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ЗМІСТ

Від редактора: Міжнародні злочини агресора
під кутом міждисциплінарного аналізу7

СВІТОГЛЯДНІ ЗАСАДИ АГРЕСІЇ Й ВІЙНИ ТА ФІЛОСОФСЬКА ГУМАНІСТИЧНА КОНТРАРГУМЕНТАЦІЯ

Єременко О. Несумісність концепту пасіонарності
Л. Гумільова з теорією і практикою
правової держави.....10

Калініченко З. Орієнтація на європейські цінності
в післявоєнному розвитку України19

Литвинов О. Про культурний код росіянина як
міжнародного злочинця (спроба емпатичного
наближення до досягнення світогляду представників
«російського світу»)28

Медвідь Ф. Гуманітарна безпека України в умовах
деокупації: питання теорії та історіографії.....44

Пилипенко В. Політичні та воєнні цілі
російсько-українських війн 1917-1918 років та
2022 року: спроба порівняльно-правового аналізу65

Сабадуха О. Психологічні причини
соціально-політичного хаосу в людському суспільстві..84

КРИМІНОЛОГІЧНА ХАРАКТЕРИСТИКА МІЖНАРОДНИХ ЗЛОЧИНІВ АГРЕСОРА

Карчевський М., Поклад В. Обчислювальне кримінологічне аргументування як сучасна методологія оцінки ефективності протидії злочинам.....	99
Колосов І. Медико-трудова проблема жертви злочинів агресії.....	112
Медицький І. Соціально-гуманітарні та економічні наслідки збройної агресії проти України: кримінологічний вимір.....	123
Омельяненко О. Науково-методичні аспекти оцінювання збитків від військових дій на основі визначення втрат людського капіталу.....	140
Поклад В. Кримінальна субкультура як фактор детермінації воєнних злочинів.....	165
Рущенко І., Зубар Н. Акустичний терор проти цивільних в умовах повномасштабної війни: до постановки проблеми.....	178
Тимофєєва Л. Воєнні злочини російської федерації на території України.....	197

**МІЖНАРОДНЕ КРИМІНАЛЬНЕ ПРАВО:
СУЧАСНІ ВИКЛИКИ В КОНТЕКСТІ АГРЕСІЇ
ПРОТИ УКРАЇНИ**

Feltes T. The role and function of the council
of Europe's "Anti-torture commission" (CPT)
in interstate conflicts and war crimes.....211

Броневицька О. Концепція злочину
в міжнародному кримінальному праві.....226

Іваницький А. Правовий статус та юрисдикція
Міжнародного кримінального суду в контексті
агресії проти України243

Марін О. Проблеми імплементації норм
міжнародного кримінального права
в законодавство України261

Мовчан Р. Про деякі дискусійні положення
кримінально-правової новели про
виправдовування збройної агресії російської
федерації проти України (ст. 436-2 КК України)277

Хавронюк М. Проблеми імплементації
міжнародного гуманітарного права в перспективне
кримінальне законодавство України291

МІЖНАРОДНЕ КРИМІНАЛЬНЕ ПРАВО: СУЧАСНІ ВИКЛИКИ В КОНТЕКСТІ АГРЕСІЇ ПРОТИ УКРАЇНИ

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THE ROLE AND FUNCTION OF THE COUNCIL OF EUROPE'S "ANTI-TORTURE COMMISSION" (CPT) IN INTERSTATE CONFLICTS AND WAR CRIMES

The CPT's task is to investigate human rights violations in states that have signed the *"European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment"* of 1989. The CPT visits facilities where people are held against their will (prisons, police custody, psychiatric wards, old people's homes, etc.). Russia has signed the European Convention on Human Rights, this signature is still valid in terms of Humanitarian State Law. Russia is still represented at the CPT and the representative of Russia attends the meetings. The CPT does not operate in war zones or areas which are disputed under international law (Northern Cyprus). Former war zones are only visited when warlike activities are no longer occurring. Moreover, visits only take place where the report of the visit can go to the government responsible for the area.

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Keywords: Convention on Human Rights, torture, task and work of the Council of Europe's Anti-Torture Commission.

1. What is the CPT?

The CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) is an institution of the Council of Europe based in Strasbourg. The legal basis for its work is the "*European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*"¹.

It allows the CPT to visit (even unannounced) all places where people are held by authorities against their will. In addition to pre-trial detention and penal institutions, this includes police stations, police detention rooms, but also psychiatric wards and social care homes.

Each member state of the Council of Europe is represented by an expert in the CPT. This expert is elected by the Committee of Ministers of the Council of Europe on the proposal of the respective government. He is not bound by instructions, i.e. he is absolutely independent.

For **Ukraine**, Professor Dr *Mykola Gnatovskyy* was a member of the CPT from 2009 to 2021 and he also chaired the CPT as President from 2015 to 2021. Since June 2022, he is a Judge at the European Court of Human Rights.

His successor (elected until 2025) is *Dmytro Yagunov*, Attorney-at-law, Lecturer at the Donetsk National University.

¹ This convention is not to be confused with the United Nations Convention against Torture (CAT), even though the regulations are largely identical.

The representative of **Russia** is currently *Olga Noyanova*, Lawyer, former staff member of the Office of the High Commissioner for Human Rights in the Russian Federation. Her official term of office expires 19/12/2023.

2. The legal basis of the CPT's work

The legal basis for the CPT's work is the "*European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*" of 1989, which has currently (2022) been ratified by 47 states.

The Convention builds on Article 3 of the *European Convention on Human Rights* which states that no one shall be subjected to torture, inhuman or degrading treatment or punishment.

The CPT is not an investigative body or a court, but a preventive mechanism to protect people deprived of their liberty. The CPT thus complements the jurisdiction of the *European Court of Human Rights*.

Ukraine and Russia ratified the Convention in 1997 and 1998 respectively:

Ukraine

Ratification of ECPT:	1997
Visits carried out:	16
> periodic	7
> ad hoc	9
Reports adopted:	16
Reports published:	16
Automatic publication procedure:	Yes
Public Statement:	None
Next periodic visit:	2022

Russia

Ratification of ECPT:	1998
Visits carried out:	30
> periodic	8
> ad hoc	22
Reports adopted:	26
(of which 3 reports cover 2 visits each)	
Reports published:	4
Automatic publication procedure:	No
Public Statement:	4

The last periodic visit to **Ukraine** took place in 2017, with another visit announced for 2022. The last ad hoc visit took place in 2020. The reports are also available in Ukrainian language on the CPT's website.

Note the differences:

Ukraine agrees that the CPT's reports are automatically published, Russia does not.

There are four "public statements" for Russia, i.e. the CPT published one report each without the consent of the Russian government because Russia was not prepared to do so despite intensive talks; there are none for Ukraine.

The last visit of CPT...

in Russia was carried out end of 2021. This was the 8th periodic visit and the 30th visit in total to the country by the CPT (no report published so far),

in the Ukraine was carried out in 2020 (see below).

1. What is the CPT's mission?

The CPT carries out so-called periodic visits to each of the 47 (now 46) member states of the Council of Europe every five years, each of which is announced one year in advance. In addition, so-called ad-hoc visits are carried out. Such ad-hoc or rapid-response visits have been increasing for some time, for example in places where migrants have been detained (in Greece, Croatia, the Poland-Belarus border).

A current issue dealt with by the CPT are also so-called push-backs, both on the Mediterranean Sea by FRONTEX, as well as by Poland at the Belarusian border or by Croatia (border to BiH).

The duration of the visit ranges from a few days for ad hoc visits to around two weeks for periodic visits. Following the visit, the delegation that visited the country prepares a draft

report, which is discussed in the plenary meeting of the committee in Strasbourg, adopted there, and then sent to the respective government with recommendations. The report and the government's response are to be made public, which now happens automatically in about a dozen countries (like Ukraine), when the report is sent to the country.

Since its establishment, the CPT has visited more than 1,100 prisons (including police detention), 350 deportation centres and 400 psychiatric and nursing homes.

The CPT visits establishments where people are deprived of their liberty (even temporarily). The main focus is on how these people are accommodated, how they are treated and what legal protection they have. Each member state of the Council of Europe has agreed that the CPT may visit these establishments at any time, at its own discretion and unaccompanied, and speak there both with detainees or patients and with staff.

The aim of the work is to protect against torture and inhuman or degrading treatment or punishment. In doing so, the CPT is not primarily concerned with individual cases of torture, but with identifying risky situations and generally problematic structures in the facilities and the countries. Nevertheless, individual cases of ill-treatment are documented in detail and included in the reports (anonymised).

Examples from recent visits to Ukraine and Russia

Ukraine

The main objective of the last visit to **Ukraine** was to review the treatment of persons held in penitentiary institutions, in particular at two correctional colonies in the Kharkiv area, namely Colonies Nos. 25 and 100 and in one in Berdyansk (Colony No. 77).

Another objective of the visit was to examine the action taken by the investigative authorities in relation to complaints of ill-treatment of inmates by prison staff.

The main findings and conclusions of the CPT are set out in the executive summary of the report, dated December 2020. Here we can read:

"At Colony No. 25, the delegation received a number of credible allegations of physical ill-treatment by prison officers in the course of 2019, consisting of punches, kicks and blows with rubber truncheons, mainly in relation to inmates who had refused to clean the premises (or accept other tasks imposed by the administration) or following instances of disobedient behaviour. The alleged ill-treatment mainly took place in the offices of operational officers, occasionally with the help of inmates (so-called "duty prisoners") who had a designated role to assist staff and were assigned supervisory tasks over other prisoners. In a few cases, the alleged ill-treatment was of such severity

that it could be considered to amount to torture (e.g. extensive beating, infliction of burns to the buttocks, asphyxiation using a plastic bag, etc.). In addition, the delegation received allegations of threats of physical ill-treatment made by staff (including threats of rape with a truncheon)".

Russia

For Russia, the CPT made in 2019 a public statement in application of Article 10 (2) of the European Convention on the Prevention of Torture which provides that the Committee itself may issue a public statement if a Party to the Convention *"fails to co-operate or refuses to improve the situation in the*

light of the Committee's recommendations". The CPT 1st Vice-President Mark Kelly, who served as Head of delegation during the CPT's 2017 visit to the Chechen Republic of the Russian Federation, said: "For the CPT, it is of grave concern that, notwithstanding the efforts it has made over the last 20 years, torture of detained persons in the Chechen Republic has remained a deeply-rooted problem. This speaks not only to a dereliction of duty at the level of the Republic's authorities, but also to a failure of effective oversight and control at the federal level." It is clear from the information gathered by the Committee in the course of its visits that resort to torture and other forms of ill-treatment by members of law enforcement agencies in the Chechen Republic remains widespread, as does the related practice of unlawful detentions which inevitably heightens significantly the risk of resort to ill-treatment. Further, it remains deeply worrying that in their responses to the CPT's visit reports the Russian authorities have failed to acknowledge the gravity of the situation. The widespread practice of police ill-treatment, including torture, is not unique to this republic of the Russian Federation; this problem has been repeatedly highlighted by the CPT in respect of other republics of the North Caucasian region".

This was the fourth time the CPT has made a public statement concerning the Northern Caucasian region of the Russian Federation. The previous statements were made in 2001, 2003 and 2007.

The CPT wants to use individual cases to illustrate that there are fundamental problems in a country, in an area or in

certain institutions. The focus of the report is always on general indications of problematic structures, lack of supervision or lack of legal foundations.

The whole committee (the 47 representatives plus the secretariat) meets three times a year for one week in Strasbourg. There, the draft reports written by the delegations in cooperation with the Secretariat are discussed and adopted. In addition, the programme of visits is decided and decisions are taken if, for example, a country does not want to cooperate or publish reports.

Overall, the CPT takes a very cautious approach to allegations made during visits to detainees. Individual allegations are double- and triple-checked by reviewing files and reports. Most importantly, a member of the visiting delegation, who is an experienced medical doctor, looks at and assesses evidence of possible ill-treatment. Only if the evidence is sufficient, such examples are included in the respective country reports.

It is also criticised when allegations of excessive police violence are not adequately and independently investigated or when such investigations are not possible because the accused officers cannot be identified. To this end, the CPT also examines existing procedural files or has them submitted to it - also retrospectively.

1. How do CPT visits to a country work and how does the committee operate?

The delegations for the visits are put together in such a way that all disciplines are represented: Besides lawyers, these are forensic doctors, psychiatrists, psychologists and human rights experts.

As a rule, the visiting groups consist of eight to 12 representatives who are divided into two groups: One group focusing on prisons and police, one group focusing on psychiatry and social care homes.

The members of the CPT are assisted by representatives of the Secretariat in Strasbourg. The respective government is informed two weeks before the visit (so the date for this year scheduled visit to the Ukraine is still pending).

Of course, the CPT can only visit a selection of institutions during its two-week stay. The country in question is not informed in advance of the specific facilities to be visited - with the exception of the facility that will be visited first.

Theoretically, any police station, prison, psychiatric ward can be visited during this period, as well as temporary forced placements such as at the Greek-Turkish or Polish-Belarusian border.

The selection of the facility to be visited is based, on the one hand, on previous reports. The aim is to check whether the deficiencies identified during the last visit have been remedied in the meantime.

On the other hand, the current situation in a country is taken into account, for example, as reported in the media or in individual reports by persons or groups to the CPT. This is to ensure that the CPT can also react to current problems.

Depending on the duration of the visit, the delegations sometimes visit several dozen facilities. After a brief orientation meeting with the head of the facility, the members of the delegation divide into smaller groups and talk to the detainees, always and without fail unaccompanied and out of earshot of a staff member of the facility, and usually in their cells.

In doing so, the members of the delegation meet as many detainees as possible, so that it is not possible to trace back later whether and, if so, who gave the CPT indications of abuses or degrading treatment.

In parallel, existing files are checked, e.g. to see whether disciplinary measures have been ordered and documented accordingly or whether medical files have been kept properly and completely. In connection with these visits, on-site police facilities are often visited (also in the evenings and at night) to talk to detainees there and/or to check whether the three essential procedural guarantees for provisionally detained persons are respected (right of access to a lawyer of choice, right of access to a doctor and to medical care, right to communicate or have communicated the fact of one's detention to a relative or other third party of one's choice).

Here, as well as in the other facilities, the size of the accommodation room is checked and factors such as temperature, light and equipment as well as the availability of toilets and, if necessary, washrooms are documented.

In prisons and psychiatric wards, it is also checked whether each detainee can spend at least one hour per day outdoors and whether meaningful recreational activities are provided.

The CPT has published these so-called "standards" for different establishments and situations.

At the end of the visit, the delegation drafts a report which is discussed in the plenary of the CPT and adopted there (confidentially). This report is then sent to the relevant government for its comments. After the government has commented, the report is again discussed in plenary and then officially adopted. It can then be published, provided the government

concerned agrees. If the government does not agree (as happened several times after visits to Russia), then the CPT can make a public statement under Art 10 of the Convention (as in 2021, see above).

1. The Current Situation: Russia no longer a member of the Council of Europe, but a member of the CPT.

Following the Committee of Ministers' Resolution CM/Res(2022)2 of 16 March 2022, the Russian Federation ceased to be a member of the Council of Europe as of 16 March 2022. Resolution CM/Res(2022)3, adopted by the Committee of Ministers on 23 March 2022, further specifies, among other things, that the Russian Federation remains a High Contracting Party to the European Convention on Human Rights until 16 September 2022 and that the Russian Federation will continue to be a Contracting Party to those conventions which are open to accession by non-member States.

In this connection, *Alan Mitchell*, President of the European Committee for the Prevention of Torture (CPT), made the following statement:

"In the current situation, I wish to recall that the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is a convention which is open to accession by non-member States of the Council of Europe and that the Russian Federation thus remains a State Party to this Convention. As such, the Russian authorities must take effective steps to prevent torture and other forms of ill-treatment (contrary to Article 3 of the European Convention on Human Rights) of persons deprived of their liberty in law enforcement establishments, prisons, military detention facilities, psychiatric hospitals, social care institutions and other places

of deprivation of liberty, whether within the territory of the Russian Federation or in areas within the territory of Ukraine of which the Russian Federation exercises effective control. Furthermore, all Council of Europe member States, as High Contracting Parties to the European Convention on Human Rights, must take appropriate measures, under any circumstances, to ensure that persons deprived of their liberty are not subjected to any treatment prohibited by Article 3, a non-derogable right under the Convention."

However, the Russian Foreign Ministry announced in March 2022: *"Russia will not participate in the transformation of Europe's oldest organisation by NATO and the EU obediently following it into another platform for Western domination and narcissism. They should have fun communicating with each other, without Russia"*. Asked whether the Foreign Ministry's communication also referred to the work of the European Court of Human Rights in Strasbourg, whose rulings Russia would then no longer abide by, Kremlin spokesman *Dmitry Peskov* said: *"Withdrawal from the Council of Europe also entails withdrawal from all mechanisms"*.

In concrete terms, this means the following:

1. Legally, Russia has signed the European Convention on Human Rights. This signature is still valid.
2. Russia is still represented in the CPT and the Russian representative attends the meetings.
3. Russia is since 16 September 2022 no longer party to the ECHR (European Convention on Human Rights), but still a party to the ECPT (European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). So at least theoretically the CPT could (try to) visit Russia, Russian territory.

4. As Ukraine is a member of the CoE, the CPT can of course visit facilities on the territory of Ukraine at any time. Under international law, this would also be possible in Crimea or occupied territories in eastern Ukraine.

5. But: This naturally raises the question of whether and how the CPT can investigate and prosecute human rights violations in war zones.

The following should be noted in this regard:

1. The CPT does not take action where there is direct and immediate warfare. This is not possible for the protection of the CPT's members, but also because the prosecution of war crimes is the task of the ICC, which has also been carrying out this task since the beginning of March 2022: The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. As a court of last resort, it seeks to complement, not replace, national courts. The German Bundeskriminalamt and the Attorney General is also now systematically collecting information on possible Russian war crimes in Ukraine. This was prompted by reports of attacks on residential buildings, hospitals and civilian infrastructure, as well as the use of cluster bombs.

1. Areas that were war zones (e.g. Nagorno-Karabakh, Azerbaijan-Armenia conflict) are visited by the CPT only after a certain period of time.

2. The CPT does not visit areas whose classification is disputed. E.g.:

a) Northern Cyprus, officially the Turkish Republic of Northern Cyprus, is a de facto state that comprises the north-eastern portion of the island of Cyprus. Recognised only by

Turkey, Northern Cyprus is considered by the international community to be part of the Republic of Cyprus.

b) Crimea: In 2014 Russians seized control, organizing an illegal referendum supporting Russian annexation, but most countries recognize Crimea as Ukrainian.

c) Areas under Russian occupation in Eastern Ukraine.

d) In both cases, the CPT does not visit these areas because, on the one hand, access is not possible or too dangerous and, on the other hand, the CPT's aim of informing the respective governments about human rights violations in facilities where people are held against their will cannot be achieved. Specifically, if human rights violations were found in eastern Ukraine or Crimea, the government of Ukraine would have to be informed, but it is not responsible for them.

Томас Фельтес. Роль і функції європейської «Комісії проти катувань» (КПК) у міждержавних конфліктах та військових злочинах

Анотація. Завдання Комісії проти катувань (КЗК) полягає в розслідуванні порушень прав людини в державах, які підписали Європейську конвенцію про запобігання катуванням і нелюдському або такому, що принижує гідність, поводженню чи покаранню 1989 року (в'язниці, поліцейські установи, психіатричні відділення, будинки для людей похилого віку тощо). Росія підписала Європейську конвенцію з прав людини, цей підпис досі чинний з позиції гуманітарного державного права. Росія все ще представлена в КЗК і представник росії бере участь у її засіданнях. КЗК не функціонує в зонах військових дій або на територіях, які оспорується міжнародним правом

(Північний Кіпр). Колишні зони бойових дій відвідують лише тоді, коли бойові дії більше не відбуваються. Крім того, візити відбуваються лише тоді, коли звіт про візит може бути надісланий уряду, відповідальному за територію.

Ключові слова: Конвенція з прав людини, тортури, завдання та робота Комісії Ради Європи проти тортур.