detected injuries to a competent authority.
- Medical examinations must be conducted in a **confidential** manner and not in the presence of a police officer, as that is likely to discourage detainees from revealing any ill-treatment by the police. In **Norway**, while not out of sight, the police are required to put on headphones to cancel out the conversation between the medical professional and the detainee.
- In **Georgia**, dedicated custodial officials called 'temporary detention isolators' are trained in health and human rights and Georgia has invested heavily in medical facilities staffed with doctors mandated to conduct routine medical checks and use forms based on the Istanbul Protocol. Directly reporting to the prosecutor, these doctors have **enhanced transparency and allowed for better reporting** of allegations. There is also a public defender's office within the national preventive mechanism who is tasked to closely follow complaint processes.

### Right to notify a third person of arrest

- The right to notify a third person of arrest has long been seen as an indispensable **bulwark against incommunicado detention** and is an essential safeguard to establish contact between the detainee and the outside world and, in turn, facilitate social and professional support and a means to follow their treatment.
- **Georgia** and **Norway** have extended this to persons apprehended for administrative purposes such as identification and maintenance of public order.
- The right to notify a third person may interfere with the **integrity of the investigation** given risks such as the detainee informing accomplices or having evidence destroyed by others. Any **limitations** of the right to notification always **need to be proportionate** and strictly **justified**.
- The third person can be notified in a number of ways, including directly by the detainee or by a police officer in the presence of the detainee (as in the case of **Georgia**). Relatedly, in **Norway**, if a family member calls, information on the detainee is not readily given but the detainee is informed that someone is looking for them. They the detainee can decide whether to call back, with these events being recorded in writing.
- The details of **time and person contacted** should be registered. Should the detained person **choose not to notify** a third person, this should also be recorded and countersigned by the detainee.
- The right of foreign nationals should not be limited to their consular representative.
- More broadly, the increasing ease of communication renders the authorities with better possibilities of ensuring the right to notification.

### 2.2 Broader Elements of Reform

In order to understand problems and challenges in detention settings the session also explored values our systems and policing culture attribute to confessions or technical evidence, the means of independent oversight they provide, and the attitudes exuded by judges and prosecutors and their influence on policing. It is important to bear in mind that culture in policing is a reflection of broader norms in the criminal justice system and even society.

While not going through a formal reform process, the **Norwegian** police – and the broader justice system – has gone through a cultural change, dismantling the so-called ‘systemic arrogance’ and allowed for an enhanced focus on ensuring individual’s dignity. International monitoring mechanisms, including the CPT, have catalyzed this change process. The **Georgian** multi-pronged reform, involving creating a new police culture and capacity, instituting a new custodial authority, establishing a national preventive mechanism and an ombudsman has demonstrably improved the conditions. Georgia also related that increase in its police investigation capacity has been central. In **Latvia**, the Internal Security Bureau has recently been established as an **independent oversight mechanism to investigate complaints** against Ministry of Interior officials such as the police. Coupled with this, Latvia has also engaged in significant ongoing police reform, both materially (refurbishing police stations) and procedurally (instituting and affecting the trinity of rights as well as embracing non-coercive interviewing).

Judges and prosecutors are often the first to see signs of ill-treatment after police custody. A lingering point of concern in this respect has been their silence when confronted with visible marks of police torture and ill-treatment. This may be linked to the lack of ethical and operational independence different state authorities exercise. With breaking down this ‘esprit de corp’, ethics becomes attached to an authority or unit’s own distinct function, in turn conceivably resulting to increased internal compartmentalization and scrutiny. This is demonstrated by the **Georgian** experience. Coupled with this, it is clear that reduction on reliance of evidence such as

torture or ill-treatment-induced confessions or through allowing a broader range of forms of evidence (e.g. electronic evidence) has corresponded directly to reduction of torture and ill-treatment.

### **Length of police custody and the role of judges and prosecutors**

- The time criminal suspects can be legally held in custody varies between 24 and 96 hours and administrative detention from 3 to 48 hours in the Council of Europe states during which they will have to be presented physically to a judicial authority.
- Prosecutors and judges plays important roles as safeguards because they often are the **first authorities, independent of the police, to see arrested persons** and scrutinize the legality of detention and treatment of the detainee.
- It is crucial to **extend the safeguards to all forms of detention**, as in the case of **Georgia**, to counter any abuse of process by the authorities.

### **Dedicated custody officers as a safeguard against ill-treatment**

- The advantages of establishing a division of labour between operational police officers, custodial officers and investigators **can lead to greater specialization, professionalism and efficiency**.
- Conferring dual or triple roles of apprehension, custody and investigation on one individual **places significant unchecked power, pressure and incentives for abuse**.
- **Specialized custody facilities**, as compared to police stations, can provide better material conditions in terms of sanitation, recreation, access to legal and medical care. As part of reforms to its police, **Georgia** has recently closed down all of its police cells and replaced them with a dedicated custodial regime called ‘temporary detention isolators’.

## **3 Session II: Police interviewing**

The second session of the seminar focused on police interviewing, and was introduced by Professor Laurence Alison, Director of the Centre for Critical and Major Incident Psychology, University of Liverpool, and Asbjørn Rachlew, Superintendent of the Norwegian Police. Detective Superintendent of the Danish National Police, Torben Ø. Henriksen, shared Denmark’s practices. The session was chaired by Alice Edwards, Head of the CTI Secretariat.

### **3.1 Introducing investigative interviewing**

*Investigative interviewing* refers to a method of questioning victims, witnesses and suspects that is non-coercive and based on building rapport. The “PEACE model” (identifying the key stages of the interview as Planning and preparation, Engage and explain, Account, Closure and Evaluation) was developed by practitioners in the **United Kingdom** in response to a number of cases in the 1980s and ‘90s that overturned wrongful convictions based on forced confessions. The seminar heard how the PEACE model has been adapted by police services in a number of other Council of Europe members, including **Denmark, Latvia, Norway and the Netherlands**.

Experts participating in the seminar explained that investigative interviewing requires the interviewer to keep an open mind and to follow a number of preparatory and execution steps. In particular, it requires moving away from “interrogation” aimed at seeking confirmation of what the interviewer believes to have happened (“perception bias”) or coercing the suspect into providing information or a confession (“confession culture”). The **aim of police interviews is to obtain accurate, reliable and actionable information** about matters under investigation.

The CTI [UNCAT Implementation Tool on investigative interviewing](http://www.cti2024.org/en/cti-uncat-implementation-tools/) was promoted as a good summary of the method, for other countries. The tool is available at [www.cti2024.org/en/cti-uncat-implementation-tools/](http://www.cti2024.org/en/cti-uncat-implementation-tools/) in several languages.

### Scientifically-backed research

- Scientific research has shown that interviews conducted using investigative interviewing techniques represent the **safest and most efficient approach** to solving crime. Such techniques contribute to reducing the risk of false confessions and errors of justice, support the prosecution's case by saving time, money and resources, and increasing the public's confidence in the police service.

### Broad applicability

- Investigative interviewing techniques are not only applicable in respect of the investigation of **ordinary crimes**, they can be used in the **counter-terrorism** context.
- The technique is also applicable in **complex cases** dealing with sexual predators and those involving child exploitation, as well as in interviewing children and juveniles.
- Investigative interviewing is **not only for highly specialised detectives** but can be employed by any regular detective or investigator. Good practice suggests that training programmes be adapted to increase the complexity of cases with associated training on investigative interviewing.
- Investigative interviewing techniques can also be effectively applied in **other contexts**, such as during monitoring visits conducted by National Preventive Mechanisms or for the purposes of asylum interviewing.

### Changing mind-sets

- Several police attending emphasised that policing is about developing **scientifically proven techniques compliant with human rights standards**. For police culture to change, it needs to be system-side through the development of the right methodology and training based on human rights standards.
- It was noted that there may be **resistance** from officers to change their long-established practices. However, the experience of those countries that have adopted the technique is that once officers have been presented with the evidence and have tried using the technique, it becomes preferred compared to previous practice. Practitioners emphasised that if there is a decision to take away a “tool” or practice from police officers, they need to be provided with an alternative one and one that works.
- Careful preparation of interviews, empathic rapport-building, using open-ended questions, listening actively and strategically disclosing potential evidence contributes to strengthening the **presumption of innocence** and **increases the public's trust** in law enforcement officials. In turn, police can become more effective.
- **Police management and leadership** have a particular responsibility to promote non-coercive and humane practices, and to correct tendencies of inappropriate culture or behaviour within the police.
- Applying the PEACE model help officers to be more methodological about their approach, thus minimising ad hoc or emotional reactions during interviews.

### Preparation

- Experts shared the importance of **careful preparation and planning** of the interview, especially regarding the level of detail to be obtained from suspects, witnesses or victims. Preparation avoids letting the interviewee talk on unrelated issues, or collecting more information than what is actually needed.

## Testing hypothesis

- Police officers need to test **all possible alternative explanations** in preparation of their interview with the witness, victim or suspect, as well as to explore in-depth the suspect's account before presenting any contrary evidence the police may possess. By allowing the suspect to provide a free account, with the **strategic release of evidence**, the suspect is prevented from fabricating an alibi if police were to disclose evidence too soon.

## Rapport-building

- Research has established that officers showing **aggressive, hostile or insulting behaviour** run the risk of making the suspect **refuse to cooperate** or to provide any information. The reliability of information or confession extracted using such techniques is easier to question by their defence lawyer.
- In understanding "rapport-building", it was explained that the officer's role is not to develop a supposed friendship with the detainee, but rather, to be genuinely interested about his or her account of the facts as well as to seek understanding through a non-judgmental approach that is based on **professional demeanour and conduct**.
- It was explained that psychologists have classified the **interpersonal management skills** of an interviewer into four different types of archetypical behaviours, which can in turn be of an "adaptive" or "maladaptive" nature<sup>2</sup>. Research has shown that if the interviewer adopts a maladaptive version of any of the four footnoted archetypes, even if used in a minimal way, this can directly influence the detainee into showing a maladaptive behaviour and subsequently decrease the information given.
- Rapport-based behaviours adapted to the demeanour of the suspect have proven useful to change maladaptive behaviours, such as an initial refusal to talk at the start of the interview, a refusal to look at the interviewer or a refusal to talk throughout the interview.
- A question arose regarding the situation when suspects are not willing to talk to a certain interviewer, and how to respond. It was considered that the supervisor may take the decision to **appoint another interviewer**. However, it was also pointed out that the interviewer does not have to fully give in to demands such as, for instance, the determination not to speak to a female officer, given the fact that *macho* culture is still prevalent in many police services.

## Collecting and preserving evidence

- Recording the interview in conjunction with investigative interviewing was seen as a powerful way of preserving and producing original evidence of verbal communication. It has also been shown to **reduce the complaints** of abuse made against the police; and is also useful for **training purposes**.

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<sup>2</sup> The four archetypes of interpersonal management skills have been classified under the following categories:

Cooperation: Social warmth (adaptive) v. overfamiliar and patronizing (maladaptive) (Adaptive attitude is referred to as "monkey").

Conflict: Frank and forthright (adaptive) v. attacking and punishing (maladaptive) (Adaptive attitude is referred to as "T Rex").

Control: Confident and in charge (adaptive) v. demanding and rigid (maladaptive) (Adaptive attitude is referred to as "lion").

Capitulate: Humility and patience (adaptive) v. uncertainty and weakness (maladaptive) (Adaptive attitude is referred to as "mouse").

## Training

- Carrying out **systematic reviews** to align policing methods with investigative interviewing techniques, and providing training was emphasised. One country explained they have two levels of training: a mandatory one, compulsory for all police officers, and a specialised one, that provides training for investigators in charge of more serious crimes and complex investigations. Both levels of training need to be underpinned by training on human rights.
- Participating experts pointed out that training in the methodology is necessary not only for police officers, but also for legal practitioners and the judiciary, to establish system-wide acceptance of the practice and rejection of evidence produced through coercive techniques, including torture or ill-treatment.

### 3.2 Relationship with safeguards against torture and ill-treatment

Experts participating in the seminar encouraged rapport-building interviewing techniques to be understood as one of the **safeguards to prevent torture and ill-treatment**. It also interlinks with some of the more traditional safeguards mentioned in the first part of this report.

- It was emphasised that all attendant rights of interviewees are to be explained and applied. In fact, the **clarification and explanation of the rights** of the victim, witness or suspect before any question on the substance of the matter is put to the interviewee, builds rapport between the interviewer and the interviewee. Research highlights that the higher the emphasis put on explaining the rights to the interviewee, the more likely it is that the interviewee will cooperate and provide relevant information or a confession to the interviewing officer.
- It was also emphasised that an **independent judiciary** and **impartiality of the prosecutors** were fundamental components in reinforcing the need to move to investigative interviewing.

### 3.3 Challenges to adopting investigative interviewing

Despite extensive scientific research showing the benefits (including reliability of evidence obtained) of applying investigative interviewing, there remain challenges to its adoption as a policy, or in practice by individual officers, that need to be responded to. These include:

- A **lack of knowledge** about the technique and the reasons (including scientific evidence) to adopt it as a standard interviewing practice.
- Criminal justice systems functioning with a **primary or exclusive reliance** on confessions that influence police officers into seeking “at all costs” corroborating information, reinforced by systems of recruitment and promotion. Such systems are also backed up by prosecutors and courts that turn a blind eye to such practices.
- **Capacity constraints**, including suggestions for how to **re-allocate resources** regarding policing activities. One practitioner shared that hours dedicated to physical exercise or military marching had been replaced in his country by training on investigative interviewing.
- A **lack of adequate training** on investigative interviewing techniques.
- A **natural human tendency** and cognitive predisposition to ignore and to seek confirmation on a suspect’s presumption of guilt.
- **Countering some of the negative images** of police abuse, manipulation and coercion shown in films and TV series, as “routine police interviews”. It was recommended to engage **the media** to publicise the need to change the image of the police, while noting that police themselves should use every opportunity to explain the role they play to citizens. It is also important not to make assumptions about what the public may think, so surveys of public opinion can be useful to understand the starting point for change.