



Documenting and reporting medical evidence of ill-treatment

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71. As from an early stage of its activities, the CPT has emphasised the important contribution which health-care services in places of deprivation of liberty can and should make to combating ill-treatment of detained persons, through the methodical recording of injuries and the provision of information to the relevant authorities¹. The accurate and timely documenting and reporting of such medical evidence will greatly facilitate the investigation of cases of possible ill-treatment and the holding of perpetrators to account, which in turn will act as a strong deterrent against the commission of ill-treatment in the future.

The CPT has paid particular attention to the role to be played by prison health-care services in relation to combating ill-treatment. Naturally, that role relates in part to possible ill-treatment of detained persons during their imprisonment, whether it is inflicted by staff or by fellow inmates. However, health-care services in establishments which constitute points of entry into the prison system also have a crucial contribution to make as regards the prevention of ill-treatment during the period immediately prior to imprisonment, namely when persons are in the custody of law enforcement agencies (e.g. the police or gendarmerie).

72. As an attentive reader of CPT reports will know, the situation as regards the documenting and reporting of medical evidence of ill-treatment is at present far from satisfactory in many States visited by the Committee. The procedures in place do not always ensure that injuries borne by detained persons will be recorded in good time; and even when injuries are recorded, this is often done in a superficial manner. Moreover, there is frequently no guarantee that medical evidence which is documented will then be reported to the relevant authorities.

Consequently, the Committee considered that it would be useful to set out in the following paragraphs the standards which it has developed as regards the documenting and reporting of medical evidence of ill-treatment. Various related issues are also discussed.

73. It is axiomatic that persons committed to prison should be properly interviewed and physically examined by a health-care professional as soon as possible after their admission. The CPT considers that the interview/examination should be carried out within 24 hours of admission. This systematic medical screening of new arrivals is essential for various reasons; more specifically, if performed properly, it will ensure that any injuries borne by the persons concerned – as well as related allegations – are recorded without undue delay. The same procedure should be followed

¹ See, for example, paragraphs 60 to 62 of the CPT's 3rd General Report, CPT/Inf (93) 12.

when a prisoner who has been transferred back to police custody for investigative reasons is returned to the prison; unfortunately, such transfers are still a common practice in some States visited by the CPT, and they can entail a high risk of ill-treatment (see also paragraph 80). Similarly, any prisoner who has been involved in a violent episode within prison should be medically screened without delay.

In addition to prisons, there are other places of deprivation of liberty where persons may be detained for a prolonged period (i.e. more than a few days). This is the case, for example, of detention centres used to accommodate persons held under aliens legislation. Further, in a number of countries visited by the CPT, various categories of detained persons (e.g. administrative offenders; persons remanded in custody who are awaiting transfer to a prison or undergoing further investigation) can be held for prolonged periods in “arrest houses” or “temporary detention facilities”. Systematic medical screening of new arrivals should also be carried out in such places.

74. The record drawn up after the medical screening referred to in paragraph 73 should contain: i) an account of statements made by the person which are relevant to the medical examination (including his/her 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 health-care professional’s observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

75. It is important to make a clear distinction between the above-mentioned medical screening and the procedure followed when a detained person is handed over to the custody of a prison. The latter procedure entails the drawing up of documentation, co-signed by the prison staff on duty and the police escort as well as perhaps by the detained person. Any visible injuries observed on the prisoner at the moment of handover of custody will usually be recorded in that documentation.

This procedure is of an administrative nature, even if – as is sometimes the case – it takes place in the presence of a member of the prison’s health-care staff. It can in no event serve as a substitute for the medical screening procedure already described. Moreover, given the presence of the police escort as well as the anxiety often felt at the very moment of entering prison, prisoners should not be questioned at this initial stage about the origin of any visible injuries observed on them. Nevertheless, the record made of visible injuries observed should be immediately forwarded to the prison’s health-care service.

76. The CPT sets much store by the observance of medical confidentiality in prisons and other places of deprivation of liberty. Consequently, in the same way as any other medical examination of a detained person, the medical screening referred to in paragraph 73 must be conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. This requirement is at present far from being met in all States visited by the CPT.

77. However, the principle of confidentiality must not become an obstacle to the reporting of medical evidence indicative of ill-treatment which health-care professionals gather in a given case.

To allow this to happen would run counter to the legitimate interests of detained persons in general and to society as a whole². The CPT is therefore in favour of an automatic reporting obligation for health-care professionals working in prisons or other places of deprivation of liberty when they gather such information. In fact, such an obligation already exists under the law of many States visited by the CPT, but is often not fully respected in practice.

In several recent visit reports, the CPT has recommended that existing procedures be reviewed in order to ensure that whenever injuries are recorded by a health-care professional which are consistent with allegations of ill-treatment made by a detained person, that information is immediately and systematically brought to the attention of the relevant authority, regardless of the wishes of the person concerned. If a detained person is found to bear injuries which are clearly indicative of ill-treatment (e.g. extensive bruising of the soles of the feet) but refuses to reveal their cause or gives a reason unrelated to ill-treatment, his/her statement should be accurately documented and reported to the authority concerned together with a full account of the objective medical findings.

78. The “relevant authority” to which the health-care professional’s report should be sent is first and foremost the independent body empowered to carry out an official investigation into the matter and, if appropriate, bring criminal charges. Other authorities to be informed could include bodies responsible for disciplinary investigations or for monitoring the situation of persons detained in the establishment where ill-treatment may have occurred. The report should also be made available to the detained person concerned and to his/her lawyer.

The actual mechanism for transmission of the report to the relevant authority(ies) will vary from country to country in the light of organisational structures and may well not involve direct communication between the health-care professional and that authority. The report might be transmitted through the hierarchy of the health-care professional (e.g. a Medical Department at ministerial level) or the management of the detention facility in which he/she works (e.g. prison director). However, whichever approach is followed, the rapid transmission of the report to the relevant authority must be ensured.

79. A corollary of the automatic reporting obligation referred to in paragraph 77 is that the health-care professional should advise the detained person concerned of the existence of that obligation, explaining that the writing of such a report falls within the framework of a system for preventing ill-treatment and that the forwarding of the report to the relevant authority is not a substitute for the lodging of a complaint in proper form. The appropriate moment to provide that information to the detained person would be as from the moment that he/she begins to make allegations of ill-treatment and/or is found to bear injuries indicative of ill-treatment.

If the process is handled with sensitivity, the great majority of the detained persons concerned will not object to disclosure. As for those that remain reluctant, the health-care professional might choose to limit the content of the report to the objective medical findings.

80. The reporting to the relevant authority of medical evidence indicative of ill-treatment must be accompanied by effective measures to protect the person who is the subject of the report as well as other detained persons. For example, prison officers who have allegedly been involved in ill-treatment should be transferred to duties not requiring day-to-day contact with prisoners, pending the outcome of the investigation. If the possible ill-treatment relates to the acts of fellow inmates,

² For a description of the dilemmas that can be faced by health-care professionals working in places of deprivation of liberty, see paragraphs 65 to 72 of the 1999 Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

alternative accommodation should be found for the detained person concerned. Naturally, if the report concerns possible ill-treatment by law enforcement officials, the detained person should under no circumstances be returned to their custody. More generally, the CPT considers that the objective should be to end the practice of returning remand prisoners to law enforcement agencies for investigative purposes; in particular, any further questioning of the person concerned which may be necessary should be conducted on prison premises.

81. In addition to the reporting by name of each case in which medical evidence indicative of ill-treatment is gathered, the Committee recommends that all traumatic injuries resulting from all possible causes be monitored and periodically reported to the bodies concerned (e.g. prison management, ministerial authorities) through anonymous statistics. Such information can be invaluable for the purpose of identifying problem areas.

82. To ensure compliance with the standards described above, special training should be offered to health-care professionals working in prisons and other places where persons may be detained for a prolonged period. In addition to developing the necessary competence in the documentation and interpretation of injuries as well as ensuring full knowledge of the reporting obligation and procedure, that training should cover the technique of interviewing persons who may have been ill-treated.

It would also be advisable for the health-care professionals concerned to receive, at regular intervals, feedback on the measures taken by the authorities following the forwarding of their reports. This can help to sensitise them to specific points in relation to which their documenting and reporting skills can be improved and, more generally, will serve as a reminder of the importance of this particular aspect of their work.

83. Prior to the systematic medical screening referred to in paragraph 73, detained persons will often spend some time in the custody of law enforcement officials for the purpose of questioning and other investigative measures. During this period, which may vary from several hours to one or more days depending on the legal system concerned, the risk of ill-treatment can be particularly high. Consequently, the CPT recommends that specific safeguards be in place during this time, including the right of access to a doctor³. As the Committee has repeatedly emphasised, a request by a person in police/gendarmerie custody to see a doctor should always be granted; law enforcement officials should not seek to filter such requests.

84. The record drawn up after any medical examination of a person in police/gendarmerie custody should meet the requirements set out in paragraph 74 above, and the confidentiality of the examination should be guaranteed as described in paragraph 76. Further, the automatic reporting obligation referred to in paragraph 77 should apply whenever medical evidence indicative of ill-treatment is gathered in the course of the examination. All these conditions should be complied with, irrespective of whether the health-care professional concerned has been called following a request by the detained person or is in attendance following an initiative taken by a law enforcement official.

The means of implementing the reporting obligation in such cases should reflect the urgency of the situation. The health-care professional should transmit his/her report directly and immediately to the authority which is in the best position to intervene rapidly and put a stop to any ill-treatment taking place; the identity of that authority will depend on the legal system and the precise circumstances of the case.

³ Other essential safeguards include the right to have one's detention notified to a third party of one's choice and the right of access to a lawyer.