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Russia's Attack on Ukraine: Implications for Russia's Membership of the Council of Europe and its Institutions - especially the Anti-Torture Commission (CPT)

Despite its exclusion from the Council of Europe and the resulting end of Russia's commitment to the European Convention on Human Rights (ECHR), Russia remains bound by the 1989 "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment". Russia must therefore allow visits by the Council of Europe's Anti-Torture Commission.

Initial situation

Russia launched its attack on Ukraine, described as a "special military operation", on 24 February 2022, which (as of the end of October 2022) led, among other things, to the illegal annexation of southern and eastern Ukraine. This escalated the Russian-Ukrainian conflict that had been smouldering since 2014. Russia had been admitted to the Council of Europe 26 years earlier, in 1996.

As a consequence of the Russian attack, the Committee of Ministers of the Council of Europe adopted Resolution [CM/Res \(2022\)2](#) on 16 March [2022](#), according to which the Russian Federation ceased to be a member of the Council of Europe on that date. A resolution [CM/Res \(2022\)3](#) adopted by the Committee of Ministers shortly afterwards on 23 March [2022](#) stipulates, inter alia, that the Russian Federation remains a party to the European Convention on Human Rights until 16 September 2022 and thereafter continues to be a party to those conventions open to accession by non-member states.

The Council of Europe Anti-Torture Commission (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](#)", which has currently (2022) been ratified by 47 states. Ukraine and Russia ratified the Convention in 1997 and 1998 respectively.

The Convention allows the CPT to visit all places where people are held by authorities against their will, even unannounced. In addition to pre-trial detention centres and penal institutions, this also includes police stations, police detention rooms, but also psychiatric wards and old people's homes. This convention is not to be confused with the [United Nations Convention against Torture](#) (CAT).

The Convention is linked to [Article 3 of the European Convention on Human Rights](#) (ECHR), which states that no one shall be subjected to torture, inhuman or degrading treatment or punishment. However, according to the comments of the Consultative Assembly of the Council of Europe on Article 1 of the European Convention against Torture ([Explanatory Report under IV., paras. 26-27](#)), the work of the CPT is not dependent on individual states being bound by the ECHR. This is because the CPT is neither an investigative authority nor a court, but a preventive mechanism for the protection of persons deprived of their liberty. The CPT is not primarily concerned with individual cases of torture, but with identifying risky situations and generally problematic structures in institutions and countries. Nevertheless, individual cases of ill-treatment are documented in detail and included in the reports (anonymised). The aim of the work is to protect against torture and inhuman or degrading treatment or punishment regardless of which specific legal source the prohibition of torture arises from in the individual case. For Russia, the international prohibition of torture and other inhuman or degrading treatment continues to apply independently of the ECHR under Art. 7 of the [International Covenant on Civil and Political Rights](#), under Art. 1 CAT and under customary international law.

The CPT carries out periodic visits and so-called ad hoc visits in the member states. Ad-hoc or rapid-response visits have been increasingly carried out in places where migrants are detained (e.g. Greece). [Push-backs](#) are also a current issue dealt with by the CPT, both on the Mediterranean Sea through [FRONTEX](#), as well as by Poland [at the Belarusian border](#) or by [Croatia](#).

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 full committee, adopted and then sent to the respective government with recommendations. The report and the government's response are supposed to be made public, which now happens automatically in about a dozen countries 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 facilities and 400 psychiatric and nursing homes.

The legal situation after Russia's exclusion from the Council of Europe

The Convention on which the CPT's work is based is a convention to which non-member states of the Council of Europe can also accede. The exclusion of the Russian Federation from the Council of Europe therefore does not change its commitment to the Convention. Therefore, as the President of the CPT pointed out in a [statement](#) at the end of March 2022, the Russian authorities must take effective measures to prevent torture and other forms of ill-treatment of persons deprived of their liberty. This applies regardless of whether the facilities in which people are held are located on the territory of the Russian Federation or in areas on the territory of Ukraine which are effectively controlled by the Russian Federation.

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."* In response to another question, Kremlin spokesman Dmitry Peskov said: *"The exit from the Council of Europe also entails the exit from all mechanisms"*.

Neither the [London Statute of the Council of Europe](#) nor the European Convention against Torture (see above) specify what consequences withdrawal or exclusion from the Council of Europe has for the commitment to the treaties under its auspices. Therefore, this question must be answered according to the general rules on withdrawal from international treaties. According to these, treaty-specific withdrawal clauses, such as Art. 7 of the London Statute, [Art. 58 ECHR](#) or Art. 22 of the European Convention against Torture, apply first.

Two aspects suggest that withdrawal from the Council of Europe under Art. 7 of the London Statute (as Russia has declared) does not automatically lead to the termination of all associated treaties. The first is that all the above-mentioned agreements have their own exit clauses and some of the human rights agreements under the Council of Europe umbrella are also open to non-members. But if membership of the Council of Europe is not necessary, even withdrawal/exclusion cannot automatically equate to the termination of further treaties. The second - and perhaps more important - aspect is that Art. 58(3) ECHR explicitly regulates the consequences of withdrawal/exclusion

from the Council of Europe for the validity of the ECHR. According to this, the end of membership in the Council of Europe also means the end of the commitment to the ECHR. However, such a connection has not been regulated for the European Convention against Torture.

The [Vienna Convention on the Law of Treaties](#), which contains the generally recognised international rules on the conclusion, validity, interpretation, application and termination of international treaties, does recognise the case that a state can also withdraw from a treaty if this follows from the nature of the subject matter of the treaty (Art. 56(b) WVK). One could therefore consider whether treaties that have come into being under the auspices of the Council of Europe also lapse in the event of withdrawal/exclusion from the Council of Europe - especially in the case of those treaties that are in any case only open to member states of the Council of Europe, such as the ECHR.

Such an idea could also be constructed in connection with the European Convention on Torture, which is also open to non-members, but only upon invitation by the Council of Europe (Art. 18(2)). These considerations and also possible Russian arguments in this direction are, however, invalid in the end, because Art. 56(b) of the ICESCR applies explicitly only to treaties that do not contain their own clause on withdrawal. However, both the ECHR and the European Convention against Torture have such clauses.

Outcome and implications for the CPT's work in Russia and Ukraine

Russia's commitment to the European Convention against Torture remains unchanged. Accordingly, Russia is still represented on the CPT, and the Russian representative still attends its meetings. Visits to Russia by the CPT therefore remain legally possible.

The CPT can also visit facilities on the territory of Ukraine at any time. Under international law, this also applies to Crimea or occupied areas of eastern Ukraine. However, this raises the question of whether and how the CPT can or may investigate and prosecute human rights violations in war zones.

The CPT does not take action where direct and immediate armed conflicts are taking place. 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 International Criminal Court ([ICC](#)), which [has also been carrying out this task specifically for the territory of Ukraine since the beginning of March](#).

Areas that were war zones (e.g. Nagorno-Karabakh, Azerbaijan-Armenia conflict) have so far been visited by the CPT only after a certain period of time, when the armed conflicts have calmed down and it is ensured that the CPT can visit the respective facilities without endangering its members.

The CPT does not visit areas whose classification is in any case factually disputed. This applies, for example, to Northern Cyprus, a so-called "de facto state", which comprises the north-eastern part of the island of Cyprus. Northern Cyprus is only recognised by Turkey (as the "Turkish Republic of Northern Cyprus"), but is considered part of the Republic of Cyprus by the international community.

The CPT has not and will not visit Crimea either. In 2014, Russia took control and organised an illegal referendum that supported Russian annexation, but most countries recognise Crimea as Ukrainian. This is also currently the case for the areas under Russian occupation in eastern Ukraine. In both cases, the CPT does not visit these areas, for self-protection on the one hand, and on the other, because 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. If concrete human rights violations were identified in eastern Ukraine or Crimea, then the government of Ukraine (which is competent under international law) would have to be informed, but it is not actually responsible for them. The CPT's work would thus come to nothing.