



CPT/Inf (2001) 3

**Response of the Hungarian 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 Hungary**

**from 5 to 16 December 1999**

The Hungarian Government has requested the publication of the CPT's report on the visit to Hungary from 5 to 16 December 1999 (see CPT/Inf (2001) 2) and of its response. The response of the Hungarian Government is set out in this document.

Strasbourg, 29 March 2001

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## **Abbreviations**

CPT =	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
BPH =	Budapest Police Headquarters
CPC =	County Police Command
NPC =	National Police Command
(D) =	Decree by the Minister of the Interior 6/1996

## **Reply by the Hungarian Government to the report on the visit to Hungary carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 5 to 16 December 1999**

We have received with thanks the thorough report, the recommendations and observations on the visit by the CPT from 5 to 16 December 1999. In the following, we will set out our position and measures already taken in this connection, and we will also provide information on all issues regarding which the report seeks clarification.

### **I. OBSERVATIONS ON ESTABLISHMENTS UNDER THE AUTHORITY OF THE MINISTRY OF THE INTERIOR**

#### **1. The CPT wishes to reiterate the recommendations already made in its report on the 1994 visit, namely that:**

- **police officers be reminded that no more force than is reasonably necessary should be used when effecting an arrest and that once arrested persons have been brought under control, there can never be any justification for them being struck;**
- **senior police officers deliver to their subordinates the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions. (para. 19.).**

In general, the Hungarian Government does not fully agree with the conclusion drawn by the CPT that police violence continues to be a serious problem in Hungary. The CPT's observation is based on the fact that altogether 2,295 complaints were lodged against all law enforcement agencies in 1998, of which 929 were related to "*abuse of power*", 842 to bodily injury suffered during investigation, 381 to interrogation under duress and 143 to unjustified detention. Some performance indicators of the Police will provide appropriate reference for effectively evaluating the above figures and for drawing conclusions.

On a daily average, the police keep 1,700 persons in custody or pre-trial detention. Complaints related to detention led to criminal proceedings in 80 cases in 1999: in 26 cases the detainees filed lawsuits with the prosecutor's office, in 54 cases action was initiated by the local police chief. The above figures reflect the fair and lawful attitude adopted by the police.

In the context of coercive measures restricting personal liberty that were taken in 1998, the police apprehended 69,788 persons, brought before a Police Magistrate 112,505, and deprived 11,712 persons of their personal liberty for security reasons, and in a total of 30,362 cases they brought people to police stations on the basis of decisions taken by a public authority. All in all, 224,367 persons were prevented from exercising their personal liberty in 1998. In other words, the 2,295 complaints mentioned in the CPT report were lodged by 1 % of all people detained and many of these complaints were unfounded. The total number of other measures taken is in the order of millions. In the light of this the number of complaints can be regarded as negligible, nevertheless the police of course make every effort to reduce the number of cases in which the law is broken.

Of course, we cannot be satisfied with the situation as long as there is one single breach of the law, and we do our utmost in terms of punishment, police management and training to minimise police action in breach of the law. Also, we fully agree with the conduct to be followed by police staff and police commanders, official persons authorised to restrict human freedoms, as contained in your recommendations. These requirements are clearly expressed in Hungary's laws and other legal provisions on police activity and criminal procedure, and they form an essential element in police training.

**2. The Committee found that continued exposure to highly stressful or violent situations can generate psychological reactions and disproportionate behaviour. Therefore, the CPT would like to be informed of any preventive measures taken with a view to providing support for police officers exposed to such situations (para. 20.).**

In an attempt to give psychological support to police staff exposed to stress, the police have employed qualified psychologists since 1999 to deal with staff including of course guards in detention facilities. Appropriate individualised psychotherapy is being provided for police staff struggling with stress-related psychic problems, and permission is underway for the use in Hungary of a questionnaire from Cary L. Cooper's Occupational Stress Inventory (OSI2). In addition, the parliamentary commissioner for human rights (Ombudsman) has suggested that police on regular duty in public areas should be given training on conflict management. Since September 2000, we have introduced regular general and targeted psychic tests to find out whether the staff continue to satisfy aptitude requirements.

**3. The CPT recommended that training programmes for police officers be reviewed in the light of its remarks (para. 21.).**

We took yet another step forward in the area of enhancing our police training programme by drawing up a central programme for police and border guard training.

This programme forms the basis of training in law enforcement schools for police and border guards in the following areas:

- **legal training** covers *legal protection for minorities, guaranteeing human and minority rights, measures and procedures of law enforcement bodies* (the notions of *abuse of office, ill-treatment in official procedures, interrogations under duress and unlawful possession of weapons* are also covered though without a detailed description of the relevant passages in the Criminal Code);
- **social studies** cover *migration, prejudice, discrimination, racism and anti-Semitism*;
- **psychological studies** cover *the effect of attitude and prejudice on human behaviour, moral and ethical requirements concerning law enforcement officers, standard international expectations, the importance of a prejudice-free attitude, empathy and tolerance in police work, special psychological problems related to police measures (against persons of different ages and genders, foreign nationals, ethnic groups, persons under the influence of alcohol and narcotics, brutal or violent persons, persons offering bribes, and persons in a morbid mental state or mentally handicapped persons), psychological problems related to community shelters and police detention facilities and psychological issues of police interrogation*;
- **investigation techniques** (including *criminal procedure law*) cover *witness protection* and personal protection for people involved in criminal proceedings.

Hands-on training is designed to turn theory into everyday skills.

**4. The CPT reiterated the recommendation made in its 1994 visit report that the results of every examination as well as any relevant statements by the detainee and the doctor's conclusions, be recorded in writing by the doctor and made available to the detainee and his lawyer. Further, the CPT recommends that existing procedures be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person, the record is systematically brought to the attention of the relevant prosecutor (para. 22.).**

If a detainee is found injured and a medical examination is carried out, the injuries observed are recorded in a professional and factual manner. To draw any conclusions, such as the origin of the injury, is the job of the expert in forensic medicine (to preclude any bias, the police doctor may not make a statement in this connection), and so any such conclusions will be drawn by a medical expert from an outside institution invited to take part in the examination of the case. If the injury is first observed by the doctor, he will record the status of the detainee and subsequently inform the person responsible for the person's detention. Under current Hungarian legislation, the doctor may not directly inform the prosecutor. If requested, the medical documentation is made available to the detainee or his defence attorney appointed either by proxy or *ex officio*. It is standard practice in Budapest for the detainee to read and then sign the medical document after the examination. We are taking measures to introduce this practice in all police detention facilities of the country.

**5. The Committee reiterated the recommendation that all medical examinations of persons in police establishments should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of police officers (para. 23.).**

In carrying out medical examinations including the recording of the detainee's medical history, police doctors do their best to make sure that the guards are out of hearing and, if possible, out of sight. This practice may be dispensed with for reasons of guarding and security or the safety and protection of the doctor. If specifically requested by the doctor, and if his request does not contravene guarding and security regulations, guarding may be dispensed with for the duration of the examination or treatment.

Acting on the recommendation of the Committee, we are taking measures to modify the practical procedures of medical examinations, without prejudice, however, to considerations related to guarding and security and the personal safety of the examining doctor.

**6. The Committee would like to be informed of developments in the area of doctors' allegiance to a particular authority (para. 25.).**

When taking professional decisions, police doctors apply the professional rules of the medical profession. The fact that they are police doctors is manifested only in the way their work is organised and in the support that they provide in criminal investigations, therefore we believe that no professional or ethical problems are posed by the "*dual allegiance*" of police doctors. Under the law, the police must not give any kind of instructions to the police doctor in this part of his work and so he enjoys full legal independence.

**7. The CPT wanted to receive the following information for 1999:**

- **the number of complaints of ill-treatment by the police lodged and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;**
- **an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment by the police (para. 26.).**

The following table contains the number of complaints lodged in 1999 against the police for ill-treatment, the ensuing disciplinary or criminal procedures and the disciplinary or criminal sanctions imposed:

Police Agency	Number of Complaints in 1999			Status of case or sanction
	Unlawful detention	Interrogation under duress	Ill-treatment in official procedure	
BPH			4 cases of which 1 case of bodily injury	1 case terminated, 3 cases in progress
Rapid Reaction Police			1 case	1 case terminated
Baranya CPC			3 cases	3 cases terminated
Bács-Kiskun CPC			1 case	1 year probation
Békés CPC			3 cases	3 cases terminated
Csongrád CPC			8 cases	8 cases terminated
Fejér CPC			5 cases	4 cases terminated, 1 case in progress
Győr-M-S CPC			1 case	1 year probation
Hajdú-Bihar CPC			2 cases	1 case terminated, 1 case in progress
Heves CPC			13 cases	13 cases terminated
Jász-NK-Szolnok CPC			1 case	1 case terminated
Komárom-Esztergom CPC		2 cases		2 cases in progress
Nógrád CPC			1 case	1 case terminated
Pest CPC		8 cases	8 cases	16 cases terminated
Somogy CPC			27 cases	26 cases terminated, 1 case closed with fine
Tolna CPC			1 case	1 case terminated
Vas CPC	4 Cases	2 cases	10 cases	16 cases terminated
Zala CPC	7 Cases	7 cases	15 cases	29 cases terminated
Total:	134 cases			124 cases terminated, 7 cases in progress, 3 cases closed with sanctions

Notes: BPH = Budapest Police Headquarters  
CPC = County Police Command



In connection with the complaints, police commanders and supervisors obliged to investigate police agencies always take action in accordance with legislation and internal regulations in force. If a complaint is found justified, a criminal charge is brought in every case when this is warranted by the gravity or nature of the offence in question. There were two cases (one at the BPH and one at the Békés CPC) in the period under review when the local competent commanders initiated disciplinary actions in addition to the criminal procedures. Both disciplinary actions have been suspended and will continue only after final judgements have been passed in the criminal courts. Complaints, charges and accusations leading to criminal proceedings are most often dropped, turned down or terminated because it was impossible to establish well-founded suspicion of a criminal offence.

Considering the number of complaints lodged and the final outcome of the ensuing criminal or disciplinary actions as well as the findings of enquiries into the complaints, it can be generally concluded that the majority of complaints, charges and accusations were unfounded. Another conclusion is that the police perform their duties basically in accordance with the law and the internal regulations. It was also found that the competent officers always took the necessary measures against police officers found to be in breach of the law or official regulations.

### **Police Detention Facilities**

**8. The CPT sought information on whether detained persons manifesting their wish to register a complaint against the police are formally advised before the complaint is recorded that to defame a police officer is a criminal offence in Hungary (para. 27.); and whether detainees are protected from other detainees who might wish to cause them harm (para. 28.).**

In registering complaints made by detained persons, the same regulations apply as in the case of other complaints. Accordingly, everybody should be warned of the legal consequences of making a false charge and misleading the authorities. Both the warning and the reply thereto are to be recorded in the minutes. A person wishing to make a complaint or bring a charge may also do so while being interrogated by a prosecutor or through his defence attorney or in any other manner. Acts of ill-treatment by the police are investigated by the Prosecutor's Office, a body independent of the police. It should be noted that the current Criminal Code no longer recognises the criminal offence termed "contempt of an authority or an official person", formerly a crime to be prosecuted *ex officio*.

Should the case arise in which a detainee has committed or threatened to commit a crime against an other detainee, proceedings must be taken *ex officio* and immediate steps must be taken to segregate the detainees and keep them in separate cells. A police officer failing to do so must be sanctioned appropriately.

**9. The Committee recommended that the possibility to delay the exercise by detained persons of the right to inform a relative or third party of their situation be made subject to appropriate safeguards (e.g. any delay to be recorded in writing together with the reasons therefor and to require the approval of a public prosecutor) and strictly limited in time (para. 30.)**

Para. (4) of section 91 of the act I. on criminal proceedings of 1973 rules that the authority must inform the relative indicated by the detainee of the person's detention without delay. Under para. (2) of section 93 of the Act, in the case of pre-trial detention this obligation is borne by the investigating authority, the prosecutor or the court, according to the actual stage of criminal proceedings. The act of notification is generally recorded in a notice at the police station or in the decision ordering the person's detention, even though no such stipulation is contained in the law or in any other regulation. With all this duly considered, the Committee is right in making this reservation since the time of notification cannot always be verified on the basis of documents. Under such circumstances it is difficult to prove that the requirement of timely notification has not been met. What most often happens is that the relative cannot be reached by phone and so he or she can be notified only by wire or in person.

To eliminate this deficiency, steps have been taken to amend Interior Ministry regulation 40/1987 on police investigation into criminal offences.

**10. The CPT recommended that steps be taken to ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of their liberty (para. 31.).**

Para. (2) of Section 132 of the Act contains clear indications as to when the accused must be reminded of his right to choose counsel. This regulation is in conformity with a provision in para. (3) of Section 57 of the Constitution saying that a person who is the subject of criminal proceedings i.e. the suspect has a right to legal aid at every stage of the procedure. Proceedings are deemed to have commenced at the time when the authority informs the subject of well-founded suspicion.

**11. The Committee recommended that the system of legal aid to detainees be reviewed, in order to ensure its effectiveness throughout the procedure, including at the initial stage of police custody (para. 32.).**

By reminding the suspect of his right to choose a lawyer and by appointing a defence attorney under appropriate conditions, the authority has met its legal obligation. The police cannot be reproached if the defence lawyer fails to contact the suspect.

It should be noted that the police are ready to embrace any initiative designed to make their work more transparent, since such efforts serve the purpose of enhancing the rule of law and enable the full exercise of their rights by persons deprived of their liberty. To demonstrate this change of attitude, mention should be made of a large number of institutions of civilian control, whereby the police make it possible for non-governmental organisations to contact detainees and provide them with legal aid if necessary. In addition, para. (4) of section 3 of Interior Ministry decree 19/1995 (13 December), hereinafter referred to as MI decree, on police holding facilities contains a provision that the detainee may, while under security surveillance, establish contact with the following persons without supervision or any limitation to the frequency of contact: his own defence lawyer engaged in the case in which the person is detained, the Human Rights Committee and Court of the United Nations, members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as members of organisations authorised by Hungarian law to protect human and civic rights.

**12. The CPT recommended that a form setting out in a straightforward manner the rights of persons detained by the police should be systematically given to such persons, at the outset of their custody. This form should be available in an appropriate range of languages (para. 33.).**

The rights and obligations of the detainee and the house rules of the detention facility are contained in a booklet displayed on the wall in every cell.

Information sheets written in 9 languages on the rights and obligations of detainees are available to every police establishment that operates a holding facility. These information sheets are displayed on the wall in the reception area of the facility, on the corridor or on the wall in every cell. On reception, the detainee is given information on rights and obligations, which he attests by signing a sheet that is subsequently filed with all other documents relevant to his case. Information booklets on the house rules of the holding facility are also available to the Police agencies in 9 languages, and they are displayed in the same places as are the booklets on rights and obligations.

**13. The Committee recommended that the Hungarian authorities explore the possibility of further developing the use of electronic recording of police interrogations (para. 35.).**

Electronic recording is currently used in hearings related to high-profile cases, however, its widespread use is dependent on funds available. In line with the CPT recommendation, measures have been taken to ensure that the head of the National Police Command may explore the possibility of further developing the use of electronic recording of police interrogations.

**14. The CPT recommended that appropriate steps should be taken to ensure that the return of remand prisoners to police custody for further questioning should only be sought and authorised when it is absolutely unavoidable (para. 36.).**

The reason behind this practice is that most penitentiary institutions lack an appropriate number of properly equipped interrogation rooms. Lack of finances mostly prevents the matter from being settled satisfactorily.

**15. The CPT would like to be informed of developments related to a body of rules concerning criminal investigation by the police including police interrogation (para. 34.).**

The decree by the Ministry of the Interior containing regulations on criminal investigation by the police has not yet been issued. A new decree by the Ministry of the Interior on procedures of investigation is to be issued after the Act on Criminal Procedure has been amended. According to its legislative schedule the Ministry of the Interior plans to submit the draft to Parliament in June 2001.

**16. The CPT sought to receive confirmation that the different safeguards against ill-treatment by the police (e.g. notification of custody, access to a lawyer and doctor, information on rights) should be guaranteed to all persons deprived of their liberty by the police, irrespective of the legal basis for the deprivation of liberty (para. 38.).**

As has been explained before, safeguards against ill-treatment – including notification of custody, access to a lawyer or a doctor, information on rights – are guaranteed in the case of every detained person.

**17. The CPT recommended that measures should be taken without further delay to implement the recommendation already set out in para. 34. of its 1994 visit report, concerning the improvement of material conditions at the 5<sup>th</sup> District Police Station and the Police Central Holding Facility in Budapest (para. 40.).**

The National Police Command (NPC) has provided every police establishment operating a holding facility with a copy of Recommendation R/87/3 of the Committee of Ministers of the Council of Europe containing prison regulations applicable to the member states, and called on these agencies to implement the contents of the regulation in their entirety. When inspecting the facilities, the NPC lays special stress on implementing and enforcing the recommendations. The Division of Public Order of the NPC regularly monitors conditions in the country's holding facilities. Newly-built police stations are equipped with up-to-date holding facilities meeting the standards of European penitentiary regulations. Whenever existing holding facilities have been renovated, all architecturally justified refurbishments have been accomplished. Improvements in holding facilities have been and can only be made to the extent resources are available to the police and so in the past few years generally characterised by economic and financial difficulties the authorities have concentrated on maintenance jobs that can no longer be delayed. Personnel and institutional conditions are provided for in a programme for holding facility improvements which itself depends on funding made available to the police. Practically all contradictions between regulations related to detention conditions and the actual conditions experienced are attributable to financial causes. Police holding facilities are being refurbished by degrees to meet European standards, as and when made possible by targeted government financing.

The central and district holding facilities operated by the Budapest Police Command have been and are being regularly inspected by the Council of Europe, the Hungarian Helsinki Committee and the Budapest General Prosecutor's Office. Largely as a result of these checks, detention conditions are steadily approaching international standards.

For example, the holding facility at the 5<sup>th</sup> District Police Station has been fully repainted, cupboards for personal belongings have been mounted on the walls, and admissible occupancy rates have been reduced by one person per cell. The paint job has greatly improved the effect of natural lighting. In order to improve natural ventilation, cell windows are being enlarged.

Cells in the holding facility of the 8<sup>th</sup> District Police Station are ventilated through electrically remote-controlled skylights adjusted as requested by detainees. The holding facility of the 15<sup>th</sup> District Police Station has been out of service since 10 December 1998, since the Budapest Prosecutor's Office did not find cell ventilation and natural lighting satisfactory.

The sanitary facilities and heating system at the Budapest central holding facility in Gyorskocsi utca have been under repair and maintenance since spring 2000.

**18. The CPT recommended that steps be taken to improve the material conditions of detention at Debrecen and Hajdúhadház police establishment in the light of remarks mentioned in para. 41. and the general requirements in para. 27. of its 1994 visit report.**

During talks at the time of its 1999 visit, the CPT suggested that the metal bars dividing a small holding room at the Hajdúhadház police station be removed. The chief of the Hajdú-Bihar County Police Command has since taken extraordinary measures to have the bars removed. The cells of the Debrecen Police station have been modified and the new holding room has also been rebuilt in line with the recommendations made by the parliamentary commissioner (Ombudsman). The county police chief and the heads of the Hajdú-Bihar County General Prosecutor's Office and the Hajdú-Bihar County Chamber of Attorneys made a joint visit to the holding facility in January 2000 and as a result the holding facility has since been modified in a number of places. In addition, the county police commander has taken measures to standardise detention practices and the use of coercive measures.

**19. The CPT repeated its call to implement the recommendation made by the committee some 5 years ago, that immediate steps be taken to ensure that all remand prisoners held in police establishments are offered at least one hour of outdoor exercise every day (para. 44.); furthermore it recommended that the Hungarian authorities explore the possibility of accelerating the entry into force of section 135. of Act XIX. of 1998; and that appropriate measures be taken to ensure that the possibility offered by para. 2. of that section, to have remanded prisoners kept on police premises for a certain period, is only resorted to in exceptional cases.**

Following the Committee's recommendation of 5 five years ago on enabling outdoor exercise, measures were taken to increase the number and area of exercise yards where it was physically possible.

Implementation of that part of the recommendation which calls for the acceleration of the entry into force of section 135. of Act XIX. of 1998 to ensure that persons in pre-trial detention should be kept in remand prisons and may be held on police premises only in exceptional cases, depends on an increase in prison capacities.

The current plans of the Ministry of the Interior do not contain any provisions to accelerate the entry into force of further legal institutions of the new Act on Criminal Procedure. It is to be noted that it is questionable whether this provision can be successfully implemented at the scheduled time of entry into force, since it would place additional burdens on the prison system, which the report itself described as dramatically overburdened and overcrowded.

**20. The CPT recommended that steps be taken to ensure that regulations concerning the preparation of medication and medical confidentiality should be fully respected in practice (para. 45.).**

Of all Hungary's police holding facilities, only the establishments operated by the Budapest Police Headquarters in Gyorskocsi utca and Tolnai Lajos utca have paramedics available 24 hours a day. Medication in other facilities is distributed by non-medically trained police. Distribution of medication presupposes for staff to have access to the medication sheet.

**21. The CPT noted that the ventilation in the cells at the 8<sup>th</sup> District Police Station in Budapest still left something to be desired (para. 40.).**

Cells at the 8<sup>th</sup> District Police Station are ventilated through electrically remote-controlled skylights adjusted as requested by detainees.

### **Border Guard Community Shelters**

**22. The Internal Order concerning daytime leave of community shelters mentioned in the visit report is not in force.**

At the time of the Committee's visit Act LXXV. of 1999 on regulations concerning action against organised crime and some related phenomena and on amendments to previous legislation was already in force. The new law raised the new, and stricter, regulations to the status of law for reasons of public safety.

The CPT noted here that it had met a foreign national who had spent more than 18 months at community shelters. This may have happened as an exception after the new law came into force, since the application of the 18-month time limit had no retroactive effect, nevertheless, alien police staff have always tried to take this into consideration in the case of persons accommodated in community shelters on the basis of orders issued at earlier dates. Currently, no foreign nationals have been staying at community shelters for more than 18 months (para. 47.).

**23. The CPT recommended that male and female residents be, as a rule, accommodated separately, unless the residents concerned expressed their wish to be placed together with persons with whom they share an emotional or cultural affinity. In addition, minors should be separated from adults with whom they are not family-related (para. 50.).**

This recommendation has been met, since § 57. of Government Decree (Gov. D.) 64/1994 (30 June) issued as the implementing decree of Act LXXXDI of 1993 on the Entry, Stay and Immigration of Foreign Nationals in Hungary clearly instructs the alien police operating the community shelter to separate men, women and minors from each other.

**24. The CPT recommended that Border Guard Staff at Nyírbátor Community Shelter be reminded that once a resident who resists authority or attempts to escape has been brought under control, there can be no justification for his being struck. They should also receive the clear message that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions (para. 52.)**

We fully agree that no unjustified violence or verbal abuse may be applied to detainees. We note however, that staff members have regularly been warned about these issues, treatment of detainees is continuously monitored, the lawful nature of the use of means of coercion applied to prevent behaviour posing a serious risk to order in community shelters and provided for by the law is investigated in each case, and these matters form an integral part of training.

In the instances mentioned by the Committee, the means of coercion were used to break resistance to lawful measures and to avert attacks posing direct physical danger to staff members.

**25. The CPT also recommended that the official capacity of Nyírbátor Community Shelter be reduced. The standard of 4 m<sup>2</sup> per resident might usefully be adopted for this purpose (para. 54.).**

The recommendation has been met, since the official capacity of the community shelter operated by Nyírbátor Border Guard Directorate was reduced to 200 in January 2000, to 150 in March and to 100 in September. Thus the cubic space per person is now at 15 m<sup>3</sup>, and floor space at 5 m<sup>2</sup>.

**26. The CPT recommended that the Hungarian authorities take immediate measures to improve material conditions in Nyírbátor Community Shelter and, in particular, in buildings 2 and 3. Particular attention should be accorded to the maintenance of an acceptable level of collective and individual hygiene, as well as to the repair of the heating system (57.).**

The building at Nyírbátor Community Shelter operated by the Border Guards which drew the sharpest criticism from the Committee has been closed. There had been plans to rebuild the entire community shelter but the budget only covered designs for the new building since there was a need to refurbish other community shelters too. Nyírbátor Community Shelter will be fully refurbished in 2001.

**27. The CPT recommended that the Hungarian authorities take steps in order to remedy shortcomings related to food offered for small children and babies (para. 58.).**

The Committee also wanted to receive comments on how it could happen that detainees had received food passed its expiry date and that small children and babies had not been offered special baby food. It is regrettable that we only received ex-post information on this matter. If such a case indeed did happen, it was certainly in flagrant breach of regulations in force and internal rules. Investigation into the case did not reveal any substantive information to support this observation of the CPT. Also, we have no knowledge of disregard for dietary habits of religious denominations.

**28. The CPT recommended that immediate steps be taken in order to ensure that all residents at Nyírbátor Community Shelter (and in other community shelters throughout Hungary) are guaranteed at least one hour of outdoor exercise per day. Further, the CPT recommended that residents in Nyírbátor Community Shelter (as well as in other such shelters throughout Hungary) be offered a wider range of activities. Ensuring access to a wide variety of reading materials, in an appropriate range of languages, and diversifying the means of recreation are examples of the steps required. Specific measures should be taken in order to ensure that minors are offered activities suitable to their age, in particular, sports and education. The recruitment of educators or social workers should also be considered. The longer the period for which persons are detained, the more developed should be the activities which are offered to them (para. 60.).**

This recommendation is no longer relevant, since under § 55. of the Government Decree the alien police authority operating a community shelter must ensure that detainees spend 2 hours outdoors every day. We agree with the second part of the recommendation, however, the budget of the Border Guards is very limited in this context, in particular as regards the provision of foreign-language newspapers and other reading materials. Nevertheless, conditions to provide activities for minors have been ensured in all directorates. Part-time teachers are employed in places where such a need has arisen. Nursery services are provided in several places. It should be noted that only 17 children are accommodated at Border Guard community shelters at the time this report is being prepared.

Residents may work only if they volunteer to do so; they cannot be obligated to work.

**29. The CPT recommended that the Hungarian authorities review the selection and training of Border Guard staff assigned to Nyírbátor Community Shelter, in the light of remarks made in § 62. Further, efforts should be made to employ a certain number female Border Guard staff members, to work in direct contact with the residents at the shelter (para. 62.).**

The Border Guards attach special importance to the training of staff assigned to community shelters, and a special curriculum for 3 x 9 weeks has been prepared for this purpose. Currently 7 female Border Guard NCO's are assigned to Nyírbátor Community Shelter. Each of the other community shelters has at least one female staff member.



**30. The CPT recommended that the House Rules be provided in a wider range of frequently spoken languages (para. 63.).**

The observation that at the time of the visit the information leaflet was available only in Hungarian and Albanian is incorrect. Currently all community shelters, including the one at Nyírbátor, have the house rules in at least 8 languages.

**31. The CPT recommended the Hungarian authorities take steps in order to ensure that all residents are duly informed about their rights and obligations, as well as of the nature and state of the proceedings in their case (para. 64.).**

In alien police proceedings initiated by the Border Guards the foreign national is given information, as specified in the law, in his/her mother tongue or in a language he/she understands.

In an attempt to prevent coercive measures being taken against them by alien police, foreign nationals often submit a petition for refugee status and demand information, while their case is being judged, on matters which will naturally be communicated to them only after the termination of the procedure. Thus in none of the cases mentioned was there a failure to provide information prescribed by the law; rather, the foreign nationals lodged unjustified complaints in order to prevent official measures being taken against them.

**32. The CPT recommended that the time allowed for visits be increased to one hour a week (para. 65.).**

The observation (i.e. that residents are allowed to see visitors for a total of 90 minutes per month) supporting the recommendation is incorrect, since the daily regime of community shelters allows visits between 9.00 and 12.00 hours as well as between 14.00 and 16.00 hours every day except Saturdays and Sundays, which adds up to a weekly 300 minutes, i.e. 5 hours of visiting time.

**33. The CPT sought information on the steps subsequently taken to enhance the level of health care provided at Nyírbátor Community Shelter. In this respect, the CPT recommended that the shelter be provided with its own medical doctor, working on at least a half-time basis and regular availability of the services of a gynaecologist, a paediatrician, a psychiatrist and a psychologist be offered at the shelter (para. 69.).**

A doctor has been employed at the community shelter since 1 March 2000, and in addition the doctor of the directorate is available if necessary. However, the Border Guards are unable to accept the CPT's recommendation for the provision of specialised gynaecological, paediatric and psychiatric services. When the need for such kinds of specialised treatment arises, it is met by the services of the local village or town, as is customary in all other community shelters. In order to improve psychological services, a vacancy for a second psychologist has been posted at Nyírbátor. Until the vacancy is filled, a psychologist is hired to work at the shelter one workday a week.

**34. The CPT considered that all residents at the community shelter should have access to preservative dental treatment, including those without the means to pay for such treatment themselves (para. 70.).**

Emergency dental treatment is provided free of charge on the premises of the Directorate by a dentist in its employment. Preservative treatment for all detainees provided on a regular basis is an issue that we are studying, especially in the context of financial resources currently unavailable to the Border Guards.

**35. The CPT noted that many complaints were heard to the effect that postage stamps were not available in the shelter's shop (para. 65.).**

We have no knowledge of residents being unable to buy postage stamps. We have repeatedly investigated the issue and found that no such problems have arisen.

**36. The CPT invited the Hungarian authorities to explore the possibility of bringing back into service the two detention rooms at Budapest Airport Terminal (para. 77.).**

It was only for a few months that the Border Guards discontinued operation of the facility offering provisional accommodation to foreign nationals in the transit area of Ferihegy Airport; the facility is currently in operation.

**37. The CPT sought further details concerning the new community shelter to be opened at the airport (e.g. capacity, material conditions, regime activities, etc. (para. 76.).**

On 20 March 2000 the Budapest Border Guard Directorate commissioned its newly built community shelter offering decent accommodation to 32 persons; its operation and regime are identical to those of the other shelters operated by the Border Guards.

**38. The CPT recommended that steps be taken to ensure that any provision of medication to persons subject to an expulsion order must only be done on the basis of a medical decision and in accordance with medical ethics (para. 81.). Further, the CPT wanted to know if specific guidelines had been drafted concerning the means of coercion that can be used in the context of expulsion procedures (para. 81.).**

To our knowledge there is no evidence that a doctor at Budapest International Airport administered, at the request of alien police staff, neuroleptics to foreign nationals resisting expulsion. No specific guidelines have been drawn up on means of coercion that can be used in the context of expulsion procedures since means of coercion that may be used to handle resistance to an official person and detailed regulations on their application are contained in Act XXXIV of 1994 and the agency's internal regulations.

**39. The CPT wanted to receive the views of the Hungarian authorities on whether every decision involving the removal of a person from the country's territory is appealable before another body of an independent nature prior to its implementation; further it sought to receive details of the training of ORMA officials and of the sources of information used by them when assessing the human rights situation in other countries (para. 80.).**

This problem was resolved by Act LXXV of 1999, which modified regulations concerning airport procedures. Under its provisions a negative decision can be challenged through the Hungarian court system by applying the rules of an accelerated procedure. In such a case a petition for the case to be reviewed may be submitted to the court and this petition has a suspensive effect. Consequently, the foreign national can not be refouled even in an airport procedure before a final decision has been taken on his/her case.

ORMA officials regularly attend training. Two international programmes are currently in progress, COP '98 TWINNING Programme and PHARE Horizontal Programme, under which seminars and study tours are being held. The Office for Immigration and Citizenship is also organising seminars for these officials on the basis of bilateral cooperation for refugee matters in conjunction with the German Federal Refugee Office, the Swiss Federal Refugee Office, the Budapest Office of UNHCR and other non-governmental organisations.

The programme of the seminars covers procedural matters as well as information about the countries of origin of asylum-seekers. In addition to decision-makers on refugee matters, these seminars are attended by alien police officials engaged in refugee matters as well as officials of courts of law.

Information on the countries of origin of asylum-seekers is processed by the documentation section at the Office for Immigration and Citizenship. The information is gathered from various sources (Ministry of Foreign Affairs, UNHCR, Internet, press materials, foreign refugee authorities, non-governmental organisations). The information processed at the documentation section is transferred to the appropriate departments of the Directorate for Refugees with the help of computers.

## II. ESTABLISHMENTS UNDER THE AUTHORITY OF THE MINISTRY OF JUSTICE

**40. The CPT recommended that the Hungarian authorities pursue vigorously the implementation of the whole range of measures designed to combat prison overcrowding, taking into account the considerations set out in para. 89. and the recommendation referred to therein (para. 90.).**

Government decree 2072/1998 (31 March) sets out a three-pronged development plan for penal institutions designed to

- increase official capacities for remand prisoners;
- place minors and women closer to their place of residence;
- refurbish penitentiaries.

The programme is scheduled as follows:

Priority projects include a new prison to be built in Veszprém County, two prisons to be built for juveniles, one in southern Hungary (Pécs), the other in north-eastern Hungary (Miskolc), a prison for juveniles of a capacity of 100-150 to be built within the administrative limits of Budapest, the extension of Pécs Prison by 50 places, Miskolc Prison by 100 places, Szolnok Prison by 64 places, refurbishment of Sopronkőhida Prison, extension of Szeged Prison by 210 places, capacity extension at Nyíregyháza Prison, rebuilding of the basement in Unit II. of Budapest Remand Prison, and reconstruction of Budapest Penitentiary and Prison.

Tököl Prison is no longer the only penal institution holding juveniles, since there is a regional prison of 30 places for juveniles in Kecskemét. Female juveniles are placed in a unit in Mélykút of Pálhalma Prison. (For details, see reply to para. 84. of the CPT report).

Hungarian legislators are working on simplified procedures to be introduced as alternatives to court proceedings in certain types of cases. We wish to point out that a provision enabling deferral of indictment against adults came into force on 1 March 1999. Part III. of Act CX of 1999 introduced yet another simplified procedure, waiver of trial (Chapter XVII/B. of Act on Criminal Procedure), in which case the court resorts to a substantially lighter sentence than is prescribed for the given offence by the law. In line with the recommendations, Act XIV. of 2000 redefined one of the causes for arrest. The new law on criminal procedures contains a number of instruments that can be used as substitutes for pre-trial detention. For example, the instrument prohibiting a person to leave his/her place of residence has been upheld and amended, and new institutions such as house arrest, seizure of passport and release on bail have been introduced.

When deciding at the end of 1999 to defer the entry into force of the new law until 1 January 2003, the legislator also decided to put into effect the newly-legislated ban on leaving one's place of residence, house arrest and seizure of passport at an earlier date. Therefore these legal institutions were subsequently incorporated into legislation currently in force and so these measures have been applicable since 1 March 2000. Following appropriate adjustment in court practice, these measures are likely to function as alternatives to pre-trial detention in a number of cases.

Electronic surveillance to supervise the location of a suspect in a designated place became a lawful instrument as from 1 March 2000 in the context of house arrest, which is a special additional measure applicable to persons prohibited to leave their place of residence [(point b) para. (3) § 1. and point (c) para. (2) § 5. of Joint Decree of the Ministries of Justice and Interior 2/2000. (26 February)].

**41. The CPT sought to receive the following information for 1999 and 2000:**

- **the number of complaints of ill-treatment lodged against prison officers and the number of ensuing disciplinary and/or criminal actions initiated;**
- **an account of disciplinary/criminal sanctions imposed following such complaints (para. 92.).**

The following is a list of criminal offences committed by prison staff:

The number of detected perpetrators of criminal offences in 1999 was 41, of which 12 persons committed physical assault in an official procedure; perpetrators detected to have committed crimes until 9 November 2000 numbered 110, of whom 14 persons committed physical assault in an official procedure.

Disciplinary action against professional prison officials employed as staff by the prison service for unlawful treatment was taken in 13 cases in 1999, resulting in disciplinary measures against 8 persons, while one person received disciplinary punishment for using means of coercion unlawfully. Figures for the year 2000 are being processed and will be forwarded in a summary form to the CPT under separate cover.

**42. The CPT recommended that a prisoner who is placed in a Grade 4 regime by the judicial or prison authorities or whose placement in such a regime is renewed be informed in writing of the reasons for that measure (it being understood that the reasons given could exclude information which security requirements reasonably justify withholding from the prisoner); a prisoner in respect of whom such a measure is envisaged be given an opportunity to express his views on the matter; the placement of a prisoner in such a regime should be as short as possible and reviewed at least every 3 months (para. 98.).**

§ 42. of Ministry of Interior Decree 6/1996 (12 July), hereinafter referred to as (D) contains instructions that detainees are classified into security grades by the reception committee under para. (2) § 30 (D). The reception committee must give a personal hearing to the detainee. The detainee may express his views at this hearing.

Under current regulations the detainee is given no written explanation of why he is allocated in a Grade 4 regime. We agree that a review of this practice is justified. It should be noted, however, that allocation in Grade 4 is mostly rendered necessary for security reasons that cannot be communicated to the detainee [ para. (2) § 44. D].

Paragraph (1) § 43 (D) prescribes a review of Grade 4 allocations every 6 months. (D) is currently being amended, and the new review period will be reduced to 3 months.

**43. The CPT is of the view that the current practice concerning the use of means of restraint vis-à-vis Grade 4 prisoners can only be seen as disproportionate and punitive. The CPT recommended that the Hungarian authorities take immediate steps to review that practice, in the light of the Committee's remarks (para. 100.).**

No means of restraint are applied to Grade 4 detainees in prison establishments just because they belong to that particular category. In certain cases amounting to about 1 % of all Grade 4 detainees, means of restraint are used in accordance with § 48 of (D) in order to prevent acts violating or jeopardising the security of detention. On the basis of the relevant legal provisions, a set of detailed regulations on the use of means of restraint is contained in Instruction 1-1/25/2000. OP of the National Police Commissioner.

The use of means of restraint (handcuffs and/or anklecuffs) vis-à-vis Grade 4 prisoners is not mandatory by law. The head of the prison establishment decides at his discretion whether or not any means of restriction are to be applied under § 48 (D). We agree that this practice needs reviewing to make sure that means of restraint are indeed used only when necessary.

**44. The CPT recommended that the Hungarian authorities review the regime applied to Grade 4 prisoners, in particular as concerns isolation, visits and access to telephone. Above all, it must be ensured that such prisoners are guaranteed appropriate human contact (para. 101.).**

Of Grade 4 detainees only those presenting an increased threat to security at the prison establishment are placed in isolation. Such placement does not qualify as either punishment or exclusion, and especially not in the light of para. (2) § 30. of Act 11. of 1979 on the execution of sentences and related measures, which requires convicted persons to be placed alone or, if relevant conditions are lacking, to be placed together with others.

The rights on persons held alone are not violated: they cannot be restricted in maintaining human contact, consequently they may receive visitors and use the telephone as often as the other detainees.

In the context of regime and activities, there is indeed a justified need to mitigate disadvantages resulting from isolation. In this regard we believe that a review of regime regulations is justified.

A minimum of one visit monthly and unlimited correspondence are basic rights accorded to all detainees in all prison establishments. The use of telephones by detainees is regulated in the house rules.

The National Commander of the Prison System of the Ministry of the Interior has instructed the heads of prisons to broaden the scope of contact for detainees in accordance with relevant framework regulations and to the extent it is possible under actual conditions.

**45. The CPT recommended that the Hungarian authorities make vigorous efforts to develop programmes of activities for prisoners in all Budapest remand establishments.**

**Further, the Committee reiterated the recommendation made in the 1994 visit report that all prisoners be offered at least one hour of outdoor exercise every day (para. 105.).**

The entry into service of Unit III. of Budapest Remand Prison will help expand opportunities for community, church, charity and other activities. A project to rebuild the basement of Unit II. may contribute to an expansion of activities for detainees. In an effort to provide training for detainees we launched 7 different courses for detainees held by lecturers of the Budapest People's College on 25 October 2000. We have plans to maintain and organise this kind of education on a regular basis.

Outdoor exercise is held in accordance with regulations in force. The Budapest Remand Prison, as all other prisons, provides for one hour of outdoor exercise daily. A prisoner's wish not to avail himself of the opportunity of outdoor exercise must be documented.

**46. The CPT sought to receive confirmation that the new remand establishment was operational as well as information on the number of prisoners accommodated in both Budapest remand establishments (para. 102.).**

Unit III. of Budapest Remand Prison began receiving detainees on 14 November 2000. The establishment has been continuously receiving pre-trial detainees since that time.

Currently Budapest Remand Prison accommodates 826 pre-trial detainees (798 pending sentence of the first instance), while Budapest Penitentiary and Prison holds 603 pre-trial detainees (435 persons pending sentence of the first instance).

**47. In the context of Tököl Prison and Remand Centre for Adolescents the CPT recommended that efforts be made to make better use of holding cells in the reception unit and provide for regular cleaning of the premises, in particular of the sanitary annexes (para. 107.).**

The prison commander has taken steps to keep the reception area clean. We have plans to build a new reception unit in 2001 to bring this matter to a satisfactory conclusion.

**48. The CPT recommended that measures be taken to improve access to natural light, artificial lighting and ventilation in the segregation/disciplinary cells at Tököl Prison and Remand Centre for Adolescents. In addition, the toilets should be repaired (para. 108.).**

Access to natural lighting in the cells is a design problem. Steps have been taken to improve artificial lighting. Toilets are under continuous repair, as necessitated by regular acts of vandalism by the detainees.

**49. The CPT recommended that steps be taken to ensure that prisoners are offered one hour of outdoor exercise per day (para. 110.).**

The Director of the prison has taken measures to enforce the regulation on one hour of outdoor exercise daily.

**50. The CPT noted that the detention units at Tököl Prison and Remand Centre for Adolescents were still somewhat austere (para. 106.).**

The Director of the prison has given instructions to make the detention units friendlier. The instructions call for decoration not endangering security in the detention area to be installed.

**51. The CPT recommended that the Hungarian authorities take steps to reduce the cell occupancy rates (number of prisoners/floor area) at Veszprém County Prison to an acceptable level. A standard of 4 m<sup>2</sup> per prisoner might usefully be adopted for this purpose. It is to be ensured that prisoners are offered the opportunity to take at least one hot shower per week. Means of improving ventilation in the cells should also be explored (para. 112.).**

We agree with the contents of this recommendation; the suggestion concerning 4 square meters of moving space is acceptable and we wish to implement it in the new Veszprém Prison being built. We have submitted a motion to amend the relevant Decree to specify 4 square meters/persons of moving space for pre-trial detainees.

Steps have been taken to repair the bath at Veszprém Prison and prisoners have since had the opportunity to take one hot shower per week. Veszprém Prison is a quasi-monument and so it is not possible to enlarge the windows. No such problems will be encountered in the new facility being built.

**52. The CPT recommended that the 2 cells, 3 m<sup>2</sup> each, used for temporary accommodation of new arrivals and for punishment purposes be immediately withdrawn from services (para. 113.).**

The 3 m<sup>2</sup> cells mentioned in the recommendation have been renovated. The establishment never used them to punish detainees: they served as “waiting rooms” for detainees in transit. Prisoners spent in them a maximum of 20-30 minutes.

**53. The CPT recommended that steps be taken in order to ensure that: all prisoners spend a reasonable part of the day (i.e. 8 hours or more) outside the cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value, education, recreation/association); all prisoners are offered at least one hour of outdoor exercise every day; further, it noted that prisoners were not allowed to have a radio/TV in their cells (para. 114.).**



Since September 2000, the prison has been running People's College Training Programmes and introduced a wide range of church-related programmes. The courtyard serving the purpose of outdoor exercise was rebuilt in April 2000 and so one hour of outdoor exercise per day is now ensured. Detainees at Veszprém Prison are allowed to use the radio and TV sets. There is at least one radio set in each cell, and 23 television sets are in operation at this establishment.

**54. The CPT wanted to receive further details on the new establishment to be opened in 2002 (para. 115.).**

After selecting a construction site jointly with the local government of Veszprém, the Ministry of Justice purchased from the Ministry of Defence a 5.5-hectare area along the Veszprém-Kádártai Road on which to build a new prison and 15 apartments for staff. On the basis of a master plan already approved and documentation compiled by experts of the prison system, an invitation to an open tender for design has been published, and the deadline for bids is 28 February 2001. Construction is to take about 2 years. The project will increase capacity by 200 persons, enabling us to meet recommendations made by the parliamentary commissioner for human rights (Ombudsman) and the CPT.

**55. The CPT recommends that two posts for psychologists be filled without further delay (para. 117.).**

In an effort to comply with this recommendation, the Budapest Remand Prison has concluded part-time contracts with two psychologists, thus ensuring continuous service to be provided. Employment of a full-time psychiatrist can be regarded as a major achievement. One of our staffers expressed readiness for training and has since been enrolled on the appropriate course.

**56. The CPT recommended that the Hungarian authorities take immediate steps to ensure that at least one of the doctors' posts at Tököl Remand Prison and Centre for Adolescents is filled without delay (para. 118.).**

Tököl Prison, too, can provide service for its detainees by employing 2 part-time specialists. We are taking all personnel measures possible to ensure that services are rendered by a full-time doctor and a full-time psychologist.

**57. The CPT recommended that Veszprém Prison be provided with its own doctor, working on at least a half-time basis, further, that a person competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification (para. 119.).**

Veszprém Prison has concluded a contract with an appropriate specialist doctor to provide basic treatment and prevention for detainees. Nurses at Veszprém Prison work extended hours from opening to closing time, while at other times and if necessary, health-care institutions and providers in the town offer unlimited access to services.

At so-called serving houses, i.e. the majority of prison establishments where sentences are served, specialised nursing and emergency duty doctor's service are available 24 hours a day. In county-level remand houses, nursing is generally provided from opening to closing time, i.e. 7 a.m. to 7 p.m. We also have immediate access to health-care institutions in the town during the night and on holidays. Basic first aid is part of the curriculum in training for prison guards, so in exceptional cases guards or supervisors on duty can provide the necessary treatment until ambulance staff arrive.

**58. The CPT recommended that the Hungarian authorities bring their HIV policy into line with the relevant international standards, in particular those established by the World Health Organisation and the Council of Europe. Also, staff working in prison establishment should be provided with ongoing training in the preventive measures to be taken and the attitudes to be adopted regarding HIV-positivity and given appropriate instructions concerning non-discrimination and confidentiality (para. 122.).**

Regarding Hungary's HIV-policy we wish to draw the attention of the CPT to the fact that Hungary's HIV infection figures are extremely low, therefore HIV/AIDS is a rare disease in Hungary, regarded as so dangerous as to induce panic in the public. Even in the context of civilian health care, patients usually call at specialised institutions and, following primary treatment, health-care providers turn to a specialised institution for assistance.

In view of the general thinking outlined above we may presume that detainees display a very negative attitude to HIV-positive persons, so much so that infected persons may be exposed to physical danger. It will take time to change this mentality; administrative measures to accomplish this are insufficient. The curriculum for schools of medicine has integrated the subject of HIV/AIDS since 1986.

The National AIDS Committee is making every effort to prevent the disease and to prevent positive patients from being discriminated against. The past few years have seen successes especially in the area of prevention. It is our view that curricula for specialist staff members should be expanded in the field of HIV/AIDS.

The "hazard allowance" mentioned in the report is not confined to medical staff working in the vicinity of HIV-positive persons: it is regularly paid to a very substantial proportion of medical staff including those employed in departments for infectious patients and staffers working in hospice departments and placed under increased psychic loads.

HIV screening for detainees in Hungary is governed by Decree 5/1988 (31 May) of the Ministries of Welfare and Health on "measures necessary to prevent the spread of acquired immune-deficiency syndrome and on instructions for screening". Even if this legal regulation were to be amended by the health department, we believe it would be justified in the prison system to uphold the screening system as a health care service provided at the request of volunteering detainees. The decree specifies those persons, including detainees serving prison sentences, who are obliged to undergo screening for HIV infection. As can be seen, the prison system did not initiate the screening, all it does is fulfil duties contained in the law. We have experienced that detainees wish to be screened and hardly ever refuse to be tested. The practice of providing common accommodation for screened HIV-positive persons primarily has to do with practical arrangements rather than epidemiological considerations.

Service provision for HIV-infected in Hungary is centred around Budapest. A new HIV-positive person is taken in the care of the National Institute for Dermatology and Venereal Disease. Medication, status control and laboratory inspection of HIV-infected people are also performed centrally at Budapest Szent László Hospital. Patients are called in for checks as required, but generally once a month. For the prison system to carry HIV-positive persons from remote establishments to Budapest for medical check-ups at such intervals would entail costs out of all proportion.

We have created conditions under which prison staff and detainees have acquired knowledge concerning HIV/AIDS. It has been experienced in a few cases that the proximity of an HIV-positive patient has triggered panic, however, thanks to the dissemination of information and CPT's investigations, we have registered some improvement and a marked change in attitude over the past 6 months.

**59. The CPT wanted to receive the comments of the Hungarian authorities on issues related to suicide prevention (para. 123.).**

For the time being, we can only provide information on suicide prevention from a medical point of view. The Hungarian Society for Suicidology devoted a special section of its 1999 congress to training on detainee suicides. It became evident that psychologists, psychiatrists, educators and heads of prison establishments were treating the problem ever more thoroughly and scientifically. Several lectures on the same subject were delivered to the General Assembly of the Society of Forensic Medical Experts in 2000. It is safe to say that the subject has been given detailed analysis and a related prevention strategy is in place. What remains to be done is draw up a practical action plan with due consideration given to the interests of the prison systems. To differentiate between a genuine suicidal attempt and an injury the detainee inflicted on him/herself only for the purpose of changing the conditions of detention (transfer to a prison hospital, permission for an extraordinary visit by relatives, etc.) is something that a doctor or a psychologist is qualified to do, whereas its assessment from a disciplinary point of view falls outside medical competence.

The Hungarian prison system has developed its own specific strategy for suicide prevention in which genuine intent is differentiated from manipulative or theatrical acts. Undoubtedly, the holding cells referred to in the CPT report are used, even though extremely infrequently and always on the basis of relevant legal regulations. Following obligatory medical examinations, the detainee may be placed in the cell for a maximum of 6 hours while being checked by the doctor every hour.

Decades of experience have taught us that no genuine intention of suicide is present in this type of cases. Real suicide, however, deserves special attention. Several conferences on this subject have been held this year with noted experts delivering a series of lectures. Although one noted researcher of the subject pointed out that the psychiatric profession is powerless in the face of genuine suicidal intent, it is the view of leaders of the Hungarian prison system that all precautions in this area must be taken. In addition to receiving theoretical training as outlined above, doctors must try to explore any suicidal attempts when establishing the anamnesis of the detainee on reception. If the expert reveals information to this effect, he will be obliged to treat the detainee with special attention. If the person attempting suicide is found to be in a critical condition and if he continues to voice his intention, he will be referred to the forensic observation and mental institution for examination and medication. On completing his treatment, the Institution will send the person back to the prison with an accompanying therapeutic proposal. A person who has attempted to commit suicide will be required to make a statement concerning his suicidal intention, which will be taken into consideration when his further treatment is decided upon.

**60. The CPT sought information on the measures envisaged by the Hungarian authorities to address problems related to drug-dependent detainees (para. 124.).**

The national drug strategy adopted by the National Assembly provides a frame in which a package of measures related to drug-user detainees can be drawn up. The importance of drug-taking has increased in an unprecedented measure in recent times and a team of expert addictologists, traditionally engaged with the problem of alcohol dependency, are now preparing themselves to tackle a rising tide of drug addiction at a high professional level.

A leading role in this respect is being played by the Forensic Observation and Mental Institution of the Ministry of the Interior, which has its own drug department employing experts who have gathered many years of experience in drug prevention, intervention and social work in the field besides being engaged in the medical job of drug withdrawal.

A separate strategy has been drawn up to combat drug use in prisons but it is to be noted that the situation in Hungary is better than that in either welfare societies or societies living under relatively difficult conditions. However, this will not relieve us of the duty to try to create drug-free prisons. The first stage of our drug strategy involved training programmes and drug recognition courses for prison staff. We plan to repeat this extension course in the coming year. The medical part of reception includes questions on drug use, and this provides us at least rough information on the subject. Also, a special questionnaire is being prepared in an effort to elicit more accurate information in this area. Prisons are continuously inspected with a view to reducing the in-house supply of narcotics.

The Budapest Penitentiary and Prison has introduced this year a series of special group therapy sessions for those volunteering to go in for treatment. In addition to theoretical preparation provided by scientific conferences, we attach great importance to a motion to amend legislation whereby drug-free quarters can be set up in prisons.

**61. The CPT recommended that visit entitlement should be substantially enhanced and visit conditions improved at Budapest Remand Prison (para. 125.). It also recommended that the visiting arrangements at Veszprém Prison be reviewed in order to ensure, as far as possible, that prisoners are able to receive visits under reasonably open conditions (para. 125.)**

Following its extension, the Budapest Remand Prison will have better opportunities to receive visitors. Contact between detainees and the outside world can be restricted only as regulated by the law. Dangerous prisoners that require special attention should also be allowed to have visitors, what is more, the stricter regime applied to them would justify visits by relatives at shorter intervals than usual.

The director of Veszprém Prison, as all other prison commanders, has been instructed to introduce a differentiated visiting system.

**62. The CPT recommended that prison authorities should take steps to review the procedure applied to making telephone calls, in the light of comments contained in the visit report. The objective should be to increase significantly access to the telephone for prisoners; close surveillance of telephone calls should be the exception rather than the rule (para. 126.).**

Access to telephones are governed by prison regulations. In the case of pre-trial detainees the Act on Criminal Procedure prescribes surveillance of verbal or written contact except for contact with a defence attorney. Surveillance of telephone calls made by detainees is performed at random.

**63. The CPT recommended that prisoners facing disciplinary charges be formally accorded the rights to be informed in writing of the charges against them and to be provided with sufficient time to prepare their defence and to call witnesses on their behalf and to cross-examine witnesses giving evidence against them (para. 128.).**

We agree with the recommendation that prisoners should be informed about a disciplinary action and related charges against them. In the context of investigations into disciplinary events, prisoners have always been granted such an opportunity. The rights of detainees are fully guaranteed in disciplinary actions. The detainee may, in the course of the proceedings, cross-examine witnesses, freely express his position and present his defence. If legal counsel is used, the attorney is also accorded these rights without any restrictions.

Persons involved in disciplinary actions are given immediate information, both oral and written, on action having been taken against them, which they confirm by their signature.

Measures have been taken to amend an instruction by the National Commander [0289/1996 (IK.Bv.MELL.10.)] on disciplinary actions against detainees in prison establishments enabling the detainees to receive documented information about the reason for which disciplinary action has been taken against them.

**64. The CPT sought information on whether the practice of enabling detainees to have confidential access in writing to the Director of the prison has been introduced in all prison establishments in Hungary (para. 129.).**

In accordance with a previous recommendation by the CPT, this system has been introduced in all establishments and therefore detainees may have direct and confidential access in writing to the prison director. On inspection, we have found that the system is working satisfactorily.

### **III. PSYCHIATRIC ESTABLISHMENTS UNDER THE AUTHORITY OF THE MINISTRY OF HEALTH AND THE MINISTRY OF SOCIAL AND FAMILY AFFAIRS**

**65. The CPT recommended that all non bed-ridden patients at Balassagyarmat General Hospital be allowed to wear their own clothes during the day or be provided with appropriate non-uniform garments (para. 135.). It is also recommended that appropriate measures be taken to put an end to the practice at Balassagyarmat General Hospital whereby some of the men's toilet facilities were being used as temporary storage place for the ward's rubbish (para. 136.).**

Measures to implement the recommendation have been taken both to enable patients to wear their own clothes and to stop men's toilets being used as storage places for rubbish.

**66. The CPT noted that some of the shower facilities for men at Balassagyarmat General Hospital were not well ventilated (para. 136.).**

The doors and windows in poorly ventilated shower facilities have been rendered operational and a pledge has been made to devote more attention to this issue in the future.

**67. The CPT recommended that the Hungarian authorities give a high priority to the implementation of plans for the reconstruction of Unit 6. of Ludányhalászi Care Home for psychiatric patients (para. 140.).**

Plans for the reconstruction of Unit 6. Ludányhalászi Care Home for Psychiatric Patients have been completed; part of the central reconstruction programme is a targeted project under which the county government, in its capacity as operating agent of the establishment, wishes to improve accommodation circumstances, create appropriate communal rooms and decrease overcrowding.

**68. The Committee noted: Some residents' rooms in Units 1. and 2. in Ludányhalászi Care Home were somewhat overcrowded (para.139.). Also, the number and the size of the communal rooms in Units 1. and 2. of Ludányhalászi Care Home were rather limited (para. 139.). The CPT trusted that reconstruction of the kitchen of Ludányhalászi Care Home would be accorded a high priority (para. 143.).**

As we pointed out under para. 67., part of the central reconstruction programme is a targeted project under which the county government, in its capacity as operating agent, wishes to improve accommodation circumstances, create appropriate communal rooms and decrease overcrowding. The county government has drawn up a general medium-term plan for social affairs including a project to rationalise psychiatric service provision.

**69. The CPT sought to receive details of the situation in the refurbished premises in Unit 6. (residents' living conditions, distribution of the residents, programme of therapeutic activities, staffing levels, etc.) at Ludányhalászi Care Home (para. 140.).**

Living conditions are being created on the basis of, and as part of, the reconstruction plan. 40 % of the residents take part in various work activities suited to their individual conditions. There are regular sessions for group therapy and individual psychotherapy. Free-time activities include drama, choral singing, sports and other artistic activities. The establishment is working on expanding and improving opportunities on a daily basis.

To improve staff quality, we wish to rely on an expanding system of social worker training at secondary school and college levels. A new set of criteria for subsidised training and specialised qualifications will be introduced in 2001 and a detailed system of rehabilitation activities will also be created. (Concerning the staffing levels, see also para. 73 of the present Reply.)

**70. The CPT wanted to receive confirmation that separation by gender is now effective in the closed ward of Unit 6. of the Care Home (para. 141.)**

Immediate measures were taken for men and women to be kept separated.

**71. The CPT recommended that efforts be made at Balassagyarmat General Hospital to increase the number of psychiatric patients taking part in therapeutic and rehabilitative activities and to offer a wider range of such activities (para. 146.). The CPT invited the Hungarian authorities further to develop rehabilitative and therapeutic activities at the Care Home, including better access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports (para. 151.).**

Current professional rules have laid a new foundation for the activities and the organisation of rehabilitation and therapeutic treatment at the Care Home provided as obligatory services for the residents. To this end, a survey on rehabilitation activities has been made in all rehabilitation establishments in the country, resulting in a set of measures designed to further improve this kind of work and improve the material and personnel conditions of institutions. The new regulations on social affairs call for a detailed elaboration of rehabilitation activities in 2001.

A new form of care for psychiatric patients was introduced by an amendment to Act III. of 1993 on the administration and provision of welfare services, under which psychiatric patients partially able to care for themselves may be accommodated in halfway houses of 8-12 people. The construction of halfway houses have since been subsidised by the Ministry. 5 halfway houses to accommodate residents transferred from psychiatric institutions were built in 2000.

The amount of state subsidy for their costs of operation grew by 38 % from 2000 to 2001. We wish to give a high priority to the halfway house programme in years to come. The Ludányhalászi halfway house is a venue for regular group therapy and individual psychotherapy. Free-time activities include drama, choral singing, sports and other artistic activities. The establishment is seeking new ways to extend the range of activities on a daily basis.

**72. The CPT recommended that steps be taken to update and complete the equipment in the ECT room at Balassagyarmat General Hospital, or, alternatively, to have ECT administered in the hospital's intensive care unit. Further, recourse to ECT should be recorded in detail (para. 148.).**

A commercial order for a respirator to be placed in the ECT room of the hospital has been placed but it has not yet been received at the time this report is being prepared, so respiration is still maintained manually. The use of the ECT room is regularly recorded.

**73. The CPT recommended that the presence of psychiatrists and general practitioners at the Care Home be substantially increased. That presence should be at least the equivalent of one full time position of a psychiatrist and one full time position of a general practitioner. The number of nurses with relevant specialist qualifications should also be increased. The CPT also recommended that steps be taken to attach psychologist and physiotherapist services to the Care Home (para. 149.), and to ensure appropriate dental care for every resident. Dental treatment should be free of charge for those residents not in a position to pay for it (para. 150.).**

A priority issue in our staff development programme is an increase in specialist staff at social institutions taking care of psychiatric patients. A system of criteria related to government-sponsored training and qualification for staff employed in the sector of social affairs will be introduced in 2001. Personnel conditions at Ludányhalászi are difficult to improve because of the location of the establishment and the low wages currently available. The number of psychiatric specialist nurses could be increased with the help of secondary training but the local government running the establishment would have to contribute to the cost of tuition. The institution has the competence to propose that a resident be given additional dental treatment under the scheme of free medical care for the disabled, and that non-reimbursable services be covered by the health insurance scheme on compassionate grounds. Such individual requests are considered on a case-by-case basis.

**74. The CPT recommended that the Hungarian authorities establish a clear written policy at Balassagyarmat General Hospital and Ludányhalászi Care Home (and, as appropriate, at other psychiatric establishments in Hungary) as regards the use of means of restraint, taking into account the remarks in para. 155. of the visit report.**

Legal regulations on the care of psychiatric patients are being overhauled (amendments to legislation, implementing regulations) so that persons in care institutions are given personalised, high quality care without their basic human freedoms and civic rights being violated.

Current legal provisions do not prohibit the use of means of restraint but a Methodological Note issued by the Ministry on "Guiding Principles for Nursing and Caring Activities in Homes for Patients with Addictive or Psychiatric Disorders" devotes an entire chapter to safeguards for the rights and interests of patients including a clear prohibition on the use of net-beds.



The staff of the home are aware of the contents of the Methodological Note: the guidelines have been repeatedly discussed in professional meetings and discussed in working groups convened to help put them into practice.

Nevertheless, officials of the Ministry have encountered the use of net-beds while visiting some institutions.

A survey on the use of measures, methods and means of restraint was conducted in 1999 in all institutions for psychiatric patients. After the survey the Ministry sent letters to the chairmen of the county assemblies operating the institutions, requesting measures to withdraw net-beds from service with immediate effect. The replies received indicate that net-beds are not in use in 12 counties, while a minimum number of this device can be found, though primarily in institutions accommodating seriously disabled persons, in 7 counties and 2 care homes in Budapest. The counties concerned agreed to find professionally acceptable methods to handle situations of danger and, while spreading these new instruments, to withdraw net-beds from service.

In a highly important section of the circular the directors of institutions gave their professional views on what professionally acceptable temporary methods were being used in situations of danger. A majority of directors highlighted a need for complex prevention and personalised care. They mostly agreed to put a comprehensive ban on the use of caged beds, a minority considered the use of caged beds professionally unacceptable and requested regulations on what methods could be used as a last resort when situations of danger arose and became regular.

County governments have taken measures to supervise the dismantling of caged beds and enhance prevention.

In the coming period, the measures that were taken in response to the replies are going to be intensively supervised by the competent division of the Ministry.

The Ludányhalászi Care Home sent the following report on the elimination of means of restraint formerly applied at the institution: the Home concluded contracts with the psychiatric patients (guardians) in the institution 3 years ago.

As part of the therapeutic contract there is a set of measures (injection or medication on a case-by-case basis, constant supervision, etc.) that can be used by the doctor and specialist staff at the institution if an acute state develops.

The professional programme of the institution gives a detailed description of the above measures, as demonstrated in the following extract from the procedures:

*“Everyday life in the institution is organised and arranged in such a way as to ensure that it meets requirements resulting from the patients’ age, general condition, former daily cycle and the inevitability of community life. In providing care and treatment, every staff member must respect the human dignity of the patient, even in the most extreme cases and therefor staff MUST NOT*

- *hit, batter, terrorise or threaten the patient;*
- *verbally abuse or address the patient in a rough or angry tone;*
- *humiliate the patient or deepen his/her sense of powerlessness;*
- *lock up the patient for punishment;*
- *deprive the patient of his/her belongings;*
- *restrict the patient’s personal freedom in any manner unless his/her conduct poses a danger or immediate danger.*

*Observation of the patient and his/her health and psychic condition may warrant restriction in the following cases:*

- *the patient is incapable of appropriate orientation (in space, time and personal relations);*
- *the patient is unable to dress or feed him/herself;*
- *the patient is momentarily unaccountable for his/her deeds (drunkenness, fit, etc.).*

*Encountering an unforeseen critical situation, the nurse may take the following measures if the patient’s behaviour poses a danger to him/herself or puts other people at physical risk:*

- *the nurse may ask or instruct the patient to surrender the dangerous instrument, may apply physical coercion (restraint) in justified cases, call for the police if necessary, refuse him/her leave if it may jeopardise the patient or other; a nurse must stay with the patient in the segregation unit or the ward until cessation of the emergency, and the head nurse must be notified of the event;*
- *the specialist staff member may, if necessary, administer the prescribed medicine or injection without regard to objections by the patient.*

*The restriction applied should not be of a punitive nature and may last only as long as there is a need for it. The event must be recorded in writing and the specialist doctor must be notified of it”.*

The Director gave immediate instructions to dismantle the only net-bed still in use. The patient in question requires for his care close nursing surveillance. A therapeutic expert has been given the duty of relaxing the patient’s anxiety. Use of net-beds in the institution has been terminated.

**75. The CPT sought information on the solution that was subsequently found for the case of a patient found in a net-bed at Ludányhalászi Care Home (para. 156.) and the findings of the special rapporteur designated to supervise the effective removal of net-beds from mental care homes (para. 157.).**

In response to Act III. of 1993 on the administration and provision of welfare services, Methodological Note on “Guiding Principles for Nursing and Caring Activities in Homes for Patients with Addictive or Psychiatric Disorders” was issued by a working group set up by the Hungarian Psychiatric Society for the specific purpose of drafting the Methodological Note.

The document devotes a separate chapter to safeguards for the rights and interests of patients, including the principle that “the use of net-beds in care homes is forbidden”. The Methodological Note has been forwarded to the institutions concerned on several occasions, its contents have been incorporated in the official publication of the Ministry and discussions on the subject have been held at professional meetings.

In spite of the prohibition contained in the Methodological Note and a variety of arguments voiced in various professional conferences against such instruments, net-beds have been found in a number of institutions (not only psychiatric homes but in institutions providing care for disabled or elderly people), and in a few cases means of coercion or restriction violating other human rights have been used.

The figures obtained indicate that the number of such instruments has been radically reduced in recent years: e.g. 10 such beds are being used in Borsod-Abaúj-Zemplén county which compares with an earlier figure of 44, while 9 such beds were taken out of use in counties Jász-Nagykun-Szolnok and Komárom-Esztergom immediately after the instructions were given.

A total of 31 caged beds can still be found in 7 counties and to Budapest institutions. The counties concerned are: Bács-Kiskun, Borsod-Abaúj-Zemplén, Csongrád, Jász-Nagykun-Szolnok, Komárom-Esztergom, Pest and Tolna.

The following related measures have been taken:

- having received instructions from the Ministry, county governments sent a circular to the institutions they operate requesting caged beds to be removed;
- measures have been taken to supervise their removal, to restrict their use to a minimum and to make living rooms more home-like in order to meet the residents’ aesthetic and mental-hygienic needs and enhance the effectiveness of prevention ;
- consultations, further training and meetings for directors on this subject have been held on a number of occasions, and the Methodological Note has been discussed many times.

**76. The CPT recommended that a booklet setting out the establishments' routine and patients' rights and duties be issued to every patient on admission, as well as to their families. This booklet should also identify a clearly-designated body to which patients can address complaints in a confidential manner (para. 160.). These procedures should be supplemented by a formal complaints procedure; specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body and to communicate on a confidential basis with an appropriate authority outside the establishment (para. 162.). Steps should be taken to ensure that all written communications addressed to the European Court of Human Rights and the CPT are transmitted to those bodies in confidence and without delay (para. 163.).**

**Steps should also be taken to ensure that all psychiatric establishments in Hungary - including care homes for psychiatric patients – are visited, on a regular basis, by an independent outside body responsible for the inspection/supervision of patients' care. This body should be authorised, in particular, to talk privately with patients/residents, receive directly any complaints which they might have and make any necessary recommendations (para. 164.).**

**The CPT requested the Hungarian authorities to provide further information on, and explanations for, the practice at Balassagyarmat General Hospital of persuading patients to accept admission to the hospital on a voluntary basis (para. 168.).**

**The CPT sought to receive information about a recommendation made by a special committee set up in September 1999 on the legal protection of residents placed in social care homes (para. 169.), and on the views of the Hungarian authorities about the lack of appropriate care and accommodation facilities for social care home residents in the outside community (170.).**

§ 10. of the Health Act contains strict provisions for respect for human dignity, setting out the conditions under which a patient can be restricted. As can be inferred from the CPT visit report, the professional psychiatric organisations have prepared professional guidelines that clearly define methods of restriction that are accepted and applicable and those that are prohibited. The curriculum for obligatory further training courses for medical doctors contains lectures on this subject and it is to be hoped that the guidelines will be fully enforced in the near future. We have called on the supervisory organisations to hold inspections on the subject on a case-by case basis.

The Health Act prescribes that the patient be informed about patients' rights. It is not necessary, however, to communicate them to each patient in writing. The reason for this provision is to save institutions of limited resources certain costs that may be avoided if appropriate interpersonal relations are established. It is fortunate that the system of information booklets for patients is quickly gaining ground.

Formal complaints procedures already exist. Under § 29. of the Health Act the patient has the right to lodge a complaint with the service provider or its operator. The recipient is obliged to investigate the complaint and inform the patient about the findings in 10 working days. Health care providers must have in-house regulations containing detailed instructions on the investigation of complaints.

In addition, under § 156. of the Act, hospitals are obliged to set up an ethics committee designed to contribute to the enforcement of patients' rights and invited to express their position on ethical issues at the institution. Complaints can also be made through the patients' representative (§ 30-33. of the Act). The patients' representative is a totally independent and unbiased person not employed by the institution, and it is his job to inform the patient of his rights and help him enforce them. The patients' representative does not generally act on the patient's behalf as if he were the patient's lawyer; rather his job is to improve relations between the institution and the patient.

There are, however, some psychiatric regulations in § 201. of the Health Act enabling the patient or his legal attorney to request the patients' representative to act on the patient's behalf in the procedure related to a magistrate's review. This provides a basis on which the court may take a well-founded decision after hearing the arguments of both parties. Since the institution of patients' representatives became operational only this year, it will, unfortunately, take some time before regulations containing procedural guarantees are more fully enforced in procedures of admission to psychiatric institutions.

Guided by experience gathered a few years earlier, we have made special efforts to ensure that a magistrate's review should fulfil its proper function. Requests for review and the review process itself have become far more orderly in most establishments. Considering that a package to amend current legislation on a person's power of disposal and guardianship has been completed, we shall, in this connection, perform another review of the responsibilities of psychiatric institutions and opportunities to make procedures more effective.

By turning to the National Service for Public Hygiene (Chief Medical Officer) or to the Ethics Committee of the Hungarian Chamber of Medicine, the patient may request an enquiry into the professional and ethical level of medical treatment. This is another example in which the complaint is investigated by institutions independent of the establishment. Furthermore, the Division of Public Relation of the Ministry of Health operates a client service office that receives questions or comments in person, by correspondence or telephone. The office gives visitors information and refers them to the appropriate administrative body.

The Ministry for Social and Family Affairs has created a specialist committee in 1999 to draw up recommendations to amend legislation on social care for psychiatric and addictive patients on the basis of consultations with specialists in these areas. These recommendations will also be taken into consideration when, most probably in 2001, Act III. of 1993 on the administration and provision and welfare services is amended with a view to updating regulations on the institutional services concerned and strengthening safeguards concerning the rights and interests of patients.

When drafting amendments to the Civil Code, experts of the Ministry of the Interior relied on the specialist committee's recommendations, and incorporated them in the amended legislation on the institution of guardianship and placement regulations. Following amendments to legislation the specialist committee will draw up professional guidelines and prepare methodological instructions to help with implementation and give presentations to professional gatherings on how the regulations are to be applied in practice.

On 1 January 2001 the Minister for Social and Family Affairs appointed one of the institutions providing care for psychiatric patients to act, in the next five years, as a model care home entrusted with methodological responsibilities. The methodological establishment will help to give directions in the field of social care for psychiatric patients, create and operate highly developed innovative services, help social institutions with their work and give advice on professional matters, methods of care, etc.

It is to be hoped that the national methodological establishment will be highly instrumental in spreading advanced methods of care for psychiatric patients and improving professional standards at the institutions.

The following measures have been taken at Ludányhalászi Care Home concerning guarantees in the context of involuntary placement:

- residents, relatives and guardians are informed about the regime of the institution on admission. They receive comprehensive information on services to be provided for the resident from admission to discharge and the rights and obligations of the patients;
- information is also provided on the system of safeguards, complaints procedures and other channels of legal remedy.

#### **IV. MEASURES TAKEN BY THE OFFICE OF THE NATIONAL COUNCIL FOR JUSTICE**

**77. The CPT pointed out the importance of providing all relevant authorities, including the judicial authorities, with detailed information on the CPT's terms of reference and the related obligations of Parties to the Convention (para. 7.).**

We agree that the European Convention, which was announced in Act III. of 1995, and matters related to its implementation should be brought to the special attention of courts of law. At a meeting in that December 2000 of presidents of county courts the Office gave information on regulations of the convention that concerned courts of law, specifically requesting the heads of courts to give special attention, in co-operation with colleges, to the full enforcement of legal safeguards protecting persons placed in psychiatric institutions on the basis of procedures conducted under Act CLIV. of 1997 on health care.

In future, the courts will, at the Committee's official request, meet the obligation on the provision of information contained in the Convention in line with applicable internal legal regulations.

**78. It became clear to the CPT that, by a process of “concerted persuasion” on the part of the medical staff at the hospital, the magistrate in charge of such cases, and the lawyer entrusted with the defence of such patients, virtually all patients admitted to the psychiatric units were, during the requisite period of 72 hours from admission, brought to acceptance of placement as a voluntary patient. Once this agreement was achieved, the voluntary status of the patient obviated the requirement for regular legal oversight, unless a patient specifically requested a review. The practice observed could well be considered as *de facto* circumventing safeguards for involuntary psychiatric patients. The CPT wished to receive the comments of the Hungarian authorities on this subject (para. 168.).**

Without quoting the Health Act we shall present the concrete review procedures followed by courts of law.

There are three ways in which a patient may be placed in a psychiatric institution:

- voluntary treatment;
- placement by a doctor noticing behaviour posing an immediate threat and requiring institutional treatment;
- placement based on a court order requiring compulsory institutional treatment.

Several years of practice have shown that most patients are admitted to the institution in a manner described in the first point. The court reviews the grounds for placement only if the patient agrees to it or makes a request for it (except for cases of impaired power of disposal or when power of disposal is lost).

Practically all voluntary patients agree to, or does not object to a court review. Therefore such reviews are held every 30 days, as required by law.

Emergency treatment occurs much less frequently, though the court again acts as prescribed by law when notified by the hospital of the admission of such a patient. Accordingly, the magistrate in charge of the case will hear the patient within 72 hours, hears the treating doctors, and obtains expert opinion from an independent psychiatric specialist. Under para. (7) § 199 of the Act this procedure must be followed and completed even if the patient has expressed his agreement in the meantime. Although in almost 100 % of the cases the patients agree to the treatment at the time of the court hearing, the court nevertheless hears the patient, the doctor and the expert as prescribed by the law, and continues to hold a review every 30 days just as in the case of voluntary patients.

The third type of placement is the least frequent: it has occurred only once or twice in years, and all legal requirements have of course been met.

All patients in the hospital are aware of the review process since voluntary patients are informed of the court procedure, which the patients confirm by their signature, and emergency patients are heard by the magistrate within 72 hours. It is probable that the magistrate interviewed by the CPT was misunderstood since a review is always held in the case of involuntary patients after 30 days, and the hospital sends regular information to the court on persons staying at the hospital for more than 30 days. In addition, if a patient requests an immediate hearing, he/she will be heard.

Reviews are held regularly and systematically as required by the law in the case of both voluntary patients and persons admitted by court order. While at the hospital, the magistrate does more than conduct hearings: he will inspect the wards to find any signs of patients' rights being restricted. The court has ruled in a number of cases that treatment was not justified and ordered the patient to be released.

The President of the Municipal Court has briefed a magistrate in charge of such cases on the findings and recommendations of the CPT.

## **V. MEASURES TAKEN BY THE OFFICE OF THE GENERAL PROSECUTOR**

**79. The CPT recommended that the possibility to delay the exercise by detained persons of the right to inform a relative or third party of their situation be made subject to appropriate safeguards (e.g. any delay to be recorded in writing together with the reasons therefor and to require the approval of a public prosecutor) and strictly limited in time.**

**Further, the CPT recommended that existing procedures be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person, the record is systematically brought to the attention of the relevant prosecutor.**

**The CPT emphasised: from the standpoint of the prevention of ill-treatment, it would be far preferable for further questioning of persons committed to prison to take place within the establishment concerned rather than on police premises. The return of remand prisoners to police custody for further questioning should only be sought and authorised when it is absolutely unavoidable. The CPT recommended that appropriate steps be taken to ensure that this is the case.**

To promote implementation of the CPT's recommendations, the Office of the General Prosecutor has issued a special circular for prosecutors that specifies certain supervisory, investigatory and reporting obligations with a view to preventing ill-treatment, and institutes further guarantees to prevent any abuses being committed by members of the prison system or police staff who have lost their moral bearings.

Accordingly, during the prosecutorial supervision of the enforcement of legal standards in the prison system, the lawfulness of treatment in all places of detention executing deprivation of liberty (police holding facilities, prisons) must be examined with great care in the event of each inspection but at least twice a month.



When a detainee is heard, whether at his request or during an inspection visit, the prosecutor always makes enquires to ascertain whether international conventions on torture and other degrading, inhuman and cruel punishment or treatment are adhered to. On each inspection the prosecutor is obliged to gather related evidence in private meetings with detainees selected at random.

When handling complaints, requests and reports related to treatment, prosecutors must take action with increased care and in full conformity with the provisions of conventions. If unlawful treatment has been observed, the complaint will be recorded in the minutes and the prosecutor will take appropriate action for a criminal offence, misdemeanour, disciplinary action or civil action for compensation, as the case may be.

If a regional prosecutor detects a violation of the convention – especially in the context of an incident related to unlawful treatment -, he must take appropriate action and report by telephone to the Department for Legal Supervision of Prisons at the Office of the General Prosecutor and also submit a written report.

In the case of inspection the prosecutor must gather information on whether the medical examination detected any external marks or other injuries which the detainee claimed were a result of unlawful treatment on admission or during his detention. In such a case the prosecutor must find out whether the detention establishment acted in accordance with the law.

On each inspection mission, the prosecutor will seek evidence on whether a relative of the detainee was notified of the pre-trial detention order without delay in every case, as provided for in para. (2) § 93. of the Act on Criminal Procedure. Should this not be the case, the prosecutor takes immediate action to correct the error, investigates into its causes and takes any further action if warranted by his findings.

Permission to deliver a person in prison to the investigating authorities and transfer him to a police holding facility must be approved, but only if this is absolutely necessary for the investigation to be effective, by the penal deputy of the Prosecutor General (if the proceedings are conducted by the county or Budapest office of the Prosecutor General) or the local chief prosecutor (if proceedings are taken by the local prosecutor's office). A precondition for approval is that the written application of the investigating authority gives a detailed list of investigative methods that can be applied on police premises only and specifies the time required for this; the permit may overrule the above time requirement and specify a different time limit, after which the detainee must be carried back to the prison establishment. This provision is envisaged to ensure that remand prisoners are transferred to a police holding facility only in justified cases, and even in justified cases they will be held there for a justified length of time only. This provision will have to be maintained until prison establishments find resources to build rooms in which certain types of investigation requiring the presence of the detainee and third parties (e.g. confrontation, identity parade) can be conducted.

Offices of general prosecutors must submit a written report to the Department of Legal Supervision of the Prison System until 31 March every year on experience gathered on supervisory missions on the lawfulness of treatment given to detainees in the county.

Finally, we wish to point out that the CPT's comments and recommendations have promoted the work of the Hungarian authorities and the report has provided them with useful information. Hereby we express our special gratitude for the Committee's efforts at maintaining good co-operation and its intention to help. The Hungarian Government requests that the present reply to the visit report on the CPT's visit to Hungary in 1999 be published in conjunction with the CPT report.