

CPT/Inf (2010) 6

Response

**of the Government of Austria
to the Report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to Austria**

from 15 to 25 February 2009

The Government of Austria has requested the publication of this response. The report of the CPT on its February 2009 visit to Austria is set out in document CPT/Inf (2010) 5.

Strasbourg, 11 March 2010

Comments of the Republic of Austria on the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Austria from 15 to 25 February 2009

Vienna, 26 January 2010

I. Introduction

Since the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force for Austria on 1 May 1989, the European Committee for the Prevention of Torture (CPT) has visited Austria five times: in 1990, 1994, 1999, 2004, and 2009.

Like the Committee's previous visits to Austria, its most recent visit from 15 to 25 February 2009 was characterised by extremely good and constructive cooperation. Austria would like to take this opportunity to thank the CPT in this connection.

Austria receives the recommendations and comments of the CPT with great interest and uses them as a valuable basis for improvement.

The following response by the Austrian government is in line with the structure of the CPT report.

II. Recommendations, comments, and requests for information of the CPT

Police custody

Ill-treatment

Re. paragraph 13:

First of all, the laws and ordinances regarding complaints of ill-treatment currently in force are to be pointed out. These laws were already explained to the Committee during its visit. Police interventions are carried out on the basis of clearly defined legal provisions, and all police officers try, at all times, to handle such interventions in a strictly impartial manner. It goes without saying that this also includes avoiding any discrimination on grounds of gender, colour, national or ethnic origin, religion, or political views, and in particular also any type of ill-treatment.

The past ten years, in particular, have been marked by the successful efforts of those responsible at the individual ministries and the heads of the competent authorities to prevent even the slightest form of ill-treatment by police officers. Measures taken to this end ranged from extensive tolerance training sessions as part of the education and further training of law enforcement personnel to training of police officers for operations where the issue of human

rights has become a matter of fact. A detailed list of the measures taken was handed over to the delegation on the occasion of its visit.

Austrian police officers, which number approximately 27,000, carry out several million official acts each year, and it has to be pointed out that the use of instruments of restraint during contacts with individuals is very rare and is far more the exception than the rule.

Re. paragraph 16:

Three officers were convicted pursuant to section 312 paragraphs 1 and 3 and one officer pursuant to section 12 in conjunction with section 312 of the Criminal Code (*Strafgesetzbuch*).

In the disciplinary proceedings, the officers involved were initially found liable to pay high fines. In the initial proceedings before the Disciplinary Commission (*Disziplinarkommission*) of the Federal Ministry of the Interior, the Disciplinary Ombudsperson (*Disziplinaranwalt*) was instructed to ask that the four accused officers be dismissed from office. The motion was heard and denied by the Disciplinary Senate. Thereafter, an appeal was filed with the Higher Disciplinary Commission (*Disziplinaroberkommission*) at the Federal Chancellery (*Bundeskanzleramt*). The Higher Disciplinary Commission confirmed the fines imposed.

The Disciplinary Ombudsperson contested this decision in the Administrative Court, which set the decision aside pursuant to section 42 paragraph 2 (1) of the Administrative Court Act (*Verwaltungsgerichtshofsgesetz*) (No. 2007/09/0320-14) on 18 September 2008. Accordingly, the proceedings had to be resumed before the Higher Disciplinary Commission, and the case was to be retried. In its decision, the Administrative Court explained that when determining the measure of the penalties the Disciplinary Commission needed to consider a very high degree of unlawfulness of the offence as well as the fact that the offenders strongly violated their professional duty as police officers (*disziplinärer Überhang*).

In the second instance, the appeal of the Disciplinary Ombudsperson was upheld and two officers were punished with the disciplinary penalty of dismissal from service and one officer, who in the meantime had been retired, with the disciplinary penalty of losing all rights and claims arising from his service. In the case of another officer, the fine in the amount of five monthly salaries was confirmed.

In this connection, internal measures were taken as well. A study that focuses particularly on the excessive demands confronting law enforcement officers carrying out deportation has been commissioned. In addition, deportation practices were subjected to a comprehensive evaluation. Problematic deportations are increasingly carried out with chartered aircrafts (joint return operations)

In order to take the pressure off and/or rotate the long-serving escort teams, training modules for new escort officers have been initiated. In addition, the Human Rights Advisory Board is informed in advance of all problematic and charter deportations so that committee members can participate in the preparatory contact meetings and/or accompany the deportees on their way to the airport.

Re. paragraph 17:

Item F.3 (page 131) of the government programme for the XXIVth legislative period provides for the inclusion of a definition of the term “torture” in the Criminal Code and a revision of the criminal law protection against torture. It is currently envisaged to draft the relevant bill in the first half of 2010.

Investigations of complaints of police ill-treatment

Re. paragraph 19:

In order to guarantee an effective, quick, and unbiased clarification of alleged cases of ill-treatment, the Federal Ministry of Justice, in cooperation with the Federal Ministry of the Interior, has set up an inter-ministerial working group in order to agree on concerted action when investigating a suspicion. A change had become necessary not least because the legal bases for investigations were amended by the Criminal Procedure Reform Act (*Strafprozessreformgesetz*), Federal Law Gazette I No. 19/2004, which entered into force on 1 January 2008.

As a result of the discussions of this working group, on 6 November 2009 the Federal Ministry of Justice issued an ordinance (*Erlass*) (addressed to all public prosecutors' offices and courts) regarding complaints of ill-treatment made against officers of the security agencies and correctional officers (BMJ-L880.014/0010-II 3/2009) in order to guarantee that the proceedings are carried out in an objective and completely unbiased manner. A copy of this ordinance in English is attached to this response. Said ordinance provides that the criminal investigation departments and the public prosecutor's offices are obliged to investigate every suspicion of ill-treatment *ex officio* once they obtain knowledge of it (section 2 paragraph 1 of the Code of Criminal Procedure [*Strafprozessordnung StPO*]). The law obliges them to be objective (section 3 Code of Criminal Procedure). Investigations must be carried out by officers who are considered as unbiased. According to section 100 paragraph 2(1) of the Code of Criminal Procedure any complaint of ill-treatment is to be reported to the public prosecutor's office without delay, but no later than within 24 hours, by the competent criminal investigation departments of the provinces (*Landeskriminalamt*) or, in Vienna, by the Bureau for Special Investigations (*Büro für besondere Ermittlungen*) or the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*). Presently the Federal Ministry of the Interior is still examining whether it is possible, if necessary, to carry out the investigations outside the responsibility of the individual provincial criminal investigation departments in order to assure impartiality. An ordinance in this matter is being prepared.

In order to speed up the process, the police establishments (*Dienststellen*) have been ordered to continue with the investigations unless the competent public prosecutor's office instructs them otherwise or takes charge of part of or the entire investigations. In order to prevent any impression of lack of impartiality, the ordinance underlines the option to entrust the court with the investigations (section 101 paragraph 2 second sentence of the Code of Criminal Procedure). This option is to be chosen in particular when high-ranking or executive officers of the criminal investigation departments (or the public prosecutor's office) are personally involved in a case of alleged ill-treatment.

The Code of Criminal Procedure (StPO) lays down the same reasons for prejudice both for officers of the criminal investigation departments and for officers of the public prosecutor's office (section 47 of StPO). If an officer who is prejudiced pursuant to section 47 of the Code of Criminal Procedure has taken part in the investigations, an objection on grounds of legal violation pursuant to section 106 paragraph 1 StPO may be raised against this breach of the Code of Criminal Procedure; the court decides on the objection. If the court allows the objection, the public prosecutor's office and the criminal investigation departments have to restore the respective legal situation (section 107 paragraph 4 of StPO); i.e. evidence has to be taken again. The Code of Criminal Procedure, supplemented by the aforementioned ordinance, guarantees a quick, objective, and unbiased investigation of complaints of ill-treatment, which should also ensure observance of the defined standards (CPT/Inf (2004) 28, paragraphs 25 to 42).

Procedural safeguards against ill-treatment

Notification of custody

Re. paragraph 22:

The Criminal Procedure Reform Act sets forth the right of the suspect to have a defence counsel present during his/her interrogation by the criminal investigation department (section 164 paragraphs 1 and 2 of the Code of Criminal Procedure). When a suspect is apprehended, he/she must be informed immediately or directly after his/her apprehension that he/she is entitled not only to inform or have informed a relative or a person of his/her trust but also a defence lawyer of his/her detention (section 171 paragraph 3(1) of the Code of Criminal Procedure). According to section 59 paragraph 1 of the Code of Criminal Procedure contact of a detained person with his/her lawyer may only be restricted if this is considered necessary in order to prevent the investigation or the gathering of evidence being adversely affected by the lawyer's presence; in addition, according to section 59 paragraph 1 of the Code of Criminal Procedure, the apprehended person is, in principle, entitled to talk to his/her lawyer without being monitored. Up to the suspect's referral to the penitentiary establishment contacts may only be monitored if adverse effects are feared. The option to deny contact with a lawyer and to monitor the talks with the lawyer is rarely applied (see comments regarding paragraph 23); in case such measures are taken, the detainee is entitled to raise an objection on grounds of violation of the law pursuant to section 106 of the Code of Criminal Procedure.

In addition, the criminal investigation department is obliged to inform each apprehended person about the stand-by legal counselling service and provide him/her with the information sheets for detainees (*Informationsblatt für Festgenommene*) and about the stand-by legal counselling service (*Informationsblatt über den rechtsanwaltlichen Journaldienst*) (in the respective language).

If the detained person requests to meet with a defence counsel of his/her choice or a lawyer from the stand-by legal counselling service, he/she is to be given the opportunity to make a phone call to the lawyer of his/her choice or to the hotline of the stand-by legal counselling service. If the circumstances so require (e.g. for language reasons), this phone call may also be made by an officer of the criminal investigation department or by an interpreter, if present. The detained person's wish to contact or have contacted a lawyer via the stand-by legal counselling service, his/her wish with to meet with a defence lawyer in person at the police establishment, his/her refusal to exercise these rights and, if applicable, any contacts with the defence counsel are to be put on record in the Detention Report II (*Haftbericht II*) (Notification Sheet item 2). The fact that the information sheet about the stand-by legal counselling service has been handed over is to be documented appropriately as well. According to the internal guidelines of the Austrian Bar Association, a lawyer who is requested to come personally to a police establishment where a suspected person is detained should do so as soon as possible and in any event within three hours.

Re. paragraph 23:

Regarding the stand-by legal counselling service, which provides free contact with a lawyer, the following statistical data are available:

Since 1 November 2008 around 475 persons have contacted the service. In 45 cases a personal counselling meeting has taken place, which was monitored pursuant to section 59 paragraph 1 of the Code of Criminal Procedure in ten cases only. In a total of 90 cases (which is one fifth of all cases) a defence counsel was present during the interrogation. There was not a single case where the lawyer sent by the stand-by legal counselling service was denied attendance of the interrogation.

The stand-by legal counselling service has been made use of frequently and has thus become established practice. Its further development into a fully-fledged system of legal aid for police interrogations still has to be subjected to a comprehensive examination, in particular with a view to the financial implications.

Re. paragraph 24:

It has to be stated that delaying the interrogation of the detained until the lawyer has arrived is in conflict with the obligation to clarify the facts of the case without delay (even more so as the suspect was arrested and needs to be remitted to a penitentiary establishment within 48 hours) and to grant the apprehended person the rights he/she is entitled to. The ordinance issued by the Federal Ministry of the Interior on 30 January 2009, BMI-EE1500/0007-II/2/a/2009, expressly refers to the provisions of section 164 of the Code of Criminal Procedure for cases where a person is apprehended by the criminal investigation department in accordance with section 172 paragraph 2 of the Code of Criminal Procedure. As according to section 164 paragraph 1 of the Code of Criminal Procedure the suspect is to be given the opportunity to contact a lawyer prior to the interrogation (by making a phone call to the stand-by legal counselling service) the procedural rights of the suspect are sufficiently warranted. In addition, the apprehended person must be expressly informed, prior to the interrogation, of his/her right to remain silent (cf. sections 49(4), 164 paragraph 1 of the Code of Criminal Procedure) so that – even after having contacted and consulted a defence counsel – he/she is entitled to delay his/her statement until his/her legal counsel has arrived at the police station. That means that in fact an interrogation of the suspect without the presence of a defence counsel is not possible. Therefore, there is no identifiable need for change.

Information on rights

Re. paragraphs 26 and 27:

According to section 164 paragraph 1 of the Code of Criminal Procedure the detained person is to be informed, prior to the start of the interrogation, of the offence he/she is suspected of, of his/her rights to comment on this matter or to refrain from making a statement, and to consult a defence counsel prior to the interrogation. Moreover, the suspect has to be informed that his/her statements may be used to defend himself/herself but also as evidence against him/her. In addition to receiving oral legal instructions, the detainee is also provided with the currently used information sheet for detainees, which has stood the test of time and is also widely accepted by those using it in their daily work.

The Federal Ministry of Justice is currently evaluating in how far access to information can be improved and made easier, also taking into consideration how to appropriately document that the detainee has been informed of his/her rights. In this context, it must be borne in mind that in practice even documentation by means of a signature prior to the interrogation cannot fully guarantee that the suspect has actually perceived the information (e.g. whether the detainee was given sufficient time to read the information and whether he/she actually understood the contents of the instructions). What turns out to be difficult is the improvement of access to information for those who cannot read or write; mechanisms determining such obstacles to communication have to be provided for such cases.

As recommended by the CPT, the information sheets currently used by the Federal Ministry of the Interior are being subjected to a thorough examination.

Specific issues related to juveniles

Re. paragraph 28:

According to section 35 paragraph 4 of the Juvenile Justice Act (*Jugendgerichtsgesetz*) – as was also noted in the report – in the case of the detention of a juvenile who cannot be released immediately in any case the parents or legal guardian or a relative sharing a home with the juvenile and, if applicable, the juvenile's probation officer and the competent youth welfare institution must be informed without any undue delay. Exceptions are possible only if the juvenile objects to informing such persons for a compelling reason. According to section 164 paragraph 2 of the Code of Criminal Procedure every suspect is entitled to have a defence lawyer present during his/her interrogation. This right applies to juveniles and young adults without any restrictions whereas the exception provided for in section 164 paragraph 2 third sentence of the Code of Criminal Procedure, which applies if adverse effects on the investigation or on evidence have to be averted, does not apply in the case of juveniles or young adults (cf. section 37 paragraph 1 last sentence of the Juvenile Justice Act, in the case of young adults in conjunction with section 46a paragraph 2 of such Act).

In addition, according to section 37 paragraph 1 of the Juvenile Justice Act a trusted person is to be present during the interrogation at the juvenile's request unless he/she is represented by a legal counsel. The juvenile is to be informed of this right when receiving the instructions regarding his/her rights and in the summons, however, at the latest prior to the beginning of the interrogation.

We are well aware of the fact that this age group requires special protection. However, the applicable laws – as presented above – provide for sufficient mechanisms to guarantee fair proceedings for juveniles. It should also be mentioned in this connection that according to section 3 of the Code of Criminal Procedure the investigating authorities (criminal investigation department and public prosecutor's office) are obliged to be objective, which means that the rights of juveniles are safeguarded *ex officio* as well.

In Austria, no problems have become known in this connection. Best-practice models (in particular suggestions by the child and youth advocates) are to be acted on and discussed in greater detail.

Re. paragraph 29:

The Austrian authorities are aware of the problems regarding the lack of intelligibility of the information sheets due to the use of legal terminology. An adequate balance between the intellectual comprehension of the written information of the persons it is addressed to (juvenile suspects find it harder to understand the legal terms than adults) and the requirement to provide correct and complete information has to be found. In doing so, it has to be borne in mind that simplification of the wording in an official information sheet is sometimes limited as too many simplifications could lead to imprecise and eventually also misleading or even incorrect (incomplete) information. In the currently used information sheet an attempt was made to choose understandable wording which is based, in all material aspects, on the provisions of the law.

A Europe-wide project is currently dealing with the establishment of "letters of rights" for suspects. Austria supports this project, which was initiated by Germany and is co-funded by the European Commission. In the course of this project the importance of simple wording in information sheets was highlighted. The results of this project are expected to be available in mid-2010 and will be considered when reviewing the international information sheets used in Austria.

Custody records

Re. paragraphs 30 and 31

The police records and/or reports made to the police provide a consistent documentation. The statements made by the Committee in this connection are obviously based on a misunderstanding. Detention details have always been documented consistently.

As a rule, a standardised detention report is prepared in order to document a person's deprivation of liberty. With this detention report, the entire process of the detention, starting from the apprehension up to the release or the transfer to the authority in charge of the proceedings can be documented in a single report. The detention report is supplemented by the information sheet for detainees (Administrative Criminal Act, Aliens Police Act, Asylum Act) (*Informationsblatt für Festgenommene [VStG, FPG, AsylG]*) and/or the information sheet for detainees (Criminal Code of Procedure) (*Informationsblatt für Festgenommene [(StPO)]*).

The detention report consists of the following parts:

Detention report I	Apprehension
Detention report II	Notification sheet
Detention report III	Medical report
Detention report IIIa	Medical report – drug-related official acts / body packers
Detention report IV	Personal belongings

The first sheet – “Detention report I: Apprehension” – serves the purpose of documenting the apprehension and all relevant circumstances for the further detention (risk of escape, addiction, etc.)

“Detention report II: Notification sheet” documents notification of the persons and authorities that need to be informed. If the detainee waives his/her right of notification this is indicated on this sheet as well.

“Detention report III: Medical report” covers all health-related aspects of the detention. In particular the “diagnostic findings” section contains information regarding existing symptoms of illnesses and lists any kind of injuries of the detainee (regardless of whether the detainee was already injured before he/she was apprehended or the injury was – for whatsoever reason – inflicted thereafter). If necessary, diagnostic findings and expert opinions are to be attached to the detention report III. The “injury documentation sheet” (*Verletzungsdokumentationsblatt*) and/or the forms documenting the examination as to physical fitness to remain in custody (*Haftfähigkeitsuntersuchungsformulare*) may be attached to the detention report III as well.

“Detention report IV: Personal belongings” documents the whereabouts of items that the detainee had with him/her and, if applicable, any transfers of the detainee. It has to be completed by the law enforcement officer in charge of the direct arrest area and/or the law enforcement officer receiving the detainee at the police detention centre (*PAZ*) (if the suspect was sent there directly).

Purpose of the detention report

- It provides documentation that the detainee has been informed of his/her situation and helps prevent complaints that statutorily required information on rights was not provided.
- It provides evidence of the wishes expressed by the detainee (e.g. notification, medication).

- The comprehensive documentation of all important circumstances of the custody in a single detention report makes the safe reconstruction of these circumstances at a later point in time easier and thus enables the security authority to defend itself against alleged violations of the law on a safe basis.
- By combining the required records in a single detention report the administrative efforts inherent with a detention are to be kept as concentrated and brief as possible.

The detention report and the information sheet are used with all people apprehended by officers of criminal law enforcement agencies or administrative authorities.

The officer ordering and/or carrying out the apprehension has to enter the data already known and the measures taken by him/her in the detention report. Even if no data are known yet, as a minimum requirement, the reason for the apprehension, the instructions as to the reasons for the arrest (provided that it was possible to inform the detainee accordingly) and the order regarding the transfer of the apprehended person to a prison have to be recorded in the “Detention report I”.

Following the visit of the CPT, all arrests carried out by the police establishments of the Federal Police Directorate of Vienna were entered into the “detention file – police administration” (*Anhaltedatei-Vollzugsverwaltung*), an application generally used to document transfers of suspects to prisons. Detainees who are released are continued to be documented in the detention journal (*Anhalteprotokoll*) and in the respective notification of detention (*Anhaltemeldung*).

From 1 January 2010 onwards, the police establishments will be in charge of keeping electronic documentation analogously to that of the PAZ. Until then, all police stations with detention facilities are obliged to keep detention registers (*Anhaltevermerkbücher*). All persons to be transferred to a detention facility have to be entered in these registers. In addition, every police station has to keep a “detention journal”, which lists all measures resulting in the deprivation of liberty of a person irrespective of whether the measures were also entered into any other record (in particular in the detainee journal (*Arrestantenprotokoll*)/detention register) and regardless of the duration of the deprivation of liberty. Deprivations of liberty according to the Act on Involuntary Placement (*Unterbringungsgesetz*) or pursuant to section 45 of the Security Police Act (*Sicherheitspolizeigesetz*) have to be recorded in the detention journal as well, stating their start and end dates.

Inspections of police establishments

Re. paragraph 32:

The government programme of the Austrian federal government for the XXIVth legislative period provides for the implementation of the Optional Protocol to the Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment of 18 November 2002, UN Doc. A/RES/57/199 (2003) (hereinafter referred to as: OPCAT). Austria signed the OPCAT on 25 September 2003. According to article 3 of the OPCAT each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism). The government programme provides that the Office of the Ombudsperson (*Volksanwaltschaft*) will be in charge, so that a basis for ratification of the OPCAT is created. The legislative work necessary to implement this project is at the preparation stage.

Police detention centres (with particular emphasis on detention pending deportation – Schubhaft)

Preliminary remarks

Re. paragraph 36:

In order to optimize the implementation of national and international provisions and guidelines for the enforcement of deprivations of liberty by the aliens police, there are plans to set up a high-quality centre in Vordernberg/Styria for nationals of third countries who have to return to their home countries.

The primary goal when building new detention facilities in order to secure proceedings before the aliens police, a person's departure and/or expulsion, is to improve the currently existing conditions of detention (in particular in the detention areas of the police detention centres, which have evolved historically) for foreign nationals who are detained pending deportation, taking into consideration the human rights standards and national and international recommendations.

The Directive on the Return of Illegal Immigrants adopted by the European Parliament provides, inter alia, that as a rule foreign nationals are to be detained, in the course of measures ending their stay in Austria, in specialised detention facilities. This concept of detention is to be put into practice at the new detention facility, which will play a pioneer role pursuing an effective European return policy and in combating illegal migration.

Building on international experience with specialised detention facilities for securing proceedings before the aliens police, a person's departure and expulsion as well as based on the recommendations by the Human Rights Advisory Board and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it is necessary to improve the framework conditions accordingly, primarily with a view to the following issues:

- respect for the human dignity of the detained individuals, in particular in terms of language and culture,
- treating detainees with reasonable care,
- granting them autonomy regarding their daily routines, adequate activities, as well as
- an organisational and spatial separation from administrative (criminal) prisoners

The new centre for returning nationals of third countries will accommodate up to 220 people obliged to leave the country, whose asylum and/or aliens police proceedings require a measure depriving them from their liberty, and who are, in principle, willing to leave the country. The police custody process in Austria is to be based on a multi-stage programme where in principle the detainees pass through several stages of detention. As a rule, they are received at a closed admission department at another PAZ where they stay until it is determined where the person is to be detained (e.g. by means of anamneses or social prognosis, preparedness to return to home country). If, after several days and/or according to objective criteria, it can be determined that these detainees can be integrated in the normal unit, provisions will be made for them to be transferred to the new deportation centre. The detention centre Vordernberg is intended to be an "open station".

In addition, the detainees' willingness to leave the country on a voluntary basis (in particular under a programme of the European Return Fund) will be encouraged by providing them with special care and extensive pre-return counselling.

Other characteristics of the new facility will include special devices to determine the identity of the detainees as well as accomplishing cooperation in order to obtain so-called return

certificates (replacement travel documents). Special attention will be paid in this respect to persons requiring protection (unaccompanied minors) and families with children (age and family-appropriate detention conditions), for which detention pending deportation may only be imposed “if absolutely necessary and for the shortest possible duration”.

Detainees not willing to cooperate or detainees showing signs of psychological problems (persons who are prone to conflicts or aggressive, persons who resisted arrest or circumvented their deportation order, etc.) are to be continued to be detained at the existing police detention centres.

All sovereign enforcement tasks as well as sovereignty regarding organisational matters relating to the detention facility will remain in the hands of the state. In the light of the complex tasks resulting from the enforcement of detention orders, comprehensive fields of cooperation between the public sector and private agents are opened up (e.g. facility management, basic health care services, psychological and social consulting services etc.), allowing for the interaction of public and private structures. Services are thus expected to be performed efficiently and effectively while at the same time local jobs will be created.

A planning contract providing for the preparation of an adequate rental offer has been entered into with the Federal Real Estate Management Company Bundesimmobiliengesellschaft.

The procedure for obtaining an adequate zoning plan has been initiated at the municipality of Vordernberg as the building authority of first instance. The decision by the municipality of Vordernberg entered into full legal force and effect as of 8 January 2010.

An EU-wide, open, single-stage invitation for tenders for architects and/or a competition for the realisation of a preliminary design and a subsequent negotiated procedure for the award of general planning services pursuant to the Federal Act on Public Procurement (*Bundesvergabegesetz*) is in the planning stage. The constituting meeting of the jury has been scheduled for 21 January 2010. The results are expected to be available by the end of April 2010.

From today's point of view, the construction phase is scheduled to take 18 months. The preliminary design planning will be forwarded to the Committee as soon as it is available.

Conditions of detention

Re. paragraph 39:

The Austrian authorities are well aware of the issues relating to the “closed regime”. Therefore, in consultation with the committees of the Human Rights Advisory Board, specifications for a large “open station” (ground floor at the PAZ in Vienna-Hernalser Gürtel) were developed. This station will accommodate 50 detainees.

Due to delays in the delivery of furniture, the opening was postponed. In the meantime, the furniture has arrived and the open-regime station was opened on 18 January 2010.

Before a detainee becomes eligible for detention in the open unit, he/she needs to be on trial in the closed regime first. This time period, during which the detainee is to be constantly available, should in particular be used for carrying out all interrogations, examinations, first consultation talks, and also for acclimatisation.

Although increased access to television is being considered, it has to be pointed out that at present the TV sets used cannot be bought at the PAZ but have to be brought in by the detainees themselves or by their relatives.

Re. paragraph 40:

The daily routine at the PAZ in Vienna-Hernalser Gürtel includes two one-hour periods of outdoor exercise per floor. This is necessary for the fact that the prisoners have doctor's appointments, interrogations, escorted leave, consultation meetings, etc. at different times and it is therefore quite possible that they miss one of the time slots for outdoor exercise.

It is to be pointed out that participation in outdoor exercise is voluntary and that this offer is used by the detainees from time to time only. The officers, in cooperation with the pre-return preparation organisation, take efforts to raise the detainees' awareness of the importance of outdoor exercise so that this offer is being made use of increasingly.

Re. paragraph 41:

Much to our regret we have to state that the information provided was obviously not precise enough.

The statement that the prison maintenance chores were performed by administrative detainees because "foreigners are not reliable enough" referred only to a small group of around four (administrative) detainees who are responsible for tasks that also involve them "going out on the streets" (example: putting the dustbins on the street for the waste collectors, cleaning jobs in the public rooms (*Parteienraum*), cleaning of doors and windows from the pavement). Most of the handyman jobs (4 jobs per floor) are performed by detainees pending deportation, as this provides several advantages for interacting on a daily basis with other detainees on their floors (language skills, information).

However, the high fluctuation makes it difficult to integrate deportation detainees into an employment relationship on a permanent basis. In particular tasks requiring a certain amount of training are therefore available to them to a limited extent only.

Re. paragraph 42:

The Federal Police Directorate of Klagenfurt has already provided several books and magazines in order to meet the needs of the detainees. In addition, the new pre-return preparation organisation (*Rückkehrvorbereitungsorganisation*, formerly *Schubhaftbetreuung* – counselling programme of detainees pending deportation) has started to organise up-to-date reading material in foreign languages and offers it to the detainees. Apart from reading material, games have been made available as well. Creative and handicraft sessions are also offered by the pre-return preparation team.

The Federal Ministry of the Interior and the subordinated departments are aware of the fact that unfortunately the conditions do not (yet) meet the best possible standards in terms of available space and infrastructure. It is to be pointed out that the Federal Ministry of the Interior takes continuous efforts to equip and/or reconstruct the police detention centres according to the standards of modern detention facilities so that they meet all human rights criteria and enable humane police custody at a high qualitative level.

Re. paragraph 43:

Renovation of the detention areas at the PAZ in Vienna-Hernalser Gürtel in 2010 has been planned and budgeted. In the course of these measures, additional jobs for detainees will be created as well.

Regarding the recommendation to provide sufficient quantities of personal hygiene products, it can be reported that normal personal hygiene products (including ladies' hygiene articles) are either allocated to the individual detainees or available in the detention room. In the past, soap was frequently used to clog the toilets and to flood them so that in part liquid soap and soap dispensers are now being used. In addition, every new detainee receives a set of bed linen and in some cases also plates and dishes. Diapers for babies are available and are handed out when

needed. Additional articles such as body lotion, beauty cream, after-shave etc. can be bought by the detainees at the respective centres at their own expense.

Re. paragraph 44:

Regarding the structural shortcomings mentioned in paragraph 44, efforts will be made to take the necessary measures to remedy these shortcomings in the course of the investment programme 2010/2011.

Health care

General information on health care at Austrian detention centres:

Providing medical care to detainees is primarily the responsibility of experienced public health doctors. In the provinces, fee-based physicians support them in this task or are responsible for it. The provision of health care to persons in the custody of the security police, which is a result of the relevant national and international provisions of conventions, laws, regulations, and ordinances (e.g. Recommendations of the CPT, the Human Rights Advisory Board, case law of the ECtHR, article 3 ECHR, Federal Act on the Medical Profession (*Ärztegesetz*), and the like) is a major obligation of the Federal Ministry of the Interior.

In general, it has to be emphasised that the provision of high-quality health care services is at present already guaranteed during several hours every day and that a medical service team/team of paramedics headed by a doctor is present at all times at the police detention centres. The permanent presence of a person competent to provide First Aid, preferably a person with recognised training meeting the criteria of the Medical Service Act (*Sanitätsergesetz*), guarantees that primary medical care is provided. Usually it does not take long before the emergency physician arrives should immediate medical care by a doctor be required.

The paramedics and physicians involved pay attention to the intercultural and milieu-therapeutic aspects as well as to the continuity of medical care. The existing bases for medical care for detainees by the public health doctors were discussed and evaluated several times in the past few years on the occasion of consultations on specific issues and by working groups involving the governmental and non-governmental organisations affected.

On these occasions, the following issues were treated and/or implemented:

- systematic examination of the detainees' physical fitness to remain in custody and/or initial examination (comprehensive determination of medical history), including improved documentation of the detainees' state of health
- current curative treatment, treatment of acute diseases (dressing of small injuries), identification of mental impairment
- more complex, more frequent blood and urine tests (and performed at an earlier stage) (lab test results)
- preventive measures, in particular in connection with detainees on hunger strike and/or refusing to take liquids;
- medical aspects prior to problematic deportations or deportations by aircraft (examination prior to deportation by aircraft)
- special treatment, in particular narcotics/drug substitution programmes led by medical experts (e.g. association "DIALOG")
- special monitoring of persons suspected of having ingested narcotics/drugs ("body packers")
- preparation of expert opinions (e.g. documentation of signs of injuries)
- trauma exploration

- examinations regarding contagious diseases (TBC serial X-ray examinations)
- comprehensive hygiene guidelines
- continuous educational and training session for medical staff

All detainees are checked for fitness to remain in custody without undue delay, in any case, however, within 24 hours from their apprehension, in the course of a preventive medical check-up, using the medical history questionnaire (see section 7 of the Regulations by the Federal Minister of the Interior on the Detention of Persons by the Security Authorities and Public Security Officers, *Anhalteordnung*, as amended by Federal Law Gazette II No. 439/2005). That means that fitness for detention is a *conditio sine qua non* for retaining a person in custody at a police detention centre.

Primary health care for detainees is structured according to the model of a general practitioner's practice and comprises primarily physical examinations as well as treatment of simple ailments with medication. Mental and/or complex somatic examinations are carried out by consulted medical experts.

Persons suffering from drug abuse are examined in line with the Substitution Regulation (Federal Ministry of Health) by external medical experts with sufficient experience and qualification. At the police detention centres in Vienna this treatment is provided by the association DIALOG, which is also regarded "best practice" by human rights organisations and the Human Rights Advisory Board.

Detailed anamnesis for suicide prevention purposes is obtained on the basis of the medical history forms in the course of the examinations upon admission; these personality analyses facilitate targeted treatment and care.

The tasks of the public health doctors at the police detention centres have been expressly laid down in the Guidelines for Police Doctors (*Richtlinien für den polizeiärztlichen Dienst*) (cf. items 1.10 and 1.11. of the ordinance no. BMI-OA1300/0011-II/1/b/2006 of 20 February 2006). Police doctors are obliged, on the basis of their position, to perform the relevant tasks within the areas of responsibility allocated to them by the authority. As they have committed to working for the security authorities, they have to exercise their jobs to the extent that they are in a position to do so given their knowledge, expertise, and experience.

The assessment of a deportation detainee's fitness to remain in custody is the responsibility of the police doctors in their function as official experts and public health doctors of the police. They are not covered by the provisions of the Act on the Medical Profession of 1998 (cf. section 41 paragraph 4 of the Act on the Medical Profession) in the performance of this task. Their particular role as public health doctors at the police detention centre guarantees that these doctors are familiar with the conditions and possibilities in the police detention centres.

The medical care to be provided and the measures to be taken with regard to detainees on hunger strike or refusing to take liquids are regulated in detail in an ordinance (including the determination of parameters in consultations with the Human Rights Advisory Board). For instance, as soon as a hunger strike is reported, a clinical examination plus documentation of all required parameters is required on a daily basis. These examinations are, of course, also carried out on Saturdays, Sundays, and holidays. If necessary, lab tests (full blood count) are ordered as well. In the case of signs of psychological problems (e.g. drug substitution therapy, etc.) it is also possible to consult a psychiatric expert.

Regarding the criticism that detainees on hunger strike are not sufficiently examined by the public health doctors, it has to be stated that in spite of objective information as to the importance of medical check-ups and the consequences for the person's health, many detainees refuse medical examinations (e.g. lab tests). It has to be pointed out that the examinations are carried out on a voluntary basis (right to bodily integrity).

The Federal Ministry of the Interior has provided the chief medical officer's establishments of the Federal Police Directorates with comprehensive new compendia and collections of

ordinances for the medical service. The police doctors and fee-based doctors were asked to take note of these instructions and confirm that they have done so.

In addition, a reorganisation of the police medical service is being considered. It is planned to implement a demand-oriented service system (e.g. standard and/or flexible hours of service) as well as incentive systems and expedient adjustments of the remuneration scheme (base remuneration and allowances) for police doctors.

The objective of this special regulation is, among other things, to make it easier to recruit motivated physicians with expertise for the police medical service.

With effect as of 1 March 2009 the chief medical service of the Federal Ministry of the Interior was supplemented by the position of deputy chief of medicine. This resulted in a significant improvement of quality management and technical supervision. The deputy medical chief has been taking random checks for the purpose of quality assurance, in particular in the field of health care documentation and the overall facilities.

Regarding documentation it is stated that the chief medical service of the Federal Ministry of the Interior has instructed the medical services of the subordinated establishments to ensure uninterrupted and complete medical documentation. The documentation has to be carried out on the basis of the forms which have been revised and harmonised. Regarding the implementation of the documentation, reference is made to the planned continuation of the project “detention file – police administration” (*Anhaltedatei-Vollzugsverwaltung*). At the moment, the preparatory works for adding a so-called “medical tool” to the detention file are underway. With this application, consistent and uniform documentation will be guaranteed. Non-medical personnel will then no longer be entitled to access medical files.

For safety reasons, the occasional presence of police officers in treatment rooms, which was mentioned several times by the Committee, cannot be changed or limited. The safety aspect is gaining importance as detainees increasingly show aggressive behaviour, in particular when faced with unpopular information and measures. In this context it has to be pointed out that these are paramedics, who in their role as assistants pursuant to section 54 of the Federal Act on the Medical Profession are subject to doctor-patient confidentiality. The main task of the police officers in this context is to ensure the smooth process of medical examinations and to provide subliminal medical assistance.

Regarding the recommendations and comments relating to health care issues made by the CPT:

Re. paragraph 45:

The recommendations of the Committee with regard to improving health care and rendering nursing services in a more professional manner have been acted on. The nursing staff are currently being evaluated by the Federal Ministry of the Interior with a focus on the (expert) staff needed to assist the doctors. In connection with the establishment of a 24-hour stand-by medical service for larger police detention centres, intense inter-ministerial efforts are currently being taken to achieve a permanent introduction of demand-oriented nursing services provided by registered nursing staff. According to the nursing concept that is being prepared nursing staff will be present during the examinations on the one hand and take care of the detainees as qualified medical persons of trust on the other.

In the future, the distribution of medicines, urine samples, and lab tests will be carried out exclusively by registered nursing staff (with a DGKS diploma [*Diplomierte Gesundheits- und Krankenschwestern/-pfleger*]) upon the instruction of a doctor at the respective units.

Qualified nursing staff will pay regular visits to police detention centres accommodating fewer detainees.

A comprehensive package of measures is being prepared. However, it has to be pointed out that the realisation of the recommendations partly also entails material restructuring of the medical service.

Re. paragraph 48:

In case of communication problems, the public health doctors are assisted by suitable interpreters, who are also subject to confidentiality. However, it has to be assessed on a case-by-case basis whether the consultation of a certified interpreter is necessary or whether a trusted person who speaks the respective language (e.g. NGO representative or fellow detainee) and who is present during the medical examination at the request of the detainee may be asked to interpret and/or whether any other form of communication (e.g. by using another foreign language) is possible. In many cases, the persons detained at police detention centres are taken care of by the staff of the pre-return preparation office who have the same mother tongue. As these staff members are constantly in contact with the detainees at the police detention centre and are very experienced in dealing with them, they are frequently used as interpreters. Any change in the behaviour of a detainee can be scrutinised and reported to the treating doctor during the next medical examination. Section 7 paragraph 5a of the Regulation by the Federal Minister of the Interior on the Detention of Persons by the Security Authorities and Public Security Service Officers (hereinafter – Detention Rules, Federal Law Gazette II No. 128/1999, last amended by Federal Law Gazette II No. 439/2005) clearly provides that, if necessary, suitable interpreters are to assist the public health doctors in assessing the detainees' fitness to remain in custody or regarding any other medical issues. In the case of hunger strike or refusal to take liquids, the doctor has to discuss the health consequences with the detainee. If required, an interpreter has to be consulted for this purpose pursuant to section 10 paragraph 4 of the Detention Rules in order to guarantee that the detainee is informed in the best possible manner.

Re. paragraph 50:

The shortcomings referred to in the report have been remedied in the meantime. In the course of a review and on the occasion of the periodical education and further training sessions, this circumstance was pointed out in all clarity. Awareness of the medical staff has been raised.

Re. paragraph 51:

The dual role of police doctors has been reviewed several times. Regarding the separation of the activities performed as a doctor or those performed as a medical assessor, it is to be pointed out that the trust a detainee puts into a doctor who meets him/her as a medical assessor on one day and treats him/her as a curative doctor the next seems to be the same. Experience has shown that detainees pending deportation who were on hunger strike with the aim of obtaining a release would not be dissuaded from their original goal when they were treated by different doctor. Detainees do not build confidence in public health doctors who were restricted to curative treatments as they do not understand that the doctor who comes to the police detention centre is “not” part of the police organisation. The police doctor is not the sole person responsible, even less so as medical findings and expert opinions of other doctors and, in particular, of the out-patient wards consulted are an important factor as well. It is noted that the medical documentation regarding detainees on hunger strike or refusing to take liquids is reviewed by the doctors of the Commission of the Human Rights Advisory Board on a regular basis.

According to section 10 paragraph 5 of the Detention Rules the detainees are, in principle, entitled to choose their doctor freely but in most cases this is frustrated by their lack of funds. The determination of a person's fitness to remain in custody is the responsibility of the competent authority. The public health doctors only act as official experts. Conflicts of

interests can be excluded as police doctors acting as official experts on the one hand and as medical experts treating their patients to the best of their knowledge and belief on the other are not faced with any advantages and/or disadvantages. This general situation results from the doctor's task of assessing the detainees' fitness for detention which means that the doctor makes a considerable contribution to keeping the detainee in custody.

Re. paragraph 52:

Before new detainees are admitted they are subjected to a thorough clinical examination in the course of the initial screening. On this occasion, the arrested person is also provided with a standardised "medical history sheet", which has been agreed upon with the Human Rights Advisory Board. The detainees complete this sheet themselves and then discuss it with the doctor during the initial medical examination.

This first medical examination includes testing for HIV and/or hepatitis. Lab screenings or blood tests are not a standard procedure but are ordered when necessary.

At the moment the diagnosis is entered into the respective medical files and in the detention report III.

As a rule, diseases and injuries are considered with a view to the detainee's fitness for detention. If injuries are detected, an expert opinion is prepared (in particular if it is likely that or if the detainee states that the injury was inflicted by another person). Reference is made to the injury documentation sheet.

This circumstance is pointed out in the course of the random quality checks and the periodical discussion and training rounds regarding medical care at police detention centres. The medical staff has been requested to take this circumstance into account.

Interpreters – see paragraph 48

The doctor-patient confidentiality is, in principle, governed by section 54 of the Federal Act on the Medical Profession under the heading of "Duties of confidentiality, report, and information", which reads as follows: "The doctor and his/her assistants are obliged to treat confidentially all secrets which are entrusted to them or which they obtain knowledge of in the performance of their profession". That means that the doctor-patient confidentiality does not only apply to medical data but to all circumstances made accessible to a limited group of people only and obtained in the course of the practice of the medical profession.

As a rule, only paramedics are present during the medical examinations to assist the treating doctor. If requested by the doctor, examinations may also take place without these civil servants.

The lessons to be learned from the current system as well as the possibility of a regular presence of doctors without any close connection to the police are being examined in the course of the implementation of the new centre for detainees pending deportation in Vordernberg.

Staff

Re. paragraph 53:

The further training of PAZ staff is based on three pillars:

- specialist training at the police detention centres with practical counselling
- additional training – methodical and didactical courses at the Academy for Security Forces (*Sicherheitsakademie*), in particular in the field of human rights
- regular internal and external training courses in specialist issues (conflict resolution, etc.)

The following courses will be offered in the course of the extra-occupational training in 2009/2010:

Psychology, law, cultural affairs (how to treat people of different cultures/religions, understanding their behaviour and habits), fire protection, police operations (protecting yourself during interrogations and while taking records, transferring detainees who do not cooperate to a cell and/or segregating recalcitrant detainees from multi-occupancy cells – Federal operations trainer (*Bundeseinsatztrainer*) and/or trainer used by him/her).

Interpersonal contacts will be treated in particular in the psychology module.

In the future, a separate officer of the Federal Ministry of the Interior will be in charge of the education and further training of the PAZ staff.

The suggestion that staff responsible for the custody of immigration detainees and administrative detainees should be in a different and separate service from law enforcement officials cannot be supported.

According to article 78d of the Federal Constitution (*Bundes-Verfassungsgesetz*) constabularies are armed or uniformed or otherwise militarily patterned units invested with tasks of a police character.

A merger with the prison staff (*Justizwachekorps*) is not planned.

However, within the constabulary force organisational units and/or organisational sections for the enforcement of detention pending deportation and detention for administrative offences have been set up which are subordinated to the respective authorities.

Regarding the additional language training it is stated that in recent years the number of courses offered by the Academy for Security Forces has been increased and language courses for police officers working in detention centres have been supported considerably.

Re. paragraph 54:

There should not be any relationship of instruction or any hierarchy among the inmates, and it is the duty of the custodial staff to intervene should they get knowledge of such behaviour. The staff will be instructed accordingly.

Contacts with the outside world

Re. paragraph 55:

The Committee's recommendation to extend the duration of visits for foreign detainees has been acted on and will be considered in the course of a planned amendment of the Detention Regulations. Changes in the framework conditions for detainees pending deportation as well as efficiency-increasing measures entail the constant evaluation of the processes relating to the act of expelling people from the country who are not entitled to stay. The planned establishment of a new detention centre for detainees pending deportation in the south of Austria is of special importance in this connection. Issues like the expansion of outdoor exercise entitlements and visitor management are also included in these comprehensive considerations.

The review regarding the extension of visits, in particular taking into consideration the consequences for the new detention centre, has not been completed yet. At the moment it is still not possible to estimate any organisational measures that may become necessary. Nevertheless, irrespective of possible changes, adequate measures will be taken.

See also paragraph 56

Re. paragraph 56:

We take the view that good contacts with the outside world are of considerable importance for all people who are deprived of their liberty.

The practice of separating inmates from normal visitors by a glass pane in the visitor zones has not been changed. The Federal Ministry of the Interior, after having considered all aspects of this practice, has found it to be admissible and cannot change it for security reasons: This method is applied in Austria as it is necessary to prevent the unauthorised inward transfer of objects that might jeopardise safety (e.g. devices for prison breaking, tablets, drugs). The risk that objects from the outside are smuggled in during the visits is very high.

Neither the Federal Ministry of the Interior nor the Independent Administrative Senate (*UVS*) (decision by the *UVS* Carinthia of 17 April 2009, Dr. Rettenbacher-Krenn) regard this as an illegal handling of visiting rights as communicating through glass separation walls does not result in any restrictions or impediments as you can hear and see sufficiently through these glass partitions. In order to avoid cushioned acoustics, adequate technical devices have been installed.

The suggested practice of a so-called table visit – a supervised meeting where prisoners and visitors remain seated at a table – is available in justified cases and, in a client-oriented manner, for visits by the pre-return preparation counselling officers. Within the meaning of section 21 paragraph 3 of the Detention Rules visits by legal representatives, representatives of Austrian authorities, diplomatic or consular representations of the country of origin, as well as of bodies which have been set up in Austria on the basis of human rights conventions binding for Austria, or whose importance for the purpose of arranging important personal matters is evidenced, are possible at any time to the extent necessary.

At the new detention centre in Vordernberg the room designs will allow for more table visits, in particular from family members. The introduction of less strict rules for inmates in open station wings is also being considered.

Re. paragraph 57:

The Austrian authorities have acted on this recommendation. The PAZ executives were instructed to provide for an extension of the times allowed for making phone calls in their schedules.

Re. paragraph 58:

Since 2003 two card telephones per floor have been available at the PAZ in Vienna-Hernalser Gürtel. There is another card phone at the solitary confinement wing.

Segregation cells**Re. paragraphs 59 - 61**

Those responsible at the local police establishments were informed, in the course of staff briefings, that detainees who are in solitary confinement for reasons laid down in section 5 paragraph 1(1) of the Detention Rules are also to be given the opportunity to exercise outdoors as a part of their daily routine, but that they have to be separated from the other inmates.

Regarding the condition of the high-security detention rooms, the Committee's recommendations were acted on and a new concept was prepared. The structural alterations will be carried out in the course of the next investment programme 2010.

Plans to build a new high-security detention room at the police detention centre in Wiener Neustadt in 2010 have been made.

New regulations on the documentation of detention in high-security cells were enacted by means of ordinance BMI-OA1320/0032-II/1/b/2009 of 31 March 2009. The Committee's recommendations were considered and a list of the measures taken was made available. The security measures taken will be saved in the electronic network system of the Federal Ministry of the Interior.

Apart from documentation, major improvements of the special detention conditions were implemented (e.g. regular consultations of doctors, reporting chain to the prison authority and security directorates, check of proportionality).

Information and assistance to foreign nationals

Re. paragraph 62:

In principle, every person taken into detention pending deportation is provided with comprehensive initial information about his/her rights and obligations (to this end, form sheets in around 30 languages are available), which also includes the offer to contact staff members of the pre-return preparation counselling service. This is to guarantee that every detainee pending deportation who requests assistance is actually provided with it. The tasks of the officers include informing the detainees about legal circumstances, in particular with a view to the proceedings pending against them, in the course of the consultations.

In addition to being provided with written information, the detainees awaiting deportation, in the presence of a qualified translator, also receive individual and personal explanations regarding their situation in the course of an interrogation, which takes place within a few days after the apprehension as a part of their asylum proceedings or proceedings before the aliens police. On this occasion, the detainees are also instructed regarding the further proceedings with a view to section 13a of the General Administrative Procedures Code (*AVG*). In this context, it has to be pointed out that providing the people concerned with as much information about their situation as possible is also in the interest of the authority as it helps to ensure an unproblematic enforcement of the detention pending deportation.

In spite of the fact that they are informed extensively, practice has shown that some detainees do not accept or do not understand their situation so that they appear to be not sufficiently informed. This is a phenomenon most likely to occur on the occasion of visits by the Commission or its delegation. Also in this context, the competent authority and/or the pre-return preparation counselling organisations take their best efforts to inform the detainees about all options available to them. Another measure to increase the detainees' understanding of the legal background of the detention pending deportation is the translation of the awards and instructions on the right to appeal contained in the decisions, which in part has already been done.

Information about the legal situation is successful if the individual detainee knows why he/she is being detained, which legal remedies he/she may resort to, and what the purpose of detention pending deportation is. This duty of information is laid down in article 4 paragraph 6 of the Federal Administrative Act on the Protection of Personal Freedom (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*).

Any alien requesting access to a lawyer is granted such access. Detainees pending deportation have the right to be represented by a lawyer, but they have to bear the costs incurred themselves. Detainees pending deportation who have applied for asylum in Austria are provided with legal counselling and representation during their asylum proceedings.

According to the EU Return Directive, the obligation to systematically inform detainees pending deportation about their rights and obligations as well as about the prison rules is to guarantee that as much legal information as possible is provided. Upon application, nationals of third countries are to be granted the required legal advice free of charge according to the

legal provision of the individual country or the provisions on legal aid. The implementation of the EU Return Directive will enhance the guarantees of legal protection and facilitate access to free legal representation.

The Federal Ministry of the Interior intends to use, in the medium-term, audiovisual media which can also be used for illiterate detainees. These info PCs are designed to increase the amount of information provided even further and also point out the legal protection available.

Detention review procedure

Re. paragraphs 63 and 64:

In principle, the individual review of a remand in custody is sufficiently provided for in the Austrian legal system. This review is carried out *ex officio* by the Independent Administrative Senate for the first time after an uninterrupted detention of six months. In connection with the obligatory review, reference is made to the Return Directive, which provides for a review of a remand in custody “at reasonable intervals”. The Committee’s recommendations will be included in the future considerations regarding the implementation of said Directive.

Prisons

Preliminary remarks

Re. paragraph 68:

In September 2007 the Federal Ministry of Justice set up a working group to develop a pilot project called “Electronic surveillance – monitored home confinement under section 126 of the Execution of Sentences Act” (*Strafvollzugsgesetz*). This working group was staffed with representatives of all organisational units of the Federal Ministry of Justice that could possibly be affected if this project were implemented as well as representatives of the probation assistance association *Verein Neustart*.

The project was divided into a development phase and a trial phase (real operation). The development of the pilot project outline was completed by December 2007. From 15 January to 15 October 2008 and in an additional one-month expiration period for prisoners participating in the project, the pilot project was tested in practice at Vienna-Simmering and Graz-Jakomini Prisons and evaluated by the Institute for the Sociology of Law and Criminology (IRKS) as the project progressed.

The pilot project of electronic surveillance and/or electronically monitored home confinement was designed as a form of executing a prison sentence or a part of a prison sentence and thus as a correctional regime. The decision on whether a sentenced prisoner was allowed to take part in this pilot project was up to the respective prison management, and even though they lived at home, participants in the programme (formally) remained prisoners. The target groups were offenders serving short sentences whose sentence was to be enforced in a monitored home confinement programme (front-door model), on the one hand, and prisoners serving the last part of their sentence in monitored home confinement (back-door model), on the other. Apart from an offender’s basic suitability that is verified by a list of criteria, the risk of abuse and/or the problems to be anticipated, the offender could only participate in this pilot project provided that he/she has an adequate home and a job working at least 30 hours a week. For the duration of the programme a strict alcohol and drug ban was imposed, the observance of which was tested by random checks carried out by correctional officers. Another requirement for participating in the programme was that the offenders as well as all adults living in the

same household gave their consent. Electronic monitoring used land-line telephone technology and was limited to observing the home confinement times.

As participants were prisoners during the duration of home detention, they continued to be under the responsibility and supervision of the respective correctional facility. These facilities had to present a short-list of potential candidates, select participants, install the equipment, approve weekly schedules, use the monitoring system to check observance of home confinement times, and conduct adequate checks. Social workers of the *Verein Neustart* were in charge of checking the qualifications for participation, providing social work services, and planning the house arrest times on a weekly basis. The company G4S Security Systems was responsible for the technology used. A total of 15 monitoring devices were available to both prisons participating in the project.

Due to the time limit of the pilot project and an average duration of home confinement of three to four months, the total of people participating in the project was 36. Of those 36 participants there were only three offenders who violated regulations and thus failed to complete the programme; there were not any noteworthy problems or other conflicts either. Even the drop-out cases were described as being unproblematic as they were not related to any incidents relevant under criminal law or any impairment to the safety of the participants or other persons. The rate of acceptance of the model tested was very high among all the participants. What proved to be extremely positive was the cooperation between the prisons and the *Verein Neustart* association, whereas technology turned out to be the weak spot. However, the problems arising were more or less eliminated towards the end of the pilot project.

The concept which was designed as a programme involving electronically monitored home confinement, work, a structured daily routine, leisure time, regular meetings with social workers, support provided by social workers, and – if necessary or agreed – also therapy has basically proved to be positive. The gradual (smooth) re-integration of back-door clients via day release and subsequent house arrest together with the support from social workers accompanying them on their way to liberty qualifies as a promising concept for the future. Similarly, the front-door model has proved to be suitable for regular practice. In summing up it can be said that electronically monitored home confinement can be regarded as a correctional regime that maintains an offender's private and professional integration to a high degree and contributes to stabilising his/her social and economic circumstances.

Apart from subject-matter criteria, the relevant organisational, administrative, legal, and financial framework conditions still have to be clarified prior to introducing electronic monitoring as a correctional regime in all of Austria. In this regard, the correlation with other correctional developments, among other things, will have to be investigated, such as, for instance, the question of whether the implementation of the model all over Austria will result in changes in planning for the use of existing, and/or the creation of new, day release places. Depending on the specific design of the model, some legal changes will also have to be made (adapting section 126 of the Execution of Sentences Act, rules on employment contracts, social security and unemployment insurance and probation as well as more detailed implementing regulations regarding electronically monitored home confinement under an ordinance issued by the Federal Minister of Justice).

Moreover, it has to be taken into account that under the tightly knit outline conditions of the pilot project it is only possible to make a rough and approximate estimate of the number of offenders qualifying for release from custody. Only when the potential number of candidates and the average duration of participation can be predicted more precisely, will it be possible to make more reliable statements as to the costs ultimately associated with the general introduction of electronic surveillance. Still when making any exact assessment it is hard to attribute an exact (monetary) value to the useful elements arising from the new penitentiary regime, such as offenders being able to keep their jobs and their relations to their social

environment, especially because such economic benefits are not taken into account in cost calculations.

Founded on the experience made with this pilot project, it is now planned to draw up a white paper for making the electronic home confinement monitoring model under section 126 paragraph 5 of the Execution of Sentences Act part of regular practice by spring **2010**. Based on the general suitability of the subject-matter of the plan, this paper is to lay down the necessary framework for an Austria-wide introduction of electronic monitoring as a correctional regime.

Staff-related issues

Re. paragraphs 71 to 74:

The Federal Ministry of Justice is attempting to raise the prison staffing levels, but budgetary targets make an increase in permanent positions seem unlikely. The Ministry of Justice's efforts to prevent a staff shortage are nevertheless evidenced by the fact that approximately 100 prison officers are in training at all times and that the so-called *Justizbetreuungsagentur*, a correctional support institution, which has been set up in the meantime, forms a staff pool ensuring that any vacant permanent position can be filled immediately.

Vienna-Josefstadt Prison has been assigned 25 prison officers more than in 2008 who are to work in particular with juveniles. When recruiting these new officers, as well as when hiring new prison staff, particular attention is paid to raising the share of women.

An internal working group, which was set up in 2008, has been dealing with the issue of changes in the shift system as currently applied in prisons and has now come up with two possible options for changing work schedules. As requested in the CPT's report, the implementation of the findings of this working group would result in shorter lock-up times of inmates.

The first model calls for a treatment-based regime with a 40-hour work week of inmates, thus attuning them to the free market economy, relatively short lock-up times, a good selection of activities, and visitation times at the weekend. This model defines a more elevated correctional standard with higher staffing levels.

The second model provides for a standard of 30 weekly hours of work to be performed by inmates and shorter times of open cell doors and activities. This model defines a suitable minimum correctional standard that must definitely be met.

In principle, both models constitute reference models that may be further expanded with higher prison staffing levels. The objective pursued by both models is creating a core working time for inmates that may not be reduced. Thus lock-up times will be lowered, while at the same time recreational activities will be increased. Both work schedule models define a transparent and understandable framework. They were prepared within the scope of the present organisational structure and could be implemented with staff levels as currently available. Implementing these work schedule models will only be possible subject to the consent of the competent union. Respective negotiations will be taken up in the near future. The requested special training for newly recruited custodial staff assigned to work with juvenile prisoners is the responsibility of the respective Prison Staff Academy. Training programmes will be modified soon with a separate focus on "dealing with juvenile inmates".

With regard to the appeal made in paragraph 110 to introduce more language courses for staff members, it can be reported that a larger number of language programmes will also be provided for. This will lead to a further reduction of language barriers in dealing with inmates.

Conditions of detention of adult prisoners at Innsbruck Prison

Range of activities

Re. paragraph 78:

The situation of remand prisoners is fundamentally different from that of prisoners undergoing a sentence, which is why a comparison is only permissible to a limited degree. Sentenced prisoners are basically obliged to work (section 44 of the Execution of Sentences Act), whereas remand prisoners have to give their consent to being employed in work, on the one hand, and such work is also subject to the approval of the competent public prosecutor's office (provided that no disadvantages are to be expected for the legal proceedings – cf. section 187 paragraph 1 of the Code of Criminal Procedure), on the other.

Concretely, a gym – open to inmates several times a week – was set up at the remand prisoners' ward at **Innsbruck Prison**. In addition to physical exercise, prisoners are, of course, given the opportunity to engage in outdoor exercise (going for a walk) at least for an hour a day as specified in section 43 of the of the Execution of Sentences Act. Other activities available to remand prisoners at Innsbruck Prison are participation in religious programmes (faith-based groups) as well as group counselling. Moreover, an average of 20 percent of remand prisoners at Innsbruck Prison are employed in work.

As concerns the activities offered to sentenced prisoners, staff are trying to offer a multifaceted programme to inmates. Recreational activities include sports, cooking, playing music, and engaging in handicraft. After finishing work, inmates are allowed to spend one hour outdoors. Numerous sentenced prisoners are placed in the semi-open regime and may therefore leave the prison for education and further training purposes. Also they are given the opportunity to make outings so that the time they remain locked up in their cells can be reduced to a necessary minimum.

Re. paragraph 79:

Equipping outdoor exercise areas at Innsbruck Prison with benches and seats is currently being investigated. The creation of shelters against inclement weather has so far not been possible for budgetary reasons, which is why rain wear (protective clothing) is being provided.

Conditions of detention of juveniles in the prisons visited

Material conditions

Re. paragraph 80:

With regard to the cells used by juveniles at **Linz Prison** it should be noted that there are four cells measuring 7.6m² each, with two of them being equipped with bunk beds which are, however, only used for double occupancy in exceptional cases. Such a cell only accommodates a second inmate if according to the cell allocation programme juvenile prisoners may not be accommodated in a cell alone (for example because they are at risk of

committing suicide). Apart from this exceptional case mentioned above, cells of that size are used for single occupancy only, as noted during the visit.

Re. paragraph 81:

The General Prison Rules specify that (for security reasons) television sets may only be purchased through the prison administration at the expense of inmates. Accordingly, juvenile prisoners at Linz Prison are given the opportunity either to purchase a television set through the prison administration at a price of currently EUR 286 or to rent a television set at a monthly fee of EUR 7. At present 86 television sets are available for rent, some of which are always available.

It is not correct that permission to rent a television set is hardly ever given. Numerous in-cell television sets are available for rental, which are given out to prisoners upon request. However, it cannot be ruled out that those inmates complaining to the CPT have actually committed an administrative offence, which is why their right to watch television may have been (preliminarily) removed or curtailed pursuant to section 109 sub-paragraph 3 second case of the Execution of Sentences Act.

Re. paragraph 82:

As regards the access to showers the current situation in the individual prisons is as follows:

At **Innsbruck Prison** female juveniles can take as many showers as they want, in other words they have unrestricted access to showers. Male juveniles who do not work may shower three times a week, those working every day.

Inmates at **Gerasdorf Prison** are allowed to shower every day.

The same goes for all juvenile prisoners at **Klagenfurt and Linz Prisons**.

At **Vienna-Josefstadt Prison** juveniles are given the opportunity to wash up or to shower more frequently than the minimum times provided for by law, for instance after work and hard physical exercise, such as after engaging in sports. In summertime juveniles may in any case take showers on a daily basis.

All in all juvenile inmates are given sufficient opportunity to maintain their personal hygiene.

Re. paragraph 83:

At **Gerasdorf Prison** the food is tasted every day by the inspection service (*Inspektionsdienst*) or the prison doctor. Inmates may also help themselves to fruit and vegetables. Any requests or suggestions made by inmates will be taken into consideration to the extent practicable.

The food provided at **Vienna-Josefstadt Prison** meets the relevant nutritional standards as regards its quality, preparation, and quantity. In addition, juveniles have been served an extra dish (such as cakes and pastries) since September 2006. Therefore the food provided is both sufficient and adequate in quality and quantity and in line with the particular needs of juvenile inmates.

Activities

Re. paragraph 89:

Improving the situation of juvenile inmates also is a particular concern to Austrian authorities. The present situation presents the following picture:

At **Innsbruck Prison** juvenile prisoners can engage in numerous out-of-cell activities, indoor sports in the respective ward and/or indoor soccer (two hours a week each), cooking (four hours a month) and a computer course (twice a month). During normal operating hours prisoners may also go to the recreation room, where they can talk to each other or play board

games. Every Tuesday classes on a compulsory-education level are offered to German-speaking juveniles and German language classes to foreign nationals. At weekends from 7 a.m. to 11 a.m. juveniles are given the opportunity to use the outdoor exercise yard, the gym, or the table-tennis room.

Also at **Vienna-Josefstadt Prison** the situation has further improved. Juvenile inmates are offered scheduled out-of-cell activities also at weekends; there are only staff-related restrictions on Sundays and holidays. The juvenile regime at Vienna-Josefstadt Prison offers two hours a week each of soccer and table tennis practice, guitar lessons, and (for female juveniles) creative classes. In addition, every fortnight a painting class as well as (for female juveniles) twice a month a cooking and needlework class is offered. This range of activities is completed by team sports played several times a week and – if a sufficient number of staff are present – by table football (foosball), darts, or weight lifting.

At **Linz Prison** juvenile inmates work in the prison's own work units in the morning where they are given the opportunity to get to know various jobs by way of a job rotation. Twice a week further training seminars are held in the juvenile ward. In the afternoon and early evening juveniles stay in their ward with cell doors being open. Cell doors remain open from 7 a.m. to 7 p.m., and also at weekends juvenile prisoners may engage in several recreational and exercise options in the ward.

At **Klagenfurt Prison** all juveniles are currently employed in businesses or undergo an education. Sports and recreational programmes (such as creative or cooking classes) are also offered outside day-shift times. In addition, further improvements through changes in the design of duty rosters and/or working schedules are planned.

Re. paragraph 91:

To date (January 2010) two possible options have been presented for constructing a new institution for juvenile delinquents and women in Vienna. In accordance with a decision taken by the Federal Minister of Justice, the budget distribution for this project still needs to be accorded with the Federal Ministry of Finance. So far this has not happened, which is why more specific details as to the time schedule of the realisation of this prison cannot be given (as of now).

Basically this new institution is designed for those juveniles and young adults as well as women now accommodated at Vienna-Josefstadt Prison. This is to take away some of the occupancy pressure now felt at Vienna-Josefstadt Prison. The juveniles, young adults, and women are to be placed in an institution that meets the particular requirements of this target group.

Should this construction project be realised, the detached unit of Vienna-Josefstadt Prison at Vienna-Simmering Prison, where primarily remand prisoners are accommodated, could be closed down.

Health care

Re. paragraph 92:

A part-time specialist in child/adolescent psychiatry is responsible for the care and treatment of juvenile inmates at **Vienna-Josefstadt Prison**. The Austrian authorities are well aware of how important the proper care of juveniles suffering from psychological or psychiatric problems is.

Re. paragraph 94:

The health-care staff at prisons are being evaluated by the Federal Ministry of Justice. In a first step permanent posts have been re-shuffled and/or new staff contracted. The results

concerning Gerasdorf and Innsbruck Prisons for juveniles are not yet available. Should further understaffing become evident, new staff will be contracted without delay.

Since 1 November 2009 an adolescent psychiatrist has been working at **Gerasdorf Prison**. A full-time general practitioner has been available at **Innsbruck Prison** since 6 August 2009; the continuity of psychiatric care to prisoners is now ensured as a group practice consisting of three psychiatrists has been set up.

Re. paragraph 95:

Due to present occupancy levels and staff shortages, the fact that health-care staff (registered nurses) are assisted by prison officers cannot be changed. In this field, prison wardens are primarily responsible for the trouble-free handling of escorting inmates and providing medical auxiliary services, such as distributing medicines – only after being prescribed by a doctor, which practice is strictly adhered to. In order to ensure a truly independent health-care service, attempts will be made to reduce health-care duties of prison officers to the necessary minimum. In any case prison wardens without any health-care training are not engaged in any duties under the Healthcare and Nursing Act (*Gesundheits- und Krankenpflegegesetz*) as of now.

As mentioned in the report, the occasional presence of prison officers during medical consultations cannot be changed and/or limited for security reasons. In this connection it should be explicitly pointed out once more that the treatment rooms are not civil hospital wards and that the patients have been sentenced or are remand prisoners, which is why security concerns always are of utmost priority. As concerns access to medical files, it should be noted that, in their capacity as assistants, prison officers are bound by (doctor-patient) confidentiality pursuant to section 54 of the Federal Act on the Medical Profession.

Re. paragraph 96:

The concerns relating to the organisation of health-care services at **Gerasdorf Prison** will be implemented in accordance with budgetary and staff resources so as to be able to employ a general practitioner on a half-time basis. At present the health-care services at Gerasdorf Prison are provided by a physician who works at the prison for eight hours a week.

Re. paragraph 97:

The poor level of hygiene addressed in the report has been remedied in the meantime, and **Vienna-Josefstadt Prison** immediately hired a pest control company to disinfect the health-care facilities.

Re. paragraphs 98 and 99:

At **Innsbruck Prison** a new physician who is also in charge of initial examinations has been employed for 15 hours a week, for the time being. Increasing her engagement to a working time of 20 hours per week is being reviewed right now so as to enable her also to spend more time on medical file work.

Inmates at **Gerasdorf Prison** do not commence their sentence in that institution but are always transferred from other correctional facilities, where they have already undergone a previous initial examination. The nurse at Gerasdorf Prison is handed over the respective medical files and takes appropriate action. In addition, a first psychiatric/psychological consultation is made on the day the inmate is admitted to Gerasdorf Prison. The physician responsible for the prison is on stand-by duty round the clock, and in cases of emergency inmates are examined in out-patient wards or treated in a public hospital. Every step taken by a medical doctor is documented, and also the nursing staff enter information in the medical records of inmates.

Re. paragraph 100:

Please refer to the opinion delivered by the Federal Ministry of Justice regarding paragraph 100 of the CPT's report as regards the psychiatric care provided at **Innsbruck Prison**.

Re. paragraph 101:

At **Innsbruck Prison** the psychological service was reinforced by half a permanent post effective of 15 September 2009, improving the professional psychological care of both juveniles and adult inmates. Additionally, several group activities (fitness group, theatre group, autogenic training) had already been organised before by the prison's psychological service.

Other issuesDiscipline**Re. paragraph 102:**

As concerns solitary confinement in an ordinary or disciplinary cell (*Hausarrest*) for juveniles, its maximum duration as well as the granting of human contact for the term of solitary confinement are being examined in light of a future amendment of the Execution of Sentences Act. With regard to solitary confinement as a punishment for adults, reference is made to section 116 paragraph 6 of the Execution of Sentences Act, which specifies that an additional term of solitary confinement may only be imposed if at least the period of time equalling the duration of such solitary confinement has elapsed prior to the solitary confinement to follow. Existing Austrian law is in compliance with the request that a period of solitary confinement should not be prolonged (due to additional disciplinary sanctions) without a break in solitary confinement.

Re. paragraph 103:

As the law stands, section 112 paragraph 1 of the Execution of Sentences Act specifies that the disciplinary sanction of prohibiting visits may only be imposed if the prisoner has abused his/her visiting right; the entitlement to visit a prisoner may not be restricted for any other reasons whatsoever. Providing for family contact during the solitary confinement of juveniles is an option that is currently being reviewed. However, when this sanction is imposed in its more lenient form (*einfacher Hausarrest*), individual rights or privileges, in other words also the right to receive visits may continue to be granted. Other forms of suitable human contact, for instance with expert service providers in prisons (social workers, psychologists, physicians, priests/pastors, etc.) are also available during the term of solitary confinement.

Re. paragraph 105:

The disciplinary sanction of restricting or withdrawing privileges (section 109(2) and section 111 of the Execution of Sentences Act) by restricting or withdrawing, for a certain time, the use of a television set provided to inmates (pursuant to section 24 paragraph 3(3) of the Execution of Sentences Act) is imposed very rarely at **Vienna-Josefstadt Prison**. In the (few) cases where such a sanction was indicated it was only imposed on (adult) inmates in single-occupancy cells, exactly so as to avoid collective punishment. However, it should be noted that the privilege of using a television set is to be restricted or withdrawn (section 24 paragraph 4 of the Execution of Sentences Act) if the prisoner abuses such privilege or if the preconditions on which the privilege was granted no longer exist.

These measures (restriction/withdrawal of privileges) are taken without a formal procedure and very often on short notice and affect all other prisoners sharing the same cell who are involved in an obvious disciplinary offence. Such action is occasionally also taken if all inmates of a cell persistently commit disciplinary offences, the gravity of which does not justify their segregation (section 116 paragraph 2 of the Execution of Sentences Act). This will, for example, happen if the peace at night is disturbed through noise nuisance during the night shift and consequently fellow prisoners frequently complain. In any case this sanction is only imposed if all inmates sharing the same cell have been engaged in the disciplinary offence and if several warnings (section 108 paragraph 1 of the Execution of Sentences Act) as well as appeals invoking a conduct in observance of the rules by the supervising officers have remained without effect.

Re. paragraph 106:

According to the provision of section 116 paragraph 3 of the Execution of Sentences Act, amended by Federal Law Gazette I No. 142/2009 and effective as of 1 January 2010, sentenced prisoners facing disciplinary charges explicitly have the right to submit evidence (calling of witnesses). This provision reads as follows: *“If a sentenced prisoner is accused of a punishable disciplinary offence, he/she shall be heard on such charges. He/she shall also have the right to demand further investigations. If the matter does not appear to be sufficiently settled thereafter, additional investigations shall be made. If such investigations find that a disciplinary punishment is to be imposed, the prisoner shall be heard once more”*. In this respect the recommendations of the Committee have been met. Questioning the prisoner and thus granting him/her the right to be heard are obligatory if the prisoner faces punishable disciplinary charges; he/she must be heard once more if the investigations made find that a punishment is to be imposed.

Re. paragraph 107:

The role of prison doctors and/or the health care provided to prisoners in solitary confinement is being reviewed. Daily visits paid by a medical practitioner are already provided for, however, only if solitary confinement is imposed as a particular safeguard.

Contact with the outside world

Re. paragraph 109:

At **Innsbruck Prison** remand prisoners are allowed to receive visits of at least half an hour three times a week. Upon request and subject to the approval of the public prosecutor's office, in individual cases also table visits are granted. Such meetings take place every Monday and, as a rule, last one hour.

At **Vienna-Josefstadt Prison** the fact that remand prisoners are usually only allowed to receive visits under closed conditions is the result of numerous attempts at smuggling (in particular drugs). In order to cope with the large number of visitors, three meeting rooms have been set up where up to eleven visits may take place at the same time. Under open conditions visitors cannot be supervised thoroughly for the purpose of preventing smuggling attempts as this is neither practicable nor is there sufficient staff available. Even in the visiting area for juveniles a 40-cm high transparent plastic partition had to be put up at the tables because of numerous attempts at smuggling. This is why, for security reasons, the present arrangement will not be modified.

The situation of foreign prisoners

Re. paragraph 110:

The suggestion to find ways of overcoming frequent language barriers existing between staff and the prison population will be followed up by offering more foreign language training.

Re. paragraph 111:

Basically it should be stated that the Austrian prison population is made up to a (very) high degree of foreign nationals who speak a great number of different languages. Both for economic and factual reasons, prison staff cannot do without interpreting services provided by other inmates in matters of daily life. Consulting external interpreters would bring regular prison operations to a standstill. On demand and in important cases, professional interpreters are definitely consulted.

Security issues

Re. paragraph 112:

In response to the CPT's report, the staff at **Innsbruck Prison** was instructed to properly complete the special forms provided in connection with the placement of a prisoner in a segregation cell. The time when segregation commences and ends is indicated on the form and, in addition, an internal note is made on it. The prisoners placed in a segregation cell are also offered outdoor exercise on a daily basis.

Re. paragraph 113:

Prisoners who are considered to be at risk are placed in a cell monitored by cameras and presented to the treatment staff (Fachdienst) and/or the psychiatrist as quickly as possible. They are visited by the ward officer, unit commander, and health-care staff on a daily basis and cared for by the prison doctor and psychiatrist during office hours. Human contact is at any rate ensured by this intensive care being provided.

Preliminary remarks on paragraphs 114 to 117:

By way of introduction to all the paragraphs relating to the carrying of service weapons by officers (114 to 117) it should be noted that Austria observes its obligation – resulting from court decisions passed by the European Court of Human Rights – which is to ensure, prior to any given case, that always the lightest weapon is used. Bearing that in mind, Austrian authorities are trying to equip officers with an array of weapons corresponding to the particular needs of various risk situations in order to be able to use, in any given case, the most moderate weapon that just meets its objective. Such weapons will only be admitted if an analysis of previous incidents finds that there is a tactical necessity and (especially medical) opinions adequately delineate the risk involved. These intensive efforts to modernise the means used in connection with providing substantial organisational and training measures have resulted in the fact that for more than a decade now there have been no complaints about any assault on the part of prison officers. The lawful and proportionate use of weapons has clearly led to a de-escalation of conflicts in prisons. The fact that some weapons are also carried openly, linked with the certainty that they are used by professionally trained officers and applied in a lawful and proportionate manner, creates more security through the preventive effect alone than carrying concealed weapons, which in fact signals uncertainty as concerns one's own duty and position.

Re. paragraph 114:

In this connection Austrian prison authorities see no reason to change the time-tested practice regarding the carrying of handguns by prison officers on night duty and would like to refer to the response to the previous CPT's report. In supplement thereto it should be noted that the carrying of handguns by staff on night duty when opening the cell doors especially of multi-occupancy cells always constitutes a security risk and thus an emergency due to the low number of prison officers on night duty. The correctional officer carrying the firearm is not in direct contact with inmates but only covers the escape route and holds the keys to the detention area. Moreover, he/she positions himself/herself at a safe distance (if possible behind the bars closing off the detention area or a unit door next to an alarm button) so as to be able to call for help in an emergency.

This practice has always been followed in Austria. There has never been a high-risk situation so that the view expressed by the CPT cannot be supported on the basis of previous experience made in Austria. It should rather be assumed that the prisoners' awareness of the existence of an officer carrying a handgun has a preventive effect, thus keeping inmates from attempting to break from prison or revolting during night duty.

Re. paragraph 115:

The truncheons, called *Rettungsmehrzweckstock* (RMS, "multi-purpose rescue baton"), are carried visibly by the members of custodial intervention units (*Einsatzgruppen*). These truncheons cannot be hidden from view because of their design (side-handled batons, the handle is fixed at a right angle in the upper part of the baton). The RMS batons can be used for self-defence in case of an attack, to rescue injured persons (transport aid) and in case of fire (breaking glass panes and similar materials) and are classified as a "low-risk service weapon" as defined in section 104 of the Execution of Sentences Act. When used as a weapon, they are aimed at the large muscle groups of the extremities, but the batons are not intended exclusively for use as a weapon.

No negative developments have been observed with respect to the relationship between members of the custodial intervention teams and inmates following the introduction of the RMS batons in 1996. This is mainly due to the fact that the intervention team members are integrated in all routine activities of the institution (e.g. workshops and ward duty) and are not assigned security tasks only.

To be entitled to carry an RMS baton, the members of the intervention team have to participate in a two-week training course which concludes with a final test. Moreover, all intervention team members are familiarised with the principles of affect control training (ACT) as part of their general training curriculum. In the ACT module, officers learn to reflect on their own attitude and the view they take of their job, as well as the role conflicts this creates. The aim is to build skills in dealing with difficult-to-control affective impulses, contradictory emotional forces and conflicts and to teach officers how to prevent and control destructive processes.

Re. paragraph 116:

Pepper spray is part of the standard equipment of Austrian prison officers. It is particularly suitable for use in confined spaces. Pepper spray is effective at a distance and can prevent physical conflicts which carry a high risk of injury both for officers and for inmates.

Pepper spray comes in the form of canisters which contain the active agent *oleoresin capsicum* (OC) in suspension and a propellant. The active agent *oleoresin capsicum* is a pure organic substance (chilli) and is released as a spray.

Prior to its approval, several expert reports – particularly by medical experts – were commissioned, and none of the reports voiced any reservations concerning the use of pepper spray in confined spaces.

There is a clear and detailed ordinance on how to proceed before and after the use of pepper spray. Among other provisions, it mandates that inmates who have been affected by pepper spray must be given First Aid and presented to the prison ward physician or brought to a hospital.

After a therapist was killed by an inmate in a prison in the mid-1990s, pepper spray has also been offered as a self-defence weapon to other prison employees besides the custodial staff. There is currently no reason why pepper spray should not be part of the standard equipment.

Re. paragraph 117:

The **stun device Taser X26** was re-approved for a final trial period in Austria's prisons as of June 2009. Prior to this trial period, a detailed evaluation was carried out by external experts (doctors and weapons experts) to analyse all previous incidents in which the stun gun was used in Austrian prisons (the Taser stun device was used in a total of 12 cases between 2005 and 2008). In their final reports, the experts concluded that no evidence of wrongful use of the stun device had been found – on the contrary, the experts expressly commended the prison staff for their professionalism and high level of training.

The measures requested by the CPT have been implemented by the Austrian prisons administration: The electric stun device Taser X26 shall be used subject to the principle of proportionality and is intended for use only in situations which would also justify the use of lethal weapons under Austrian law. Use of the stun device is restricted to those prison officers who have been trained in the handling of this weapon in special training courses. The level of training of each officer is tested once every year in an obligatory test.

In addition, every officer who is trained in handling the stun device Taser X26 has to receive an additional 8-hour course in First Aid. This training course is specifically designed to enable officers to cope with First Aid situations which may arise from the use of the stun device in prison. Moreover, all participants in this training course are also trained in defibrillation. A defibrillator has to be on site wherever the stun device Taser X26 is used. The First Aid training course has to be repeated after five years.

The ordinance now in force has been drafted in cooperation with the expert service providers in Austria's prisons (physicians, psychologists, social workers, and healthcare experts) and with external experts from the fields of medicine and weapons technology. Eleven events were organised to present the content of the ordinance to staff in supervisory functions and discuss it with them. The responsible representatives of the Austrian penal system are convinced that the stun device Taser X26 is a ranged weapon which, if adequately used, can help prevent grievous bodily harm, both among prison personnel and among inmates. Notably, the strong deterrent effect of the stun device should be underlined.

Representatives of Amnesty International in Austria received a copy of the ordinance issued at the start of the final trial operation period in summer 2009. Amnesty International Austria acknowledged the ordinance positively and saw it as an example of good regulatory practice.

Psychiatric and social welfare establishments

Living conditions

Re. paragraph 123:

Criticism with respect to the material condition of patients' rooms have been taken into account at the *Sigmund Freud Psychiatric Hospital* (Landesnervenklinikum Sigmund Freud, LSF), Graz, in planning for improvements over the last few years. The step-by-step efforts to provide aesthetically pleasing and personalised rooms to patients will continue in the years to come. Solving this problem is one of the focus areas of the "LSF 2020" project.

It was already some time ago that the Chief Physician of the hospital issued instructions to all employees of the hospital not to keep beds in reserve if they are not currently needed.

Re. paragraph 124:

At the *Johannes von Gott Nursing Centre*, Kainbach, completion of the 3rd construction phase (northern building with three units) is scheduled for March 2010. After completion of the works, the number of residents per unit will be reduced.

Current planning for future improvements and extensions of the existing infrastructure has been concluded with the support of a construction management consultancy company (Delta).

The result of this planning exercise is a master plan for the next five years which was presented to the regional heads of the Brothers Hospitallers of St. John of God in September 2009.

The objectives of the infrastructure improvement measures are:

- reduction of the number of residents per unit
- increasing the homogeneity of the groups
- approximation, in all living units, activity and working areas, to the standards concerning performance of services and remuneration annexed to the Disabled Persons Act (*Behindertengesetz*) of the province of Styria
- comprehensive and individualised care for all residents

Re. paragraph 126:

Actions which were discussed in the May 2009 statement submitted by the *Johannes von Gott Nursing Centre* in relation to the "immediate observations" of the 2009 CPT report, have been fully implemented in the interim:

- Residents living in units with gardens are taken into the garden every day according to the daily care schedule.
- Residents living in units without immediate garden access are taken for walks and receive other pedagogic services as alternatives to staying inside the unit.

The following documents are annexed as evidence of these actions:

- instructions to all units;
- one example of a computerised medical file (N.Ca.Sol. software) of the care plan and care documentation for a resident who lives in unit Johannes, and
- a list of all the pedagogic services provided to residents who live in units without garden access.

This resulted in additional personnel requirements, which were met by the immediate transfer of 1.5 full-time equivalents to unit Markus and additional hiring of two persons for unit Vinzenz.

Staff

Re. paragraph 128:

Since 2008, the position of a second psychiatrist at the *Johannes von Gott Nursing Centre* has been continually advertised. Because of the current market situation (the number of available psychiatrists has been insufficient for several years), it has not been possible to fill the position until now. However, the position is budgeted for and further efforts are being made to recruit a second psychiatrist.

Treatment

Re. paragraph 130:

The duty of physicians to fully inform patients about their medical treatment is the subject of thorough and systematic discussions with medical staff at the *Sigmund Freud Psychiatric Hospital*, by way of the head physicians.

Re. paragraph 131:

Along with the infrastructure improvement measures, a comprehensive new care master plan has been launched on the basis of the LEVO standards set by the province Styria (LEVO: Regulation on service performance and remuneration in connection with the province of Styria's Disabled Persons Act).

Moreover, two training and quality assurance programmes have been introduced to ensure an even balance in the amount of care given to the residents. These programmes are: *KIBB – Kommunikations- und Informationssystem Berufliche Bildung* ("Vocational Training Communication and Information System", following the example of a German programme), and *KTQ – Kooperation für Transparenz und Qualität im Gesundheitswesen* ("Cooperation for Transparency and Quality in Healthcare", a certificate which is also modelled on a similar programme in Germany). Both programmes have been instituted with a view to improving the therapeutic activities in the units mentioned.

Re. paragraph 132:

The 1992 Styrian Burial Act (*Steiermärkisches Leichenbestattungsgesetz 1992*) stipulates in section 3 paragraph 1 that the body of any deceased person, unless provided otherwise in paragraph 4, shall be examined by the district physician who is responsible for providing community public health services, or the physicians appointed for this purpose by the authorities of the provincial capital Graz and the local communities.

Under section 3 paragraph 4 of this Act, the body of a person who died in a public or private, for-profit or charitable hospital, shall be examined by the Chief Physician of that hospital, or by a physician whom the Chief Physician has appointed for this task and who must be entitled to work independently as a physician.

As the *Johannes von Gott Nursing Centre* is a private, non-profit hospital within the meaning of this provision, examining the dead is not the duty of the district or community doctor, but primarily incumbent on the Chief Physician of the Nursing Centre. The Chief Physician may

appoint another physician who has the right to practice independently (*ius practicandii*) to conduct the examination. This may well be the district or community doctor, but one of the hospital's physicians may also be appointed for this task.

The competent public health authority of the province of Styria shall ensure, with immediate effect, that examinations of the bodies of deceased persons are conducted as prescribed by the above-quoted legislation, so that the physicians of the institution in question shall receive full information.

If the examination or other circumstances give rise to any suspicion of a criminal act in connection with the death of a resident, the competent public prosecutor's office shall be notified immediately; the latter will then request an autopsy to be performed.

Means of restraint

Sigmund Freud Psychiatric Hospital

Re. paragraph 134:

Under article 12, paragraph 1(1) of the Federal Constitution, the federal government regulates "hospitals and nursing homes" only in principle, while the legislation that implements these principles, as well as its enforcement, is reserved for the provinces (*Länder*). The latter have exclusive competence in all matters relating to the organisation of nursing establishments.

The Federal Ministry of Health has therefore informed the provinces of the CPT's views in respect of the use of net beds and the necessity of continuous and direct supervision of the patients (*Sitzwache*). It should be noted that net beds are not used at all in several provinces. In Styria, net beds are used in individual cases and in compliance with the provisions of the Act on Involuntary Placement. The provincial government is aware of the problem and has taken measures for some time to minimise the use of net beds (see paragraphs 137 and 138 below).

Re. paragraphs 135 and 137:

To comply with the recommendation that patients in net beds and mechanically restrained patients be better supervised, while taking into account the availability of staff, mechanically restrained patients are treated jointly in one unit to ensure continuous observation and keep them separated from non-restrained patients. To comply equally with both recommendations is not feasible because of the additional manpower that would be needed for separate supervision (individual *Sitzwachen*).

Re. paragraph 136:

It has been agreed with the nursing management to pay particular attention to dress, also with respect to restrained patients. There is certainly no general practice in the institution of restraining patients only in light clothing. However, the psychiatric state of gerontopsychiatric patients poses the daily challenge to care-givers to give restless and confused patients as much room for activity as possible, which may result in their repeatedly undressing themselves.

Re. paragraph 138:

In the unit for addicted persons at the *Sigmund Freud Psychiatric Hospital*, net beds are used only for patients subject to involuntary placement, who fulfil the criteria for further restraint; the patients' representatives are notified of these patients accordingly.

There is no regular practice of using open net beds for patients who are not subject to involuntary placement. However, the lack of space in the closed units for acute cases (one room plus bathroom for each unit) sometimes leads to overcrowding, and staff resort to placing the patients in net beds in the adjacent open areas. However, concrete steps are being taken to change admission management in such a way as to allow a continuous reduction of the number of net beds, which will help to gradually improve the oppressive atmosphere described by the CPT delegation. Immediate removal of all net beds is not feasible because of the structural and space situation of the closed units.

The Styrian regional health authority (*Landessanitätsbehörde*) wishes to point out that several meetings have meanwhile been held at the *Sigmund Freud Psychiatric Hospital*, in which members of the regional health authority participated, and which dealt, *inter alia*, with the desired reduction of the net beds. At a *jour fixe* on patient safety held at the *Sigmund Freud Psychiatric Hospital* on 7 July 2009, the regional health authority was specifically informed about action taken (improvements with respect to net beds).

On 24 September 2009, a *jour fixe* on cooperation with the law enforcement authorities took place at the *Sigmund Freud Psychiatric Hospital*, which the regional health authority also used to discuss the net bed issue with hospital staff.

Most recently, the regional health authority used a meeting on 24 November 2009 to point out, with great emphasis, which improvement measures have been proposed by the CPT (general reduction of restraint by belts/straps, monitoring of patients by a professional caregiver as a *Sitzwache* who can offer human contact with the patient and reduce his/her anxiety, and the issue of net beds in general).

Finally, the regional health authority plans to hold a meeting with representatives of the Brothers Hospitallers of St. John of God who run the Kainbach Nursing Centre, and of the *Sigmund Freud Psychiatric Hospital*, to use the good practice example of the Kainbach Nursing Centre to induce progress with the reduction of net bed use at the *Sigmund Freud Psychiatric Hospital*.

Re. paragraph 139:

A central register has been introduced at the *Sigmund Freud Psychiatric Hospital* and is currently in the pilot stage. An evaluation is planned for 2010.

Johannes von Gott Nursing Centre**Re. paragraphs 141 to 144:**

With respect to the comments in connection with chemical restraint (medication), it should be noted that under section 3 paragraph 1 of the Act on the Residence in Welfare Homes (*Heimaufenthaltsgesetz*), a restriction of freedom within the meaning of the law takes place if a resident is prevented from changing his/her location, against or without the resident's will, by the application of physical means, in particular mechanical, electronic or medication measures, or the threat of such measures.

The administration of medication may therefore constitute a restriction of freedom if the other conditions apply as well. A number of court decisions (to some of which the CPT report refers) have yielded indicators capable of generalisation with respect to the definition of restriction of freedom by medication as follows:

According to the court decisions, the crucial question is whether a treatment is applied with the direct aim of suppressing the resident's urge to move about, for example to prevent her/him from endangering him/herself or others by throwing objects. This constitutes a restriction of freedom by medication (*medikamentöse Freiheitsbeschränkung*), irrespective of any additional therapeutic considerations and objectives which may be pursued at the same time (see for example a decision by Austria's Supreme Court: *Oberster Gerichtshof 7 Ob 186/06p iFamZ 18/07 = EF-Z 2007/16 = EvBl 2007/18 = Zak 2006/673*). The Ministry of Justice takes the view that the medication in this case also constitutes a "severe medical intervention" (*schwerwiegende medizinische Behandlung*) within the meaning of section 283 of the Civil Code (*ABGB*), which requires approval by the court-appointed guardian (*Sachwalter*) of the resident if the latter is unable to give a valid consent. (see: *Erläuternde Bemerkungen zur Regierungsvorlage 353 BlgNR 22. GP, Seite 11* – "Explanatory notes on Government Bill 353, submitted to parliament in the 22nd legislation period, page 11").

The administration of medication may also constitute a restriction of freedom if the resident is not completely immobilised by it (Regional Court (*Landesgericht*) Steyr, 1 R 194/07h). Medication is held to be purely medical treatment and constitute no restriction of freedom only in those cases where the medication serves a strictly therapeutic function, i.e. when the only purpose is to improve the resident's health – for example, when sedating medication is administered in the evening to improve a resident's sleeping disorder (day-night reversal). (Regional Court Ried, 6 R 115/07i; Regional Court Wels 21 R 45/07b.)

Whether an administration of medication constitutes a restriction of freedom or only medical treatment, has to be judged in each individual case on the basis of what the direct purpose of the medication was. If the medication is administered in response to a potentially dangerous scenario, this will always (though not only) constitute a restriction of freedom. The Federal Ministry of Justice takes the view that the court decisions have resulted in sufficiently clear criteria for what constitutes a restriction of freedom by medication. This fundamental standard will prevail, even though courts may in individual cases reach diverging conclusions. However, the Federal Ministry of Justice has initiated the establishment of a multi-disciplinary working group headed by the Lower Austrian association for guardianship and residents' representation, which has been charged with drafting guidelines on how to deal with restriction of freedom by medication. The working group has not yet reported on the results of its deliberations.

Re. paragraph 148:

Under section 5 paragraph 2 of the Act on the Residence in Welfare Homes, means of restraint – other than medication – have to be ordered by a doctor if their application is expected to last longer than 24 hours or to be *repeatedly* required. In practice, there will be only very rare cases in which restraining measures, which become necessary at short notice, will have to be taken only once and not repeatedly (see Hofinger et al., *Rechtsschutz und Pflegekultur – Effekte des Heimaufenthaltsgesetzes* (2008), p. 124 – "Legal safeguards and culture of care – impacts of the Act on the Residence in Welfare Homes"). For smaller nursing homes and establishments for disabled persons in general, this means that they have to make organisational preparations to have a doctor available who can order the means of restraint if the necessity arises.

This has resulted in some problems in the past – among other reasons because physicians are often not able to fully judge the implications which an order will have for the care of a resident, including pedagogic care of persons with mental disabilities (a more detailed

discussion is contained in Hofinger et al., Op. cit. 124 et seq.). In those cases which are covered by section 5 paragraph 1(2,3) of the Act on the Residence in Welfare Homes, those who manage care and pedagogic services are in much closer contact with the resident and may therefore be in a much better position to judge the necessity of means of restraint, as well as the most suitable method of restraint, than an outside physician who does not know the patient. Many of the institutions covered by the Act on the Residence in Welfare Homes do not focus first and foremost on medical treatment of the residents; rather, they are geared to providing assistance and care for residents in their everyday lives, a function which is fulfilled by non-medical staff who are in very close contact with the residents and know their needs very well. The Federal Ministry of Justice has therefore proposed in a draft bill which is currently being discussed to restrict doctor's orders to those cases which require medical expertise; however, a physician's report or comparable document shall continue to be required as evidence in all cases of mental illness or mental disability.

Safeguards

Initial placement of a civil nature and discharge procedures

Re. paragraph 152:

It has now been ensured that long-term patients at the *Sigmund Freud Psychiatric Hospital* are awarded the status of patients in open care.

Safeguards during the stay in psychiatric/social welfare establishments

Re paragraph 157:

By way of introduction, it should be pointed out that pursuant to article 15, paragraph 1 of the Federal Constitution, the provinces are responsible for regulating the construction, maintenance and operation of nursing/welfare establishments for persons who need constant care, but only intermittent medical attention (relevant Constitutional Court decision: VfSlg 13237/1992 = JBl. 1993, 382). This applies also to the supervision of such establishments, with the only exception – which has been clarified by the Constitutional Court – of regulations in respect of measures in this area which deprive persons of their freedom.

In this area, the Act on the Residence in Welfare Homes defines extensive rights and duties of the residents' representatives. In particular, section 9 paragraph 1 of the Act on the Residence in Welfare Homes stipulates that the residents' representative has the right to visit the establishment unannounced, to form a personal impression of the residents, to discuss with the management and staff of the establishment whether criteria are met for restricting a resident's personal freedom, to question those who represent the interests of residents or clients of the establishment, and to have access to the medical files, care documentation and other written records on the residents to the extent this is necessary to fulfil his/her duties. Under section 3 of the Act on the Residence in Welfare Homes, the residents' representative has the right to contact those institutions which are charged with the supervision of the establishment or the processing of complaints and to inform them about the observations he/she has made in the context of his/her work; further, the residents' representative has the duty to provide information to these institutions to the extent that this is required by them in the performance of their duties.

Under section 8 paragraph 3 of the Act on the Residence in Welfare Homes, it is incumbent upon the Federal Minister of Justice to determine, by government regulation, the suitability of

an association for providing residents' representatives under section 8, paragraph 3 of the Act on the Residence in Welfare Homes. The associations are subject to expert supervision by the Minister of Justice and have to produce annual reports about their activities, experiences and observations; the annual report for any given calendar year must be submitted by 30 April of the following year. The associations are paid for their representation and counselling activities out of the federal budget as provided in the Federal Finance Act (*Bundesfinanzgesetz*) for each year.

With respect to the staff and financial situation of the residents' representatives associations, it should be noted that the regulations implementing the Act on the Residence in Welfare Homes originally foresaw 50 positions for residents' representatives nationwide. Currently, the four associations involved in these activities are able to finance some 54 positions.

However, currently existing capacities do not suffice; the main reason being that the number of establishments which come under the provisions of the Act on the Residence in Welfare Homes has increased significantly – more than 50% above the original assumptions – since the coming into force of the Act. At the moment, a total of 2,335 establishments across Austria are covered by the Act on the Residence in Welfare Homes.

The Federal Ministry of Justice has repeatedly pointed out the need to extend residents' representation, most recently at the time of submission of requests for the two-year budget period 2009/2010. However, the financial means made available to the Ministry of Justice in the 2009 and 2010 federal budgets have been insufficient to increase the residents' representation capacities.

As has been noted in the CPT's report, patients who are subject to involuntary placement in a psychiatric hospital or unit (i.e. who are deprived of liberty), enjoy free-of-charge representation by a patients' advocate from the time of admission to the time of discharge from the institution (section 14 of the Act on Involuntary Placement). Moreover, every involuntary placement has to be examined by an independent court which rules on the admissibility of the involuntary placement (sections 17 et seq. of the Act on Involuntary Placement). If so requested, the court also has to rule on further interventions (further restriction of the patient's liberty, medical treatments, restrictions of contact with the outside world: section 33 et seq. of such Act). The court procedure includes an oral hearing of the patient (sections 19 and 25 of such Act). The cost of the proceedings is covered by the federal budget (section 40 of such Act). Under section 38c of the Hospitals and Sanatoria Act (*Krankenanstalten- und Kuranstaltengesetz*), the hospital statutes have to ensure that patients' advocates and courts can fulfil their legal functions and that adequate rooms are available to them for this purpose.

Thus, each case of involuntary placement in Austria is subject to independent examination by an external institution – the independent courts. Furthermore, the patients' advocates – and the residents' advocates within the meaning of the Act on the Residence in Welfare Homes – are drawn from associations which have been determined as suitable under the provisions of the relevant law (Act on Court-Appointed Guardians from Associations, Patients' Representatives and Residents' Representatives [*Vereinssachwalter-, Patienten-anwalts- und Bewohnervertretergesetz*]); they are subject to supervision by the Ministry of Justice and have to submit annual reports on their activities, experiences and observations. If the patients' advocates note grievances in psychiatric institutions, they have to include those in the report. By virtue of their position as legal representatives of the patients, the patients' advocates have the right to make regular unannounced visits to psychiatric institutions that restrict patients'

freedom, to have private conversations with the patients, and to have access to patients' medical files and other relevant documentation; the patients' advocates duly use these rights in their capacity as legal representatives of the patients.