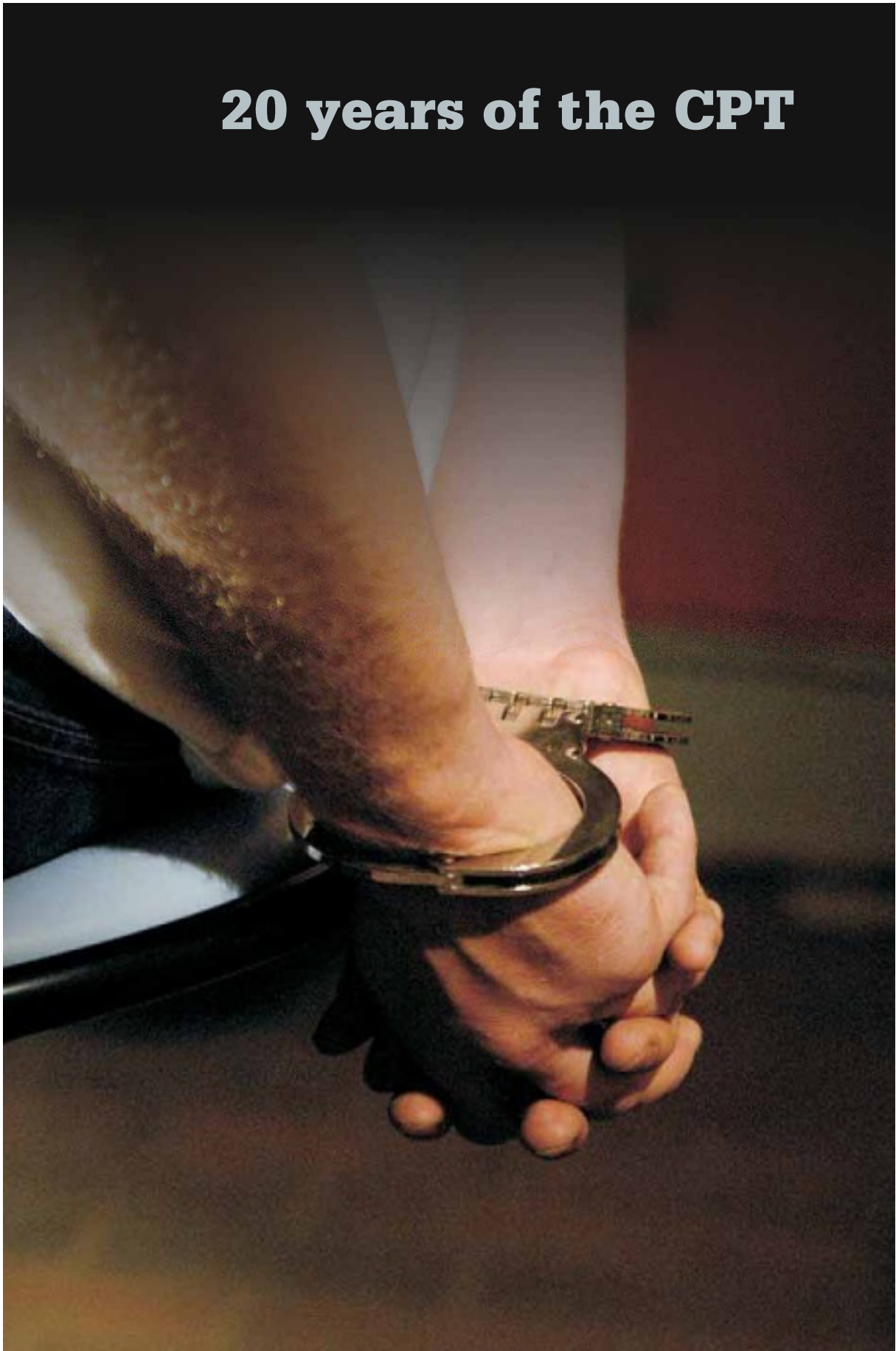


20 years of the CPT

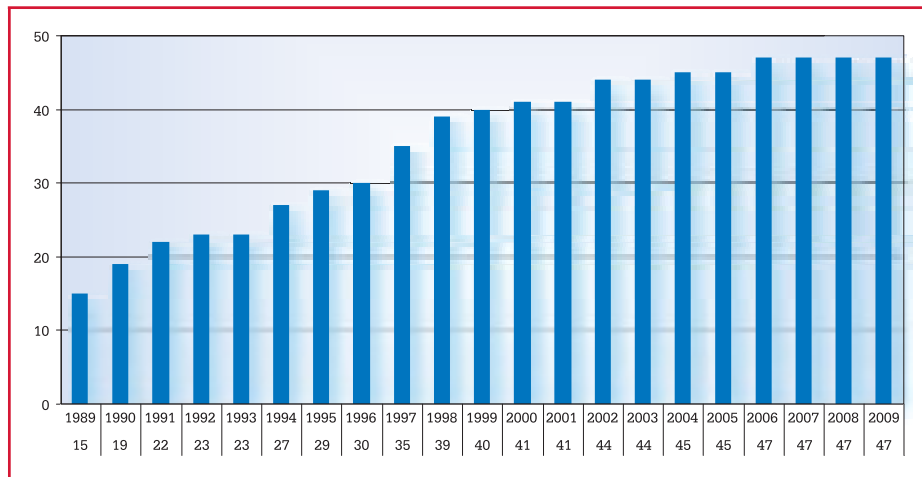


20 years of the CPT

1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is about to turn twenty. Rather than being a cause for celebration, the Committee sees this as a time for taking stock. What has been achieved during the two decades since the CPT held its inaugural meeting in November 1989, and what challenges lie ahead?

2. One thing which has certainly changed over those twenty years is the **geographical scope of the CPT's field of operations**. At that first meeting in November 1989, members elected in respect of the then 15 Parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) gathered to plot the course of the Committee's on-site monitoring action. The number of Parties to the Convention has subsequently more than tripled and now stands at 47 (see Table 1). This is in large measure a consequence of the gradual accession of central and eastern European States to the Council of Europe. The process of ratification of the ECPT by these countries began in 1994 and was basically completed ten years later. As a result, the CPT is presently tasked with preventing torture and other forms of severe ill-treatment throughout almost the whole of Europe (and in fact also a significant part of Asia).

Table 1. Number of Parties to the ECPT, 1989-2009



3. However, the CPT's coverage of the European continent is not yet complete. The fact that Belarus is not a Party to the ECPT constitutes one significant lacuna, as the map of the Committee's field of operations provided in Appendix 3 (page 55) illustrates only too well. Since March 2002, it has been possible for the Committee of Ministers of the Council of Europe to invite any non-member State to accede to the Convention, and the CPT hopes that the time will soon be ripe for such an invitation to be extended to Belarus.

4. There are also a number of regions in Europe in which the central authorities are not, or not fully, in effective control, and the CPT has so far had only partial success in exercising its preventive mandate in these areas. The Committee has been able to operate in the breakaway Moldovan region of Transnistria as well as in Kosovo, in the latter case on the basis of a specific Agreement between the Council of Europe and the United Nations Interim Administration in Kosovo. The CPT also recently succeeded in organising its first visit to the breakaway Georgian region of Abkhazia. In contrast, attempts by the CPT to visit the corresponding region of South Ossetia have failed to date. Further, the Committee's repeated efforts to organise a visit to the northern part of Cyprus have so far been fruitless, and it has also yet to visit the breakaway Azerbaijani region of Nagorno-Karabakh.

Regrettably, legalistic obstacles are frequently raised when the CPT seeks to operate in the above-mentioned regions, obstacles which appear on occasion to be politically motivated. The CPT wishes to emphasise that its mandate is entirely apolitical. The Committee's only objective in seeking to go to these areas is to strengthen the protection of individuals against torture and other forms of ill-treatment; surely that is in the true interests of all parties involved.

5. The geographical enlargement of the CPT's activities has been accompanied by an **enlargement of the Committee's work in terms of the types of places visited**. At the outset, CPT visits were centred mainly on police and prison establishments. However, the Committee has progressively explored in depth the whole gamut of deprivation of liberty, from involuntary placement in psychiatric establishments to the administrative detention of foreigners under aliens legislation, detention centres for juveniles and social welfare establishments for the mentally disabled or elderly. Visits have been organised to military detention facilities as well, though this is one category of place of deprivation of liberty that arguably should receive more attention from the Committee. In recent years, the CPT has also increasingly carried out visits focused on specific categories of inmates, such as remand prisoners held in conditions of isolation, life-sentenced prisoners and persons placed in high-security units.

6. The CPT has gradually developed a **corpus of standards** on safeguards against ill-treatment and conditions of detention, as regards both persons deprived of their liberty in general and detained persons belonging to particularly vulnerable groups. These standards have in large part been made public through substantive sections in the Committee's General Reports. The CPT is pleased to note that the standards have had an influence on various Council of Europe instruments, such as the Twenty guidelines on forced return of 2005, the revised European Prison Rules (2006), the European Rules for juvenile offenders (2008) and the Guidelines on human rights protection in the context of accelerated asylum procedures (2009). The CPT also greatly welcomes the increasing reference being made in judgments of the European Court of Human Rights to the Committee's standards as well as to the specific findings in its country visit reports.

7. As an assiduous reader of CPT visit reports and State responses will know, there are countless concrete examples of **positive steps taken in reaction to the Committee's recommendations and observations**. Safeguards against ill-treatment have been introduced or strengthened, substandard inmate accommodation has been renovated or withdrawn from service, the quality of health care for persons detained has been improved and out-of-cell activities have been enhanced. In spite of that, torture and other deliberate forms of ill-treatment of persons deprived of their liberty still exist in the Council of Europe area, and conditions of detention remain wretched in numerous establishments of various types; many published CPT reports as well as judgments of the European Court of Human Rights attest to this state of affairs.

8. **Successfully combating deliberate forms of ill-treatment** requires that appropriate safeguards be both provided by law and applied in practice, that those given the heavy responsibility of dealing with persons deprived of their liberty be carefully selected and properly trained, and that vigorous action be taken when evidence of ill-treatment emerges. Specific mention should be made of impunity, a problem encountered by the CPT in many countries and which was recently described by the Committee of Ministers of the Council of Europe as "an issue of major concern". The credibility of the prohibition of torture and other forms of severe ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. The CPT looks forward to contributing to the work on measures to address this problem which has recently begun within the Council of Europe.

9. As for the **improvement of conditions of detention**, this may well require a combination of additional material resources and appropriate legislative measures. As regards more particularly prison conditions, it is essential to get to grips with the phenomenon of overcrowding which continues to blight penitentiary systems across Europe. The various interrelated measures needed have already been identified, including through recommendations of the Committee of Ministers; simply building more prisons is not the solution.

10. For any body charged with preventing torture and other forms of severe ill-treatment, **the potential tension between a State's obligation to protect its citizens (for example, against acts of terrorism) and the need to uphold basic values** constitutes one of the greatest challenges. The CPT has experienced such tension in certain countries ever since the outset of its activities, but it became more pronounced – and more widespread – after the terrible events of September 11, 2001. This tension manifests itself in various ways, such as the extension of maximum periods of custody, limitations on the exercise of fundamental safeguards (the key requirement of access to a lawyer as from the outset of custody often being one of the first casualties), and the highly-debatable practice of seeking, in the context of deportation procedures, "diplomatic assurances" from States with a poor human rights record.

11. Although often critical of the specific measures taken, the CPT does acknowledge that some adaptations of the existing legal framework may exceptionally be necessary. Of course, adaptations of the legal framework are one thing, descent into illegality quite another. Kidnapping, secret detention, forms of torture masquerading as “enhanced interrogation techniques” – these are not the kind of methods that democratic societies should be employing (or aiding and abetting) when going about their business, even in the most testing of times. Fortunately, more rational voices have now prevailed and some of the most flagrant aberrations of the post-9/11 period are being overturned. Societies founded on human rights and the rule of law will not serve their interests well by jettisoning their basic values; on the contrary, it is in the defence of those values that lies ultimately their greatest security.

12. On five occasions during the last twenty years, the CPT has made use of **the power under Article 10, paragraph 2, of the ECPT to make a public statement**. In each of these cases, the Committee was confronted with a failure to co-operate and/or a refusal to improve the situation in relation to widespread acts of torture or other deliberate forms of ill-treatment. The Explanatory Report to the Convention describes the making of a public statement as an “exceptional competence of the Committee”, and the CPT intends to continue to use this power sparingly. However, when a public statement is made by the CPT, the Committee believes that the exceptional character of this measure should be duly recognised within the organisational structure of the Council of Europe and appropriate action taken; at the very least, the statement should be placed on the agenda of the relevant bodies. Of course, a public statement should above all be thoroughly examined by the national authorities concerned, and at the highest level. However, the Council of Europe can help to move that process forward.

13. Tables 2 and 3 on page 11 chart **the annual number of visits and of visit days** organised by the CPT since its inception. As will be observed, the steady rise in the Committee’s activities came to a halt some time ago. Since 2005 the CPT has struggled to maintain an annual visits programme in the region of 160 to 165 days, and it is still some distance from the volume of visit days required to cope effectively with the workload generated by 47 Parties to the ECPT. The loss of a number of experienced members of the Secretariat in recent years combined with the overall difficult budgetary circumstances of the Council of Europe are the root causes of this state of affairs. The CPT continues to innovate so as to make the most effective use of its powers under the Convention: routine periodic visits are becoming more targeted (and theme-based), in the same way as ad hoc visits; the Committee’s rapid reaction capacity is being developed; and “high-level talks” outside the formal framework of a visit is a method increasingly used in appropriate cases. The fact remains, nevertheless, that with the resources currently at its disposal, the CPT is not able to exploit fully the considerable potential offered by the breadth of expertise within the Committee’s membership.

Table 2. Number of CPT visits, 1990-2009 (2009 estimated)

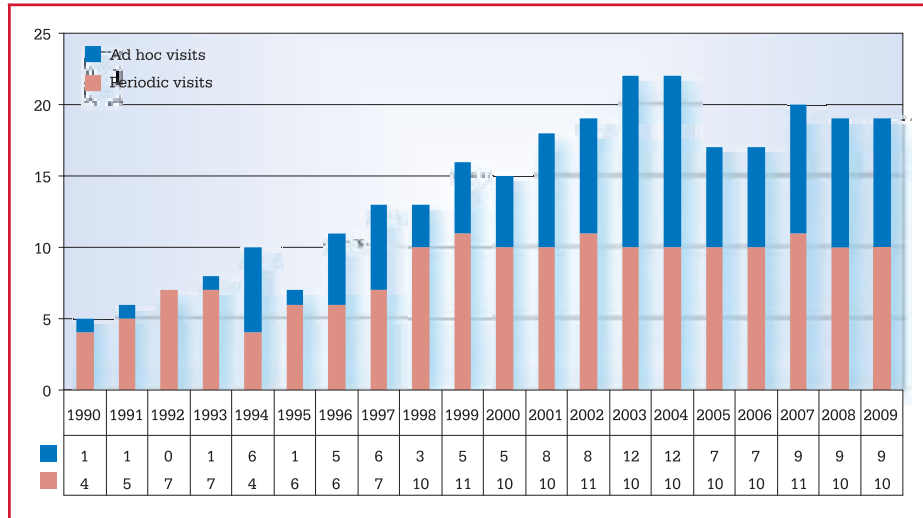
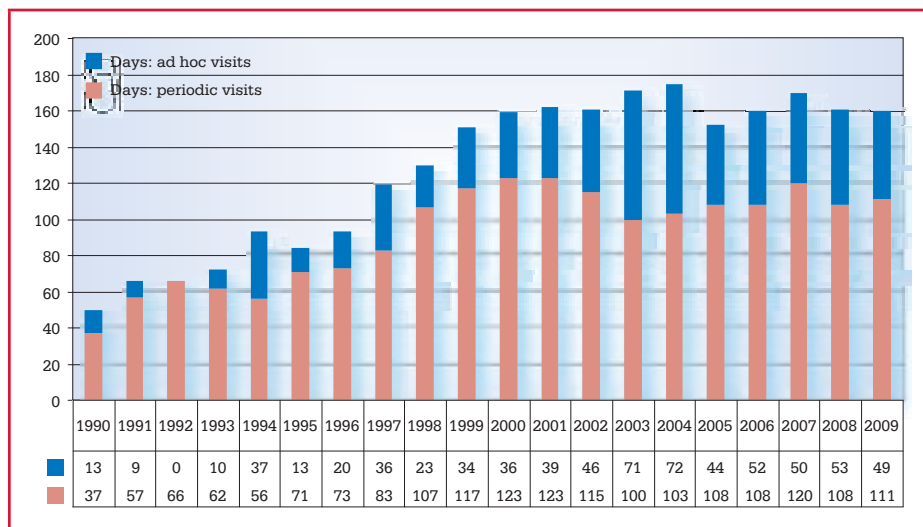


Table 3. Number of visit days, 1990-2009 (2009 estimated)



14. On a more positive note, the recent **advent of universal machinery for the prevention of torture and other forms of severe ill-treatment** raises exciting prospects, provided that this machinery is itself properly resourced. The CPT has put a premium on developing relations with the United Nations Subcommittee on Prevention of Torture (SPT), so as to ensure the greatest possible synergy between the activities of the two bodies. The CPT also looks forward to working closely with the National Preventive Mechanisms (NPMs) to be set up, under the guidance of the SPT, in European States that have ratified the Optional Protocol to the United Nations Convention against Torture. The CPT is a long-standing advocate of such monitoring bodies at domestic level, and the NPMs should be among the Committee's most important interlocutors.

15. **The absolute prohibition of torture and inhuman or degrading treatment or punishment** forms part of the bedrock of the societies that make up Europe. To challenge that prohibition is to challenge the very nature of those societies. The day will probably never come when torture and other forms of severe ill-treatment can be said to have been totally eradicated in the European continent; however, they can certainly be combated successfully and reduced to a marginal phenomenon. To achieve that, all relevant actors – national or international, governmental as well as non-governmental, judicial and supervisory – must fulfil their responsibilities. The CPT looks forward to playing its part in this endeavour during the next twenty years.