COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

CPT/Inf (2014) 4

Response

of the Czech 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 the Czech Republic

from 7 to 16 September 2010

The Czech Government has requested the publication of this response. The report of the CPT on its September 2010 visit to the Czech Republic is set out in document CPT/Inf (2014) 3.

Strasbourg, 18 February 2014

Response of the Czech Government to the Report sent by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to the Czech Government following its visit to the Czech Republic on 7 - 16 September 2010

The Response of the Czech Government was approved under Government Resolution No. 859 of 23 November 2011.

Introductory remarks

The Czech Republic is a Party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the "Convention"), which was published in the Collection of Acts of the Czech Republic as Communication of the Ministry of Foreign Affairs No. 9/1996 Coll., and which entered into force for the Czech Republic on 1 January 1996. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the "CPT") acts as the inspection body for the Convention.

In accordance with Article 7(1) of the Convention, the CPT made its fourth periodic visit to the Czech Republic on 7 - 16 September 2010. Following this visit, in accordance with Article 10(1) of the Convention the CPT drew up and approved at its 74th meeting on 7 - 11 March 2011 a "Report to the Government of the Czech Republic on the visit to the Czech Republic made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 7 - 16 September 2010 (hereinafter the "CPT Report"). The CPT Report was sent to the Czech government on 8 April 2011, along with a request that in accordance with Article 10 of the Convention the authorities of the Czech Republic send a response within six months, stating all the details of steps taken in order to implement the recommendations of the CPT Report, including providing any information requested and responding to any comments contained therein. The government of the Czech Republic acknowledged the CPT Report under Government Resolution No. 569 of 20 July 2011. At the same time, the Czech government instructed the Minister of Justice, the Minister of the Interior, the Minister of Health, the Minister of Education, Youth and Sports, the Minister of Labour and Social Affairs, and the First Deputy Prime Minister and Minister for Foreign Affairs to provide the Government Commissioner for Human Rights with information on the steps taken further to the recommendations of the CPT. The Czech government further instructed the Government Commissioner for Human Rights to submit to the government for its approval a response from the Czech government in regard to the implementation of the recommendations contained in the CPT Report (hereinafter the "Czech Government Response").

The government considered the recommendations contained in the CPT Report in detail, and values in this context the Committee's work in protecting the human rights of persons deprived of their liberty. After carefully considering all the CPT's recommendations in the light of the requirements of national and international law, the Czech government approved the Czech Government Response to the submitted CPT Report stated below. The Czech government also expressed its interest in continuing with the implementation of the CPT's recommendations, while taking into account the current economic conditions of the Czech Republic. The Czech Government Response is structured according to Annex I to the CPT Report, which contains a list of the CPT's recommendations, comments and requests for information, stating the number of the point of the CPT Report under which the given recommendation is made.

In regard to Part I. C: Consultations carried out by the delegation and cooperation

Comments

The CPT trusts that the Czech authorities will take appropriate steps to prevent any repetition of such situations during future visits (point 5).

No situations ever occurred in the past where the delegation was not allowed to talk with patients during its visits to medical facilities. The problem arose in regard to the issue of the inspection of the medical records of patients without their consent. In connection with the forthcoming visit of CPT representatives to the Czech Republic, in 2010 the Ministry of Health reconsidered its position on the issue of the inspection of medical records by Committee representatives without patients' consent. Prior to the visit it informed the psychiatric hospital of the following legal opinion - as a treaty within the meaning of Article 10 of the Constitution of the Czech Republic, the European Convention forms part of the legal order of the Czech Republic and has precedence over the law. The inspection of medical records without patients' consent is therefore allowed by the Convention itself.

Furthermore, in the draft of the Act on health services and the conditions of their provision which the Czech government approved in June 2011 and which was approved in its third reading by the Chamber of Deputies on 7 September 2011, Section 65(2)(n) states that medical records kept on a patient may be inspected without such patient's consent by members of the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or members of the delegation of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the extent necessary in order for them to fulfil their tasks under international treaties binding on the Czech Republic which govern the activities of the Committee or Subcommittee. The aforementioned persons may also make extracts or copies of medical records to the extent necessary.

In the Binding Guideline of the Police President No. 159/2009 on police escorts, the guarding of persons and police cells, which came into effect on 1 January 2010 (hereinafter the "Binding Guideline"), Article 17(1)(i) states that other authorities may enter a police cell in which a person is being held if so stipulated by law or an international treaty binding on the Czech Republic, where the corresponding footnote reads: "For example the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987 promulgated under Act No. 9/1996 Coll." In view of the foregoing, where the issue of the possibility of entering a police cell is resolved under the provision of Article 17 of the Binding Guideline, this matter therefore involves an individual error by a police officer of the Kladno-Kročehlavy District Police Department, not a systemic error.

In regard to Part II. A: Police establishments

With reference to Chapter 2: Ill treatment

Recommendations

The CPT recommends that police officers in the entire Czech Republic be reminded at regular intervals that all forms of ill treatment of detainees are unacceptable and subject to severe penalties. Police officers must likewise be reminded that when detaining persons no more force may be used than is strictly necessary, and that as soon as detainees are under control there is no justification for striking them (point 10).

The Internal Control Office of the Police Presidium of the Czech Republic carries out intensive and ongoing inspections of the state of police cells. It then evaluates the information obtained and takes appropriate steps to eliminate undesirable aspects. An example of this is its inspection of monitoring equipment, which in essence functions precisely as a means to prevent physical assaults on persons restricted in their liberty by Czech police officers in the course of their respective duties. However, due attention is also given to the issue of cells in all the other relevant areas, particularly as regards compliance with the internal procedural document "Binding Guideline of the Police President No. 159/2009 on police escorts, the guarding of persons and police cells".

Comments

In the opinion of the CPT, the independence and impartiality of the investigation of complaints about police ill-treatment would be increased if all complaints were automatically sent to the Inspectorate of the Ministry of the Interior, and if this authority were then to decide (under the supervision of the state prosecutor) whether the relevant case is subject to criminal investigation (point 11).

We do not believe that the independence of the investigation of criminal acts of members of the security forces would be in any way increased if the new General Police Forces Inspectorate (hereinafter the "General Inspectorate") were to be the obligatory addressee of all complaints made against members of the security forces, including complaints giving rise to suspicions of a disciplinary offence. It is not possible to order complainants to send their complaints to one particular addressee. Every complainant currently has, and will continue to have, the right to send his complaint at his sole discretion either to the internal control authority of the security force with jurisdiction to investigate suspected disciplinary offences, or to the General Inspectorate, which has the jurisdiction to investigate suspected crimes, or to the state prosecutor, who will oversee an investigation conducted by the General Inspectorate.

If a received complaint suggests that an act took place which does not fall within the jurisdiction of the addressee, then this addressee is obliged to forward it to the appropriate addressee (i.e. criminal acts to the General Inspectorate, disciplinary offences to the internal control authorities). However, in any case where a citizen has the impression that his complaint will be investigated as a disciplinary offence, although in fact a criminal act is involved, nothing prevents him from filing a criminal complaint directly to the General Inspectorate or even to the state prosecutor. This right, and the obligation of these authorities to accept such a criminal complaint, are guaranteed by Section 158(2) of Act No. 141/1961 Coll., on criminal procedure, as amended (hereinafter the "Criminal Procedure Code").

On the other hand, stipulating, for example, an obligation for the internal control authorities of the security forces[1] to first forward all complaints, even regarding minor offences of members of the security forces, to the General Inspectorate for legal classification, would in practice result merely in the burdening of the new General Inspectorate with considerable unproductive administration, and instead of leading to greater protection of the rights of complainants would in fact merely delay the investigation of the cases to which the complaints relate.

Requests for information

The CPT would like to receive up-to-date information about the planned reform of the Inspectorate of the Ministry of the Interior, including the draft Act which was prepared for this purpose (point 12).

The task of submitting to the government a draft Act on the General Inspectorate of the Security Forces ensues from Government Resolution No. 1 of 5 January 2011, under which the government approved the Government Strategy in the Fight Against Corruption for the period 2010 - 2012. The submission of this draft Act on the General Inspectorate of the Security Forces also simultaneously fulfils one of the tasks which the government undertook in its Policy Statement, namely to introduce independent controls on the activities of the security forces.

The preparation of the draft Act was preceded by an Analysis of the control mechanisms in the security forces made in June 2008, which also included a proposed list of the principal themes involved in the resolution of this issue. This analysis was prepared by an interministerial working group composed of representatives of the Ministry of the Interior, the Police of the Czech Republic, the Ministry of Finance - the Customs Administration of the Czech Republic, the Ministry of Justice - the Prison Service of the Czech Republic, the Security Information Service, the Office for Foreign Relations and Information and Military Intelligence. The submitted draft Act on the General Inspectorate of the Security Forces is based on this Analysis.

The aim of the submitted draft Act is to set up a system at the security forces which is independent both institutionally and in terms of the personnel involved, and which will be effective in the prosecution of criminal acts committed by members and employees of the Czech Police, the Customs Administration of the Czech Republic, the Prison Service of the Czech Republic and also the General Inspectorate of the Security Forces itself, thus leading to greater effectiveness in the fight against corruption amongst members and employees of the security forces.

The General Inspectorate is conceived of as an independent security force, whose members are engaged in the service in accordance with Act No. 361/2003 Coll., regulating the service of members of the security forces, as amended. In view of its role, the General Inspectorate will have the status of a police authority under the Criminal Procedure Code. The General Inspectorate will also be economically independent; it will have the status of an organisational unit of the state and an entity with its own budget heading.

[1] In addition to this, a large quantity of various types of complaints also come regularly to the Minister of the Interior, the Minister of Finance and the Minister of Justice.

According to the draft, only some of the security forces are to fall under the competence of the General Inspectorate, as specified in the Analysis. The role of the General Inspectorate will be to investigate criminal acts of members of the Police of the Czech Republic, customs officers, members of the Prison Service of the Czech Republic or Czech state employees assigned to work with the Police of the Czech Republic and Czech state employees assigned to work with the Customs Administration of the Czech Republic or the Prison Service of the Czech Republic, in cases where a crime was committed in connection with the performance of their work duties.

In the case of members and employees of the Fire Service of the Czech Republic, no reason was found for prosecuting their criminal acts in a different manner than is used for ordinary citizens, especially since their activities mostly involve rescue work. In the case of the Security Information Service and the Office for Foreign Relations and Information, which are also security forces, it is proposed that the existing system for prosecuting their members will not be changed, due to the strict secrecy of the activities of the intelligence services.

The General Inspectorate will be headed by a Director, who will be appointed and recalled from office - further to a government motion and following discussion on a House Committee for security affairs - by the Prime Minister, to whom the Director of the General Inspectorate will be accountable for the performance of his duties.

On 9 September 2011 the draft Act was discussed and approved in its third reading by the Chamber of Deputies under Resolution No. 684.

The CPT would like to receive the following information for the period from 1 January 2009 to the present:

(a) the number of complaints of ill treatment lodged against police officers, and the number of criminal/disciplinary proceedings which have been initiated on the basis thereof;

(b) the number of criminal investigations relating to possible cases of police ill-treatment which have been launched by the Inspectorate of the Ministry of the Interior on its own initiative;

(c) the outcome of the proceedings referred to in points (a) and (b), and a report on any criminal / disciplinary sanctions imposed on police officers in such cases (point 13).

Complaints submitted under Section 175 of Act No. 500/2004 Coll., the Administrative Procedure Code, as amended, which are directed against the conduct of members of the Police of the Czech Republic are recorded in the "Records of Submissions" information system using the Lotus Notes application environment. In this information system a record is also made of steps taken, e.g. the outcomes of proceedings in matters relating to the service of members in accordance with the above Act.

According to data from the Inspectorate of the Police of the Czech Republic, a total of 73 complaints of ill-treatment of detainees by members of the Police of the Czech Republic were recorded in 2009. Of these, 32 submitted complaints were dismissed as without justification, 7 were forwarded to the Internal Control Office of the Police Presidium, false charges were recorded in 5 cases, 12 cases were forwarded to disciplinary proceedings, and in 1 case a proposal was filed to initiate the criminal prosecution of a member of the Police of the Czech Republic.

In 2010, the Inspectorate of the Police of the Czech Republic recorded a total of 67 complaints of ill treatment of detainees by members of the Police of the Czech Republic. Of these, 25 submitted complaints were dismissed as without justification, 22 were forwarded to the Internal Control Office of the Police Presidium, false charges were recorded in 9 cases, 10 cases were forwarded to disciplinary proceedings, and only in 1 case was a proposal filed to initiate the criminal prosecution of a member of the Police of the Czech Republic.

According to data from the Internal Control Office of the Police Presidium of the Czech Republic, in 2009 the total number of submitted complaints was 61, of which 48 were found to be without justification. Three submitted complaints were found to be partially justified: 1 submitted complaint was then found in the final proceedings to be without justification, 1 submitted complaint concerned incorrect official procedure (it was not a complaint in relation to police brutality). 1 submitted complaint was found to be partially justified in its part relating to the placement of a detainee in a police cell, which resulted from a misinterpretation of the internal procedural document (hereinafter the "IPD"). The chosen form of action was discussion of the issue at a meeting. 1 submitted complaint was at first found to be justified, but was then found in the final proceedings to be without justification, 1 submitted complaint was administratively transferred, 1 submitted complaint was put on file without investigation, and 7 submitted complaints were forwarded to other departments within the Ministry of the Interior.

In 2010, the total number of submitted complaints was 83, of which 69 were found to be without justification and 6 were found to be partially justified:

In the case of 1 submitted complaint, the first part of the complaint relating to police brutality was found to be without justification, and the second part of the complaint relating to incorrect official procedure by police officers was found to be justified due to negligence and indiscipline and a misinterpretation of the IPD. The matter was investigated by the Inspectorate of the Police of the Czech Republic and subsequently returned to the complaints administration system. The matter was then discussed at a meeting;
1 submitted complaint was found to be partially justified, since as a result of an incorrect interpretation of the law and the IPD, a warning was not given, prior to the use of means of force, that such means would be employed in the event of non-cooperation. The matter was discussed at a meeting;
1 submitted complaint was found to be partially justified, as when being placed in a police cell a list was not made and presented to the detainee of his personal effects, and the police officer did not proceed in accordance with the law and the IPD due to negligence and indiscipline. The matter was discussed at a meeting;
1 submitted complaint was found to be partially justified in the part concerning the dispatching of an official record of the behaviour of the complainant towards his employer, despite the fact that there were no legal grounds for doing so. The matter was discussed at a meeting due to the incorrect interpretation of the law and the IPD;
1 submitted complaint was found to be partially justified in the part relating to the fact that the intervening officer did not have his service number on his uniform as it had been stolen earlier. The matter was discussed at a meeting;
1 submitted complaint was found to be justified in the part concerning the failure to carry out an identification check on a person during a police intervention due to failings in procedure and the system for control. The part of the complaint regarding police brutality was forwarded to the Inspectorate of the Police of the Czech Republic. No outcome has yet been reached from the investigation.

One submitted complaint was found to be justified due to the excessive use of means of force (grips, holds and handcuffs) as a result of the negligence and indiscipline of a police officer. The matter was discussed with the officer by a police service official and at a meeting of the commanding officers of the police department. One submitted complaint was forwarded outside the Ministry of the Interior, 1 submitted complaint was put on file without investigation and 5 submitted complaints were forwarded to departments within the Ministry of the Interior.

The total number of submitted complaints in 2011 was 51, of which 31 were found to be without justification. 17 submitted complaints are still under investigation. 1 submitted complaint was found to be partially justified - this did not involve a complaint in regard to police brutality, but a complaint regarding the incorrect parking of a service vehicle during the performance of police activities due to the negligence and indiscipline of the driver. The matter was discussed with the officer. One submitted complaint was forwarded to another department within the Ministry of the Interior and one submitted complaint was withdrawn.

The procedure of "forwarding complaints to other departments within the Ministry of the Interior" usually involves the transfer of the procedure to the Inspectorate of the Police of the Czech Republic. The procedure of "forwarding complaints outside the Ministry of the Interior" usually involves complaints that are directed against members of the Municipal Police, which are forwarded to the inspection and control authorities of the relevant municipal police departments. The procedure "put on file without investigation" generally involves repeated identical submitted complaints, which are dealt with by putting the information on file, or cases where the submitted complaint was withdrawn by the complainant.

With reference to Chapter 3: Basic safeguards against ill treatment

Recommendations

The Committee recommends that the legal provisions relating to the right to notification of detention be amended so as to reflect the rules set out in point 15 (i.e. any exemptions from this right must be clearly defined). In this regard, the present wording of Section 24(3) of the Police Act is too vague and must be in application for as short a time as possible. Appropriate safeguards must also be introduced (e.g. a written record must be made of any delay stating the reasons for it, and the explicit consent must be required of a senior police official who is not connected with the relevant case or with the state prosecutor). Practice at all police establishments must be revised in a suitable manner (point 15).

The existing legislation on the notification of close persons and the formulation of the exemption is optimal as regards the balance between the needs and rights of persons held in custody and police practice. The state prosecutor is always informed in writing of any cases where the exemption is applied and the chosen person is not notified of the detainee's detention. This fulfils the CPT's recommendations: a) that there be a written record of the fact that the exemption has been applied, b) that the exemption be applied solely with the knowledge of a superior entity. Czech law establishes a system where control in such cases is performed by the state prosecutor, i.e. a state authority independent of and superior to the police, which, in addition to overseeing the pre-trial criminal process, is also responsible for the supervision of locations where persons are restricted in their liberty (Section 4(b) of Act No. 283/1993 Coll., on the state prosecutor's office, as amended).

As regards the right to notification of detention, Section 24(2) of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended (hereinafter the "Police Act") stipulates that at the request of a detainee the police must notify a close relative or some other third person of his detention without undue delay (see also Section 70 of the Criminal Procedure Code). In the light of the above, we do not consider it necessary to amend the legislation. In accordance with the recommendation, an interpretative opinion or, as applicable, a methodological guideline will be added. If, in a justified case, a police officer does not notify a third person of the detention of a suspect, the officer shall make an official record of the justification for this. This official record will form part of the file.

The Committee recommends that the Czech authorities take steps to ensure the effective exercise of the right of detainees to have access to a lawyer (including the right to have a lawyer present during police questioning and to have the opportunity to speak with a lawyer in person) at all police establishments (point 16).

When handling detainees, the conduct of members of the Police of the Czech Republic is governed both by the law and internal procedural documents regulating this issue.

Under the Police Act, restriction of personal liberty is covered by Title V. Exercise of the right of detainees to have access to a lawyer is regulated by Section 24(4): "Persons restricted in their liberty have the right to secure, at their own cost, legal assistance and to speak with legal counsel without the presence of third parties. Police officers shall promptly provide necessary assistance for this purpose, if such persons so request."

The Criminal Procedure Code provides for the right of detainees to have access to a lawyer under Section 76(6): "Detainees have the right to choose their own legal counsel, speak with him without the presence of third parties and to confer with him during their detention; they also have the right to request that their legal counsel be present during their questioning according to subsection 3, unless their legal counsel is unreachable within the period stated in subsection 4. Suspects must be advised of these rights and given full opportunity to exercise them."

Among the internal procedural documents, this issue is dealt with under Section 15(1) of Binding Guideline of the Police President No. 159/2009 on police escorts, the guarding of persons and police cells: "Persons placed in police cells are to be advised of their rights and obligations by a police officer. The content of the list of these rights and obligations and the information provided shall be the same both for foreign nationals and for citizens of the Czech Republic who are placed in cells. Foreign nationals may be advised of their rights and obligations by means of a printed translation of the list of rights and obligations, or via an interpreter using a foreign language which the person understands. One copy of this list of rights and obligations, signed by the person being held, is to be filed in the records of the organisational unit of the police where the police cell is located, and one copy is to be given to the person. If the person does not sign the list of rights and obligations a record of this is to be made on the form." The list of rights and obligations is available in 13 foreign languages (Annex No. 3 of the Binding Guideline of the Police President No. 159/2009 on police escorts, the guarding of persons and police cells). Furthermore, Section 38 of Binding Guideline of the Police President No. 30/2009 on the performance of tasks in criminal proceedings states that: “Prior to any questioning or other procedural act involving his participation, the accused must be advised, without limitation, of his right: to choose his legal counsel or to request that legal counsel be appointed, and to confer with him during the tasks carried out by the police authority; to request the presence of his legal counsel during questioning or other acts, and, if the accused is in remand or is serving a term of lawful imprisonment, also of his right to speak with

his legal counsel without the presence of third parties. The reading of these rights to the accused is to be recorded verbatim in the record of the given act prior to which the accused was advised of them. A suspect that has been detained must similarly be informed of his right to choose legal counsel and to confer with him". Furthermore, under Section 39(3): "In cases where the accused is deprived of his liberty (remanded pending trial, detained or brought in for questioning) while the period of hours set for him to choose legal counsel is running, the police authority shall provide him with effective assistance, in particular by allowing him to contact legal counsel by telephone using the telephone directory or using a list of lawyers."

At the same time, Article 47(2) sets out the rights of a detained suspect: "The police authority shall inform a detained suspect of the objective elements of the crime of which he is suspected and of the reasons for his detention, and shall also advise him of his right to choose legal counsel, to confer with him during his detention, and to request that his legal counsel be present during his questioning. The police authority shall set a reasonable time limit, of at most a number of hours, for the detainee to choose legal counsel, and shall provide him with assistance to allow him to contact legal counsel by telephone, or, as the case may be, to choose legal counsel using the telephone directory or the list of lawyers maintained by the court. The police authority shall question a detainee without the presence of legal counsel if the detainee has refused to choose a legal counsel, or if the period for the choice of legal counsel has expired, or if legal counsel has failed to appear at the detainee's questioning within a reasonable period of time or is unreachable."

The exercise of the rights of detainees is subject to internal control mechanisms of the Police of the Czech Republic on several levels. On 24 January 2011, the Deputy Police President for External Service assigned, amongst other things, a task to the Directorate of the Public Order Police Service of the Police Presidium of the Czech Republic to carry out methodological activities aimed at: verifying the correctness of the set rules for restricting the liberty of persons and for holding them in cells, with an emphasis on the advising of persons of their rights; verifying whether any violations are occurring of the personal rights of persons whose liberty has been restricted; and at checking compliance with the lawful periods applying to the holding of persons in police cells.

In conjunction with these internal control activities, the legislation contained both in the cited Acts and in the internal procedural documents (including the lists of rights and obligations which have been prepared) is adequate to ensure the effective exercise of the right of detainees to have access to a lawyer. All accused persons who lack the means to pay for legal counsel are entitled to free legal assistance (as similarly under Article 6(3)(c) of the Convention for the Protection of Human Rights and Fundamental Freedoms). In the Czech Criminal Procedure Code, free legal assistance is provided for under Section 33(2).

Exercise of the right to access to a lawyer can be considered an effective safeguard against ill-treatment only if persons who are in police custody and cannot afford to pay for a lawyer may make use of a comprehensive system for legal assistance. If this is not so, then the right to access to a lawyer will remain merely a hypothetical right in many cases. In this regard, the CPT notes with concern that under the existing criminal laws, the right to access to a lawyer *ex officio* is limited to serious crimes (i.e. crimes which are subject to a minimum of five years imprisonment or a fine of at least 5 million Czech crowns).[2]

[2] Cf. Sections 17 and 36 of the Criminal Procedure Code.

The Committee recommends that as a matter of priority a comprehensive and properly funded system of legal assistance be set up for <u>all</u> persons that are in police custody and cannot afford to pay for a lawyer. This system must apply from the very outset of police custody, regardless of the seriousness of the crime allegedly committed (point 17).

One of the fundamental principles of criminal proceedings in the Czech Republic is the principle of securing the right of defence of the accused. This right, laid down under the provision of Article 40(3) of the Czech Charter of Fundamental Rights and Freedoms and the provision of Section 2(13) of the Criminal Procedure Code, is aimed at ensuring full protection of the rights and legitimate interests of persons against whom criminal proceedings are being conducted. Only a certified lawyer may act as legal counsel in criminal proceedings.

Neither the Criminal Procedure Code nor the Police Act in any way restrict the right of defence of detainees. Detainees may freely choose their legal counsel at any time (Section 37 of the Criminal Procedure Code), and legal counsel may also be chosen for them by a close person. In addition to this, in certain cases persons in criminal proceedings may have legal counsel appointed for them due to the fact that their ability to defend their rights is restricted or their rights are in danger (e.g. due to the penalty of a long term of imprisonment). The applicable Czech legislation complies with European human rights standards as regards the issue of access to legal counsel (a lawyer). All accused persons who lack the means to pay for legal counsel are entitled to free legal assistance (as similarly under Article 6(3)(c) of the Convention for the Protection of Human Rights and Fundamental Freedoms). In the Czech Criminal Procedure Code, free legal assistance is provided for under Section 33(2).

According to Section 158(4) of the Criminal Procedure Code, everyone has the right to legal assistance from a lawyer when submitting explanations to the police authority prior to the commencement of criminal prosecution. In cases where such explanations are required from minors, this act must be notified to their legal representative beforehand.

In the case of detainees it is explicitly stated that they have the right to choose legal counsel, speak with him without the presence of third parties and to confer with him during their detention (Section 76(6) of the Criminal Procedure Code). Detainees already have the right to have their legal counsel present during the initial questioning focusing on the grounds for their detention (Section 76(3) of the Criminal Procedure Code).

Sections 36 and 36a of the Criminal Procedure Code provide for what is known as "obligatory defence". The accused must already have legal counsel during the pre-trial process if the proceedings relate to a crime for which the law imposes a penalty of imprisonment for a term whose upper limit exceeds five years. In other cases (i.e. regardless of what penalty they face) accused persons must have legal counsel if they are remanded pending trial, serving a term of lawful imprisonment, or under observation at a medical institution. This also applies in cases where the accused has been deprived of legal capacity, or his legal capacity is restricted, or in the case of proceedings against a fugitive. The accused must also have legal counsel, if deemed necessary either by the court or during pre-trial process by the state prosecutor, particularly in cases where these have doubts about the accused's capacity to present an adequate defence due to his physical or mental deficiencies. The accused must also have legal counsel during the hearing in simplified proceedings against a detainee during which a decision is made on ordering or amending "security detention" [i.e. detention for compulsory treatment in a secure institution] or on ordering or amending compulsory treatment, with the exception of treatment for alcoholism.

The Criminal Procedure Code requires that the accused have legal counsel if he is to make a statement on whether he will waive the right to the application of the specialty rule in proceedings following extradition from a foreign country, in proceedings on extradition to a foreign country or on transfer to another Member State of the European Union, in proceedings on further transfer to another EU Member State, or in proceedings on the recognition and enforcement of a foreign decision, in proceedings on the recognition and enforcement of a decision of another Member State of the European Union regarding financial sanctions and performance under which a financial penalty or fine was imposed, and in proceedings on the recognition and enforcement of a decision of another Member State of the European Union on the forfeiture or confiscation of property. In enforcement proceedings where the court is to decide in open session, the convicted person must have legal counsel if he has been deprived of legal capacity, if his legal capacity has been restricted, if he is remanded pending trial, or if there are doubts about his capacity to present an adequate defence.

The provision of Section 36 of the Criminal Procedure Code provides for obligatory defence by implementing the significant components of the accused's right of defence laid down in Article 6(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In cases of obligatory defence, the accused must have legal counsel even if he expressly refused legal representation or did not intend to choose any legal counsel. The grounds for obligatory defence relate to specific circumstances under which the accused cannot adequately secure his defence. They relate, on the one hand, to the accused himself and his potential to properly carry out his defence, and, on the other, to the subject of the proceedings.

In pre-trial process, obligatory defence must be secured for the accused from the moment that any of the grounds stated in the Criminal Procedure Code arise (i.e. upon being remanded into custody, upon the commencement of the performance of a term of lawful imprisonment or the start of observation in a medical institution, upon the handing down of a decision of a civil court on deprivation or restriction of legal capacity, if the conditions for holding proceedings against a fugitive are met and the legal counsel has been informed of the charges). If the grounds for obligatory defence are already met at the time of the statement of the charges, the accused must have legal counsel from that moment on. Obligatory defence then continues for as long as the grounds for it exist, including in cases where one set of grounds have ceased to apply but new grounds for obligatory defence have arisen.

Established case law shows that the appointment of legal counsel for the accused during pre-trial process in cases of obligatory defence must be carried out as swiftly as possible in order to secure the legal counsel a real possibility of protecting the rights of the accused, particularly the right for legal counsel to be present during questioning from the time that charges are made. Doubts may arise about accused persons' capacity to present an adequate defence if their mental state causes such doubts, and also in the case of accused persons that are deaf, deaf-mute, mute or blind, or that have relatively serious speech defects, or suffer from serious illnesses other than merely mental illnesses, which prevent them from presenting an adequate defence. The same applies in the case of accused persons who cannot read or write.

If an accused person does not have legal counsel in a situation where this is obligatory, a time period is set in which he must choose one. If he fails to choose legal counsel within this period, the court will immediately appoint one for him for the period during which the grounds for obligatory defence exist (Section 38(1) of the Criminal Procedure Code). The law provides that the accused may choose a different legal counsel from the one appointed for him or chosen for him by an authorised person (Section 37(2) of the Criminal Procedure Code).

The Czech Bar Association provides two forms of legal assistance to persons who are unable for various reasons and on various grounds to obtain the legal assistance of a lawyer - firstly, the option to request the CBA to appoint a lawyer free of charge or for a reduced fee, and, secondly, by organising free legal consultations in the various regions as part of its performance of public benefit activities. The Board of Directors of the Czech Bar Association appoints regional representatives and their deputies according to the jurisdiction of the regional courts. Amongst other things, regional centres are involved in securing legal assistance to persons who cannot obtain the provision of legal services by a lawyer. Under Article 18 of Resolution of the Board of Directors of the Czech Bar Association No. 1/1997 of the Official Journal of the Bar which determines the Rules of Professional Conduct and the Rules of Competition of Lawyers, lawyers are obliged to participate to a reasonable extent in projects aimed at promoting or defending human rights and freedoms without the entitlement to remuneration.

The CPT reiterates its recommendation that the Czech authorities take steps to ensure that at all police establishments medical examinations of detainees be performed out of earshot and (unless the relevant doctor requests otherwise in a particular case) out of sight of law enforcement officials. It is also necessary to take steps to ensure that medical information no longer be accessible to non-medical staff (point 18).

Persons restricted in their liberty outside of police cells are also entitled to medical treatment - this rule is laid down in the provision of Section 24(5) of the Police Act. Persons restricted in their liberty have the right to be examined or treated by a doctor according to their own choice; this does not apply to examinations by a doctor to ascertain whether such persons may be held in a police cell or whether they must be released from it. The police are obliged to allow a doctor access to persons restricted in their liberty for the purpose of treatment or examination.

Article 12(2) of the Binding Guideline clearly sets forth the obligation: "During the medical examination or treatment of a person, at least one escorting police officer of the same sex as the examined or treated person shall maintain visual contact." This obligation has not been stipulated for police officers for its own sake: medical examinations are generally carried out in medical facilities (chiefly in hospitals, where neither the doors nor the windows are secured in any way) which are not under the control of the Ministry of the Interior. The Police of the Czech Republic have a duty to ensure the safety of persons (primarily doctors and medical personnel) and property as prescribed under Section 2 of the Police Act, and also to prevent persons restricted in their liberty from escaping during the performance of medical examinations or treatment. If medical examinations of persons restricted in their liberty were performed without the presence of an escorting police officer, this police officer could not then properly perform the tasks prescribed by the Police Act.

Following the performance of the medical examination, the Police of the Czech Republic receive a report from the examining doctor stating whether it is possible from the medical perspective to hold the person in a police cell, and whether the person is capable from the medical perspective of cooperating in police acts. The doctor also draws up a medical report regarding the examination performed and the medical condition of the person. This is, however, sealed (for example in an envelope) so that it cannot be examined. The police officer deposits this sealed report into the respective file for the purpose of the subsequent preparation of an expert opinion. The police do not, therefore, learn the complete medical condition of the person restricted in their liberty whom they are questioning, but only the information which they are informed of by the doctor for the purpose of placing the person in a police cell and as regards the capacity of the person to cooperate in police acts. Such a procedure does not entail any violation of the rights of persons restricted in their liberty.

The CPT reiterates its recommendation that the Czech authorities take steps to ensure that persons detained by the police systematically be provided with a form explicitly stating all the aforementioned rights of persons detained by the police, immediately upon their arrival at police establishments. This form must be available in the appropriate languages. In addition to this, such persons must be required to sign a statement proving that they were informed of their rights, stating the date and time of signing (point 19).

The issue of advising persons of their rights and obligations in connection with the restriction of personal liberty has been the subject of intensive consideration by the Directorate of the Public Order Police Service. The proposal of the CPT is now being implemented, as in June 2011 the Directorate received versions of the relevant list of rights and obligations translated into English, French, German, Russian, Spanish, Italian, Arabic, Bulgarian, Chinese, Moldavian, Mongolian, Polish, Ukrainian and Vietnamese.

The rights of persons restricted in their liberty and the list of rights and obligations of which they are to be advised when escorted by police and being placed in a police cell are therefore now available in 14 languages on the intranet pages of the Directorate (http://ppportal.pcr.cz/rspp/Poradkova/informace/informace.htm) while the different language versions of the list are also being entered into the Database of Criminal Proceedings as part of the language-specific options available. Nothing prevents persons restricted in their liberty from being informed of their rights and signing a statement to that effect.

The CPT recommends that the Czech authorities take immediate steps to improve the material conditions of detention at the Kladno-Kročehlavy District Police Department, with regard to the comments made above (point 21).
As regards the Regional Police Headquarters of the Capital City of Prague at Kongresová street, the delegation noticed that since the last visit separate toilets have been fitted in the cells for two detainees. However, most of the cells still lack adequate ventilation. The CPT recommends that this deficiency be corrected.

Annexes Nos. 1, 2 and 3 of the Binding Guideline of the Police President No. 159/2009 on police escorts, the guarding of persons and police cells stipulate conditions for constructing and fitting police cells which are in accordance with the requirements of the CPT. If police cells lack any material fittings, then this is an individual error of the relevant staff member responsible. From our practical police experience, we would mention that police cells are gradually being constructed and reconstructed to bring them into line with the conditions stated in the Binding Guideline and that this process depends on the quantities of funding provided.

The CPT trusts that the Czech authorities will take steps necessary to ensure that all persons deprived of their liberty by the police be given food at appropriate intervals and that they have easy access to drinking water (point 22).

Further to a request from the Directorate of the Public Order Police Service, opinions have been drawn up by the Department of Analysis and Legislation of the Police Presidium of the Czech Republic and the Department of Security Policy of the Ministry of the Interior of the Czech Republic regarding the "Provision of food to persons restricted in their liberty who are not held in police cells", which have been available on the intranet pages of the Directorate since 5 November 2010 (http://ppportal.pcr.cz/rspp/Poradkova/stanoviska_jina/stanoviska_jina.htm).

These opinions guarantee that all persons deprived of their liberty by the police will be given food at appropriate intervals and that they will have easy access to drinking water. If this has failed to be carried out, the error is of an individual, not a systemic, nature.

The CPT recommends that all the necessary steps be taken at the Regional Police Headquarters of the Capital City of Prague at Kongresová street, and that if possible it be ensured at other police establishments that persons detained for 24 hours or longer be able to have at least one hour of outdoor exercise per day (point 23).

The police always restrict persons' liberty only for short periods of time, usually for up to 24 hours. In our opinion, it is not absolutely necessary for the protection of the rights and interests of persons restricted in their liberty by the police for such persons to have the possibility of outdoor exercise during this very limited period of time. Such a requirement makes sense in the case of persons remanded pending trial or imprisoned etc.

The holding cells at most of the police establishments visited were fitted with CCTV. The CPT has no objection to the use of CCTV camera systems for the supervision of detention areas, provided that persons deprived of their liberty are given adequate privacy when using toilets, sinks and showers, as was the case in all the holding cells monitored by CCTV which the delegation visited. However, systems of this kind cannot replace direct contact with prison staff and may, on the contrary, lead to a false sense of security; regular inspections of cells by prison staff cannot be substituted (point 24).

At the facilities listed by the CPT, guarding and checking on persons is for the most part carried out using a combination of a CCTV system and police guards, who perform checks in person at least every hour.

The CPT calls on the Czech authorities to remove immediately from all police establishments any wall fittings used for shackling persons, and in general to take effective steps to eradicate the practice of shackling persons in police detention to fixed fittings. Every police establishment where persons may be deprived of their liberty must be equipped with one or more rooms designated for detention purposes.

In the case of detainees who are behaving aggressively, justifiable use of handcuffs may be made. However, such persons may not be shackled to fixed fittings, but instead must be kept under strict supervision in a secure environment, and if necessary medical assistance is to be summoned (point 25).

In the light of the requirements of the CPT relating to the condition and operation of police cells following its inspection in 2006, a Czech government response was submitted which was approved under Government Resolution No. 223 of 12 March 2007. As a result, metal fixtures built into the walls of police cells to which detainees at some police stations were shackled in unnatural or uncomfortable positions were removed. Gradually, depending on the funds available, fixtures are being installed in police cells which form part of the frame of the bench in the cell, allowing detainees to be shackled in natural and comfortable positions which are not detrimental to their health. The specific positions to be used for shackling detainees have been consulted with a specialist health department - the Health Institute of the Ministry of the Interior.

On 2 July 2007, the Police President approved information resulting from meetings of the Deputy Police President for the Uniformed Police with the Government Commissioner for Human Rights and representatives of the CPT. The consensus achieved at these meetings was that a) wall-mounted and uncomfortable fixtures have been removed from cells, b) the new fixtures being constructed in cells form part of the frame of the bench in the cell, allowing detainees to be shackled in natural and comfortable positions which are not detrimental to their health, and c) outside of cells fixtures will be constructed which allow detainees to be shackled in natural and comfortable positions which are not detrimental to their health only in service areas of police departments which are inaccessible to the general public.

The above changes will ensure that the principles of proportionality, which every police officer must abide by during all his activities, are adhered to, and that the institution of shackling detainees will at all times be used only in cases where it is truly unavoidable, and will be carried out in a manner that respects the health and dignity of persons restricted in their liberty.

Section 25 of the Police Act authorises police officers to restrict the freedom of movement of aggressive persons, i.e. persons who *physically assault police officers or other persons, endanger their own lives, cause damage to property or attempt to escape,* and this may be carried out by shackling such persons to *a suitable* object until such time as *it is clear that such persons will not repeat such behaviour,* although for 2 hours at the most. Provided that the conditions of Section 25 of the Police Act are met, the shackling of persons to a suitable object, in particular by using handcuffs, may currently be carried out as a lawful act.

Under Section 25 of the Police Act, police officers are authorised to restrict the freedom of movement of persons who physically assault police officers or other persons, endanger their own lives, cause damage to property or attempt to escape, by shackling such persons to a suitable object, in particular by using handcuffs. Under Section 25(2), the restriction according to subsection 1 must end when it is clear that such persons will not repeat the behaviour according to subsection 1, although at the latest 2 hours after the person was first shackled.

This measure may be applied solely against aggressive persons**,** as stated above, and may only be applied until such time as the person ceases this aggressive behaviour, and at the longest for two hours. The behaviour involved must be physical aggression, not merely verbal aggression, threats, insults etc.

The CPT trusts that the Czech authorities will take steps to ensure that the recommendations set out in points 15 to 19 (the right to notification of detention, the right to access to a lawyer, the right to access to a doctor, advising persons of their rights) also be implemented by the foreigners police at the Praha-Ruzyně international airport (point 33).

The basic safeguards are adhered to at the Praha-Ruzyně international airport. At the airport, the foreigners police advises detainees of their rights when placing them into cells, when they are escorted by police or when their liberty is restricted. The relevant forms are written in several languages (e.g. English, Vietnamese, Russian, Mongolian, Arabic etc.), and are based on similar forms used by the public order police. These are also available on the intranet. All the foreigners police officers on duty at the airport are informed of the need to use these forms.

Medical treatment and the presence of a doctor are provided immediately if a person requests them.

In regard to Part II. C: Correctional facilities for adults

Introductory remarks

The CPT recommends that the Czech authorities redouble their efforts to end overcrowding at prisons and to ensure the effective implementation of the above legal standard of 4 m^2 of space per prisoner in practice, with regard to 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) (point 35).

The new Criminal Code (Act No. 40/2009 Coll., as amended, hereinafter the "Criminal Code"), which came into effect on 1 January 2010, has not yet manifested in the expected reduction in the number of persons serving terms of lawful imprisonment. The newly introduced sentence of house arrest is still not greatly used in judicial practice.

The Ministry of Justice and the Administration of the Prison Service of the Czech Republic are encouraging wardens of prisons to make the greatest possible use of the option to submit proposals for conditional release (parole) pursuant to Section 88(2) of the Criminal Code (before prisoners have served half of their sentences). In early May 2011 a model for cooperation between the Probation and Mediation Service of the Czech Republic and the Prison Service of the Czech Republic was put into operation to explore the possibilities for applying the above institute of conditional release. Cooperation between these services continues to be governed by an Agreement on Cooperation between the Probation and Mediation Service of the Czech Republic and the Prison Service of the Czech Republic relating to the securing of documents for court decisions on potential conditional release with supervision, which was concluded by the heads of these services on 19 April 2010.

In 2011 and 2012, investment projects will be implemented which will increase the capacity of prisons by 800 places at a cost of 130 million CZK. The Ministry of Justice and the Prison Service of the Czech Republic are jointly negotiating with the Ministry of the Interior in regard to the gratuitous transfer of unneeded real estate - the currently unused refugee facilities in Velké Přílepy (district of Prague – East) and the site of a police training centre in Balková (district of Prague – North), which, after being modified and put into operation, would increase accommodation capacities by an additional approximately 700 places. To eliminate the disproportion between the number of prisoners and the accommodation capacity of prison facilities (approximately 3 000 places) it would be necessary to increase the capital expenditure of the Prison Service of the Czech Republic by 1.65 billion CZK, which the state budget of the Czech Republic does not allow.

With reference to Chapter 2: Ill treatment

The CPT recommends that the administration of the prisons in Hradec Králové and Ruzyně bring it to the attention of their staff that all forms of ill treatment of prisoners (including verbal assaults) are unacceptable and will be appropriately punished (point 36).

The recommendation of the CPT has been, and continues to be, implemented on an annual basis in the form of instruction given as part of the professional training of members of the service and civilian employees. If cases of inappropriate behaviour are discovered, these are always investigated by the competent authority (the Prevention and Complaints Department), and if proven result in disciplinary or personnel measures.

The Special Inspections Department in the Section of the 1st Deputy Minister carries out checks on compliance with the laws and internal regulations regulating the duties of members and civilian employees of the Prison Service during the handling of remanded and convicted prisoners, specifically in the context of the provisions of Act No. 555/1992 Coll., on the Prison Service and Court Security Officers of the Czech Republic, as amended (hereinafter the "Act on the Prison Service") which cover the duties and authorisations of members of the service.

Under Section 6(1) of the Act on the Prison Service, members of the service are obliged to conduct themselves in a serious and decisive manner in their dealings with persons in security detention, remand prisoners and convicted prisoners, to respect their rights, to prevent any cruel or degrading treatment both of and among such persons, and to perform their duties with the aim of fulfilling the purpose of such security detention, remand or lawful imprisonment. When carrying out service procedures and service acts, members of the service are obliged, under the provision of Section 6(2) of the Act, to have regard for the honour and dignity both of the persons with whom they are dealing and of themselves, and to ensure that such persons do not suffer any unreasonable harm, and that any infringement of their rights and freedoms does not exceed what is necessary in order to achieve the purpose pursued by the relevant service intervention or service act.

Amongst other tasks, the Special Inspections Department of the Minister of Justice devotes thorough attention to the processing of complaints submitted by prisoners and other persons relating to the activities of the Prison Service of the Czech Republic or the conditions of remanded and convicted prisoners which are addressed to the Ministry or the Minister of Justice.

This issue is also a recurring theme at the regular meetings of the staff of the individual prison units. The administrations of the prison and its units pay careful attention to compliance with the obligations by all employees.

The CPT recommends that the Czech authorities continue in their efforts to combat violence among prisoners at Pardubice Prison and at the Praha – Ruzyně Remand Prison, with regard to the comments made above. In Pardubice especially, a review should be made of the number of employees, in order to ensure more effective supervision of the detention areas (point 38).

One of the principal tasks of the employees and members of the Prison Service of the Czech Republic is to establish and secure conditions aimed at the avoidance, prevention and timely detection of violence among remanded prisoners and convicted prisoners in remand prisons and prisons, and compliance with the stipulated procedure during the detection and assessment of particular cases of violence and during the collection and assessment of information on violent behaviour, i.e. to proceed strictly in accordance with Regulation of the Director General No. 82/2006 on the avoidance and timely detection of violence among remand prisoners.

The CPT Report indicates that this task is progressively being performed by the Prison Service of the Czech Republic, and that its employees are making every effort to detect and investigate any cases of violence and to take appropriate steps in this regard.

The Ministry of Justice has long been aware of the low staff levels of the Prison Service of the Czech Republic, which has also resulted in inadequate staff presence in the detention premises in Pardubice Prison. For this reason, in May 2011 the Minister of Justice submitted to the Czech government a proposal to amend the system applied in regard to service members and to increase the number of civilian employees of the Prison Service of the Czech Republic for the year 2011.

The Czech government passed a decision under Resolution No. 421 of 8 June 2011 approving an increase as of 1 July 2011 in the number of service member positions in the Prison Service of the Czech Republic by 345 positions, resulting in a total of 7 237 positions for members of the Prison Service of the Czech Republic, and at the same time approving an increase in the funds allocated for their service incomes, associated expenditures for insurance paid by their employer, and the Cultural and Social Needs Fund by 70 684 thousand CZK from the government's budget reserve, and instructed the Minister of Justice to present a request to the Minister of Finance for the respective budgetary measures to be effected in the budget heading of the Ministry of Justice for 2011.

On 1 July 2011, a change was made to the schedule of guard posts at the Pardubice Prison so as to increase guard duties during both the day and night. Based on the above Government Resolution, it will be possible to increase guard presence at prisoner accommodation units in the coming period.

In collaboration with the Ministry of Justice, the Prison Service of the Czech Republic will continue to give heightened attention to the detection of latent violence among prisoners.

With reference to Chapter 3: Conditions of detention

In several of the detention units at Pardubice Prison, the toilets and showers were in a poor state. The CPT recommends that this deficiency be rectified (point 39).

Due to the difficult economic situation in the Prison Service of the Czech Republic, the poor state of the sanitary facilities at accommodation units B, E and G of the Pardubice Prison cannot be rectified immediately. Following the increase in the budgeted operating funds and further to a request from the Director of the Pardubice Prison, purchases are now being made of new washroom fittings, spare parts for repairs and other materials necessary for carrying out the most urgent repairs of the sanitary facilities, with a total value of 100 000 CZK. Once the necessary materials have been secured, repairs will be carried out to the electrical wiring, doors and windows, and resurfacing work will be performed. As regards the paintwork, a procedure will be strictly adhered to wherein a fresh coat of paint will be applied every six months and the use of antifungal preparations will be increased. The ceilings will also be given a new scratch coat of plaster at more regular intervals - at least once every four years (to prevent premature peeling). Greater attention is being given to clean-up work by the administration of the prison and of its individual units.

In Hradec Králové Prison a number of cells were greatly overcrowded (e.g. up to three prisoners in one cell with an area of 8 m2, and up to seven prisoners in one cell with an area of approximately 18 m2); in Pardubice Prison several detention units with a capacity of approximately 60 were used to accommodate more than a hundred prisoners (in particular Block D). In this regard we refer again to point 35 (point 40).

To eliminate the disproportion between the number of prisoners and the accommodation capacity of prison facilities - specified so that in areas designated for permanent accommodation each inmate would have a floor space of at least 4.0 m^2 (approximately 3 000 places) - it would be necessary to increase the capital expenditure of the Prison Service of the Czech Republic by 1.65 billion CZK, which the state budget of the Czech Republic does not allow.

At the present time, inmates are accommodated in prisons and remand prisons so that each inmate has a floor space of at least 3.0 m^2. Necessary steps are being taken in this area, e.g. as of 1 April 2011 a change was made in the system for remand in the case of prisoners remanded into custody based on a decision of the District Court in Nymburk, as well as a change in the system for the admission of convicted prisoners, so that it will be possible to maintain a minimum area of 3.0 m^2 per prisoner in the Hradec Králové Remand Prison.

In collaboration with the Prison Service, the Ministry of Justice is preparing to increase the number of accommodation places by approximately 800 at existing facilities of the Prison Service of the Czech Republic by investing into building extensions, with a planned deadline for completion in 2012. These two institutions are also jointly negotiating with the Ministry of the Interior in regard to the gratuitous transfer of unneeded real estate - the currently unused refugee facilities in Velké Přílepy (district of Prague – East) and the site of a police training centre in Balková (district of Prague – North), which, after being modified and put into operation, would increase accommodation capacities by an additional approximately 700 places. In the current economic situation it is not possible to make any greater increase in the number of accommodation places available, as the Ministry of Justice does not have sufficient funds to invest.

In the Hradec Králové and Praha-Ruzyně remand prisons, the delegation heard a number of complaints from the inmates about the insufficient quantity of food provided. The CPT recommends that the Czech authorities review the provision of food at both the establishments visited (point 41).

Further to the CPT's recommendation, a special inspection is to be carried out in 2011 at the Hradec Králové and Praha-Ruzyně remand prisons in regard to compliance with the rules on the provision of food rations in line with the financial limits stipulated by Regulation of the Director General of the Prison Service of the Czech Republic No. 4/2008, on diet and meals in the Prison Service of the Czech Republic. This regulation has been, and continues to be, regularly updated since it came into effect.

During the whole of 2010, the Hradec Králové Remand Prison received only one complaint from inmates in regard to the quantity of food provided, which specifically related to the small quantity of meat and vitamins in meals. This complaint was properly investigated, and was assessed to be without justification. The administration of the Hradec Králové Remand Prison considers the diet of inmates to be a key issue, and therefore gives special attention to it. The menu is compiled by the department of diet and nutrition in collaboration with a nutritional therapist. When compiling this menu, care is taken to adhere to the principles of a healthy diet and to ensure the nutritional value of the meals prepared, taking into account the set financial limit. The meals provided are checked on a daily basis by employees of the department of diet and nutrition, and five days a week by a nutritional therapist, as well as random spot-checks by other officials of the remand prison and inspection authorities.

The Praha – Ruzyně Remand Prison likewise gives ongoing attention to the diet of inmates. Checks carried out have not found that the meals provided to inmates fall short of the set criteria, covering, for example, the nutritional balance, variety and quantity of the food served. Meals are prepared according to a set financial standard. The relevant staff are trained, and know the standard for the size of individual portions, and how to serve them. The quantities of food are watched over by supervisors when being served from the kitchen, and these also subsequently check that the portions of food given are appropriate for the particular inmates.

Complaints from prisoners about food that are addressed to the Ministry of Justice are immediately dealt with by the Special Inspections Department. This department also carries out regular inspections on the performance of prison administration at various prisons and remand prisons throughout the Czech Republic, during which checks on compliance with the food and dietary regulations are among its priorities.

The CPT recommends that the authorities of the Czech Republic take immediate steps at Pardubice Prison, and, if appropriate, also at other prisons, to ensure that all prisoners be able to shower at least twice a week, or more often if allowed by the circumstances, in view of the European Prison Rules. The Committee furthermore recommends that the Czech authorities review their policy in regard to electricity supply to prisons, and extend the period during which prisoners have electricity supply in their cells, especially prisoners which are subject to strict regimes (point 42).

Convicted prisoners are allowed to bathe more than once per week only if this is required due to their involvement in prison work programmes or their participation in activity programmes (e.g. sports activities). The supply of hot water to prisoners' cells and washrooms is limited to the periods specified in the daily schedule for personal hygiene, cleaning and eating. Inmates have a cold water supply 24 hours a day for the maintenance of personal hygiene.

Inmates are also allowed to use water heaters to prepare their own hot drinks 2 times a day. As an incentive under the internal differentiation system, the opportunity for convicted prisoners to watch television programmes is provided for in a uniform manner for all types of prisons - for the 1st privilege level of the internal differentiation system to 12 midnight; for the 2nd privilege level of the internal differentiation system to 11 p.m.; for the 3rd privilege level of the internal differentiation system to 10 p.m.

The Ministry of Justice is in agreement with Guideline of the Director General of the Prison Service of the Czech Republic No. 8/2010, on measures to minimise the costs of energy consumed during the exercise of the rights of prisoners, which came into effect on 6 September 2010. Measures to save on hot water and electricity are being taken as a result of the currently strained budget of the Prison Service of the Czech Republic. As soon as financial conditions allow, the Ministry of Justice will initiate a change in the system for bathing and using electricity.

The CPT recommends that the Czech authorities redouble their efforts to improve the programme of activities offered to men and women (both convicted prisoners and those in remand) in the prisons at Hradec Králové, Praha-Ruzyně and Teplice, and where appropriate also in other prisons in the Czech Republic (point 45).

The numbers of civilian employees employed in organising activities for prisoners and of guards performing supervision of prisoners during the various activities are not ideal. The Czech government, aware of this unsatisfactory situation, but nonetheless in a situation where for economic reasons austerity measures are being taken at all its ministries, decided under Government Resolution No. 421 of 8 June 2011 to increase the number of service member positions in the Prison Service of the Czech Republic by 345 positions from 1 July 2011, and to increase the number of civilian employee positions in the Prison Service of the Czech Republic by 196 positions as of 1 July 2011. Amongst other things, this increase will allow the time allotted for prisoners to take part in activities outside their cells to be increased.

The CPT recommends that steps be taken as a matter of priority at the prisons in Hradec Králové and Praha-Ruzyně, and where appropriate also at other prisons, in order to set up a programme of useful activities outside cells during the day for juvenile prisoners which are adapted to their needs (such as education, sport and recreational activities (point 46).

Following the CPT's visit, the Hradec Králové, Praha – Ruzyně and Teplice remand prisons took steps to extend the time spent by juvenile remand prisoners outside their cells. These measures have been most successful at the Hradec Králové Remand Prison, where juvenile remand prisoners spend an average of 9 hours a day outside their cells. Under the guidance of its superior authority, the Ministry of Justice, the General Directorate of the Prison Service of the Czech Republic has requested that an increase be made in the length of time spent outside cells by juvenile remand prisoners at all remand prisons as a matter of priority.

The Committee points out that in view of the inherent risk of manipulation and abuse, juvenile prisoners which, in exceptional cases, are held at adult prisons must always be accommodated separately from adult prisoners. In the event of only one or very few such juvenile prisoners, they must be provided with opportunities to participate in activities with adults outside their cells, under appropriate staff supervision, and may not be left alone shut in their cells for relatively long periods of time.

The CPT recommends that these rules be effectively implemented at the Hradec Králové, Praha-Ruzyně and Teplice remand prisons, and where appropriate also at other prisons in the Czech Republic (point 47).

Across the whole of the Czech Republic, the total current number of juvenile remand prisoners is 46 (44 boys and 2 girls). At particular remand prisons, their number ranges from one (Teplice Remand Prison, Břeclav Remand Prison) to eleven (Ostrava Remand Prison). When remanding juveniles into custody, remand prisons proceed under the provisions of Section 26(1) of Act No. 293/1993 Coll., on remand, as amended (hereinafter the "Act on Remand"): "Juveniles may be placed in cells together with adult remand prisoners only in exceptional circumstances, if there is justification to believe that such a procedure is more appropriate for the relevant juveniles from the perspectives set forth in Section 6(1)." Where the numbers involved are very low, juvenile remand prisoners are grouped together for activities outside their cells with young prisoners, i.e. prisoners of the nearest age category, and such organised activities are always carried out under direct staff supervision.

The Ministry of Justice ensures that checks are performed on the conditions of confinement and the treatment of juvenile prisoners, including in the context of the European Prison Rules, Article 35.4 of which states that: "Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child."

The CPT recommends that steps be taken at Ruzyně Prison to ensure the establishment of an open regime for all the detainees designated for deportation, and to ensure that recreational activities are organised for them (point 48).

The procedure applied when taking any foreign nationals into deportation custody at detention units with moderate regimes is according to Section 8(3) of the Act on Remand. The taking of such persons into custody (i.e. remand prisoners for standard remand or foreign nationals for deportation custody) is conditional upon the approval of a doctor and a psychologist. If this approval is refused by the doctor or psychologist, such persons may not be taken into custody at detention units with moderate regimes.

The CPT recommends that the facilities for outdoor exercise at Ruzyně Prison be expanded to allow prisoners to physically exert themselves (point 49).

Due to the structural and spatial limitations at the Praha – Ruzyně Remand Prison, the only means to implement the CPT's recommendation is to build an area for outdoor exercise on the land adjacent to the remand prison of area 1 698 m^2, which is state-owned, and for which the Prison Service of the Czech Republic has a right of use. The remand prison estimates the costs for fencing off the area, landscaping it and constructing security components at 550 000 CZK. However, the difficult economic situation in the Prison Service of the Czech Republic does not allow this to be carried out in 2011. At present it is not yet clear whether it will be possible to carry out these construction works in 2012 using the investment funding allocated from the state budget.

With reference to Chapter 4: Medical care

The CPT recommends that the authorities of the Czech Republic put an end to the practice of prison doctors at Czech prisons treating both the prisoners and the prison staff (point 51).

The Ministry of Justice does not believe that the provision of medical care to the service members and employees of Prison Service of the Czech Republic by prison doctors reduces the quality or the availability of medical care for the prisoners themselves. The confidence of the employees of the Prison Service of the Czech Republic in the professional medical services provided bears witness to their quality.

Under Section 2(1)(l) of the Act on the Prison Service, the Prison Service of the Czech Republic provides medical care at its medical facilities to persons remanded in custody, persons held in security detention and persons serving terms of lawful imprisonment, as well as the service members and civilian employees of the Prison Service. The law requires that the employer (i.e. the Prison Service) ensure the provision of occupational preventive care, for which the freedom to choose a doctor and a medical facility does not apply.

As regards the availability of medical care for prisoners, the standard measure for comparison is that at civilian medical facilities general practitioners working "full time" will routinely have 2 000 patients or more. At prisons the standard numbers are significantly lower. The limited staff and funds of the Prison Service of the Czech Republic are also an important factor.

The Committee would like to have confirmation that the vacant position for a part-time doctor at Pardubice Prison has been filled (point 51).

The Methodological Management Department of the Probation and Mediation Service of the Czech Republic and the Prison Service of the Czech Republic in the Department of the Office of the 1st Deputy Minister has received information that a general practitioner was engaged to fill the vacant position for a part-time (60% of full time) doctor on 1 February 2011. At the present time, all of the systematically required posts for doctors are filled at Pardubice Prison, and the Ministry of Justice of the Czech Republic has no funds which it could release to the Prison Service for the purpose of creating new work positions for medical personnel.

The CPT recommends that priority steps be taken to ensure that both facilities be regularly visited by a psychiatrist (point 52).

The attempt to secure the specialist medical care of a psychiatrist either in permanent employment or based on an agreement on work activities comes up against the problem of the lack of interest of such specialists in working for the prison, in particular due to the fact that the Prison Service of the Czech Republic cannot meet their payment demands. According to a communication from the Medical Services Department of the General Directorate of the Prison Service of the Czech Republic, where necessary each prison can always secure the requisite specialist medical care in the form of an individual contract for the provision of services. The Ministry of Justice accepts the comment of the CPT regarding systematic special psychiatric care, and agrees with the opinion that the optimal approach would be preventive work with risk groups, but the Ministry of Justice lacks the human and financial resources to provide such services as a matter of priority.

The CPT recommends that the number of medical staff at the remand prisons in Hradec Králové, at the prison in Pardubice and at the remand prison at Praha-Ruzyně be significantly increased (point 53).

The Committee also recommends that appropriate steps be taken to ensure the following conditions at all prisons in the Czech Republic:

- the presence of qualified nurses every day of the week, including weekends; amongst other things this should eliminate the need for medication to be distributed to prisoners by prison staff;

- the permanent presence of a person competent to provide first aid - if possible, qualified nurses, including at night (point 53).

The CPT's recommendation involves engaging greater numbers of doctors and nurses. At the present time, the economic situation in the Prison Service of the Czech Republic does not allow any increase to be made in the number of posts for doctors and nurses. At the same time, the Prison Service of the Czech Republic comes up against a lack of interest from both doctors and nurses to work in prisons, particularly due to the amounts demanded as a standard salary. Moreover, a significant role is also played by the safety risk involved in contact with prisoners.

All the service members of the Prison Service of the Czech Republic are trained to provide first aid during their initial training course (basic professional training). It has been proven repeatedly that service members are able to provide quality first aid until the arrival of the medical emergency services (within 15 minutes according to the regulations). This adequately ensures the provision of

first aid, and at a standard above that generally found in everyday life. Medical staff are designated for the provision of medical care; the provision of first aid is an obligation that also applies to other persons who do not have the specialist competence to perform medical professions.

The Ministry of Justice is well aware of the shortage of quality prison medical staff, and together with the Prison Service is trying to satisfy the demand in this area, which exceeds supply several times over. However, for the financial reasons stated above and due to the safety risks it is not within its powers to find a satisfactory solution for this situation. The Ministry of Justice will continue to deal in a systematic manner with the issue of the provision of medical care at the requisite level, and will also seek a solution in cooperation with the Ministry of Health and the Ministry of Labour and Social Affairs.

The CPT reiterates its recommendation that the Czech authorities arrange for consultations to be held with all prisoners before and after performing blood tests and other medical tests, to enable them to grant valid consent to such tests (point 56).

Medical staff are informed of the fact that testing is not possible without consent. Written consent is not required, as in the view of the Medical Services Department of the General Directorate of the Prison Service of the Czech Republic the patient's "presumed" consent - i.e. the fact that the patient voluntarily allows a sample to be taken - is entirely sufficient. The patient is given information (consultation) and his consent is granted in accordance with Section 23 of Act No. 20/1966 Coll., on healthcare and public health, as amended. This provision of law does not anticipate written consent. A written declaration is required only in the case that medical treatment is refused (treatment refusal form). In practice, however, it is standard that relatively serious medical procedures (especially operations) always require written consent (consent for medical treatment form). For routine medical procedures such written consent is not required, as it is substituted by the fact that the patient is voluntarily undergoing the medical procedure.

The Ministry of Justice would also make reference to Article 5 of Chapter II of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (the Convention on Biomedicine) which states the general rule for "Consent", i.e. that any intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. No mention is made of the need for written consent to perform a medical procedure. In this regard, the Czech national legislation is in conformity with the Convention.

As regards the provision of information to patients about the result of an examination performed as part of medical care provided, such procedure is *lege artis* and forms an integral part of every clinical examination of a patient.

Medical professionals will again be reminded of the need to emphasise the provision of information to patients, as required by applicable law, in connection with the performance of medical care at a national meeting of the management staff of the Medical Service of the Prison Service of the Czech Republic.

The CPT recommends that steps be taken at the Praha-Ruzyně Remand Prison, and where appropriate also at other Czech prisons, to ensure that if doctors are not able to communicate with prisoners during medical examinations/consultations due to language barriers, these persons may use the services of professional interpreters (point 57).

In necessary cases, a professional interpreter can be arranged via a request from the medical professional to his superior (with due justification), even though this represents a significant cost for the budget of the Prison Service the Czech Republic. However, in acute cases it is not always possible to obtain an interpreter. Permanent availability of interpreters is not economically viable, and is not even secured at civilian medical facilities, where the number of foreign nationals treated is also significant. The employees of the Praha – Ruzyně Remand Prison are capable of communicating with prisoners in English, German, Russian, Polish or French, which, in the opinion of the Ministry of Justice, represents a level above the standard, considering that for economic reasons the Ministry itself orders interpreting services for less common languages on an ad hoc basis.

At Pardubice Prison, the delegation saw that prisoners were employed as assistant medical workers, taking care of the needs of particularly dependent prisoners (especially in blocks D and H). The obligations of these medical assistant prisoners included reminding other prisoners to take their medication and providing assistance with personal hygiene to prisoners who were unable to wash (including incontinent prisoners). In the opinion of the CPT, medical assistance tasks may not be delegated to other prisoners, but must be performed by appropriate staff. The Committee recommends that the current practice at Pardubice Prison, and where appropriate also at other prisons, be revised accordingly (point 58).

In the opinion of the Prison Service of the Czech Republic and the Ministry of Justice, there is nothing incorrect or in conflict with the law about the procedure employed at the prison. The "care" provided does not involve any specialist medical procedures which may be carried out only by medical staff. The activities are of the type that are usually performed in everyday life by family members or other non-professional caregivers. Outside the Prison Service of the Czech Republic, care is professionally provided by social welfare institutions, although in this case these provide a service paid for by the care recipient. For economic reasons in particular, it cannot be expected that care services will be secured in any other manner.

The prison provides funds from its budget to remunerate chosen prisoners who assist handicapped prisoners under the supervision of employees of the Prison Service of the Czech Republic. This medical assistance is provided in the interest of convicted prisoners and in an adequate quality using methods which always strictly ensure respect for the human rights and fundamental freedoms of the relevant persons in accordance with the provision of Section 2(2) of Act No. 108/2006 Coll., on social services, as amended (hereinafter the Social Services Act).

The choice of persons suitable for working with handicapped prisoners is made by a committee appointed by the warden of the prison, which has the psychological, pedagogical and social case histories of the relevant prisoners at its disposal during its decision-making, providing details from their past (family, criminal, working history etc.), and, with a view in particular to their potential future work with this sensitively perceived target group of handicapped prisoners, a check is also made on details from their previous employment (many of the prisoners used for this assistant work with handicapped prisoners have worked on ambulance crews or as medical orderlies or have been long-term carers for handicapped family members). All the prisoners used for work with handicapped prisoners are given specialised health and safety training financed by the prison. To date, no problems have yet had to be resolved in connection with prisoners assigned to work in these specialised units for prisoners permanently released from work duties.

At all the facilities visited, the medical records of prison doctors, psychiatrists and nurses were generally comprehensive and well maintained. However, we were sorry to see that at the Praha-Ruzyně Remand Prison no register of injuries was kept (in contrast to the other facilities visited). Steps must be taken to rectify this deficiency (point 59).

Under the current regulations, maintenance of a register of injuries is not the obligation of medical staff but of other persons. Under the regulations of the Prison Service of the Czech Republic (Regulation of the Director General of the Prison Service of the Czech Republic No. 73/2010 on the system for managing occupational health and safety during work and performance of service in the Prison Service of the Czech Republic), central records of injuries are maintained in prisons by the occupational health and safety officer. An exception consists of non-work-related injuries of prisoners not assigned to work duties, of which records are made in the Prison Information System by the employee of the Prison Service of the Czech Republic to whom the injury was reported. A transparent system of records is therefore maintained, with clear duties for the relevant persons.

The CPT calls on the Czech authorities to take steps to ensure that at the Hradec Králové Remand Prison and the Teplice Remand Prison, and where appropriate also at other prison facilities, all medical examinations of prisoners be performed out of earshot and - unless the relevant doctor requests otherwise in a particular case - out of sight of prison guards.

The Committee recommends that at the Praha-Ruzyně Remand Prison steps be taken to ensure that medical records no longer be accessible to non-medical staff (point 60).

Guards are present at medical examinations of prisoners only when the doctor specifically requests the presence of a member of the Prison Service of the Czech Republic in the consulting room. The Ministry of Justice agrees that if a doctor justifiably feels at risk with an examined prisoner, the presence of a prison guard is an appropriate measure for the sake of his safety. In the opinion of the Ministry of Justice, a further reason for maintaining the status quo is the security risk in relation to the potential escape of prisoners and the resulting endangerment of the general public by such prisoners and/or by security force actions taken to apprehend such escapees and return them to prison. In cases where, at the doctor's request, a member of the Prison Service of the Czech Republic is present in the consulting room, he has a service duty of confidentiality under the applicable regulations, i.e. he may not disclose any information which he learns of during the performance of his duties. Some older doctors feel serious concerns when treating prisoners, and therefore request the presence of a member of the Prison Service of the Czech Republic more often. Without such doctors, however, the Prison Service of the Czech Republic would not be able to provide proper medical care for prisoners.

At the Praha – Ruzyně Remand Prison adequate measures have been taken to remove any prisoner medical information from the work materials of guards. All the civilian employees and service members of the remand and imprisonment units of this remand prison have been informed of these measures and a record made of this fact.

With reference to Chapter 5: Other problems

The Committee reiterates its recommendation that the prison guards at all prisons be encouraged to have a wider range of interaction with prisoners, and that the guards be provided with training so that they can learn necessary interpersonal skills focused on developing communication (point 61).

Training in communication skills and the resolution of difficult service situations by guards are subjects to which considerable attention is already given as part of the basic professional training of members of the Prison Service of the Czech Republic under courses covering both service-related matters and social sciences-humanities themes. In the psychology course, the main relevant topics covered include social groups, group dynamics and social communication, types of interpersonal communication, effective communication and communication with prisoners. The course on professional ethics covers themes from the code of ethics and professionalism of employees of the Prison Service of the Czech Republic, professional ethics, communication in the workplace and the basics of general cultural education. The course dealing with imprisonment is focused on the issue of the exercise of the rights of convicted prisoners, including the protection of such rights, as well as the duties of guards in the course of their prison work. Analogous themes are also covered in the course on remand. The course offers a comprehensive treatment of the theme of communication with prisoners in the form of model situations where the particular communication issues involved are rehearsed in practice. In the service preparation course great emphasis is placed on the conduct and actions of the security force member in public and when dealing with the parties involved.

In accordance with Regulation of the Director General of the Prison Service of the Czech Republic No. 67/2009, stipulating the scope of service and professional training for service members and civilian employees of the Prison Service of the Czech Republic, service members and civilian employees are given annual training in communication with prisoners whose specific theme is decided by the prison warden. For 2012, the Department of Prison Guards and Court Security Officers of the General Directorate of the Prison Service of the Czech Republic will propose that prison wardens choose a theme in the context of the CPT's recommendation, i.e. training aimed at the acquisition of necessary interpersonal skills focused on the development of communication.

Selected members of the Prison Service of the Czech Republic also have the opportunity to attend specialised lifelong learning courses organised by the Institute of Education of the Prison Service of the Czech Republic, generally in cooperation with universities and other non-governmental organisations. Last but not least, service members and employees of the Prison Service of the Czech Republic also benefit from using the services of the Judicial Academy of the Ministry of Justice in Kroměříž. For prison guards there are, amongst other things, the specialised courses Communication I - III, which have a broad focus covering the development of communication skills, conflict resolution and dealing with other critical situations which may arise during contact with prisoners.

At several of the prisons visited, the delegation heard complaints from senior personnel about the shortage of educational staff. The CPT also noted that educational staff were continuously carrying out many other tasks, including tasks which, in the Committee's view, are usually the responsibility of prison staff (for example, dealing with prisoners' requests for telephone calls, personally monitoring telephone calls or checking the correspondence of prisoners). The CPT would like to receive comments in response to this issue from the competent authorities of the Czech Republic (point 62).

Prison educational staff - consisting of educators, educator-therapists, special needs teachers, social workers and psychologists - are responsible for carrying out the tasks defined in Regulation of the Director General of the Prison Service of the Czech Republic No. 21/2010, stipulating the tasks of employees and members of the Prison Service of the Czech Republic during imprisonment, remand and security detention. We consider the distribution of tasks to each position to be optimal. However, the numbers of such educational staff - as also of guards - clearly fall short in comparison to the optimal number based on the number of prisoners, resulting in an excessive workload for

these employees. The Czech government, aware of this adverse situation, but nonetheless in the midst of a period where for economic reasons austerity measures are being taken at all its ministries, decided under Government Resolution No. 421 of 8 June 2011 to increase the number of service member positions in the Prison Service of the Czech Republic by 345 positions from 1 July 2011, and to increase the number of civilian employee positions in the Prison Service of the Czech Republic by 196 positions as of 1 July 2011. Due to the very short period of time that the above decision of the Czech government has been in effect, it is not possible to specify precisely the numbers of future new employees at the various organisational units of the Prison Service of the Czech Republic in the positions of educators, special needs teachers or psychologists, but the Ministry of Justice will be vigilant in filling any newly created positions based on the current demands of the particular organisational units involved.

In this context, the Ministry of Justice would refer directly to the applicable legislation, wherein the working duties of educational staff also include, amongst other things, the duty to arrange telephone calls and to check the content of correspondence. This is set out directly in Section 24(1) of Decree of the Ministry of Justice No. 345/1999 Coll., laying down rules and regulations for imprisonment, whereunder employees of the Prison Service of the Czech Republic authorised by the prison warden (generally members of the educational staff) may check the content of correspondence both received and sent by convicted prisoners without prisoners' consent. According to Section 25(2) of this Decree, convicted prisoners are to request a member of the educational staff to arrange telephone calls for them to permitted numbers.

The Committee recommends that the Czech authorities take appropriate steps at all prisons to ensure that prisoners are not entrusted with tasks relating to maintaining order and supervision (point 63).

Convicted prisoners may participate in the handling of matters connected with their life in prison by presenting suggestions and comments to employees of the Prison Service of the Czech Republic, as stipulated under Section 4 of Act No. 169/1999 Coll., on imprisonment and amending certain related Acts, as amended (hereinafter the "Act on Lawful Imprisonment"). However, no prisoner may stand in for any employee in the performance of work duties or propose disciplinary measures. If any such specific cases are found and proven, the Prison Service of the Czech Republic will take action against the employees involved in accordance with the applicable labour law legislation.

No system of "prisoner-coordinators" is applied at Pardubice Prison. It is possible that some prisoners mentioned so-called "elected self-administration" according to the previous version of the Act on Lawful Imprisonment, which was not properly understood. In this case, some convicted prisoners merely carry out "unit services", which are also listed in their activity programmes. They are not, however, responsible for order and security in accommodation units, and do not take over any of the duties of employees. During both ongoing and spot checks focused on verifying procedure and activities at the various organisational units of the Prison Service of the Czech Republic, staff of the Special Inspections Department of the Ministry of Justice have so far not found any violation of Rule 62 of the European Prison Rules, according to which no prisoner may be employed in a prison in any disciplinary capacity.

The CPT notes that strict <u>disciplinary punishments</u> (such as solitary confinement) were used only very rarely at the institutions visited. However, the delegation did notice that in several cases disciplinary measures were imposed on prisoners without any formal procedure. For example, a remand prisoner with whom the delegation met in the Praha-Ruzyně Prison complained that after initially being held for a few weeks in a unit with an open regime, from

one day to the next he was then transferred without any explanation to a unit with a strict regime. When discussing this case with the prison administration, the delegation was informed that several of his fellow prisoners had filed a complaint against him, and for that reason a decision was made to transfer him to a different cell with a closed regime. It is clear that this decision was taken by the prison administration alone, without the involvement of the regime commission of this facility and without giving the prisoner any opportunity to express his opinion.

The CPT would like to receive comments in response to this issue from the Czech authorities (point 64).

The case described, where a prisoner was relocated from a remand unit with a moderate regime, involved a joint complaint submitted by his fellow prisoners in this unit requesting action to deal with a situation where they suspected the relevant prisoner of petty theft (tobacco products and coffee), not following the set rules on order and discipline, and also due to his tendency to bully other prisoners. On the basis of this complaint, the remand prisoner accused was temporarily transferred from the remand unit with a moderate regime to a remand unit with a standard regime as a preventive measure until the case was resolved, on the proviso that if the alleged acts were not proven he would be sent back to the remand unit with a moderate regime. If, however, the allegations were proven, proceedings would be initiated on a disciplinary infraction, based on which he would be transferred to a remand unit with a standard regime. Based on statements from his fellow remand prisoners, the allegations were confirmed, and additional evidence was obtained by an investigation carried out by the Prevention and Complaints Department of the Praha - Ruzyně Remand Prison.

In disciplinary proceedings, the case was dealt with in accordance with the second sentence of Section 22(1) of the Act on Remand. In such a case, it is not necessary to convene the commission to decide on the transfer of a remand prisoner from a remand unit with a moderate regime to a standard unit - this is fully within the competence of the employee with the assigned disciplinary capacity. In other cases (e.g. in the event of the worsening of the prisoner's state of mind or health, a request from the prisoner), a decision is made on the transfer by a competent specialist committee based on a proposal from a particular qualified employee, primarily a doctor.

The Ministry of Justice does not find the decision of the administration of the Praha – Ruzyně Remand Prison regarding the transfer of the prisoner to be unacceptable. Procedure was in accordance with the Act on Remand, under which less serious disciplinary infractions may be dealt with by a warning or by transferring the remand prisoner from a remand unit with a moderate regime to a unit with a standard regime. The administration of the remand prison opted for a disciplinary punishment proportional to the seriousness of the disciplinary infraction.

Disciplinary punishments imposed on prisoners may not include complete prohibition of contact with their families, and any restrictions placed on contact with family as a punishment must be imposed only in cases where the infraction relates to such contact. The CPT recommends that the legal provisions governing disciplinary punishments be revised accordingly (point 65).

Section 49 of the Act on Lawful Imprisonment, which provides for the disciplinary punishment of solitary confinement during imprisonment, does not need to be revised in connection with the CPT's recommendation, as the current legislation rules out any restriction on the right of a convicted prisoner to receive visits from close persons or other persons or his right to use the telephone for contact with a close person or other person due to the imposition of the disciplinary punishment of solitary confinement.

The disciplinary punishment of solitary confinement is provided for under Section 22(7) of the Act on Remand. The Ministry of Justice and the Prison Service of the Czech Republic are currently preparing documents for the amendment of this Act. The existing provisions relating to solitary confinement will be revised in line with the CPT's recommendation, as the existing law prohibits remand prisoners from receiving visitors except for their legal counsel or a lawyer representing them in some other matter while they are in solitary confinement as a disciplinary punishment. Moreover, the time served in solitary confinement as a disciplinary punishment does not count towards the time period for their entitlement to receive visitors. Rule 60.4 of the European Prison Rules states that punishment may not include a total prohibition on family contact, and a similar provision exists under Rule 95.6 of the European Rules for Juvenile Offenders.

The provisions of law providing for the right of remand prisoners to be allowed to use the telephone for contact with a close person or other person do not need to be revised, as the existing legislation rules out any restriction on such right of a remand prisoner due to the imposition of the disciplinary punishment of solitary confinement.

Under the current legislation, prisoners punished by solitary confinement were prohibited from having reasonable reading material in disciplinary cells (aside from legal, educational and religious literature).[3] The CPT calls on the Czech authorities to abolish these restrictions on access to reading material for prisoners undergoing the disciplinary punishment of solitary confinement (point 66).

The disciplinary punishment of solitary confinement is the strictest disciplinary punishment. It is imposed on convicted prisoners only in exceptional cases, for gross violations of their obligations, prison order or discipline during their imprisonment. Under Section 49(3) of the Act on Lawful Imprisonment, during such disciplinary punishment a convicted prisoner is also not allowed, amongst other things, to read daily newspapers, books or other publications apart from legal, educational and religious literature. Pedagogical principles must be adhered to when imposing this punishment. In this regard, the explanatory memorandum to the draft Act states that the legislation on the performance of the disciplinary punishments of full-time confinement to a closed unit and solitary confinement is based on the European Prison Rules and respects the conditions set for the performance of such disciplinary punishments. In this context, the Ministry of Justice states that the possibility of moderating this disciplinary punishment in line with the CPT's request will be considered in connection with the next amendment of the Act on Lawful Imprisonment.

The CPT recommends that the Czech authorities introduce a possibility for prisoners to appeal against disciplinary punishments to a competent and independent higher authority, and that the relevant provisions of law be amended accordingly (point 67).

On the basis of Decision No. 341/2010 of the Constitutional Court of the Czech Republic, the Act on Lawful Imprisonment was amended with effect from 1 July 2011 by Act No. 181/2011 Coll., amending Act No. 141/1961 Coll., on criminal procedure (the "Criminal Procedure Code"), as amended, and certain other Acts, to allow a court review in the case of a differentially specified list of disciplinary punishments (under Section 46(3)(e) to (h)) after the exhaustion of remedies, i.e. following the learning of or the delivery of a decision in regard to a complaint against the relevant disciplinary punishment imposed. A complaint or action filed against a decision on the imposition of a disciplinary punishment does not have suspensive effect, except in the case of the disciplinary punishments of forfeiture or provisional attachment of property.

[3] Persons in custody have also been allowed to read newspapers.

In regard to the issue of the possibility for prisoners to appeal against disciplinary punishments, the Ministry of Justice points out that the provisions on disciplinary proceedings during remand are significantly different, and analogous legislation is not at present being prepared. A very short limitation period applies in this case – the objective period is 1 month, the subjective period 15 days. A complaint may be filed within 3 days of the learning of or the delivery of a decision. As a rule, a decision must be made immediately about such a complaint (filed complaints have suspensive effect, except in cases of the imposition of the punishment of solitary confinement where the punishment must be carried out immediately for the purpose of maintaining order and discipline in the prison). In the case of the differentially specified list of disciplinary punishments, a court review must be performed if a complaint is submitted. In accordance with specific legislation, complaints against the imposition of the disciplinary punishments of a fine, the forfeiture of property or provisional attachment of property are decided by the court within whose district the prison is located. In the case of a decision on the issuance of a reprimand, a prohibition on the purchase of foods and personal items (except for hygienic items) for a period of up to one month, or solitary confinement of up to 10 days, only a complaint may be filed, on which a decision is made by the warden of the prison (if he has not yet decided in the matter).

The CPT recommends that the role of prison doctors with regard to disciplinary matters be reviewed in the light of the comments above. If this is carried out, it is necessary to take into account the European Prison Rules (particularly Rule 43.2) and the comments made by the Committee in its 15th General Report (see point 53 of CPT / Inf (2005) 17) (point 68).

Prior to the commencement of the disciplinary punishments of full-time confinement to a closed unit and solitary confinement, the state of health of the prisoner is examined by a doctor to ascertain his physical and mental condition. If his state of health does not allow him to undergo such disciplinary punishments, the doctor issues a negative opinion. The doctor does not issue a "certificate confirming whether the prisoner is fit for punishment", but assesses the current state of health of the prisoner, focusing particularly on factors which would rule out the performance of disciplinary punishment. By examining the prisoner, the doctor protects him from potential harm that could be caused. The approach taken by the doctor to prisoners is always objective. This means that the doctor always approaches the prisoner as he would any other patient, while at the same time he must also be aware that the conclusion of his assessment of the prisoner's state of health may be subject to an expert review.

Although the rule from an earlier version of the European Prison Rules which stipulated that prison doctors must confirm that prisoners are fit to undergo solitary confinement has now been abolished, in the opinion of the Ministry of Justice doctors working in the Prison Service proceed in the performance of their duties entirely in accordance with applicable law, primarily Section 49 of the Act on Lawful Imprisonment.

Information gathered during the CPT's visit indicates that at all the facilities visited routine checks were now widely performed on the contents of the correspondence of detainees and convicted prisoners. The CPT fully recognises the need to verify that correspondence does not include illegal matters. However, the routine practice of reading letters without any specific suspicion that they may jeopardise an ongoing investigation, or that their content is illegal, is unreasonable.[4] The CPT would like to receive comments in response to this issue from the Czech authorities (point 70).

[4] See also the commentary to Rule 24 of the European Prison Rules.

The Prison Service of the Czech Republic strictly adheres to the current legislation on the issue of the routine correspondence of prisoners, which *inter alia* stipulates:

a) for remand prisoners: "Correspondence is subject to checks, which include ascertaining the content of written documents. If a prisoner has been remanded into custody on the grounds that he will obstruct the investigation of facts of importance for criminal prosecution, the authority in charge of the proceedings shall perform a check on his correspondence within a period of 14 days of his admission." (pursuant to Section 13(2) of the Act on Remand).
b) for convicted prisoners: "Unless this Act provides otherwise, convicted prisoners may receive and send at their own expense written communications (hereinafter "correspondence") without restriction. The Prison Service of the Czech Republic is authorised to perform checks on the correspondence referred to in subsection 1, and in doing so may ascertain the contents of written documents sent. Where the content of such correspondence gives rise to suspicions that a crime is being prepared or committed, the Prison Service of the Czech Republic shall seize such correspondence and transfer it to the relevant law enforcement authority." (pursuant to Section 49(1) and (2) of the Act on Lawful Imprisonment).

The Ministry of Justice considers the legislation on the performance of checks on correspondence to be reasonable in the context of Rule 24 of the European Prison Rules.

In the opinion of the CPT, all prisoners must have the right to at least one visit per week. In addition, it is not acceptable that prisoners (both convicted and in remand) may receive visits from persons other than relatives only in "justified cases". The Committee recommends that the Czech authorities review the measures relating to prison visits in the light of the comments above (point 71).

Visits to convicted prisoners are provided for under Section 19 of Act No. 169/1999 Coll., on lawful imprisonment and amending certain related Acts, as amended by Act No. 52/2004 Coll. The relevant provisions state that a convicted prisoner has the right to receive visits from close persons at times specified by the prison warden with a total length of 3 hours per calendar month. In the interest of the prisoner's correction or on other serious grounds, the prisoner may also be allowed visits from persons other than close persons.

Under Section 14(1) of the Act on Remand, remand prisoners are entitled to receive one visit consisting of a total of at most 4 persons each 2 week period, with a duration of ninety minutes. In justified cases, the prison warden may allow a visit to be received consisting of a larger number of persons, or within a shorter period than two weeks, or with a duration of longer than ninety minutes.

According to Rule 24.1 of Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. At the same time, under Rule 24.5 the prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. The European Prison Rules do not mention either the frequency or the length of visits to prisoners. On the contrary, they leave these provisions to the legislature of the given state.

The current legislation therefore allows all remand prisoners to receive visits totalling 39 hours per year, and in the case of convicted prisoners totalling 36 hours per year. According to information from prison and remand prison wardens, extension of the total visit time to 52 hours per year (according to the CPT's opinion - one 1 hour visit per week) would require a one-off investment of 200 million CZK into the construction of new visiting facilities, including new visitor entrances to these prisons and remand prisons, as the existing facilities and entrances are already at the limit of their capacities.

Furthermore, according to this information from prison and remand prison wardens, in order to arrange for visits totalling 52 hours per year, it would be necessary to increase the number of posts for service members and civilian employees of the Prison Service of the Czech Republic by 279. However, the current economic situation does not allow such an extensive investment to be made, nor such an increase in the number of posts of service members and civilian employees of the Prison Service of the Czech Republic.

The Act on Remand does not limit the visits of remand prisoners solely to close persons. These prisoners may invite anyone they wish to visit. In the case of convicted prisoners, the term "close person" is interpreted liberally in accordance with the provision of Section 116 of the Civil Code and the associated commentary (it is not limited to relatives). The possibility of removing the term "close persons" from Section 19(1) of the Act on Lawful Imprisonment will be reviewed in the context of the next amendment of this Act.

According to the relevant regulations, convicted prisoners may also have the right to receive visits without staff supervision.[5] However, it seems that in practice such visits are never approved. The CPT would like to receive comments in response to this issue from the Czech authorities (point 72).

Visits of convicted prisoners without supervision by employees of the Prison Service of the Czech Republic can be carried out in two ways:

a) The prison warden may, in accordance with the provision of Section 19(5) of Act No. 169/1999 Coll., on lawful imprisonment and amending certain related Acts, as amended, permit visits to be made to convicted prisoners without visual and auditory supervision by employees of the Prison Service of the Czech Republic in facilities designated for this purpose.

b) As a reward for good behaviour in accordance with Section 45(2)(g) of Act No. 169/1999 Coll., on lawful imprisonment and amending certain related Acts, as amended, a prisoner may receive permission to leave the prison for up to 24 hours in connection with a visit or a programme of activities.

Both of these possibilities are used in practice, depending on the conditions set up in the prison and on a case-by-case basis depending on the convicted prisoner involved.

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[5] At the Hradec Králové Prison, the delegation received a good impression from the facilities designed for unsupervised visits.

One of the tasks of the Special Inspections Department of the Office of the 1st Deputy Minister of Justice is to process complaints submitted by prisoners and other persons relating to the activities of the Prison Service of the Czech Republic or the conditions of remand and imprisonment which are addressed to the Minister or the Ministry. Complaints from such persons are always investigated without undue delay or are forwarded to specialist departments of the General Directorate of the Prison Service of the Czech Republic for investigation and for the necessary corrections to be made, of which the Ministry of Justice is then informed in writing.

The CPT recommends that the Czech authorities take steps necessary to ensure that remanded and convicted prisoners be allowed regular and frequent access to the telephone (point 73).

Section 13a of the Act on Remand allows prisoners who have not been remanded into custody on the grounds that they would obstruct the investigation of facts of importance for criminal prosecution under Section 67(b) of the Criminal Procedure Code to have contact with close persons and, if there is good cause, also with other persons. The costs involved in the use of the telephone are to be paid by the remand prisoner. A similar provision applies in the case of the use of the telephone by convicted prisoners. Under Section 18 of the Act on Lawful Imprisonment, convicted prisoners are allowed to use the telephone at their own expense in justified cases to contact close persons and, in the interest of their correction or if there is some other good cause, also with other persons.

In collaboration with the Prison Service of the Czech Republic, the Ministry of Justice will prepare in the near future an amendment to Act No. 293/1993 Coll., on remand, as amended, and Act No. 169/1999 Coll., on lawful imprisonment and amending certain Acts, which, amongst other things, will also include amendments to the stated provisions in order to facilitate telephone use by prisoners.

Based on internal inspection activities it has been found that the relatively low level of telephone communication by prisoners is chiefly due to the fact that prisoners do not have money to pay for it. Cases where prisoners are denied telephone calls are exceptional.

If there is a marked increase in the numbers of telephone calls made at a prison, the prison increases its number of installed payphones.

At all the facilities visited, records were made in a special register of cases of the use of physical force or means of restraint (for example handcuffs), *in response* to aggressive or defiant behaviour by prisoners. In the case of the *preventive* use of special security measures (e.g. during prisoner movements outside of the cell or during escort outside the institution), orders for the use of such measures are usually issued on the basis of an individual risk assessment. However these orders were recorded only in the individual files of the relevant prisoners, not in a central register. The CPT recommends setting up such a register at all prisons (point 74).

Under Act No. 555/1992 Coll., on the Prison Service and Court Security Officers of the Czech Republic, means of force may be used in two ways, namely:

a) "ex post", i.e. in accordance with Section 17(1) of the cited Act ("If necessary in order to ensure order and security, service members may in the course of their duties use means of force against persons which are a danger to life or health, which intentionally damage property or which

forcibly attempt to obstruct the purpose of security detention, remand or lawful imprisonment, or which disrupt order or security at premises of the Prison Service of the Czech Republic, in local prisons, in court buildings and in other premises of court activities, buildings of state prosecutors' officers or ministries and in the immediate vicinity of guarded sites.")

b) as a preventive measure, i.e. in accordance with Section 17(4) and (5) of the cited Act ("When escorting persons held in security detention, remanded in custody or serving terms of lawful imprisonment outside the building of the facility, the means of force listed in the preceding subsection under paragraphs (b), (c) and (e) may be used even in cases where the conditions of subsection 1 are not met. Service members may use such means of force if this is absolutely necessary for the performance of the purpose of the given act." "If, in view of the prior conduct of accused or convicted persons, there is just cause for concern that such persons may behave in a violent manner, the means of force listed in subsection 2 under paragraphs (b), (c) and (e) may be used when escorting such persons even in cases where the conditions of subsection 1 are not met. Service members may use such means of force if this is absolutely necessary for the performance of the purpose of the given act").

The current situation is that in accordance with Section 20 of Act No. 555/1992 Coll. and Section 2 of Regulation of the Director General of the Prison Service of the Czech Republic No. 40/2002 on the method for recording and reporting the use of means of force, cases where means of force are used as preventive measures in accordance with the above Sections 17(4) and (5) of Act No. 555/1992 Coll. are not recorded in registers of the use of means of force.

The creation of a register at all prisons in which records would be made of the preventive use of special security measures would involve enormous demands on personnel (escorting prisoners outside prisons would account for 140 000 cases alone).

The CPT would like to receive more detailed information about the security measures that are currently applied with regard to the prisoners mentioned above (point 77).

In the case of two of the convicted prisoners, special security measures are not at present being applied. They are being held in standard prison units. The other two are being held in high security units, and the same security measures are being applied for them as for other convicted prisoners held in high security units. Exceptional security measures similar to those used at the Praha – Pankrác and Praha – Ruzyně remand prisons are not currently being applied for these convicted prisoners.

The Committee recommends that the Czech authorities take appropriate steps at Pankrác Prison and Ruzyně Prison, and where appropriate also at other facilities in the Czech Republic, to ensure that:
- dogs no longer be used when escorting prisoners outside the prison;
- prisoners not be handcuffed during meetings with their lawyers (point 77).

Both the Ministry of Justice and the Department of Prison Guards and Court Security Officers of the General Directorate of the Prison Service of the Czech Republic consider the existing legislation on both these issues contained in Act No. 555/1992 Coll., on the Prison Service and Court Security Officers of the Czech Republic, as amended, to be adequate.

As regards the issue of the use of prison service dogs when escorting prisoners at prisons and remand prisons, it can be stated that the use of service dogs as a means of force is permitted under Section 17(1) of the Act on the Prison Service. The overall construction of Section 17 of this Act

clearly shows that the legislature anticipated a very diverse range of situations under which means of force may be used. The legislature left the decision on the type, and thus also the method of usage, of means of force up to the relevant service member, subject to the condition of achieving the purpose pursued by the Act, which is to ensure the security of the performance of the given service act. The use of means of force must be adequate to the purpose of the service act being performed, to prevent unreasonable injury from being caused to the prisoner and to ensure the security of the performance of the relevant act. When deciding, in the context of their potential use, which means of force a service member will have with him when performing a specific service act, consideration must be given to the specific conditions under which the service act will be carried out. When escorting prisoners at prisons or remand prisons, consideration must thus also be given to any security information relating to the persons escorted, to their number and the purpose for which they are being escorted, to the number of service members escorting them, the layout of the prison or remand prison etc.

If, for example, a person subject to exceptional security measures is being escorted at a prison or remand prison, this may be one of the grounds justifying the presence of a prison service dog during this service act. Although Section 17(5) of the Act on the Prison Service allows only the use of escort chains, handcuffs or handcuffs together with a restraining belt during the escorting of prisoners at prisons or remand prisons in cases where the conditions of Section 17(1) are not met, when escorting prisoners which are subject to exceptional security measures it is entirely appropriate, on grounds including the high risk of the escorting members of the Prison Service of the Czech Republic being assaulted, that this escort be secured by a service dog handler and a dog, since there is a high degree of probability that the service dog will be used as a means of force in accordance with Section 17(1) of Act No. 555/1192 Coll.

Handcuffing of prisoners during meetings with their lawyer is allowed, provided that, in accordance with Section 17(5) of Act No. 555/1992 Coll., this is necessary for the performance of the purpose of the given act. "If, in view of the prior conduct of accused or convicted persons, there is just cause for concern that such persons may behave in a violent manner, the means of force listed in subsection 2 under paragraphs (b), (c) and (e) may be used when transporting such persons even in cases where the conditions of subsection 1 are not met. Service members may use such means of force if this is absolutely necessary for the performance of the purpose of the given act").

The delegation was surprised to observe the manner in which a group of newly arrived prisoners was admitted at Pardubice Prison. All the prisoners were escorted by prison guards from the admission area directly into the respective detention units, and on the way had to pass through the central area of the detention block, where dogs were located which barked whenever one of the prisoners passed by. When asked whether this kind of "admission procedure" serves any purpose other than to intimidate newly arrived prisoners (as well as the prisoners who heard this barking from their cells), the prison guards questioned by the delegation openly answered that it did not. In the CPT's opinion, the practice described above is entirely unacceptable. The Committee recommends that this practice be abolished immediately (point 78).

Pardubice Prison does not have any prison service dogs. The case described involved the reception of prisoners being brought in by a so-called "long-distance escort" arranged by the Hradec Králové Remand Prison, during which the members of the escort, together with guards and the rapid response patrol of the Pardubice Prison, assume a circular guard formation at the Pardubice Prison entrance. For security reasons, the crew of the "long-distance escort" standardly includes a dog handler and a service dog, which also join the circular guard formation.

In the view of the Ministry of Justice and the Department of Prison Guards and Court Security Officers of the General Directorate of the Prison Service of the Czech Republic, this is a standard measure necessary to ensure security. For this reason, the CPT's recommendation cannot be implemented.

The CPT is concerned by a practice that it observed at several of the facilities visited, where the prison guards openly wore batons and handcuffs in detention areas. The CPT reiterates its recommendation that the Czech authorities take steps to ensure that prison guards no longer be systematically outfitted with batons and handcuffs, or that such items be worn covertly (point 79).

Members of the Prison Service of the Czech Republic are properly trained and regularly re-examined on the usage of means of force. The prison warden decides on what means of force will be carried by service members. The carrying of such means of force is neither evidence of strength nor of weakness, but is the causal consequence of the fact that in certain specific situations the use of other means of force (e.g. grips, holds, blows and kicks in self-defence) is ineffective and often also dangerous, especially in situations where prisoners lose control over their actions and can hurt themselves, resulting in health problems for the rest of their lives.

Every case of the use of means of force is thoroughly investigated, with an emphasis on the adequacy and effectiveness of their use. Current legislation gives intervening service members discretion in this regard, i.e. the option of choosing means of force so that the purpose of the intervention be carried out as prescribed by law. Regulation of the Director General of the Prison Service of the Czech Republic No. 40/2002 unifies the procedure at remand prisons and prisons for recording and reporting the use of means of force, and determines a single form for written records on the use of means of force by members of the Prison Service of the Czech Republic as well as the content of reports on the use of means of force which form the basis for an assessment of their use in the Prison Service over the given period.

The current uniform and equipment of service members does not allow batons and handcuffs to be worn covertly. Fitting out service members with completely new uniforms and equipment would require a considerable expenditure of funds which the Czech Republic does not at present have at its disposal.

In this regard, the Ministry of Justice points out that in connection with the current crisis there have been substantial budget cuts in the area of logistics, and the funds for renewing the uniforms and equipment of members of the Prison Service of the Czech Republic have been reduced to 24% of the amount required. This crisis situation in the area of uniforms and equipment is being dealt with by the Prison Service itself, using its own resources to repair the uniforms and equipment of its members, which in most cases means the repairs are carried out by prisoners in the framework of their work assignments inside the prison. As the budget of the Prison Service of the Czech Republic is to be cut next year, once again it cannot be anticipated that uniforms and equipment will be renewed to an extent allowing means of force to be worn covertly.

At several facilities visited, the delegation noted that in detention areas prison guards also carried cans of pepper spray.[6] The CPT feels that, given the potentially harmful effects of using this substance, such means should not form part of the standard equipment of prison staff, and should not be used in confined spaces. Whenever the need to use pepper spray arises, relevant safeguards should be clearly defined. Detainees exposed to pepper spray must be allowed to have immediate access to a doctor, and must be immediately provided with means for the effective and rapid prevention of the effects of pepper spray. The Committee recommends that the policy regarding the use of pepper spray be revised at all prisons of the Czech Republic in the light of the above comments (point 80).

Section 17(2)(f) of the Act on the Prison Service lists lachrymators among possible means of force. Pepper spray is classified among lachrymators. Section 17(3) of the cited Act provides as follows: "(3) Service members shall decide which means of force they will use in the given situation in order to achieve the purpose pursued by the relevant service intervention. In so doing, they must ensure that the use of the means of force be adequate to the purpose of the service intervention, to avoid causing injury manifestly disproportionate to the nature and danger of the unlawful activity."

Section 19(1) of the Act on the Prison Service sets out restrictions on the use of means of force and firearms as follows: "(1) During service interventions it is prohibited to employ

a) against pregnant women, elderly persons, persons with manifest handicaps or persons manifestly under the age of 15 years: blows and kicks in self-defence, handcuffs with a restraining belt, lachrymators, batons, service dogs, water cannons, smoke canisters, blows with a firearm, warning shots and firearms;
b) against women: service dogs and firearms;

the foregoing shall not apply in the event that an attack by such persons directly endangers the life or health of a service member or third persons, or threatens to causes large scale damage to property and the danger cannot be averted otherwise, and in the cases stated under Section 18(1)(c) of the Act."

Under Section 17(3) of the Act, a service member is to choose means of force appropriate to the momentary situation, while taking into account the behaviour and actions of the persons involved in the intervention and observing the provision of Section 19 of the Act on the Prison Service.

The Ministry of Justice is of the same opinion as the Prison Service of the Czech Republic as regards the conditions for the use of pepper spray as one of the means of force under the Act on the Prison Service. Since it is not possible to stipulate procedures in advance for every situation that may arise, the Act gives service members the right, and also the responsibility, in cases of the use of means of force, i.e. including pepper spray. Lachrymators appear to be the most useful, most humane and least damaging means to employ against the persons involved in interventions aimed at restoring discipline and order in confined spaces. Any prohibition on the use of lachrymators would also result in the risk of greater use of other means of force (e.g. batons, service dogs, water cannons), which would then meet with criticism directed at the use of means of force which may cause far greater injury to health than the pepper spray currently under consideration. Clear guidelines as to when pepper spray may be used are laid down by the law. It therefore appears that an explicitly stated prohibition on the use of pepper spray in confined spaces is impossible for the performance of guard services. Remand imprisonment, lawful imprisonment and security detention also involved confined spaces.

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6 None of the members of prison personnel questioned by the delegations could remember a single case where they had to make use of this means.

Under Section 20 of the Act on the Prison Service, in the event that persons were injured during the use of means of force or firearms, service members are obliged, as soon as the circumstances allow, to provide such persons with first aid, secure medical treatment for them, and make a record of the use of such means of force. It follows that in the event of the use of lachrymators service members are always to take prisoners for examination by a doctor.

Under the applicable regulations, prisoners in a state of agitation or prisoners who are at risk of doing injury to themselves should be separated from other prisoners and held in safety/emergency cells for a period of at most 24 hours. In line with the applicable regulations, the placing of prisoners in such cells was recorded in a register, the relevant prisoners were generally allowed to have an hour of outdoor exercise, and were regularly monitored by staff (every 15 minutes).

However, several prisoners at Pardubice Prison claimed that they were held in a safety cell for several days without being given a mattress (only a blanket) and without being allowed outdoor exercise.[7] The CPT would like to receive comments in response to this problem from the Czech authorities (point 81).

The Prison Service of the Czech Republic does not use the term "safety cell". It is not clear from the CPT Report:
1) whether these convicted prisoners were placed in crisis units, whether they were accommodated separately, or whether they underwent the disciplinary punishment of solitary confinement,
2) when they were placed in such a unit or cell,
3) whether they were placed in such a unit or cell at their own request or against their will, or
4) which convicted prisoners are involved.

Therefore it is not possible to examine the CPT's information as a specific case.

We consider the allegation that prisoners spent several days in a "safety" cell without a mattress to be very serious. If this did not involve the disciplinary punishment of solitary confinement, during which convicted prisoners are not allowed to rest on a bed outside the time allotted by the internal regulations, and if the allegation proved to be true, this would undoubtedly be a violation of the regulations of the Prison Service of the Czech Republic and in fundamental conflict with the practices applied. However, it is very likely that the allegations of the convicted prisoners related precisely to the disciplinary punishment of solitary confinement. Even in cases where a prisoner is in an acutely critical state, and has therefore been placed in a special cell, and for entirely exceptional, absolutely specific security reasons (so that the prisoner does not harm himself if he attempted to do so using the mattress) a decision was made to remove his mattress, this would be an emergency measure lasting in the range of tens of minutes to a few hours, not days. All prisoners are entitled to one hour's outside exercise per day.

Ongoing inspections and methodological inspection visits performed by methodological experts of the General Directorate of the Prison Service of the Czech Republic over the last three years and investigations made by the superior authorities of the Prison Service of the Czech Republic based on the allegations made in the CPT Report have not found any cases or even suspected cases where the Pardubice Prison had placed prisoners in special cells in conflict with the law, a decree or internal regulations, where such prisoners had their mattresses taken away or were denied their right to outdoor exercise.

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[7] In the register of this facility relating to the use of the safety cell, entries state that relevant prisoners spent a period of up to 72 hours in this cell, with a break of one hour's duration every 24 hours.

The CPT recommends that the Czech authorities take the necessary steps to ensure that whenever prisoners are immobilised using means for mechanically restraining their movements (such as restraint belts and straps):

- the use of such immobilisation immediately be notified to a doctor and a record made in a special register;

- the relevant persons be continuously directly monitored by a suitably trained member of staff (point 82).

The leather belts which the CPT mentions in its report are restraint straps - a means of force listed under Section 17(2)(d) of the Act on the Prison Service. Their use is governed by Section 20 of the cited Act, which lays down the obligations of service members following the use of means of force or firearms. The processing of records of their use and reports is provided for in Regulation of the Director General of the Prison Service of the Czech Republic No. 40/2002, on the method for recording and reporting the use of means of force, as amended.

The Department of Prison Guards and Court Security Officers of the General Directorate of the Prison Service of the Czech Republic confirms that the use of restraint straps is immediately notified to a doctor in all cases where a doctor is in the prison at the time of their use. In other cases, this notification is carried out as soon as the circumstances allow. Records are made of the use of restraint straps in accordance with Section 12(1) of the cited Regulation.

In the opinion of the Department of Prison Guards and Court Security Officers of the General Directorate of the Prison Service of the Czech Republic, continuous direct monitoring of persons on whom restraint straps are used is possible in principle in cases that warrant particular attention. In other cases, increased supervision is sufficient, i.e. checking on the relevant person at more frequent intervals.

Further to the recommendation, an amendment will be prepared to Regulation of the Director General of the Prison Service of the Czech Republic No. 40/2002, which will specify in greater detail the procedure for the use of restraint straps.

The CPT recommends that at all the facilities visited appropriate steps be taken to strengthen the confidence of prisoners in the system for filing complaints (point 83).

Complaints are processed strictly in accordance with the applicable law under Section 175 of the Administrative Procedure Code. This area of activity is also dealt with under Regulation of the Director General of the Prison Service of the Czech Republic No. 70/2009, on the handling of complaints and notifications in the Prison Service of the Czech Republic. The method for filing complaints is specified under Article 9:
"(1) For the purpose of the filing of complaints by remand prisoners, convicted prisoners and persons held in security detention, a requisite number of boxes marked "COMPLAINTS" must be placed in prison facilities at accessible locations, including in units for disciplinary punishment, crisis units and wards of prison infirmaries and hospitals. Complaints are to be collected from these boxes each working day by an employee authorised by the prison warden who is not in direct contact with remand prisoners, convicted prisoners or security detainees.
(2) On working days, complaints of remand prisoners are also to be accepted by guards.
(3) In the event that a danger is associated with any delay (abuse, bullying etc.), remand prisoners, convicted prisoners and security detainees may file complaints to any employee."

Complainants therefore have ample opportunity to file complaints, are informed of them and make use of them. Further to the above, the Ministry of Justice notes that Rule 70.1 of the European Prison Rules is thereby fulfilled, i.e. "Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority."

No measures are taken against prisoners in connection with their filing complaints (see Article 4(4) of Regulation of the Director General of the Prison Service of the Czech Republic No. 70/2009: "Complainants shall not suffer any detriment as a result of their filing complaints. This provision shall not prejudice the liability of complainants under specific legislation (e.g. for committing a criminal offence, an administrative offence, a misdemeanour or a disciplinary offence).")

Prisoners have a guaranteed right to address complaints or requests to other state authorities of the Czech Republic and international authorities and organisations.

As part of its internal inspection activities, the Prison Service of the Czech Republic investigates all verifiable, i.e. specific, allegations, including, for example, information resulting from anonymous complaints.

Proof has not been found to support the CPT's statement about the lack of confidence of prisoners in the system for filing complaints. Authorities of both the Prison Service of the Czech Republic and the Ministry of Justice deal with all complaints filed, even anonymous complaints, on a regular and ongoing basis. In serious cases, direct, on-the-spot supervision and checks are carried out by staff of the Special Inspections Department of the Ministry of Justice at the remand prisons and prisons of complainants. Based on the above, it is therefore possible to question the claims of complainants regarding an alleged lack of confidence in the proper handling and investigation of complaints filed. According to fact-finding carried out by the Prison Service of the Czech Republic, in 2010 a total of 1 537 complaints were dealt with from prisoners, and during the first 5 months of 2011 a total of 611 complaints were dealt with from prisoners.

Overview of complaints dealt with in 2010 and the first 5 months of 2011 in the Prison Service of the Czech Republic in total and at the facilities visited by the CPT, including how these were evaluated.

Prison facility	complaints in period									
	2010					1.1. – 31. 5. 2011				
	J	PJ	JOR	WJ	total	J	PJ	JOR	WJ	total
Praha – Ruzyně	0	0	0	52	52	0	2	0	12	14
Všehrdy	0	1	0	15	16	0	1	0	5	6
Hradec Králové	1	1	1	20	23	0	1	0	10	11
Pardubice	0	5	0	48	53	0	0	0	22	22
Prison Service of the Czech Republic - total	**29**	**58**	**14**	**1 436**	**1 537**	**21**	**19**	**6**	**565**	**611**

Explanation of abbreviations:

J - complaint evaluated as justified
PJ - complaint evaluated as partially justified
JOR - complaint evaluated as justified, but with objective reasons or not caused by the fault of the Prison Service of the Czech Republic
WJ - complaint evaluated as without justification

Overview of complaints dealt with in 2010 and the first 5 months of 2011 in the Prison Service of the Czech Republic in total and by activities of the Prison Service of the Czech Republic subject to complaints (specific aspects), including how these were evaluated

Specific aspect	complaints in period									
	2010					1.1. – 31. 5. 2011				
	J	PJ	JOR	WJ	total	J	PJ	JOR	WJ	total
meals and diet	3	1	1	53	58		2	0	20	22
physical violence of prisoners/ security detainees	0	0	0		9	0	0	0		3
misconduct of prisoners/security detainees	0	0	0	30	30	0	0	0	3	3
physical violence of service members	0	0	0	24	24	0	0	0	10	10
inappropriate and offensive language of service members	0	0	0	34	34	0	0	0	17	17
other misconduct of service members	3	2	0	112	117	0	1	0	64	65
inappropriate and offensive language of civilian employees	0	0	0	11	11	0	0	0	2	2
other misconduct of civilian employees	2	1	0	102	105	1	0	0	25	26
All aspects	**29**	**58**	**14**	**1 436**	**1 537**	**21**	**19**	**6**	**565**	**611**

Explanation of abbreviations:
J - complaint evaluated as justified
PJ - complaint evaluated as partially justified
JOR - complaint evaluated as justified, but with objective reasons or not caused by the fault of the Prison Service of the Czech Republic
WJ - complaint evaluated as without justification

The Prison Service of the Czech Republic agrees with the comment of the CPT that a well-functioning system for the filing of complaints is in the interest of all the parties involved, can serve as a valuable source of information for the prison administration regarding potential problems in the respective facility, and can alleviate the tension between prisoners by ensuring that their problems are taken seriously and, if appropriate, that appropriate corrective actions will be proposed. The Prison Service of the Czech Republic has made long term use of the functioning of this system in its everyday activities. Specifically, it may be mentioned that if any deficiencies or errors are found which have resulted in justified complaints, these always lead to appropriate measures being taken and discussion of the issue with the employee or team of employees to which the complaint relates.

At some of the facilities visited (especially in Hradec Králové and Pardubice) the delegation noted a certain amount of confusion in the various registers used for filing complaints, requests or appeals. In some cases, complaints were registered as requests, requests as appeals, and appeals as requests or complaints. Steps should be taken to rectify this deficiency (point 84).

The method for registering complaints is described in Article 10 of Regulation of the Director General of the Prison Service of the Czech Republic No. 70/2009, on the handling of complaints and notifications in the Prison Service of the Czech Republic: "A procedural record (hereinafter "Record") is to be made of all complaints which have been submitted or delivered to the relevant organisational unit of the Prison Service of the Czech Republic, or, as the case may be, forwarded to it for its opinion or for direct administration (e.g. by an inspection department, ministries, state prosecutors' offices etc.). Staff are obliged to forward complaints for registration and further measures without delay. During the administration of written documentation, staff are obliged to proceed in a manner ensuring the protection of personal data in accordance with Act No. 101/2000 Coll., on the protection of personal data, as amended.

As part of its methodological and inspection activities, the Inspection Department of the General Directorate of the Prison Service of the Czech Republic carries out operational inspections at particular prisons, focusing on the handling of complaints and associated agendas at departments and independent offices for prevention and complaints. In 2009, inspections were carried out also at the prisons in Hradec Králové and Pardubice, and no deficiencies were found.

Appeals, which are a lawful remedy, are not provided for under Section 175 of the Administrative Procedure Code, and, unlike complaints, neither their registration nor their handling falls within the competence of departments and independent offices for prevention and complaints. Requests are registered by the relevant organisational unit (department or office) to which the request is addressed. Every submission is thoroughly assessed on the basis of its content, not its designation.

In regard to Part II. D: Facilities for juvenile detention under the Youth Justice Act of 2003

Information

In this regard, recent media reports indicate that the Czech authorities have prepared legislation authorising the ordering of compulsory treatment for an indefinite period, not to 18 years of age, as was the case previously.[8] The CPT would like to receive detailed information about the draft Act described above (including the intended date of its entry into force, legal safeguards, and the estimated number of juveniles that will be subject to the provisions of this Act) (point 85).

As regards the length of compulsory treatment, at the present time it still applies that after 2 years compulsory treatment must either be terminated or subjected to a review and extended by a court of appropriate jurisdiction.

The government bill of the Act on Specific Health Services, which is expected to come into effect at the beginning of 2012, sets out new legislation under Sections 83 to 89 only in regard to the conditions for compulsory treatment. Compulsory treatment is carried out, further to a final court decision ordering compulsory treatment (hereinafter "court order"), as institutional compulsory treatment either in the form of inpatient or outpatient treatment.

[8] See for example: "Underage criminals may be isolated for life under new bill"; Prague Daily Monitor, 16 February 2011.

Compulsory treatment ordered by the court may also be carried out at medical facilities of the Prison Service during imprisonment, and may take the form of compulsory treatment institutionally performed as a day treatment programme and compulsory treatment performed as outpatient treatment. The conditions for the performance of compulsory treatment are not permitted to affect the conditions of imprisonment.

Precise data are not available as regards the estimated number of juveniles undergoing compulsory treatment. Their number can be estimated only from data collected by the Institute of Health Information and Statistics of the Czech Republic:
(http://www.uzis.cz/publikace/psychiatricka-pece-2009).

Number of admissions to inpatient psychiatric facilities by psychiatric diagnostic groups and age groups in 2010
(diagnostic groups according to ICD-10)

Age group	0–14	15–19	20 – 29	30–39	40–49	50–59	60–69	70–79	80+	total
F64–F66	**0**	**10**	**37**	**27**	**25**	**19**	**3**	**0**	**0**	**121**

The draft amendment of Act No. 218/2003 Coll., on youth justice, which is the relevant legislation here, relates only to children under fifteen years old, not to juveniles.

Above all, it must be stressed that under Czech law children of below the age of 15 do not have criminal responsibility - they cannot commit crimes and criminal proceedings cannot be taken against them, even in a modified form (in contrast to juvenile offenders, i.e. persons who committed a crime at the age of between 15 and 18). Unlawful acts committed by a child younger than 15 - which would be crimes in the case of an adult, criminally responsible, offender - are defined as: "acts otherwise criminal".

If a child of younger than 15 years of age commits an act otherwise criminal, the youth court will order necessary correctional measures for the child. These include a wide range of primarily educational-correctional measures, which in general are ordered on the basis of a prior pedagogical and psychological examination. These proceedings on the ordering of necessary correctional measures for a child of under 15 are held before a youth court further to a petition from the state prosecutor's office, which is obliged to file such a petition immediately after learning that criminal prosecution cannot be carried out due to the fact that the offender is below the age of criminal responsibility.

Proceedings on the ordering of measures for a child of under 15 which committed an act otherwise criminal are held under the Civil Procedure Code. These are a specific type of non-contentious civil proceedings. In such proceedings, the child has the status of a party. The other parties are the competent authority of social and legal protection of children, the child's legal representatives (or persons granted custody of the child) and the state prosecutor.

In such proceedings, the court is always obliged by law to appoint a lawyer to act as a custodian for the child. This lawyer is obliged to perform the duties of a custodian for the duration of the proceedings - even if the child reaches majority in the interim. His task is to provide the child with professional legal assistance in the child's interest, and thereby to contribute to the clarification of the case as a whole, including its causes. In the role of custodian, the lawyer is to defend the interests of the child considered in a broad and comprehensive social context, and to contribute to finding solutions to the benefit of the child which have long-term prospects and are a positive motivation for the child. At the same time, he should assist in ensuring that the unlawful actions of the child are not repeated.

The involvement of an authority for the social and legal protection of children allows the court to ascertain the conditions in which the child lives, the standard of care that the child has received to date, and any prior contact this authority has previously had with the child's parents, including ascertaining whether educational-corrective measures of the Act on the Family have been applied to the child previously.

These court proceedings are held essentially in the interests of the child, not "against the child". Their outcome may not therefore be the punishment of the child (they are not criminal proceedings). Up to this time, even in cases where a child has committed the most serious act otherwise criminal, it has only been possible to order protective custody, which ends at the latest in the child's 19th year. Protective custody is carried out at educational-correctional facilities of the Ministry of Education, Youth and Sports.

On 27 September 2011, following approval by the Czech Parliament, the President signed an amendment to the Youth Justice Act. This amendment, which will very soon be published in the Collection of Acts, newly allows a youth court to order compulsory treatment for a child younger than fifteen years who commits an act otherwise criminal. This compulsory treatment may also take the form of institutional treatment, which may then - depending on the result - be changed to outpatient treatment (and vice versa). A youth court may order compulsory treatment for a child of younger than fifteen years if the child committed an act otherwise criminal a) in a state resulting from a psychological disorder, or b) under the influence of an addictive substance or in connection with the abuse thereof, in the case of a child which habitually abuses such substances.

However, this is always subject to the condition that it would be dangerous for the child to be at liberty without ordering compulsory treatment. The Act expressly states that the court may decide to order compulsory treatment for a child only on the basis of the results of a prior psychological examination of the child. Compulsory treatment continues as long as its purpose necessitates. The court is required to monitor the performance of compulsory treatment on the basis of requested reports, and at least once every twelve months to review whether legal grounds for it still exist. The court may also decide on its own motion for the continuation of compulsory treatment or for its termination. All the hearings involved are held by a youth court in civil proceedings, even after the "child" reaches or exceeds the age of 18 years.

The CPT recommends that the administration of the Všehrdy Prison make prison guards fully aware of the fact that all forms of ill treatment are unacceptable and will be appropriately punished (point 90).

Any suspicion or anonymous complaint regarding ill treatment of juveniles by prison staff is always thoroughly investigated. The information stated regarding violence perpetrated using sticks and cuffs to the head to ensure discipline among prisoners was not confirmed during inspections carried out by the prison administration, bodies of the General Directorate of the Prison Service of the Czech Republic and other bodies (the supervising state prosecutor, the ombudsman, the Special Inspections Department of the Ministry of Justice of the Czech Republic). Guards at juvenile accommodation units are not equipped with rubber truncheons. No sticks or other similar instruments are at hand in the unit, and no such case of ill treatment has been recorded or registered by the prison. However, despite the fact that no ill treatment of juveniles was proven, following an evaluation of the CPT's visit the prison warden called an extraordinary meeting of all the employees of the prison, where in particular prison guards and service members with duties involving direct contact with convicted prisoners were clearly informed that no forms of ill treatment of prisoners would be tolerated, and that in the event of any suspicion or finding of any such case, proceedings would always be brought against the person involved under the Criminal Procedure Code.

Under Section 6 of the Act on the Prison Service, members of the service assigned to guard duties are obliged to conduct themselves with persons in security detention, remand prisoners and convicted prisoners in a serious and decisive manner, to respect their rights, and to prevent any cruel or degrading treatment both of and among such persons.

Every employee is demonstrably trained in this area upon being hired or admitted to the service, and is also re-trained and re-examined every year in these regulations as part of the planned schedule for professional and service training.

The CPT recommends that the Czech authorities establish an integrated action plan to combat violence among prisoners in juvenile units at Všehrdy Prison in view of the comments made under points 91 to 94 (point 94).

Every case of physical violence, bullying or psychological abuse that is found at Všehrdy Prison is always dealt with promptly. The detection rate of such cases is almost one hundred percent. Serious cases of physical violence amongst juveniles are always forwarded for investigation to the law enforcement authorities. In order to reduce violence among juveniles in accommodation units 3 and 4 following the exhaustion of all the options for accommodation and differential treatment for this category of convicted prisoners, the General Directorate of the Prison Service of the Czech Republic has decided to establish additional independent units for convicted juvenile male prisoners at other prisons. On 1 April 2011, a new juvenile unit with a capacity of 20 places was opened at Plzeň Prison, and a further prison has also already been identified for this purpose.

In order to secure separate accommodation for maladjusted perpetrators of violence amongst juveniles at accommodation units which are of the standard dormitory type with shared sanitary facilities, the prison has prepared an investment plan for the creation of a cell-type unit (with 3-4 convicted prisoners in a cell) for the differentiated placement of the perpetrators of violence amongst convicted juvenile prisoners. It is expected that this unit will be established by the end of 2011.

After undergoing disciplinary punishment, perpetrators of violence are compulsorily assigned to a standardised therapeutic programme "TP 21 JUNIOR", whose aim is to teach juvenile prisoners to deal with routine life situations in a socially acceptable manner without violence.

In order to increase supervision and the intensity of the effect of educational-correctional activities, in 2011 the number of guards and educational staff engaged at facilities for imprisonment will be increased on the basis of Government Resolution No. 421 of 8 June 2011 amending the system applied in regard to service members and increasing the number of civilian employees of the Prison Service of the Czech Republic for the year 2011 and amending the system applied in regard to service members of the Prison Service of the Czech Republic for the year 2012.

As the increase in the number of posts for employees of the Prison Service of the Czech Republic was made as of 1 July 2011, the planned posts have not been filled. Staff will be distributed by the Prison Service of the Czech Republic on the basis of the current needs of individual organisational units, in particular with a view to the growing numbers of persons remanded into custody and serving terms of imprisonment. Attention will be given especially to the organisational units which were criticised by the CPT with regard to inadequate staffing levels of specialist employees (educators, special needs teachers etc.).

Guard supervision will also be increased in the school educational centre. The prison has found no instances of the bullying of juveniles by adult convicted prisoners. Indeed, the opposite has been observed - bullying of adults by juvenile convicted prisoners. The most frequent reasons for the exclusion of juveniles from the school educational centre are lack of discipline, absolute passivity, violation of the school rules and regulations etc. Sexual bullying and intimidation found amongst juveniles were investigated by the prevention and complaints department of the prison and forwarded to law enforcement authorities for criminal prosecution in 2008.

The material conditions in units for juveniles were generally acceptable; rooms for several prisoners (with two to five beds) were adequately large, clean, and had good access to natural light. However, they were rather austere; only in rooms for the best-behaved juveniles on the first floor of unit 4 had efforts been made to create a less austere environment, using plants, wall decorations and curtains. The sleeping quarters were open at night, so there were no problems with access to toilets.

Some units needed maintenance work. For example, the washroom on the ground floor of unit 3 had been damaged due to the leakage of water from the floor above, and on the upper floor of unit 3 a window had been broken for some time. The CPT trusts that these deficiencies will be rectified (point 95).

The furnishings and fittings of sleeping quarters for juveniles subject to the measure of imprisonment vary according to the rules of the internal differentiation system, which sets up 3 privilege levels. The relevant furnishings and fittings correspond to the particular differentiation group to which the prisoners have been assigned. The lower the differentiation group, the greater and better are the options for furnishings and fittings and the décor in sleeping quarters, which are thus closely tied to the system of incentives for prisoners. The assignment of a convicted prisoner to a particular differentiation group is based on an evaluation of the programme of activities which the prisoner is obliged to perform.

The state of disrepair at accommodation units, features of which include the water leakage which was found in the washroom on the ground floor of accommodation unit 3, is gradually being rectified. The routine maintenance work carried out at accommodation units in the prison is

dependent on the funds allocated to the relevant items of the prison's account. A professional company has been contracted to replace the broken window, and this job will depend on the time taken to manufacture the broken part of the (plastic) window and mount it back into the frame. This will be carried out as soon as possible.

The CPT recommends that the Czech authorities review the amount of food provided to juveniles at Všehrdy Prison and the time given to them for its consumption (point 96).

Further to the CPT's recommendation, a special inspection is to be carried out in 2011 at Všehrdy Prison in regard to compliance with the rules on the provision of food rations in line with the financial limits stipulated by Regulation of the Director General of the Prison Service of the Czech Republic No. 4/2008, on diet and meals in the Prison Service of the Czech Republic. The basic financial allocation for juveniles is 48 CZK, plus additional item 01 (drinks) at a price of 11 CZK. Juvenile convicted prisoners with work assignments who are engaged in education programmes also receive an additional snack costing 11 CZK and a second evening meal costing 11 CZK.

Routine inspection activities have found that the menu is compiled with consideration to the principles of a healthy diet and the recommended levels of nutrition for the specified category of consumers. The recommended nutritional levels are stated in the dietary programme and are continuously monitored. Inspections have even found that the recommended nutritional levels are being exceeded in the areas of energy, proteins, fats and carbohydrates.

A dietary and meals committee meets once a month, which is regularly attended by elected prisoners, including juvenile prisoners. Their comments are recorded and dealt with immediately.

The timetable for meals is set in the internal rules for convicted prisoners. If the time for the provision of a meal is shifted, the period for its consumption is shifted accordingly. The actual times for the provision of meals are recorded in the relevant documentation at guard posts. Meals are provided in the presence of a guard and one educational worker of the imprisonment unit. In addition, one cook (a prison employee) is also present at the serving of all meals, and guarantees the correct quantity and quality of the portions given. Meals are provided separately to juvenile and adult prisoners (at different times). The dining hall is monitored by a CCTV recording system. Theft of food and the stated lack of time for its consumption have not been found in the recent period, and prisoners have not submitted any complaints in this regard. Amongst other things, guards are responsible for making sure that prisoners form orderly queues at the serving counter.

In the event of any doubts about the quantity of food provided, prisoners may ask guards to check its amount. This is carried out by civilian employees assigned to work in the kitchen.

The CPT points out that a lack of useful activities is harmful both for juvenile prisoners themselves and for their physical and social environment. As part of the duty of care borne by the Czech authorities, the Committee believes that further steps should be taken aimed at providing a range of meaningful activities for juvenile detainees at Všehrdy Prison. The Czech authorities must increase the number of non-prison staff allocated to juvenile units. At present, these staff consist of a social worker, two educators and one psychologist per unit. The CPT recommends that the Czech authorities set up a programme of meaningful activities fitting the needs of juvenile prisoners (such as work, education, sport and recreational activities) for <u>all</u> juveniles at Všehrdy Prison (point 97).

The CPT points out the low number of juvenile convicted prisoners enrolled in the school educational centre. In this regard, it must be added that as soon as they are admitted to the prison all juveniles are demonstrably informed of the opportunities for study on any of the apprenticeship courses offered. The educational centre has the status of a secondary vocational school in the state schools network of the Czech Republic. This status means that the school has clear obligations in connection with admission procedures, i.e. the admission of juvenile students on the basis of the demonstrable submission of a certificate of the level of education attained, proof of completion of primary school education, and potentially of the students' year of study at a vocational or standard secondary school. If they express interest, juvenile prisoners are helped with this process by the relevant specialist staff of the prison.

When drawing up their programme of activities, each juvenile prisoner is offered the option of studying an apprenticeship or vocational course, and there are also a wide range of other activities on offer as part of programmes of activities. Education of convicted prisoners after the completion of primary school education is voluntary and depends on the interests of the juvenile prisoner. Programmes of activities for juveniles are always prepared as weekly plans. In order to increase the intensity of the effect of educational-correctional activities directed at juvenile convicted prisoners, the number of educational staff engaged at facilities for the imprisonment of juvenile convicted prisoners will be increased in 2011.

Rule 35.1 of the European Prison Rules stipulates: "Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community."

If a convicted prisoner does not choose any of the suitable activities on offer as part of programmes of activity, does not wish to study, is not interested in work or there is no suitable work for him, he is assigned to the minimum programme of activities, which consists of the obligatory work required to ensure the everyday running of the prison, the legal minimum of education, basic self-care skills and guided physical education. These convicted prisoners are generally assigned to internal differentiation group 3. Except for the time allotted for sleep, the prison staff attend to juvenile convicted prisoners the whole day.

With reference to Chapter 3: Boletice nad Labem-Děčín Youth Detention Centre

The CPT recommends that the signal bells in the unit for children with exceptional behavioural problems be mended (point 100).

The signal bells in the unit for children with extreme behavioural problems were mended immediately after the CPT's visit.

The CPT recommends that the Czech authorities establish an appropriate procedure for the admission of all children and juveniles placed in institutions under the provisions of the Youth Justice Act (point 101).

The CPT's recommendation results from the finding that an eleven year old child had been placed in a facility. According to the facility's documentation, the youngest boy at the time of the CPT's visit was 13 years old. Section 13(3) of Act No. 109/2002 Coll., on youth justice, as amended, allows children of over 12 years old to be placed in youth detention centres if institutional care has been ordered. In exceptional cases, the Act allows children of over 15 years old to be placed into institutional care if they have especially serious behavioural problems. In view of the fact that this procedure is laid down in legislation, we consider the CPT's recommendation to be fulfilled.

In regard to Part II. E: Psychiatric facilities

With reference to Chapter 1: Introductory remarks

Recommendations

The CPT recommends that the legal status of "voluntary" patients held in locked wards at Horní Beřkovice Psychiatric Hospital be reviewed in the light of the comments of the CPT (point 105).

On so-called "locked wards", a significant proportion of the patients are at least partially disoriented due to the sudden onset of their underlying illness. Locked doors serve two protective functions for these patients: to stop them from going outside the facility, where they can be a danger primarily to themselves, and to prevent the unannounced entry of persons unknown to them.

The Horní Beřkovice Psychiatric Hospital consistently adheres to the rule that any patient undergoing voluntary treatment who does not agree to this regime on such a ward must immediately be discharged. If a patient is a danger to himself or his surroundings, he is transferred to a regime of involuntary hospitalisation. The hospital also consistently reports to the district court for its catchment area in Litoměřice on any situations where patients in the voluntary hospitalisation regime were mechanically restrained or restricted in their movements during such hospitalisation.

Requests for information

Within a reasonable period of time, the CPT would like to receive information about the provisions on legal guardianship under the amended Civil Code (point 106).

The proposed legislation on "legal guardianship" in the draft of the new Civil Code is essentially based on the existing legislation under Section 78 et seq. of the Act on the Family, in addition to which, for example, it expressly stipulates the time at which the duties of a legal guardian begin (Section 928). As well as providing for situations where a legal guardian is relieved of his duties either at his own request or due to his violation of such duties, the legislation also lays down detailed provisions on the termination of legal guardianship on other grounds (Section 930). Provisions are also proposed for cases where persons acting as legal guardians die (Section 933). As regards the rendering of accounts of the guardian's administration of affairs and the content of the guardian's obligations during the performance of his duties, the legislation has not been significantly changed and is aimed at maintaining a high level of protection for the interests of the child in this situation.

"Custodianship" is provided for under Section 458 et seq. The court is to appoint a custodian for a person if this is necessary for the protection of such person's interests or if the public interest requires it. In particular, the court will appoint a custodian for a person whose legal capacity the court has restricted, for a person whose place of residence is unknown, for an unknown person that is a party to a particular legal proceeding, or a person whose medical condition hinders the management of his property or the defence of his rights. The duties of a custodian include maintaining regular contact with the person in his custody in a suitable manner and to the necessary extent, expressing genuine interest in the welfare of the person in his custody, showing concern for his medical condition and the exercise of his rights, and protecting his interests. As part of the performance of his duties, the custodian makes legal statements for the person in his custody, and respects his views and opinions, even those expressed at an earlier time, including convictions or religious beliefs, consistently takes them into account and manages his affairs in accordance therewith.

With reference to Chapter 2: Living conditions and medical treatment of patients

Recommendations

The CPT recommends that the Czech authorities make efforts to abolish the large dormitories at the Horní Beřkovice Psychiatric Hospital, and where appropriate also at other psychiatric facilities (point 107).

Payments from health insurance companies are virtually the only source of income for all psychiatric hospitals, including the Horní Beřkovice Psychiatric Hospital. Health insurance companies check thoroughly whether the payments they make are going exclusively to the medical treatment of their clients. All psychiatric hospitals are making efforts towards a gradual reduction of the number of beds in large dormitories. However, every reduction in the number of beds requires partial reconstruction of the ward.

Economically, the Horní Beřkovice Psychiatric Hospital is a state-funded organisation. Therefore repairs to its buildings, including any additional material improvement in the conditions for patients, are primarily dependent on the capacities of the state budget. Furthermore, from the professional perspective of the doctors it is necessary to consistently differentiate amongst patients - this is why the Horní Beřkovice Psychiatric Hospital has 19 wards. Some of these have rooms with only two or three beds each (patients with neuroses, addictions, elderly patients). Notwithstanding the points made above, the Horní Beřkovice Psychiatric Hospital is actively taking account of the CPT's recommendations and over the long term is successfully reducing the numbers of patients in dormitories. For example, in 2005 an average room at the Horní Beřkovice Psychiatric Hospital held 6.05 patients (92 rooms and dormitories and an average daily number of patients of 557). By 2010 this figure had been reduced to 4.84 patients per room (103 rooms and dormitories and an average daily number of patients of 499).

At some psychiatric hospitals it would be possible to reduce the number of beds in dormitories and rooms only if the hospital's bed capacity were reduced, or if new pavilions were built, which would require a significant increase in funding from the state budget. In 2009, the average bed occupancy rate at psychiatric hospitals was 94 %. If greater reductions were made in the number of beds in psychiatric hospitals, it would soon be necessary to extend the waiting times for admission to particular hospitals.

The CPT recommends that the Czech authorities take appropriate steps to ensure that all patients at the Horní Beřkovice Psychiatric Hospital whose state of health allows it have the opportunity for outdoor exercise even in bad weather (point 108).

At the Horní Beřkovice Psychiatric Hospital plans are being made for the construction of an area with a projecting roof, where patients could have such outdoor exercise.

With reference to Chapter 3: Restraint of the movements of agitated or aggressive patients

Recommendations

The CPT recommends that the problems mentioned above be dealt with in methodological guidelines, if not already covered by legislation (point 111).

In regard to the differences between the methodological guidelines from 2005 and from 2009 (Ministry of Health Bulletin No. 1/2005 and Ministry of Health Bulletin No. 7/2009), the Ministry of Health points out that in 2005 the methodological guideline related only to psychiatric facilities (Use of means of restraint on patients at psychiatric facilities of the Czech Republic). The methodological guideline from 2009 also covered other medical facilities (Use of means of restraint on patients at medical facilities of the Czech Republic). The use of means of restraint at other medical facilities is covered by paragraphs (b) and (f) of this methodological guideline: restraint of the movements of patients by means of belts or straps, acute parenteral administration of psychotropic or other drugs appropriate for limiting the free movements of patients during the provision of medical care in cases where treatment is not at the patient's request, or during regular treatment for psychiatric disorders. At the present time, the procedure applied at all psychiatric hospitals and medical facilities is in accordance with Ministry of Health Bulletin No. 7/2009.

As regards the cancellation of the procedure where the use of means of restraint must be notified to the court, it may be noted that in 2007 Decree No. 385/2006 Coll., on medical documentation, as amended, came into effect, under which Section 1(2)(j) states that medical documentation is to contain a record of the use of means of restraint on a patient and on the notification of this fact to the court. For this reason, the methodological guideline of 2009 no longer states the obligation to notify the use of means of restraint, since Decree No. 385/2006 Coll. is law.

The hospitalisation of patients, the provision of medical services without consent and the use of means of restraint are provided for in the government bill of the Act on health services and the conditions of their provision, which had its third reading in the Chamber of Deputies in September. The draft Act specifies the various types of means of restraint, the conditions for their use and the documentation of their use.

The CPT recommends that as soon as possible the Czech authorities implement a policy for phasing out the use of net beds in psychiatric hospitals (point 112).

In line with the CPT's finding, the Horní Beřkovice Psychiatric Hospital confirms that it now has no net beds or cage beds. The trend towards the decreased usage of net beds is also visible in the Czech Republic. From a clinical perspective, however, Czech experts believe an absolute ban on net beds to be inappropriate, and that it may potentially worsen the risk of health complications in some types of patients, such as nocturnal restlessness in patients with dementia. In the draft Act on health services, net beds continue to be permitted as a means of restraint.

Net beds are currently used exclusively for the protection of agitated and disoriented patients, especially at geronto-psychiatric facilities. Highly confused patients with dementia are placed in net beds for the night. Use of such beds is safer and more humane - it is not then necessary to use means of restraint and patients do not fall out of bed. This averts the medical complications of falls, in particular fractures of the upper end of the femur with a fatal outcome.

Means of restraint may be used only for the period strictly necessary, and only on serious medical grounds, not for correctional reasons. It is not possible to approve the use of any restrictive therapeutic procedure as a means for dealing with disciplinary problems and infractions.

The CPT recommends that the Czech authorities appropriately amend the methodological guideline of 2009 in order to ban the use of means of restraint for long periods of time, i.e. several days or more (point 113).

Conditions relating to the use of means of restraint, including the length of time for which such means of restraint may be used (i.e. limiting this solely to the period of time for which the purpose of their use is to avert imminent danger to the life, health or safety of the patient or third persons) have been newly incorporated into the government bill of the Act on health services:

(1) The following may be used for the purpose of restricting the free movements of patients during the provision of medical services:

a) holds employed by medical personnel or other persons designated to employ such holds by the medical service provider,
b) restriction of patients' movements by means or belts or straps,
c) placing of patients in net beds,
d) placing of patients in rooms designed for safe movement,
e) protective jackets or vests preventing patients from moving their upper limbs,
f) psychotropic drugs or other drugs administered parenterally which are appropriate for the purpose of limiting the free movements of patients during the provision of medical services in cases where treatment is not at the patient's request, or during systematic treatment for psychiatric disorders, or
g) a combination of the means listed under paragraphs (a) to (f),

(hereinafter "means of restraint").

(2) Means of restraint may be used:

a) only where the purpose of their use is to avert imminent danger to the life, health or safety of the patient or third persons, and
b) solely for the period of time that the grounds for their use under paragraph (a) exist.

(3) Medical services providers are obliged to ensure that:

a) patients on whom means of restraint are used be comprehensibly informed - taking into account their medical condition - of the reasons for the use of such means of restraint,
b) the legal representative of a patient that is a minor or a patient deprived of legal capacity (hereinafter the "patient's legal representative") be informed without undue delay of the use of any of the means of restraint listed under subsection 1(b), (c), (d) or (e); a record is to be made of the communication of this information to the patient's legal representative in the medical documentation kept on the patient, and this record is to be signed by the relevant member of medical staff and the patient's legal representative,

c) the patient be under the supervision of medical staff for the duration of the use of the means of restraint; this supervision must be adequate to the seriousness of the patient's medical condition, and measures must also be taken to prevent any harm to the patient's health,
d) at all times the use of means of restraint be indicated by a doctor; in exceptional cases requiring urgent action, the use of means of restraint may also be indicated by another member of medical personnel present at the time that is not a doctor; however, a doctor must immediately be informed of such use of means of restraint and must confirm the justification for it,
e) a record be made of every case of the use of means of restraint in the medical documentation kept on the patient.

The CPT recommends that the Czech authorities carry out a detailed investigation of the long-term application of mechanical means of restraint on the woman J. J. (including the reasons for the application of means of restraint and the total duration of their use, as well as the procedures that led up to the decision on their application and the extension of the period, and also the availability of alternatives to means of restraint). The Committee would also like to receive updated information on the current situation of this woman, including in regard to her accommodation and whether she has been subject to means of restraint on her movements during the last twelve months, and if so, for how long (point 114).

Ms. J. J. was hospitalised at the Kroměříž Psychiatric Hospital on two occasions: from 8 June 2005 to 4 October 2010, and from 22 December 2010 to 1 March 2011. Ms. J. J. was hospitalised long term at the Kroměříž Psychiatric Hospital due to behavioural disorders resulting from mental retardation. For the entire duration of her hospitalisation, the main problem was automutilation (self-injurious behaviour), which involved Ms. J. J. swallowing various objects - lighters, pens, coins, spoons etc., or otherwise injuring herself. In the event that she swallowed such objects, these then had to be removed from her digestive tract under general anaesthesia. She engaged in this self-injurious behaviour whenever she was not mechanically restrained or, in the absence of means of restraint, whenever she was not under the constant direct supervision of attendants or, subsequently, of assistants from the civic association "Podané ruce" - "Helping Hands". Means of treatment had virtually no influence on this situation.

The psychiatric hospital essentially took the place of a social services facility. The psychiatric hospital therefore concluded an agreement with the civic association "Podané ruce", and 3 assistants came to attend to the patient 3 times a week for 2 hours. Further to an agreement with the patient's custodian she was also visited by a priest. The situation of Ms. J. J. was made known to the representatives of the Zlín Regional Authority, which is vested, under Section 95 of Act No. 108/2006 Coll., on social services, with legal competence in regard to the planning and development of the social services network on its territory.

During the last 12 months – i.e. from July 2010 to 4 October 2010 and from 22 December 2010 to 1 March 2010 - records have been made of the use of the following means of restraint – straitjacket, bed restraints. The use of means of restraint is recorded in the relevant medical documentation, and was always indicated by a doctor, stating the reason for the measure and its duration. The medical documentation shows that means of restraint were not used on Ms. J. J. as long as she was under constant supervision (see above). Whenever constant supervision could not be secured, means of restraint were used to prevent automutilation and thereby to avoid any necessary subsequent medical procedures under general anaesthesia. The Ministry of Health is of the opinion that the use of means of restraint was appropriate in this case and was indicated. If she were allowed normal freedom of movement there would be a high risk of self-injurious behaviour.

According to information from the Ministry of Labour and Social Affairs, Ms. J. J. is at present in a home for people with disabilities. She is not subject to any measures restricting her movements, takes part in leisure activities, including outings and trips, is receiving therapy and is attended by an assistant. She has a one-bed room at the facility. The situation of Ms. J. J. is now diametrically different from that observed by the CPT during its visit to the Czech Republic.

The CPT would like to receive comments from the Czech authorities in regard to the issue of the long-term use of means of restraint (point 116).

In September 2009, the Ministry of Health published a new methodological guideline in its Bulletin regarding the use of means of restraint, and the directors of all psychiatric hospitals were notified of the need to adhere to this guideline.

Means of restraint may be used only for the period strictly necessary, and only on serious medical grounds, not for correctional reasons. It is not possible to approve the use of any restrictive therapeutic procedure as a means for dealing with disciplinary problems and infractions. Complete discontinuance of the use of measures for restraint is unrealistic, however, as some psychotic states connected with agitation, aggression, suicidal tendencies and unpredictable behaviour under the influence of delusions and hallucinations can represent a threat not only to other patients and staff, but also to the patients themselves. The use of means of restraint must be recorded and justified in medical documentation.

Mechanical restraining measures lasting more than 24 hours including periods of interruption are generally indicated for patients who are an exceptional danger to their surroundings and who are also confused, and for patients who are a particular danger to themselves. There is a high risk of self-injurious behaviour in particular if patients who are a danger to themselves are allowed normal freedom of movement, and so in these cases mechanical restraints serve as key means for protecting patients from themselves and are of critical importance for the safe treatment of such patients. For these reasons, the Horní Beřkovice Psychiatric Hospital also opts for this basic *lege artis* procedure.

Closer investigation will be made in regard to the issue of the long-term restraint of patients in the second half of 2011, when visits to psychiatric hospitals focusing on the use of means of restraint will be carried out as part of the management and methodological activities of the Ministry of Health.

Conditions relating to the use of means of restraint, including the length of time for which such means of restraint may be used (i.e. limiting this solely to the period of time for which the purpose of their use is to avert imminent danger to the life, health or safety of the patient or third persons) have been newly incorporated into the government bill of the Act on health services (see also above in this Czech Government Response, response in regard to point 113).

The CPT recommends that a rule be put in place at the Horní Beřkovice Psychiatric Hospital, and where appropriate also at other psychiatric hospitals in the Czech Republic, requiring that patients restrained using straps be subject to constant direct supervision by a member of medical staff present in the room. In addition, patients may not be restricted in their movements in the presence of other patients (point 117).

According to an investigation carried out by the Ministry of Health, all psychiatric hospitals proceed in accordance with the guidelines of Ministry of Health Bulletin 7/2009.

At the Horní Beřkovice Psychiatric Hospital, the observation room on ward 421 has a transparent, unbreakable window connecting it with the examination room, so that patients are under direct staff supervision not mediated by a camera. At station 433 such an arrangement is fundamentally impossible from the structural-technical perspective, and so patients are under the direct supervision of a camera used by medical staff for monitoring them from the examination room. We would also note that at the Horní Beřkovice Psychiatric Hospital it has been standard practice for many years to perform checks on mechanically restrained patients every hour, including a check on their vital signs, which are recorded. To summarise: the Horní Beřkovice Psychiatric Hospital strictly adheres to the rules for staffing its wards laid down in the decree. As a result, it is not anticipated that the hospital will have an extra member of staff who will be on hand for hypothetical cases of the mechanical restraint of patients, which is a measure applied rather rarely at the Horní Beřkovice Psychiatric Hospital. Moreover, precisely because of the stated staffing rules applying to hospitals in the Czech Republic, the Joint Accreditation Commission of the Czech Republic recommends the use of CCTV camera systems, and considers them to be very safe.

Requests for information

Updated information on the current situation of the woman referred to in point 114, including in regard to her accommodation and whether she has been subject to means of restraint on her movements during the last twelve months, and if so, for how long (point 114).

According to information from the Ministry of Labour and Social Affairs, Ms. J. J. has been in a home for people with disabilities since March 2011. This client, Ms. J. J., is not subject to any measures restricting her movements, takes part in leisure activities, including outings and trips, is receiving therapy and is attended by an assistant. She occupies a one-bed room at this social services facility. The situation of Ms. J. J. is now diametrically different from that observed by the CPT during its visit to the Czech Republic. For more information, see above in this Czech Government Response, response to point 114.

Response in regard to the CPT's comments under point 116 questioning the need for the continued restriction of patients' movements in certain cases (point 116).

The Horní Beřkovice Psychiatric Hospital confirms that mechanically restrained patients are standardly placed outside direct contact with other patients, usually in "observation rooms". Furthermore, the Horní Beřkovice Psychiatric Hospital also confirms that without exception it always reports the use of means of restraint on voluntarily hospitalised patients to the district court for its catchment area.

Means of restraint may be used only for the period strictly necessary, and only on serious medical grounds, not for correctional reasons. It is not possible to approve the use of any restrictive therapeutic procedure as a means for dealing with disciplinary problems and infractions. Complete discontinuance of the use of measures for restraint is unrealistic, however, as some psychotic states connected with agitation, aggression, suicidal tendencies and unpredictable behaviour under the influence of delusions and hallucinations can represent a threat not only to other patients and staff, but also to the patients themselves. In accordance with legislation (Decree No. 385/2006 Coll.) and with the methodological guideline of the Ministry of Health, the use of means of restraint must be recorded and justified in the medical documentation.

With reference to Chapter 4: Safeguards

Recommendations

The CPT recommends that a special form be introduced for all medical procedures that require patient consent. This form must state that the patient has received complete information about the treatment and that the patient has the right to revoke consent granted at an earlier time. These rules must similarly be incorporated into future mental health legislation (point 119).

The Horní Beřkovice Psychiatric Hospital confirms that even in the case of non-voluntary patients, it presents a consent to treatment form separately from the consent to hospitalisation form. The Horní Beřkovice Psychiatric Hospital further states that it has corresponding forms for psychiatric medical procedures which enable patients - with the exception of life-threatening situations - to express their wishes by giving their informed consent.

Psychiatric hospitals require informed, written consent for electroconvulsive therapy to be carried out.

Some psychiatric hospitals give patients only a general informed consent form to sign. However, most psychiatric hospitals keep patients informed on an ongoing basis of the steps involved in treatment, and patients' consent is obtained for all medical procedures.

The draft Act on health services stipulates that the information provided to the patient must include information about the cause and origin of the disease, if known, its stage and anticipated development, the purpose, nature, expected benefits, potential consequences and risks of the health services proposed, including particular medical procedures, about other options for the provision of health services, their suitability, the benefits and risks for the patient, further treatment required, and any restrictions and recommendations relating to patients' lifestyle in view of their state of health. Patients must always express their consent to the provision of health services.

List of documents to be sent as attachments for informative purposes to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Annex No. 1: Binding Guideline of the Police President No. 159/2009 on police escorts, the guarding of persons and police cells, with annexes nos. 1, 2 and 3.

Annex No. 2: Act on the General Inspectorate of the Security Forces No. 341/ 2011 Coll. (selected provisions).

Supplement to the response of the Government of the Czech Republic to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Czech Republic from 7 to 16 September 2010
(received on 29 November 2013)

In this and in the previous reports the CPT states that surgical castration is an intervention with irreversible physical effects; there is no guarantee that the result being sought (reducing testosterone levels) is permanent; its envisaged positive effects are not based on thorough scientific evaluation; and in the context in which they are offered it is doubtful whether consent with this intervention will always be free and informed. According to the CPT, surgical castration is a mutilating, irreversible intervention and cannot be considered as a medical necessity in the context of the treatment of sexual offenders. The CPT then concludes that the surgical castration of detained sexual offenders can be considered as amounting to degrading treatment.

Before commenting on the opinion of the CPT it is appropriate to clarify the terminology used, primarily regarding a definition of the group of persons affected. The CPT speaks of the treatment of sexual offenders. This is a very wide term the scope of which, in addition, can differ according to the legislation in individual states. It is therefore necessary to remember that the group of persons to whom the forms of treatment indicated below are made available are not sexual offenders in general, but only a small subgroup of them who suffer from paraphilic disorders. This subgroup is defined primarily through medical diagnosis and not through criminal behaviour.

Paraphilic disorders are among the mental disorders listed in the Classification Manual of the World Health Organisation (International Classification of Mental Diseases (ICD-10th)). According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM IV-TR) they are defined as sexual disorders characterised by “recurrent, intense, sexually arousing fantasies, sexual urges or behaviours, generally involving
1) non human objects,
2) the suffering or humiliation of oneself or one's partner, or
3) children or other non-consenting persons
that occur over a period of 6 months”, which “cause clinically significant distress or impairment in social, occupational, or other important areas of functioning”.

The treatment of paraphilic disorders

The causes of paraphilic disorders are complex and include various psychological, organic and other factors. Their treatment is subsequently similarly complex and has various forms depending on the type and intensity of the disorder.

It is generally recognised that such treatment includes primarily psychotherapy, sociotherapy and the use of psychotropic medication. The goal of the treatment is to improve the voluntary control over sexual arousal, reduce the sexual compulsion or teach motivated individuals to avoid acting under the influence of their sexual instincts, self-control and the ability to prevent re-offending. It is also generally recognised that these forms of treatment might not be effective alone, in particular with patients suffering from serious paraphilic disorders. In such cases the only remaining way to provide a patient with relief from the ailment is androgen deprivation therapy (ADT). This therapy focuses on reducing testosterone levels, either through hormone treatment (sometimes labelled “chemical castration” or “medical castration”) or, where such treatment is ineffective or contraindicated for health reasons, surgical castration. It is important to note that both forms of ADT, i.e., hormonal treatment and castration, are also used in the treatment of prostate cancer.

The effectiveness of androgen deprivation therapy

The CPT asserts that the envisaged positive effects of surgical castration are not based on thorough scientific evaluation. There is however an extensive set of scientific data showing that paraphilic re-offending can be significantly reduced through ADT. The effectiveness of castration and hormonal therapy in this regard is also confirmed by the World Federation of Societies of Biological Psychiatry (WFSBP) in its Directives for the Treatment of Paraphilia issued in 2010. Extensive meta-analysis has confirmed that both surgical and also medical intervention reduces the re-offending rates much more than any other treatment procedure, in particular when they are used side by side with psychological treatment[9]. Reducing testosterone through ADT clearly provides a benefit to the patient by enabling him to acquire greater self-control and relief from persistent erotic obsessive fantasies. In the presence of a proper therapeutic procedure prepared with the goal of preventing side effects or, if they are unavoidable, minimising them, the risks connected with ADT are generally at the same level as the risks connected with many other regularly prescribed pharmacological procedures[10].

In the context of a rehabilitation procedure for paraphilic sexual offenders it is therefore completely *lege artis* to offer ADT, which by reducing the action of androgens will potentially improve control over sexual instincts and desires and could thus help prevent repeat offences. It would on the other hand be *non lege artis* not to make a treatment with demonstrated effectiveness available.

Surgical castration and pharmacological hormonal treatment provide equivalent suppression of testosterone. The *castration* testosterone level is in reality used as the scale for evaluating the effectiveness of various pharmaceuticals used in hormonal treatment. Hence, if surgical castration should be rejected for reason of its alleged lack of effect, hormonal treatment ("medical castration") would also have to be rejected for the same reasons. It is necessary to note that medical castration is mentioned in the explanatory report on the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No 201) as being among the effective measures of therapeutic intervention that should be made available to sexual offenders, and that the effectiveness of this treatment was not challenged by the CPT.

The CPT asserts that there is no guarantee that the effects of castration will not be reversed through the external administration of testosterone. It uses this argument to imply that it is not possible to guarantee that a drop in testosterone (and the related change in behaviour of the paraphilic patient) will be permanent, and that castration can therefore not be considered as a reliable means to prevent the repeated manifestations of paraphilic disorders.

It is necessary to make several comments regarding this assertion. Firstly, the same objection could also be made against hormonal treatment; a patient could also supress its effects through the external administration of testosterone. Secondly, the secret use of testosterone can easily be detected in time through the taking of blood samples during the regular monitoring of the patient by a physician. Thirdly, the administration of testosterone is very improbable with patients who are – also with the help of preceding psychotherapy – sufficiently motivated to successfully complete a therapy that will enable them to gain control over their sexual urges with the goal of preventing harm to others. It is worth mentioning that no case of external administration of testosterone has yet been recorded in the Czech Republic.

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[9] Lösel F, Schmucker M: The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis. *Journal of Experimental Criminology I (1), 117-146.*

[10] Berlin FS: Commentary: Risk/Benefit Ratio of Androgen Deprivation Treatment for Sex Offenders, Journal of the American Academy of Psychiatry and the Law 37, 2009

The extent to which surgical castration is irreversible

The CPT correctly states that surgical castration is an irreversible and mutilating intervention. Nevertheless, it is necessary to bear in mind that the extent of both the irreversibility as well as the mutilation (i.e., the removal of otherwise healthy organs) can today be significantly reduced.

The visibly mutilating effects of castration can be dealt with for both paraphilic patients and also for patients with prostate cancer who want to undergo the procedure, by replacing the removed testicles with prostheses. The consequences of surgical intervention thus become practically invisible. In addition, instead of castration it is possible to use testicular pulpectomy, a less invasive intervention during which only the hormonally active part of the testicles is removed.

The CPT mentions the permanent loss of reproductive ability as the main irreversible effect of surgical castration. This does not, however, reflect the fact that loss of reproductive ability can be fully compensated today: a patient may have his sperm stored in a sperm bank and his reproductive ability will be retained. In this respect, therefore, the former fundamental difference between hormonal treatment and surgical castration no longer applies.

The other effects are connected with the drop in testosterone level and are therefore the same for surgical castration and for hormonal treatment. It is true that following hormonal treatment many of these effects can fade, while with castration they can be permanent. It is, however, important to keep in mind that these effects can as a rule be prevented, for example the development of osteoporosis can be prevented thanks to regular medical controls. Moreover, one should bear in mind that if hormonal treatment is applied over the long term, it can also cause irreversible changes, for example breast growth.

It should be noted that with castration no side effects connected with the administration of pharmaceuticals are suffered, unlike with hormonal treatment. For patients whose state of health excludes the use of such pharmaceuticals, castration is the sole remaining form of ADT.

As regards the irreversibility of the intervention, the assertion by the CPT that the effects of castration can be reversed through the external administration of testosterone should also not be overlooked. Indeed, a series of consequences connected with the drop in testosterone caused by castration can be eliminated for patients in this manner. It must, however, be kept in mind that it is also, as shown above, possible to prevent the abuse of this possibility. It therefore follows that the external administration of testosterone, if performed under the supervision of a physician, could in fact be a way to reduce the differences between hormonal treatment and castration, in terms of the irreversibility of the effects of a drop in testosterone levels.

In any case, the existence of serious side effects, reversible or irreversible, is common to many medical interventions and cannot, alone, render them inadmissible. One must primarily consider whether and to what extent such interventions offer the patient therapeutic benefit and whether they are thus medically appropriate. It is at the same time necessary to emphasize that a medically appropriate treatment is a treatment which is for the purpose of alleviating or preventing a worsening of the patient’s mental disorder or its symptoms or manifestations. As the above has shown, ADT, whether in the form of hormonal treatment or castration, unequivocally fulfils these criteria.

Free and informed consent

The CPT states that in the context in which castration is offered, it is doubtful whether consent with this intervention will always be really free and informed; situations could occur when patients acquiesce rather than agree, in the hope of avoiding permanent detention.

It is clear that the context the CPT has in mind is the involuntary placement of patients in psychiatric facilities. Therefore, the conclusions it reaches regarding the ability of such patients to give their free and informed consent would generally have to relate not only to castration, but also to any other treatment offered in this context. This would of course, as will be shown below, lead to a significant restriction on the treatment options for many psychiatric patients.

There is absolutely no doubt that patients detained in psychiatric facilities are, in view of the nature of the circumstances in which they find themselves, rightly regarded as vulnerable and therefore should be given special consideration. This, however, does not mean that they should be denied access to treatment that could provide them with therapeutic benefits. A patient who is otherwise fully competent to give his/her free and informed consent cannot be automatically considered incapable of making a fully voluntary decision regarding his/her choice of treatment simply because the relief from the disorder that the treatment would provide would make release from detention a possibility. For patients who have already unsuccessfully exhausted all other available therapeutic options, this would condemn them to the loss of liberty for an unspecified period of time, if not for life, without the possibility of completing the treatment for their disorder.

In the same way as the CPT did not doubt the effectiveness of hormonal treatment, it also did not doubt the validity of the consent of detained persons to this treatment, in spite of the fact that, as it stated, when taking the decision many of them see it as a "ticket to freedom"[11]. Surgical castration is a treatment provided in exactly the same context, brings patients the same therapeutic benefit, and is at least as effective as hormonal treatment. The sole significant difference between the two forms of ADT is the irreversibility of castration, the impacts of which, however, as has been shown above, can today be significantly reduced. From the perspective of the criterion of free and informed consent, however, there is no difference between the two forms of ADT. The degree of voluntariness and informedness of a patient's consent does not differ according to the nature of the intervention, but according to the circumstances under which the consent is given. Even though one form of ADT (castration) is irreversible, consent to it is no less voluntary and informed than consent with the other form of this therapy (hormonal treatment).

The irreversibility of an intervention offered to detained persons should therefore be reflected in sufficiently strong procedural guarantees of free and informed consent, including review by an independent body, but should not lead to the exclusion of such an intervention. These guarantees should ensure that the patient is informed about all possible treatments available to him/her, so that he/she can properly assess the advantages as well as the risks of undergoing or not undergoing the treatment, and that his/her decision-making is completely free of coercion or improper influence.

The past abuse of castration as forced or inadequate treatment or even as a punishment undoubtedly contributed towards the fact that today even its exclusively therapeutic use, founded on careful diagnosis and free and informed consent, is often viewed with concern. It is therefore all the more important to thoroughly discuss this issue, unburdened by the weight of the past, so that castration can be seen as part of comprehensive, medically appropriate treatment for patients suffering from

[11] See the CPT report on its visit to Denmark in 2008 (CPT/Inf (2008) 26)

severe paraphilic disorders where other forms of treatment have failed or are excluded due to the patient's state of health. On this basis, attention should focus on the conditions under which castration is available, in particular whether legislation and its use in practice ensures the proper protection of patients' rights.

New legislation

Taking the above into consideration, the government decided that voluntary surgical castration will also be retained for detained patients, under the conditions that it will be the last treatment option and that the guarantees of free and informed consent will be strengthened. The Committee against Torture and other Cruel, Inhuman or Degrading Treatment of the Government Council for Human Rights, a government advisory body, expressed its opinion on this issue. The Committee recommended that castration should be available only to persons aged over 25 years who have committed at least one violent sexually motivated crime defined pursuant to the Criminal Code, who remain a danger to society, and where other treatment alternatives are inappropriate, but it cannot be performed on persons who are on remand or imprisoned. The government enshrined these recommendations in the draft Act on Specific Health Services, which the Parliament approved in November 2011. No castration has been performed in the Czech Republic since 1st April 2012, when the Act came into effect.

The previous legislation stipulated that a voluntary, informed consent had to be given and that the request be approved by an expert commission. These basic principles were developed in the new Act in a much more detailed way with the goal of strengthening the existing guarantee of free and informed consent. The main changes that it brought include in particular the following:

- Castration cannot be performed on persons who are on remand or imprisoned. Castration also cannot be performed on a patient deprived of legal capacity.

- In other cases specific criteria were introduced for permitting voluntary castration. Castration may be permitted upon the written request of the patient only if
  1) the patient is over 25 years of age,
  2) the patient has committed a violent sexually motivated crime,
  3) an expert medical examination has shown the existence of specific sexual deviance and a high probability that he will again commit a violent sexually motivated crime in the future and, last but not least,
  4) other methods of treatment have proven unsuccessful.

- The patient's request must be accompanied by a recommendation from the attending physician and also by an independent medical evaluation demonstrating a high level of probability that the patient will commit a violent sexually motivated crime in the future.

- A central expert commission will decide on castration requests. This will ensure the uniform interpretation of the criteria for permitting castration and strengthen the independence and impartiality of the expert examination. The members of this commission are experts in psychology, psychiatry, sexology and urology, together with a lawyer specialising in medical law. Persons with any links to the facility in which the applicant has been placed are excluded from membership in this commission.

- The commission will invite the patient to a meeting and inform him of the nature, permanent consequences and possible risks of this medical intervention[12]. It also must verify whether the

patient has understood the information and whether he made the request completely voluntarily. If the patient is in protective treatment or security detention, he must be informed that the castration will not give a right to release.

- The decision of the expert commission must be unanimous. In the case of a patient in protective treatment or security detention, it must be approved by a court.

- The castration can only be performed if the patient gives his written consent to it immediately before the operation.

It has to be pointed out that the judicial review of the expert committee's decision introduces an important new element into the procedure. The court has the obligation imposed by the Czech Republic's Constitution to ensure protection of fundamental rights and freedoms, including protection of human personality, physical integrity, private and family life, and protection against torture and other cruel, inhuman or degrading treatment or punishment. In each individual case, the court must consider whether surgical castration is justified in a patient under protective treatment or security detention in terms of the above legal conditions; the court must make sure that these legal conditions were met, the expert committee complied with the prescribed procedure, the patient was duly informed about all the related issues and his consent with the castration was free and informed. The court must also consider whether surgical castration is a reasonable interference with the above fundamental rights and whether this step is not unjustified or unreasonable, or does not violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. If it is the case, the court will not give its consent to the castration and it cannot be carried out.

The judicial review is not limited to verifying whether the conditions prescribed by law were met; the court may also verify whether the provisions of the given act are in accordance with international treaties. The Constitutional Court is competent to abolish an act or its provisions if they are in conflict with the constitutional order, which includes international treaties binding on the Czech Republic. If, in reviewing the expert committee's decision, an ordinary court has reached a decision that the castration, carried out in compliance with the legal conditions, would be in conflict with the European Convention on Human Rights or the Convention on Human Rights and Biomedicine and that this conflict arises from the Czech legislation related to the castration which cannot be interpreted or applied in accordance with the above treaties, the ordinary court may request the Constitutional Court to abolish the related provisions of the law.

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[12]This is the second comprehensive information that the patient receives. The first is provided to him by his attending physician before the submission of a castration request; the request includes thorough information in writing signed by the patient.