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EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(CPT)

Written contributions from CPT members on the topic of combating impunity, as a possible subject for the substantive section of the 14th General Report

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Mauro PALMA

General

Over the years, in the course of its visits to States party of Convention, CPT's delegations encountered a number of episodes of ill-treatment of people deprived of their liberty that did not find a prompt and adequate reaction by the relevant authorities. This deficiency of a proper reaction was due to a variety of reasons: because they were not properly investigated; because the inquiry was actually not carried out by an independent authority; because the investigation (even if carried out by the prosecutorial/judicial authority) did not follow the criterion of effectiveness; because the responsibilities were not considered under the disciplinary profile; or because the disciplinary inquiry resulted in a lenient sanction.
Sometimes, even when persons had lodged a formal complaint of ill-treatment by the police/prison staff, either no steps had been taken at all by the competent authorities, or the investigations had been carried out in a manifestly ineffective manner.

The CPT considers that, in those cases where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties can have a profound dissuasive effect on law enforcement officers.
On the contrary, the lack of effective and appropriate response from the relevant authorities, particularly from the prosecuting/judicial and disciplinary authorities, can only foster a climate in which law enforcement officers who have in mind to ill-treat persons deprived of their liberty will quickly come to believe – with very good reason – that they can do so with impunity. This improper message of impunity has a negative effect on the formative culture of law enforcement officers, sometimes being more forceful than any messages delivered to them in the formal training.

Moreover, the CPT observes that the criminal law of some countries does not impose an explicit obligation upon prosecutors to open *ex officio* (i.e. in the absence of a formal complaint) a preliminary enquiry, when he/she receives information that a persons deprived of his/her liberty may have been ill-treated.
The CPT considers that such a legal provision in all the States party of Convention would be of great support for the shared aim to combat impunity. Therefore, whenever the Committee found that the prosecution *ex officio* in such cases was not provided (or not explicitly provided) by law, it pressed the national authorities to introduce such legal provision.
As in some countries such a requirement is not currently fulfilled, therefore the diffusion among all the law officials of a culture not making any allowances for messages of impunity – even if delivered in a roundabout way – becomes more crucial.

Complaints' examination

In order to make its assessments, in the course of its visits the CPT's delegations examined the actions taken by the authorities to ascertain the responsibilities of alleged ill-treatment and to take consequent measures on the administrative and/or criminal grounds.
In some cases the delegations scrutinised the related criminal files (including the medical documentation prepared by medical staff working in police/prison establishments) and met with the judicial/prosecutorial authorities in charge of those cases.

The CPT considers that one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by all competent authorities of all relevant information regarding alleged ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint. This concept was repeatedly stressed in the Reports concerning the visits, highlighting that in this connection, independent investigative bodies have an important role to play, as well as judges and prosecutors.

All persons in respect of whom the preventive measure of remand in custody is applied should be physically brought before a judge who must order that measure [*see paragraphs … concerning custody in police*]. This will provide a timely opportunity for a person who has been ill-treated to lodge a complaint. Furthermore, even in the absence of an express complaint, the fact of having the person concerned brought before the judge will enable the latter to take action in good time if there are other indications (e.g. visible injuries; a person's general appearance or demeanour) that ill-treatment might have occurred.
In addition, every public official is under a legal obligation to report in writing to the prosecutor or the criminal police any facts related to a criminal offence which may have come to his/her knowledge. Specific obligations to report facts which are indicative of a criminal offence are incumbent on police officers and medical personnel.

In principle, whenever an episode of ill-treatment of a person deprived of his/her liberty is alleged or it is deduced from other elements, the decision as to whether or not the conduct of the officers concerned is criminal in nature should be made by the competent prosecution and/or judicial authorities, not by a serving police officer. In this regard, the CPT considers that a positive feature of the legal system of States party of Convention lays in the provisions that all complaints of ill-treatment of people deprived of their liberty against law enforcement officers are submitted to the prosecutor, and that it is the prosecutor who determines whether or not a preliminary investigation should be opened into the complaint.
It is possible and useful to entrust a fully independent investigating agency with the task of processing complaints against law enforcement officers. Such a body should have the power to instigate disciplinary proceedings against law enforcement officers and to refer cases to the prosecution and/or judicial authorities which are competent in considering whether criminal proceedings should be brought.

It goes without saying that the body entrusted with such a task should satisfy a criterion of absolute independency from the agency to which the officers involved in the episode to be investigated belong. More in general, this investigating body should be independent from the law enforcement agency (police, frontier guard, special corps, forces under the responsibility of the Ministry of Defence or of other Ministries) which is responsible of the deprivation of liberty of the allegedly ill-treated person.
It should be composed of people with a professional and personal profile such as to guarantee an absolutely independent enquiry and to be perceived as clearly independent by the officers as well as by the community. It should be entitled to have access to any relevant information sources, useful for the case's assessment. It should be put in conditions (logistic, financial, etc.) to carry out its investigation. It should be requested to come to a conclusion, by ascertaining the responsibilities, in a reasonable time.

On the contrary, the CPT often founded cases where the body entrusted of the investigation of the misconduct of law enforcement officers was composed of members of the same law enforcement agency or directly belonging to the same Ministry. In same cases, for instance, the investigation was entrusted to and conducted by police officers from the same Police Station. This situation does not satisfy a basic criterion of independency of the investigation.

Criminal investigations

In some occasions, the CPT observed that even when a criminal investigation had been opened, the involvement of the judicial enquiring authority had been limited to superficial initial instructions delivered to the criminal police and approval of the decision taken by them. Frequently the decision in these cases was the indefinite suspension of the case or its dismissal.
The CPT has to remind that a proper investigation should comply with criteria of promptness, comprehensiveness and effectiveness.
It is necessary to carry out all the needed and possible investigative activities, exhausting all reasonable investigative remedies, in order to determine whether or not the force has been lawfully used; to ascertain all significant and related circumstances of possible ill-treatment by members of law enforcement agencies; to identify the responsible officials; and, if appropriate, to apply the punishment of those concerned.
It is necessary to cover by investigations the possible breach of procedures and duties by members of law enforcement agencies, including the proper reaction to any information received on ill-treatment. Even if the inaction (or action) does not constitute a crime, it is necessary to recommend disciplinary measures.
Moreover, as already said, whenever the investigations are carried out by prosecutors/judicial authorities, who are formally independent from police, the criminal police is usually entrusted by them to conduct investigative acts. It is axiomatic, in the CPT's view that such investigative acts should be conducted by officers who are not attached to the same police department or establishment as the police officers who were object of the investigation (for example, police officers attached to a general police inspectorate or an internal affairs department).

To sum up, in the CPT's opinion, for a criminal investigation into possible ill-treatment by law enforcement officials to be effective:
- the persons responsible for, and carrying out, investigations into possible cases of ill-treatment by law enforcement officials should be *independent* from those implicated in the events;
- the investigation must be capable of leading to a *determination of whether force used was or was not justified* under the circumstances and to the identification and, if appropriate, the punishment of those concerned;
- *all reasonable steps* should be taken to *secure evidence* concerning the incident, including *inter alia* eyewitness testimony, forensic evidence, and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings including the cause of the death;
- the investigation must be conducted in a *prompt* and reasonably *expeditious* manner;
- a sufficient element of *public scrutiny* of the investigation or its results should be required, to secure accountability in practice as well as in theory.

In addition, the CPT attaches particular importance to two additional criteria:
- in the context of *criminal* investigations, all pieces of information which may be indicative of the commission of other criminal offences should be fully taken into account;
- *disciplinary* responsibilities of law enforcement officers involved in instances of ill-treatment should be systematically examined, irrespective of whether the misconduct of the officers concerned constitutes a criminal offence.

The practice, found in some countries, of not disclosing the identity of members of special forces charged with ill-treatment of detained persons in the context of criminal investigations is unacceptable. Such state of affairs is tantamount to granting members of special forces absolute immunity from criminal liability in relation to their action while on duty.

Finally, persons who are/were deprived of their liberty and allege that they had been ill-treated by law enforcement officials must be granted, at their request, unrestricted access to a forensic medical examination, if necessary, free of charge.

With a view to enhancing the global effectiveness of the investigation procedure into possible ill-treatment by law enforcement officers, the CPT recommended in its Reports that immediate measures be adopted to ensure that these precepts are systematically applied in practice.
For such achievements, the CPT considers that it could be useful to provide prosecutors with clear guidance as to the manner in which they are expected to supervise preliminary investigations involving complaints against law enforcement officers and, specifying that, in every case where it comes to a prosecutor's attention that a complainant may have sustained injuries while in the hands of law enforcement officers, the prosecutor must order immediately a forensic medical examination; such an approach should be followed whether or not the complainant concerned bears visible external injuries.
It is also essential that law provides strict time limits within which prosecutors must determine whether complaints against the police which are transmitted to them are to be the subject of a preliminary investigation.

Role of prison service

Reference has to be made to the role of prison service in preventing ill-treatment and combating impunity [*see paragraphs … concerning the prevention of ill-treatment in prison*]. An efficient prison service can undoubtedly contribute to such achievements, in particular in establishments which represent points of entry into the prison system.
Newly-arrived prisoners should be systematically subjected to a medical examination by a doctor as soon as possible after his/her admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.
Any signs of injuries observed on admission should be duly recorded, together with any relevant statements of the prisoner and the doctor's conclusions. The same approach should be followed whenever a prisoner is medically examined after a violent episode in prison. Furthermore, if a prisoner so requests, the doctor should supply him with a certificate describing his injuries.
Therefore the record drawn up by doctors following a medical examination of a newly-arrived inmate should contain:
(i) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);
(ii) a full account of objective medical findings based on a thorough examination, and
(iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings.

Training

As it is for other topics, that are important for the CPT's mandate and that are subject of its attention, a proper training of all the concerned 'actors' (police officers, prison staff, criminal police, prosecutorial/judicial authorities, …) is an extremely significant instrument to combating impunity.

Law enforcement officers should be led to see impunity – in general, and particularly that related to the ill-treatment of detained people, put under their responsibility – as a shame, which is paid by their entire corps, rather than as a way to keep them far from external prying eyes.
Obviously, it is true that the responsibility of any episode is personal and it has to be given only to the person(s) who committed or permitted the ill-treatment. But it is also true that the conspiracy of silence and the investigative inactivity lead to a form of complicity, which turns the personal responsibility into a collective responsibility.
This misunderstood esprit de corps is testimony of an internal climate potentially conducive to the expansion of the phenomenon of ill-treatment, otherwise circumscribable to the misconduct of a few. For this reason it should be strongly nipped in the bud by the responsible authorities.

To such achievements initial training and training on the job have a crucial role. Training should pay particular attention to get law enforcement officers to appreciate the adequate investigation of any episode of ill-treatment as an element providing their personal professional dignity and the dignity of the corps they belong to, with a more effective safeguard and a broader acknowledgment.
It is evident that this result can not be achieved by giving them theoretical lectures – though properly organised – during their training courses. Nor it can be achieved only by delivering clear messages to them reminding that ill-treatment of people deprived of their liberty will be not tolerated and it will subject to severe sanctions. These messages are absolutely necessary, but they should be not contradicted by the messages delivered to them by the daily practices. The daily practices constitute a body of indirect messages, methods to do, global view of their profession, picture of the corps. This body performs the professional profile of an individual police officer, more than the message he/she received during the formal training, as it constitutes the connective tissue of his/her factual experience.

It is for this reason that only the prompt, effective and comprehensive investigation of any allegation of ill-treatment can deliver a clear message, on the concrete field of the daily practice. It can avoid that the needed solidarity among people belonging to the same team might evolve in an improper esprit de corps; so giving the basis for a common culture respectful of the dignity of any persons and refusing any form of impunity.

Veronica PIMENOFF

I. there should be a definition given on what is meant by impunity.
impunity is an exemption from punishment, it is the lack of mechanisms of accountability which not only is a reaction on crimes already committed but may function as an invitation to repeat the offences. The CPT, as a committee for prevention, is guided by the view that practised and expected impunity for torture and inhumane or degrading treatment encourage torture and inhumane or degrading treatment and is a severe obstacle in abolishing such behaviour. Therefore part of the prevention of future torture and ill treatment is holding perpetrators accountable and introducing a system of complaints, investigations and justice.

II. as impunity nowadays in public awareness and the media seems to be mainly connected to genocide, war crimes and crimes against humanity on one hand and the International Criminal Court and Courts set up for i.a Rwanda, Sierra Leone or Former Yugoslavia or commissions for achieving truth and reconciliation as complement to the justice system on the other, we have to show that fighting impunity is crucial in less extreme situations, too: among state authorities which have the monopoly of legal power and apprehend and detain persons.

The reader is perhaps more used to read about torture and ill treatment of persons in areas with a severe ongoing (armed) conflict. The CPT is acting in such regions, in other places there is a transitional context: armed groups turn into criminal gangs, but CPT delegations come across ill treatment and even torture of persons involved in common crime and social violence, too.
Criminal justice systems set up by authoritarian governments for regime protection and criminal justice systems facing organised international crime may try to expand police powers and tolerate torture. Abusive response to crime might be supported inside and outside the police and also prison organisation.
Therefore it is crucial to stand up against the authorities who violate human rights norms and/or use violence against ordinary criminals, who nowadays often are the victims of police abuse instead of/along with the victims of state repression.

III. It might be useful to - in a way or other – express why fighting impunity is of importance in the work of the CPT (additionally to what was said under I)**:**

-fighting impunity is primary prevention of torture and ill treatment of persons deprived of their liberty
because it aims at stopping the perpetrators. It is not only the possibility of being punished which stops the perpetrator (and it is well known, that many people committing a crime do not expect that they will be caught and punished; and in every country torture is a crime) but the knowledge that he is accountable, that he will not be protected, that there will be an independent investigation and the results will be public and a punishment will follow.

fighting impunity is breaking the bonds of solidarity between the perpetrators, it is destroying structures which permit and even invite to/expect ill treatment of persons deprived of their liberty by having a culture of permitted overstepping of the rules (in her essay on torture for instance Kate Millet tries to show how in the atmosphere of impunity an act which as an individual act would be a crime which is prohibited and perhaps "perverse" becomes a by the state permitted act, patriotic, on duty professional paid work), which is an open secret of the organisation. (Mika Haritos-Fatouros has described the training for torture in Greece after 1967, one part was creating and maintaining the feeling of powerful solidarity by stating "Nobody will ever stand up against you, you can hit an fuck anybody") Where impunity is ruling, cruelty is not condemn but justified and the perpetrators protected. The possibility of committing crimes inside the organisation without having to face or suffer any punishment is an implicit – when not explicit –approval of these crimes. What is done without punishment can be repeated without fear. The forgiving and forgetting of the deeds of oneself and one's companions strengthens the bounds of solidarity within the group, as does the remembering without caring, too.

-fighting impunity is tertiary prevention of torture and ill treatment of persons deprived of their liberty

for victims of torture and ill-treatment public knowledge of their experience and the truth about the perpetrators, which can be established by investigating, are steps towards regaining one's dignity. rehabilitation and reconciliation

-fighting impunity is covered by the CPT mandate also in a formal way, as the lack of an effective official investigation into a person's allegations of ill-treatment might be regarded as a violation of Article 3 of the ECHR.

• In Sadık Önder v. Turkey, that there had been a violation of Article 3 (prohibition of torture or inhuman or degrading treatment or punishment) of the European Convention on Human Rights, in that there was no effective official investigation into the applicant's allegations of ill-treatment
The European Court of Human Rights has today notified in writing two judgments [1] in the cases of Sadık Önder v. Turkey (application no. 28520/95) and Çolak and Filizer v. Turkey (application nos. 32578/96 and 32579/96). (These judgments are available only in English.)

IV. in the substantive part we might have a chapter In some places there is a transitional context: armed groups turn into criminal gangs **on "as from the outset of its activities the CPT has paid attention to fighting impunity, promoting accountability and promoting the establishment of avenues of complaints and official/independent investigations of allegations of ill-treatment".**

Perhaps there are some characteristic findings one should mention. Further, one could describe what mechanisms of accountability the CPT has been recommending and what it has been stating on complaint systems and investigations in different types of institutions under its mandate. Are we so lucky, that we can show up examples of successful approaches??

What has been the outcome, when the committee has requested the party State to provide information on legislative or administrative steps which it has taken to create complaint systems and combat impunity in other ways?

V. it could be appropriate to refer to some of the numeros international declarations on impunity, but it depends on the outset of the text, whether that is necessary or suitable

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Silvia CASALE

Mauro Palma and Veronica Pimenoff have raised a number of interesting issues of relevance to our consideration of the question of impunity, including complaints procedures. Clearly the CPT has made findings on this subject during a number of visits and has made relevant recommendations in visit reports.

I have been thinking about how to structure our thoughts on this complex matter and have a few preliminary suggestions to put forward for consideration.

Firstly we should be clear that a substantive section in the 14th (or subsequent) General Report would not be an exhaustive exploration of the subject, but, as with past substantive sections, would raise some issues and point to some recommendations which have emerged thus far from CPT visits. This would serve to emphasise the importance the CPT attaches to this subject and enable us to invite comments from readers, as we have done on other occasions.

Secondly, as I have thought about this section, I am coming to the view that "combating impunity" may not be the best title for it. In effect we are talking about effective action to counter torture and other forms of ill-treatment of persons deprived of their liberty. If we say this, it would be a more positive way of talking about combating impunity. The term "impunity" could well fit within the body of the text, but I wonder whether a less negative title would not be more in line with our preventive mandate.

<u>Outline of possible structure:</u>

A. Introductory remarks

- CPT's practical experience of action taken / lack of effective action in the face of information indicating ill-treatment

- importance of a system for ensuring effective action, in terms of general prevention, specific deterrence, development of the professional ethos of law enforcement agencies

B. Legal framework

- torture and ill-treatment as specific crimes under domestic law
- specific penalties for torture and ill-treatment in domestic law

- the ex officio obligation of prosecutors' to take action (a) against any crime coming to their attention (b) on all complaints of ill-treatment (c) on any evidence of ill-treatment

- obligations under international law (including ECHR and ECPT)

C. Procedures

- disciplinary process

- criminal process

In discussing the procedural options, we might wish to include suggestions about :

- the inter-relationship between them (and other bodies, e.g. Ombudsman's office)
- independence of officials involved
- criteria for initiating process (e.g. formal, written complaint or information coming to the attention of officials, level of injury sustained etc.)
- standards of proof and burden of proof
- requirements for thorough investigation (including taking of statements from officials and witnesses)
- due process safeguards
- outcomes (reference to statistical trends regarding outcomes – dismissals, nfa)
- sanctions (reference to statistics on use of strong sanctions / substitutions)

- complaints process

- the right to lodge a complaint
- bodies entitled to receive and act on complaints
- complainant's right to information
- right to a timely official response
- safeguards : right to advice, protection of witnesses, confidentiality, prosecution for bringing false allegations against officials

D. Operational Gaps

- timely official action
- securing of evidence
- forensic resources
- accurate and comprehensive record-keeping by law enforcement
- police co-operation with the complaint authority

E. Conclusions

- implications for law enforcement staff - closing ranks / professional ethos; recruitment, training and development
- forensic experts – training, equipment, other resources
- independent complaints authorities
- prosecutors and judges
- inspection mechanisms

Renate KICKER

In addition to what is said in the more elaborated papers by other colleagues I wish to highlight cases of impunity in the prison setting which the CPT's delegation faced in two of its most recent visits, namely in Bosnia and Herzegovina and in Croatia. In both countries in the course of a planned armed intervention prisoners had received visible injuries caused by uniformed prison staff and the primary investigations into these cases were carried out by the head of security, their superior authority. In both cases (Bosnia/Zenica prison and Croatia/Split county prison) the decision of an armed intervention against a certain group of prisoners was planned and taken by the prison director together with the head of security and other members of the leading team. The prison doctor, at least in Zenica prison, did neither examine nor record the injuries received by the prisoners concerned. When we asked for a thorough, independent and impartial investigation into these cases we received a short paper by the Ministry of Justice certifying that the use of force was not excessive and consequently no action taken against the guards involved. The numerous interviews the delegation had conducted in both cases suggested the contrary.

In respect to Bosnia and Herzegovina the CPT recommendation reads as follows:
"The CPT calls upon the relevant authorities to ensure that a thorough, independent and impartial investigation into the subject is carried out. The investigation must be capable of leading to a determination of whether force used by prison officers was or was not justified under the circumstances … and to the identification and, if appropriate, the punishment of those concerned; in this context, the CPT would like to receive a copy of any written instructions and/or authorisation issued concerning the use of force. All reasonable steps should be taken to secure evidence concerning the incident(s), including inter alia eyewitness testimony, forensic evidence, etc"

When drafting this recommendation the delegation discussed whether the CPT could/should go a bit further and ask for an investigation by an authority independent from the prison administration or by a judicial authority. One could argue that the CPT should leave it to the discretion of the state concerned how and by whom an independent and impartial investigation be carried out. However, the results in these two cases are clear examples that the investigations carried out within the prison administration system totally lacked independence and impartiality, which led to impunity.

Another example from the Croatian visit can be given where the lack of proper documentation of a certain period of time during a violent episode suggests that impunity will be provided for the main perpetrators of ill-treatment against prisoners. The question whether an internal disciplinary proceeding or a judicial criminal procedure needs to be instigated in case of injuries suffered by inmates should not be left to the discretion of the prison director as is the case in Croatia. This again is an example why it should be required that an authority independent from the prison administration or a judicial authority examines any case where a prisoner received injuries.

Aleš BUTALA

ESTABLISHING EFFECTIVE APPEAL PROCEDURES*

1. Article 25 of the Slovenian constitution guarantees everyone the right to appeal or other legal remedy against the rulings of courts and other state bodies, local community bodies and statutory authorities by means of which these bodies rule on their rights, obligations or legal interests. The right to legal remedy is realised in accordance with procedural laws which determine the course of individual types of court and administrative procedures. In addition to formal (court and administrative) possibilities, which are usually lengthy and often expensive, the individual concerned must also have the option of other less formal appeal procedures which can even be more effective and which most importantly are faster and cheaper. When an individual feels that an official or public servant has in processing and ruling on his case been guilty of an irregularity, made a mistake, or simply acted incorrectly, in short that his rights have not been respected, he must be given the possibility of appeal. Mistakes can occur in any type of work, but what is important is that the individual has the possibility of having the error rectified through an appeal.

2. Formal appeal procedures in court, administrative and other legal proceedings usually allow a review of the correctness and legality of the ruling of a state body, local community body or statutory authority (hereinafter: body). By means of legal remedy the individual may in a prescribed procedure achieve the abolition, annulling or reversal of a ruling from a body of first instance. The subject of the legal remedies specified by procedural regulations is usually only the (more or less comprehensive) judgement of the ruling passed, and on rarely of the procedure itself, independently of the review of the ruling. Formal appeal procedures do not deal with the **conduct** of the body in the decision-making process, which however can be equally important for the individual. Ruling on legal remedies (with very few exceptions) does not include dealing with accusations of lengthiness, economic inefficiency and abuses of procedural provisions which do not have a causal connection with the correctness and legality of the ruling issued. Formal legal remedies are unsuccessful as a form of supervision of the work of the official who conducts the procedure and makes the ruling: his offensive attitude, arrogance, conceit, lack of proper courtesy and respect in relation to the party, omissions and failure to take measures in the procedure are only a few examples of circumstances which cannot be effectively asserted through the legal remedies specified in procedural regulations for specific types of procedure.

In all cases of ruling on the rights, obligations and legal standing of the individual, a suitable procedure for exercising the right to legal remedy should be specified or prescribed. Although this is one of the basic preconditions for ensuring a fair procedure and a just decision, we find that there are still areas in which they are no appeal procedures. Such difficulties appear above all in cases where the body making the ruling considers that the matter is not an administrative matter and as a consequence does not apply the provisions of the General Administrative Procedure Act (ZUP).

*text prepared for an Annual Report of the Slovenian Ombudsman.

If we label as formal those appeal procedures which with regard to the correctness and legality of an issued ruling are put into effect in accordance with procedural regulations, informal appeals procedures are those which though they can also be determined by a regulation do not have the aim of changing a legal relation established by the ruling of a body. For the purposes of this article we understand as informal appeal procedures all those possibilities available to the individual in relation to the actions and omissions of bodies (e.g. in police procedures), in the area of various services (e.g. in health care, public utility services, lawyers and notaries) and all those cases of complaints or requests for control when an individual claims that his rights were not respected in a procedure (because of an error or incorrectness).

In the area of informal appeal procedures there are still many vacuums. Even where specific forms of appeal are envisaged, they are frequently set up in such a way as to be practically inaccessible to the individual concerned, or else they are not effective. It is worth mentioning that more appeal procedures do not necessarily mean greater efficiency. Several appeal procedures with areas of jurisdiction which are unclear, and the incomprehensible to the individual concerned (e.g. in relation to health care) mean more than anything else an obstacle to the rapid and effective establishing of an alleged irregularity and action against it. Inflation and the consequent lack of transparency of appeal procedures only makes appealing more difficult.

3. Numerous applications received by the Human Rights Ombudsman are the consequence of unsuitable communication between the body and the individual. These applications can usually be resolved rapidly when all the decisive facts and circumstances are established. The outcome of the case is the identifying of an irregularity with corresponding consequences, or, where an application is found to be unfounded, the complainant receives a finding on the correctness of the ruling or the conduct of the competent body. Many complaints from applicants could be resolved in a simple and effective way during the procedure before the bodies themselves, without the need for the intervention of institutions outside the body where the alleged irregularity has occurred. The Human Rights Ombudsman would also receive less applications, particularly undemanding ones, if bodies ensured an effective and credible internal appeal system.

Naturally the public must be acquainted with the possibilities of appeal. Otherwise such possibilities might as well not exist. Bodies must ensure that the system of appeal procedures is published and that potential users are thus familiar with it. Leaflets containing all the information necessary for lodging an appeal are therefore welcome, as are appeal forms. This also applies to posters and similar notices at the premises of state bodies which are devoted to dealings with clients. The possibilities for control and appeal, and not merely the existence of a complaints box, should be mentioned in the handbook which presents the body and explains its areas of jurisdiction and the other circumstances of its work. Better accessibility is also enabled by telephone information, in particular via free phone lines. In short, people need to be acquainted with the possibilities of appeal, and clients with little education must also be provided with (legal) assistance of an appropriate extent and in an understandable way.

4. The possibilities of appeal contribute to the limiting of arbitrariness, to more thorough and better quality work, and also mean that poor work by a small number of individuals does not lead to the stigmatising of everyone working in a given institution. Even the fact that a body hears the appeal of an individual and deals with it, means to at least partial satisfaction to the individual and gives him the feeling that the body is not omnipotent. The body’s acknowledgement of a mistake can also contribute to the moral victory of the individual.

Careful processing of appeals must be accepted as a constituent part of the efforts of bodies for a friendlier relationship with their clients. Appeals should therefore not be understood as interference in regular work or as an annoying criticism of conduct and decisions against which the officials and employees concerned must defend themselves. The dissatisfaction and complaints of clients should not be interpreted as naked criticism. On the contrary: the should serve as an incentive for improvements. An effective internal complaints mechanism saves time and money and stimulates good relations and communication with the public or with people as potential clients or users of the services of the body. The appeal procedure helps show where the problems are in the provision of quality services, which enables the removal of these problems and an improvement in the quality of work. Efficient and impartial processing of complaints also contributes to the avoidance of undesirable negative publicity.

It is important, particularly from the good administration point of view, that the individual also has the possibility of having his case dealt with in an informal appeal procedure. This, if it can be done, should also enable the rectification of the irregularity if it is found that the appeal is well-founded. Informal appeal procedures provide protection in the area of the proper and correct proceedings of authorities in relation to the individual and cover the areas of the decision-making process and personal contact of the individual, as the client, with bodies. Not even the clearest legal provisions, executive regulations or internal instructions are a guarantee that an official will act properly and correctly in every contact with an individual. An appeal or other legal remedy against the ruling of a body is usually available in prescribed procedures. However this seldom applies to (physical) actions and omissions by bodies. And it is precisely in this area that powers are frequently exercised which encroach on traditional and fundamental human rights. It is therefore important that even in these cases the individual has the opportunity via an appeal to have his case dealt with.

5. As the client and the complainant the individual has a right to expect that appeal proceedings will enable a rapid, economically accessible (cheap) and correct ruling on his appeal. Commitment to the principle of efficient processing of appeals must be an essential constituent element of the work of a body. Public confidence in the appeal system will quickly dissipate if the system fails to provide what it promises. The length of time taken to rule on appeals does not encourage confidence and nor does it point to the success and efficiency of appeal procedures. It is worth stressing here that results cannot be expected without appropriate staffing and financial conditions for the work of the body which processes appeals and makes rulings in the appeal procedure.

The guiding principle should be that appeals are dealt with thoroughly and fairly. The usefulness of the appeal procedure is especially dependent on the confidence of the complainant in the impartiality of its implementation. To this end it is necessary to ensure fair treatment and the justification of the appeal ruling with clear grounds even if the ruling is not in favour of the complainant. The ruling of the appeal body must be in writing and contain an explanation - on other words it must have actual, technical and legal grounds. The complainant must be notified of the ruling as soon as possible.

It is wrong to take the approach that sees appeals as an inconvenience which officials and employees must face in order help improve the public image of the body. The ability to admit that a mistake has been made is a strength not a weakness of the person responsible. Through a proper approach to the treatment of appeals the client must be made to feel that it is worth appealing, and be reassured that he will not suffer any consequences because he has appealed.

6. The appeal system must be accessible to everyone. To this end clear instructions for the lodging of appeals are necessary, including a precise statement of the appeal body or the address to which appeals should be sent. Appeals procedures must be transparent, easily accessible and simple to use. In practice it very often happens that an effective right to appeal is not guaranteed because of insufficiently clear rules on jurisdiction and the conditioning of the accessibility of appeal by means of (disproportionately high) costs.

Appeal procedures must be presented and described in a simple way which the individual concerned can understand. Independent mechanisms and transparent procedures need to be established to enable the simple lodging of appeals. These mechanisms must ensure that information on appeal procedures is available to the client and, when necessary, that an independent person is available to provide appropriate (legal) assistance by advising the party concerned with regard to the most suitable course of action.

The way in which the appeal procedure runs must also be explained. The procedure must not contain unnecessary formalities and should be comprehensible to the complainant so that he can follow the individual phases and thus acquaint himself with the processing of a lodged appeal. The speed of the procedure is important. If the procedure lasts a long time the complainant must be notified of progress or of the individual phases of the procedure.

Above all the procedure must be fair, impartial and confidential. The appeal must be ruled on by persons who were not involved in and did not participate in the procedure of the criticised hearing or decision-making. In settling appeals the principles of equity and good administration must be observed. The appeal procedure must be confidential unless the complainant desires otherwise. An unequivocal message needs to be sent to the public that lodging an appeal will not have unfavourable effects on future contacts and decision-making of the body in relation to the person lodging the appeal. Documentation on the processing of the appeal must be kept in a special file separated from other information relating to the complainant as the party to proceedings before the body.

And finally: the procedure must be effective, which envisages impartial treatment and objective decision-making. If it is found that the appeal is grounded, suitable ways of removing errors or punishing irregularities must be ensured. Whenever possible the complainant should be enabled to return to the situation that would have prevailed had the irregular action not taken place. In any case the complainant must be given a precise explanation of the matter. Often a written apology is in order. In the case of injury having occurred, it is right to offer suitable damages, or at least to direct the complainant to file a damages claim. It is certainly worth approving reasonable and well-grounded claims without reference to a court. A complainant who is not satisfied with the appeal ruling must be acquainted with further appeal procedures, including the lodging of an application with the Human Rights Ombudsman.

7. The nature of the matter means that most emphasis is placed on the internal appeal procedure or internal control. The decisive facts and circumstances can most easily be established directly at the body involved, i.e. where the alleged irregularity occurred. Many appeals could be simply resolved within the body in the earliest phases of the procedure, with the cooperation of the officials involved. The ruling in an internal appeal procedure should however be made by someone else, and not by the person who took part in or ruled in the procedure which is the subject of the appeal. The dispute, disagreement or mistake will thus be more easily remedied.

The principle of subsidiarity also applies to appeal procedures: it is not necessary for the appeal to be ruled on by external bodies if it can be settled within the body where the alleged irregularity occurred. External appeal procedures should only be considered subordinately. It is particularly worth mentioning here the control and appeal procedures provided by various professional associations (e.g. the Medical Chamber, the Bar Association, the Notaries' Association) and also by societies (e.g. the honour tribunal of the Journalists' Society). These professional associations should devote more attention to ensuring the objective exercising of (public) powers in the area of hearing and ruling on appeals. Chambers and societies must subordinate the protection of the rights and interests of their members to the interests of their members' clients or the users of their services. In particular because numerous professional associations outside the judicial branch of authority practically have a monopoly in ruling on appeals.

In order to ensure fair, proper and objective decision-making, different levels or instances of decision-making are also desirable in informal appeal procedures. The appeal should first be ruled on by the organ where the alleged irregularity occurred. This is usually a basic unit such as a health centre, hospital, administrative unit, local government body or a licensee operating a public service. The next instance in the (sub)system can be for example a professional association, the Health Insurance Institute and Pension and Disability Insurance Institute as the bodies responsible for compulsory health insurance and pensions and invalidity insurance, or the ministry responsible for the area concerned.

The highest instance in informal appeal procedures is the Human Rights Ombudsman, who represents an independent and impartial form of the informal protection of the rights of the individual in relation to state bodies, local government bodies and statutory authorities. The ombudsman steps only into the frame when all other possibilities of appeal have been exhausted, except if it would be inexpedient for the individual to initiate or continue such procedures, or if by waiting the individual would meanwhile suffer serious injury or harm that was difficult to remedy.

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