Criminologie

The case law of the European Court of Human Rights: Its content and effect on suicide prevention in custody and detention

La jurisprudence de la Cour européenne des droits de l'homme : son contenu et ses effets en matière de prévention du suicide

La jurisprudencia de la Corte Europea de los Derechos HumanosSu contenido, y sus efectos en materia de prevención del suicidio

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Résumé de l'article

Nous proposons d'analyser les développements jurisprudentiels de la Cour européenne en matière de prévention du suicide en prison et dans les commissariats de police et leurs effets paradoxaux sur les politiques de prévention conduites par les États condamnés par la Cour. Nous montrons d'abord que la philosophie jurisprudentielle à laquelle se réfère la Cour est marquée par une segmentation des risques suicidaires et une conception étroite et synchronique du passage à l'acte suicidaire des gardés à vue et des détenus qui s'oppose au paradigme de la réaction sociale. Nous montrons ensuite que, sous la pression exercée par le Comité pour la prévention de la torture et des associations nationales de défense des droits des détenus, les arrêts de la Cour conduisent les États à adopter des politiques de prévention du suicide marquées par une rationalité à la fois actuarielle et punitive. Ceci n'empêche pas la jurisprudence européenne d'être au fondement d'un nouveau contrôle opéré sur les lieux privatifs de liberté auquel peuvent contribuer les familles de détenus suicidés.

The case law of the European Court of Human Rights: Its content and effect on suicide prevention in custody and detention

Gaëtan Cliquennois[1]

Abstract

This article analyses developments in case law based on Article 2 (right to life) in the European Court of Human Rights as they relate to suicide prevention for those in detention (in prison, police stations, or psychiatric hospitals) and the paradoxical effects they have had on prevention policies enacted by states condemned by the Court. I first show that the jurisprudential philosophy used by the Court is characterized by an emphasis on risk management and a narrow understanding of individual motivations for suicide. I then demonstrate that, under pressure from the Committee for the Prevention of Torture and the national associations for the defence of the rights of detainees, the Court's judgments have led states to adopt suicide prevention policies that are actuarial (based on risk management) and punitive. However, this perverse effect seems to be partially offset by the possibility that the families of detainees, through the investigative duties of member states of the Council of Europe, can exercise at least some supervision over the custodial and police systems.

Keywords

European Court of Human Rights, suicide, prevention, prison, police station.

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Introduction

The European Court of Human Rights has begun paying greater attention to suicide prevention for those in prisons or in custody, recognizing the vulnerable situation in which detainees find themselves in these places where they are deprived of liberty. In spite of numerous studies that have analyzed the way prison conditions are monitored in Europe (Daems and Robert, 2017; Van Zyl Smit, 2010), suicide prevention in Europe remains an under-studied topic in the scientific literature dealing with prisons and policing and there is a significant lack of research into the European Courts' growing influence on the way suicide prevention is dealt with in prison and custody. The available literature on European Court jurisprudence has tended to look at prison suicide on a case-by-case basis (Krenc and Van Drooghenbroeck, 2007; Murdoch, 2007; Simon, 2015; Tulkens, 2014; Tulkens and Dubois-Hamdi, 2015) or by analyzing the impact of certain rulings of the Strasbourg Court on how national suicide prevention programs should be applied in prisons (Cliquennois, 2010; Cliquennois, Cartuyvels and Campetier, 2014; Cliquennois and Champetier, 2013) without examining the primary features of the applicable case law or its more generalized effects on various member states. Lack of knowledge in this area is particularly regrettable given that the Court's rulings related to the right to life, as enshrined in Article 2 of the European Convention on Human Rights, are among its most important. The court recognized this importance on June 29, 2009[2], by introducing a prioritization policy that classifies risk to life and health as urgent and assigns a larger share of available resources to litigation dealing with these areas.

The significant expansion of the power and influence of the European Court since 1998 has meant that European case law dealing with suicide has had an increased effect on member states (Cliquennois and Suremain, 2017; Daems and Robert, 2017). Five factors in particular have made it possible for European Court case law to increase its

[2] See the recently added Article 41 of the European Court's Rules of Procedure, revised in June, 2009: "In determining the order in which cases are to be dealt with, the Court shall take into account the importance and urgency of the issues being raised, on the basis of criteria it defines. The Chamber and its President may, however, deviate from these criteria and reserve priority treatment for a particular application," (our translation). See also the note on the Court's priority policy, revised on May 22, 2017. Retrieved from: www.echr.coe.int/Documents/Priority_policy_ENG.pdf {If citation suggests that the pdf was in English - if so, why was a translation necessary?}

influence over national penitentiary policies. (1) The Court's architecture has evolved toward that of a quasi-constitutional court[3]. (2) Since 2004, the Court has had the option of rendering pilot and quasi-pilot rulings that deal with amalgamations of similar cases focused on human rights violations tied to structural and systemic issues. These rulings require that states take corrective legislative or administrative measures and submit action plans to the Committee of Ministers of the Council of Europe[4]. (3) The Court has increasingly employed a wide range of bold interpretive techniques to protect detainees' rights (Belda, 2010). (4) The Court has intensified its interactions with Council of Europe bodies, such as the Commissioner for Human Rights and the Committee for the Prevention of Torture (CPT), whose mission is to combat torture in states that are signatories to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and involves visits to examine how individuals deprived of liberty are being treated with the aim of strengthening, where necessary, protections against torture and inhuman or degrading treatment or punishment (Morgan and Evans, 2001; Murdoch, 2007; Snacken, 2014; Van Zyl Smit and Snacken, 2009). (5) The Court's interactions with the European Union, which funds programs aimed at improving implementation of both the Court's case law and European prison standards, including suicide prevention[5], have also increased (Cliquennois and Snacken, 2017). A "common European law for detention" (Belda, 2010 [my translation]) that protects detainees' rights has emerged from judge-made law, influenced by the factors discussed above.

Given this confluence of factors, it would be incorrect to conclude that the Court's rulings alone determine national prison policies. These policies are driven by a constellation of interconnected European and national organizations and institutions capable of influencing states. The results of their influence, in the form of cumulative

[3] Protocol 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the restructuring of the supervisory mechanism established by the Convention (1994).
[4] Resolution of the Committee of Ministers of the Council of Europe on rulings revealing an underlying structural problem (2004).
[5] Criminal justice and fundamental rights programs funded by the European Commission's Directorate-General for Justice. The JUST/2013/JPEN/AG/4554 program, for example, finances the implementation of a suicide prevention system in several European countries in accordance with the case law of the European Court and the CPT standards.

institutional interconnection and convergence, are capable, over time, of successfully influencing national prison administrations. Therefore, rather than analyzing the influence of any single type of supervisory body, as has generally been done in previous academic literature (Corriveau, Cauchie, and Perreault, 2014; Daems, 2017), it seems preferable to discuss the combined effects of European and national organizations, as well as interactions between European and national orders.

With this in mind, I propose an analysis of (1) developments in the European Court of Justice's case law regarding suicide prevention in prisons and police stations, as well as (2) the paradoxical effects of these rulings on the prevention policies adopted by the states condemned by the Court. I demonstrate first that the jurisprudential philosophy cited by the Court is characterized by a particular form of identification and management of suicide risks. Specifically, in the context of analyzing suicide risks to prevent its occurrence, the European Court relies on a narrow and ahistorical conception of the suicide attempts undertaken by detainees and individuals in custody. Such a philosophy contrasts with a more process-oriented and historical consideration of suicide, one that would require the Court to acknowledge social reaction theory and factor in more institutional factors. I then illustrate how the Court's rulings and influence from the CPT and national associations for the protection of prisoners' rights have resulted in the adoption of suicide prevention policies characterized by a punitive and actuarial form of thought. However, while these additional influences should be acknowledged, European case law remains the basis of a new form of control over places where individuals are deprived of liberty, one that offers the possibility that the families of suicidal prisoners will be able to have some impact.

Developments in European Court case law regarding suicide prevention in prisons and police stations

In Europe, the right to life is the basis for judicial supervision of suicides in prisons and police stations. As previously noted, the Court has made protection of this right a priority, evidence that it is seen as a high-level concern, "one of the basic values of the

democratic societies making up the Council of Europe," (*Makaratzis v. Greece*, 2004)[6]. Given this, violating the right to life exposes a state to very close supervision by the Court (*Natchova and Others v. Bulgaria*, 2005), particularly in places of deprivation of liberty where prisoners are in an especially vulnerable situation. This vulnerability requires that national authorities protect prisoners and suspects held in custody (*Keenan v. the United Kingdom*, 2001). Rather than a simple negative obligation to do no harm to such detainees, European case law obliges states to take appropriate measures and actions to prevent suicide. The philosophy associated with these measures and actions is based on identifying and managing risks, and preventing suicide attempts by managing the environment in which they may occur.

The content of European case law regarding suicide prevention in places where individuals are deprived of liberty

Analyzing European case law regarding suicide prevention in places where individuals are deprived of liberty reveals that the Strasbourg Court attributes potential liability based on whether the state accused by the applicants (usually the deceased's companion or family members) had undertaken all necessary measures to prevent the victim's suicide (see mutatis mutandis *L.C.B. v. the United Kingdom*, 1998). The Court established its main principles in this regard in *Tanribilir v. Turkey* in 2000 (dealing with police custody in police stations) and *Keenan v. the United Kingdom* in 2001 (dealing with prisons). These rulings establish that where there is a definite and immediate risk of suicide in places of deprivation of liberty, whether known to the authorities or foreseeable by them, national authorities must provide measures to prevent that risk, failing which they will be held liable:

> For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of suicide for an identified individual and that they failed to take measures within the

[6] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20MAKARATZIS%20v.%20GREECE.pdf, official translation, p. 27.

> scope of their powers which, judged reasonably, might have been expected to avoid that risk. (*Keenan v. United Kingdom*, 2001; *Tanribilir v. Turkey*, 2000)[7]

Consequently, it is sufficient for the applicant to demonstrate that prison authorities failed to undertake every action that could reasonably have been expected of them to eliminate the opportunity for and prevent the occurrence of suicide in circumstances where they were aware – or should have been aware of – a definite and immediate risk to life (*Keenan v. United Kingdom*, 2001, s. 93; *Ketreb v. France*, 2012, s. 71; *Renolde v. France*, 2008, s. 85; *Sellal v. France*, 2015, s. 47; *Tanribilir v. Turkey*, 2000, s. 72).

In requiring states to adopt such preventive measures the Court draws not only on Article 2 of the Convention but also on Recommendation 98(7) of the Committee of Ministers of the Council of Europe to member states regarding the ethical and organizational aspects of prison health care.[8] Inter alia, this recommendation requires that national authorities adopt procedures for detecting suicide risk as well as instituting specific measures to supervise prisoners at high risk of suicide. States are required to detect suicide risk via frequent medical assessments and to provide for intensive monitoring, appropriate physical measures, and constant and careful observation of prisoners deemed to be at a high risk of suicide (*Keenan v. the United Kingdom*, 2001; *Tanribilir v. Turkey*, 2000). The Court also invokes the European Prison Rules, which stipulate in Article 47.2 that "The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention."[9]

Although European case law primarily employs a case-by-case approach (specific to the particular circumstances of each case), in several of its rulings the Court has specified what constitute suicide risks, as well as the preventive actions that are required given states' positive obligation to protect the lives of individuals deprived of their

[7] Keenan v The United Kingdom: ECHR 3 Apr 2001 - swarb.co.uk, official translation, p. 28-29.
[8] Recommendation 98(7) of the Committee of Ministers of the Council of Europe to member states concerning the ethical and organizational aspects of health care in prison adopted by the Committee of Ministers on April 8, 1998 at the 627th meeting of the Ministers' Deputies in Strasbourg, France.
[9] Recommendation (2006) of the Committee of Ministers to Member States on the European Prison Rules. Adopted by the Committee of Ministers on January 11, 2006, at the 952nd meeting of the Ministers' Deputies in Strasbourg, France. https://archive.is/OTDXp#selection-4089.5-4089.175, official translation.

liberty. While prison administrations are expected to assess suicide risk (a result of the foreseeability of suicide risk criterion adopted by the Court), the Court considers that these risks are particularly high for both newly arrived detainees (detainees incarcerated for the first time and having just arrived in prison) (*Isenc v. France*, 2016) and individuals who have previously self-harmed (*Keenan v. the United Kingdom*, 2001, s. 88), as self-injury is seen as a significant predictor of the likelihood of a suicide attempt. Those who suffer from psychiatric disorders are also considered to be at high risk of suicide and their vulnerability must be taken into account by national administrations (*De Donder and De Clippel v. Belgium*, 2011, s. 75; *Keenan v. United Kingdom*, 2001, s. 111; *Renolde v. France*, 2008, s. 84), particularly in the case of individuals incorrectly sent to ordinary prisons (*De Donder and De Clippel v. Belgium*, 2011, s. 78) or to disciplinary wards (*Renolde v. France*, 2008) without being granted access to medical care (*Ketreb v. France*, 2012).

In these situations, the level of suicide risk is such that national authorities are obligated to undertake special and constant supervision of such detainees. Prison administrations must also ensure that prisoners at risk of suicide receive adequate medical supervision, including access to appropriate medication (*Jasinska v. Poland, 2010*, ss. 74-78), and consultation with a doctor (*Isenc v. France*, 2016; *Renolde v. France*, 2008). National prison administrations are also expected to place prisoners at high risk of suicide in either a bare cell or a specific ward, as well as to confiscate belts, shoelaces, and any object that could be used to commit suicide (*Keenan v. the United Kingdom*, 2001; *Shumkova v. Russia*, 2012). Intensive supervision with direct visual contact (*Keenan v. the United Kingdom*, 2001, s. 88), as well as daily medical supervision (*Gagiu v. Romania*, 2009, ss. 56-57) are also required, with particular attention paid to the signs and risks of self-harm.

Finally, per the European Court's case law, the positive obligation resulting from the right to life has not only a substantial dimension but also a procedural one. Article 2 of the European Convention on Human Rights requires that in the case of the death of a detainee, states must conduct an official, impartial, prompt, serious, effective, and independent (the individuals responsible for the investigation must be independent from a

hierarchical, institutional, or practical standpoint from those potentially involved in the death) investigation. The investigation must determine the nature (suicide, homicide, or accident), probable causes, and exact circumstances of the death, establish the authorities' possible degree of responsibility, and provide for punishment in the case of a suicide (*Troubnikov v. Russia*, 2005, s. 86-88). The primary purpose of such an enquiry is to ensure the effective application of domestic laws that protect the right to life and, in cases where agents or organs of the state are involved, to ensure they are held accountable for deaths that occur in their area of responsibility (*De Donder and De Clippel v. Belgium*, 2011, s. 61). The investigation must focus on eyewitness testimony, expert reports, medical and forensic evidence and, where appropriate, an autopsy that provides both an accurate and complete account of the injuries and an objective analysis of clinical findings, including cause of death (*De Donder and De Clippel v. Belgium*, 2011, s. 61).

The jurisprudential philosophy behind the identification and management of risk and necessary changes in the physical environment in detention

Analysis of European Court case law reveals two essential features of the European judicial philosophy regarding suicide prevention. The first is related to the procedures national authorities are expected to undertake to detect suicide risk and identify the elements involved. The existence of the responsibility-triggering criteria – present or foreseeable suicide risk – requires the implementation of policies to identify and deal with suicide risks. Specifically, according to the Court, states are responsible for identifying detainees most at-risk – those with a history of suicide attempts, self-aggression, or psychiatric disorders or who have been assigned to either the new arrivals wing or punishment cells. The Court mentions only risk factors specific to either the individual (first-time offender, newcomer, self-aggressive past, psychiatric disorders), or the location of detention (new arrivals wing, the disciplinary cell), which are relatively easy to identify. The resulting risk-screening process fails to take into account more environmental and procedural – and therefore more complex – factors, such as prison density and overcrowding, the punitive nature of certain detention regimes, the primacy of passive over active security, etc. The Court ignores these factors, although recent studies (Opitz-Welke, Bennefeld-Kersten, Konrad, and Welke, 2013; Rabe, 2012; van

Ginneken, Sutherland and Molleman, 2017) suggest that they play an important role in some suicides.

This narrow definition of suicide risk also effects the measures that states are expected to undertake, requiring national prison administrations to adopt special monitoring measures (visual and medical surveillance, removal of blunt objects, bare cells), tailored to the level of risk. Administrators aware of a suicide risk must adopt the measures needed to prevent the determined level of risk, failing which they will be held liable. The rationale for these preventive measures appears to be similar to that used for insurance (i.e. an actuarial approach) and focuses primarily on risks associated with an individual: individual risk levels are evaluated and differential responses are then adopted based on risk level. The Court appears to have chosen an actuarial approach focused on individual, physical, and temporal risk factors as the model for assessing state responsibility and for determining the dominant mode of suicide prevention for individuals deprived of their liberty.

The second feature of European judicial philosophy regarding suicide prevention, linked to the first, relates to the constraining and immediate nature of the measures prescribed by the European Court to detect and prevent attempted suicides. Based on the Court's model of suicide risk and the resulting means necessary to prevent it, detainees and prisoners at risk of committing suicide are subjected to material deprivation to limit or prevent any opportunity for or concrete possibility of attempting suicide via the removal of any object that could potentially be used to commit suicide as well as placement in a bare cell or specific area under intense visual and medical surveillance. The Court does, however, seem to be aware of the limits inherent in this model, citing the need to balance it by taking into account the principle of individual autonomy (*Keenan v. the United Kingdom*, 2001, s. 92). Rather than a process-oriented approach based on social reaction theory, which would require recognizing institutional factors, the Court seems to have implicitly chosen to employ a synchronous conception based on the immediate risks for imminent suicide, looking at an attempted suicide in the same way it looks at an attempted criminal act. The Court's use of an actuarial approach to identify the elements of suicide risk means that the risk of attempted suicide is evaluated in terms

of individual factors. This approach makes it possible to base suicide prevention on immediate risks, which are more obvious and easily calculated than institutional factors, whose analysis and resolution would require a longer period of time.

Although the Court requires states to monitor detainees who have been placed in disciplinary wards, it emphasizes the identification of high-risk detainees, such as those with psychiatric disorders or a history of suicide attempts, and recommends surveillance by regular or medical staff as well as materially (rather than psychologically) preventing such detainees from attempting suicide. This interpretation has led the Court to require medical follow-up only for detainees going through a suicide crisis and to expect that physical monitoring will take a synchronous – rather than a diachronic, i.e. historical – approach to preventing suicide attempts.

A more process-oriented and historical approach that was informed by social reaction theory would require taking into account several additional considerations, such as the way detainees are dealt with by prison authorities, as well as their possible rebellion and protest against such treatment (Cliquennois and Chantraine, 2009); the effect of the stigmatization of detainees, both in arrests and during trial (including trial delays); the effect of new public management (cost reduction, efficiency and quantitative indicators of performance (targets), staff reduction…) (van Ginneken, Sutherland and Molleman, 2017); the negative impact of prison architecture, as well as the prevalence of not only passive but punitive security in certain prisons and police stations (van Ginneken et al., 2017); and the different characteristics of detention systems (Cliquennois, 2013). Taking social reaction theory into account would also require acknowledging the increase in both the severity and scale of prison sentences, as well as its consequences, which include a worsening of prison conditions and increased overcrowding. Both these phenomena are associated with a higher rates of suicide (Opitz-Welke, Bennefeld-Kersten, Konrad, and Welke, 2013; Rabe, 2012).

It is also important to recognize the role the right to life plays in criminalizing behaviour contrary to this right and, by extension, in possibly increasing the severity of criminal punishment in European states. As interpreted by the Court, Article 2 of the

European Convention on Human Rights obliges member states of the Council of Europe to adopt legislation that criminalizes violations of the right to life, both as a way to ensure that national legal systems protect this right and to prevent, deter, and punish offences against human life (*L.C.B. v. the United Kingdom*, 1998, s. 36; *Osman v. the United Kingdom*, 1998, s. 115). The same obligations hold for Article 3 (which enshrines the right to dignity and prohibits torture as well inhuman and degrading treatment), requiring national authorities to, for example, criminalize rape and sexual violence (*A. v. the United Kingdom*, 1998, s. 22; *M.C. v. Bulgaria*, 2003, s. 153; *Z and Others v. the United Kingdom*, 2001, s. 73-75). In addition, and going even beyond the increases in criminal severity proposed by the European Convention on Human Rights, since the September 11 attacks on New York the European Union has urged states to adopt legislation aimed at preventing terrorism. The legality of such legislation, as well as its conformity with the European Convention on Human Rights, remains open to discussion (Eckes, 2009). A good example of such legislation is the European Arrest Warrant[10], a punitive measure that has contributed to an inflation in the number of arrests and thus to prison overcrowding, which is linked to a higher prevalence of suicide. The impact such repressive policies have on the number of suicides in places where individuals are deprived of liberty should be acknowledged by the Court, which might then be able to break with, or at least distance itself from, its current model of suicide risk.

More generally, a more holistic, comprehensive, and diachronic understanding of suicide prevention, based in part on recent independent scientific research that highlights the relationship between social reaction theory-related factors and the prevalence of suicide, might allow the Court to recognize that in certain cases detention conditions are completely inappropriate to deal with suicidal prisoners and provide appropriate care. The Court would then be able to consider whether a suspended sentence or long-term in-hospital placement might be more appropriate than regular custody and the supervision measures aimed at preventing suicide. The legal justification for suspending a sentence in such cases would involve invoking Article 3 of the European Convention on Human

[10] Framework Decision 2002/584/JHA of the Council of the European Union of June 13, 2002, on the European Arrest Warrant and the surrender procedures between member states.

Rights: the continued imprisonment of suicidal detainees whose mental and physical health is incompatible with detention could be seen as an affront to human dignity, especially given that the suicide prevention measures adopted by states the European Court has convicted are focused on security and restrictions.

The paradoxical impacts of European case law on national policies and practices designed to prevent suicide in places of deprivation of liberty

European case law's impact on national suicide prevention in places of deprivation of liberty is dualistic. On one hand, convicted states have translated the Court's rulings into practice based on an actuarial, safety-conscious, and even punitive logic. On the other hand, European case-law regarding suicide prevention has resulted in places of deprivation of liberty being subjected to external monitoring, which can involve the families of suicidal prisoners.

An actuarial and punitive rationale for national suicide prevention

European Court case law regarding suicide prevention has been disseminated at the national level (for countries covered by the European Court's rulings, particularly the United Kingdom, France, and Belgium[11]) as well as to the Committee for the Prevention of Torture (CPT), domestic courts, and national associations for the protection of prisoners' rights. In practice, the influence exerted by these organizations on suicide prevention involves actuarial suicide risk management and preventive measures focused on security (or even punitive) constraints.

In a document entitled "CPT Standards," (CPT/Inf/E [2002] 1-Rev. 2015), cited by the European Court in the *Isenc v. France* ruling (2010, s. 28), the CPT set out its approach to suicide prevention, which is similar in every respect to the Court's, both in terms of suicide risk factors and the way to manage them:

> 57. Suicide prevention is another matter falling within the purview of a prison's health care service. It should ensure that there is an adequate awareness of this subject

[11] I exclude here Turkey and Russia, whose suicide prevention policies are deserving of very broad development and another article.

> throughout the establishment, and that appropriate procedures are in place. 58. Medical screening on arrival, and the reception process as a whole, has an important role to play in this context; performed properly, it could identify at least certain of those at risk and relieve some of the anxiety experienced by all newly-arrived prisoners. Further, prison staff, whatever their particular job, should be made aware of (which implies being trained in recognizing) indications of suicidal risk. In this connection it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, involve an increased risk of suicide. 59. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme. Further, such persons should not have easy access to means of killing themselves (cell window bars, broken glass, belts or ties, etc.).[12]

During its visits, the CPT has paid close attention to suicide prevention in states that have been found guilty by the European Court of Human Rights, such as the United Kingdom, France, and Belgium. It has also acted as an avenue for the dissemination of European case law at the domestic level (CPT, 2009, s. 64; CPT, 2014, s. 61; CPT, 2017a, s. 68, 190) by encouraging states to adopt systems to manage suicide risk and to control the detention environment to help prevent suicide attempts.

For example, during its visits to prisons in the United Kingdom in 2008 and 2012, the CPT noted the satisfactory implementation of the Assessment, Care in Custody, and Teamwork (ACCT) process, as well as the High Risk Assessment Team Strategy for Managing Prisoners at Risk of Self-harm or Suicide. Both of these use an actuarial logic and are expected to be better at identifying and preventing suicide risk than the previous F2052SH medical prevention system, which is considered less efficient (CPT, 2008, s. 64; CPT, 2012, s. 61). However, it also indicated its disappointment that these new instruments were not yet in place in all prisons, as evidenced by the suicide of several prisoners who had been at risk of suicide or suffering from mental illness (CPT, 2012, s. 56). British authorities were encouraged to improve both their suicide risk management system (CPT, 2012, s. 56) and the training provided prison staff regarding detecting and addressing suicide risks (CPT, 2012, s. 61). In response, the United Kingdom promised to

[12] https://www.refworld.org/pdfid/4d7882092.pdf, official translation, p. 33.

ensure better implementation of its strategic assessment of suicide risk management (CPT, 2014, s. 45) and assured the CPT that all prison staff had received training in suicide risk management (CPT, 2014, s. 48). It also promised to update and improve its collective strategic assessment of suicide risk management (CPT, 2014, s. 66). The CPT noted its satisfaction with the systematic placement of prisoners at risk of suicide in bare emergency cells (without any anchor-points), the use of supportive co-prisoners to provide assistance and supervision, the provision of tear-proof clothing, and the organization of surveillance rounds at intervals of 15 to 60 minutes, depending on the level of determined risk (CPT, 2012, s. 61).

In contrast, the CPT criticized the lack of tear-proof clothing for suicidal prisoners and detainees in French police stations (CPT, 2017b, s. 14) and in Belgian prisons (CPT, 2010, s. 130), as well as the absence of an operational call system (intercom) in certain French prison cells (CPT, 2017b, s. 44). In its 2009 report to Belgium (CPT, 2010, s. 130) the CPT criticized Belgium's lack of suicide prevention programs and procedures (at the national, regional, and local level) and recommended implementation of such measures (CPT, 2017b, s. 141). In response, following the directives in the quasi-pilot *De Donder and De Clippel v. Belgium* (2011) ruling, Belgian authorities submitted both an original and a revised action plan to the Committee of Ministers detailing the actions that had been taken following the European Court's ruling (Committee of Ministers of the Council of Europe, 2012) and noted the measures taken in June, 2012, to prevent and manage suicide risks in response to European Court criticism. A multidisciplinary (including supervisors, management, and the medical and psychosocial services) and collective alert system was established in a number of prisons (including Ghent Prison) to assess suicide risks and provide medical and security responses commensurate with the level of identified risk (Committee of Ministers of the Council of Europe, 2012). Training focused on "prevention of suicide in prison" is now provided to prison staff to increase awareness of suicide risk factors and improve management of suicidal prisoners (Committee of Ministers of the Council of Europe, 2015; 2016).

For its part, following the *Renolde v. France* ruling (see above), as well as two CPT reports in 2000 (s. 98-100) and 2003 (s. 43-46) that were extremely critical of the

lack of real suicide risk prevention in French prisons, the French government standardized an actuarial suicide risk assessment and management system based on the Terra report (2003) and refined in 2007 (Albrand, 2009). Since 2009 an actuarial scale of suicide risk factors, focused primarily on individual factors related to the highest-risk placements and times, has been provided to all penitentiary staff, with an emphasis on those responsible for reception in the new arrivals wing (CPT, 2000, 2003). The standardized prevention system includes measures commensurate with the determined level of risk (Note du Garde des Sceaux, 2009). In addition to incorporating suicide prevention into the architectural planning for new prisons (Albrand, 2009) (particularly with regard to design specifications) and increasing the number of emergency telephone lines, intercoms, cardiac defibrillators and security rounds as well as the availability of prison psychiatric units (Albrand, 2009), France's prison administration also has four new tools to prevent suicide in "extreme" situations or where there is a very high risk of a suicide attempt. These are (1) the provision of disposable clothing and sheets, as well as tear-proof blankets; (2) the use, as in the United Kingdom, of supportive prisoners to share a cell with and supervise a prisoner at risk of attempting suicide; (3) the provision of "smooth" emergency protection cells with no hook points or sharp corners (including on furniture); and (4) video surveillance for 24 to 72 hours within secure cells (Albrand, 2009). In exceptional cases, video surveillance of suicidal detainees in secure cells (coupled with intensive surveillance rounds) can be renewed for a unlimited number of three-month periods.[13] Although the CPT has not questioned the use of video surveillance, it has expressed concern about its privacy implications, insisting that medical care should be provided to suicidal prisoners through treatment in a psychiatric centre (CPT, 2017b).

Finally, national human rights associations (in the United Kingdom: Justice, Liberty, the Prison Reform Trust, the Howard League for Penal Reform, the Children's Rights Alliance of England, and Inquest; in France and Belgium: l'Observatoire international des prisons [the International Prison Observatory]) remain in close contact

[13] Article 1 of the Order of June 9, 2016, relating to the management of personal data and the video surveillance and video protection of prison cells.

with the CPT and echo its focus on European jurisprudential criteria in their respective countries[14] (Cliquennois and Champetier, 2013) by launching legal appeals in domestic courts[15] and, for certain associations, regular appearances before the European Court.[16]

Several states have responded to convictions by the European Court of Human Rights by doubling down on the use of both panoptic surveillance systems (video surveillance, visual surveillance by guards) and suicide and self-aggressive risk assessment systems (assessment tests, interviews). Targeted inmates are thus subject to increased monitoring and evaluation, based, to some degree, on a hybrid model of security constraints and actuarial risk-management. These solutions, designed to prevent suicide attempts, represent the flip side of the right to life in the sense that, in the name of this right, measures for the identification and monitoring of suicide risk increase the degree of confinement of the detainees most at risk. One cannot help but question the punitive nature of these measures, which compel at-risk detainees not only to refrain from killing themselves while passively submitting to their sentence and the removal of any of their possessions that could potentially aid a suicide attempt but also to have their every move spied upon, whether via actuarial assessment, video surveillance, surveillance by guards, or surveillance by fellow "support" detainees.

The development of external monitoring of prisons and police stations

As previously noted, for suicides that occur while the individual is in police custody or in prison the European Court requires police and prosecutors to investigate the circumstances of the death (*Keenan v. the United Kingdom*, 2001, s. 88). This obligation to investigate leads to multiple examinations of prison conditions by police as well as judicial and professional authorities, usually involving testimony by eyewitnesses and prison officials, autopsies, forensic reports, and photographs of the bodies of prisoners and the prison environment. As a result, prison administrations must conduct meticulous inspections so that they are ready to provide statements in their defense in the event that either the family of the deceased or a detainee rights association undertakes legal action

[14] For Belgium, see International Prison Observatory - Belgian Section (2016, pp. 18, 156-159).
[15] See, for example, for England: Inquest Law Issue 28, December 2013.
[16] See, for example, l'Observatoire international des prisons (2012).

following a suicide. This creates an additional level of professional and hierarchical control over prison practices that, while open to criticism for reducing the independence of the prison staff , is undeniably effective. As detainee rights associations tend to draw on prison administration inspection reports to support their appeals before domestic courts, these reports provide an additional form of control that contributes to increased questioning and scrutiny of police and prison practices (Ferran, 2017).

The European Court's requirement that such investigations must be available for public scrutiny entails that not only must the deceased's family be involved and regularly informed about the process (*Troubnikov v. Russia*, 2005, s. 93), but broader public scrutiny, whether by individuals or the media, is also possible. This has helped create what has been called the reverse panopticon (Cliquennois et al., 2014; Cliquennois and Suremain, 2017), the ability of prisoners, their relatives, and other individuals to exercise some oversight over prisons and prison practices. This inverted understanding of both the Foucauldian panopticon and traditional prison power, though not embedded or crystallized in an architectural framework, makes it possible to partially compensate for the security-based excesses associated with the implementation suicide prevention policies.

Conclusion

I have shown that European case law dealing with suicide in police custody and in prison is inspired by both risk-management logic and a concern for the material prevention of suicide attempts. Adopting the resulting measures has had a perverse effect on the provision of human rights, particularly the right to life. However, this perverse effect appears to be partly balanced by the investigative duties now incumbent on states who are members of the Council of Europe, which offer the possibility that detainees' families, as well as citizens, judges, police officers, and the media, will be able to exercise some supervision, however slight, over the prison environment. My analysis of suicide prevention as exemplified in European case law has focused on this human rights dialectic and on the fluctuations between it and risk management, punitiveness, and external control of the places where individuals are deprived of liberty. The links between

these two contrary approaches and the interplay between them deserve further exploration in other areas of criminal law and legal punishment.

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La jurisprudence de la Cour européenne des droits de l'homme : son contenu et ses effets en matière de prévention du suicide

Résumé

Nous proposons d'analyser les développements jurisprudentiels de la Cour européenne en matière de prévention du suicide en prison et dans les commissariats de police et leurs effets paradoxaux sur les politiques de prévention conduites par les États condamnés par la Cour. Nous montrons d'abord que la philosophie jurisprudentielle à laquelle se réfère la Cour est marquée par une segmentation des risques suicidaires et une conception étroite et synchronique du passage à l'acte suicidaire des gardés à vue et des détenus qui s'oppose au paradigme de la réaction sociale. Nous montrons ensuite que, sous la pression exercée par le Comité pour la prévention de la torture et des associations nationales de défense des droits des détenus, les arrêts de la Cour conduisent les États à adopter des politiques de prévention du suicide marquées par une rationalité à la fois actuarielle et punitive. Ceci n'empêche pas la jurisprudence européenne d'être au fondement d'un nouveau contrôle opéré sur les lieux privatifs de liberté auquel peuvent contribuer les familles de détenus suicidés.

Mots-clés

Cour européenne des droits de l'homme, suicide, prévention, prison, commissariats de police.

La jurisprudencia de la Corte Europea de los Derechos HumanosSu contenido, y sus efectos en materia de prevención del suicidio

Resumen

Proponemos analizar los desarrollos jurisprudenciales de la Corte Europea, en materia de prevención del suicidio en las cárceles y en las comisarías de la policía, y sus efectos paradójicos sobre las políticas de prevención conducidas por los Estados condenados por la Corte. En primer lugar, mostramos que la filosofía jurisprudencial a la que hace referencia la Corte, está marcada por una segmentación de los riesgos suicidas, y por una concepción estrecha y sincrónica del acto suicida de los custodiados y de los detenidos, que se opone al paradigma de la reacción social. Luego, mostramos que bajo la presión ejercida por el Comité de Prevención de la Tortura y por las asociaciones nacionales de defensa de los derechos de los detenidos, los juicios de la Corte conducen a los Estados a adoptar políticas de prevención del suicidio, marcadas por una racionalidad a la vez actuarial y punitiva. Esto no le impide a la jurisprudencia europea, estar en la fundación de un nuevo control operado sobre los lugares privativos de la libertad, al cual pueden contribuir las familias de detenidos que se suicidaron.

Palabras clave

Corte europea de los derechos del hombre, suicidio, prevención, cárcel, comisarías de policía.