

**Report to the Austrian Government
on the visit to Austria
carried out by the European Committee
for the Prevention of Torture And Inhuman
or Degrading Treatment or Punishment (CPT)**

from 20 May 1990 To 27 May 1990

The Austrian Government has agreed to the publication of this report, provided that it is published together with its comments thereon. These comments are set out in document CPT/Inf (91) 11.

Strasbourg, 3 October 1991

CONTENTS

COPY OF THE LETTER TRANSMITTING THE CPT'S REPORT	4
PREFACE	5
SUMMARY OF THE CPT'S MAIN FINDINGS.....	7
I. INTRODUCTION.....	9
A. Period of the visit and composition of the delegation	9
B. Establishments visited by the delegation	9
C. Consultations held by the delegation.....	11
D. Co-operation met with during the visit.....	12
II. THE LEGISLATIVE FRAMEWORK.....	13
A. Brief survey of legislation	13
B. Remedies in the event of alleged ill-treatment.....	15
C. Planned reforms	17
a. Reforms due to come into force	17
b. Reforms in progress.....	17
III. FACTS FOUND DURING THE VISIT.....	18
A. Establishments administered by the Ministry of Justice.....	18
a. Ill-treatment of persons deprived of their liberty.....	18
b. Conditions of detention	18
(physical conditions).....	18
(regime)	19
(medical care and hygiene).....	20
(foreign prisoners)	20
(prisoners' welfare)	20

B.	Establishments administered by the Ministry of the Interior.....	21
a.	Ill-treatment of persons deprived of their liberty.....	21
b.	Conditions of detention	24
i)	Police stations.....	24
	<i>(physical conditions)</i>	24
	<i>(food in police stations)</i>	25
	<i>(notification of custody / access to legal advice)</i>	26
	<i>(access to medical treatment)</i>	28
	<i>(conduct of interrogations)</i>	29
	<i>(custody records)</i>	29
ii)	Vienna Security Bureau and Salzburg Criminal police department	30
iii)	Police jails	31
	<i>(physical conditions)</i>	31
	<i>(outdoor exercise)</i>	32
	<i>(regime)</i>	33
	<i>(foreign prisoners)</i>	33
	<i>(medical care and hygiene)</i>	34
	<i>(inspection procedures)</i>	35
	<i>(recruitment / training of police officers responsible for prison duties)</i>	35
iv.	Special transit room at Schwechat airport.....	36
v.	The immigration department in Vienna	37
C.	Additional issues arising out of the consultations with the Ministry of the Interior	38
IV.	CONCLUSIONS	39
A.	Overall assessment of establishments visited.....	39
a.	Establishments administered by the Ministry of Justice	39
b.	Establishments administered by the Ministry of Interior	39
B.	Action on the CPT's recommendations, comments and requests for information	41
APPENDIX		
	SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION	42

Copy of the letter transmitting the CPT's report

Strasbourg, 14 November 1990

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Austrian Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Austria from 20 May 1990 to 27 May 1990. The report was unanimously adopted by the CPT at its sixth meeting, held from 7 to 9 November 1990.

In order to facilitate consideration of the report by the Austrian Government, it is accompanied by a preface explaining the CPT's mandate and a summary of the CPT's main findings.

I would draw your attention in particular to paragraph 104 of the report, in which the CPT requests the Austrian authorities to provide an interim and a follow-up report on action taken upon its report. More generally, the CPT is keen to establish an on-going dialogue with the Austrian authorities on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention; consequently, any other communication that the Austrian authorities might wish to make would also be most welcome.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Antonio CASSESE
President of the European Committee for
the prevention of torture and inhuman
or degrading treatment or punishment

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Preface

The European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) being a new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features, inter alia because the basis and aims of its activities are fundamentally different from those of the two other Council of Europe bodies of supervision within the field of human rights protection - the European Commission and European Court of Human Rights.

Unlike the Commission and the Court, the CPT is not a judicial body empowered to resolve legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims *ex post facto*).

The CPT is rather first and foremost a mechanism designed to prevent torture and inhuman or degrading treatment or punishment from occurring, although it may also in special cases intervene after the event if this is important for future prevention.

Consequently, whereas the Commission's and Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

Underlying the CPT's activities is the notion of co-operation (Article 3 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment). The CPT's task is not to publicly criticise States, but to assist them to find ways and means of strengthening the "cordon sanitaire" between acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following considerations: that the prohibition of ill-treatment is absolute; that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms; and that ill-treatment is not only harmful to the victim but also degrading to the person inflicting it and ultimately harmful to the national authorities in general.

In performing its function of prevention of ill-treatment, the CPT must first of all explore the prevailing factual situation. In this connection it:

- i) takes stock of the general conditions in establishments visited;
- ii) observes the general attitude, behaviour and demeanour of law enforcement officials and other staff to persons deprived of their liberty;
- iii) interviews persons deprived of their liberty in order to get their views on i) and ii), and to hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, the CPT recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions the CPT may take as points of departure not only the European Convention on Human Rights but also a number of other relevant human rights instruments (and the interpretation of them by the relevant human rights organs). At the same time, it is not bound by the jurisprudence of judicial bodies acting in the same field *ex post facto* but possessing quite distinct powers and duties.

To sum up, the principal differences between the CPT and the European Commission and European Court of Human Rights can be resumed as follows:

- i) the Commission and Court have substantive treaty provisions to apply and interpret: the CPT does not, although it could seek guidance from - without, however, being formally bound by - not only one but a number of treaties, other international instruments and the jurisprudence formulated thereunder;
- ii) the Commission and Court only intervene after having been duly seised with applications from individuals or States: the CPT "intervenes" *ex-officio* by way of periodic or *ad hoc* visits and mainly without complaints;
- iii) the Commission and Court's proceedings conclude with a finding of breach or no breach of a State's treaty obligations, which is legally binding upon the parties: the CPT's findings result in a report with, if need be, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to co-operate with the CPT or to comply with its recommendations, the latter may issue a public statement on the matter.

Summary of the CPT's main findings

The CPT formed a positive view of the one establishment administered by the Ministry of Justice visited by it, namely the Vienna Court of First Instance Prison (Landesgerichtliches Gefangenenhaus). No allegations were heard of ill-treatment of prisoners by the prison's staff. Further, despite a measure of overcrowding, physical conditions within the prison were quite acceptable. In addition, the regime for prisoners appeared on the whole satisfactory.

Nevertheless, certain facilities seemed to be underused, possibly due to staff shortages. Further, there was room for improvement as regards washing facilities, in particular for women. Moreover, despite the considerable efforts already made, additional steps were required to overcome difficulties of communication between foreign prisoners and the staff.

The CPT was impressed by the high degree of co-operation and professionalism displayed by the Prison Director and his staff throughout the visit.

The CPT heard many allegations of ill-treatment of detainees during the initial period (i.e. up to 48 hours) of police custody. These allegations came from prisoners in the different establishments visited, from nongovernmental organisations and from various other sources. The CPT was struck by the large number and the consistency of the allegations, as well as by the contrast with the almost total absence of allegations of ill-treatment in prison establishments (including police jails). Medical information consistent with certain of the allegations was made available to the CPT. Taking into account also the weaknesses in some of the basic safeguards against ill-treatment noted in the course of the visit, the CPT has reached the conclusion that there is a serious risk of detainees being ill-treated while in police custody.

The CPT has recommended a number of measures to the Austrian authorities designed to address this problem eg. improved access to legal advice for persons in police custody; a right for persons in police custody to be examined by a doctor of their own choice; the drawing up of a code of practice concerning police interviews; the keeping of full records of police custody. Further, the recourse had by police officers to defamation proceedings against persons who accuse them of ill-treatment should be reviewed with a view to ensuring that there is a proper balance between the competing interests in play. The CPT also welcomes the intention of the Austrian authorities to reform the existing police disciplinary procedure and has made some suggestions in this connection.

In addition, the CPT cannot emphasise too strongly the importance of adequate professional training. Skilled police officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of such fundamental safeguards as access to legal advice for detainees. The CPT looks forward to receiving details of the measures taken and envisaged in this respect.

The CPT was also concerned about the physical conditions of detention in the police stations visited, especially as regards sleeping and sanitary arrangements. It has made some recommendations and comments in this area and trusts in particular that its recommendation that persons obliged to stay overnight in a police cell should be provided with a mattress will be implemented forthwith.

As regards the two police jails visited, of Vienna and Salzburg, the CPT heard no allegations of ill-treatment by the staff. On the other hand, the CPT was not impressed by the conditions of detention, in particular in the Vienna Police Jail. The CPT has made a number of recommendations and comments on specific matters concerning the two jails (eg level of occupancy of night cells and state of toilet facilities in the Vienna Jail; waiting periods for medication and personal hygiene arrangements in the Vienna Jail; hygiene in the cells in both jails, as well as difficulties of communication between foreign inmates and staff).

However, the visits to the two jails also served to highlight certain fundamental problems which the CPT suspects are common to many police jails. Firstly, it was clear that prisoners in the Vienna Jail were not guaranteed one hour's outdoor exercise every day, and the CPT was not certain that the situation was considerably better in the Salzburg Jail. The possibility for prisoners to have at least one hour's exercise in the open air daily is an internationally accepted minimum standard; immediate steps are required to ensure that this standard is met in all police jails in Austria.

Secondly, a common feature of the Vienna and Salzburg Jails, and presumably of other police jails, was the almost total lack of regime activities for prisoners, some of whom might stay in the jail for many weeks, perhaps months. This situation needs to be reviewed with a view to the development of activities for prisoners.

Thirdly, the CPT learned that the review of conditions of detention in police jails by an independent body was not provided for. In the course of its visits to the Vienna and Salzburg Police Jails, the CPT saw much that would benefit from a critical assessment by an external authority. The introduction of inspection procedures comparable to those operating within prisons administered by the Ministry of Justice should be envisaged.

I. INTRODUCTION

A. Period of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, a delegation of the CPT carried out a periodic visit to Austria from 20 to 27 May 1990.

2. The delegation consisted of the following Committee members:

- Mr Love KELLBERG (Head of the Delegation)
- Mr Jacques BERNHEIM (Second Vice-President of the Committee)
- Mrs Nadia GEVERS LEUVEN-LACHINSKY
- Mr Claude NICOLAY

The delegation was assisted by:

- Mr Rodney MORGAN, Professor of Criminal Justice at Bristol University (expert)
- Mrs Susan FERGUSSON-GÜNTHER (interpreter)
- Mrs Margarete Sinaide von MÜLMANN (interpreter).

The delegation was also accompanied by the following members of the Committee's Secretariat:

- Mr Trevor STEVENS (Secretary of the Committee)
- Mrs Geneviève MAYER-FABIAN

B. Establishments visited by the delegation

3. The delegation visited the places listed below during the week of 20 to 27 May 1990; some of the places visited had not been formally notified in advance of the visit to Austria (cf. those marked with an asterisk).

VIENNA

Prisons

- Vienna Court of First Instance Prison (Landesgerichtliches Gefangenenhaus)
- Police Jail (Polizeiliches Gefangenenhaus)

District police stations

located at:

- Deutschmeisterplatz, 3: Innere Stadt (1st district)
- Leopoldgasse, 18: Leopoldstadt (2nd district)
- Van-der-Nüll-Gasse, 11: Favoriten (10th district)*
- Wagramer Strasse, 89: Donaustadt (22nd district)*

Other places / establishments

- Security Bureau (Sicherheitsbüro)
- Schwechat Airport: special transit centre for asylum-seekers (Sondertransitraum-Schwechat)*
- Immigration Department (Fremdenpolizeilichesbüro)*

SALZBURG

- Police post (Wachstube) at Salzburg railway station
- Criminal police department (Kriminal Dauerdienst)*
- Police Jail (Polizeiliches Gefangenenhaus).

4. During the talks which the delegation had with nongovernmental organisations in the course of its visit, information was passed on to it concerning problems in psychiatric institutions. However, the delegation did not think it appropriate to visit this type of institution during the present visit.

C. Consultations held by the delegation

5. The delegation held a series of consultations with the national authorities, nongovernmental organisations, the prison staff trade union and the police trade unions.

6. As regards the national authorities, the delegation met, among others:

- Mr Löschnak, Minister of the Interior
- senior officials of the Ministry of the Interior
- senior officials of the Ministry of Justice
- Mr Woratsch, President of the Vienna Court of First Instance exercising jurisdiction in criminal matters
- Mr Schender, Ombudsman
- Mr Marek, Vice-President for Vienna of the Federal Police Department.

7. As regards trade unions, consultations were held with:

- representatives of the prison staff trade union (Gewerkschaft der öffentlichen Bediensteten)
- a representative of the "Sicherheitswache" trade union (Sicherheitswache Gewerkschaft)
- a representative of the trade union of officers of the criminal police (Kriminalbeamten Gewerkschaft).

8. As regards nongovernmental organisations, consultations were held with representatives of the following organisations:

- the Austrian Committee against Torture (Österreichischer Komitee gegen die Folter)
- the Austrian Human Rights League (Österreichische Liga für Menschenrechte)
- the Association for Human Dignity under State Authority (Verein für die Menschenwürde unter der Staatsgewalt).

D. Co-operation met with during the visit

9. In the high-level consultations and talks with national authorities, the delegation met with a satisfactory degree of co-operation. The talks proceeded in an atmosphere of frankness and open-mindedness. The willingness to consider reform was particularly pronounced in the Ministry of Justice.

10. At the subordinate levels, and particularly in the establishments visited, the delegation sometimes met with reticence on the part of the authorities.

This reticence may be explained to some extent by a lack of information on the part of the officials directly concerned, especially in the case of the police, who were only vaguely, or not at all, aware of the CPT's visit and its role¹. It was also no doubt due to the fact that police officers are unaccustomed to such visits, the system currently in force not providing for inspection by independent external bodies.

¹ The circular issued by the Ministry of the Interior to the departments under its authority explaining the CPT's role and powers and the aims of the Convention was not distributed until 17 May 1990 (only three days before the start of the visit). A similar circular had been issued by the Ministry of Justice on 21 February 1990.

II. THE LEGISLATIVE FRAMEWORK

A. Brief survey of legislation

11. The Austrian system of deprivation of liberty is based on a fundamental distinction between criminal and administrative offences. Each of these categories is governed by specific legislation. An administrative offence may be, for example, a breach of the highway code or a disturbance of the peace. Such an offence is tried by the competent administrative authority.

12. In both cases, however, arrests are the responsibility of the police. In the case of administrative offences, the police authorities have complete jurisdiction, i.e. from the arrest up to the execution of the sentence, which is served in police jails (polizeiliche Gefangenenhäuser) administered by the Ministry of the Interior. In the case of a criminal offence, however, after being detained by the police the person is committed for trial before the competent court and transferred to the relevant court of first instance prison (landesgerichtliches Gefangenenhaus). All sentences are delivered by the courts and served in prisons administered by the Ministry of Justice.

13. With both types of offence, the person arrested has a number of rights. In both cases, the maximum period of police detention is, as a rule, 48 hours. Anyone who is arrested is entitled to inform a friend or relative or a legal advisor that he has been arrested and is being held in police custody (Article 36, paragraph 3 of the "Verwaltungsstrafgesetz"). The law stipulates that the officers who make the arrest must inform the persons arrested of their rights. Although the text of the legislation expresses it as a choice between two alternatives, a circular issued jointly by the Ministries of Justice and the Interior stipulated that a prisoner must be able to inform a friend or relative and a legal advisor².

The law allows the authorities to assess whether a person should be allowed to exercise his right in person or whether it is better to have this done by an officer. It would seem that practice has developed in a somewhat different direction because the authorities may even refuse to allow a person to exercise his rights if it is believed that there may be a risk of collusion. This development is reflected in the above-mentioned circular.

14. In the case of an administrative offence, the legal advisor may visit and assist his client from the time he is taken into custody by the police (Article 36, paragraph 4, of the "Verwaltungsstrafgesetz").

In the case of a criminal offence, this right to legal advice is restricted to telephone contact. Access to the client's file and visits to him are not legally guaranteed during police custody.

² In this connection, see paragraph 26 below.

15. Particular mention should be made of young people, who, since the coming into force (on 1 January 1989) of amended legislation relating to their judicial protection (Jugendgerichtsgesetz), have been subject to special rules, whatever the type of offence. They have a right to contact with a friend or relative and a legal advisor or probation officer and to be assisted by them from the time of their arrest and throughout the period of police custody. In addition, they are entitled to psychological assistance by a person of their choice during questioning.

Like adults, young people may relinquish the above rights.

16. In the case of a criminal offence, the treatment of unconvicted persons is monitored by the President of the court of first instance exercising jurisdiction in criminal matters, who is required to make weekly visits to cells without giving advance notice.

After conviction, the "Vollzugskommissionen", boards responsible for supervising the enforcement of sentences and monitoring the treatment of prisoners, are required to make one unannounced visit a year to prisons. They are also entitled to make additional visits. They send an annual report comprising the necessary recommendations to the Minister of Justice.

The code governing the enforcement of sentences (Strafvollzugsgesetz) stipulates that prisoners may, without any restriction, correspond with national authorities and bodies, such as legal advisors, the Minister of Justice and the Ombudsman, international authorities (eg the European Commission of Human Rights), and foreign (consular) authorities. Correspondence of this kind may not be inspected.

17. In the case of an administrative offence, however, no provision is made for systematic inspection by independent bodies outside the police.

18. In the absence of any offence, detention may also be a temporary administrative measure taken to guarantee the removal of an illegal immigrant or pending the outcome of an asylum request. This type of deprivation of liberty is called "Schubhaft". Most of the prisoners interviewed by the delegation in the police jails visited by it were foreigners in this situation.

B. Remedies in the event of alleged ill-treatment

19. A person who alleges that he has been subjected to ill-treatment, e.g. at the time of his arrest or in police custody, has certain remedies available to him³ :

- * criminal proceedings based on the provisions of the Penal Code (wounding, acts of torture or negligence towards a prisoner, punishable acts resulting from abuse of office)
- * an application to the Minister of the Interior for disciplinary proceedings (if a police officer is implicated)
- * an appeal to the Constitutional Court.

20. Nevertheless, counter proceedings may be initiated against a complainant on the following grounds: defamation (Verleumdung), under Article 297 of the Penal Code (Strafgesetzbuch) - the fact of having knowingly exposed a person to criminal proceedings or action by other authorities⁴; or false evidence before a court or public authority (Articles 288 and 289 of the Penal Code).

21. Particular mention should be made of an important circular dated 15 September 1989 sent by the Ministry of Justice to the appeal court presidents and public prosecutors. This circular, dealing with the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, also comprises instructions on the procedure to be adopted by the prosecuting authorities in the event of allegations of ill-treatment by the police.

If such allegations are brought to their notice and do not seem manifestly unfounded, prosecutors are requested to take immediate action by initiating a judicial investigation in order to establish the facts. This investigation must be brought to the attention of the police authorities.

The investigation must be conducted on a priority basis in order to guarantee the right of the person concerned to impartial proceedings and protection from intimidation (in accordance with Articles 13 and 16 of the above-mentioned Convention) and also to determine whether the statements made are of the same nature as those referred to in Article 15 of that Convention (statements made as a result of torture).

The circular also states that facts not falling within the definition which is given of torture but constituting cruel, inhuman or degrading treatment for the purpose of obtaining a statement must be taken into consideration in assessing the value of the evidence against a person.

In this connection, recipients of the circular are also asked to ensure that the possibility of a transfer to police premises is no longer envisaged in the case of persons detained on remand who allege that they have been subjected to ill-treatment by the police.

When an inquiry is opened into allegations of ill-treatment by the police, it is recommended

³ See also paragraph 28 below.

⁴ The offence carries a prison sentence ranging from six months to five years.

that the charges against the alleged victim be suspended until the inquiry has been completed, subject to the condition that this does not result in an extension of the period of detention on remand (if so, the inquiry must be conducted independently of the proceedings against the individual concerned).

Lastly, pending the reform of criminal procedure, which will also involve a modification of the law of evidence, courts and prosecuting authorities are recommended not to consider statements obtained as a result of torture and ill-treatment. Public prosecutors are asked to ensure that such evidence is not used. They must oppose its use and, if necessary, ask for judgments based on such evidence to be declared null and void.

22. As part of their official duties, police officers are in principle required to report alleged or observed abuses to the authorities through internal channels, with a view to the initiation of disciplinary proceedings and the possible lodging of a complaint. If injuries are found on a person in their custody, police officers are obliged to call a police doctor. It is in any case this doctor's responsibility to examine an arrested person in order to determine whether he is fit for detention (Regulations governing police jails, instructions to police doctors, 4.7.1968). If he finds injuries, a medical report must be drawn up, sent to the person in charge of the establishment and forwarded to the competent authorities.

23. It should be noted that under Article 27 of the legislation governing the medical profession (Ärztegesetz), any doctor who, in the course of his professional duties, suspects that the death or serious wounding of a person is the result of punishable behaviour, is obliged to lodge a complaint with the police. The same applies to the discovery of acts of torture and ill-treatment.

24. Lastly, anyone who does not have legal remedies or who has exhausted the available remedies can submit complaints concerning the federal administration to the Ombudsman⁵. The Ombudsman's role is to investigate the complaint and submit any appropriate recommendations for its settlement to the highest competent body⁶. The body to which the Ombudsman's recommendations are submitted is obliged to act on those recommendations within a time limit laid down by law (8 weeks) or, failing that, to state in writing the reasons why they have not been acted upon.

⁵ The Ombudsman's office was established in Austria by a Constitutional Act of 1 July 1981.

⁶ For this purpose, the Ombudsman enjoys a number of powers, including access to files. All agencies of the federation, the Länder and the smaller administrative districts are obliged to provide the Ombudsman with the requisite assistance ("Unterstützungspflicht der volksanwaltschaftliche Kontrolle").

C. Planned reforms

a. Reforms due to come into force

25. Constitutional Law No. 684 of 29 November 1988 on the protection of individual freedom (Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit) will come into force on 1 January 1991. This law lists a series of fundamental principles to be observed when persons are deprived of their freedom.

26. Among the most significant of these, it should be noted that a person arrested while committing an administrative offence may not be held in police custody for more than 24 hours.

It will also be expressly stipulated that, when arrested, every individual is entitled, at his request, to inform a person of his choice and a legal advisor of his situation. The coming into force of this legislation will call for subsequent harmonisation and clarification of the relevant provisions (Article 36) of the Verwaltungsstrafgesetz and those (Articles 38 and 39) of the Code of Criminal Procedure (Strafprozessordnung).

b. Reforms in progress

27. One of the main reforms planned concerns the police. Draft legislation on the duties and powers of the police is currently under consideration in Parliament. The purpose of this reform is to provide the powers of the various police forces with a legislative basis and define their functions and duties more precisely.

28. In its current form, the draft legislation defines the role of the various police forces (to maintain public order) and specifies how they are to perform their duties. In the provisions of the draft, emphasis is put on the need for the police to respect fundamental rights when performing their duties⁷. The draft also refers to the provisions governing the rights of persons arrested or detained and makes it obligatory for the police to comply with them. The use of personal data is governed by a whole series of provisions designed in particular to guarantee their confidentiality. The draft comprises a section entitled "Specific protection" dealing with the protection of individuals in their relations with the police. It is stipulated that the administrative tribunals will be competent to hear complaints from individuals alleging a violation of their rights as a result of the carrying out of an order by the police or the use of coercion. This possibility of applying to the administrative tribunals is without prejudice to the usual remedies of a disciplinary nature, particularly if the complaint is based on the violation of an instruction issued by the Minister of the Interior pursuant to the provisions of the draft law.

⁷ Under the terms of the draft, the Minister of the Interior is required to issue policy directives concerning police intervention in order to guarantee a degree of harmony in police work and avert the risk of conflict with persons affected by the intervention. The Ministry of the Interior sent a circular to this effect to the police on 15.2.1990 (6.2.1990 in the case of the Gendarmerie). This circular provides clarifications and issues directives concerning ill-treatment inflicted and abuses committed while on duty.

III. FACTS FOUND DURING THE VISIT

A. Establishments administered by the Ministry of Justice

29. The delegation visited one establishment administered by the Ministry of Justice, namely the Landesgerichtliches Gefangenenhaus ("Court of First Instance Prison") in Vienna. This is relatively large establishment (official capacity: 958), much of which is housed in a modern, and as yet uncompleted, building. The inmates are mainly persons detained on remand.

30. At the outset the CPT would underline the high degree of co-operation and professionalism displayed by the Prison Director and his staff throughout the delegation's visit.

a. Ill-treatment of persons deprived of their liberty

31. The delegation received no written or oral representations from non governmental organisations or individuals concerning the use of torture or inhuman or degrading treatment or punishment in the Vienna Court of First Instance Prison. Further, the delegation's talks in private with prisoners confirmed that they were treated in a civilised manner by the staff.

32. The Director indicated that on average there was one incident per month involving violence between a prisoner and a member of the staff. He stressed that any staff member found to have used excessive force was dealt with severely. The delegation had no reason to doubt the veracity of these statements, which were fully consistent with the comments of both the prisoners and the staff members interviewed by the delegation.

b. Conditions of detention

(physical conditions)

33. The prison cells are for the most part designed for one, three or five prisoners. All cells are equipped with toilets. The Director indicated that the current overcrowding of the prison (whereas the official capacity of the main building is 745, there were 896 inmates on the first day of the delegation's visit) meant that many 1-man cells were occupied by 2 persons, many 3-man cells by 5 prisoners, and many 5-man cells by 8 prisoners. Although not ideal, the delegation concluded after visiting the different types of cells that the present situation was not unacceptable.

(regime)

34. The delegation found that on the whole the regime for prisoners (work, leisure facilities, visits, food, etc.) was satisfactory, although there was some evidence of a certain lack of appropriate work for some prisoners, in particular for women. The delegation had the impression that some facilities - and in particular the workshops and the excellent gymnasium - were underused, allegedly, according to prison officer union representatives, due to staff shortages. The delegation was not in a position to judge the adequacy of staff resources but it was concerned to note that a fuller and more consistent regime appeared to be undermined by the involvement of prison officers in outside escort duties; it felt that the relationship between officers' escort and prison duties might be looked at.

The CPT would like the Austrian authorities to inform it of the reasons for the underuse of the above-mentioned facilities.

35. As regards the disciplinary regime applied within the prison, the delegation interviewed a prisoner who had been ordered to be confined in an isolation cell for 14 days for using insulting language towards a prison officer (the officer had told him to stop standing on a chair and looking out of his cell window). The isolation cell was of the same dimensions as an ordinary one-man cell, but was furnished during the day by only a small wooden table and chair; a mattress was provided at night. Apparently, the prisoner was not allowed access to reading material (the delegation received contradictory information on this point).

The Director argued that a criminal complaint could be lodged against a prisoner for such an offence, but that his policy was to have just one punishment, namely internal, for such offences. However, in return, the internal punishment needed to be seen to be severe and had to strike a balance between leniency and staff demands.

Without pronouncing itself on this particular case, the CPT wishes to underline the need always to keep in mind the principle of proportionality when disciplinary measures are imposed.

(medical care and hygiene)

36. The delegation had discussions with various members of the prison's medical staff and visited their facilities. From its own observations and the lack of any complaints from prisoners, the delegation reached the conclusion that the medical care provided in the prison was satisfactory.

37. On the whole, the level of hygiene within the prison was acceptable. However, washing facilities were not ideal. The quantity and quality of shower facilities were very good. On the other hand, access to those facilities was less than good: only one shower was allowed per week, apparently on grounds of economy. Further, the provision of wash basins (a small one in each cell) was less than adequate, particularly for women. Prisoners were allowed to wash their own clothes but had only a small hand basin in which to do it and were not allowed to hang wet garments in the windows to dry.

The CPT considers that there is room for improvement as regards washing facilities (including those for clothes) in the prison, in particular insofar as women are concerned.

(foreign prisoners)

38. More than one third of the prison's inmates are foreigners, some 35 different nationalities being represented. This obviously poses various problems, in particular of language. The delegation noted that efforts had been made to overcome these problems e.g. translation of the Prison Rules into various foreign languages. Nevertheless, it was evident from some of the cell visits carried out by the delegation that there were significant difficulties of communication between prisoners and staff.

The CPT wishes to emphasise the importance of pursuing efforts to overcome these difficulties.

(prisoners' welfare)

39. The delegation was impressed by the group counselling offered to the prisoners but was concerned by the lack of educational facilities, including the absence of german language classes for the many foreigners detained in the prison (see also paragraph 38).

B. Establishments administered by the Ministry of the Interior

40. The different places under the authority of the Ministry of the Interior visited by the delegation are listed in paragraph 3. The reaction to the delegation's visit varied from place to place; a reasonable degree of co-operation was encountered at some places (e.g. the police jails), whereas in certain other places considerable reticence was displayed, at least initially (cf. paragraph 10).

a. Ill-treatment of persons deprived of their liberty

41. Allegations regarding ill-treatment at the hands of the police were made during the delegation's discussions with representatives of non governmental organisations. The delegation also had in its possession the report of Amnesty International concerning Austria published in January 1990, which had been formally submitted to the CPT by that Organisation (see Rule 28 of the CPT's Rules of Procedure).

42. In the course of the interviews in private with prisoners at the Vienna Court of First Instance Prison and the Vienna Police Jail, a considerable number of allegations of ill-treatment by the police were made. Many prisoners spoken to stated that they knew of cases of ill-treatment by the police, and a sizeable minority reported that they themselves had been subjected to ill-treatment while in police custody. This ranged from slaps with the flat of the hand to punches, kicks or being struck with truncheons or heavy books during interrogations. A number of prisoners independently identified the interrogation holding cells of the Security Bureau (Sicherheitsbüro) in Vienna as the scene of regular physical abuse. It was alleged that drug addicts in particular were subjected to ill-treatment. Allegations were also made of ill-treatment in police stations.

43. The delegation saw files containing medical reports on injuries found on prisoners arriving at the Vienna Police Jail (after being taken to a police station) or after questioning at the offices of the Vienna Security Bureau (which is located in premises adjacent to the Jail). The delegation noted in particular the file of one prisoner who was diagnosed as having a perforated eardrum; it was alleged in the file that this was due to him having received blows to the side of the face at the offices of the Security Bureau. The medical report drawn up in April 1988 also mentioned contusions on the chest and in the lumbar region. A subsequent medical report, drawn up in October 1988, stated that the eardrum had been ruptured.

44. The case of a prisoner whom the delegation met in the Vienna Court of First Instance Prison also deserves particular mention. This prisoner had been admitted to the prison on 14 November 1989, but had been returned to police custody on 10 January 1990 for further questioning. He alleged that he had been physically ill-treated by the police (punched and struck on the head with a heavy book) on that occasion. The prisoner's medical file in the Court of First Instance Prison - to which the delegation was granted access - is consistent with this allegation; whereas the medical report drawn up when the prisoner was first admitted to prison recorded no injuries, injuries were noted in the course of a medical examination carried out by a prison doctor on 11 January 1990 following the prisoner's return from police custody.

The medical report (dated 19 January 1990) stated that bruising had been found on the right hand side of the prisoner's chest, large red marks on both his kneecaps and bleeding on the outside of both his thighs. This part of his body was very painful when touched. The prisoner complained of headaches. The top of his head was painful when touched and a slight swelling was found on his scalp.

According to a report dated 12 January 1990 consulted by the delegation, the prisoner said that when he was questioned at the Lower Austria Security Bureau he received blows to the head, the chest, the kidneys and the legs, that he was forced to kneel for a long period and was dragged by his hair, that he eventually lost consciousness and that when he recovered consciousness, he was examined by a police doctor, after which the questioning renewed, and that at no time was he served any food.

The prisoner instituted legal proceedings concerning his treatment and the matter is currently before the Austrian courts.

45. In the course of the delegation's talks with the Director and medical personnel of the Court of First instance Prison, accounts of the numbers of prisoners admitted to the prison with injuries varied somewhat (1 per month, 1 per week, sometimes several a week). In any event, the delegation detected during these talks a general uneasiness about the treatment received by prisoners while in police custody.

The Director of the Vienna Police Jail said there were one or two cases a month of prisoners received from the Vienna Security Bureau who displayed injuries.

46. The delegation encountered very few detainees during its visits to police commissariats. The persons who were in custody at the time of the delegation's visit indicated that they had not been ill-treated.

However, one of the two persons being held at the Vienna Police Jail at the time of the delegation's visit for the purposes of questioning by detectives of the Security Bureau, stated that he had been slapped in the face several times in the course of his interrogation. The first interrogation, according to the detainee, lasted only ten minutes. He was informed that his interrogation would start the next day and that without a confession from him, he would be seriously beaten. The detainee indicated to the delegation that he had not been ill-treated during this subsequent interrogation, having made a "complete confession".

The second detainee, who had been arrested on the night of 22 May 1990 and held in custody at a police commissariat, said that he had been kept handcuffed for four hours with his hands behind his back. The next morning, he had been transferred to the Security Bureau and questioned from 10 am to 1 pm. He alleged that he had been hit several times during the questioning, which had been resumed on the morning of 24 May. The delegation met him on 24 May after his return from the Security Bureau (at around 1 pm). He was in a state of general, though not very marked, discomfort, owing to withdrawal symptoms. He was to be transferred from the Police Jail to the Vienna Court of First Instance Prison.

47. The delegation visited the premises of the Vienna Security Bureau on two occasions and met among others its Head, Mr Edelbacher. The delegation was shown the holding cells ("handzellen") used by detectives for questioning suspects. Two cells were discovered (Mr Edelbacher had indicated that there were three, but subsequently corrected himself). The cells were spacious, and were each furnished with two large benches, a table and a typewriter.

Mr Edelbacher stated that the cells were used exclusively for interrogation purposes; when not being questioned, prisoners were taken back to the Police Jail. However, the walls of the cells bore a considerable amount of graffiti, some of it quite elaborate. The delegation asked whether prisoners were allowed to draw on the walls while being questioned; it was replied that prisoners were sometimes left alone in the cells for a short period eg. while a telephone call was made by a detective.

48. Given the number and consistency of the allegations of ill-treatment by the police, the comments of prison staff and the medical information made available, the CPT considers that these allegations cannot be dismissed out of hand.

Taking into account also the weaknesses in some of the basic safeguards against ill-treatment noted in the course of the visit (see under b. below, paragraphs 56 to 69), the CPT has reached the conclusion that there is a serious risk of detainees being ill-treated while in police custody.

49. In the following paragraphs a number of measures designed to address this problem will be proposed, the most important being:

- improved access to legal advice for persons in police custody;
- a right for persons in police custody to be examined by a doctor of their own choice;
- drawing up of a code of practice concerning police interviews;
- full records of police custody (including transportation), providing for greater accountability.

The CPT also wishes to stress that adequate professional training is an essential ingredient of any strategy for the prevention of ill-treatment. Skilled officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of such fundamental safeguards as access to legal advice for detainees. **Consequently, the CPT is keen to have details of the measures taken or envisaged as regards human rights courses and professional training in general (cf. paragraphs 101 and 102).**

50. In the course of the delegation's talks with prisoners in the Vienna and Salzburg Police Jails, no allegations of ill-treatment by the staff of the jails were made.

b. Conditions of detention

i) Police stations

(physical conditions)

51. The police stations visited by the delegation ranged from very old to reputedly the most modern. The state of general cleanliness of the cells seen varied from reasonably clean to very dirty. Many of the older cells visited were extremely dilapidated, and even in the more modern stations a considerable number of the cells were damaged.

52. It is noteworthy that the cells in both the older and more modern stations displayed certain common characteristics:

- rest / sleeping arrangements

Between one-half to three-quarters of the areas of each cell visited comprised a solid platform at approximately knee height. In older stations the platform was built of wood, in more modern stations of concrete, sometimes covered with linoleum. Prisoners could sit on the edge of the platform for rest. In no police station were mattresses provided. Prisoners staying overnight in a cell were provided with a thin blanket to lie on and cover themselves with.

The lights were permanently switched on in the cells but were not bright enough to read by. They could be controlled only from the outside as no switches had been installed inside the cells.

- sanitary arrangements

With the exception of the cell at the police post at Salzburg railway station, none of the cells visited possessed a toilet. Access to toilets was clearly always controlled by the police. Evidence of prisoners urinating on a wall was found in one cell seen. Further, no cells contained running water, and only the most modern station visited possessed a shower for prisoners (moreover, this shower room was apparently not currently in use, being filled with surplus furniture).

53. The CPT recommends that all prisoners obliged to stay overnight in a police cell should be provided with a mattress.

The CPT also wishes to stress the importance of enabling persons detained in police stations to comply with the needs of nature when necessary and in clean and decent conditions, and of offering to such persons adequate washing facilities.

Further, the CPT would suggest that in the design of future police stations, the Austrian authorities ought to consider the question of cell lighting and ensure that cells are equipped with adequate lighting which is neither too bright nor too dim and can also be controlled by prisoners from within the cells. Cell design should also take sanitary appliances into account.

(food in police stations)

54. Police officers' and prisoners' accounts about food in police stations conflicted. The police maintained that all prisoners were provided with a proper meal at midday, with bread and a hot drink at breakfast and with soup and bread in the early evening. However, some prisoners in the Vienna Court of First Instance Prison claimed that they had been detained in police stations for 24 hours or more without food. Further, the delegation met one prisoner in a police station at approximately 10.30 p.m. who alleged that he had had nothing to eat or drink since his arrival at the station at midday. It was impossible to check whether this allegation was true as no record is kept of when prisoners in police custody are offered and accept meals.

55. The CPT felt it should draw the attention of the Austrian authorities to the allegations made. Further, it recommends that a written record be kept of when prisoners in police custody are fed.

(notification of custody / access to legal advice)

56. The relevant legal provisions concerning the right of detainees to inform someone of their arrest and to be visited are summarised in paragraphs 13 to 15. The delegation's talks with both prisoners in the Court of First Instance Prison and police officers raised doubts as to whether these provisions were being properly applied in all cases.

57. Some prisoners alleged that they had not been informed of their right to have someone notified of their detention by the police, whereas others alleged that permission to notify someone had been expressly refused. Further, one prisoner alleged that he had been coerced into signing a form renouncing his right to inform someone of his arrest.

58. The delegation was told by police officers that as a general rule they were obliged to inform detained persons of the possibility of contacting a third party; the delegation was shown the forms used for this purpose (interestingly, although the form given to foreign nationals exists in several languages, it only refers to the possibility of contacting the consul of the detainee's country). However, the police officers also stated that the possibility of informing a third party might be denied if it was believed that such a notification might prejudice their inquiries. They were not able to give a clear indication of how often this occurred.

59. A legal advisor is one of the persons that detainees may choose to inform of their detention, and persons detained under the Administrative Offences Code have the right to be visited and assisted by a legal advisor. However, it was clear from talks with police officers that it was extremely rare for persons to have access to legal advice during the initial period of police custody. One station officer could not recall any instance of such advice being provided in five years experience. Another said that possibly one out of 700 detainees so far handled by his station in 1990 had the benefit of advice from a lawyer while in police custody.

The reasons for this situation appear to be several:

- firstly, the relevant legal provisions provide that a detainee has the right to contact one person of his detention (a family member, another person trusted by him or a legal advisor); according to police officers, the recommendation made by the Ministries of Justice and the Interior to the effect that detainees should be able to contact a person of their choice and a legal advisor (see paragraphs 13 and 26) was not followed in many cases;
- secondly, as already mentioned, the possibility of informing a third person of one's detention can be refused by the police;
- thirdly, a detainee suspected of a criminal offence does not have the right to be visited by a lawyer during the initial period of police investigation;
- fourthly, and most fundamentally, there is in any event no developed infrastructure in Austria permitting the provision of legal advice free of charge and at short notice to persons in police custody.

The result is that save for someone who knows the name of a lawyer in advance, and who has the means to pay for his services, there is in practice an absence of any form of independent legal advice for detainees in police stations.

60. The CPT has the following recommendations to make:

- **that the police authorities be formally reminded (i) of the right of all detainees to contact both a member of their family or another person of their choice and a legal advisor about their detention⁸, and (ii) of the strict obligation placed upon the police to duly inform detainees of this right and to refrain from placing any pressure of whatever kind upon them as regards its exercise;**
- **that the relevant form(s) used for informing detainees of their right to contact a member of their family, etc, be translated into a wide range of languages and that an interpreter be made available if necessary to ensure that a detainee is informed of his rights;**
- **that the possibility for the police exceptionally to delay or refuse contact with a third person be clearly circumscribed and made subject to appropriate safeguards (e.g. such delay or refusal to be recorded in writing together with the reasons and to require confirmation by a senior officer or a public prosecutor "Staatsanwalt");**
- **that the right to be visited by a legal advisor while in police custody be extended to persons suspected of having committed a criminal offence;**
- **that urgent consideration be given to the possibility of allowing a legal advisor to be present during police interrogations;**
- **that urgent consideration be given to the possibility of devising a scheme for the provision, free of charge, of independent legal advice to persons in police custody.**

⁸ This right will be guaranteed in law as from 1.1.1991 (see paragraph 26).

(access to medical treatment)

61. The delegation was informed by police officers in Vienna that there was no systematic medical examination of persons taken into police custody (see, nevertheless, paragraph 22). However, a police doctor was always on call for detainees who requested or who appeared to be in need of medical attention. Police doctors were legally obliged to report any injuries found on detainees (see paragraph 22). On the other hand, a detainee had no right to be examined by a private doctor.

62. Several prisoners interviewed by the delegation alleged that police doctors were not objective. A similar opinion was expressed by certain other persons (eg. medical staff and representatives of non governmental organisations) with whom the delegation spoke in the course of its visit.

It was also alleged by prisoners, and confirmed by medical staff at the Vienna Court of First Instance Prison, that detainees sometimes did not receive the medication required by their medical condition (e.g. insulin for diabetics) while in police custody.

63. In this context reference should also be made to the system of "spot checks" by police doctors announced by the Minister of the Interior in his press communiqué of 23 January 1990. Apparently, the idea of having such spot checks carried out by fully independent doctors was evoked but eventually discarded as being impractical.

64. The CPT recommends that, in addition to examination by a police doctor, a person in police custody should have the right to be examined if he so wishes by a doctor of his own choice (such a right exists in other countries and has not caused insuperable practical problems).

Further, the CPT recommends that existing procedures concerning the provision to persons in police custody of the medication required by their medical condition be reviewed.

Moreover, the CPT would like the Austrian authorities to provide full details of the system of spot checks by police doctors announced by the Minister of the Interior - e.g. rules of operation; number of visits carried out, when and where; findings, etc. In addition, the CPT would like to be informed of the reasons why the idea of having such spot checks carried out by fully independent doctors was considered impractical.

(conduct of interrogations)

65. From the delegation's talks with police officers it transpired that there are no rules or guidelines as to how the interrogation process should be conducted. Consequently, police officers would appear to have a considerable degree of discretion on such matters as informing the detainee of the identity of police officers present during the interview, the length of a given interview, rest periods between interviews, the place(s) in which an interview may take place, whether the detainee may be required to stand while being questioned, etc.

The delegation was also concerned about the possible questioning of detainees suffering from the effects of drugs or alcohol. It had the impression that one of the detainees at the Vienna Police Jail referred to in paragraph 46 had been questioned while he was experiencing withdrawal symptoms, without any previous medical consultation.

66. The CPT recommends the Austrian authorities to draw up as a matter of urgency a code of practice on police interviews addressing inter alia the matters referred to in paragraph 65 and providing for a record to be systematically kept of the times during which a detainee is questioned.

67. As regards the actual records kept of the content of police interviews, they would appear to be exclusively manual.

The CPT recommends the Austrian authorities to explore the possibility of introducing a system of electronic recording of police interviews offering all appropriate guarantees.

(custody records)

68. The delegation noted in the course of its visits to police stations that no record is kept of certain important aspects of a prisoner's custody. For example, no record is kept of when prisoners are fed nor, apparently, of periods of questioning. Recommendations have already been made concerning these matters (see paragraphs 55 and 66).

69. As for the information that does exist concerning a person's custody, it is spread over a variety of documents. It would greatly facilitate the supervision of the treatment of persons in police custody (and might also facilitate the work of the police) if a single comprehensive custody record, in booklet form, were to exist for each prisoner, on which would be recorded all aspects of his custody and action taken regarding them (when arrested and reasons for arrest; when told of rights; signs of injury, mental illness, etc.; when visited by a doctor; when next of kin and/or lawyer telephoned and when visited by them; when fed; when interrogated; when charged; when transferred; when released; etc.). For various matters (for example, items in the detainee's possession, waiving or invoking rights), the signature of the prisoner should be obtained and the absence of a signature explained.

The CPT recommends the Austrian authorities to explore the possibility of developing such a single and comprehensive custody record.

ii) Vienna Security Bureau and Salzburg Criminal police department

70. Reference has already been made to the holding cells used by detectives of the Vienna Security Bureau for questioning suspects (see paragraph 47). Apparently, persons detained by the Security Bureau are held in the cells of the Vienna Police Jail when not being questioned.

71. A similar system operates in the Salzburg Criminal police department. Persons kept in custody by the department are placed in the cells of the Salzburg Police Jail, which is located in adjacent premises. Such persons are questioned in the offices of the department. One office contains a grillwork type holding cell (handzelle) used for questioning persons thought to be dangerous; it calls for no comment by the CPT.

72. Of course, the recommendations and comments made by the CPT under i) above apply also to police establishments such as the Vienna Security Bureau and the Criminal police department in Salzburg.

iii) Police jails

(physical conditions)

73. The respective physical conditions in the two police jails visited were markedly different. The Vienna Police Jail is located in an old and somewhat dilapidated building, whereas the Salzburg Police Jail is housed in modern, purpose-built, premises.

74. As regards the Vienna jail, although a considerable number of single occupancy cells exist, most prisoners were accommodated in community cells in groups of up to 10. A system of day and night cells was partially operated. The day cells were reasonably spacious. However, certain of the night cells were very cramped for the numbers accommodated. The delegation visited one night cell measuring approximately 30 square metres containing 10 beds for 9 prisoners (the purpose of the spare bed was apparently to give prisoners somewhere to place their personal effects). The prisoners in this cell called the attention of the delegation to wooden boards stored under the beds which were frequently used as extra beds. The Director of the Jail stated that his wish was to have a maximum of five prisoners in such a cell. The delegation noted that this would be easily possible if there were no system of day and night cells.

The day cells each contained a toilet; however, in some cells privacy was provided by only a curtain, and where a partition had been installed, it was often in a very poor state of repair. Further some prisoners alleged that it was difficult to obtain toilet paper.

The day and night cells were permanently lighted (60 watt bulbs in the day cells, weaker bulbs in the night cells).

75. Physical conditions in the Salzburg Jail were on the whole far better. However, the delegation noted that prisoners tended to be crowded in relatively few cells while many other cells were left empty. When this was drawn to the attention of the prison staff, they explained that a fresh influx of prisoners was due to arrive. The delegation did not find this explanation entirely convincing⁹, but was not in a position to pursue the matter further.

One specific complaint made by prisoners was that the partition in the visiting rooms was such that prisoners and visitors had to shout to make themselves heard. The delegation checked the visiting room and found that the complaint was justified. Prisoners also reported that visits were very brief (lasting only 10-15 minutes).

⁹ There were more empty cells available than were required for the number of extra prisoners expected.

76. The CPT recommends the Austrian authorities to review the level of occupancy of night cells in the Vienna Police Jail as well as the state of toilet facilities.

The CPT would also ask the Austrian authorities to note the difficulty of oral communication between prisoners and visitors in the Salzburg Police Jail visiting rooms. In this regard, it might be felt that given the low security status of most prisoners in the Vienna and Salzburg Police Jails, visits could be more openly conducted in a room without a partition.

Further, the Austrian authorities might wish to reconsider the need for cells in the Vienna Police jail to be permanently lighted.

(outdoor exercise)

77. The Director of the Vienna Police Jail stated that prisoners were given one hour's outdoor exercise every day, except on shower days (once a week for men, twice a week for women). Prisoners interviewed stated that the length of the exercise period was on average 15 minutes, and many alleged that they often received no exercise at all.

78. It emerged clearly from the Director's own comments that prisoners at the Vienna Police Jail are not allowed to take outdoor exercise every day. Furthermore, the delegation concluded from the many complaints by prisoners that even when such exercise is allowed, it does not always last one hour. It is essential, in such establishments as the Vienna Police Jail, which offers an extremely limited range of activities, to guarantee at least one hour of walking or suitable exercise in the open air daily (one might also in this connection refer to paragraph 86 of the European Prison Rules, which recommends that every prisoner who is not employed in outdoor work, or located in an open institution, should be allowed, if the weather permits, at least one hour of walking or suitable exercise in the open air daily, as far as possible, sheltered from inclement weather)¹⁰.

79. The CPT recommends the Austrian authorities to take immediate steps to ensure that all prisoners are allowed at least one hour's outdoor exercise every day.

¹⁰ The explanatory memorandum to the European Prison Rules specifies that this is an important requirement offering prisoners a basic safeguard.

(regime)

80. A common feature of the Vienna and Salzburg Police Jails is the almost total lack of regime activities. Prisoners spend the vast majority of the day - sometimes the whole day - in their cells; no work (apart from cleaning and preparing meals), sport or education facilities are made available and access to books and newspapers is manifestly precarious. It was said that most prisoners would only stay a relatively short period in a police jail. This is hardly a justification for such a situation. Moreover, the delegation encountered quite a considerable number of prisoners who had been detained for many weeks; one prisoner in the Salzburg Jail had been detained for more than three months.

The Director of the Vienna Police Jail remarked that one of the advantages of the day and night cell system was that the move from one cell to another provided prisoners with a "point of reference" in the course of the day; the CPT considers that it would be preferable if a more inspiring point of reference could be provided.

81. The CPT recommends the Austrian authorities to review the regime in police jails with a view to the development of activities for prisoners. For example, such a regime could be based on that in use for persons on remand in the Court of first instance prisons.

(foreign prisoners)

82. A very high proportion of the inmates in the two police jails visited were foreigners (as regards the Vienna Police Jail, some 90 % on the first day of the delegation's visit). Apart from the general inadequacy of the prison building, the Director of the Vienna Police Jail identified the question of language as his greatest problem, an opinion endorsed by prison officers and trade-union officials.

During its visits to cells, the delegation was able to appreciate for itself that there were serious difficulties of communication between prison staff and prisoners and, frequently, between prisoners. However, there was apparently as yet no documentation available for prisoners in languages other than German (the Director of the Vienna Police Jail indicated that a text was under preparation). On this point, one can compare the situation with that of the Vienna Court of First Instance Prison, where not only the prison regulations, but also those expressions most commonly used in daily interactions between prisoners and prison staff, have been translated into various languages (French, English and Spanish).

The CPT wishes to emphasise the importance of taking steps (documentation in other languages; provision of interpreters) to overcome these difficulties of communication.

(medical care and hygiene)

83. From discussions with both the medical staff and prisoners at the two police jails, it was unclear whether there was a medical examination of a prisoner on his arrival. The prisoners maintained that contact with the doctor consisted of no more than the latter putting his head around the cell door and asking "are you alright". The doctors said that they spoke individually to every prisoner on arrival and conducted a full medical examination if they considered it necessary.

The CPT would like the Austrian authorities to give detailed information on the implementation of the internal rules concerning the carrying out of medical examinations on admission. In this respect Rule 29 of the European Prison Rules, which provides that the prison medical officer "shall see and examine every prisoner as soon as possible after admission", should be noted.

84. As regards medical care during the period of detention, several prisoners at the Vienna Police Jail alleged that medication was very difficult to obtain and that very long waiting periods were involved.

This allegation was confirmed by staff at the Jail, who told the delegation that the waiting period for medication was two months or even longer. It was also stated that there were no routine follow-up medical examinations after a first consultation with the doctor.

85. In the conversations with prisoners at the Vienna Police Jail, there were also frequent references to the problems of hygiene caused by the lack of cutlery (only spoons were allowed).

All the prisoners interviewed in both jails complained unanimously about the state of the blankets, which were extremely old, seldom cleaned and never disinfected. Sheets were changed every two weeks. Further, the prisoners deplored the fact that they did not have cleaning products to keep the cells clean.

With regard to bodily hygiene, the delegation was told in the Vienna Police Jail that it was not easy for a person to wash, as prisoners were only provided with towels for half an hour in the morning. In addition, the cells did not have mirrors.

The delegation was able to see for itself that conditions of hygiene and cleanliness in the cells in both jails left much to be desired, in particular as regards bedding.

86. In the light of the remarks in paragraphs 84 and 85, the CPT would like in particular to draw the attention of the Austrian authorities to the desirability of:

- **shorter waiting periods for the receipt of medication for prisoners and a regular follow-up of treatment given (Vienna);**
- **providing more appropriate cutlery for prisoners to eat with (Vienna);**
- **enabling prisoners to wash in better conditions (towels etc) (Vienna);**
- **improving hygiene in cells, particularly with regard to bedding (sheets and blankets), (Salzburg and Vienna).**

(inspection procedures)

87. As already indicated (see paragraph 17), the review of conditions of detention in police jails by an outside, independent body is not provided for. In the course of its visits to the Vienna and Salzburg Police Jails the delegation saw much that would benefit from a critical assessment by an external authority.

The CPT recommends the Austrian authorities to explore the possibility of empowering an independent body to inspect on a regular basis the conditions of detention in police jails.

(recruitment / training of police officers responsible for prison duties)

88. In so far as the police continue to be responsible for the running of jails and the long-term custody of prisoners (more than 48 hours), the CPT takes the view that the officers undertaking those custodial duties should either be recruited specifically for the task or, in addition to their basic police training, should be trained for prison duties (reference might also be made to Rule 55, second paragraph of the European Prison Rules and paragraph 55 of the Explanatory Memorandum ¹¹).

Consequently, the CPT recommends the Austrian authorities to review the system of recruitment of police officers and/or their training with respect to prison duties.

¹¹ Rule 55, second paragraph, provides that "during their career, all personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organised by the administration at suitable intervals."

iv. Special transit room at Schwechat airport

89. This room, situated in the airport and administered by it, is not a place of detention in the formal sense. Nevertheless, there are de facto restrictions on the freedom of movement of asylum seekers. Officers of the frontier and security police keep watch over the special transit room and monitor those entering and leaving it.

90. The room is in fact a string of several rooms, one serving as a living room, one room with 12 beds, another with 10 beds, and yet another with 4 beds. 30 people can be accommodated there. The delegation was told, however, that it had never yet been filled to capacity. Showers and washing facilities were located in a prefabricated annex. The door for entering and leaving the premises could only be opened from the outside.

91. The airport authority is responsible for the upkeep of these premises. It is also responsible for the people staying there (food and health care). The delegation found that living conditions and standards of hygiene could be considered acceptable in these premises. In summer, however, living conditions could prove rather difficult in these premises in view of their structure and poor ventilation. The delegation was unable to speak with the 6 people present (2 men and 4 women) for linguistic reasons.

92. The head of the airport's criminal police department, Mr Rupf, told the delegation that voluntary social workers had free access to this transit room. Mr Rupf also mentioned that asylum seekers were at liberty to call a lawyer and ask for an interpreter. There would seem to be some confusion surrounding this point because, according to other sources of information, the authorities do not allow asylum seekers to contact a lawyer. In some cases, voluntary social workers have reportedly asked asylum seekers to sign blank proxy forms for this purpose.

Where interpreters are concerned, apparently no interpreter has yet been allowed to enter the transit room. The only possible contact would be by telephone from the outside police offices. In fact, it would seem that no-one has access to the transit room apart from authorised airport staff. Mr Rupf acknowledged that, in this room, people were in practice deprived of their liberty.

The CPT wishes to underline the importance of guaranteeing access to such transit rooms for persons whom asylum seekers might wish to contact, such as lawyers, interpreters or family members already in Austria.

93. During its visit, the delegation also learned that a plan for the construction of a new transit room was under consideration. **The CPT would like to be kept informed of any further action taken on this plan.**

v. The immigration department in Vienna

94. The delegation visited this place in order to have an overall picture of the kind of "route" a foreign national might have to follow, and not to visit it as a place of detention. For this reason, the visit was confined to a discussion with the head of this department in the administrative offices.

C. Additional issues arising out of the consultations with the Ministry of the Interior

95. Two issues touched upon during the delegation's meeting with officials of the Ministry of the Interior, namely the use of the defamation procedure by police officers accused of ill-treatment and the police disciplinary procedure, merit some supplementary remarks.

96. It has been argued that the possibility - apparently frequently used - for police officers to bring criminal proceedings for defamation against someone who accuses them of ill-treatment often deters people who have genuinely been ill-treated from lodging a complaint. The delegation's talks with prisoners and staff at certain of the establishments visited tended to confirm this opinion.

Of course, police officers, no less than anyone else, should have means of redress open to them when someone lays false accusations against them and thereby exposes them to the danger of unjustified prosecution. However, the CPT is concerned that the balance between competing, legitimate interests is perhaps not evenly established with regard to this question. It has taken note of the ongoing discussion in Austria concerning, inter alia, an "Ermächtigungsdelikt" (action ultra vires), the idea being that a police officer should seek authorisation from a superior authority before bringing defamation proceedings, failing which he would face a penalty.

The CPT is of the opinion that measures should be taken with a view to guaranteeing that persons who have been ill-treated should not be discouraged from lodging a complaint. **Consequently, it requests the Austrian authorities to provide information on the measures envisaged in this field.**

97. As regards the police disciplinary procedure, the delegation heard many criticisms concerning its operation. It was stated by the delegation's interlocutors that the Austrian Government envisaged reforming the current procedure with a view to its reinforcement.

The CPT considers that any review of the disciplinary procedure should inter alia:

- **address the question whether the level of sanctions, both as provided for and as applied in practice, is adequate to deter police officers from resorting to excessive use of force;**
- **envisage the participation of an independent person (e.g. a magistrate) in the decision making process. This would both improve the intrinsic quality of the procedure and enhance public confidence in its fairness.**

Further, the CPT would like to be kept informed of envisaged modifications to the police disciplinary procedure and in particular of whether sanctions against police officers will continue to require unanimous approval.

IV. CONCLUSIONS

A. Overall assessment of establishments visited

a. Establishments administered by the Ministry of Justice

98. The CPT formed a positive view of the one establishment (the Vienna Court First Instance Prison) administered by the Ministry of Justice which it visited. It does not wish to make any recommendations concerning the situation in this establishment. However, certain comments or questions on some issues have been formulated (see paragraphs 34, 35, 37 and 38).

Further, the CPT was impressed by the control mechanisms (prison inspectorate within the Ministry; visits by Court Presidents; boards of visitors re. convicted prisoners) against ill-treatment existing within the establishments administered by the Ministry of Justice.

b. Establishments administered by the Ministry of Interior

99. As already indicated (see paragraph 48), the sheer number of allegations of ill-treatment by the police and their consistency, the comments of prison staff, the medical information available and the inadequate safeguards against ill-treatment noted during the visit, led the CPT to the conclusion that there was a serious risk of detainees being ill-treated while in police custody. The views expressed by the Ombudsman must also be noted. In his reports to Parliament in recent years the Ombudsman has repeatedly identified the police as a problem area. The CPT is of the same opinion.

100. In the preceding paragraphs the CPT has made a considerable number of recommendations and comments to the Austrian authorities. These recommendations and comments relate not only to safeguards against ill treatment (eg. notification of custody, access to legal advice, controls concerning the interrogation process, etc) but also to the actual conditions of detention (eg. sleeping and sanitary arrangements, medical treatment, exercise, etc), which were often found wanting. As regards, more particularly, police jails, the CPT believes it is very important for the the Austrian authorities to establish a system of inspection comparable to that operating within prisons administered by the Ministry of Justice.

101. The CPT is also anxious to acknowledge that the criticisms which have been levelled at Austria's police system in recent years are clearly being taken seriously by the Government. An impressive number of measures have been taken or are planned to address the problems. Mention should be made in particular of:

- the Constitutional Law of 29 November 1988, due to enter in force on 1 January 1991 (see paragraphs 25 and 26);
- the draft Law on the duties and powers of the police (see paragraphs 27 and 28);
- the circular issued by the Ministry of Justice on 15 September 1989 (see paragraph 21);
- the decision expressly to include in the Austrian Penal Code the prohibition of using as evidence statements obtained by torture;
- the directives to the different branches of the police issued on 6 and 15 February 1990 concerning the treatment of detainees (see paragraph 28, footnote 7);
- the introduction of a system of ad hoc visits to police stations by police doctors (see paragraph 63);
- the announced intention to review the police disciplinary procedure;
- the preparation of a new information notice for detainees explaining to them their rights;
- the immediate intensification of education and training on human rights issues and the carrying out of an overall reappraisal of professional training;
- the setting up of a committee of experts to advise on further measures in the field of the treatment of detainees.

102. The CPT would like to receive further information on certain of the above-mentioned measures. Additional information concerning the system of ad hoc visits by police doctors has already been requested (see paragraph 64). **The CPT would also like to be provided with (i) details of the measures taken or envisaged as regards human rights education and professional training in general, (ii) the text of the information notice for detainees once finalised, and (iii) any available information and statistics concerning the application of the measures provided for in the circular of 15 September 1989.**

B. Action on the CPT's recommendations, comments and requests for information

103. The various recommendations, comments and requests for information formulated by the CPT are summarised in an Appendix to this report.

104. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 2, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, the CPT requests the Austrian authorities:

- i) to provide within six months an interim report giving details on how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken (N.B. the CPT has indicated the urgency of certain of its recommendations);
- ii) to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the Austrian authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report as well as replies to the requests for information made.

APPENDIX

Summary of the CPT's recommendations, comments and requests for information

A. Re. establishments administered by the Ministry of Justice

i) Vienna Court of First Instance Prison

a. recommendations - none.

b. comments

- importance of keeping in mind the principle of proportionality when disciplinary measures are imposed (paragraph 35);
- room for improvement as regards washing facilities (including those for clothes) in the prison, in particular insofar as women are concerned (paragraph 37);
- importance of pursuing efforts to overcome difficulties of communication between foreign prisoners and staff (paragraph 38).

c. requests for information

- explanations for the underuse of certain facilities, in particular of the workshops and the gymnasium (paragraph 34).

ii) General

a. recommendations - none.

b. comments - none.

c. requests for information - none.

B. Re. establishments administered by the Ministry of the Interior

i) Police stations

a. recommendations

- all detainees obliged to stay overnight in a police cell to be provided with a mattress (paragraph 53);
- a written record to be kept of when detainees in police custody are fed (paragraph 55);
- the police authorities to be formally reminded (i) of the right of all detainees to contact both a member of their family or another person of their choice and a legal advisor about their detention, and (ii) of the strict obligation placed upon the police to duly inform detainees of this right and to refrain from placing any pressure of whatever kind upon them as regards its exercise (paragraph 60);
- the relevant form(s) used for informing detainees of their right to contact a member of their family, etc, to be translated into a wide range of languages and an interpreter to be made available if necessary to ensure that a detainee is informed of his rights (paragraph 60);
- the possibility for the police exceptionally to delay or refuse contact with a third person to be clearly circumscribed and made subject to appropriate safeguards (e.g. such delay or refusal to be recorded in writing together with the reasons, and to require confirmation by a senior officer or a public prosecutor "Staatsanwalt") (paragraph 60);
- the right to be visited by a legal advisor while in police custody to be extended to persons suspected of having committed a criminal offence (paragraph 60);
- urgent consideration to be given to the possibility of allowing a legal advisor to be present during police interrogations (paragraph 60);
- urgent consideration to be given to the possibility of devising a scheme for the provision, free of charge, of independent legal advice to persons in police custody (paragraph 60);
- a person in police custody to have the right to be examined by a doctor of his own choice (paragraph 64);
- existing procedures concerning the provision to persons in police custody of the medication required by their medical condition to be reviewed (paragraph 64);
- a code of practice on police interviews to be drawn up as a matter of urgency (paragraph 66);

- possibility of introducing a system of electronic recording of police interviews to be explored (paragraph 67);
- possibility of developing a single and comprehensive custody record to be explored, showing all aspects of each detainee's custody and action taken regarding them, for example, when arrested and reasons for the arrest, when told of rights (paragraph 60), when visited by a doctor (paragraph 64), when fed (paragraph 55) etc. ... (paragraph 69).

b. comments

- importance of enabling detainees to comply with the needs of nature when necessary and in clean and decent conditions, and of offering to such persons adequate washing facilities (paragraph 53);
- importance of considering in the design of future police stations the questions of cell lighting - with a view to ensuring that cells are equipped with adequate lighting (neither too bright nor too dim) that can be controlled from within the cells - and of sanitary appliances (paragraph 53).

c. requests for information

- full details of the system of spot checks by police doctors (paragraph 64);
- reasons why it was considered impractical to have such spot checks carried out by fully independent doctors (paragraph 64).

ii) Police Jails

I. Vienna and Salzburg Police Jails

a. recommendations

- (Vienna) - level of occupancy of night cells and state of toilet facilities to be reviewed (paragraph 76).

b. comments

- (Vienna) - desirability of reviewing the system of permanent lighting in cells (paragraph 76);
- desirability of shorter waiting periods for medication and a more careful follow-up of treatment given (paragraph 86);
- desirability of providing more appropriate cutlery (paragraph 86);
- desirability of enabling prisoners to carry out personal hygiene in better conditions (paragraph 86);
- (Salzburg) - difficulty of oral communication in visiting rooms (paragraph 76);
- (Vienna and Salzburg) - importance of taking steps to overcome difficulties of communication between foreign inmates and staff (paragraph 82);
- (Vienna and Salzburg) - desirability of improving hygiene in cells, particularly with regard to bedding (paragraph 86).

c. requests for information - none.

II. General

a. recommendations

- immediate steps to be taken to ensure that all prisoners are allowed at least one hour's outdoor exercise every day (paragraph 79);
- regime to be reviewed in police jails with a view to the development of activities for prisoners (paragraph 81);
- possibility of empowering an independent body to inspect on a regular basis conditions of detention in police jails to be explored (paragraph 87);
- existing system of recruitment of police officers and/or of their training with respect to prison duties to be reviewed (paragraph 88).

b. comments - none.

c. requests for information

- detailed information on the implementation of the internal rules concerning the carrying out of medical examinations on admission (paragraph 83).

iii) Special transit room at Schwechat Airport

a. recommendations - none.

b. comments

- importance of guaranteeing access to the special transit room for persons with whom asylum seekers wish to enter into contact (paragraph 92).

c. requests for information

- information on the follow-up of the project to build a new transit room (paragraph 93).

C. Re. related matters

a. recommendations - none.

b. comments

- desirability, in the context of a review of the police disciplinary procedure, of considering whether the level of sanctions is adequate and of envisaging the participation of an independent person in the decision making process (paragraph 97).

c. requests for information

- measures envisaged with a view to guaranteeing that persons who claim to have been ill-treated should not be discouraged from lodging a complaint (paragraph 96);
- information on the envisaged modifications to the police disciplinary procedure, particularly with reference to the question of unanimous approval required for sanctioning police officers (paragraph 97);
- details of measures taken or envisaged as regards human rights education and professional training in general (paragraph 102);
- final text of the new information notice for detainees (paragraph 102);
- available statistics concerning the application of the measures provided for in the circular of 15 September 1989 (paragraph 102).