



Recommendation 971 (1983)¹

Protection of detainees from torture and from cruel, inhuman or degrading treatment or punishment

Parliamentary Assembly

The Assembly,

1. Recalling that torture has been universally denounced as one of the gravest violations of human rights, demanding effective measures for its prevention ;
2. Recalling its [Recommendation 909 \(1981\)](#), on the International Convention against Torture, and Committee of Ministers Resolution (78) 41, on the teaching of human rights in the member countries ;
3. Noting that, by virtue of the domestic legislation of member states and the European Convention on Human Rights, the victims of torture or inhuman or degrading treatment have legal channels open to them for denouncing such violations of human rights ;
4. Stressing, nevertheless, that these legal channels only become available once the individual has become the victim of torture ;
5. Considering that most acts of torture are committed in places of detention, and convinced that regular visits without notice to places of detention would make a considerable contribution to the prevention of torture ;
6. Noting that such visits are recommended in the draft optional protocol to the draft International Convention against Torture currently being studied in the United Nations, and hoping that this will shortly be adopted ;
7. Considering that such a system cannot be expected to come into operation rapidly and faultlessly throughout the world ;
8. Considering that all prevention of torture and of inhuman or degrading treatment begins with instruction in human rights to be given in all systems and at all levels of education and as part of training for all civil and military service staff, whatever their rank or field ;
9. Noting many allegations concerning prison conditions in certain member countries and in particular the use of torture and similar treatment ;
10. Considering that the governments of the Council of Europe member states have a duty to combat jointly all torture and inhuman, cruel or degrading treatment, and any abuses that have found their way into prison practice despite the vigilance of their judicial authorities;
11. Considering that, by establishing under the Council of Europe a system of visits without notice to places of detention, so as to protect the detainees against torture or cruel, inhuman or degrading treatment or punishment, the member states of the Council of Europe would, once again, be acting as pioneers in the field of human rights as they did in the case of the European Convention on Human Rights itself,

1. Assembly debate on 28 September 1983 (13th Sitting) (see [Doc. 5099](#), report of the Legal Affairs Committee, and [Doc. 5123](#), opinion of the Political Affairs Committee). Text adopted by the Assembly on 28 September 1983 (13th Sitting).



12. Recommends that the Committee of Ministers :

12.1. adopt the draft European Convention on the Protection of Detainees from Torture and from Cruel, Inhuman or Degrading Treatment or Punishment, the text of which is appended hereto ;

12.2. ask the Secretary General to assemble information concerning implementation by the member states of its Resolution (78) 41 and to report back to the Parliamentary Assembly without delay.

Appendix Appendix to the recommendation

Draft European Convention on the Protection of Detainees from Torture and from Cruel, Inhuman or Degrading Treatment or Punishment

PREAMBLE

(to be drafted)

CHAPTER I

Principles

Article 1

In order better to ensure respect for and observe Article 3 of the European Convention on Human Rights, the Contracting Parties agree to supplement the procedure provided for in the European Convention on Human Rights by creating a procedure for the protection of detainees from torture and cruel, inhuman or degrading treatment or punishment.

Article 2

This convention shall apply in all circumstances and all places to all persons deprived of their liberty, whatever the reason, including persons detained for the purposes of inquiries by civil or military authorities responsible for the maintenance of law and order, persons held in provisional, administrative or re-educative detention, persons accused of, or sentenced for, any offence whatever and persons interned for medical reasons.

Article 3

No provision of this convention may be interpreted as detracting from the enjoyment by detainees of any advantages applicable to them under domestic legislation or under other international instruments, such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, and the Geneva Conventions of 12 August 1949 on the protection of victims of armed conflicts and the Additional Protocols thereto of 10 June 1977.

CHAPTER II

Commission

Article 4

For the purpose of this convention, there shall be established a commission composed of five members, who shall serve in their individual capacities and be selected from among persons of high moral standing, known for their competence in the field of human rights or in the fields covered by the convention. The commission may not include two members of the same nationality.

Article 5

1. The members of the commission shall be elected by the Parliamentary Assembly of the Council of Europe from a list of persons nominated by the Contracting Parties, each of which shall nominate three candidates who are nationals of Contracting Parties, of whom two at least shall be its own nationals.

2. The members of the commission shall be elected for a period of six years. They may be re-elected. However, among the members elected at the first election, the terms of three members chosen by lot, shall expire at the end of three years.

Article 6

The commission shall meet in camera. Its decisions shall be taken by a majority of the members present and voting. A quorum of the commission shall be four members.

Article 7

3. Without prejudice to Article 6 above, the commission shall draw up its own rules of procedure. It shall meet whenever circumstances require, but at least once a year.

4. The commission shall be provided with secretarial services by the Secretary General of the Council of Europe. Its secretary shall be appointed by the Secretary General in agreement with the commission.

CHAPTER III

Visits

Article 8

1. The commission may organise visits, by delegates chosen from among its members or other persons, to places of detention within the jurisdiction of the Contracting Parties.

2. Apart from periodic visits in the territory of each Contracting Party, the commission may organise such other visits as appear to it to be required in the circumstances. Article 9

Article 9

3. The commission shall notify the government of the Contracting Party concerned of its intention to carry out a visit. After such notification, its delegates may, without prior notice and at any time, visit any place within the Contracting Party's jurisdiction where they believe detainees as referred to in Article 2 above are being or may be held, including police stations and civil and military interrogation centres.

4. The delegates may not inspect places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross are entitled to visit under the Geneva Conventions of 1949 and the Protocols of 1977 thereto and which they do in fact visit regularly.

5. A Contracting Party in whose territory a visit is being made shall provide the commission with every facility to carry out its task and may in no way hamper the visit. In particular, it shall give the commission full information on the places where detainees, including specified persons, are being held.

6. The delegates may interview detainees alone and at leisure.

7. The delegates may communicate freely with the families, the counsel and doctors of detainees.

8. During each visit, the delegates shall ascertain that detainees are being treated in conformity with Article 3 of the European Convention on Human Rights.

9. If necessary, the delegates shall immediately communicate their observations and recommendations to the appropriate authorities of the Contracting Party concerned.

Article 10

10. After each visit, the commission shall draw up a report, setting out its observations and recommendations. On the basis of this report, the commission shall inform the Contracting Party concerned of its findings and, if necessary, make recommendations. The commission may on its own initiative engage in consultations with the Contracting Party with a view to improving the treatment of detainees.

11. As a rule, the reports, findings, recommendations and consultations of the commission shall be confidential. By way of exception, however, if the government concerned fails to co-operate or refuses to apply the recommendations, the commission may decide to make a public statement on the matter, announcing its findings and recommendations. It must publish its findings and recommendations whenever requested to do so by the Contracting Party concerned.

12. The commission shall submit to the Committee of Ministers a general report which shall be transmitted to the Parliamentary Assembly and made public.

CHAPTER IV

Final provisions

Article 11

The convention shall be open to signature by the member states of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 12

1. This convention shall come into force on the first day of the month following the expiry of a period of three months after the date on which five member states of the Council of Europe have expressed their consent to be bound by the convention in accordance with the provisions of Article 11 above.

2. In respect of any member state which subsequently expresses its consent to be bound by the convention, the convention shall come into force on the first day of the month following the expiry of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.

Article 13

Any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this convention to all or some of the territories for whose international relations it is responsible. In respect of such territories, the convention shall come into force on the first day of the month following the expiry of a period of three months after the date on which such declaration is received by the Secretary General.

Article 14

No reservations may be made in respect of the provisions of this convention.

Article 15

3. Any party may, at any time, denounce this convention by means of a notification addressed to the Secretary General of the Council of Europe.

4. Such denunciation shall take effect on the first day of the month following the expiry of a period of twelve months after the date on which the notification is received by the Secretary General.

Article 16

The Secretary General of the Council of Europe shall notify the member states of the Council of Europe of :

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession ;
- c. any date of entry into force of this convention in accordance with its Articles 12 and 13 ;
- d. any other act, notification or communication relating to this convention, except for action taken in pursuance of Chapter III above.

In witness whereof, the undersigned, being duly authorised thereto, have signed this convention.

Done at, this day of 19.., in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.