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**Response of the Austrian Government
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 14 to 23 April 2004

The Austrian Government has requested the publication of this response. The report of the CPT on its April 2004 visit to Austria is set out in document CPT/Inf (2005) 13.

Strasbourg, 21 July 2005

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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 14 to 23 April 2004

Vienna, 14 June 2005

Introduction

The promotion and protection of human rights and the rule of law are priorities of Austrian domestic and foreign policy. The cooperation with international monitoring and prevention mechanisms in the field of human rights is of central importance in this respect.

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

The reports on the first three visits, together with the respective Responses of the Austrian Government were published in 1991, 1996 and 2000.

The last visit of the CPT to Austria took place from 14 to 23 April, 2004. The CPT adopted its report on the visit at its 55th meeting, held from 8 to 12 November 2004 and transmitted the report to the Austrian authorities by covering letter of 14 December 2004. Paragraph 150 of the report requests the Austrian authorities to provide within six months a response giving a full account of action taken to implement them.

The Response is in line with the structure of the Committees report. The recommendations, comments and requests for information are cited in bold italics.

Two enclosures (medical questionnaires in English and German, cf. response to paragraph 49) are transmitted with the report.

Recommendations, comments and requests for information

A. Establishments under the authority of the Federal Ministry of the Interior

Paragraphs 13 and 14:

The CPT calls upon the Austrian authorities to redouble their efforts to combat ill-treatment by the police. Senior police officers should be required to deliver to their staff the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions.

At the outset we should like to point out the laws and decrees in connection with allegations of ill-treatment and/or the prevention of ill-treatment of which the CPT was already informed on the occasion of its visit.

In addition to the decrees issued in coordination between the Federal Ministry of the Interior and the Federal Ministry of Justice, senior police officers must ensure, within the scope of their administrative supervisory duties, that their staff take action in accordance with the law (Sec. 45 of the 1979 Public Service Act (*Beamten-Dienstrechtsgesetz*), Federal Law Gazette No. 333/1979, as well as Sec. 2 of the Decree of Guidelines (*Richtlinienverordnung*), Federal Law Gazette No. 266/1993).

In summary, based on existing legislation, organisational arrangements, as well as the obligatory training curricula a clear message is being communicated to all staff that the ill-treatment of detained persons is not acceptable and will be sanctioned accordingly.

Furthermore, the Federal Ministry of the Interior is planning a review of the 1999 Detention Regulations (*Anhalteordnung*) with a view to amending them. The review process is to start end of June, 2005, and to be completed in autumn 2005. In the course of this review, special emphasis will be placed on enhancing measures to prevent ill-treatment.

Paragraphs 15 and 16:

The Committee recommends that the Austrian authorities issue instructions, in the light of the above remarks. (regarding the practice of restraining a person in a hyper-extended position with hand and ankle cuffs linked together)

With regard to the detainee who informed the Committee that he had been restrained in the manner described, we should like to state as follows: As his presentation at the Federal Asylum Office apparently did not turn out as he had expected, this Moldavian citizen (a foreign national awaiting enforcement of a removal order of the Office of the Amstetten County Administration) swallowed a radio battery (presumably to effect his release).

After complaining of severe stomach pains on 3 April 2004, he was immediately examined by a police doctor and subsequently, on doctor's orders, transferred to the General Hospital of Linz for an X-ray examination and/or further treatment. This is where the battery was found in his stomach and intestines. However, the detainee refused to be treated further by the hospital physician.

After being returned to the police detention centre (PAZ) and being declared physically fit by the police physician to continue to remain in custody, the detainee threatened to commit suicide. For this reason he was placed in a segregation cell and was hand and ankle-cuffed on 3 April 2004 at 5.20 p.m. in order to prevent any self-inflicted injury from occurring as was expected.

The detainee's statement that the two sets of cuffs were joined cannot be confirmed.

After the detainee had calmed down somewhat, his hand and ankle cuffs were removed at around 10.00 p.m. However, he remained in the segregation cell until 8 April 2004.

The Federal Ministry of the Interior is currently considering the introduction of alternative technical means of restraint. A decision on the matter, to be followed by corresponding instructions, is sought in the course of the review of the 1999 Detention Regulations mentioned under paragraphs 13 and 14.

Paragraph 17:

The CPT would like to be informed in due course of the outcome of the criminal and disciplinary proceedings initiated in the above-mentioned case (Cheibani W.), as well as measures subsequently taken to avoid similar situations in the future (including any amendments to Instruction No. 5121/35-II/4/02 of the Federal Ministry of the Interior concerning the use of means of restraint by law enforcement agencies).

A first statement of the known facts was sent to the public prosecutor's office as early as 15 July 2003, and further investigations were carried out by the office of internal affairs of the Federal Ministry of the Interior. All statements and findings were presented to the public prosecutor, who is responsible for their assessment.

To date, 10 persons (police officers, nurses, and an emergency physician) have been indicted by the public prosecutor at the Provincial Court of Vienna.

In its decision, the Independent Administrative Senate (UVS) declared the official action taken by the Federal Police Directorate of Vienna against Cheibani W. unlawful. The Federal Minister of the Interior lodged an official complaint with the Administrative Court of Austria against this decision; these proceedings are still pending.

According to the relevant regulations governing the training of police officers in Austria – chapter on restraining techniques –, the restraining of the feet and legs of an individual who was lying face down on the ground was an admissible measure.

A working group was immediately set up at the Federal Ministry of the Interior which evaluated all relevant regulations pertaining to “Official actions against resisting persons” and presented a comprehensive report. The Federal Minister of the Interior also requested the Human Rights Advisory Board to make an evaluation of these regulations.

The results of these evaluations were comprised in a comprehensive report issued by the Human Rights Advisory Board (HRAB) with regard to the “Use of police force – minimising risks in problematic situations”, which is available for download in German at www.menschenrechtsbeirat.at.

The HRABs report contains 12 recommendations, dealing i. a. with enhancing training for interacting with persons with psychological illnesses, awareness-raising regarding the risks of fixation measures, and the ex post documentation of fixation measures whenever they are inevitable.

On this basis, the regulations governing the training of police officers for operations entailing the use of physical force were revised.

Paragraph 18:

Adequate professional training.

The CPT would like to receive further information on this issue.

Moreover, the CPT would like to be informed of the steps taken by the Federal Ministry of the Interior to implement the recommendations of the study carried out by the Human Rights Advisory Board on the use of discriminatory language by law enforcement officials.

The CPT has, with good reason, placed great emphasis on the issue of interrogation techniques. Also with regard to the training of its staff, the Federal Ministry of the Interior is fully aware of how sensitive this issue is - one of the reasons why great significance was attributed to the report of the CPT.

All ongoing training programmes, such as the seminars on interrogation techniques, are constantly evaluated. As a consequence of this evaluation process, the chapter on interrogation techniques was incorporated into the basic training programme required for all law-enforcement officers.

As far as the in-service training of police officers is concerned, the training programmes are being standardised throughout Austria in the course of the streamlining of the protective forces. This ensures that the same high standards are observed in all the provinces and that a uniform evaluation can be made, making it possible to speed up any adjustments that may become necessary.

Moreover, ongoing seminars titled “interrogation techniques” are offered as part of the in-service training programmes, which emphasises the significance of this issue.

The recommendations of the Human Rights Advisory Board on the use of language by law enforcement officials were received by the Federal Ministry of the Interior with great interest. As already explained in our response of that time, this issue is handled on various fronts. Even though the issue of enhancing police officers’ sensitivity in the use of language has been emphasised in the past, the recommendations of the Human Rights Advisory Board have resulted in the incorporation of special inputs into existing training programmes.

In the field of basic training, the initial and ongoing training of educators places more emphasis on the use of language so that law enforcement officers are exposed to relevant sensitivity issues from their initial training.

The various training programmes also take into account the recommendations of the HRAB by modifying or adding to the curricula.

By way of example, the seminar “Police and Africans” should be mentioned in which a section called “Use of discriminatory language” was incorporated as a response to the recommendations of the HRAB.

A further example is the co-operation of the Federal Ministry of the Interior with the US civil rights advocacy organisation “Anti Defamation League” and its programme “A WORLD OF DIFFERENCE”. 40 training seminars are held every year for two days eight hours each with the aim of raising the awareness of participants in dealing with people of a different language, religion and ethnic background. All newly recruited law enforcement staff are obliged to participate in these seminars, which are attended by a total of approximately 800 officers every year.

The recommendations of the HRAB are therefore being implemented by way of numerous activities within the existing initial and ongoing training programmes. Great significance is attributed to raising the awareness of officers with regard to the use of language, and the recommendations of the HRAB have been incorporated into various initial and ongoing training programmes.

Paragraph 19:

In order for the CPT to obtain a full picture of the current situation, the Committee would like to receive the following information in respect of 2003 and 2004:

- *the number of complaints of ill-treatment made against law enforcement officials;*
- *the number of criminal and disciplinary proceedings instituted as a result of those complaints;*
- *an account of criminal and disciplinary sanctions imposed.*

Further, the CPT would like to be informed of progress made in respect of the drafting of a Government bill for the amendment of the disciplinary law provisions within the Public Service Act (Beamtendienstrechtsgesetz).

Please refer to the following chart:

| | 2003 | | | 2004 | | |
|-----------------------------------|----------------|---------------------|-------|----------------|---------------------|-------|
| | Federal police | Federal gendarmerie | Total | Federal police | Federal gendarmerie | Total |
| Complaints: | 384 | 75 | 459 | 398 | 73 | 471 |
| Of which unfounded: | 0 | 3 | 3 | 0 | 1 | 1 |
| Criminal complaints: | 384 | 72 | 456 | 398 | 72 | 470 |
| Criminal complaint discontinued : | 366 | 70 | 436 | 360 | 57 | 417 |
| Found guilty: | 0 | 1 | 1 | 2 | 0 | 2 |
| Found not guilty: | 6 | 1 | 7 | 2 | 0 | 2 |
| Proceedings pending | 12 | 0 | 12 | 34 | 15 | 49 |
| | | | | | | |
| Disciplinary proceedings: | 10 | 8 | 18 | 4 | 3 | 7 |
| Disciplinary penalty: | 7 | 3 | 10 | 2 | 0 | 2 |
| Proceedings pending: | 2 | 0 | 2 | 2 | 3 | 5 |

At present, there are no plans to amend the Public Service Act as regards its disciplinary provisions. The current statutory provisions are deemed sufficient in order to adequately proceed against an official's misconduct.

Paragraph 20:

The CPT invites the Austrian authorities to review the status of the Human Rights Advisory Board, in the light of the above remarks.

The fact that the Human Rights Advisory Board's competence is limited to detention facilities under the Federal Ministry of Interior does not prevent the Board's commissions from interviewing detained persons after their transfer to court prison – legally as well as factually. Indeed, the commission for Upper Austria and Salzburg has, in 2004, started to visit court prisons in order to contact former police detainees and was assisted thereby by investigating judges. Eastern Austrian commissions intend to follow that practice in the second half of 2005. The Ministry of Justice intends to issue a general decree on the administration of such visits and contacts by members of commissions.

The six commissions of the Advisory Board discussed questions of prevention of ill-treatment intensively during their regular internal conference in March 2005. The Advisory Board and its commissions intend to follow-up on this matter.

Concerning the future status of the Human Rights Advisory Board, an inter-agency preparatory process on all questions relating to the planned ratification of the Optional Protocol to the UN Convention against Torture (OPCAT) has been initiated by the Federal Ministry of Foreign Affairs, with the participation of human rights experts. Among participants in this process there is agreement that future monitoring structures would have competence for all persons in detention in police, justice and mental health establishments and should meet the requirement of full independence. Taking into account the present comprehensive human rights mandate of the Advisory Board (not being limited to detention situations) as well as the existing prison commissions for court prisons and correction establishments, however, the development of a new monitoring system and the possible transfer of existing bodies into it require a still more thorough and broad discussion.

Paragraph 21:

The CPT recommends that the form filled out by doctors concerning injuries observed on persons in police custody contain, in addition to the already existing elements, the doctor's conclusions as to the degree of consistency between any allegations made by the detained person concerned and the objective medical findings.

The Austrian authorities fully agree with the CPT's recommendation and will take appropriate action for its implementation.

A decree will be issued to take into account the recommendations of the CPT to include the doctor's conclusions as to the consistency between the objective medical findings and the allegations made by the detained person concerned in the form filled out.

In addition, this fact will be pointed out in the regular discussion and training groups of police medical officers on medical care provided in the police detention centre. The medical staff will be requested to implement this recommendation and, to make a statement on the consistency between any allegations and the medical findings.

Paragraphs 22 to 26:

The CPT recommends that the Austrian authorities take steps to ensure that:

- ***the right of access to a lawyer is enjoyed by all persons deprived of their liberty, as from the moment they are obliged to remain with the law enforcement agency;***
- ***the rights to talk to a lawyer in private and to have a lawyer present during interrogations are never totally denied to persons deprived of their liberty.***

The Committee recommends that a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer be developed as a matter of urgency and be applicable as from the very outset of police custody.

The Federal Ministries of Justice and of Interior pay particular attention to the right of access to a lawyer during police detention of suspects under criminal procedure. Access to a lawyer at this stage has been a matter of intense and very detailed debate (including several alternative texts) during the final stage of parliamentary deliberations leading to the adoption of the Criminal Procedure Reform Act in February/March 2004. Taking into due account the comments and recommendations of the CPT in this respect, the introductory decree to the said Act to be issued in 2007 (before the Reform Act comes into force on January 1st, 2008) will aim at precise wording in order to safeguard that access to a particular lawyer, asked to serve as defence counsel by a detained suspect, will only be restricted or delayed in exceptional circumstances as defined in the Act. In addition, it has to be mentioned that the Reform Act foresees electronic recording of the interrogation as an alternative to restricted access to a lawyer in such cases (Sec. 164 par. 2 and Sec. 97 Reform Act).

The entry into force of the Reform Act is scheduled for 2008 to allow for time to train judges, prosecutors and law enforcement officials in the new regulations and to bring about the necessary changes in the personnel structure of the public prosecutors' offices.

Following the suggestions of the CPT to arrange, under such exceptional circumstances, for access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation in case of unsupervised contact with the suspect and/or presence during interrogation, the Federal Ministry of Justice is willing to start a discussion process on such a possibility. However, in view of the fact that the Reform Act was adopted by Parliament after long and thorough debate only recently, the amendment of this reform act cannot realistically be expected to take place quickly.

Concerning the introduction of a system of legal aid for persons in police custody, the Austrian government is aware of the necessity to adapt the current system of legal aid to the new legal structures of pre-trial proceedings contained in the Criminal Procedure Reform Act, in particular to the (enhanced) role of the police. This adaptation is to be achieved in cooperation of the Ministries of Justice and the Interior and representatives of the lawyers. A first exchange of views with the Bar Association and the Association of Defence Counsel to that effect has already been undertaken. Regional experiments, e. g. in the province of Styria, of providing access to a lawyer for persons in police custody around the clock seven days a week provided promising experience. The biggest obstacle yet to overcome concerns the problem of appropriate funding.

Paragraphs 27 to 31

The Committee invites the authorities to take further steps to ensure that the information sheet is made more user friendly.

The delegation paid particular attention to the application of specific safeguards concerning young persons apprehended in relation to criminal offences.

The Committee recommends that the Austrian authorities take steps to ensure compliance with this requirement (of protecting young persons by requiring a trusted person to be present during interrogation).

The CPT recommends that steps be taken to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present.

The CPT recommends that a specific version of the information sheet, setting out the particular position of detained juveniles and young persons, be developed and given to all such persons taken into custody. For this age group especially, the information sheet should be made more easy to understand and available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension. In this connection, the Austrian authorities should take into account the recent Recommendation Rec(2003)20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

The information sheet setting out the rights of persons detained by the police was prepared by the Federal Ministry of the Interior together with the Federal Ministry of Justice, initially in German in an updated version, and communicated to the authorities and departments at a lower level by circular dd. 29 April 2004. Subsequently, the text was translated into a total of 26 languages, of which the authorities and departments were informed. All information sheets can be easily downloaded from the computer system of the Federal Ministry of the Interior. This is why it is no longer necessary to have the different language versions of the information sheet available in the various police establishments as was previously the case.

As far as the wording of the information sheet is concerned, it should be stated that the text is naturally modelled after the wording as contained in the respective statutory provisions. This is regarded necessary and sensible as it can be assumed that a “narrative” processing of information, in other words one in deviation from the text of the law, would lead to misunderstandings or maybe even create wrong expectations of detainees.

With regard to the CPT’s proposal to develop a “special version of the information sheet for detained juveniles and young persons” we should like to state as follows:

The particular position of juveniles and young adults according to the provisions of the Austrian Juvenile Justice Act (*Jugendgerichtsgesetz*) (Secs. 35 to 37 of the JGG, Federal Law Gazette No. 599/1988) was taken into account when preparing the text of the information sheet to the extent that item “3. Presence of a lawyer” specifically deals with the rights to which juveniles and young adults are entitled. As concerns all other items of the information sheet, a distinction between detained juveniles and/or young adults and other persons detained is not necessary as the groups of individuals mentioned all enjoy the same rights.

The “specific version of the information sheet” proposed by the CPT would thus differ from the “regular” version only in one respect. Due to these circumstances we would like to request the Committee’s understanding that the Federal Ministry of the Interior and the Federal Ministry of Justice at present do not intend to implement the proposal mentioned above.

Moreover, item 3 of the information sheet is modelled after the Recommendation Rec (2003) 20 of the Council of Europe’s Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice mentioned by the CTP, whereby the needs of juvenile suspects must be considered for example by giving them the benefit of the presence of their parents or other person entitled to bring up the child.

Ultimately, in addition to all measures taken so far, the Federal Ministry of the Interior will make every effort, in its future criminal police (training) seminars, to ensure that police officials will exercise particular care in dealing with the information sheet for detainees.

The Federal Ministry of Justice intends to reconsider the question of the presence of a trusted person of an apprehended juvenile, in particular in the context of the discussion process envisaged above (cf. ad 23 and 26).

Paragraph 32:

The CPT invites the Austrian authorities to consider adopting the above-mentioned approach (of setting up separate juvenile police departments).

In this respect the Federal Ministry of the Interior does indeed recognise the meaningfulness of such a request, however, it should be pointed out that according to the provisions of both the Administrative Penal Code (*Verwaltungsstrafgesetz*) and the Aliens Act (*Fremdengesetz*) juveniles should only be detained in police detention centres in exceptional cases.

Moreover, juveniles and adults are detained separately if possible, unless such a separation would not be desirable as in the case of families. Setting up separate juvenile police departments for juveniles is, therefore, not expedient due to the small number of cases.

The Austrian authorities will continue to give thought to improving the situation of juveniles in police detention in the future.

Paragraph 33 – Video-recordings:

Consequently, the CPT invites the Austrian authorities to persevere in their attempts to introduce electronic recording of police interviews. Further, police officers should receive specific training for the conducting of electronically recorded interviews.

Sec. 164 par. 2 (*) in connection with Sec. 97 (**) of the Code of Criminal Procedure as amended by the Reform Act of 2004 provides for the possibility of electronic recording of police interviews. Preparations for the implementation of this are currently under discussion.

(*) Sec. 164 (2) of the Criminal Procedure Reform Act (Interrogation of the Suspect/Defendant - the term "*Beschuldigter*" under the new Act applies to both):

The suspect/defendant has the right to be assisted by counsel during his interrogation; the counsel must not in any way participate in the interrogation as such, may however put additional questions to the suspect/defendant after its end. During interrogation the suspect/defendant must not consult the counsel about answering specific questions. Participation of a counsel can be excluded, however, as far as this appears necessary in order to prevent danger for the investigation or prejudice to means of evidence. In such a case an audio- or video-recording (Sec.97) is to be undertaken, if possible.

(**) Sec. 97 (1) of the Criminal Procedure Reform Act (Audio and Video-Recording):

After explicit information of the person to be interrogated, audio- or video-recording of an interrogation is permitted, if it extends to complete recording. In the case of a witness recording is not permitted, if and as soon as the witness contradicts, leaving other legal provisions (Sec. 150, 165, 247a, 250 para. 3) unaffected.

Sec. 97 (2): In cases of recording according to para. 1, a written summary of the contents of the interrogation can be made. (...)

Paragraph 35

... Asylum seekers who leave the reception centre without authorisation, or whose application is rejected at the first instance, will be placed in a PAZ; detention in a PAZ pending deportation cannot exceed two months.

In this connection, the CPT has taken note of the decision of the Constitutional Court dated 15 October 2004, whereby some of the 2003 amendments to the Asylum Law have been declared unconstitutional, in particular Section 32 (3), which excludes an automatic suspensive effect of an appeal against a negative first instance decision.

The CPT would like to receive information on the experience stemming from the implementation of the amended Asylum Law and its impact on the detention of foreign nationals.

Re item 35 para. 1 penultimate sentence:

Under legislation presently in force, it is not the case that every asylum seeker who leaves the reception centre without authorisation, or whose application is rejected in the first instance, will be detained pending deportation.

Detention pending deportation may be instructed by an administrative ruling for the purpose of securing a person's expulsion or deportation provided that the negative decision on an asylum application is not appealable. This is in particular the case if no appeal is lodged against it or in the event of an enforceable decision (appeals against decisions under Sec. 5 in the admission procedure do not have a suspensive effect).

The decision on whether a foreign national is to be detained awaiting enforcement of a removal order is taken by the locally competent police authority for aliens and is a discretionary decision.

Paragraph 35 para. 2

Specifically, the Constitutional Court has declared the general exclusion of the suspensive effect of an appeal in Dublin cases, i.e. where another Dublin Member State considers itself competent to examine an asylum application, unconstitutional and no longer applicable.

Consequently, all appeals lodged in Dublin cases (these are cases where one EU Member State under the Dublin Convention has declared itself competent after examination under the Dublin Convention procedure) basically have a suspensive effect pursuant to Sec. 64 para. 1 of the 1991 General Administrative Procedures Code (*Allgemeines Verwaltungsverfahrensgesetz 1991*); Federal Law Gazette No. 51/1991), which may only be excluded in well-founded individual cases as specified in Sec. 64 para. 2 of the General Administrative Procedures Code.

Re the issue of the effects of the amended Asylum Law

Firstly we would like to state that every effort is being made to hold the first asylum interview and to decide the issue of competence within a short period of time, thus keeping detention times as short as possible.

Basically, holding the first asylum interview has dramatically reduced the length of the proceedings as a result of the amendment to the Asylum Law. Consequently, the period of custody pending detention has also been reduced.

The decision of the cited Constitutional Court did not have a vital effect in this regard, as the suspensive effects of appeals had not been generally excluded earlier, but only in Dublin cases and in the event of certain follow-up applications.

The removal of Sec. 32 para. 2 of the Asylum Law results in the fact that now the suspensive effect is excluded only in few cases so that first-instance decisions according to the Dublin Convention are, as a rule, not enforceable. Therefore, asylum seekers are not in custody pending deportation at that time.

In May 2005 the government introduced into parliament draft legislation amending the Asylum Law, which is to incorporate inter alia the October 2004 decision of the Constitutional Court.

Paragraph 36 et seq.– Conditions of custody in detail:

Paragraph 40 (comprising Paragraphs 36 to 39):

The CPT recommends that the Austrian authorities take steps to:

- ***restore all cells at the PAZ in Innsbruck and Linz to a good state of repair and ensure that all in-cell sanitary facilities are suitably partitioned from the rest of the cell;***
- ***ensure cell occupancy levels which guarantee a minimum of 4 m² per detained person (sanitary facilities excluded);***
- ***review the provision of personal hygiene products to detainees at the PAZ in Vienna-Hernalser Gürtel, Innsbruck and Linz, in the light of the above remarks;***
- ***ensure that detainees are provided with sufficient materials to clean their cells;***
- ***review the food arrangements at the PAZ in Vienna-Hernalser Gürtel, Innsbruck and Linz, in order to ensure that the specific dietary habits and needs of detained persons are being adequately catered for.***
- ***Fitting out a gym or other recreational facilities (at the PAZ in Innsbruck)***

Below are detailed statements with regard to the respective police detention centres referred to :

Re paragraph 36 – the PAZ in Vienna - Hernalser Gürtel:

The detainees themselves are basically responsible for cleaning their cells and the sanitary facilities contained therein pursuant to Sec. 12 para. 4 of the Detention Regulations (*Anhalteordnung*) of the Federal Ministry of the Interior. Of course, the custodial staff also takes care that this cleaning obligation is fulfilled; to a certain extent, however, it is up to the detainees themselves to decide how clean they keep their own cells.

Regarding statements by inmates to the effect that cleaning materials were not sufficiently provided for, the PAZ director pointed out that cleaning materials were in store near the wash-basins and were also shown to the delegation members.

Access to showers is allowed every other day. Apart from the sanitary package, which is mentioned in the report, the detainees do not receive any further personal hygiene products. In individual cases and when the need arises and/or in cases of exception, however, they may be supplemented or further provided. Additional personal hygiene products such as body lotions, skin creams, etc. can be purchased in the cafeteria at the detainees' own cost. The detainees can also buy any food they want in the cafeteria.

The quantity and quality of the food are not only permanently checked by the detention centre's staff but also, on a regular basis, by commissions of the Human Rights Advisory Board. Therefore, no food items beyond their expiration date are being made available to detainees. However, no control is exercised over the food items kept by detainees on their own. The meals of detainees who are not in their unit when the food is distributed are kept by the custodial staff. Thermostatic containers ensure that the food is kept warm for several hours; otherwise it can be heated in a microwave oven.

As the cells are generously equipped with two wash-basins each, the detainees like to wash articles of clothing in these wash-basins. However, one washing machine and one drier are located on each floor for detainees to do their laundry.

Re paragraph 37 – the PAZ in Innsbruck:

All the windows have been renovated in the meantime. In the investment programme for 2005 loans amounting to approximately EUR 55,000.00 were included for improvements. The implementation of this programme will include the installation of partitioned toilets.

The system has also been improved with regard to personal hygiene products for female detainees.

The recommendation to fit out the basement with a gym will be considered in the course of a next stage of improvements pending allocation of funds additional to the EUR 55,000, - mentioned above.

The authority also endeavours adequately to take the different dietary habits of detainees of European, Asian, African and Arabic origin into consideration. These efforts will continue to be made in the future as well.

Attempts are going to be taken to achieve a minimum living space of 4 m² when reconstructing the facilities.

Re paragraph 38 – the PAZ in Linz:

Planning work has already been commissioned in connection with the planned renovation of the entire facilities, which will include the installation of partitioned toilets.

With regard to alleged complaints of detainees about lack of or insufficient cleaning materials it is stated that, according to the Linz Federal Police Directorate, such complaints are not valid in this form. The head of the PAZ will, in any case, be careful in ensuring that the necessary cleaning materials will be ordered on a weekly basis.

Access to showers for female and male detainees is laid down in the internal regulations and is implemented accordingly.

Personal hygiene products such as soap, toilet paper as well as, for destitute detainees, toothbrushes, tooth paste and disposable razors are distributed on a case-of-need basis. Twice a week detainees are given the opportunity to purchase other articles for personal use.

As regards the meals prepared by the police directorate's own kitchen, it is ensured that the detainees are supplied daily with food in compliance with the required standards. In this connection, consideration is given to the necessary low-calorie and bland meals, as well as religion-based dietary needs. Significant attention is also paid to the quality of the preparation, the supply and quantity of food on a daily basis. The meals are regularly inspected by the medical officers with respect to their appropriateness from a medical point of view.

Paragraphs 45 and 46 (comprising paragraphs 41 to 44):

The CPT calls upon the Austrian authorities to review as a matter of urgency the detention regime at all police detention centres accommodating foreign nationals detained under aliens legislation, in the light of the preceding remarks. As regards in particular the PAZ in Vienna-Hernalser Gürtel, an open regime unit should be introduced in the establishment as a matter of priority.

Further, the CPT recommends that:

- **steps be taken to guarantee that all persons detained at PAZ can fully benefit from their entitlement to at least one hour of outdoor exercise per day. Conditions in the outdoor exercise yards at the PAZ in Linz should be reviewed;**
- **efforts continue to be made at all PAZ to provide a wider range of out-of-cell activities for persons detained for prolonged periods. In this connection, steps should be taken to ensure that the already existing facilities (e.g. recreation rooms, books, games, etc.) are made accessible to all detainees.**

Most available facilities for the confinement of prisoners in Austria are designed for a sentenced imprisonment regime. It is correct that detention pending deportation only fulfils a securing and not a punitive purpose and should, therefore, be associated with as few restrictions of a person's freedom of movement as possible. The need for such detention facilities arose on a rather short notice as a consequence of the fall of the former Iron Curtain and the resulting migration movements so that at present adequate detention facilities are still not available to the desired extent. The Federal Ministry of the Interior is aware of this need, and continuous efforts are being made to create the necessary accommodation for detainees, on the one hand, and to adjust existing imprisonment facilities in a way so as to permit as few impairments as possible.

Moreover, the following individual items are explained in detail:

Re paragraph 41 – the PAZ in Vienna-Hernalser Gürtel

The restrictions of the number of jobs available as mentioned in the report are due to the required justifiability review. Only very reliable detainees can be called upon to do a house worker's job. Furthermore, the number of house workers is not – contrary to what is stated in the report – limited to four (per floor), rather the particular skills of other detainees are also taken into account in addition to their unblemished record of reliability, and detainees are used to do various jobs (repair jobs for painters, carpenters and locksmiths, as well as kitchen duties). Reviewing a detainee's reliability must be seen as being in the safety interest of all detainees. A less restrictive selection policy might be considered a lack of care and diligence of the head of the detention centre should problems occur.

Apart from outdoor exercise in the yard in the morning and in the afternoon, a library, games and psychosocial counselling also are available (counselling programme of detainees pending deportation [*Schubhaftbetreuung*]). One television set and one radio are allowed in each cell provided that they are brought by the detainees themselves. The detainees are allowed outdoor exercise in the yard (outdoor exercise within the meaning of Sec. 17 of the Detention Regulations) for approximately one hour in the morning and one hour in the afternoon on a voluntary basis. As mentioned in the report, a detainee may also choose not to spend all of his/her allocated time outdoors. As detention pending deportation is not sentenced imprisonment, there is no justifiable way of forcing a detainee to complete the full period of outdoor exercise against his/her wishes.

In response to general criticism that the vast majority of foreign nationals spend the bulk of the day locked up and idle in their cells, we would like to refer to the “open regime” and/or “opened cell doors” in particular. At present, a modification of the regime in the sense of a “structured daily routine” is being tested in particular in the unit for women. This may only be introduced step by step in the section for men, taking into account security issues as well as the number of staff available.

At any rate, the intention is to implement the open-unit project on a larger scale, here in the form of a structured daily routine with open cell doors.

Re paragraph 43 – the PAZ in Linz

There are plans for improving conditions in unit “B” and in the unit for female detainees as well. In unit “B” one common room is to be adapted accordingly, and an “open unit” is to be introduced in the unit for women.

It is not correct that outdoor exercise is limited to 30 minutes a day. Detainees may exercise, i.e. go for a walk, outdoors for one hour a day. Very often the detainees themselves ask whether this period of one hour may be reduced or they ask not to have to take part at all. Such a request is, however, documented. It was already pointed out that outdoor exercise cannot be enforced in the case of detainees pending deportation.

However, we should not fail to mention that the exercise yard does not look very appealing indeed for one-hour outdoor exercise. The planned renovation of the PAZ also envisages a newly designed exercise yard.

Re paragraph 44 – the PAZ in Wels

In the PAZ in Wels an “open unit” is available for detainees. Almost all detainees are accommodated in this “open unit” and thus have access to the recreational facilities. In addition, detainees have unrestricted access to the partly roofed yard, where they can play table-tennis and outdoor chess.

The fitness room offers table-tennis, table football and an exercise bike.

A TV set able to receive foreign satellite channels and a games console (Play Station), as well as various books (some of them also in foreign languages) are available in the recreation area.

Paragraph 47:

The CPT recommends that the Austrian authorities take steps to increase staffing levels at the PAZ and encourage staff to work more proactively with detainees, in particular by enhancing their possibilities for training (including language training).

In this connection, the Austrian authorities might take into account the remarks contained in paragraph 29 of the CPT's 7th General Report.

A large-scale police reform is underway in Austria in the period under review. During this process, the PAZ and their efficiency and/or the structure of their departments are being evaluated and reappraised. In the future, each department will be free to determine its own schedules, and the number of staff working in the PAZ will be increased.

Within the scope of in-service training, foreign-language classes and courses in inter-cultural communication skills are also offered to officials who frequently have to communicate with foreign nationals.

The Austrian authorities wish to stress, however, that maintaining the necessary security standards is to remain the main task of police staff in the PAZ. For services to foreign nationals' detained pending deportation, the Federal Ministry of the Interior requires cooperation with NGOs, which it has put on a contractual basis. This Counselling Programme for Foreign Nationals Detained Pending Deportation (Schubhaftbetreuung) consists of counselling, support and mediation services. These are services which the PAZ staff could not perform alone.

During its visit, the CPT delegation was shown the text of the relevant contracts concluded between the Federal Ministry of the Interior and respective NGOs.

Paragraph 48:

The CPT calls upon the Austrian authorities to take steps to employ at least one fully-qualified nurse at the PAZ in Vienna-Hernalser Gürtel, and to organise regular attendance by a fully-qualified nurse at the rest of the PAZ.

A registered nurse is on duty at the PAZ in Vienna-Hernalser Gürtel.

At present, the Austrian PAZ, between themselves, count 75 trained paramedics among their staff. In addition, medical care is guaranteed through the following measures:

- Each PAZ has one or more (predominantly) general practitioners at its disposal who are employed on a different time scale.
- Medical specialists are consulted if necessary or the detainees are taken to the specific ward of a hospital (out-patient departments).

Since all PAZ are situated in urban areas, emergency care is always available at short notice.

As far as nursing care is concerned, there are plans to increase the number of staff having paramedic training.

Paragraph 49:

The CPT recommends that such medical questionnaires be introduced at all police detention centres in a range of languages.

This recommendation of the CPT has already been implemented. In the meantime comprehensive medical questionnaires have been made available for downloading in 38 languages from the computer system of the Federal Ministry of the Interior.

The English and German versions are enclosed to the Austrian Government's response.

Paragraph 50:

The CPT is concerned by the current approach to the confidentiality of medical information at the PAZ visited. As a rule, medical examinations took place in the presence of police officers.

The Committee recommends that the Austrian authorities take steps to bring practice in line with the above considerations. Further, keeping detained persons' medical files should be the doctor's responsibility.

As elaborated in the CPT's report, the medical examination of detainees systematically took place in the presence of police officers who are, in most cases, trained as paramedics (emergency-care orderlies or ambulance orderlies under the Act on Paramedics [*Sanitätsergesetz*]) and assist the doctor like a regular doctor's assistant who may be present during examinations and treatments in the general practice of medicine in Austria. In this respect it should be noted that Sec. 54 of the Federal Act on the Medical Profession (*Ärztegesetz*) also obliges a doctor's assistant staff to observe secrecy regarding all information that is disclosed to them or of which they have gained knowledge in exercising their profession.

Medical records and documents may only be kept by medical staff (police doctors and medical orderlies); the directors of the PAZ may only inspect these documents if the need should arise.

Furthermore, guaranteeing the security both of detainees and of the physician is a core responsibility. This is often not easily facilitated especially during the first phase of custody, as a detainee is in an exceptional state of mind.

Under regulations currently in force, a one-on-one conversation of the detainee with his/her doctor is permitted, if the required minimum standards of security are ensured.

Paragraph 51:

In this connection, the CPT wishes to stress that at hunger strikes should be approached from a therapeutic rather than punitive standpoint.

The proposals and considerations of the CPT in this connection are acknowledged. The Federal Ministry of the Interior is well aware of this issue and is currently making every effort to find the best solution possible.

Two round-table meetings have already been held on this issue between the Human Rights Advisory Board and NGO representatives, the conclusions of which have already been incorporated into the practice of dealing with hunger strikes.

The matter will also be taken into account in the review of the 1999 Detention Regulations.

Paragraph 52:

The CPT calls upon the Austrian authorities to take measures, as a matter of priority, in order to provide professional psychiatric and psychological services to foreign nationals detained at police detention centres.

At present regular psychological/psychiatric counselling is available at the PAZ of the Vienna Federal Police Directorate and in the Bludenz administrative detention centre.

Detainees are provided medical care during medical office hours in the PAZ. In addition to potential health problems particular emphasis is given to psychiatric disorders. Even though smaller facilities do not provide psychiatric/psychological medical services, specialists may be consulted and/or detainees be transferred to hospitals at any time following a general practitioner's diagnosis of such problems. As the PAZ are primarily located in the provincial capitals, treatment is sufficiently available.

It should be noted that also the organisations providing care to deportation detainees are in close contact with the medical services and are, as a rule, in a position promptly to inform the doctor of any change in a detainee's behaviour.

Paragraph 55:

The CPT recommends that:

- ***conditions in the segregation cells of the PAZ in Innsbruck and Linz be improved, in the light of the remarks made in paragraph 53;***
- ***detained persons placed in segregation cells be guaranteed one hour of outdoor exercise per day;***
- ***detained persons placed in a segregation cell for disciplinary reasons be given the right to be heard on the subject of the offence of which they are accused and to appeal against a disciplinary sanction to a higher authority;***
- ***a separate register be established for the use of the segregation cells, setting out the full details of the persons held in them : date and time of entering and leaving, grounds for placement, etc.***

Further, the CPT invites the Austrian authorities to provide suicide-proof clothing for use in appropriate circumstances.

Renovation and reconstruction work planned or already initiated at the PAZ in Innsbruck and Linz were already detailed in response to paragraphs 37 and 38.

As regards the necessary placing of detainees in segregation cells, it is noted that this procedure is only taken when detainees represent a danger to themselves or to others and, in any case, such procedures are recorded without exception in the PAZ day book. A separate register on the use of segregation cells, as recommended, is currently used in the Vienna detention centres. Its introduction throughout Austria will be considered.

According to the provisions of the Detention Regulations, the right of a person detained in a segregation cell to outdoor exercise is not restricted. Detainees are only placed in segregation cells as is absolutely necessary, which means that outdoor exercise is guaranteed after time spent in segregation cells. The lack of means to enforce a detainee's outdoor exercise should also be mentioned at this point.

In connection with the mentioned right to be heard and the right to appeal due to detained persons placed in a segregation cell for disciplinary reasons, reference is made to Secs. 23 and 24 of the Detention Regulations (Federal Law Gazette II No. 128/1999) which regulate the opportunity to convey complaints, wishes and requests, as well as the procedure in connection with the punishment for administrative offences. Sec. 24 para. 3 of the Detention Regulations specifically provides that the director is obliged to hear detainees on the administrative offence of which they are accused. In case that the detainee's request is not met, the director must refer the matter to his/her authority for decision. In practice, this constitutes a form of appeal.

A round-table discussion was held on the prevention of suicide in February 2005, which highlighted this issue from various perspectives. A working group was set up to review all the inputs as to how they may be implemented. Also the possible supply of suicide-proof clothing is to be taken into account in these considerations.

Paragraph 56:

The CPT recommends that information on the internal rules and other procedures applicable to foreign detainees be systematically provided at the PAZ in Innsbruck and Linz, in an appropriate range of languages.

The internal rules of the PAZ have in the meantime been provided both at the PAZ in Innsbruck and at the PAZ in Linz in a variety of languages (at least in the official languages of the United Nations, the languages spoken in the neighbouring countries of Austria, as well as Croatian, Romanian, Serbian and Turkish). As in all other police detention centres, conditions are now as prescribed.

Paragraphs 57 and 58:

The CPT recommends that the Austrian authorities step up their efforts to ensure that foreign detainees are duly informed about the state of their case. In this context, the Committee wishes to stress that the fact that outside bodies have been contracted to help foreign detainees does not discharge the State from its responsibility for providing information and assistance to such persons.

Further, the CPT would like to be informed of any safeguards to guarantee adequate accountability and contract monitoring incorporated in the contracts between the Federal Ministry of the Interior and organisations providing care to deportation detainees.

The subject matter of contracts concluded with organisations providing care to deportation detainees is providing care to foreign nationals in humanitarian and social matters and has nothing to do with legal representation. By contracting suitable organisations providing care to deportation detainees, monitoring of the services provided as agreed and assuming the quite remarkable costs incurred thereby, Austria believes that it effectively meets its responsibility as a State to provide support and assistance.

Regularly informing foreign nationals on the state of their case by organisations providing care to deportation detainees is also provided for by the contracts – a contractual obligation that is fulfilled by organisations to the extent provided.

This information is seen as a service provided in addition to the information that is furnished by the aliens police in the course of the procedure to be conducted by them, on the state of the case and the ensuing rights and obligations of a foreign national.

The transfer of detainees pending deportation to police detention centres located further west in Austria as mentioned in the report has proved necessary in some cases when large numbers of illegal frontier crossers are seized at the eastern borders and detention capacities in Vienna, Lower Austria and Burgenland are not always sufficiently available. The Federal Ministry of the Interior also makes every effort to keep the number of transfers as low as possible as this incurs additional costs and binds staff.

Paragraph 60:

The CPT recommends that:

- ***steps be taken at the PAZ in Linz to ensure that detainees' right to visits and phone calls is fully respected;***
- ***the visiting facilities at the PAZ in Vienna-Hernalser Gürtel and Innsbruck be revised in order to ensure that visits take place under more open conditions.***

The Committee would also like to be informed of the official position as regards the keeping of mobile phones by foreign nationals detained pending deportation.

Due to severe security-related problems arisen in practice, detainees basically may no longer take mobile phones to, or use them in, their cells. An exception is made on an individual basis in justifiable cases.

In return, phones operating with phone cards or pre-paid telephones are made available to detainees in each PAZ.

The PAZ in Linz

The generally applicable internal rules for detainees at the PAZ in Linz provides for the regulation of making phone calls, writing letters and receiving visits.

Specifically, the detainees at the PAZ in Linz have the right to make private telephone calls (for official reasons, primarily in the evening hours).

The writing of letters is not restricted in any way. Detainees may write letters at any time if required.

Visiting hours at the PAZ in Linz are three times a week, on Wednesday, Saturday and Sunday, from 2 to 4 p.m.

The PAZ in Innsbruck

In the reconstruction of this detention centre the visitors' area is going to be improved despite some given restrictions due to the existing structure of the building.

The PAZ in Vienna

The rights enjoyed by detainees, such as the right to receive visitors, to make phone calls and write letters as described in the report, are not only safeguarded, but the exercise of such rights is also adequately documented in the day book kept for each floor.

The report indicated that the approach to visits had changed since 1999. According to the director of the PAZ in Vienna, this statement is correct in so far as the size and the technical equipment of the visitors' area have been considerably improved. Detainees and visitors continue to be separated by a glass screen – a necessary measure in use throughout all PAZ in Austria in order to prevent the unauthorized introduction of articles constituting a security threat (e.g. addictive drugs and escape tools). The option of meeting relatives and friends “around a table” as referred to in the report, in other words, without a separating glass screen, is provided for in particularly well-founded cases (e.g. lawyer, organisation providing care to deportation detainees) to the same extent as in 1999.

Paragraph 61:

The CPT calls upon the Austrian authorities to give a high priority to the creation of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under aliens legislation.

These considerations have been incorporated into a review phase already initiated for the establishment of a centre for persons in detention pending deportation. Its realisation, as well as funding, has so far not been secured.

Specific measures may only be taken after current legislative projects in the areas of asylum and the aliens' police are completed. However, the intention is to pursue this issue vigorously.

Paragraph 67 (comprising paragraphs 62 to 67):

The Austrian authorities must ensure that conditions of detention at the Criminal police headquarters East in Vienna correspond fully to the criteria outlined in the report on the 1994 visit (cf. paragraph 30 of CPT/Inf (96) 28).

The CPT also recommends that the Austrian authorities take steps to:

- ***guarantee ready access to drinking water for all persons in police custody;***
- ***ensure that all detained persons throughout the country are provided with a clean mattress and clean blankets at night.***

The recommendations of the CPT are being implemented in the Criminal police headquarters East in Vienna by effecting improvements to the infrastructure and structure of the building and obtaining new furniture and equipment.

In addition, the conditions of detention are both being comprehensively evaluated by the Human Rights Advisory Board and the Federal Ministry of the Interior. The recommendations of the CPT will be incorporated in these evaluations.

B. Establishments under the authority of the Federal Ministry of Justice

Paragraph 69:

The CPT recommends that the Austrian authorities pursue vigorously the application of a range of measures designed to combat prison overcrowding, including policies to limit or modulate the number of persons sent to prison. In this connection, the Austrian authorities should take into account the principles and measures set out in Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole).

The Federal Ministry of Justice is continuing its efforts to reduce prison overcrowding:

On one hand, new space for inmates is provided at various places: At the penal institutions in Leoben, Hirtenberg, Sonnberg and Linz-Asten the capacity was (or will soon be) increased by 339 places altogether.

On the other hand alternatives to imprisonment and measures to shorten prison sentences are being explored.

A technical experiment with electronic monitoring has been undertaken with positive results. A pilot project for (regional) application of electronic monitoring in certain cases is envisaged for the second half of 2005.

A working group convened by the Federal Ministry of Justice is currently exploring possibilities for community service (already practised as a general form of diversion) as an alternative to imprisonment.

In November 2004 a 2 days-conference, organized by the Federal Ministry of Justice in cooperation with the Association of Austrian Judges and the Austrian Chamber of Advocates, explored the current situation of conditional release (parole) and reform proposals in the light of empirical research, comparative law and practical experience. A brochure on the proceedings of that conference is about to be published. According to the working plan of the Federal Ministry of Justice a reform concept on conditional release is to be presented in the course of 2005. The CPT will be informed accordingly.

Paragraph 70:

The CPT recommends that the Austrian authorities introduce measures aimed at ensuring that both sentenced and remand prisoners are provided with work. Further, the Committee recommends that efforts be made to develop programmes of education and vocational training in all penitentiary establishments. The provision of a satisfactory regime of activities for prisoners will require having an adequate staff complement and a staff attendance system which ensures the availability of staff throughout the day.

Work is obligatory for all sentenced prisoners fit for work. Prisoners under remand are permitted to work if the competent judge does not contradict because of reasons of the criminal investigation and proceedings.

However, the average length of time spent in remand is 72 days in Austria, and the moment of release cannot, in the majority of cases, be predicted. Therefore it is very difficult to provide suitable work in many cases.

As concerns sentenced prisoners, about 20 percent of them cannot be employed because of lack of suitable work.

The Austrian prison administration endeavours to change working hours of prison staff in such a way as to achieve more flexibility, which would permit more activities with prisoners.

Concerning the overall staff complement, some positive developments have been initiated since the visit of the CPT delegation in 2004: The trend towards reducing the number of prison officers has been reversed to some extent. In 2005 an increase of 125 officers will have been possible.

Rationalization processes of work in the administration of prison establishments (e.g. by expanding the use of computerized systems) and synergy effects have already enabled the transfer of 150 staff members from the administrative field to the work with prisoners. Efforts in that direction will be continued.

Paragraph 72:

The CPT has noted with interest the above information (on the reform of prison staff training and awareness-raising regarding the special needs of foreign inmates) ***and would like to receive more details in due course.***

The Federal Ministry of Justice has started a comprehensive reform on prison staff training; this reform is partly already implemented, namely concerning training of newly recruited staff (trainees) and training of senior staff (commissioned officers).

These new training systems are currently under testing by various projects.

The standard of the training given to new recruits is focusing on offering a clear set of principles about what their task involves, from a theoretical and a practical point of view. Step by step the trainees are brought towards the essentials of their job. They have to work in selected penal institutions alongside selected and experienced staff that are most likely to give the new staff member's best example.

Senior staff must be helped to develop additional skills before taking on a management role. Therefore they are trained to have a clear vision and a determination to maintain the highest standards in the work of prison management. Besides technical and managerial issues also a more sophisticated form of training (leadership skills, public relations, work with the media, ethics etc.) is offered.

In the very near future the Training Center for Prison Staff and the Further Education Center will be concentrated in a so called "Prison Staff Academy", using synergies to offer high quality education.

Concerning foreign prisoners the Austrian authorities are very much aware of the importance of staff being able to communicate with them. Therefore the Austrian prison administration is organizing the following measures and projects:

- 1) Language courses for prison staff in English and Russian.
- 2) Language courses for inmates, who do not have German as their native tongue, in German language. These courses will be offered to different groups of foreigners (e.g. persons from Russia Romania and Africa south of the Sahara).
- 3) To sensitize staff-attitudes towards foreign inmates, courses are offered for staff to get acquainted with different cultures, religions and mentalities.
- 4) Starting in March 2005, there is a special programme for leisure- time activities tailored to the special needs and interests of particular groups of foreigners.
- 5) Offer of legal advice for foreign prisoners in asylum law. It is envisaged to offer a seminar for social workers, where they will be trained in asylum-law and necessary information concerning the legal situation of foreigners in Austria. It is also planned to train other prison staff in this field, so that they may assist foreigners with information and support.

These measures by the prison administration are supported by the Austrian Probation Service (Neustart) and some Non-Governmental Organisations.

Paragraph 73:

The CPT recommends that the Austrian authorities review their prison staffing and deployment policy, in the light of the above remarks (on staff attendance etc.).
See comments to paragraphs 70 above.

Paragraph 79: Prison of Linz:

The CPT recommends that:

- **the mixing of juvenile and adult prisoners be discontinued as a matter of priority. Juvenile Prisoners should be held in separate accommodation, staffed by persons trained in dealing with the young and offering regimes tailored to their needs (education, sport, vocational training, recreation and other purposeful activities);**
- **measures be taken to ensure adequate access to natural light in all cells; any devices fixed to cell windows should be of such a design as not to deprive prisoners of this basic element of life;**
- **personal hygiene items be systematically provided to all prisoners.**

According to sections 36, 55 of the Juvenile Court Act juvenile inmates have to be separated from adult inmates. The law provides that juveniles shall be accommodated as far as possible in separate departments.

Under special conditions, they may be kept together with adult inmates if this is in the best interest of the juvenile.

In many penal institutions, there are only very few juveniles.

The average proportion of juveniles, i.e. persons between 14 – 18 years of age in penal institutions in Austria is approximately 3 per cent. In institutions in the Eastern part of the country it is slightly higher, about 4 – 5 per cent.

As of 1 June 2005 there were 70 juvenile prisoners kept in Vienna Josefstadt Prison (i.e. 5 per cent of the total population there), and 18 juveniles in Linz Prison (i.e. 4, 4 per cent of the prison population in this institution).

In principle, juveniles are held in separate accommodation from adults and kept together with adults only as an exception. In any case it has to be in the best interest of the juvenile. Staff working with juveniles undergoes special training.

Juvenile prisoners may only be given work with an educational value. They may work outside of the prison only if there is no possibility for them to be exposed to the public. The daily working hours must be interspersed with at least two breaks of sufficient length.

The prison staff is much aware of the importance of leisure activities, in particular sports, for the juveniles and strives to fulfil this demand to the greatest possible extent.

The construction of windows, which allow more natural light, in the Linz prison, is already under preparation.

The prison governor of Linz prison has been instructed by the Federal Ministry of Justice to supply prisoners with personal hygiene items on request. In general, the information of all penal institutions in Austria on the matter was improved, in order to guarantee a good supply of basic personal hygiene items.

Paragraph 80:

The CPT would like to receive confirmation that the outdoor exercise yards used by male prisoners have been equipped with seats and that all yards have been provided with shelters against inclement weather.

The CPT proposed the construction of a roof in the outside yard. This recommendation will be realised in the course of 2005. All outdoor exercise yards are now equipped with seats.

The CPT recommends that steps be taken to ensure that all prisoners are offered at least one hour of outdoor exercise every day, including weekends.

The Austrian Prison Act provides that the inmates must have at least one hour of outdoor exercise every day. The Federal Ministry of Justice is monitoring that this provision is strictly applied.

Paragraph 83:

The CPT recommends that strenuous efforts be made to improve the programme of activities offered to prisoners at Linz prison. For this purpose, staffing levels and the staff attendance systems need to be reviewed. Further, a proactive approach is required on the part of staff in order to engage more prisoners in work and other purposeful activities (in particular education and vocational training).

See comment to paragraph 72 above.

In the Austrian penitentiaries vocational training is offered in a considerable number of professions. The education of prisoners is integrated into the general educational system of the country, so that after their release prisoners may continue their education without difficulty. Teachers and instructors (engaged full-time or part-time) are aiming at filling the gaps of knowledge on elementary school and vocational school level and teach and instruct also in a wide range of activities.

Regarding vocational training it should be mentioned that almost all 200 workshops in prison establishments are run by prison officers who are certified masters in their respective craft under general law; many of them perform vocational training themselves.

In the special institutions for juvenile offenders regular classes at elementary and secondary school levels are held. Vocational training (including school and public examination) is available in 11 professions. Secondary school and university education is granted in individual cases.

For adult prisoners, priority is given to vocational training and, as far as necessary, to elementary-school and general education. Secondary-school and university education is granted in individual cases. Vocational training for 3 or 3 ½ years with a final examination is available in 5 professions. Intensive vocational training for 18 months with a final examination or external training is possible in 15 professions.

Prisoners, who have commenced vocational training during their term of imprisonment with satisfactory results, may be granted the opportunity to continue and finish this vocational training within the penal institution even after release. This provision was introduced into the Prison Act by an amendment of 1993.

Social workers play an active part in care for prisoners, in particular by meeting the prisoners' social needs.

Throughout Austria 82 social workers are employed in the penal institutions. For social workers different seminars are offered on various issues, e. g. mediation, solving of conflicts, case management (counselling to inmates), anti-aggression-training, family therapy, crisis intervention and courses to get acquainted with foreign cultures.

These courses are organized by the Prison Training Centre for Further Education and the Austrian Probation Service, named "Association Neustart". Demand for the courses among social workers is high. In the average each social worker attends 3 courses per year.

Paragraph 88:

Prison of Wien-Josefstadt:

The CPT recommends that steps be taken to improve the provision of food to juveniles and young adults at Vienna–Josefstadt Prison and review the hours at which food is distributed.

The daily expenditure for food was about € 3,30 per inmate in 2003. In this respect it has to be stressed, however, that the food purchased through this expenditure was supplemented to a considerable degree by the products of agricultural farms and related supply workshops of the prison service itself (meat, vegetables, bread) ensuring adequate quantity and diversity of food.

It is the duty of the prison governor to organize the meals to be served at reasonable times. Normally lunch is served to juveniles and young adults between 11.00 and 14.00, and dinner between 17.00 and 19.00 hours.

Paragraph 92:

Prison of Wien-Josefstadt:

The Committee would like to receive information on the number of juveniles actually benefiting from the increased possibilities for out-of-cell activities and the average number of hours per day spent by them engaged in such activities. The CPT would also like to know what measures have been taken in respect of units D1 and E1.

Further, the CPT recommends that steps be taken to ensure that all juveniles held at Vienna–Josefstadt Prison can fully benefit from their entitlement to two hours of outdoor exercise per day.

The range of activities out of cell for juvenile inmates has been increased. Presently there are on average 60 to 70 juvenile prisoners kept in the prison of Wien-Josefstadt. (The number is now considerably lower than at the time of the visit of the CPT delegation, due to a change of policy of the prosecution service). The average time spent out of cell for leisure-activities is five hours. Such activities include theatre, concert, sports activities and excursions. The prison administration was granted five additional officers in particular for these leisure-activities and is now able to offer activities (school and leisure) from 7:00 am to 3:00 pm for juveniles. In general, this time is spent out of cell.

Units D1 und E1 are now used for the accommodation of young adults (18 to 21 years) exclusively.

Paragraph 93:

Health-care services at Linz and Vienna-Josefstadt Prisons:

The CPT recommends that steps be taken at Linz Prison to:

- ***increase the attendance hours of the doctor to the equivalent of a full-time post and substantially reinforce the nursing cover;***
- ***ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the prison's premises, including at night and weekends.***

Treatment of prisoners in general is a task for social workers, medical doctors, psychologists and psychiatrists. The Austrian Federal Ministry of Justice now prefers to recruit (often part-time) staff on a contractual basis.

In Linz prison a medical doctor and a psychiatrist are available, who are treating the inmates on request. The attendance hours of the medical doctor are 30 hours per week and so far no complaints were lodged that this is not sufficient. The psychiatrist is available on request.

A big part of the prison staff is qualified to provide first aid; nevertheless it is planned to recruit more ambulance personnel on a contractual basis, to ensure presence at night and weekends. It has to be stressed, however, that Linz Prison is situated in the city and very near to the General Hospital so that in case of emergency inmates speedily and without delay may be transferred there.

Paragraph 95:

The CPT recommends that steps be taken at Vienna -Josefstadt Prison to employ a fully qualified specialist in child/adolescent psychiatry, to take care of the specific problems of juvenile prisoners.

Following this recommendation, a specialist in child/adolescent psychiatry is now employed in Vienna-Josefstadt prison. He is present in the institution 20 hours per week. In addition to this specialist there are 6 other psychiatrists employed in the Vienna-Josefstadt prison.

The CPT invites the Austrian authorities to take steps to ensure that any medical research on juvenile prisoners is carried out in compliance with the international standards concerning information for and consent of research participants.

According to the information given to the Federal Ministry of Justice, the research project concerned in the Vienna-Josefstadt Prison was focusing on social science.

If medical research is undertaken, in accordance with Austrian legislation and international standards, the consent of the juvenile and/or his/her legal representative is asked for.

Paragraph 96:

The Committee recommends that steps be taken to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of non-medical prison staff.

In general this recommendation is followed, unless there are special security reasons in the individual case, which may require the presence of non-medical prison staff.

Paragraph 98:

The Committee would like to receive more information on the plan by which prison doctors would no longer be employed by the Federal Ministry of Justice but would instead be contracted in from the general health service.

The Austrian Federal Ministry of Justice endeavours to involve the Federal Ministry of Health in the issue of health care in prisons. Prison doctors are now generally contracted in from the general health service. The Federal Ministry of Justice is continuing this practice, which is considered appropriate to raise the quality of health care in prison. At present, only three prison doctors are still employed by the prison administration throughout Austria.

Paragraph 99:

Prison of Linz:

The CPT recommends that possibilities be explored for introducing more open visiting arrangements at Linz Prison.

The respective measures to build better and more open visiting-facilities are under preparation. They will be implemented in the very near future in the light of the CPT's recommendations.

Paragraph 100:

The Committee invites the Austrian authorities to review the possibilities for juvenile prisoners to make phone calls (e.g. by providing free-of-charge telephone cards and following the same approach to the surveillance of phone calls as was observed at Linz Prison).

According to Sections 92 and 96a of the Law on Execution of Sentences (StVG) prisoners, in principle, have to cover the costs of telephone calls by themselves. They may use their remuneration of prison work or money received from outside. If a prisoner is unable to cover the costs for phone calls, for reasons he is not responsible for, these costs are borne by the prison administration.

To maintain personal relations with the family and friends is of utmost importance for juveniles. Therefore the recommendation of the CPT will be followed. The prison governors will be told to support the contact of juvenile inmates with their family by permitting them phone calls as often as practicable and to cover these costs, if necessary, by the prison administration. Technical innovations like free-of-charge telephone cards are currently tested out and will be introduced as soon as possible.

Paragraph 102:

The CPT invites the Austrian authorities to review the disciplinary sanctions procedure with a view to ensuring that prisoners facing disciplinary charges are formally guaranteed the right to call witnesses on their own behalf and to cross-examine evidence given against them.

The right to nominate witnesses in disciplinary proceedings is granted to prison inmates.

The Federal Ministry of Justice intends to reconsider disciplinary sanction procedures with a view to the possibility of strengthening the means of defence and eventually to introduce adversarial elements in either first or second instance proceedings. Faced with the current shortage of prison staff, however, legal amendments to that effect are not on top of the list of priorities.

Paragraph 103:

The CPT has reservations about the use of prisoners as interpreters for other prisoners during disciplinary hearings. If, exceptionally, recourse is had to such an approach, the consent of the prisoner facing disciplinary charges should be carefully documented.

The Austrian authorities acknowledge the reservations of the CPT.

Due to practical constraints, recourse to this approach is currently inevitable.

A general order on the issue of consent is under preparation. The prison governors will have to register the consent of the prisoner, if a fellow-prisoner or an officer is acting as interpreter during disciplinary hearings.

Paragraph 105:

The CPT invites the Austrian authorities to review the relevant legal provisions (on self-harm and suicide attempts as disciplinary offences) in the light of the above remarks.

While the CPT assumes that there exists (only) “a policy of non-punishing” acts of self-harm and suicide attempts, the practice of non-prosecuting and non-sanctioning of such cases is in fact derived directly from the law: According to Sec. 107 par. 1 No 3 of the Law on the Execution of Sentences (StVG) acts of self-harm are considered disciplinary offences only if performed “with the aim of incapacitating oneself for the performance of one’s duties” (e.g. the obligation to work). This condition is not considered as fulfilled, as a rule. Suicide attempts are not mentioned at all in this section and have never been a ground for disciplinary proceedings.

Current practice, following the law, is not considered problematic – as confirmed by the findings of the CPT. Nevertheless, the wording of the respective section will be re-examined in due course.

Paragraph 106:

The CPT recommends that the Austrian authorities reconsider the application of complaints procedures, with a view to ensuring that they are operating effectively. In particular, the internal complaints system should be reviewed to ensure that prisoners receive, within a reasonable time, reasoned answers in writing to written complaints and that a proper record is maintained of every complaint. It should also be verified that the existing arrangements do indeed enable prisoners to send complaints on a confidential basis.

There is a “double-track” complaint system established by law comprising

- a) administrative complaints (concerning prisoners’ rights) to be decided by the prison director and/or – as far as his decisions are concerned – by independent tribunals (Vollzugskammern, Sec. 11a of the Law on Execution of Sentences/StVG) and
- b) complaints concerning surveillance duties by the authorities responsible for the proper functioning of prisons (prison director, court president, Ministry of Justice).

Inmates filing a complaint (orally or in writing) have in both cases a right to request a written decision. Complaint tribunals (Vollzugskammern) always hand down their decisions in writing, independent from a request to that effect by the inmate.

Prisoners have the right to communicate by letter with all public authorities (including courts and the Ministry of Justice). Such letters are confidential and may be closed by the prisoners himself. They may be opened only in very exceptional circumstances and in the presence of the prisoner.

Paragraph 107:

The CPT recommends that the Austrian authorities develop a system of regular inspections of prison establishments by an independent body.

The appropriateness of a system of regular inspections of prisons by an independent body is fully acknowledged. The frequency of visits by the existing prison monitoring commissions (Vollzugskommissionen) is currently examined. The general question of the future system of independent monitoring of prisons is dealt with in the context of the ongoing discussion in preparation of the OPCAT ratification (see ad 20. above).

Paragraph 108:

The CPT recommends that information on the internal regulations be routinely provided to all prisoners on admission, in a language they understand.

Further, the Committee invites the Austrian authorities to introduce programmes of language education for foreign prisoners and language training for staff working with them.

In each penal institution in Austria there are uniform house regulations in written form, which are handed out to the prisoner on admission. This information contains the regulations governing prison discipline, their rights and duties in prison. It is considered necessary that this information is written in a language the prisoner understands. Therefore, the house regulations are now available in 13 different languages. The contents of the house regulations are approved by the Federal Ministry of Justice. The Ministry of Justice regularly reminds the institutions' directors of their duty to hand out the house regulations.

In many of the Austrian penal institutions programmes of language education for foreign prisoners and language training for staff are available. The Austrian prison administration is now – following the CPT recommendation – promoting these programmes in all penal institutions (see also ad 72 above).

Paragraph 109:

Prison of Vienna-Josefstadt:

The CPT invites the Austrian authorities to reconsider the current policy on the carrying of firearms by staff working within prison premises.

Pistols are only used as a preventive measure in case of emergency and only by specially trained staff, who are responsible for the security. Custodial staff is never wearing a pistol, when working with inmates. In general the weapons are kept in a special office and must not be worn by the staff during day. They are only worn during night shift by specially trained security staff and only in particular areas of the prison (never in direct contact with inmates in the cell).

Paragraph 113:

The CPT recommends that steps be taken to increase the number of nurses qualified in psychiatric care at both Vienna-Mittersteig Prison and the detached unit in Floridsdorf.

Although the number of qualified nurses employed in the medical wards throughout Austria has increased in the last years, there are still shortages in this field. There are presently 2 nurses in Mittersteig Prison and one in the detached unit in Floridsdorf.

The number of nurses could not be increased so far due to budgetary restrictions, but negotiations are going on to obtain at least 2 more nurses in this special institution as soon as possible.

Paragraph 118:

The CPT recommends that the Austrian authorities take steps to ensure, in the context of the placement review procedure, that prisoners have legal representation (including legal assistance to prisoners who are not in a position to pay for a lawyer themselves).

The court competent in the field of the execution of sentences (Vollzugsgericht, Sec. 16 of the Law on Execution of Sentences/StVG) is also competent to decide, in accordance with Sec. 25 par. 3 of the Penal Code, on the necessity of further placement in cases of an indeterminate measure (Sec. 21 of the Penal Code, mentally abnormal offenders).

This court has to apply the procedural provisions of the Code of Criminal Procedure supplementing the provisions of the StVG, including the legal aid provisions of the said Code. This has been confirmed by decision of the Supreme Court (OGH 14.5.2003, 13 Os 46/03) as well as by a decree of the Ministry of Justice (JMZ 625.074/2-II 1/2003). Legal aid is to be provided whenever this is required in the interest of justice (Sec. 41 par. 2 of the Code of Criminal Procedure).

C. Secure wards at Wagner-Jauregg Psychiatric Hospital, Linz

Paragraph 123:

Wagner-Jauregg Psychiatric Hospital, Linz

The CPT recommends that an individualised approach be adopted as regards patients' clothing.

The patients in Wagner-Jauregg Psychiatric Hospital are dressed in pyjamas like all patients in this hospital. It is a kind of "hospital uniform". The Austrian prison administration has now decided to allocate means for a solution in line with the CPTs recommendation (acquisition of dressing-gowns allowing for more individuality for the inmates).

Paragraph 127:

The CPT would like to receive confirmation that an end has been put to the practice of using net-beds and cage-beds at all psychiatric hospitals and prisons throughout Austria.

Cage beds are not in use without exceptions. Beds with nets are still available in a few penal institutions, some of them being already out of order. The Federal Ministry of Justice has just issued an order, which will definitely abolish the use of net beds too.

ANNEXE

ANAMNESIS SHEET

(stamp/Stempel)

HB No.

Name of detainee/Name des Angehaltenen

Detainee's date of birth/Geburtsdatum des Angehaltenen

Date/Datum

In order to guarantee a possibly required medical treatment you are asked to answer the following questions.

Um die Möglichkeit einer eventuell erforderlichen medizinischen Behandlung zu gewährleisten, werden Sie ersucht, nachstehende Fragen zu beantworten.

Please mark with a cross the appropriate box:

Bitte kreuzen Sie das zutreffende Kästchen an:

1. Do you suffer from a chronic disease?

☐ YES ☐ NO

If so, from which one?

Leiden Sie an einer chronischen Erkrankung?

Wenn ja, an welcher?

2. Do you have currently health complaints or sicknesses?

☐ YES ☐ NO

If so, which ones?

Haben Sie derzeit gesundheitliche Beschwerden oder Krankheiten?

Wenn ja, welche?

3. Do you suffer from a severe allergy?

☐ YES ☐ NO

If so, against which one?

Leiden Sie an einer schweren Allergie?

Wenn ja, wogegen?

4. Do you take regularly any medicine?

☐ YES ☐ NO

If so, which one(s)?

Nehmen Sie regelmäßig Medikamente?

Wenn ja, welche?

5. Did you take any medicine during the last days?

☐ YES ☐ NO

If so, which one(s)?

Haben Sie in den letzten Tagen Medikamente eingenommen?

Wenn ja, welche?

Name: _____

HB No. _____

6. Do you suffer from an allergy against any medicine? ☐ YES ☐ NO
Leiden Sie an Allergie gegen Medikamente?

7. Do you have a vaccination card? ☐ YES ☐ NO
Haben Sie einen Impfpaß?

8. Have you been treated during the past 5 years for a longer period in a hospital? If so, where and for which reason? ☐ YES ☐ NO
Waren Sie in den letzten 5 Jahren für längere Zeit im Krankenhaus? Wenn ja, in welchem und weshalb?

9. Have you undergone severe operation(s)? If so, which one(s)? ☐ YES ☐ NO
Hatten Sie größere Operationen? Wenn ja, welche?

10. Do you suffer from diabetes? ☐ YES ☐ NO
If so, how it is treated?
Leiden Sie an Zuckerkrankheit?
Wenn ja, welche Behandlung haben Sie?

11. Do you suffer from a chronic heart disease? ☐ YES ☐ NO
If so, which medicine do you take regularly?
Leiden Sie an einer chronischen Herzkrankheit?
Wenn ja, welche Medikamente nehmen Sie?

12. Do you suffer from asthma? ☐ YES ☐ NO
If so, which medicine do you take regularly?
Leiden Sie an einem Lungenasthma?
Wenn ja, welche Medikamente nehmen Sie regelmäßig ein ?

Name: _____

HB No. _____

13. Do you suffer from tuberculosis? ☐ YES ☐ NO

If so, which medicine do you/did you take regularly?

Leiden/Litten Sie an Tuberkulose?

Wenn ja, welche Medikamente nehmen Sie?

14. Do you suffer currently from diarrhoea or vomiting? ☐ YES ☐ NO

If so, from which one?

Leiden Sie derzeit an einer Durchfallerkrankung oder

Erbrechen? Wenn ja, welche?

15. Do you suffer from epilepsy (in form of epileptic attacks)? ☐ YES ☐ NO

Leiden Sie an Epilepsie (Anfallsleiden)?

16. Do you suffer from mental anomalies? ☐ YES ☐ NO

Leiden Sie an psychischen Störungen?

17. Have you undergone psychological treatment,
at any time or now? ☐ YES ☐ NO

Waren Sie jemals oder zuletzt in psychiatrischer Behandlung?

18. Do you suffer from depressions? ☐ YES ☐ NO

Leiden Sie unter Depressionen?

19. Are you sometimes in a state of panic? ☐ YES ☐ NO

Haben Sie Angstzustände?

20. Have you ever tried to commit suicide? ☐ YES ☐ NO

Haben Sie jemals einen Selbstmordversuch unternommen?

21. Do you have currently thoughts of committing suicide ☐ YES ☐ NO

Haben Sie derzeit Selbstmordgedanken?

22. Do you have concentration and memory disturbances? ☐ YES ☐ NO

Haben Sie Konzentrations- und Gedächtnisstörungen?

Name: _____

HB No. _____

23. Do you suffer from sleep disturbances and nightmare?

☐ YES ☐ NO

Leiden Sie an Schlafstörungen und Albträumen?

24. Have you ever been in jail?

☐ YES ☐ NO

If so, when and for how long?

Waren Sie im Gefängnis?

Wenn ja, wann und wie lange?

25. Have you been maltreated?

☐ YES ☐ NO

If so, where?

Sind Sie mißhandelt worden?

Wenn ja, wo?

26. Did you stay in a war area or in a region, where fights had occurred? ☐ YES ☐ NO

*Haben Sie sich in einem Kriegsgebiet oder in einem Gebiet,
wo gekämpft wurde, aufgehalten?*

27. Are you addicted to drugs resp. alcohol?

☐ YES ☐ NO

If so, which drugs did you regularly consume last time?

Sind Sie drogen- bzw. Alkoholabhängig?

Wenn ja, welche Drogen haben Sie in letzter Zeit regelmäßig benutzt?

28. For **WOMEN**: are you currently pregnant?

☐ YES ☐ NO

*Für **FRAUEN**: sind Sie derzeit schwanger?*

Date/Datum

Signature of detainee/Unterschrift des Angehaltenen