

## The European Torture Committee: Membership Issues

*Malcolm Evans and Rod Morgan \**

The Committee established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT, consists 'of a number of members equal to that of the Parties'.<sup>1</sup> As of 1 April 1994 25 States had signed and ratified the Convention. The Committee, however, comprised only 21 members. No member had yet been elected in respect of either San Marino or Hungary, which became parties to the Convention on 1 May 1990 and 1 March 1994 respectively or in respect of Slovenia, for whom the Convention will enter into force on 1 June 1994.<sup>2</sup> In addition, no member had been elected to replace the member for Ireland who did not seek re-election in September 1993.<sup>3</sup>

The effectiveness and credibility of the CPT (which given its four years of operational existence is arguably already considerable<sup>4</sup>) depends crucially on the quality and continuity of its membership. The work of the Committee rests on it being provided by the Council of Europe with a budget adequate for it to be: serviced by a professional secretariat; assisted by competent experts; and able to carry out thorough and regular visits of inspection. These support facilities are likely to count for little, however, if the Committee itself lacks persons committed to the mandate provided by the Convention or short of the ability and experience to carry it through. In this brief paper we examine the characteristics of the members and the

\* Faculty of Law, University of Bristol.

1 Convention, Article 4(1).

2 Hungary ratified the Convention on 4 November 1993 and Slovenia ratified on 2 February 1994. The Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of an instrument of ratification (Article 19(2)). Romania also signed the Convention on 4 November 1993 but has yet to ratify. Following a decision of the Committee of Ministers on 30 June 1993 the Czech Republic and Slovakia are also regarded as signatories to the Convention as of 1 January 1993.

3 Mr Mellett had been the member for Ireland since September 1993.

4 See Evans and Morgan, 'The European Convention for the Prevention of Torture: Operational Practice', *JCLQ* (1992) 41, 590-614; Morgan and Evans, 'Inspecting Prisons: the View from Strasbourg', in R.D. King and M. Maguire (eds), *Prisons in Context* (1994); Murdoch, 'The Work of the Council of Europe's Torture Committee', 5 *EJIL* (1994) 220.

arrangements for their election to see whether they enhance the likelihood that the Committee will continue to grow in stature. We begin with the question of election.

## I. The Mechanics of Election to the Committee

The articles of the Convention dealing with the election of CPT members have been found wanting in a number of respects. Under the scheme set out in the Convention, members are elected for periods of four years and may only be re-elected once. Three of the original members of the Committee, chosen by lot, were to have their terms of office reduced to two years. The purpose of this measure was to ensure an orderly turnover in membership. The latter provision made sense in the context of the very small Committee originally envisaged (in which it was planned that there should not be a representative of each State party<sup>5</sup>) but it made less and less sense in a Committee which is by now already large and, with the accession of former Warsaw Pact countries,<sup>6</sup> is clearly destined to grow further in size.

A more serious problem is that the term of office of each member runs from the date of their election. This means that every time a new State becomes a party to the Convention another cycle of office is superimposed on the Committee. It also means that if an existing member resigns from the Committee the new member elected in respect of that country will serve a full four years rather than simply 'serve out' the unexpired portion of the predecessor's term of office. Every time such an event occurs, the orderly cycle of elections is again impaired. This happened first with respect to Spain in 1990 and Portugal in 1991.<sup>7</sup> The consequence is that after four years of life a most inconvenient schedule of elections has emerged.

5 See Cassese, 'A New Approach to Human Rights: the European Convention for the Prevention of Torture', 83 *AJIL* (1989) 128, at 146.

6 Article 3 of Protocol No. 1 (See CPT/Inf (93) 17) amends Article 18 of the Convention so that 'The Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe to accede to the Convention.' This Protocol is designed to facilitate accession by the European States involved in the CSCE process which are not Council of Europe Members. The protocol will come into force on the first day of the month following three months after the date on which all parties have expressed their consent (Protocol No. 1 Article 8). This is not likely to occur in the near future. The Protocol was opened for signature on 4 November 1993.

7 This produced a rather peculiar situation as regards the Member for Spain. Mr Torres Boursault was elected as an original member of the Committee in September 1989 and was, therefore, due for re-election in September 1993. However, he resigned as a member in 1990 and was replaced in April 1990 by Mr Mohedano who himself resigned in 1993 when Mr Torres Boursault was again elected to the Committee. His term of office will now expire in May 1997. It is unclear, however, whether he can be eligible for re-election under the existing rules since it is at least arguable that he has already been 're-elected once'. No matter what the answer is to this question, it is clear that the election of the Spanish member has 'broken away' from the original cycle of election. Another alteration in the date of election was caused by the resignation in September 1991 of the Portuguese member, Mr Lopes Rocha (who had been first elected in June 1990), following his election as a Judge of the European Court of Human Rights. In September 1992 Mr Vieira Mesquita was elected member for Portugal.

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The Convention entered into force on 1 February 1989. The first elections were held in September 1989, at which time there were fifteen State parties.<sup>8</sup> However, only fourteen members were elected, since at this stage no member was put forward in respect of Malta.<sup>9</sup> As has already been indicated, Spain 'broke away' from this block of States due to the resignation of the original member. Further, the term of office of three of the original members was reduced to two years by virtue of Article 5(3).<sup>10</sup> In consequence, members of only ten States fell due for election. However, both the Italian member and President of the CPT, Professor Cassese, and the Irish member, Mr Mellet, resigned in September 1993. The election of a new member in respect of Italy was held at the same time<sup>11</sup> but the election of a new member for Ireland remains outstanding. In consequence, the current schedule of elections to the Committee is as set out below.

### The Schedule of Elections

#### 'Irregular' elections

Germany	Mr Kaiser	June 1994
Malta	Mr Borg	June 1994
Finland	Ms Lahti	June 1995
Cyprus	Mr Michaelides	September 1995
Greece	Mr Economides	December 1995
Belgium	Ms Staels-Dompas	January 1996
Iceland	Mr Bjarman	June 1996
Portugal	Mr Vieira-Mesquito	September 1996
Liechtenstein	Mr Oehry	November 1996
Spain	Mr Torres Boursault	May 1997
Ireland	Vacant	Not Known

8 Austria, Cyprus, Denmark, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom.

9 Mr Borg was subsequently elected to the Committee in June 1990.

10 These being the members for Italy, Ireland and Cyprus, all three of whom were elected to a further four-year term of office in September 1991.

11 In effect, his decision to resign at this point simply restored Italy to the position it would have been in had Professor Cassese not been one of the members whose term of office was shortened to two years. Professor Cassese was subsequently elected to serve as a Judge, and President, of the Yugoslavia War Crimes Tribunal. This would also have been the position as regards Ireland but for the fact that no election was held. In consequence, the election of the Irish member has moved from the 'regular' to an as yet unknown point on the 'irregular' election cycle.

**'Regular' elections**

Austria	Mr Machacek	September 1997
Denmark	Mr Sorensen	September 1997
France	Mr Zakine	September 1997
Italy	Mr Amato	September 1997
Luxembourg	Mr Nicolay	September 1997
Netherlands	Ms Gevers	
	Leuven-Lachinsky	September 1997
Norway	Ms Ellingsen	September 1997
Sweden	Mr Kellberg	September 1997
Switzerland	Ms Perren-Kingler	September 1997
Turkey	Mr Reisoglu	September 1997
United Kingdom	Mr Terlezki	September 1997

It is obvious that such a pattern is wholly unsatisfactory and under the existing rules the situation can only worsen as further States become a party to the Convention and as members resign for one reason or another. In order to rectify these shortcomings, a Protocol amending Article 5 of the Convention has recently been opened for signature. The purpose of this Protocol is described as being to make 'provision ... for members of the [Committee] ... to be placed in one of two groups for election purposes, the aim being to ensure that one half of the Committee's membership is renewed every two years'.<sup>12</sup> To this end, Article 1(2) of Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment amends Article 5 of the Convention by adding two new sub sections which provide:

4. In order to ensure that, as far as possible, one half of the membership of the Committee shall be renewed every two years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than four years but not more than six and not less than two years. 5. In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General, immediately after the election.

It is presumably the intention that the elections be consolidated and take place in September 1997, 1999 and bi-annually thereafter. The Protocol will only enter into force 'on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol'.<sup>13</sup> Assuming that elections are held when the

<sup>12</sup> Council of Europe Press Release Ref. 454(93).

<sup>13</sup> Protocol No. 2, Article 3.

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existing terms of office expire,<sup>14</sup> all Parties would have had to have given their consent to the Protocol by the end of February 1994 for the first of the forthcoming 'irregular' elections to be subject to the new provisions. It seems, therefore, that the anomalies are set to continue for a while longer and that it will not be until 1998 that the election of the German and Maltese members could be placed within the regular cycle.

In order to avoid even more slippage, it would be essential that the Protocol be in force by June 1995. The member then elected for Finland could either be given a term of office to expire in September 1997 or in September 1999. The September 1995 elections would be for a regular four year cycle, whilst the remaining members on the 'irregular' cycle would presumably be given terms that would expire in September 1999. The German and Maltese elections could then be consolidated with either the 2001 or 2003 elections. Come what may, then, nearly ten years would have to elapse before the elections in respect of current State parties could be rationalized.

It would be a comfort to think that this Protocol, which is modelled on Articles 22(3) and (4) of the European Convention on Human Rights, finally solves the problems concerning the election cycle. Unfortunately, this might not be so, since the new sub-section 5 is the source of a potential problem. This subsection is designed to allow the Committee of Ministers to 'allocate' either a longer or shorter term of office to newly<sup>15</sup> elected members in order to ensure that roughly half the Committee retire at two yearly intervals. To this end, the sub-section provides:

*In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph [Article 5(4)], the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General, immediately after the election.*

The assumption must have been that this sub-section would only apply when two or more new members are being elected *at a regular point in the cycle*. If, to retain an overall balance, one or more new members ought to have their term reduced from four to two years, or extended to six years, then this is decided beforehand and the allocation of the longer or shorter term between the newly elected members is decided by lot after the election. This is an entirely sensible proposal. Nevertheless, the drafting of these new sub-sections is somewhat problematic.

Sub-section 5 applies to any election in which, in accordance with sub-section 4, the Committee of Ministers chooses to allocate differing *terms of office* to those elected. This, then, would not affect the probable election in June 1998 of members

- 14 If an existing member was not seeking – or was not eligible – for re-election, then it is possible that the State concerned might agree to wait until the new system was in place before seeking to have a new member appointed. It is both unlikely and probably undesirable for the ongoing work of the Committee to be disrupted by an existing member standing down for an interim period.
- 15 There is, in fact, nothing to limit the operation of the new sub-section 5 to new members, but there would seem to be no justification for applying it to exiting members.

for Germany and Malta, since these would be given the same, reduced or extended, term needed to place them in the regular cycle. It would, however, cause a problem in any future regular September election in which the member of a new State, or, possibly, a new member of an existing State, was being elected for the first time. According to sub-section 5, the member who was to have the longer, or shorter, term of office would have to be chosen by lot. This might mean that an *existing* member might have their term reduced. Although not intended, this does seem to be the inevitable consequence of sub-section 5. The problem seems to be that sub-section 4 seeks to achieve two purposes; placing the 'irregular' elections on a regular cycle and allowing new members to be allocated to an appropriate cycle upon their first election. Sub-section 5 is only relevant to the second of these purposes and sits uneasily with the first and yet, according to its wording, it is impossible to apply sub-section 4 without applying subsection 5 when two or more terms of office are involved. It may be necessary to take a fairly pragmatic approach to this, for example, by holding separate elections.

In addition to amending the election mechanisms, Protocol No. 2 also amends the Convention so as to permit an existing member of the Committee to be re-elected twice.<sup>16</sup> The first potential beneficiary of this would be the member for Cyprus whose original term of office was reduced to two years and whose second term of office is due to elapse in September 1995. Once in force, this means that members could serve for between 10 and 14 years, depending upon whether one of their terms of office has been shortened or lengthened by virtue of the amended Article 5(4) and (5).<sup>17</sup>

## II. Membership Characteristics

The advantage of arrangements which provide for an orderly staggered turnover of members is that the Committee is not excessively robbed of experience on a single occasion. That danger first arose in September 1993 when no fewer than ten members were required to seek re-election,<sup>18</sup> of whom four either decided not to stand again or were not re-elected.<sup>19</sup> Moreover, two members not due for re-election decided to take this opportunity to resign.<sup>20</sup> This meant that the Committee would certainly lose six members and might lose up to twelve. The certain depletion of

16 Protocol No. 2, Article 1.

17 Assuming that he wishes to continue as a member and is re-elected, Mr Michaelides will have a possible maximum of ten years of membership whilst Mr Borg and Mr Kaiser might enjoy a potential thirteen years of membership.

18 The members for Austria, Denmark, France, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, Turkey and the United Kingdom, all of whom had been elected on 19 September 1989.

19 The members for France, Norway, Switzerland and Turkey were not re-elected. It is not known which, if any, offered themselves for re-election.

20 The members for Ireland and Italy.

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experience was considerable because the departing members included: two members of the Committee's Bureau,<sup>21</sup> the President and one of the Vice Presidents;<sup>22</sup> both of the psychiatrists then on the Committee;<sup>23</sup> four of the members most experienced in conducting visits;<sup>24</sup> and four out of the five members who had been involved in the three visits to Turkey,<sup>25</sup> the State party which has so far been the subject of most attention and controversy.<sup>26</sup>

In the event, the loss of experience was only marginally greater than that made necessary by individual members' decisions to resign or their failure to be re-elected. Six members known to have sought re-election were re-elected. Further, unlike one of the six departing members,<sup>27</sup> all six of the re-elected members were either relatively or extremely experienced in conducting visits;<sup>28</sup> and one was the remaining member of the outgoing Bureau and of the three delegations to Turkey.<sup>29</sup> Moreover, as we shall see, the new members elected in September 1993 included persons with expertise apparently the equivalent of that lost. It would seem, therefore, that on this occasion an election which might have damaged the working capacity of the Committee turned out reasonably well. Whether the Committee of Ministers' voting decisions were informed by these considerations we do not know.

If Protocol No. 2 is not in force by September 1997, there would be a modest exodus of members which could become a mass exodus if members with the option of standing for re-election decline to do so. On that date five members will have completed their second term of office<sup>30</sup> and five others will have to seek re-election should they wish to remain members. Though the members ineligible for re-election

21 The Bureau, which exerts great influence over the functioning of the Committee (see Evans and Morgan, *supra* note 4), comprises a President and two Vice Presidents.

22 Professor Cassese (Italy) was elected President of the CPT in September 1989 and continued as President when re-elected to the Committee in September 1991. Mr Bernheim (Switzerland) was elected Second Vice President in September 1989 and remained so until September 1993.

23 Mr Bernheim (Switzerland) and Ms Astrid Heiberg (Norway).

24 In September 1993 only seven CPT members had taken part in more than six visits. Of these members four were certain to depart or were not re-elected – Professor Cassese (Italy, eight visits), Mr Bernheim (Switzerland, eight visits), Ms Heiberg (Norway, eight visits) and Mr Mellet (Ireland, seven visits).

25 Turkey was visited in September 1990, October 1991 and November 1993, the first two visits being *ad hoc* and the third periodic. On all three occasions the same CPT members made up the visiting delegation – Professor Cassese (Italy), Mr Sorensen (Denmark), Mr Bernheim (Switzerland), Ms Heiberg (Norway) and Mr Mellet (Ireland). Only Mr Sorensen was re-elected in September 1993.

26 Turkey was the subject of a Public Statement in December 1993, the only occasion so far on which Article 10(2) of the Convention has been employed (*Public Statement on Turkey*, CPT/Inf (93)).

27 Ms Dupuy, member for France from September 1989, conducted only two visits (to Switzerland and Luxembourg) during her four years of membership.

28 Mr Sorensen (Denmark, nine visits), Mr Terlezki (United Kingdom, six visits), Mr Machacek (Austria, five visits), Mr Kellberg (Sweden, seven visits), Ms Leuven-Lachinsky (Netherlands, six visits) and Mr Nicolay (Luxembourg, seven visits).

29 Mr Sorensen, the member for Denmark since 1989 and First Vice President. He was re-elected to the Bureau in September 1993, again as first Vice President.

30 Mr Nicolay (Luxembourg), Mr Sorensen (Denmark), Ms Leuven-Lachinsky (Netherlands), Mr Kellberg (Sweden) and Mr Terlezki (United Kingdom).

might include two members of the Bureau,<sup>31</sup> there would still be a member with Bureau experience staying on<sup>32</sup> (this will surely have been in the minds of members when they cast their votes in the election to the Bureau in September 1993) and, if precedents are any guide, it seems likely that most if not all of the members seeking re-election would succeed. Moreover, by 1997 it is probable that the CPT will have at least thirty members. The depletion of Committee experience would therefore be relatively small and when Protocol No. 2 works its way in, the continuity of Committee experience should be assured.

It is difficult to assess, from the relatively cryptic *curriculum vitae* issued by the Council of Europe Directorate of Information when announcing the election of new members, how well members satisfy the requirement that they be 'persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention'.<sup>33</sup> It would appear from the number of visits that different members make, and their allocation by the Bureau to visiting delegations likely to encounter more or less difficulties, that some members are judged by the Bureau to be more able to make a contribution than others. External observers, however, are able only to consider the *balance* of background and expertise that members *appear* to bring to the work of the Committee.

The most accessible criteria for assessment are those of members' age, gender and professional background. The work of the Committee, particularly the conduct of visiting delegations, is relatively onerous,<sup>34</sup> and though the Committee can and does make extensive use of experts to assist them in conducting visits, there is a clear advantage in their being able to draw on their own resources when addressing gender-related and different policy issues. How balanced is the membership and is its character changing? It may be worthwhile comparing the membership at the beginning of 1991 and at the time of writing (April 1994).

In January 1991 the Committee comprised seventeen members of whom: nine were lawyers; four were medical doctors (two of whom were psychiatrists); two were parliamentarians; one was an academic; and one was a civil servant. In April 1994 the pattern had changed only marginally. There were now twenty one members of whom: thirteen were lawyers; four were doctors (of whom two were psychiatrists); two were parliamentarians; one was a psychologist; and one was a cleric. The Committee now included an even greater concentration of lawyers.

31 Mr Nicholay, elected President in September 1993, and Mr Sorensen, re-elected Vice President in September 1993. Members are elected to the Bureau for two years at a time (Art. 5(2) *Rules of Procedure*). The Bureau would therefore lose two of its three members were Mr Nicholay and Mr Sorenson re-elected to the Bureau in September 1995.

32 Assuming that Ms Staels-Dompas (Belgium, first elected January 1992 and elected Second Vice President in September 1993) is re-elected to the Bureau in September 1995 and re-elected to the Committee in January 1996.

33 Convention, Art.(4).

34 See the description given of the conduct of visits in *First General Report*, CPT (91) 3, paras. 55-68. See also Evans and Morgan *supra* note 4, at 605-7.



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These typifications are crude, however. The professional categories cover a variety of experience. For example the lawyers, the largest professional group, include persons as varied as a private practitioner,<sup>35</sup> public prosecutors,<sup>36</sup> a retired diplomat and a serving diplomat,<sup>37</sup> members of supreme courts<sup>38</sup> and academic lawyers.<sup>39</sup> Nor do these groupings do justice to the depth and breadth of some members' experience: a good many wear several hats. For example, members include: a retired professor of surgery, who is also an original member of the United Nations Committee Against Torture and is actively involved with a renowned centre for the treatment of torture victims;<sup>40</sup> an academic lawyer who was formerly a director general of remand centres and prisons;<sup>41</sup> and a former Vice President of the Parliamentary Assembly of the Council of Europe and a former member of the Committee on Legal Affairs and Human Rights.<sup>42</sup> Thus though the membership is dominated by persons with a legal background the CPT can reasonably claim to bring a variety of perspectives to bear upon its work, a characteristic by which the Committee sets great store<sup>43</sup> and which clearly distinguishes its work from that of the European Commission and Court.

It is doubtful, however, that the Committee has yet achieved that mix of experience to which it aspires. This is particularly true regarding gender.<sup>44</sup> In January 1991 three out of its seventeen members were female. Three years later the position has only marginally improved: five out of the twenty one members are women, and it is noteworthy that three of them are medical doctors (including both the psychiatrists) and one is a psychologist.<sup>45</sup> The male/female divide within the membership of the Committee currently corresponds rather closely with their legal/non-legal backgrounds.

To the extent that CPT visits require members to undertake fairly gruelling schedules, during the course of which they will have to talk to and identify with the generally young persons detained in police stations and prisons (as well as, by definition, young offender establishments),<sup>46</sup> then the age of members may be

35 Mr Borg (Malta 1990- ).

36 Mr Nicolay (Luxembourg 1989- ) and Mr Boursault (Spain 1989-1990 and 1993- ).

37 Mr Kellberg (Sweden 1989- ) and Mr Michaelides (Cyprus 1991-) respectively.

38 Mr Machacek (Austria 1989- ) and Mr Zakine (France 1993- ).

39 Professors Cassese (Italy 1989-1993), Kaiser (Germany 1990- ) and Reisoglu (Turkey 1993- ).

40 Mr Sorensen (Denmark 1989- ).

41 Mr Amato (Italy 1993- ).

42 Ms Staels-Dompas (Belgium 1992- ).

43 See *First General Report*, para. 87.

44 *Ibid.*, paras. 87-88.

45 Ms Lycke Ellingsen (Norway) and Ms Perren-Klingler (Switzerland) are psychiatrists. Ms Gevers Leuven-Lachinsky (Netherlands) is a doctor. Ms Lahti (Finland) is a psychologist. The remaining female member, Ms Staels-Dompas (Belgium) was elected second Vice President in September 1993.

46 The peak age for criminal offending in most developed countries is 16-17 years of age and the average age of adult prisoners, who tend to be incarcerated after being convicted of several offences, is generally in the mid to late 20s (see Maguire on 'Crime Statistics, Patterns and Trends' and Morgan on 'Imprisonment', in M. Maguire, R. Morgan and R. Reiner (eds), *The Oxford Handbook of Criminology* (1994).

relevant. The January 1991 cohort of members included: eight members aged 60 years or over; six members of 45 to 60 years; and three members below 45 years of age. The average age was 56 years. Of the twenty one members in April 1994: thirteen are 60 years or over (of whom three are 70 or more); six are 45 to 60 years; and only two below 45 years of age. The average age is now 60 years. Once again it is doubtful that the Committee includes an ideal mix, though any shortcomings can be compensated for by employing expert advisors as well as relying on the generally more youthful vigour of the Secretariat.

### **III. Conclusion**

The first occasion on which the CPT's membership has faced the possibility of major change has passed in a fairly undramatic fashion. There has been a modest turnover of members but the overall balance of the Committee in terms of expertise has been maintained and, indeed, enhanced, though the male/female ratio is still less satisfactory than might have been hoped. The most encouraging sign is that the Committee is clearly perceived as being of significance and is attracting the attention and involvement of persons of the highest calibre. The structural changes to the Committee to be ushered in by Protocol No. 2 are also to be welcomed, though it is disquieting to note that these uncontroversial changes seem likely to take a considerable time to come into force. It will not be until the early years of the next century before elections to the Committee are finally put on a satisfactory footing.