ВРОЦЛАВСЬКО-ЛЬВІВСЬКИЙ ЮРИДИЧНИЙ ЗБІРНИК 12
WROCŁAWSKO-LWOWSKIE ZESZYTY PRAWNICZE 12
Львівський національний університет імені Івана Франка • Львів 2021

Aleksandra Zawiślak

ORCID: 0000-0001-6043-6912
University of Maria Curie-Skłodowska
aleksandrazet2@gmail.com

Type of article: original scientific article

Treaty Organs of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and The Optional Protocol of 2002 – The Committee Against Torture and The Subcommittee on Prevention

Keywords: convention, committee, protocol, subcommittee, prohibition of torture

1. Introduction

The mechanisms for the protection of human rights presented in this paper are the available procedures used in prevention of violations of the prohibition of torture and other cruel, inhuman, and degrading forms of treatment or punishment. The aim of the study is to present the legal aspects of the prohibition of torture as specified in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The author focuses on the functioning, objectives, and activities of the treaty bodies, i.e., The Committee against Torture and the Subcommittee on Prevention, as well as the mutual relations between these bodies.

© for this edition by CNS

2. The Committee Against Torture

The Committee Against Torture was established under the Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[1]. The functioning of this body is based on the convention's resolutions and the committee's rules of procedure adopted on 1st September, 2014[2]. The committee started operating on 1st January, 1988, i.e., the date when the convention came into force. It consists of 10 experts of unblemished reputation, having recognised knowledge in the field of human rights and acting on their own behalf in performing their duties as specified in the convention (Article 17)[3]. The fact that the committee had fewer members than most other treaty bodies was due to the member states' initial reluctance to establish a separate committee: some delegations suggested that it should be the Human Rights Committee that should monitor the new convention[4]. The system according to which the experts are appointed is based on geographical criteria, and the candidates are chosen by the states parties by secret ballot[5]. The elections are held every two years at meetings convened by the Secretary-General of the United Nations, with the committee's members being recruited from those who have won an absolute majority of the votes of the states parties. The committee's term of office is four years, and the members may be re-elected if they are nominated. A specific feature of the committee's operating system is the obligation to cover its members' expenses by the states parties.

The effectiveness of the justice institutions is related to their flexibility and independence. Since the committee acts on behalf of 160 states, i.e., most of the UN states[6], performing its duties is a difficult task. With such a large number of states parties and committees already operating at the international level, there is the need to ensure the greatest possible effectiveness so that the created control apparatus is not only a theoretical body. At the same time, the committee's small size and the simplified formal procedures related to its members' election, mandate and terms of office pose an obstacle to the proper functioning of this body.

The committee's decisions are taken by a majority of the votes of the members present at open sessions, in accordance with the rules formulated in its rules of procedure. Usually, the committee's meetings are held twice a year in Geneva. However, the committee sits as long and as often as necessary in order to accomplish its overriding objective which is implementing the provisions of the convention and performing the tasks assigned to this body. It also is the commit-

[1] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, Journal of Laws 1989, no 63, item 378.

[2] Committee Against Torture, *Rules of Procedure*, 1 September 2014, Geneva, CAT/C/3/ Rev.6.

[3] In addition, under Article 18, the committee elects its officers for a term of two years. As stated in the Rules of Procedure, the officers are the Chairperson, three Vice-Chairpersons, and the Rapporteur.

[4] M. Nowak, E. McArthur (ed.), *The United Nations Convention Against Torture. A Commentary*, Oxford 2008, p. 595.

[5] Article 17 (2) stipulates that each state party can nominate one person from among its citizens.

[6] At present, there are 193 member states.

© for this edition by CNS

tee itself that decides on the date and time of its sessions. Pursuant to the provisions of the convention, the committee meets in the cases specified in its rules of procedure (Article 18 (4)). The committees' chair can also convene a special session in three cases: on his/her own initiative, at the request of the majority of the committee members, and at the request of a state party.

3. The committee's objectives

The principal objectives of the committee's controlling organs are as follows: 1) promoting human rights in general; 2) interpreting treaties by means of reports and individual communications; 3) identifying crucial problems by receiving general comments and recommendations; 4) helping states parties to identify violations of human rights and to find solutions by entering into a dialogue with states and drawing conclusions; 5) assisting the victims of the violation of human rights; 6) informing the international public about the current situation concerning human rights and encouraging all forms of preventive action[7]. The committee was established in order to more effectively prevent torture or any other cruel or degrading forms of treatment or punishment all over the world. Therefore, it is expected to act in such a way as to achieve this aim[8].

The effective prevention of torture all over the world is made possible by the committee's pursuit of its objectives as specified in the convention (Articles 19–22). The committee's activity is threefold. First, according to Article 19, it analyses the states parties' reports. Second, according to Article 20, it investigates all the cases of systematic torture on the territories of the states parties. Third, it considers communications submitted by states and individuals.

3.1. The reports of the states parties

The committee has the authority to consider the states parties' reports on their implementation of the provisions of the convention. Article 19 states that the states parties submit reports on the measures they have taken in order to meet the obligations within one year of the convention's entry into force[9]. Subsequently, every four years the states parties are supposed to submit supplementary reports on any new measures undertaken by them in the meantime, as well as any other reports requested by the committee (Article 19). Each report is considered by the committee, which is entitled to make general remarks on it and pass them to the states parties concerned.

[7] R. Wieruszewski, *ONZ-owski system ochrony praw człowieka*, [in:] B. Banaszak, A. Bisztyga, K. Complak, M. Jabłoński, R. Wieruszewski, K. Wójtowicz, *System ochrony praw człowieka*, Kraków 2005, p. 82.

[8] *Ibidem*, p. 130.

[9] The states parties' reports are submitted by the agency of the Secretary-General of the United Nations.

© for this edition by CNS

The reporting process comprises six stages. The first stage is the submission of a report by a state party; the second stage is the appointment of a national rapporteur; the third stage is the submission of the list of questions and answers by a state party; the fourth stage is a dialogue with a state party; the fifth stage is the committee's closed session during which conclusions are drawn; and the final stage is the follow-up procedure.

Due to the fact that the deadlines for the submission of the reports were frequently not met or totally ignored altogether, the committee gradually extended its authority concerning the controlling procedures. For instance, it made the reporting process more reliable by involving non-government organisations, appointing rapporteurs for each state, and reminding the states about their overdue reports. In addition, for many years, in its annual reports, the committee included lists of the states that had failed to submit their reports on time. At present, these lists can be found on its website[10]. Another considerable change was the introduction of the procedure of consideration and verification of the situation in the states that had not submitted their reports, as exemplified by the case of the Republic of Cabo Verde, in which the committee studied the circumstances with no report or presence of a delegation from the country. Nonetheless, it should be emphasised that it was an exceptional situation and that the committee had taken numerous measures to exact the report and enable the country's representatives to be present at its sessions[11]. Providing such mechanisms reduces the number of the cases of states parties failing to meet their obligations as specified in the convention. It also leads to the creation of a system that clearly defines the actual consequences of breaching any regulations, which makes the committee's work in the field of the protection of human rights more effective.

The reports submitted by the states parties, based on the committee's directives, ought to specify the legal regulations concerning prohibition of torture. They should also be supplemented with all the information about the states' compliance with Articles 1–16 of the convention. In addition, there is the so-called simplified reporting procedure which consists in a state party being presented with a list of questions concerning its prevention of torture, as well as its compliance with the committee's directives and the convention's resolutions[12]. The simplified reporting procedure must be approved by each state party, and its answers the questions asked form a periodic report. Since many member countries have consented to such a kind of reporting, it is currently the most common procedure, as exemplified by the combined 5th and 6th periodic reports of Poland on its implementation of the provisions of the convention[13],

[10] G. Baranowska, *Komitet Przeciwko Torturom*, [in:] R. Wieruszewski (ed.), *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*, Warszawa 2017, p. 137.

[11] *Ibidem*, p. 138.

[12] This so-called List of issues is presented to a state party prior to its submission of a report.

[13] UN Committee Against Torture (CAT), *Concluding observations on the combined fifth and sixth periodic reports of Poland*, 23 December 2013, CAT/C/POL/CO/5-6. URL: https://www.refworld. org/docid/537f14e84.html (15.06.2021).

© for this edition by CNS

which were compiled in response to the list of questions prepared by the committee[14]. Among the most important recommendations produced by the committee after its consideration of the reports were introducing a statutory definition of torture, enabling easier access to a lawyer for persons in police custody, completing the investigation into CIA's clandestine prisons, and reducing the number of detention centres for asylum seekers, including children[15]. Poland's next report is going to follow the same reporting procedure. At its 38th session, the committee established an alternative procedure, consisting in the preparation and approval of a list of questions to a state party prior to the submission of its periodic reports. It was during this session, in January 2016, that the list of issues for Poland's next report was compiled[16], to which the country is obliged to respond under Article 19 of the convention.

3.2. The investigation procedure for violations of the prohibition of torture

As stipulated in Article 20 (1) of the convention, whenever the committee receives reliable information about a state party systematically employing torture, it is expected to require the party to co-operate in verifying this information and to formally comment on it. In addition, Paragraph 2 states that, after considering the state party's response and any other available information concerning the case, the Committee is empowered, whenever it deems it necessary, to appoint "one or more of its members to make a confidential inquiry and to report to the Committee urgently"[17]. Article 20 makes reference to "systematically practised torture." Since no definition of this phrase had been provided before and the procedure itself is exclusively related to it, the committee found it useful to clarify it. Accordingly, in the committee's opinion, torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a government. It may be the consequence of factors which the government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice[18].

---

[14] *Ibidem*.

[15] *Ibidem*.

[16] UN Committee Against Torture, *List of issues prior to submission of the seventh periodic report of Poland: Human Rights Committee*, 12 January 2016, CAT/C/POL/QPR/7. URL: https://undocs. org/en/CAT/C/POL/QPR/7 (6.07.2021).

[17] In the situation specified in Article 20 of the convention, the committee imposes a deadline for the state's response to the information received.

[18] http://www.ohchr.org/EN/HRBodies/CAT/Pages/InquiryProcedure.aspx (24.05.2018).

© for this edition by CNS

The results of the investigation procedure are presented in a report that must be submitted to the state subjected to this procedure, and the report's findings determine the committee's future course of action. Since the convention puts emphasis on the secret character of the procedure, the findings are not published. Yet, in consultation with the state concerned, the committee may include the results of its investigation in its annual report[19]. According to the committee's statistics, only nine investigation procedures under Article 20 of the convention have been completed so far. These have concerned Turkey (1994), Egypt (1996), Peru (2001), Sri Lanka (2002), Mexico (2003), the Federal Republic of Yugoslavia (2004), Brazil (2008), Nepal (2012), and Liban (2003). It is therefore not common for the committee to use such procedures[20], which is mainly due to the fact that they are expensive and time-consuming. In addition, they have a negative effect on the committee members' attending to current matters. For this reason, bearing in mind the committee's small size, the frequency of the procedures has remained on the same level.

3.3. The procedure for individual communications

An individual communication is a document in which a person, a group, or an organization whose rights have been infringed notifies a competent international institution about a country failing to meet its international obligations concerning human rights[21].

At present, the procedure for individual communications as specified in the convention is one of the five procedures of this type available in the United Nations system. The other acts regulating complaints procedures are The International Covenant on Civil and Political Rights[22], Convention on the Elimination of All Forms of Discrimination Against Women[23], International Convention on the Elimination of All Forms of Racial Discrimination[24], and Convention on the Rights of Persons with Disabilities[25]. Statistics show that the greatest number of individual communications are addressed to the Human Rights Committee[26]. For

[19] The report is submitted to the state party and the General Assembly. See: Article 24 of the convention.

[20] G. Baranowska, *Komitet Przeciwko Torturom*…, p. 145.

[21] J. Rezmer, *Jak korzystać z procedur skargowych w traktatowym systemie ochrony praw człowieka ONZ? Informator dla ofiar naruszeń*, Warszawa 2011, p. 4.

[22] International Covenant on Civil and Political Rights of 16 December 1966, New York, Journal of Laws 1977, no 38, item 169.

[23] *Convention on the Elimination of All Forms of Discrimination against Women z 18 December 1979 r., New York*, [in:] A. Bieńczyk-Missala (ed.), *Międzynarodowa ochrona praw człowieka. Wybór dokumentów*, Warszawa 2008, pp. 83–92.

[24] International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, New York, „Journal of Laws" 1969, no 25, item 187.

[25] *Convention on the Rights of Persons with Disabilities of 13 December 2006, New York*, [in:] A. Bieńczyk-Missala (ed.), *op. cit.*, p. 216–240.

[26] The procedure for the submission of individual communications to the Human Rights Committee is regulated by the International Covenant on Civil and Political Rights.

© for this edition by CNS

example, by 2016 the committee had considered as many as 430 notifications concerning the cases of torture, whereas the Committee Against Torture considered only 279. In addition, individual communications relating to violations of the prohibition of torture addressed to the Human Rights Committee can also be accompanied by those relating to infringement of other rights protected by the International Covenant on Civil and Political Rights, which accounts for the fact that they are more effective than the communications submitted to the Committee Against Torture[27]. One example of such procedure is the *Staselovich v. Belarus* case, related to the fact that the convict's family had not been informed about the date of his execution and his burial place[28]. Accordingly, the Human Rights Committee pronounced the case to be a violation of Article 7 of the ICCPR concerning prohibition of torture[29].

By August 2015[30], the committee had received 697 individual communications concerning 34 countries, out of which 539 had been considered. More specifically, 70 had been dismissed, 197 had been discontinued, 107 had been pronounced to be violations of the convention, and in 165 no violations had been identified. The greatest number of communications had concerned Switzerland (165), Sweden (135), and Canada (124)[31]. Protection against torture is an inalienable human right, irrespective of the race, gender, language, or religious denomination. Therefore, anyone whose rights are not respected should have the possibility to exercise them by legal means.

4. The Subcommittee on Prevention

4.1. The subcommittee's preventive function

Owing to its preventive mechanisms, the Subcommittee on Prevention limits the number of the cases of torture and other cruel, inhuman, or degrading kinds of treatment or punishment. Its origins lie in the conviction that torture or inhuman treatment can be prevented or at least restricted by means of visits to places of detention. Such visits are made by independent outside experts who have a mandate to put forward appropriate recommendations[32].

---

[27] G. Baranowska, *Komitet Przeciwko Torturom*…, p. 149.

[28] Decision of 3 April 2003, no 887/1999, [in:] R. Wieruszewski, A. Gliszczyńska, K. Sękowska-Kozłowska (eds.), *Komitet Praw Człowieka. Wybór orzecznictwa*, Warszawa 2009, p. 111.

[29] As stated in Article 7 of the ICCPR, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

[30] See the committee's statistics at http://www.ohchr.org/EN/HRBodies/CAT/Pages/ CATIndex.aspx, available for download at Statistical Survey on individual complaints (accessed 26.05.2018).

[31] G. Baranowska, *Komitet Przeciwko Torturom*…, p. 148.

[32] G. Baranowska, *Podkomitet do Spraw Prewencji*, [in:] R. Wieruszewski (ed.), *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*, Warszawa 2017, p. 160.

© for this edition by CNS

The committee was formed under The Optional Protocol to the Convention[33]. Pursuant to Article 1 of the protocol, its aim is to establish a system of regular visits made by independent international and national organs to places of detention in order to prevent torture or other cruel, inhuman, or degrading kinds of treatment or punishment. As for the subcommittee's legal basis, it is formed by Article 2 of the protocol[34], which establishes this organ and determines its objectives. Paragraph 3 of the article stipulates that performing its tasks, the committee should be guided by the equally important principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The close connection between the committee and the subcommittee is related to the fact that the former is supposed to aid the latter. Pursuant to Article 16, the subcommittee submits an annual report on its activity to the committee. Moreover, according to paragraph 2, in case of a state party refusing to co-operate with the subcommittee, as specified in Articles 12 and 14, or to take measures in order to rectify the situation by implementing the subcommittee's recommendations, the committee, having heard the state party, by a majority of its members' votes decide to issue a public statement or to entitle the subcommittee to publish a report concerning the question.

The subcommittee's sessions are held three times a year[35]. Currently, the subcommittee, which is the biggest treaty organ[36], consists of 25 members. Under Article 5 (5) of the protocol, its size grew from 10 to 25 members after it had been joined by 50 states parties[37]. The members' term of office is four years,

[33] The Optional Protocol of 18 December 2002, New York, Journal of Laws 2007, no 30, item 192. The protocol was adopted by the General Assembly of the United Nations on 18th December 2002 in New York, and it came into force on 22nd June 2006.

[34] "A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol".

[35] One of these sessions, usually held in November, runs parallel to a session of the Committee Against Torture. See section 3.1.

[36] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 161.

[37] In addition, as stated in Article 2, "1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five; 2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty; 3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties; 4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination; 5. No two members of the Subcommittee on Prevention may be nationals of the same State; 6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently".

© for this edition by CNS

and, under Article 9 of the protocol, they can be re-elected[38]. As for the subcommittee's officers, they are elected for a term of two years, and they can be re-elected as well, as stated in Article 10[39]. The subcommittee operates according to the provisions of the protocol and, under Article 10 (2), its rules of procedure[40].

4.2. The subcommittee's objectives and activities

As stipulated in the protocol, the subcommittee's tasks include the following: 1) making visits to so-called places of detention; 2) supporting the national prevention mechanisms; 3) co-operating with UN organs and other institutions and organisations in prevention of torture[41]. For the sake of the treaty, the protocol also provides a definition of deprivation of liberty.

The subcommittee's major priority are visits to places of detention, which are made under Article 11 (1)[42]. The system of regular visits undertaken by independent international and national bodies has been implemented in order to prevent torture (Article 1 (1)). The places of detention that can be visited by the subcommittee and the national preventive organs are very broadly defined in Article 4 of the protocol, and they include not only prisons and police stations but also homes for juvenile delinquents, refugee camps, and mental hospitals among others. Deprivation of liberty can also refer to private places of detention on the condition that the state authorities know about them[43]. Such a definition relates to the necessity to identify any places where the rights, autonomy, values, or interests of individuals are not protected[44]. For example, if the police know that a private paramilitary group has imprisoned a person but they do not take any counteractive measures, the responsibility for the situation lies with the state as well. In such cases, the state authorities must provide the subcommittee or a national preventive organ with access to this place[45]. It should be stressed that, according to the international law, the inclusion of the activities of private individuals or organisations in the protocol's

[38] According to Article 10 (2), "(a) Half the members plus one shall constitute a quorum; (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present; (c) The Subcommittee on Prevention shall meet in camera".

[39] There are four officers in the subcommittee: the chairperson and four vice-chairpersons, one of whom is elected rapporteur.

[40] See Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rules of procedure*, 22 February 2013, Geneva, CAT/OP/3.

[41] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 160.

[42] Furthermore, Article 11 (1) of the protocol stipulates that the subcommittee should make recommendations to the states parties concerning prevention of torture and other cruel, inhuman or degrading treatment or punishment.

[43] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 165.

[44] Z. Kędzia, *Horyzontalne działanie praw obywatelskich*, [in:] J. Łętowski, W. Sokolewicz (eds.), *Państwo – prawo – obywatel*, Wrocław 1989, p. 522.

[45] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 160.

© for this edition by CNS

provisions does not absolve the state from the direct legal responsibility in the field of the protection of human rights[46].

The visits are undertaken by mutual agreement, and both sides are supposed to co-operate and respect each other's principles during the procedure. The obligations of the visiting and visited parties are formulated in the protocol's provisions. On the one hand, each state party consents to a visit to any place remaining under its jurisdiction and control[47] where individuals are or may be deprived of their liberty as a result of an order, instigation, consent, or acquiescence of a public authority, referred to as "a place of detention." On the other hand, while visiting a state party, the members of the committee should, without prejudice to the provisions and purposes of the protocol and their privileges and immunities, respect the laws and regulations of the visited state as well as refrain from any action or activity incompatible with the impartial and international nature of their duties (Article 36 (1–2)). The programme of the visits is made public, which enables states parties to prepare for them, and the visits themselves are conducted by at least two members of the subcommittee[48]. In compliance with the provisions of the protocol, states parties should receive the subcommittee in their territory, grant it access to all the places of detention, provide the committee with all the information it may request to evaluate the needs and measures that should be taken in order to strengthen the protection of the individuals deprived of their liberty, encourage and facilitate contacts between the subcommittee and the national preventive mechanisms, consider the subcommittee's recommendations, and enter into dialogue with it concerning possible implementation measures (Article 12). The visit is concluded with a report which contains confidential recommendations and comments[49]. The subcommittee's recommendations are of different nature than those issued by other treaty organs, which is related to its special status and powers. While the latter's recommendations are based on the reports submitted by states parties, the information provided by

[46] E. H. Morawska, *Odpowiedzialność państw za naruszenia praw człowieka przez osoby i podmioty prywatne. Stanowisko komitetów traktatowych ONZ*, [in:] M. Balcerzak, J. Kapelańska-Pręgowska (eds.), *Odpowiedzialność międzynarodowa w związku z naruszeniami praw człowieka i międzynarodowego prawa humanitarnego*, Toruń 2016, p. 140.

[47] In the territories that are not, in practice, under the control of a state party, this obligation is transferred to the state party exercising practical control in the territory.

[48] The members of the subcommittee may be accompanied by experts selected from a list prepared on the basis of proposals made by the states parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. A state party may object to the inclusion of a specific expert in the visit. For more, see Article 13. In addition, the experts cannot be the citizens of the visited state, and neither can they be nominated by it or related to it in any way that leads to a conflict of interests.

[49] The report is presented to a state party and, in relevant cases, to a national mechanism for prevention. Upon the request of a state party, the subcommittee may also publish the report along with the state party's comments. In case the state party makes part of the report public, the subcommittee may publish the report in whole or in part. However, no personal data may be published without the consent of the person concerned (Article 16).

© for this edition by CNS

other sources, and the information obtained during their sessions, the former gathers information itself upon its visits to states parties[50]. This difference is essential to the subcommittee's procedures. By 2017, the subcommittee had conducted 62 state visits[51], most of which had used the follow-up procedure, and another four visits had been scheduled for the first half of 2018[52].

The protocol was the first international instrument[53] that obliged states parties to establish a national institution ensuring the implementation of the provisions of the convention[54.] Since 2012, the subcommittee has undertaken about twenty visits of this type[55]. Since the subcommittee has a limited possibility to systematically and frequently conduct ordinary visits to states parties[56], it is the national mechanisms for prevention that are expected to play an important role in this respect. Therefore, it is all the more alarming that out of the 83 states parties of the protocol as many as 26 have failed to inform the subcommittee which of their institutions performs the national preventive function[57].

The subcommittee is also supposed to cooperate with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons/individuals (Article 11 (3)). Since all the states that have ratified the protocol are also parties to the convention, i.e. they are supervised by the committee, the subcommittee closely co-operates with the committee.

5. Conclusions

Conforming to the norms of the aforementioned institutions makes the system of protecting human rights more effective. It should be noted that the organs established by and implementing the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are beginning to extend their mechanisms, thus forming a system that is capable of exerting influence on the situation in a specific country, territory, or place. Despite the

[50] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 168.

[51] State visits usually take between six and ten days. See: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/countryVisits.aspx?Sort/Order=Chronological (accessed 30.05.2018).

[52] These were conducted in the following order: Uruguay (March), Belize (April), Portugal (May), and Poland (June).

[53] The second instrument of this type was established under Article 33 of Convention on the Rights of Persons with Disabilities.

[54] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 170.

[55] Such visits take shorter than standard ones (between 2 and 5 days) See: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/countryVisits.aspx?Sort/Order=Chronological (accessed 30.05.2018).

[56] Nevertheless, the number of the visits is growing every year. For example, in 2007 only two visits were conducted whereas in 2017 the number amounted to nine. See: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/countryVisits.aspx?Sort/Order=Chronological.

[57] G. Baranowska, *Podkomitet do Spraw Prewencji*, p. 171.

© for this edition by CNS

doubts that originally surrounded the idea of creating the Committee Against Torture as a separate organ, it has gradually established its strong position and has greatly contributed to the protection of human rights in this respect. By creating special mechanisms and focusing on particular territories, it is also more precise in its procedures.

All the activities undertaken within the United Nations system of the protection of human rights should be deemed positive. Moreover, the development and increasing implementation of preventive methods as reflected in statistics testifies to improvements in relevant legal regulations. These regulations should be proportional to the growing number of conflicts and tensions in various regions of the world, which intensify the threat of torture and other cruel, inhuman, and degrading forms of treatment or punishment. The legal acts presented in this article form an effective preventive system, based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and The Optional Protocol of 2002. As there is still a need for strengthening the mechanisms that prevent violations of the prohibition of torture, the authority of such effective organs as The Committee Against Torture and the Subcommittee on Prevention should be systematically extended.

Bibliography

Literature

Baranowska G., *Komitet Przeciwko Torturom*, [in:] R. Wieruszewski (ed.), *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*, Warszawa 2017.

Baranowska G., *Podkomitet do Spraw Prewencji*, [in:] R. Wieruszewski (ed.), *Mechanizmy ochrony praw człowieka w ramach ONZ. Analiza systemowa*, Warszawa 2017.

Bieńczyk-Missala A. (oprac.), *Międzynarodowa ochrona praw człowieka. Wybór dokumentów*, Warszawa 2008.

Kędzia Z., *Horyzontalne działanie praw obywatelskich*, [in:] J. Łętowski, W. Sokolewicz (eds.), *Państwo – prawo – obywatel*, Wrocław 1989.

Morawska E.H., *Odpowiedzialność państw za naruszenia praw człowieka przez osoby i podmioty prywatne. Stanowisko komitetów traktatowych ONZ*, [in:] M. Balcerzak, J. Kapelańska-Pręgowska (eds.), *Odpowiedzialność międzynarodowa w związku z naruszeniami praw człowieka i międzynarodowego prawa humanitarnego*, Toruń 2016.

Nowak M., McArthur E. (ed.), *The United Nations Convention Against Torture. A Commentary*, Oxford 2008.

Rezmer J., *Jak korzystać z procedur skargowych w traktatowym systemie ochrony praw człowieka ONZ? Informator dla ofiar naruszeń*, Warszawa 2011.

Wieruszewski R., *ONZ-owski system ochrony praw człowieka*, [in:] B. Banaszak, A. Bisztyga, K. Complak, M. Jabłoński, R. Wieruszewski, K. Wójtowicz, *System ochrony praw człowieka*, Kraków 2005.

Wieruszewski R., Gliszczyńska A., Sękowska-Kozłowska K. (ed.), *Komitet Praw Człowieka. Wybór orzecznictwa*, Warszawa 2009.

© for this edition by CNS

Legal acts

Committee Against Torture, *Rules of Procedure*, 1 September 2014, Geneva, CAT/C/3/Rev.6.

Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, New York, [in:] A. Bieńczyk-Missala (oprac.), *Międzynarodowa ochrona praw człowieka. Wybór dokumentów*, Warszawa 2008, pp. 83–92.

Convention on the Rights of Persons with Disabilities of 13 December 2006, New York, [in:] A. Bieńczyk-Missala (ed.), *Międzynarodowa ochrona praw człowieka. Wybór dokumentów*, Warszawa 2008, p. 216–240.

International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, New York, Journal of Laws 1969, no 25, item 187.

International Covenant on Civil and Political Rights of 16 December 1966, New York, Journal of Laws 1977, no 38, item 169.

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rules of procedure*, 22 February 2013, Geneva, CAT/OP/3.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, Journal of Laws 1989, no 63, item 378.

The Optional Protocol of 18 December 2002, New York, Journal of Laws 2007, no 30, item 192.

UN Committee Against Torture (CAT), *Concluding observations on the combined fifth and sixth periodic reports of Poland*, 23 December 2013, CAT/C/POL/CO/5–6. URL: https://www.refworld.org/docid/537f14e84.html (15.06.2021).

UN Committee Against Torture, *List of issues prior to submission of the seventh periodic report of Poland: Human Rights Committee*, 12 January 2016, CAT/C/POL/QPR/7. URL: https://undocs.org/en/CAT/C/POL/QPR/7.

Websites

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/countryVisits.aspx?Sort/Order=Chronological.

https://undocs.org/en/CAT/C/POL/QPR/7.

http://www.hfhr.pl/komitet-przeciwko-torturom-wydal-rekomendacje-dla-polski/.

http://www.ohchr.org/EN/HRBodies/CAT/Pages/InquiryProcedure.aspx.

http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIndex.aspx.

https://www.refworld.org/docid/537f14e84.html.

Organy traktowe Konwencji w sprawie zakazu stosowania tortur oraz innego okrutnego, nieludzkiego lub poniżającego traktowania albo karania z 1984 roku oraz Protokołu fakultatywnego z 2002 roku – Komitet Przeciwko Torturom i Podkomitet do Spraw Prewencji

Summary

W niniejszym artykule przedstawione zostały mechanizmy ochrony praw człowieka stanowiące formy dostępnych procedur zapobiegania złamaniu zakazu stosowania tortur

© for this edition by CNS

oraz innego okrutnego, nieludzkiego, poniżającego traktowania lub karania. Podstawą funkcjonowania tego systemu w ramach ONZ jest działalność Komitetu Przeciwko Torturom i Podkomitetu do Spraw Prewencji, które tworzą kontrolę oraz prewencję w zakresie zakazu stosowania tortur. Są to organy powołane przepisami Konwencji w sprawie zakazu stosowania tortur oraz innego okrutnego, nieludzkiego lub poniżającego traktowania albo karania z 1984 r. oraz Protokołu fakultatywnego z 2002 r.. Celem pracy było przybliżenie struktury powyższych organów oraz zaprezentowanie ich działalności i zadań. W związku z tym szczegółowo przedstawione zostało funkcjonowanie Komitetu, od momentu rozpoczęcia działalności 1 stycznia 1988 r. w składzie 10 ekspertów. Efektywność instytucji wiąże się z ich elastycznością i niezależnością. Komitet obejmuje swoim zasięgiem grupę 160 państw, czyli większość państw ONZ, zatem wykonywanie kompetencji stanowi duże przedsięwzięcie prawne oraz logistyczne. Przy takiej liczbie państw-stron i funkcjonujących już na płaszczyźnie międzynarodowej komitetów istnieje potrzeba zapewnienia jak największej skuteczności, aby tworzony aparat kontrolny nie był jedynie teoretycznym organem. Jednocześnie minimalizacja składu członków oraz uproszczone procedury formalne, wiążące się z ich wyborem, mandatem i sprawowaniem urzędu, stanowią przeszkodę w prawidłowym funkcjonowaniu tego organu. Szczegółowa analiza organów powołanych przez Konwencję pokazuje przekrojową rozbudowę mechanizmów i tworzenie systemu mającego realne możliwości wnikania w sytuację w danym państwie, na konkretnym obszarze czy miejscu. Ukształtowanie na przestrzeni lat roli wyspecjalizowanych mechanizmów ochrony praw człowieka w ramach Komitetu Przeciwko Torturom zwiększyło stopień precyzji działania w sprawach naruszeń postanowień konwencyjnych. Realizacja celu zwiększenia efektywności zwalczania tortur na całym świecie następuje poprzez wypełnianie określonych w Konwencji zadań Komitetu, które podzielone zostały na trzy części. Zgodnie z art. 19 Konwencji Komitet rozpatruje sprawozdania państw-stron. Stanowi to pierwszy poziom zadań Komitetu. Drugi wyznaczony jest przez art. 20, który nakłada obowiązek przeprowadzenia dochodzenia w przypadku systematycznego stosowania tortur na terytorium państwa-strony. Trzeci poziom działań Komitetu obejmuje rozpatrywanie zawiadomień międzypaństwowych i indywidualnych. Poniższa praca przedstawia szczegółową analizę podstawowych celów działania organów kontrolnych na gruncie ich efektywności oraz skuteczności. Ponadto przybliżone zostało rozwijanie prewencyjnych metod i zwiększanie ich częstotliwości widoczne w przedstawionych statystykach. Wobec zwiększania się liczby konfliktów i napięć w różnych regionach świata, które potęgują zagrożenie stosowania tortur oraz innego okrutnego, nieludzkiego, poniżającego traktowania lub karania w niniejszej pracy zostało opracowane działanie prewencyjnych mechanizmów stworzonych w ramach funkcjonowania Podkomitetu do Spraw Prewencji. Praca obejmuje w swoim zakresie charakterystykę zadań Podkomitetu do Spraw Prewencji, czyli przeprowadzania wizyt w miejscach zatrzymań, wspierania krajowych mechanizmów prewencji oraz współpracy na rzecz zapobiegania torturom z odpowiednimi organami i mechanizmami ONZ oraz innymi instytucjami lub organizacjami. Zaprezentowany katalog aktów prawnych tworzy zestawienie normatywnych sposobów ochrony przed wszystkimi formami naruszeń zakazu stosowania tortur, a Konwencja w sprawie zakazu stosowania tortur z 1984 r. oraz Protokół Fakultatywny do Konwencji z 2002 r. stanowią podstawę wypracowanego systemu, którego funkcjonowanie zapewniają organy traktatowe – Komitet Przeciwko Torturom i Podkomitet do Spraw Prewencji.

Słowa kluczowe: konwencja, komitet, protokół, podkomitet, zakaz tortur

© for this edition by CNS

Александра Завісьляк
Університет Марії Кюрі-Склодовської

Органи Конвенції проти катувань та інших жорстоких, нелюдських або таких, що принижують гідність видів поводжень та покарань 1984 року та Факультативного протоколу 2002 р. – Комітет проти тортур та Підкомітет з питань запобігання

Анотація

У статті представлено механізми захисту прав людини як форми доступних процедур для запобігання порушенням заборони катувань та інших жорстоких, нелюдських або таких, що принижують гідність видів поводжень та покарань. Основою функціонування цієї системи в ООН є діяльність Комітету проти катувань та Підкомітету з питань запобігання, які здійснюють контроль та запобігання у сфері заборони катувань. Це органи, створені положеннями Конвенції 1984 р. проти катувань та інших жорстоких, нелюдських або таких, що принижують гідність, поводжень та покарань та Факультативного протоколу 2002 р. Мета дослідження – представити структуру зазначених органів, їх діяльність та завдання. Функціонування Комітету докладно проаналізовано. З початку його діяльності 1 січня 1988 року до його складу входило десять експертів. Ефективність установ пов'язана з їх гнучкістю та незалежністю. Комітет охоплює групу із 160 країн, тобто більшість країн ООН, тому здійснення повноважень є великим юридичним та логістичним викликом. При такій кількості держав та комітетів, що вже діють на міжнародному рівні, існує потреба забезпечити якомога більшу ефективність, щоб створений апарат контролю був не лише теоретичним органом. Мінімізація складу членів та спрощені формальні процедури, пов'язані з їх обранням, мандатом та здійсненням повноважень є перешкодою для належного функціонування цього органу. Детальний аналіз органів, утворених Конвенцією, демонструє розширення механізмів та створення системи з реальними можливостями впливу на ситуацію в певній країні чи місці. Розвиток ролі спеціалізованих механізмів захисту прав людини в Комітеті проти катувань протягом багатьох років підвищив ступінь точності дій у випадках порушення положень Конвенції. Мета підвищення ефективності боротьби з тортурами у всьому світі досягається виконанням завдань Комітету, визначених Конвенцією, які поділяються на три частини. На підставі ст. 19 Конвенції Комітет розглядає звіти держав-учасниць. Це перший рівень завдань Комітету. Другий – визначений ст. 20, який накладає обов'язок розслідувати систематичне використання катувань на території держави-учасниці. Третій рівень діяльності Комітету охоплює перевірку міждержавних та індивідуальних повідомлень. У пропонованій роботі представлено детальний аналіз основних цілей органів контролю з точки зору їх ефективності та результативності. Крім того, проаналізовано розвиток превентивних методів та збільшення їх частоти у статистиці. З огляду на зростання кількості конфліктів і напруження в різних регіонах світу, що збільшують загрозу катувань та інших жорстоких, нелюдських, таких, що принижують гідність, видів

© for this edition by CNS

поводження чи покарання, у пропонованій роботі проаналізовано дії превентивних механізмів, створених в рамках Підкомітету з питань запобігання. Робота охоплює характеристику завдань Підкомітету з питань запобігання, тобто проведення візитів до місць позбавлення волі, підтримка державних превентивних механізмів та співпраця задля запобігання катувань з відповідними органами та механізмами ООН, а також іншими установами чи організаціями. Представлений каталог нормативно-правових актів – це перелік нормативних методів захисту від усіх форм порушень заборони катувань, а Конвенція проти катувань 1984 р. та Факультативний протокол до Конвенції 2002 р. становлять основу розробленої системи, функціонування якої забезпечують органи – Комітет проти катувань та Підкомітет з питань запобігання.

Ключові слова: конвенція, комітет, протокол, підкомітет, заборона катувань

© for this edition by CNS