The Committee against Torture and the European Court of Human Rights

Panel on

Judicial Applications and interpretation of international/regional human rights law

Felice D. Gaer

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In my remarks today, I will look at the practice of two bodies, the Committee against Torture (CAT) and the European Court of Human Rights (ECtHR), examining how, on the one hand, the European Court has utilized the conclusions and case specific jurisprudence of CAT and how, on the other hand, CAT utilizes the case specific jurisprudence of the European Court. With an initial understanding of these patterns, I hope to be able to offer some suggestions regarding cooperative measures as encouraged by the conference organizers.

The Committee against Torture reviews 16-20 periodic reports from states and reaches decisions on 15-30 individual communications each year. There are 66 states that accept the article XXII communications procedure, out of a total of 158 states parties. As of May 15, 2015 the CAT has received a total of 678 communications regarding 34 states parties. Of these, 525 cases were concluded; the Committee has found 100 violations and 161 non-violations, and 264 cases that were found inadmissible or discontinued. The six countries with the largest number of cases lodged against them are Switzerland (164), Sweden (133), Canada (118), Australia (54), France (34) and Denmark (32). With this geographical focus, I felt that the relationship between CAT and the ECtHR merits further attention and that is why I have limited by comments today to the relationship of the European Court of Human Rights and CAT.

European Court on Human Rights

Many case judgments published by the European Court of Human Rights (ECtHR) make reference to the United Nations Committee Against Torture (CAT). A web search found 12 that are ranked most important (and went to the Grand Chamber) and another 44 that were ranked medium important. I’ve looked at the 12 most important and a selection of the 44, for a total of 19 such cases.

ECtHR court judgments reference CAT in three main ways:

1) Complainants to ECtHR use reports by CAT to support their cases

2) ECtHR uses reports by CAT (or references by third parties to CAT) to document human rights abuses, ill-treatment, and general conditions of countries of interest

3) ECtHR cites CAT decisions, rules of procedure, case jurisprudence or general comments as legal rules or guidelines in its own decisions.

To elaborate:

1. *Complainants cite CAT reports and conclusions to support their claims*

Many complainants to the ECtHR seek redress for torture or ill-treatment or attempt to stop a request for extradition. Many such complainants cite CAT reports following the review of a country’s compliance about country compliance to strengthen their case-specific allegations. In *Bouyid v. Belgium* (Grand Chamber, 2015) the complainant used CAT’s conclusions on Belgium to support their case under Article 3 of the European convention. In *Aksoy v. Turkey* (Chamber, 1996) the complainant referenced CAT’s report on its article 20 inquiry on Turkey to show that other international bodies support the allegation that the torture of detainees continued to be systematic and widespread in Turkey. This was also the case in *El Haski v. Belgium* (Second Section, 2012) when the complainant used case-law of CAT to argue that that evidence obtained by means contrary to Article 3 must be excluded from his case. In such cases CAT’s input is often valued by the court in regard to country conditions. This is comparatively common in asylum or extradition cases under article 3.

1. *The court uses reports by CAT or references of reports by CAT by third parties to document human rights abuses, ill-treatment, and general conditions of countries of interest*

This was by far the overwhelming way in which CAT was mentioned in court judgments. In almost every case analyzed, ECtHR relied on reports by CAT or references to CAT by third parties to establish tendencies of human rights abuses and document country conditions.

In many extradition cases, like *Babar Ahmad and Others v. The United Kingdom* (Fourth Section, 2012), the court reference reports and recommendations from CAT to analyze the likelihood of an applicant being tortured or ill-treated in the country requesting extradition. In this case the court referenced CAT’s recommendations against **solitary confinement**, “solitary confinement for long periods of time may constitute inhuman treatment,” as one example of why the applicants would likely experience violations of Article 3 if extradited to the United States.

In a **reproductive justice** case, *I.G. and Others v. Slovakia* (Fourth Section, 2012), the court used a report by CAT on Slovakia to back allegations of continued involuntary sterilization of Roma women.

In *Karabet and Others v. Ukraine* (Fifth Section, 2013) **the court brought to light that the Parliamentary Commissioner for Human Rights of Ukraine was aware that the practice of the use of special forces units is in fact systematic resort to torture because the commissioner referenced a CAT report** in her Annual human Rights Report.

The court also references CAT in relations to **submissions by third parties** like Amnesty International, who often cite CAT in their submissions. These references to CAT are very frequent in ECtHR judgments and show CATs legitimacy when it comes to reporting human rights abuses in countries and making country recommendations.

1. *The court uses rules of CAT as applicable international law instruments*

The court uses case-law analysis and state submissions to CAT to analyze international law in many of its judgments.

In *Pădureţ v. Moldova* (Fourth Section, 2010) the court interpreted relevant domestic law by analyzing a report submitted by Moldova to CAT. In the document the government states that the arrest of a student who was subjected to beatings and torture before his release is an example of illegal actions in the country.

In *Mamatkulov and Abdurasulovic v. Turkey* (First Section, 2003) the court used Rule 108 § 9 of the Rules of Procedure of CAT as a relevant international law instrument on interim measures. The rule enables interim measures to be adopted in proceedings brought by individuals alleging a violation of the Convention against Torture. The court uses old case-law to show how CAT applied the procedural rule in other scenarios before applying it to the case at hand. There were not many ECtHR judgments that used CAT as a means of enacting specific international law but in the cases where it was mentioned the court seemed to hold the rules and opinions of CAT in high regard.

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Committee against Torture: References to the European Court:

A search of the Committee against Torture’s database shows 19 separate occasions on which concluding comments on periodic reports from states parties have referenced the European Court. Moreover, there were 51 distinct communications in which CAT has explicitly referenced the European Court.

In most communications (25), the complainants cite the European court’s judgement in an attempt to bolster their case against the state party, but in other cases (11), states parties cite the court to argue that procedure, time limits, or other administrative or substantive positions of the court should be determinative. My initial review of these cases suggests that the most common citation of European Court standards is found in the replies from Sweden to communications affecting it.

Finally, in four cases, both parties raised the European Court’s practices, and in two cases, the CAT itself raised the Court’s standards even when the parties did not.

In examining these references, the most surprising finding was despite the many times CAT cites the European Court decisions in various cases, I found that the actual decision is made without directly engaging on the ECHR jurisprudence – even when CAT adopts exactly the same position as ECtHR. They simply did not discuss it in the decisions. CAT’s decisions are overwhelmingly focused on facts and positions of each side and spend only a few paras on the decision and the rationale is normally rather routine.

This means that even  though both CAT and the ECtHR may have reached the exact same conclusion, CAT does not discuss or make reference to the ECtHR (generally) or the European decision (specifically), when rendering its own decision. Sometimes CAT cites its own jurisprudence on the exact same point, at other times CAT refers to standard positions without citing to a source.

In fact we only found 3 cases in which CAT uses a decision of the European Court to interpret the Convention against Torture: (ABAO vFrance, Sogi (citing the Chahal case), and TPS v Canada).

In at least 8 of the cases, the matter had been submitted to the ECtHR, and the obligation not to admit a case pending before another international tribunal came into play.

In other cases, we see similar patterns to those in cases before the Court:

*1) Complainants cite ECtHR case decisions to support their claims*

1. *The State Party uses reports by ECtHR (or third parties) to raise human rights abuses but more often, cites rules and issues of timing, and procedure of the ECt to make their claim*
2. *CAT cites rules of ECtHR and its findings as applicable international law .*

Examples here.

**Cooperation**

CAT recently spent a half day in a seminar/briefing of non-refoulement. ECtHR judge, Mark Villiger, attended and presented a summary of the ECtHR practices, criteria for decisions, and decisions in this area. Would it be possible to identify other issues and areas in which consultation between members of the two bodies would benefit one another?

Should the CAT members and secretariat be assisted in efforts to learn from the ECt judgements how better to engage with the argumentation presented?

When a case is entered in CAT and it is already registered at ECtHR, can a means of coordination/communication between these bodies be established?

I look forward to the discussion of these and other proposals for cooperation between CT and the ECtHR.