

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 24 March to 2 April 2009

The Hungarian Government has requested the publication of this response. The report of the CPT on its March/April 2009 visit to Hungary is set out in document CPT/Inf (2010) 16.

Strasbourg, 8 June 2010

Note:

In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

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***RESPONSE OF THE HUNGARIAN GOVERNMENT AND JUDICIAL AUTHORITIES 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 24 MARCH TO 2 APRIL 2009***

Introduction

Hungarian authorities would like to express their special thanks to CPT for its activities and also for the approach, by which not only deficiencies and shortcomings have been displayed, but efforts and achievement have also been acknowledged. They concede also with thanks the detailed and constructive report, drawn up on the visit between 24 March and 2 April 2009, the recommendations, remarks and comments laid down in this report. Hungarian authorities are desirous to make some special comments and furnish some additional information to these remarks. They would like to give a complete account on the measures which have been accomplished and also on those, the fulfilment of which is actually in progress, and in the same time, report information about all questions raised by CPT.

During the 17 year period since Hungary's adhesion to the European Convention against Torture, the Hungarian Governments and judicial authorities expressed repeatedly their declaration in writing that they attached high importance to CPT's facts finding and recommendations, and the fulfilment of these recommendations was always considered to be a main task of priority, and the accomplished positive evolution had to be further improved. During the cooperation between CPT and Hungarian public authorities, the principles laid down by CPT have been wholly confirmed.

The structure of the present responses reflects CPT's Report (hereunder referred as "Report") architecture in view of facilitating their treatment.

I.

CPT's remarks and responses to them concerning establishments under the authority and surveillance of the Ministry of Justice and Law Enforcement

In May 2009, a detailed action plan has been drawn up by the concerned organisations with the purpose of resolving problems and redressing inadequacies observed. The tasks, assigned by CPT as requiring immediate action had been accomplished, and the remedy of other deficiencies observed is actually proceeding. Particularly the tasks, the execution of which requires only material funding are not fulfilled yet. Nevertheless, the elaboration of the necessary conceptions and plans had been finished, but their implementing would be started exclusively after having adequate material resources from the national budget. When they are in the possession of these funds, the concerned establishments will immediately implement the required tasks.

A. Responses concerning the Police

1. Police establishments

Recommendations (Paragraphs 9-30):

“The Hungarian authorities take decisive measures to end completely the practice of holding remand prisoners in police establishments”

In the sense of Act XIX of 1998 on Criminal Proceedings (CCP), the person in pre-trial detention may be held in a police cell – prior to the filing of the indictment - only in exceptional cases, and only if justified by the interests, connected with the investigation, and only for the period of the accomplishment of that investigatory action. The length of the pre-trial detention is exactly determined by the law on the basis of Section 135, Subsection (2) of the CCP. If justified in order to take an investigatory action, based on the decision of the prosecutor, the person in pre-trial detention may be held in a police establishment for a period of maximum thirty days. When this period expires, a court decision – rendered on the prosecutor’s motion – shall dispose of the placement of the suspect in a police establishment for another period of thirty days.

During this quite short period, the investigation authority has to accomplish all investigatory actions that allow no delay. In case the person in pre-trial detention would be detained in a prison establishment, the transfer, - including its organisation and authorisation - of the detainee would take excessively much time. That would cause problem particularly for county chief police directorates, because there are some counties, where there is only one prison establishment, or there is none at all.

The investigating authority of the police – having in mind these circumstances - submits its proposal to the prosecutor in view of the placement of the suspect in a police establishment. Nevertheless, it is the competence of the prosecutor or the court to decide whether the proposal of the investigating authority shall be approved or not.

For this reason, the legal position of the Ministry of Justice and Law Enforcement (hereafter referred as Ministry) is that the placement in a police establishment of the suspects in pre-trial detention remains justified. Further, it must be emphasised, that the placement of the criminal suspect in police holding facility does not affect in merits the suspect’s procedural rights.

Comments (Paragraphs 8-30)

“Review the situation of persons who have committed misdemeanours in police holding facilities”

In accordance with Section 122, Subsection (2) of the Law-decree 11 of 1979 on the implementation of punishments and measures (hereafter referred as Law-decree), the detention of misdemeanour offenders has to be implemented in prisons, or in cases determined by separate law, in police holding establishments. In the sense of Section 2, Subsection (3) of the Joint Decree 7/2000. (III. 29) IM-BM of the Ministers of Justice and Interior on detailed rules of the implementation of the detention of misdemeanour offenders and of the detention inflicted in lieu of non paid fine, if the misdemeanour offender is held in custody by the police, and the remaining period of the detention does not exceed ten days, the detention shall be implemented in the police holding facility located at the seat of the police authority, implementing the custody.

In the sense of Section (2), Subsection 6 of Decree 19/1995. (XII.13.) BM of the Ministry of Interior on the regime of the police holding facilities (hereafter referred as Decree on police holding facilities) there are dispositions of Decree-law which shall be applied to the rights and obligations of persons, held in police holding facilities. On the basis of Section 122, Subsection (3) of Decree-law, the misdemeanour offender being in detention has the right to work, which is useful for the society, receive one visit at least a month on the basis of Section 124, Subsection (2), Paragraph c), and also have access to cultural and sport activities in the prison establishment. Considering the dispositions set forth in Decree-law, on the one hand, and the length of the detention in police holding facility, on the other hand, the Ministry considers the increasing of the visiting possibilities in case of misdemeanour offenders in police holding facilities not justified.

The Ministry considers adequate the practice on telephone calls and correspondence, as forms of maintaining contacts, and these forms of contacts are actually accessible for interested persons.

The return of remand prisoners to police custody must be ordered only when it is absolutely unavoidable (Paragraph 10):

The Director General of National Police shall issue instructions in view of the implementation of this comment.

2. Ill-treatment by police officers

To deliver a firm message, that all forms of ill-treatment are not acceptable (Paragraph 11):

The 3rd November 2009, it was ordered by the Deputy Director General of National Police in Act Nr 26-58/8/2009/Confidential for the heads of all county chief police directorates (Chief Police Directorate of Budapest), and also for the Comdt. of the Alarm Forces, that they should inform all the professional staff under their authority on this CPT recommendation, namely:

The competent commandants shall call the attention of all members of regular staff – during briefings, staff meetings, or different regular trainings – and that, in a justifiable by documented manner, to the facts findings and recommendations of CPT, and also to the needlessness of the use of undue police force, and the prospective legal consequences of such abuse;

as part of this message, they should make clear that no more force than is strictly necessary should be used when affecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for striking them.

Further, this task has been determined also for the Director of the Airport Police Directorate, and has been incorporated into the aforementioned instructions of the Director General of National Police.

“The truncheons should be hidden from view in police holding facilities” (Paragraph 12.)

Similarly to the practice of other countries, the truncheon is one device from the arsenal of the operational police coercive means. The rules, regulating its application are defined by Act XXXIV of 1994 on the Police (hereafter referred as Act on the Police), Section 49, and Subsection (1):

“The police officer may use regulation chemical or electric shocking device, police truncheon or flat of sword in order to

a) avert an attack directly endangering the life, bodily integrity of others, or his own bodily integrity, or the security of property,

b) break resistance to a lawful action taken by Police.”

As regards to the form and specific characteristics of the truncheon, in legal terms, it is considered as equivalent to the regulation of chemical or electric shocking device, or flat of sword.

Hungarian authorities continue to consider necessary for custodial staff assigned to police holding facilities to carry truncheons, because there is not actually any regulation coercive device which would be more expedient or appropriate for the purpose of maintaining the security of custody, or legally and competently avert eventual attacks against custodial staff in a proportional manner. Custodial staff has an adequate training for the legal and competent use of truncheon in any case.

The Ministry has the opinion that carrying truncheons in a visible manner in the police establishment seems to be justified, because there are also – in the sense of the effective laws - detainees held in police establishments, who had perpetrated serious offences, to whom heavy punishments would be inflicted, therefore the truncheon and its carrying in such manner persist indispensable for the protection of the staff’s life and physical integrity.

“The practice of carrying firearms within the detention areas should be stopped” (Paragraph 12):

CPT indicates in the second Subparagraph of Paragraph 12 of the Report, that *“...some police officers at the Miskolc holding facility carried firearms within the detention areas.”*

It has been established during the on-the-spot inspection, that only the holding facility of the Miskolc municipal police directorate had been concerned, where exclusively members of the staff, assigned to the admission unit and providing escort-tasks are authorised to carrying firearm.

These staff members are not permitted to accede to the detention unit; the detainees are, in all cases, escorted from their cell by a non-armed member of the custodial staff, and then transferred – in the presence of the chief of the custodial staff - to other officers, assigned to escorting tasks.

The concerned officers are always forewarned, in the course of their briefing, to the prevention and bringing under control the exceptional incidents.

The Hungarian authorities note however, that this practice is not of national extension, but it is only a single case on local level, which has been introduced several decades before, and only because of the architectural structure of the establishment, i. e. of the police holding facility. Such manner of custodial service is in conformity with Hungarian legislation.

“Problem of the police officers’ presence during the medical examinations of detainees and the confidential treatment of medical documents” (Paragraph 13)

On 24 June 2009, the Deputy Director General of National Police ordered the suitable attitude of the police staff in the course of medical examinations, together with the confidential treatment of medical documentations by Act Nr 9803-18/2009/general for all heads of county chief police directorates (of Budapest Chief Police Directorate) and also for the director of National Investigation Bureau. Beyond this act, this task has been incorporated into the instructions, issued by the Director General of National Police in view of the implementation of CPT recommendations.

“The applicable procedure by police doctors in case of finding physical injuries, eventually resulting from ill-treatment” (Paragraph 14):

The doctor’s documentation obligations relating to the medical examination of the detainee at his/her admission to the police holding facility are set forth in Section 17, Subsection (3) of Decree on police holding facilities. In the sense of this regulation, the medical doctor shall record in writing all external signs of injury observed on the detainee’s body-surface, together with information relating to the circumstances of their origin, or the doctor shall sign a declaration, indicating the absence of such outward signs of injury.

The examining doctor must not conclude on any concrete statement concerning the relation between the detainee’s allegations and medical findings indicated in the doctor’s report. The medical doctor shall exclusively presume the origin of the injury, but he shall record all information at his disposal in order to assure its accessibility in the course of further legal proceedings. The detainee has the right to deny delivering a declaration on the circumstances of the origin of his/her injuries.

When a criminal proceeding is instituted for ill-treatment, an expert qualified in forensic medicine should contribute to the adequate clarification of the facts. Naturally, the concerned persons (i.e. the detainee, his/her lawyer) have access to the files of the case.

“The practice of inviting detained persons presenting injuries to sign a disclaimer” (Paragraph 15):

Mention has been made in Paragraph 15 of the Report on the police staff’s current practice of inviting persons presenting injuries “to sign disclaimer”, which has been observed by CPT delegation during their visit.

The phrasing “*disclaimer*” cannot be interpreted in terms of Hungarian law, because there is not a current practice in the police holding facilities, by which both the doctor charged of the admission of the detainees, or any member of the police custodial staff would invite the detainees to withdraw their declarations concerning any statement.

Mention has been made in the second Subparagraph of Paragraph 14 of the Report to a declaration, which had been remarked by CPT in the course of its visit at Miskolc.

It has been established at the issue of the inspection on the spot that such declaration constitutes the part of the minutes, drawn up when injuries are diagnosed by the doctor on the body-surface of the detainee at the admission to the police holding facility, and/or the detainee alleges having suffered ill-treatment. The practice referred to in the Report is in conformity with the Hungarian legislation in force [Decree 19/1995. (XII. 13.) BM of the Minister of Interior, Section 16, Subsection (7)].

“The removal of the spotlights in “K” cell, Gyorskocsi utca, and the partial screening of in-cell sanitary facilities” (Paragraph 17):

CPT requested for response within three months on this matter, as well information on the measures taken by the Hungarian authorities. The relevant response has been sent by the precedent letter addressed to CPT.

Measures have been taken by the Deputy Director General of the National Police in view to assure that no detainee should be accommodated in “K” cell, Gyorskocsi utca, before implementing amendments recommended by CPT.

“Medical examinations of detainees were carried out through the bars of “K” cell, Gyorskocsi utca”
(Paragraph 18):

Members of the National Police Directorate have on several occasions personally inspected “K” cell, Gyorskocsi utca paying particular attention to the definite concern of CPT, provoked by this special establishment - as appears from the Report.

It has been established during these inspections, that probably a misunderstanding must have happened, namely, such practice does not exist, and only the medicaments could have been administered through the bars of the cell, more exactly only through the special delivery gap, especially formed for this purpose. Actually, the cell bars are armoured with close-woven steel net on the inside, and that excludes all kind of reaching in or reaching out.

Comments (Paragraph 20):

“Extending the powers of the Independent Police Complaints Board with a view to enabling it to initiate ex officio inquiries into cases possibly involving ill-treatment”

One of the most important reforms, instituted to the Hungarian administration of justice during its history, has been the integration of the Police with the Frontier Guards – followed by amendments of crucial importance in the legislation. A wide range of new legal dispositions – becoming effective from the 1st of January 2008 – have introduced significant amendments in the police activities. An important component of these amendments has been the reform of the system of legal remedies prescribed by Act on the Police.

The substantial element of the amendments entered into force on 1st of January 2008, has been the establishment of the Independent Police Complaints Board (referred hereafter as “IPCB”). The definite intention of the legislator by the adoption of the relevant amendment aimed at the creation of an independent entity with high legitimacy and members of eminent professional qualification which would supervise actions of police officers in terms of the enforcement of fundamental human rights of nationals. The legislator wished to assure a way for legal remedy for the complainant against infringements of fundamental rights prescribing that his/her complaint – having been passed over a preliminary examination by an independent, civilian board - would be considered by the Director General of the National Police.

An important task of IPCB consists of the drafting of positions on the subjects, whether the infringement of the obligations set forth in the Chapters IV, V and VI of Act on the Police, or certain actions of the police, respectively the failure to accomplish certain actions, the application of a mean of coercion had infringed the fundamental rights of the complainant.

The decision of the Director General of the National Police shall be given in the form of a *decision* – in conformity with the relevant disposition of Act *CXL of 2004 on the general rules of the procedures and services of administrative authorities* (hereafter referred as Act on procedures of administrative authorities).

Publicity is a determinant factor in the work of the Police Complaints Board, because the law imposes on it the obligation of publishing its positions on its Web site.

The Director General of National Police has established the Central Complaint Bureau of the National Police (hereafter referred as CCB), which is charged of coordination of treatment of the complaints, applications for general interest against police actions and others, on the basis of the dispositions laid down in the instructions Nr 36/2008 ORFK of the National Police.

The task of the CCB is sending the decisions on approval or refusal of the complaints to the competent police organs. An innovative element introduced by the amendments is that positions of IPCB taken and decisions, taken on the basis of these positions, ruling serious infringement of the fundamental rights shall

be incorporated into the materials of training, consequently, those police officers, who have directly been affected by the relevant illicit action, and also all members of the local police organ, shall be acquainted with the detailed facts of the case. Certain feedbacks from county chief police directorates indicate that the police shall deploy great efforts in the future for consecutively improving the culture, legality, and efficiency of the police actions. Constructive and fruitful work relations have been built up between the CCB – considering its special attributions – and the Independent Police Complaint Board.

The divulgation for the public of the conclusions made at the issue of inspections and their permeation to the work of the police leaders have been fulfilled in two important dimensions. One of this was implemented within the police structure: a copy of the decision rendered by the Director General of the National Police - with a covering letter, calling the attention to the most important lessons, drawn from the concrete case, as well as to the carrying out the necessary measures – shall be sent to the head of the police authority having implemented the criticised measure or to the head of its hierarchic supervising authority. Therewith, the content of such decisions has to be made known to the staff members in a documented manner. The other dimension is - as part of the communication outside of the police organisation - that all decisions are accessible to the public on the Police Web site, certainly, respecting the legal dispositions on protection of personal data, and these decisions may be compared with the positions that the Independent Police Complaints Board adopted in the same case.

Summarizing the afore-mentioned, the Ministry considers adequate the powers which have been assigned by the effective Act on the Police to the Independent Police Complaint Board. Together with other authorities, it does not seem justified to extend the powers of the Independent Police Complaint Board with a view to enabling it to initiate *ex officio* inquiries (e. g. into cases possibly involving ill-treatment). Actually, it is the Investigating Prosecution Authority which has power for that.

IPCB has been instituted as organisation for the protection of rights; it proceeds on the complaints of citizens, submitted on their individual decisions. The Board takes a position on the issue, whether the fundamental rights of the concerned person were infringed or not.

There is an adequate legal basis for assuring both the Investigating Prosecution Office and any organ of the police that they conduct a fair investigation, detecting all the details of the alleged facts in all cases of ill-treatment which came to their knowledge.

Requests for information (Paragraphs 15, 16, 17, 19):

“Whether there is a specific obligation for health-care staff to report cases of ill-treatment?”

In the sense of Decree Nr 19/1995. (XII. 13.) BM of Minister of Interior on the regime of police holding facilities:

“In the course of the medical examination, the doctor shall record in writing all surfacial signs of injury observed on the detainee’s body-surface, together with information relating to the circumstances of their origin, or the doctor shall subscribe a declaration, indicating the absence of such outward signs of injury. If the detainee alleges that he has been ill-treated, a protocol shall be drawn up. A copy shall be forwarded to the organ, accomplishing the detention, and another copy has to be sent to the prosecutor, charged with the inspection of prison establishments. “

This disposition has been inserted in Decree as issue of CPT previous recommendation.

In the sense of Section 171, Subsection (1) of the Code on Criminal Proceedings: "Anyone may lodge a complaint concerning a criminal offence.

It is obligatory to lodge a complaint, if failure to do so constitutes a criminal offence. In conformity with Section 172, Subsection (1) of the same Code, generally, the complaint shall be made with the prosecutor or the investigating authority verbally or in writing. Consequently, CPT's expectation, that the suspicion of the ill-treatment – probably against the denial of the injured person and even in the absence of an allegation from the person concerned – should be reported to the prosecutor, has a legal ground.

On the basis of the effective decree on the regime of the police holding facilities, the commandant of the police holding facility or the person in charge of the implementation of the detention shall be responsible for the enforcement of the detainee's right to legal remedies.

"The health-care staff working in the police holding facilities should be aligned as closely as possible with the mainstream of health-care provision in the community at large":

In terms of the provisions of Decree on the regime of police holding facilities in force, medical care shall be provided for detainees primarily by the police doctor's service, and in the absence of such service, health-care should be assured – on contractual basis – by the municipality health-care service.

The purpose of the medical examination preceding the detainee's admission to the police holding facility is to appreciate whether the concerned person is able to endure the detention or not. During the detention, the police shall be obliged to assure the minimal basic health-care service, which permits the maintenance of the interested person's good health, prevents endangering of the health, and eventual further failure in health condition of the detainees.

The medical examination preceding admission to the police holding facility by a doctor chosen by the interested person would require the modification of the referred legal provisions.

Carrying out of the medical examination is authorized – and also expedient - for persons, having some overview to the internal regime and rules of the prison holding facility, and conditions of the detention. He/she must thoroughly know the circumstances of detention, as well as the scope of the cares and services, which may be provided to the detainee.

Therefore the concerned specialists believe that enlarging without restriction the number of doctors authorized to carry out medical examination preceding admission to the police holding facility seems unjustified.

"Up-to-date information in the case, referred to in Paragraph 16 of the Report":

It is mentioned in Paragraph 16 of the Report, that the woman concerned had been medically examined on 24 March 2009 at the Miskolc police holding facility. She had displayed different surfacial signs of injury; while her allegations on the origin of which were quite inconsistent. The competent local authority, i. e. the Investigating Prosecution Service at Miskolc, conducted the investigation. At the issue of the investigation, it has been established that the injuries had not resulted from the police action, and the woman had not been ill-treated by police officers.

"Disproportional character of the simultaneous application of multiple means of restraint against the remand prisoner being held in "K" cell, Gyorskocsi utca"

CPT required response and information within tree months from the Hungarian authorities on the taken measures. The response and information required have been sent in compliance with the prescribed deadline, by the letter Ref. Nr. Ig. 0344/2009, pages 1 and 2, addressed to H.E. President of CPT.

“Clarification of the issue on the maximum length of stay of a remand prisoner in “K cell”.

“K” cell objected in the Report was constructed in 1995, and it was established on the basis of the gathered information, that the maximum length of stay in this especially constructed cell was a period from the 18 April 1997 to the 3 June 1999, spent by a remand prisoner in a concrete case, having this cell as provisory dweller.

“The rather low proportion of the Independent Police Complaint Board’s “recommendations”, which has been followed by the police” (Paragraph 20):

The members of IPCB were elected the 25 of February 2008. After, they began immediately the preparations for constituting meeting and drafting Regulations. The meeting of constitution took place on 5th March 2008, where members elected – by voting with unanimity – the president and the deputy president of the Board. The Regulations were adopted by voting with unanimity on 7th March 2008. IPCB published its information for 2008 on its activities in March 2009 (just before the period of CPT visit to Hungary). This information was also put on the www.panasztestulet.hu Web-site. The first report on 2008 activities gives a detailed picture of the experiences, gathered during the first year of functioning of this new legal institution. With respect to the majority of the suggestions made for redressing anomalies revealed in the course of the elaboration of IPCB positions, the police have the identical point of view as the majority of IPCB members.

It is worth to mention with respect to the relevant paragraphs of the Report, that IPCB adopts *not recommendations, but positions*, reflecting the majority opinion of its members.

The Director General of the National Police – with respect to the special dispositions of Act on the Police – shall render his decisions in conformity with the norms, set forth in Act CXL of 2004 on the general rules of the procedures and services of administrative authorities. If his decision differs from IPCB position, he shall expose the justification of that divergence in the reasons of the decision with indication of all legal references.

Considering that the complainant mostly does not know the precise text of the referred legal dispositions, this text is indicated in footnote, with the purpose of avoiding ambiguity in all cases. This simple technical solution is intended to provide first hand information to the public on the possibilities - and in the same time on the limits - of exercising its legal rights, as well as the means of observation of the imposed obligations, and the relevant jurisprudence on legal basis.

These decisions shall always be sent to the head of the police authority, having effectuated the contested police action (so to say to draw a lesson of the case, and for reporting the case to the staff, and avoiding similar cases), to the hierarchic superior authority, to the Head of Chief County/Budapest Police Directorate (and as circumstances may require, together with recommendations to make measures by leading police officers in the matters, not concerned by the given case, but in connexion with it).

The police are an authority charged with the application of the law; therefore it would be particular enough to vest it with the power to determinate the attributions of the Independent Police Complaint Board. Certainly, they can express their opinion, because they experience to their cost, which of principal issues are regulated, are not regulated or are not regulated enough. When IPCB takes position on an issue, it expresses its point of view, whether the police action concerning nationals has to be considered as infringement of the constitutional basic rights, or on the contrary, as a form of the manifestation of the legal restriction of these rights.

In 2008 (probably CPT has been informed on this period) a “condemning” position by IPCB had been sent to the Director General of the National Police at the issue of 38 investigations. In these cases, the majority of IPCB members delivered the opinion that the infringement of the fundamental rights had exceeded the small degree.

There were 35 cases among these 38, which have been concluded by a final decision on the merits, 1 proceeding has been suspended, and in 2 cases, the decision-making – in respect to the dispositions of Act on the general rules of the procedures and services of administrative authorities – passed over to 2009.

Among the decisions, rendered by the Director General of the National Police in first instance, there were:

- 21 decisions on refusal the complaint (14 decisions of which have been rendered in connexion with the incident of 11th April 2008, Clark Ádám tér¹, i.e. on the same facts);
-
- 8 decisions on partial approval of the complaint;
-
- 6 decisions on approval of the complaint.

At first sight, the proportion of the definite rejections of IPCB's positions seems to be quite high (60%), but it must be noted, that among the 21 cases, there were 14 relating to the same series of police actions applied in the same time and on the same site. It amounts to saying that if these cases were interpreted as a single fact, the real proportion of the rejecting resolutions would constitute only 20%.

The fundamental difference between the approaches of the Director General of the National Police and IPCB was in the different treatment of mass demonstrations (essentially in connection with the events of 11th April 2008), the appreciation of proportionality of police actions, and the legal grounds for apprehensions after these incidents.

There is a fair professional cooperation between IPCB and heads of the Police; the Central Bureau of Complaints and regional police entities, charged with the treatment of the complaints have determinant part in the formation of such relations.

¹ Resort by the Police to measures of coercion, in connection with a mass demonstration near a first instance court building.

The status of the settlement of IPCB's positions, sent to the General Directorate of the National Police in 2009 is presented by the following schedule (until 29 October 2009 inclusive):

Repartition of the decisions by the Director General of the National Police concerning the positions of the Independent Police Complaints Board:

	from 1 st June to 31 December 2008	From 1 st January to 31 October 2009
Number of IPCB's positions sent to the Director General of the National Police	39	52
Passing over the next year	2	-
Completed in the course of the period of reference	37	-
Suspended	2	50*)
Pending proceeding		2
Decision by the Director General of the National Police on the merits	35	50
	(of which 14 relating to the events of 11 April 2008, Budapest, Clark Ádám tér)	(of which 19 relating to the events of 15 March 2009, Budapest) ²
Termination of the proceeding	-	1
Approving the complaint	8	8 (6 of which – events of 15 March 2009)
Partially approving the complaint	6	27 (13 of which – events of 15 March 2009)
Rejecting the complaint	21	13

*) Among the cases, closed in 2009, is one case, which was suspended in 2008, and 2 cases from 2008. The pending case from 2008 was not reopened yet.

Report on the treatment of the complaints

Data on national level	from 1 st January 2009 to 31 st October 2009
Total number of applications	3634
Complaints against police actions	1394
Requests for IPCB (complaints on infringement of fundamental rights)	489

The fair approach of the Police to IPCB may be illustrated by the following – non exhaustive – enumeration:

- After the election by the Parliament of IPCB's members on 25 February 2008, the contacts have been brought on high level: the Director General of the National Police invited IPCB president to the National Police;
- IPCB president and members participated in the meetings of leaders of the National Police, held in April and May 2008;
- In view of debating experiences, and determining actual framework for their further cooperation, the officers of the controlling service of the National Police participated, on 29 September 2008, in a professional meeting in IPCB headquarters;

² Resort by the Police to measures of coercion, in connection with a mass demonstration.

- The officers of the controlling service of the National Police organised a professional forum, the 18 February 2009 for the professionals of IPCB, the Administrative Division of the Metropolitan Court, the Metropolitan Prosecution Service and the Ministry of Justice and Law Enforcement, where the most important procedural experiences have been debated;
- The officers and agents working at the Central Bureau of Complaints of the National Police are in daily work relationship with IPCB; in view of assuring rapid flow of information, IPCB has also been connected to the National Messenger Service;
- The amendment of certain intern norms (like administrative regulations, regulation of the treatment of the complaints) are implemented in a coordinated manner with IPCB;
- The National Police allowed (free of charge) 2 cellular phones for IPCB in a view of assuring direct and rapid access to the high rank officers of the National Police;
- The mutual accessibility between the Web-sites of this two organisations;
- In conformity with the dispositions of Act on the Police, there is a monthly information for IPCB on the applications and complaints against police actions sent to the police (the pilot plan of computerised version of on-line accessibility has been completed, and IPCB may have access to this network soon);
- The most important experience gathered by IPCB members from the date of IPCB constitution was published in September 2009. The booklet had the title: *One and half year on review. The most important problems in the practice of the Independent Police Complaints Board*. The Central Bureau of Complaints sent this publication to all directors of the country chief police directorates, calling up their attention to certain parts considered important with a view to the functioning of the police;
- Members of IPCB have recently paid a visit to all country chief police directorates in the near past, for furthering the fair professional relationship with them.

“The data on complaints of ill-treatment made against police staff in years 2008 and 2009” (Paragraph 21):

Considering the statements laid down in the Report, a survey has been conducted on the information, complaints and denunciations because of ill-treatment by police staff and recorded by the police, as well as on the number of criminal proceedings instituted in these cases and issues. The relevant data are summarised as follows:

Statement

on the complaints registered by police organs because of ill-treatment by police staff and on the number of criminal proceedings instituted in these cases
2008-2009³

1/ Number of information and complaints because of ill-treatment by police staff:

2008: 231

2009: 236

2/ Number of refusals of complaints as unfounded and number of different proceedings instituted on the basis of complaints:

2008: complaints refused:	21
disciplinary proceedings:	26
criminal proceedings:	184

2009: complaints refused:	22
disciplinary proceedings:	25
criminal proceedings:	189

³ Until 31 October 2009 inclusive.

3/ Criminal and disciplinary sanctions imposed:

	<u>Termination of the proceedings</u>	<u>Criminal/disciplinary conviction</u>	<u>Pending proceedings</u>
<u>2008</u>			
Disciplinary proceedings:	23	3	-
Criminal proceeding:	143	3	38
<u>2009</u>			
Disciplinary proceedings:	6	1	18
Criminal proceeding:	83	1	105

3. Procedural safeguards against ill-treatment of persons detained by the police (Paragraphs 23, 24 and 25):

As concerns the statement in Paragraph 22 of the Report, the dispositions in Section 128, Subsection (1) of Act XIX of 1998 on Criminal Proceedings are referred, namely:

“The relative of the defendant designated by the defendant shall be notified of the warrant of custody and the place of detention within twenty-four hours; in the absence of such a relative, notification has to be made to another person designated by the defendant.”

According to Section 47, Subsection (3) of the Code on Criminal Proceedings, if the defendant is detained, the court, the prosecutor or the investigating authority, at which the criminal proceedings is in progress, “*notifies without delay the establishment, carrying out the detention of the defendant*” on the person of the mandated counsel for defence, and in the sense of Section 48, Subsection (8), on the person of the *ex officio* appointed counsel for the defence (these dispositions were enacted by Sections 6 and 7 of Act LXXXIII of 2009).

Hungarian authorities would like to receive the interpretation of CPT recommendation “with regard to access to a lawyer as from the very outset of deprivation of liberty”. The lawyer is not present during the apprehension, or when the person is caught in *flagrant delicto*; it happens sometimes, that he/she is not available, and the authorities can not let evade the delinquent against which an arrest warrant has been issued by the court, only because a lawyer is not present on the scene of the capture.

Comments

“Hungarian authorities should take measures to ensure that detained persons are provided with feedback on whether it has been possible to notify relatives of the fact of their detention” (Paragraph 23):

Instructions have been issued by the General Director of National Police on the notification of a relative or third person designated by the criminal suspect. In the sense of these instructions, the notification has to be performed promptly, and the fact, mean and time, or failure of the notification has to be recorded in the form of a note, or on the decision ordering the apprehension/arrest. The note has to be treated together with the dossier of the detainee.

“The form of rights of detainees should be available in an appropriate range of languages” (Paragraph 26):

In conformity with Section 2, Subsection (8) of Decree on the regime of police holding facilities, a booklet in 9 languages informing on the detainees’ rights is available in all police holding facilities in use,

which – as a routine procedure – continues to be transmitted to all detainees at their admission to the facility. Nevertheless, these booklets are obsolete from certain aspects, therefore, amendments of the instructions Nr 16/1996. (VIII.23.) ORFK of the National Police Directorate on the deliverance of the Regulations on Service in Police Holding Facilities is foreseen for 2010; the unified and actualised form shall be enacted as attachment to the said instructions, and the documentation certifying that detainees have been informed of their right shall be assured.

4. Conditions of detention in police establishments

Recommendations

“Completion of measures as regards to remedy the deficiencies referred to in paragraphs 27 and 28 of the Report”:

Police holding facilities in Hungary – except for a few numbers of such establishments – have been constructed several decades ago; their architectural design reflects considerations and standards other than those of the rule of law. Police holding facilities, where material and physical conditions of detention did not correspond to the standards laid down in the European Prison Rules and where the detention could not be carried out without the infringement of the fundamental human rights, have been closed without exception.

The estate of maintenance of the police buildings – except for a few of them – has essentially declined during the past years. Financial allocations from the national budget for the reconstruction, maintenance of these building has not increase, and only the reasonable and urgent renovation works could be completed from police resources. Therefore, there was not any encouraging change as regards to the state of repair and material conditions of police holding facilities.

Financial resources for financing the renovation of police holding facilities and waiting rooms for “apprehended” persons are extremely reduced.

The statements above cover the Budapest central holding facility of National Police Directorate at Gyorskocsi utca and the Miskolc police holding facility too, nevertheless, with a view to CPT recommendations, they shall enjoy special priority in the program of renovation or eventual reconstruction of the police holding facilities.

“Regime of activities provided for misdemeanour offenders and the review the visiting arrangements” (Paragraph 30):

The ways of communication between the detainees held in police holding facilities are essentially regulated by Section 18, Subsection (1) of Decree on the regime of police holding facilities. The application of the dispositions, ruling the separation of the detainees and the primacy of the interests attached to the investigations allow a very restricted margin to the detainees to meet persons other than their cell-fellows. Accordingly, while doing outdoors activities or being in areas of common use, they are authorised stay together only with peoples accommodated in the same cell.

“Detailed regulations on in-cell video surveillance to be adopted” (Paragraph 31):

Sharing the recommendation of CPT, the competent authority shall incorporate the detailed regulations on in-cell video surveillance into the instructions on the *Regulations on Service in Police Holding Facilities* as their organic part, and with special attention to the efforts aimed at deregulation.

According to the statement of the Ministry, the dispositions on data treatment are adequately enacted by Act on the Police; therefore the special regularisation on in-cell video-surveillance on instructions’ level by the Director General of the National Police would be adequate and sufficient – together with other special regulations on police holding facilities.

“Measures to be taken to ensure provision with a mattress and blankets in police waiting rooms at night, and assuring ready access to a toilet” (Paragraph 32):

The possibility of being allowed to go to the toilet for the persons, held in waiting rooms for apprehended persons is already assured in all such establishments, insomuch as in the sense of legal dispositions in force, whenever a person is accommodated in such a room, his/her custody shall be assured by a member of the custodial staff, assigned especially to his/her person, who shall act in all cases for assuring the access to a toilet, if the detainee demands to be allowed. There is only one exception, when the member of the custodial staff watches the detainee not standing near the door of the waiting room for apprehended persons, but through a closed video-surveillance system. Nevertheless, the necessary measures are always to be taken in such cases too.

As regards to CPT recommendation to ensure that, if apprehended persons have to spend the night in a police waiting room, they are provided with a mattress and blankets, the Ministry has professional counter-arguments as follows:

- the waiting rooms for apprehended persons are located in heated police buildings, where detainees stay in their own clothes, therefore it is dispensable to assure blankets;
- if the detainee's clothes are inadequate for the temperature of the room, or if he/she needs a blanket in any individual case, the custodial staff may take measures for providing him/her with blankets;
- the basic pretension of the competent authorities is that the apprehended persons should not spend the maximal duration of the apprehension in waiting rooms for apprehended persons, but they should be released long before its expiration. In case when their further detention would become necessary, they should be admitted as soon as possible to a police holding facility;
- the waiting rooms for apprehended persons are generally equipped with a view to the above purpose, and mattress and blankets are necessary in a very few cases. If necessary, the relevant measures are always taken.

Comments

“Video-surveillance systems should not replace frequent direct observation of cells by police officers” (Paragraph 33):

Hungarian authorities agree to this remark of CPT, therefore the Ministry shall take it into consideration during the elaboration of the new regulations on video-surveillance.

Requests for information (Paragraphs 28 and 30):

“Detailed information about plans to refurbish the exercise yards at the Budapest police central holding facility, Gyorskocsi utca”

The schedule relating to the renovation of the Budapest police central holding facility has been approved by the General Directorate of Economy of the National Police in 2008. Nevertheless, the necessary funding for the completion of the renovation has not been assured in conformity with the schedule. Accordingly, the refurbishing of the exercise yards of the police central holding facility has not been accomplished in 2009 in default of funding. The maintenance works shall be executed in April or May 2010, at the earliest possible date, depending on intemperance of weather, and allowance of the necessary funding by the budget for 2010.

B. Foreign nationals held under aliens' legislations

1. Responses to the preliminary remarks

In the sense of Section 61, Subsection (1) of Act II of 2007 on Admission and rights of residence of third-country nationals, the immigration authority shall carry out the detention in places, designated for that purpose, which is – in application of Section 1, Subsection (1) of Decree 27/2007. (V. 31.) IRM Minister of Justice and Law Enforcement on the implementation of detention, ordered in immigration procedure – the guarded shelter, run by the police, competent by the headquarters of the immigration authority, having ordered the detention.

The term of “compulsory place of stay” is not qualified as detention. The immigration authority shall order the confinement of a foreign national in a designated place – among other things - , if he/she is released from detention; however, there are still grounds for his/her detention (Section 62, Subsection (1), Paragraph d) of Act II of 2007.). The compulsory place of confinement shall be designated at an open community shelter, run by the Office of Immigration and Nationality, but not at a guarded holding facility/shelter for aliens, run by the Police for nationals of third-country.

3. Ill-treatment to the prejudice of foreign nationals:

Recommendations:

“Staff working at the Nyírbátor holding facility/guarded shelter to be given the clear message that the ill-treatment of detained persons is not acceptable” (Paragraph 36):

In the sense of Section 16, Subsection (4) of Act on the Police, *“The police officer shall not apply torture, duress, cruel, inhuman or degrading treatment ...”*

The Code of Ethics of the profession of police officers declares in paragraph 4, that *“The police officer shall recognise and protect human dignity, respect the human and individual rights. He/she shall precede in an objective manner, without respect to the gender, age, nationality, ethnicity, confession or political conviction, social and property status.”*

Beyond the obligation that the police staffs have to be acquainted with the above norms, the Police attach special importance to trainings. The custodial-escort police staff participates regularly in trainings, aiming at the improvement of the treatment of conflicts, and enhancement of the sensibility of its members.

“The management of the Nyírbátor holding facility /guarded shelter to take steps to address the issue of inter-detainee violence/intimidation” (Paragraph 37):

The inter-detainee violence/intimidation may essentially be accounted for the great number and large ethnical diversity of the detainees, and also for the cultural and religious differences resulting from these circumstances.

In 2008, a total number of 452 persons, and until 30 November 2009, a total number of 584 persons have been admitted, mostly nationals of Kosovo, Albania and Serbia, while the proportion of the nationals of India, Pakistan, Afghanistan, Turkey, Viet Nam, Iraq, Iran, Macedonia, Georgia and Russia was smaller.

Whilst considering the existing architectural design of the building, special attention was paid – in the course of the elaboration of the domestic rules - to the prevention of situations that may lead to conflicts among detainees.

Within the enumerated ethnical categories, hostility between Serbian – Kosovar, Russian -Georgian and Turkish – Kurdish ethnicities is widely known, therefore the prevention of conflicts, manifesting in assaults is possible only by consequent separation of these persons, to which the management of the guarded shelter of Nyíregyháza pays particular attention.

The allocation of the cells, situated in the two corridors of the building suits specifically the principle, aimed at the prevention of throwing together in the same community the mentioned hostile with each other ethnicities, and that they shall be securely separated while in leisure time under domestic regulations.

In the architectural state before the reconstruction of the building in 2005, the detainees moved freely; there were every week regular assaults in groups and intentional deteriorations, motivated by the mentioned causes. After the renovation in 2005, there were only 30 such conflicts in 2008 and 9 in 2009, while the number of detainees has increased threefold in comparison with the total number of detainees in the period before 2005.

“To carry truncheons and handcuffs hidden from the view in guarded shelters for aliens” (Paragraph 38):

Detention of foreign nationals under aliens’ legislation has to be implemented in guarded shelters, run by the Police. In the community shelters, run by the Immigration and Nationality Office, it is not police officers, but exclusively public servants employed by the Immigration and Nationality Office who work, and they are not authorised to use coercive means.

In accordance with Paragraph 44 of the instructions Nr 43/2008, (OT 25.) of the National Police Directorate on the guarded shelters run by the Police, the custodial-staff shall carry out their duty in regulation uniform adapted to the season, and equipped with chemical device, truncheon and handcuffs.

Hiding of such devices is not soluble (example: truncheon), on the one hand, and if they are hidden, it would expressly cause a disadvantageous position to the detriment of the bearers for tactical reasons at taking actions, on the other hand, because they should be encumbered in the use in action against incidents, therefore – reaffirming the referred above position of the Ministry concerning police holding facilities – the Ministry regards hiding these devices not justified.

Comments:

“Pepper spray should not form part of the standard equipment of custodial staff and, as a rule, should not be used in confined spaces” (Paragraph 38):

As indicated above, the chemical device forms part of the standard equipment of the custodial staff. The mechanism of action produced by the police standard chemical device is not destroying body tissues, but provisory irritating terminal filaments on the mycoderm. Active agent in the regulation chemical devise, the so called “pepper spray” is the capsaicin $(\text{CH}_3)_2\text{CHCH}=\text{CH}(\text{CH}_2)_4\text{CONHCH}_2\text{C}_6\text{H}_3-4-(\text{OH})-3-(\text{OCH}_3)$, which has no irreversible effect. This devise may also be used in confined spaces. During the visit of CPT delegation at that establishment, the staff used the device type, which releases active agent in the form of foam, and that has expressly been conceived for the use in confined spaces. The foam, released by the device, has effect only on the targeted person, contrary to the other types, which eject active agent in the form of spray. The used type of devise is a special, purpose-made one.

No use of this chemical device has been made in guarded shelters in 2009.

Request for informationA copy of the instructions given to staff on the use of pepper spray (Paragraph 38):

According to Section 49, Subsection (1) of Act on the Police, the police officer may use regulation chemical or electric shocking device, police truncheon or flat of sword in order a) to avert an attack directly endangering the life, bodily integrity of others or his own or the security of property
b) break resistance to a lawful action taken by police.

Section 61 of Decree Nr 62/2007. (XII.23.) IRM of Minister of Justice and Law Enforcement on Police Service Regulation disposes on the use of chemical devices as follows:

“Section 61. (1) The police officer may use regulation chemical or electric shocking device, police baton or flat of sword on his/her initiative or on his/her superior’s order.

(2) All other casual devices which have the same effects, as the regulation police baton are considered as police baton (truncheon, tonfa).

(3) The police officer may keep on the devices indicated in paragraph (1) out of service, but must not carry them in a visible manner.

(4) When beginning to proceed to action, the police officers – if the circumstances require to do so – must keep in readiness the chemical device, the electric shocking device, police baton, sword take in their hand, and prepare themselves to the breaking down of the counteraction.

(5) The whack should – as far as possible – stroke the attacking limbs; it should be avoided, that the whack directs at the head, the waist, the stomach or the abdomen.

(6) The coercive devices are not to be used after the termination or the breaking down of the attack or physical opposition

(7) Tear-gas grenade may be used for the forced dissolution of crowd, or for forced dispersal of the centre of the opposition, provided that it may be applied only by order, in the manner determined by the commandant being on the spot, and if precautions have been made in the same time for the protection of the police officers against effects of the tear-gas.”

The instructions on tactics of the use of chemical devices are set forth in the attachment to the instructions Nr 18/2008. (OT 10.) ORFK National Police Directorate on basic tactics in practical carrying out police actions”, pages 57-58.

Conditions of detention in guarded shelters

Recommendations

“In the context of the implementation of plans to enlarge the capacity of the Budapest holding facility/guarded shelter for aliens, the minimum standard of 4 m² of living space per detained person in multi-occupancy rooms to be observed” (Paragraph 39):

One of the objectives of the European Union is the enhancement of the efficiency and efficacy of the implementation of the tasks, connected to the border guard, the harmonisation of the applied procedures. Particular attention is paid in the European Union to the enforcement of the humane treatment of persons in the area of the border guard and connected fields, therefore the criteria for the establishment of guarded shelters and assurance of humane conditions of accommodation for detainees have been set forth in a Recommendation of the Council. The criteria for the establishment of guarded shelters are regulated in details in the Hungarian legislation by Section 129, Subsection (1) of Act II of 2007 on Admission and rights of residence of third-country nationals.

The primary purpose linked to the enlargement of the Budapest guarded shelter is the construction and running of a guarded shelter, which shall be conform to the Hungarian standards and those of the European Union and at the same time the enforcement of humane and secure detention of foreign nationals.

The more comfortable and humane accommodation means also the essential enlargement of the living space per person (a minimal space of 5 m²/person), the formation of unities accommodating 3-4 persons, the complete renovation of the premises, used by the inmates, the change of the furniture, and setting up separated smoking areas for the protection of non-smokers.

The increase of the number of living unities shall permit the separation of the inmates as per their religion and ethnicity, and that shall diminish situations of conflict between inmates.

“Measures resulting from Paragraph 42 of the Report”:

The premises serving the accommodation of the foreign nationals are located in the strict security zone of the Ferihegy Airport. The escort of detained foreign nationals to outdoor exercise on the Airport territory may not be assured because of security problems.

Direct exit from the buildings to the territory, designed for outdoor exercise, and adequate in respect of the security of custody is assured in the guarded shelters run by the Police in Győr, Kiskunhalas and Nyírbátor. The direct exit in Budapest could not be assured because of the location of the guarded shelter. Therefore, the escort of the inmates shall be considered as escort out of the detention area. According to Paragraph 74 of the Regulation on police holding facilities, the police officer carrying out the custodial escort has to accomplish this task with the regulation equipment, including guiding strap, attached to handcuff and handcuff-securing belt. The guarded shelter in Budapest is equipped with basketball, rib-stall and horizontal bar, which are at the detainees' disposal. At Nyírbátor, balls are regularly provided to inmates, but the detainees damage them. The courtyard of the guarded shelter is daily cleaned by the staff.

“To make further efforts to develop the regime applied to foreign nationals held in holding facilities for aliens / guarded shelters” (Paragraph 43):

With a view to spending leisure time in a useful manner, the detainees have in their disposal TV set, radio, books and journals in foreign languages, magazines, board-games, playing-cards, chess in Budapest; the library in Nyírbátor consists actually of 300 volumes in languages that detainees speak mostly; and contacts have been established with the Red Cross with the aim to enrich the fond of books. It is foreseen by Section 17, Subsection (1) of the relevant Decree of the Minister of Justice and Law Enforcement, that detainees may use means of general education and sports in the designated area; they are also authorised to use the library, listen to radio-programs, and watch TV emissions. Ways of spending leisure time and using opportunities for general education are to be regulated by domestic regulations of the guarded shelter [Section 5, Subsections (1)-(2) of Decree on police holding facilities].

“Steps to be taken to review visiting arrangement at the Nyírbátor guarded shelter”

The architecture of the premises, designated for visits has been designed primarily with respect to the security considerations, according to the effective legal norms and standards. The physical separation of the visitors from the visited persons serves the prevention of delivery of prohibited objects. The means of keeping contacts, included circumstances of receiving visitors, are to be laid down in the domestic regulations of the guarded shelters.

The detainees may meet their mandated defence lawyer not in this are, but on the premises of admissions/hearings.

Comments:

“The detainees’ rooms in the Nyírbátor guarded shelter for aliens should be equipped with a call bell” (Paragraph 40):

The dormitory sections in the guarded shelter at Nyírbátor, were constructed according to the principal requirement for assuring “vandalism-proofing” quality, in order to prevent intentional deteriorations, having caused serious material damages in the past. Consequently, that is for this explicit reason why armoires have not been installed in the detainees’ room.

The equipment of the rooms with call bell would require important financing, and that does not seem be justified with consideration of the incidents having occurred in the past. In the sense of Paragraph 42 of the Instruction on the guarded shelters, for the purpose of secure custody, the guards shall control the detainees’ compartment once an hour, and if they are isolated, or are accommodated individually, in the dormitory section – every 20 minutes, and all inspections have to be documented. The detainees, who have provoked an incident, have to be inspected even more frequently, as well as detainees, who are presumed - on the basis of their compartment - to perpetrate such actions.

The locking of the dormitory sections serves security purposes; it is justified by the high number of detainees, and the very different ethnical composition of the guarded shelter’s population, and aims at the prevention of incidents.

Requests for information

“Details on the plans to enlarge the capacity of the Budapest guarded shelter” (Paragraph 39):

The primary purpose of the reconstruction of the Budapest guarded shelter is the construction and running of a guarded shelter, which will conform to the Hungarian standards and those of the European Union and assure at the same time the secure detention of foreign nationals. The technical inspection has been made on 21st December 2009, but the putting into use of the new premises was delayed to the end of January 2010, because of the repairing of the detected deficiencies.

The strict regime of visits (Paragraph 44):

In Paragraph 44 of the Report, a question has been asked, namely: “why persons held under aliens’ legislation, which are neither convicted nor suspected of criminal offences, should be subject to visiting arrangements that are usually seen in strict-regime prison establishments”. It has been noted in this context, that in the sense of the previous aliens’ legislation (Act XXXIX of 2001 on entry and stay of foreigners), the alien policing detention should be implemented in a penitentiary establishment, when the foreigner has been released from a penalty of loss of freedom, imposed owing to having committed a deliberate criminal offence; in other cases, the detention was implemented in holding facilities, run by the Border Guard. This difference has been abrogated by the new aliens’ legislation which entered into force on 1st of July 2007. In the sense of Section 129, Subsection (2) of Act II of 2007 on Admission and right of residence of third-country nationals, a guarded shelter must not be established on the territory of a police holding facility or prison establishment. In this context, Section 1, Subsection (1) of Decree of the Minister of Justice and Law Enforcement on the guarded shelters disposes, that the alien policing detention against a national of the European Economic Area or of a third country, or his/her family member, shall be implemented in the guarded shelter, run by the Police, having competence on the basis of the location of aliens’ policing authority headquarter, having ordered the detention.

4. Health care

Recommendations

“Steps to be taken at the Nyírbátor holding facility /guarded shelter to ensure the presence of a feldsher on a 24-hour basis” (Paragraph 45):

At Nyírbátor guarded shelter, the recruitment of the staff is actually in progress, in view of assuring continuous medical surveillance and care for inmates. Detainees have prompt access to the medical services, which are provided either by the regular doctor charged with the medical care of the staff, or by doctors, working in municipal polyclinics.

“To introduce systematic medical screening of persons admitted to the Ferihegy Airport transit zone shelter” (Paragraph 46):

There is not any legal obligation in force, which prescribes the medical screening of returned foreign nationals.

If there are signs, indicating the necessity of such a medical screening, or on the request of the interested person, the medical examination shall be pursued by the medical doctor working at the Budapest Airport joint stock company on contractual basis (for a fee of 5.000 – 7.000 HUF / medical examination). These expenses are accrued by those of interpretation (minimal fee of 5.000 HUF/hour).

“To ensure that confidentiality of medical documentation is strictly observed” (Paragraph 47):

The medical documentation of persons, accommodated in the guarded shelters is kept in the doctor’s consultation room, in a manner that no unauthorised person has access to it. After the termination of the detention, the medical documentation shall be put into the file of the case, but in a closed envelope.

“To stop the practice of entrusting feldshers working in holding facilities/guarded shelters with custodial tasks” (Paragraph 47):

The necessary measures were taken in this field in order to review – and if necessary, discontinue - this practice by the competent heads of county chief police directorates.

Request for information:

“To align health-care staff working in holding facilities /guarded shelters for aliens as closely as possible with the mainstream of health-care provision in the community at large” (Paragraph 47):

The Ministry has the same position concerning guarded shelters as developed in the context of the police holding facilities.

5. Safeguards

Recommendations

“Steps to be taken to ensure that written information on detainees’ rights, internal rules and applicable procedure is available in the languages most commonly spoken by foreign nationals” (Paragraph 48):

The Police already accomplish entirely their obligation for providing information towards the foreign nationals, but written information is only available in Hungarian, with verbal interpretation, and also in the foreign national’s mother tongue or in other languages which he/she understands, by using forms.

As experience proves, nationals from third countries quickly forget the information provided them this way, and they frequently lose the forms on their rights and duties. It is required to continuously replace the information sheets, domestic rules, etc. posted on the notice board in the common area, because detainees systematically damage and detach them.

Having in mind the obligation to respond to the requirements expressed by the European Union's legal norms and Hungarian laws on more effective and continuous information of wider range of foreign nationals, Hungarian authorities submitted in the past applications to EU tenders for obtaining funding for the installation of a computer based information system, accessible constantly by detainees. Such a "vandalism-proof" quality Internet access would ameliorate the general conditions of subsistence for detainees, and would also enhance the useful spending of leisure time.

According to Section 60, Subsection (1) of Act II on Admission and right of residence of third-country nationals, the third-country national placed under detention shall be informed of his/her rights and obligations in his/her native language or another language he/she understands. On the basis of Section 4, Subsection (1) of the relevant Decree of the Minister of Justice and Law Enforcement, the detainee shall be informed, on his/her admission to the establishment, in writing on his/her rights and obligations in his/her native language or another language he/she understands. He/she shall be informed with the help of information sheets or verbally on his/her rights and obligations, the possibility of appliance against him/her of coercive means, and ways or legal remedy. The receipt of the information sheet and the taking place of the verbal information shall be recorded, and the record shall be signed in the presence of two witnesses. The witnesses shall also sign the record.

At the admission to the Nyírbátor community shelter, the foreign nationals to be admitted are informed on their rights and obligations verbally, with the contribution of an interpreter, speaking the native tongue of the concerned person. The fact of having been informed is recorded. Apart from these forms of information, the domestic rules and the usual daily program are posed in the common area of the establishment in Hungarian and different foreign languages. Actually, the domestic rules are accessible in English, Albanian and Serbian languages; nevertheless, depending on the nationality of the foreigners accommodated in the shelter, translation into other languages is made.

"Ensure that persons detained under aliens' legislation have an effective right of access to a lawyer in the guarded shelters" (Paragraph 49):

In the sense of Section 59, Subsection (6) of Act II of 2007 on Admission and right of residence of third-country nationals, the hearing may be conducted at the place of detention and in the absence of the third-country national's legal representative."

The participation of a representative ad litem in the judicial proceedings linked to the detention shall be obligatory in all cases.

In conformity with Section 59, Subsection (5) of the referred Act: "In any case concerning the extension of detention beyond the seventy-two-hour time limit by the court, and in proceedings relating to complaints and further extension of detention, the detainee shall be granted a personal hearing upon request."

In the court proceedings on the extension of the detention, and also in proceedings relating to complaints against the ordering of the detention, any third-country national must be represented by a legal representative. The court shall appoint – on the basis of Section 59, Subsection (4) - a representative *ad litem* for any third-country national who does not understand the Hungarian language and is unable to contract the services of a legal representative on his/her own.

The immigration procedures, instituted by regional agencies of the Immigration and Nationality Office against foreign nationals for infringement of statutory dispositions – in order to accomplish obligation, that the authority shall ascertain the relevant facts of the case in the decision-making process, prescribed for public authorities by Section 50, Subsection (1) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services shall start with hearing of the concerned foreign national and drawing minutes of his/her statement. According to the applicable dispositions of Act on the General Rules of Administrative Proceeding, the regional agencies of the Immigration and Nationality Office shall hear the clients, not speaking Hungarian language in their mother tongue – with the contribution of an interpreter, whom they accept, or in default of such interpreter, in an intermediary language that they speak. During this first hearing, the proceeding immigration public authority shall verbally inform the client of his/her rights and obligations in Hungarian language. Mention has to be made in the hearing minutes of this briefing. The part of the minutes, relating to the briefing on the rights and obligations, shall be separately signed by the client and interpreter in order to attest that briefing was made. In this part of the minutes, the public authority shall inform the client that he/she may be substituted by his/her legal representative or by a person designated by the client or his/her legal representative, and in all cases the client may proceed together with his/her representative. Thus, the Immigration and Nationality Office assures the right to have a legal representative from the very beginning of the immigration procedure, while regional agencies shall take the necessary measures for assuring the foreign national's appearing before the court in all court proceedings instituted for the extension of the detention, and also in proceedings relating to complaints against the ordering of the detention, when the court wishes him/her heard in person.

Comments:

“The regular presence of a legal advisor should be arranged at holding facilities/shelters for aliens”
(Paragraph 49):

There is no legal obligation disposing on the provision of the regular presence of a legal advisor in guarded shelters, nevertheless, on the basis of the cooperation agreement with the Hungarian Helsinki Committee, the Committee's lawyers regularly visit the guarded shelters run by the Police, as well as the Committee's publications are at the detainees' disposal in different languages.

6. Other issues

Recommendations

“To develop specialised training for staff working with foreign nationals” (Paragraph 50):

On the basis of the tripartite convention between the Regional Representation for Central Europe of the United Nations High Commissioner for Refugees, the Hungarian Helsinki Committee and the Hungarian Police, in 2009 intercultural and legal trainings took place 5 times, in the framework of which more than 100 police officers – working with third-country nationals – have been trained, including heads and working staff of the guarded shelters.

There is at present foreign language training in the Airport Police Directorate; several members of the staff working at the guarded shelters have diplomas of foreign language skills.

To the remark made in Paragraph 51:

In the concrete case mentioned in Paragraph 51 of CPT Report, the concerned person at the Nyírbátor guarded shelter, has been a third-country national suffering from mental instability and being under medical treatment, who encumbered the guards in the implementation of their service duties – cell search –, while getting into a burst of fury and attacked the guards, therefore coercive means - physical force and handcuffs – had to be used against him.

“Medical isolators in holding facilities /guarded shelters for aliens under no circumstances to be used for disciplinary or administrative segregation purposes” (Paragraph 51):

In Hungary, there is no such systematic practice in guarded shelters; that was the only individual case, but it was established during the verification, pursued following CPT fact finding, that the concerned person had been accommodated in the medical isolator not as a punishment, but his isolation had been required in order to protect his own and other persons’ physical integrity, and also with a view of assuring the immediate access to the medical unit and staff, and also assuring continuous medical supervision. That provisory measure seemed to be the most expedient solution in terms of the securing custody.

“To ensure that detainees at the Nyírbátor holding facility /guarded shelter have adequate access to a telephone” (Paragraph 52):

According to Section 8, Subsection (1) of Decree Nr 27/2007 (V. 31.) IRM of the Minister of Justice and Law Enforcement on the rules of implementation of the detention ordered in immigration procedure: *“The keeping of contacts by telephone shall only take place by the telephone set, assured by the guarded shelter, and to the detainee’s cost. In conformity with Section 8, Subsection (2) of the same decree, “The telephone calls – exception made for telephone calls with persons enumerated in Section 7, Subsection (1) – may be inspected for security reasons. In case when the telephone call engenders the security of the guarded shelter or the implementation of the detention, the telephone call – after made previous warning – may be interrupted. The detainee shall be informed of the possible inspection.”*

A general opportunity is provided for all detainees at the guarded shelters run by the Police on the basis of Section 18, Subsection (1) to inform their relative or other person of the fact of their detention.

Some time ago, the use of telephone sets was uncontrolled, and that resulted in innumerable situations of conflict – frequently with physical injuries – between the detainees. At present, the telephone sets are used on the basis of previous demands, and the majority of calls take place in the late afternoon and evening hours, because the tariffs are lower in this period than by daytime.

Comments:

“To offer at least one free telephone call per month to those immigration detainees without the financial means to pay for it themselves in the guarded shelters” (Paragraph 52):

It appears from the response above, that detainees’ faculty to have telephone calls is assured in the guarded shelters; nevertheless, in case of lack of financial funds, the free telephone call per month may not be provided. The use of cellular phones is not authorised because of reasons of securing custody.

C. Prison establishments

1. Response to the preliminary remarks

“CPT encourages the Hungarian authorities to pursue their efforts to combat prison overcrowding, by placing particular emphasis on non-custodial measures in the period before the imposition of a sentence, increasing the use of alternatives to imprisonment and adopting measures facilitating the reintegration into society of persons deprived of their liberty.”

As a result of the measures directed at the reduction of the prisons overcrowding, two penitentiary establishments have been built in 2008, with a total capacity of 1 380 new accommodation places. It is owing to that, the overcrowding has decreased from 126 % to 117%.

Beyond that, the management of the penitentiary establishments is steadily searching after possibilities for the implementation of other means for decreasing overcrowding. In the autumn of 2008, the implementation of the program aiming at the convergence of the overcrowding among different penitentiary establishments has been launched, on the one hand, and a draft of proposition has been submitted to the supervising Ministry on the use of so called “electronic guard”, the introduction of which – as a kind of alternative measure - would permit to avoid the serving of imprisonment for authors, having committed petty offences.

2. Ill-treatment in penitentiary establishments

Recommendations

“...Staff at Miskolc and Tiszalök Prisons should be regularly reminded that physical ill-treatment, verbal abuse and other forms of provocative behaviour vis-à-vis prisoners are not acceptable and that the perpetrators of such acts, as well as those condoning them, will be the subject of severe sanctions. The management of both establishments should exercise increased vigilance in this area, including through the regular presence of prison managers in the detention areas, their direct contact with prisoners, and improvement in selection procedures and staff training” (Paragraph 55):

The management of the penitentiary service pays particular attention to the containment and prevention of acts of ill-treatment and other infractions committed by penitentiary staff. The implementation in the penitentiary establishments of the recruitment procedures is promoted by the active participation of the managing staff of the establishment, while training is supported by the development of planned education and formation, as well as methodological systems, and enlargement of themes thereof. Accordingly, not only at the Borsod-Abaúj-Zemplén County Penitentiary Establishment and the National Penitentiary Establishment at Tiszalök, but in all Hungarian penitentiary establishments, trainings on crime prevention have been implemented in the framework of regular staff meetings with the contribution of external lecturers, members of the competent prosecutor’s offices and officials of supervisory authorities. Also themes on crime prevention have been debated in daily briefings and staff meetings.

The management of the establishments frequents systematically the detention areas, and has direct contact with detainees. The number of inspections by the management pursues to be increased, and the implementation of controlling actions is continuous. As before, detainees have the faculty to address their demands directly to the establishment’s management. It is a general approach, that if there is any suspicion of ill-treatment or other infraction committed by the staff, prompt measure shall be made in order to institute the relevant criminal or disciplinary proceedings.

“The relevant regulations on the use of means of restraint be reviewed in the light of the remarks set up in Paragraph 57” (Paragraph 57):

The substance of the regulations on use of means of restraint and practical implementation thereof is that the means of restraint, applicable during movement and escort of the detainees inside and outside the penitentiary establishment shall be determined individually in each case, on the basis of the individual risk assessment of the detainee, having in mind the secure implementation of the detention. The verification of the adequate implementation of the regulation constitutes a permanent activity both on national and local levels of the management.

Measures have been taken in order to assure that the use of handcuffs / anklecuffs should be recorded in a regular standard form, and also in the individual instruction to the treatment of the given detainee, separately from resort to handcuffs.

“Steps to be taken to ensure that dogs are not used in prisoner accommodation areas as a dissuasive measure while a cell search is being carried out”. (Paragraph 58):

As described in the Report, a service dog has been applied without cause at the National Penitentiary Establishment at Tiszalök. The investigation of this case has been carried out on the spot. The incident has been recorded by the video-camera system, and it was established on the bases of the records, that the service dog, mentioned by the interviewed detainee, had really been in the corridor of the accommodation unit while the measure had been started against him. Nevertheless, it clearly appears from the video-records, that the dog was previously in the unit before the search of the cell start, for the purpose of carrying out an other task (searching for prohibited substances), on one hand, and the dog was closed in the bathroom from the beginning to the end of the cell search, on the other hand. Irrespectively from the allegation of the interviewed detainee which has not been proven, the penitentiary management and staff do their best efforts for observing the legal dispositions in all aspects, i.e. that dogs are not used as measures for the intimidation and dissuasion of the detainees. At the same time, there are certain cases when even detainees attitudes or acts provoke situations, menacing the secure detention (opposition to action, assault against the member of the staff, etc.), when using of a service dog becomes unavoidable, even inside the cells. Beyond that, specially trained dogs for the search of drugs are also used for the cell search too, but in such cases, the detainee must not be present.

“The management of the Miskolc Prison make use of all the means at its disposal to prevent inter-prisoner violence and intimidation, in the light of the remarks laid down in Paragraph 60” (Paragraph 60):

“The management of Miskolc Prison to deliver the clear message to custodial staff that any attempts to provoke inter-prisoner violence are totally unacceptable and will be dealt with severely” (Paragraph 60):

The management of the penitentiary administration takes all means to keep back Acts of violence between detainees. This statement is justified by the fact that the penitentiary administration’s developing program entitled *“With responsibility and competence”* determines as individual task the treatment and decreasing the number of acts of violence, economic and sexual duress and torture committed to the prejudice of co-detainees.

Accordingly, not only at the Borsod-Abaúj-Zemplén County Penitentiary Establishment, but at all other penitentiary entities, the implementation of measures aimed at the decrease of such acts is considered as a task of priority, as well as the enhancement of inspections of in-cell activities. All detainees are informed on their admission to the penitentiary establishment on the criminal consequences of such and other infractions.

For preventive purpose, the educators pay continuous attention to the evolution of detainees’ personality to filter persons who may become victims of such infractions.

The understaffing at the detention area makes the situation really more difficult. At the same time, it is considered as important progress that the number of penitentiary establishments, where qualified staff with special competences – including psychologist – is employed, continues to increase. The elaboration of measures, aimed at the decreasing of administrative burdens of the educators has been started, and that shall permit the organisation of more programs for spending leisure time, and create the possibility of accomplishing individual activities, and controls by the educators more frequently.

Nevertheless, if appeared that any staff member provokes any act of violence between detainees, the severest possible sanctions would be applied against him/her.

Comments

“Restraining a person in a hyper-extended position (e. g. with hand and ankle cuffs linked together behind the back) is not acceptable” (Paragraph 56):

The pursued investigation at the Borsod-Abaúj-Zemplén County Penitentiary Establishment in the context of the concrete case did not justify the allegation of the concerned detainee, according to which he was restrained in a hyper-extended position with hand and ankle cuffs linked together behind the back. Naturally, such restraining is not acceptable in Hungary either, therefore staff members are regularly trained to the professional and correct and at the same time proportional use of coercive and restraining means, aimed at the termination and prevention of detainees’ incidents.

“Any conduct of the type described in Paragraph 56 (i. e. handcuffs fixed behind the prisoner’s back and raised to inflict pain) should be considered as constituting an assault” (Paragraph 56):

In the context of the remark made in the Report, an investigation has been ordered in the National Penitentiary Establishment at Tiszalök, and information has been deposed to the competent military prosecutor’s office for suspicion of the criminal offence “mistreatment in official proceedings”.

It appeared from the pursued investigation, that handcuffs and physical restraint, means of restraint had been applied against the denominated detainee, with the purpose to break down and control his dangerous comportment, endangering the security of the penitentiary establishment. Action against him was registered by the video-camera on the floor of the area. It was established that the allegations of the detainee, that the handcuffs and dog were applied in an unprofessional manner to his prejudice, had not been proved.

The relevant video-records have also been transmitted to the military prosecutor’s office. The military prosecutor proceeding informed the commandant of the concerned penitentiary establishment on 19th June 2009 that no criminal offence was detected in the course of the investigation; the investigation instituted in that case had been terminated by resolution which had also been sent to the concerned detainee.

“A system of cell representatives should not prevent direct communications between custodial staff and other prisoners” (Paragraph 59):

In the sense of the effective legal regulation, the education officer may designate a cell representative with the purpose of organising the in-cell living and that of in the accommodation area, the tasks of whom are determined by the domestic rules of the establishment. The task of the representative shall be to call his/her co-detainees’ attention to observe the dispositions set forth in the domestic rules and daily program of the penitentiary establishment, and if he/she perceives that they are not observed, to remind the co-detainees to respect their obligations, and also advise the supervising staff.

Nevertheless, the legal norms clearly declare that the competence of the cell representative should not contain any task, the implementation of which would create a relation of subordination between cell-representative and other detainees.

Accordingly, the “system of cell representatives”, indicated in CPT Report serves the daily functioning of the penitentiary establishment, and shall not prevent direct communication between custodial staff and the population of detainees. The control of that constitutes a priority task both on national and local levels.

Requests for information

“Up-to-date information on the investigations into the cases mentioned in paragraph 61 and an account of any disciplinary and/or criminal proceedings instituted” (Paragraph 61):

The response of Hungarian authorities to the request for information in Paragraph 61 has been sent to CPT as part of responses within three months. The following evolution has taken place after the sending of the above response:

In the criminal case concerning the Somogy County Penitentiary Establishment, the prosecutor’s office presented an indictment to the Somogy County Court for cause of bodily injury causing death and other criminal offences that will be presented in details in Chapter IV. The investigation in cause of criminal offences of perjury and infringement of reporting obligation, connected to the basic case has been terminated. The prosecutor has inflicted a reprimand to 3 suspects, and in case of 1 person, the affair has been referred to disciplinary way.

In the case concerning the Borsod-Abaúj-Zemplén County Penitentiary Establishment, the military section of the Hajdú-Bihar County Court has rendered a non final judgment, which has been appealed by two convicted sub-officers. The written judgment did not arrive until the compilation of the present responses.

The statistical data, requested by CPT figure as follows:

01/01/2009 – 31/12/2009	Criminal offences committed by staff		Criminal offences committed by detainees					
	Mistreatment in official proceedings		Duress		Assault		Grievous bodily harm	
	2008	2009	2008	2009	2008	2009	2008	2009
Total cases	110 cases/ 111 persons	164 cases/ 170 persons	78 cases/ 129 persons	166 cases/ 286 persons	25 cases/ 37 persons	28 cases/ 39 persons	88 cases/ 124 persons	91 cases/ 113 persons
Dismissed proceedings (in default of criminal offence)	10 cases/ 10 persons	7 cases/ 7 persons	12 cases/ 16 persons	6 cases/ 10 persons	0 cases/ 0 persons	0 cases/ 0 persons	1cases/ 1persons	2 cases/ 2 persons
Closed proceedings (with conviction)	4 cases/ 4 persons	2 cases/ 2 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	1 cases/ 1 persons
Dismissed proceeding (perpetration not proven)	29 cases/ 29 persons	33 cases/ 34 persons	3 cases/ 3 persons	2 cases/ 2 persons	0 cases/ 0 persons	0 cases/ 0 persons	3 cases/ 3 persons	2 cases/ 2 persons
Proceedings pending	67 cases/ 68 persons	122 cases/ 127 persons	63 cases/ 110 persons	158 cases/ 274 persons	25 cases/ 37 persons	28 cases/ 39 persons	84 cases/ 120 persons	86 cases/ 108 persons

01/01/2009 – 31/12/2009	Criminal offences, committed by detainees					
	Acts of indecency		Robbery		Blackmail	
	2008	2009	2008	2009	2008	2009
Total cases	36 cases/ 52 persons	35 cases/ 65 persons	16 cases/ 23 persons	13 cases/ 22 persons	39 cases/ 63 persons	51 cases/ 73 persons
Dismissed proceedings (in default of criminal offence)	2 cases/ 2 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	5 cases/ 6 persons	1 cases/ 2 persons
Closed proceedings (with conviction)	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons	0 cases/ 0 persons
Dismissed proceeding (perpetration not proven)	3 cases/ 3 persons	1 cases/ 2 persons	0 cases/ 0 persons	0 cases/ 0 persons	1 cases/ 2 persons	3 cases/ 3 persons
Proceedings pending	31 cases/ 47 persons	34 cases/ 63 persons	16 cases/ 23 persons	13 cases/ 22 persons	33 cases/ 55 persons	47 cases/ 68 persons

3. Grade IV prisoners

Recommendations

“The Hungarian authorities to take steps to implement CPT’s previous recommendations concerning the provision to prisoners placed in a Grade IV regime of written information on the reasons for the measure as well as the opportunity to express their view on the matter” (Paragraph 64)

“The system of qualifying prisoners as Grade IV to be reviewed and refined with a view to ensure that this grade is only applied – and retained – vis-à-vis prisoners, in the light of a thorough assessment of their current attitude and behaviour” (Paragraph 64)

“Measures to be taken to ensure that Grade IV prisoners have the right to appeal against the decisions on their allocation to this grade to an independent authority (e. g. judge)” (Paragraph 64):

When the Special National Committee on Admission and Employment of Detainees decides on the detainee’s grading to the regime IV of security, the detainee shall to be informed on his/her grading in all cases, and generally also on the reasons of his/her allocation to this grade. There are some cases however, when the detainee must not be informed on the reason for his/her allocation to the Grade IV of security regime, but legal grounds for this are laid down for the penitentiary by Section 44, Subsection (2) of Decree 6/1996 IM of the Minister of Justice on the rules of implementation of the imprisonment and pre-trial detention. Nevertheless, particular attention has to be paid to the treatment of detainees classed into the Grade IV – considered as the most rigorous - regime of security in order to assure that they do not suffer any prejudice during their detention, which would adversely affect their social reintegration after having been released from the penitentiary.

The case indicated in CPT Report must be only a sporadic and not a general affair, in which periodic review did not assure real and accurate assessment of the inmates’ current dangerousness of propensity to act again in an unacceptable way. While allocating detainee to a certain regime of security, the Special National Committee on Admission and Employment considers not only the committed criminal offence and previous escape history, but - as disposed by legal norms, among other things - also the duration and the regime of the imposed imprisonment, the personality, criminal history, medical and physical status of the condemned person, his/her contacts with the outside world, and eventual other criminal proceedings pending, and also specificities relating to the security aspects of his/her work employment.

Whenever the detainee is without problems and respects the laws, the penitentiary shall not be interested in retaining him/her in a strict and rigorous regime, because his/her rights assured by laws must not be restricted, and only single and individual instructions may contain certain measures which affect the means and regime of exercising of his/her rights. However, the treatment of a detainee classed to the IV Grade of security requires essentially more tasks and work.

In the classical sense of the term, the detainees have no possibility to challenge their allocation to the IV Grade regime, namely there is nothing to contest, since the Special National Committee on Admission and Employment renders only a decision and not a resolution on the allocation to that regime of the detainee, and its decision shall be introduced to the detainee’s personal file. At the same time, the detainees’ right to express their view on their allocation to a more rigorous and strict regime – alike as in matters connecting to the others circumstances of the detention – must not be restricted, and they have the right to depose a complaint against that measure.

However, it must be noted that the draft of the new Act on the implementation of punishment, measures, certain means of coercion and administrative detention contains the detainee’s right to appeal to an independent authority concerning the implementation of his/her punishment – alike as in the cases, criticised by CPT.

“The remedy of the shortcoming, indicated in Paragraph 66 of the Report (i.e. too small living space for the

inmates, accommodated in cells 311 and 312, because of the barred area at the entrance)”

Request for information:

The Committee would like to receive information from the Hungarian authorities as to the rules governing the use of cells 311 and 312” (Paragraph 66):

The two single cells at the Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment had been built as cells of special security – issue of the reconstruction in 1996 of the detention area – but their use has been ceased by the putting into operation of the unit of special security area. Therefore, despite their special construction, these two cells are used as single cells, while the separating bars between them are opened. Bars are closed only when the isolation of actually accommodated there detainee becomes necessary. The detainees use both territories separated by bars, therefore the living space in cell 312 amounts to 8,13 m², while in cell 311 to 9,08 m². Considering, that at the Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment there are only these two cells for the single accommodation of detainees – upwards of the cells in the special security area – which serve for the accommodation of detainees, classed to the Grade IV until the individual security risk assessment, and in cases when condemned persons are transferred out from the special security area - up to the date of their transport to another establishment. The use of these cells is regulated by general penitentiary dispositions on the security regime of the concerned detainee.

“The management of Miskolc and Tiszalök Prisons step up their efforts to offer a range of purposeful activities to Grade IV prisoners. Further, the outdoor exercise facilities at Miskolc Prison should be improved (Paragraph 67):

The acquisition of further sports equipments is foreseen by the budget for 2010 of the Borsod-Abaúj-Zemplén County Penitentiary Establishment. While maintaining existing programs, the management of this establishment has increased the inventory of sport, cultural, educational and religious programs, which are constant and organised with a weekly periodicity. The possibility for participation in these programs is also assured for Grade IV inmates.

At the National Penitentiary Establishment at Tiszalök, the participation in leisure-time and cultural programs for Grade IV inmates is assured with the same frequency and variety scale as for other detainees (and as determined by the daily activities regime and cultural programs). At this establishment, while offering and assuring such regular activities, only number of Grade IV detainees, staying at the same time in the premises and number of staff members necessary to the securing activity session are to be considered, in conformity with the relevant local instructions. As a result, there are at present 14 inmates, classed in Grade IV of security regime, that take part in organised education sessions.

Comments:

“The management of Sátoraljaújhely Prison is encouraged to reduce actual occupancy levels in the cells accommodating Grade IV prisoners, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells” (Paragraph 65):

The Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment suffers from problems resulting from overcrowding, which is a general problem at national level. Considering the higher proportion - in comparison with the national average detainees' number – of the detainees from Borsod-Abaúj-Zemplén County, and from Szabolcs-Szatmár-Bereg County, the overpopulation rate for the past period has corresponded to 135-145 %, despite the official capacity. Consequently, the living space per person just approaches to the recommended minimum. Therefore considering the existing overpopulation rate, the normal living space in cells for the accommodation of Grade IV detainees would be assured only by increasing the overpopulation in other cells.

4. Prisoners held in special security conditions

Recommendations

“The Hungarian authorities amend the relevant regulations and take appropriate measures, in the light of the remarks in Paragraph 70 on placement in special security conditions” (Paragraph 70):

Irrespective of the visit of CPT, the management of the penitentiary attached high importance to the review of the whole legal regulation and practice in the field of special security conditions. The overwhelming majority of the statements made at the issue of the interne inspection were similar to those, laid down in CPT Report. The situation of the functioning - and further tasks relating to the enhancement of the conditions – of special security cells and special security detention area were debated in October 2009, in a meeting of heads of departments of the National Penitentiary Administration, where commandants of penitentiary establishments, having special security cells were invited too. The written proposals contained numerous initiatives and amendments which entirely covered CPT recommendations. It is envisaged that only security factors would not be enough to accommodate a condemned person to special security conditions. The placement under special security regime shall be founded on an actual individual, real risk assessment. Inasmuch conditions shall be assured, all efforts will be made for assuring that the placement to this regime have place only after a complete checking-up and assessment by psychologist – by psychiatrist, if necessary – of the concerned detainee. The relevant tasks (admission procedure, contacts with the penitentiary staff and the “outside world”, elaboration of an effective program of development and motivation, etc.), shall be summarised in a scheme of measures. The issuing and the implementation of the new regulation are expected for the first semester of 2010.

The decision on the accommodation to special security conditions and the retaining of the inmate in this regime is even presently not formal. The members of the competent committee, headed by the deputy – charged of security and detention tasks – of the head of national penitentiary administration are heads of the concerned special fields (security, detention, medical care, transport and recording sections), who formulate their individual propositions after having deeply analysed the submitted position by the competent penitentiary establishment. Nevertheless, the submittal of the penitentiary establishment contains in all cases the position of the educator of the concerned detainee, and also the assessment by the establishment’s psychologist. The decision is rendered by the Committee after having analysed the whole information together. It is owing to this procedure that the Committee put out an inmate from special security conditions in spite of the proposition of the penitentiary establishment, and also decided on the putting out before the expiration of the legal time-limit of the review, when acquired the necessary information for the reviewed decision.

“Measures to be taken to ensure that prisoners held in special security conditions have the right to appeal against the decision on their placement in such security conditions, and any renewal of such a placement to an independent authority (e. g. a judge)” (Paragraph 70):

As it was indicated in context of Paragraph 64, it is foreseen by the draft of the new Act on penitentiary that the detainee shall have the right to appeal in his/her case relating to the implementation of the punishment imposed, namely against his/her ranging into special security conditions area or special security cell. However, the proposed draft of the new Act contains the disposition foreseeing that if the condemned person has spent one year in a special security cell or in a special security area, only the penitentiary judge would have the competence to decide on the retaining of that person in such regime, and afterwards, only the penitentiary judge would review half-yearly the necessity of retaining the accommodation in such a cell or area.

“The management of Tiszalök Prison to ensure that cell windows in the Special Security Unit (KBK) allow prisoners to see outside their cells” (Paragraph 72):

The National Penitentiary Administration has monthly checking up with the contractor on the running of the National Penitentiary Establishment at Tiszalök. During these checking ups, the problem of adequacy and eventual renewal of the cell windows in the special security unit has also been debated. Consequently, the windows in the special security regime area will be refashioned in conformity with CPT recommendations and remarks, and also according to the relevant Hungarian legal regulation in force. After that, the windows will continue to assure full transparency, however, an appliance impeding the view shall be fitted to the external wall in order to prevent prohibited contacts with other persons and protect inmates, accommodated in the cells. The appliance will be put in a manner that it assures a partial view from the cells.

“The Hungarian authorities to remedy the shortcomings observed in the exercise yards for prisoners held in special security conditions at Sátoraljaújhely and Tiszalök Prisons” (Paragraph 74):

The Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment has a closed exercise yard. Using when inclement weather was a criterion for the architectural design, therefore a coping had been fitted over the yard. According to the architectural design, this coping was translucent. The Hungarian authorities have examined the possibility for a transformation applying transparent elements, but the cleaning of such elements would not be soluble because of the inaccessibility. Apart from this, they asked for a bidding offer from an architectural entrepreneur for the electrical or mechanical opening of the yard roofing in order to assure view and ventilation of the yard. At the same time, the installation of means of rest has been planned both to the sport-yard and to the yard of outdoor exercise, and the implementation of these plans will started soon.

The unit, established at the National Penitentiary Establishment at Tiszalök is not designated at present as a special security unit, and the functioning of the two cells of the unit, indicated in CPT Report is only planned at present. Nevertheless, CPT recommendations shall be observed and steps shall be taken in order to install a covered shelter and means of rest before the entering into service of the unit.

“A suitable programme of purposeful activities of a varied nature (including work, education, association and targeted rehabilitation programmes) to be offered to prisoners held in special security conditions. This programme should be drawn up and reviewed on the basis of an individualised needs/risk assessment by a multi-disciplinary team (involving, for example, a psychologist and an educator), in consultation with the inmates concerned. Interaction/action between prisoners within a KBK should be the norm; condition akin to solitary confinement should only be used when absolutely unavoidable in order to deal with a person who is assessed to be acutely dangerous to others and for the shortest period necessary” (Paragraph 75):

Members of the penitentiary organisation attribute high priority to the increase in numbers of programmes, education and training of the detainees, and the tailored to the needs of a concrete penitentiary establishment implementation. That statement is also valid to the inmates, accommodated at the special security regimes. As indicated in the response to Paragraph 70, all CPT recommendations will be considered by the expected new legislation. As attachment to the regulation, theoretical materials shall be provided, supporting the work of specialists, assigned to the special security regime cells and units (especially that of educators and unit inspectors), and also methodical instructions on the special treatment and education of detainees. A strategy plan, aimed at the education - which will be similar to that applied in the unit of special regime unit for the implementation of long lasting punishments, operative in the Szeged Strict and Medium Regime Penitentiary Establishment – will also make part of the Attachment. Beyond that, efforts will be made for assuring wider possibilities for the use of activity rooms (i. e. computer use, faculty of foreign language learning, DVD films, kitchenette, etc.).

The Hungarian authorities agree with CPT remark concerning the necessity of the interaction with other persons, that is why the penitentiary specialists – bearing in mind the personality of the detainees too – are in search of means for assuring to associate fellow prisoners during activity session, outdoor exercise and sports. It must however be noted that both the priority of the observance of the special security rules and the individual motivations of the inmates in such regime determine the possible margin for these activities. Common sport sessions in special security regime units have already taken place, in which inmates participated on voluntary basis, after having made a declaration. However, detainees signalled later on that they were not desirous of having common sport sessions with fellow inmates.

Over that, Hungarian authorities are searching after solutions for providing special work to the inmates accommodated in special security regime unit. At the Sátorajáújhely Strict and Medium Regime Penitentiary Establishment, the management has found further works, beside the previous cells maintenance works. The inmates have the faculty of painting ceramic items for the prison museum. Along with these achievements, the management intends to create an activity room, indicated in CPT Report that would permit to enlarge actual opportunities not only in the field the work, but would also enrich leisure-time activities. Architectural design was drawn, and when funds are available for the financing of its implementation, reconstruction works will start.

“The Hungarian authorities to make immediate action as regards to staff issues, in the light of the remarks made in paragraph 76” (Paragraph 76):

In addition to the above described achievements, the stand point of the penitentiary authorities is that the looking after and activities with the detainee, his/her preparation to the placement out of the strict regime world shall mostly be the task of determined members of the staff (head of section, educator, psychologist, prison chaplain). The custodial staff has to assure the detainees’ daily activities and rights, maintain the security of the penitentiary establishment and that of the detention. Experience has proved that personal conversations aim, after a certain time, at acquiring information of personal character, and that may weaken the security of the detention unit and in general terms, that of the penitentiary establishment, and also may give rise to corruptive activities.

Besides, the Hungarian authorities adopt the suggestion for amendment of material conditions while working with detainees, and they have already started the implementation of measures aiming at the assurance of conversation intimacy. With a view to avoid the practice of talking to prisoners through a hatch in the cell door, the setting-in of seats is started in the cells. At present, tests are in course with two types of fixed and one type of portable seats, and the most adequate will be brought into service in all cells.

Comments

“The case of an inmate allegedly kept in handcuffs during outdoor exercise at Sátorajáújhely Prison would, if true, contravene the regulations” (Paragraph 77):

“The Hungarian authorities are encouraged to continue their efforts to minimise the application of means of restraint to prisoners held in special security conditions” (Paragraph 77):

On the basis of the verbal information at the issue of CPT delegation's visit, Hungarian authorities have immediately inspected the means of restraint, used to the inmates held in special security conditions unit at the Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment. In certain cases, such use seemed to be really excessive. Therefore, measures have been taken in order to amend the relevant legal regulation. Nevertheless, it continues to be a consideration of priority that the type and number of applicable means of restraint shall be determined on the basis of individualised risk assessment, and that shall also be introduced in writing to the instructions on individual treatment of the detainee. Having in mind the high security risk of the inmates, accommodated in that unit, the penitentiary institution has the task to prevent the perpetration and to take under control any incident which may infringe the order and the security while running the establishment. However, it would be feasible without the excessive use of measures of restraint during the movement inside the Unit. Along with the regulation on the use of means of restraint inside and outside the penitentiary establishment, the management fixed the number of staff members, necessary to the movements inside the unit, the applicable types and numbers of means of restraint. Consequently, in the course of movements inside the unit – on individual instructions to each inmate in the future too – the use of one fixable pressing handcuff and maximum 2 guiding handcuffs may be ordered. Body-belts and anklecuffs must not be used during the movements inside the special security regime unit. The new regulation is issue of the amendment of the instructions on special security regime units. The observance of this new regulation shall regularly be controlled. The use of means of restraint during movements inside the prison, but outside the unit and in the course of movements outside the prison shall be applied in all cases on the basis of an individualised risk assessment.

Concerning the allegation of a detainee, that he had remained in handcuffs during outdoor exercise, the Report does not contain concrete information, therefore the examination of the case was not possible. The types of means of restraint are determined by instructions and acts in force for the custodial staff while escorting the detainee to outdoor exercise inside the special security regime unit. As soon as the detainee has been escorted to the courtyard for outdoor exercise, and the separating door has been locked, the means of restraint are to be removed from the detainee. No complaint has been made in this respect by detainees, classed to special security regime before or after CPT visit.

“Hungarian authorities will pursue their efforts to provide prisoners held in special security conditions with appropriate contact with the outside world” (Paragraph 78):

The penitentiary management continues to be committed to the reinforcement of detainees' contacts with the outside world. This statement is right particularly in case of inmates, accommodated in such closed conditions, as special security regime units. Consequently, the prison management welcomes all means which may intensify detainees' contacts with the outside world, even beyond the dispositions set forth in the effective legislation; the management provides all opportunities for fostering contacts. It continues to encourage detainees in their demands for receiving visitors from other penitentiary establishments. The penitentiary establishment provides detainees monthly one and a half hour twice for receiving relatives' visits. Telephone calls are allowed 4 times for 8 minutes with authorised contact persons.

Requests for information

“Up-to-date information on the implementation of the plans to install one-way glass in the cells currently fitted with frosted glass at Sátoraljaújhely Prison, in order to allow prisoners to see outside their cells while preventing them from communicating with the outside” (Paragraph 71):

The windows of cells Nos. 320 to 323 are fitted with frosted (hammered) glass impeding by its function the view outside and inside to these cells. Taking into consideration CPT remarks, the reconstruction of the impeding devices is planned in a manner that they shall be turned away for assuring ventilation of the cells, and the upper one third part of the hammered glass will be replaced by normal transparent glass. This solution will permit the view from the cells in a manner that the inmates accommodated in the part of the high strict security regime of the unit would not acquire any information on activities in the courtyard, the movement of the custodial staff on the rampart, the elements of the custodial system of the penitentiary establishment, and would impede them in prohibited communications. The concrete architectural designs have been drawn up, and when financial funding is at the disposal of the establishment, the implementation will start.

“Confirmation that Miskolc Prison’s Special Security Cell (KBZ) was only used for periods of detention of up to 10 days, pending a decision of the special national special national committee on placement” (Paragraph 73):

The management of the penitentiary establishment at Miskolc believes, that remarks made by CPT in this Paragraph, are founded on misinterpretation, probably resulting from an imperfect communication or incorrect information. At the Miskolc Strict an Medium Regime Penitentiary Establishment, there is a cell with special security regime, which is in operation under the authorisation of the head of this establishment, and the rules of operation of which are set forth in a commandant’s act, issued in 2006 in conformity with relevant legal norms and hierarchic regulations. After the issuing of the local act, no person has been accommodated in the special security cell in this penitentiary establishment.

“A copy of the regulations on the use of video-surveillance in prison cells” (Paragraphs 73 and 112):

It seems to be not justified to issue particular regulations on the use of video-surveillance in prison cells. The cells with video-surveillance do not serve for permanent accommodation of detainees: only those are temporally placed in such cells in certain cases, who are exceptionally menaced and dangerous for themselves and also for other inmates, therefore their continuous surveillance by technical devices does not infringe any legal norm. The cell’s parties with toilettes and shower are screened; therefore the resort to video-surveillance is not degrading or indecent.

The video-cameras are not hidden; therefore the detainee has knowledge of the surveillance. The screen of the camera is shown only for the technical personnel charged with operation of the system; unauthorised person does not have access to the records made and stored.

“The Committee would like to receive a copy of the regulations on means of restraint, as amended, as well as statistical data on the application of means of restraint to the prisoners concerned during the three months preceding and following the amendments to the regulations at Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment” (Paragraph 77):

As response to the remark of CPT, a copy of the amended regulations and the requested statistical data are as follows:

Period from 22nd of March 2009 to 22nd of June 2009

Detainee	Handcuffs	Guiding handcuffs	Body-belt	Ankle-cuffs
1	88	88	88	88
2	95	95	-	-
3	95	95	95	-
4	3	3	3	3

The detainee under 1/ was transferred from the establishment on 19th of June, and the detainee under 4/ was admitted to the establishment on 19th of June 2009.

Period from 23rd of June 2009 to 22nd of September 2009

Detainee	Handcuffs	Guiding handcuffs	Body-belt	Ankle-cuffs
2	94	92	-	-
3	94	94	89	-
4	91	91	53	53
5	81	81	68	1

The detainee under 5/ was admitted to the establishment on 1st of July 2009.

Use of the means of restraint during movement of detainees, accommodated in special security regime units

		Use of means of restraint under previous regularisation				Use of means of restraint under regularisation in force			
		Inside the unit	Outside the unit, but inside the penitentiary establishment	Outside the unit but the establishment	Outside the unit	Outside the unit, but inside the penitentiary establishment	Outside the unit	Outside the unit	
Nr. 1	detainee	Fixable patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Fixable patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Fixable patent handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	The nominated detainee was transferred to an other penitentiary establishment the 19 of June 2009				
Nr. 2	detainee	Patent handcuffs, 1 guiding handcuffs	Patent handcuffs, 1 guiding handcuffs	Patent handcuffs, 1 guiding handcuffs	Patent handcuffs, 1 guiding handcuffs	Patent handcuffs, 1 guiding handcuffs	Patent handcuffs, 1 guiding handcuffs	Patent handcuffs, 2 guiding handcuffs	
Nr. 3	detainee	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	
Nr. 4	detainee	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, 2 guiding handcuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	
Nr. 5	detainee	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, 2 guiding handcuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	Patent handcuffs, handcuff attaching body-belt, 2 guiding handcuffs, anklecuffs	

**Strict and Medium Regime
Penitentiary Establishment
Sátoraljaújhely
3350 Sátoraljaújhely, Kazinczy u. 35.**

Reference Nr: 33/6-31/2009

A m e n d m e n t
to the instruction Nr 31 issued by the
COMMANDANT OF THE STRICT AND MEDIUM REGIME
PENITENTIARY ESTABLISHMENT IN SÁTORALJAÚJHELY

Sátoraljaújhely, the 17th June 2009

Subject: Regularisation of the operation of the special security unit

I hereby amend the 1st Chapter of the Instruction Nr 33/6-3/2007 of the Commandant of the present penitentiary establishment as follows:

“12) The means of restraint shall be used on the basis of an individual risk appreciation and in a differenced manner by application of the rules below:

- for movements outside the penitentiary establishment: guiding handcuffs, fixable patent handcuffs, handcuff attaching body-belt and anklecuffs may be used,*
- for movements outside the special security unit: guiding handcuffs, fixable patent handcuffs shall be used;*
- for movements inside the special security unit: guiding handcuffs, fixable patent handcuffs shall be used.”*

The present amendment to instruction shall be effective from the 22nd of June 2009, and shall remain in effect until withdrawal.

All staff members shall be informed on the dispositions of the present Amendment.

*Signed: illegible signature
Tamás Rózsahegyi, major of penitentiary
Acing Commandant of the Strict and Medium
Regime Penitentiary Establishment*

5. Conditions of detention for prisoners in general

Recommendations

The Hungarian authorities to take steps at Miskolc Prison to:

- reduce overcrowding in the cell, the objective being to meet the standard of 4 m² of living space per prisoner in multi-occupancy cells;
- improve the state of repair of cell equipment and replace worn out mattresses;
- pursue the partitioning of in-cell toilets” (Paragraph 80):

The management of the national penitentiary administration is continuously searching for new means for reducing overcrowding in penitentiary. The implementation of the program, aiming at the convergence of the occupancy rate continues to be implemented, but the situation at the Borsod-Abaúj-Zemplén County Penitentiary Establishment seems to be more difficult because the proportion of the detainees, coming from this county is higher in comparison with the average at national level. The number of detainees on transit is the higher quite every day, and consequently, the overcrowding rate amounts to more than 180 % from time to time. Therefore the standard of 4 m² of living space per detainee could not be met.

The assessment of the state of repair of cell equipment progresses continuously, and the necessary reparations, replacement of pieces of furniture and technical reconstructions take place, depending on the accessibility of financing. Some cells criticized by CPT were repainted in accordance with the usual annual timing. In smaller cells (17), the funds for financing the partitioning of in-cell toilets were available in August 2009; therefore the necessary fitting up has been accomplished by the end of November 2009.

Female detainees held at Miskolc Penitentiary Establishment be offered at least one hour of outdoor exercise every day (Paragraph 81):

In conformity with legal regulation, at all Hungarian penitentiary establishments – including Borsod-Abaúj-Zemplén County Penitentiary Establishment – and also for every detainee’s groups, one hour is offered for staying in fresh air, and outdoor exercise. As of the Miskolc penitentiary establishment, the material conditions and infrastructure in the building of the age of more than 100 years are not quite advantageous. While respecting detainees’ rights, the rules on separation of detainees have to be observed as well, and one hour of outdoor staying/exercise may be provided only by using all courtyards. That is the reason why the smaller population number of female detainees is offered outdoor staying in the smallest courtyard. When the daily outdoor exercise lasts less than one hour that is exclusively because of security reasons linked to detention, issuing from an exceptional incident. There has not been any such incident recently. Nevertheless, it happens sometimes, that female detainees do not take advantage in full time of their outdoor staying, assured under legal regulation. In such case, a written declaration is to be made on the waiver of this opportunity.

“The Hungarian authorities take steps to offer remand prisoners a range of purposeful activities corresponding to their needs and legal status.” (Paragraph 82):

The management of the Hungarian penitentiary administration does its best – within its bounds - to increase the time that detainees spend outside their cells. In cooperation with external entities, it endeavours to offer different programs, education and trainings for detainees. Moreover that, serious efforts are being made for searching financing funds through tenders, because the present budget allowances for penitentiary are not quite satisfactory for financing the implementation of detainees’ social reintegration projects. At present, a project TÁMOP – being in phase of implementation with the partial EU financing – has been conceived, having in mind this objective, in which material and other conditions, as well as needs of different detainees’ populations (remind prisoners; sentenced persons, minors, women, etc.) in each penitentiary establishment are considered. The implementation of such programs offers a wide field for positive evolution of the detainee’s personality, as well as for acquiring vocational formation.

At the Borsod-Abaúj-Zemplén County Penitentiary Establishment – alike at other such establishments, where remand prisoners are accommodated – the accomplishment of this task is more difficult. Personal, material conditions are not satisfactory, and because of the legal status of the detainees and frequent changes in their population, trainings and education are difficult to organise. Despite of difficulties, the management – while maintaining the actual scale of programs – endeavours to increase and enrich the inventory of out of cell regular and weekly activity – sports, cultural, educational, religious – programs. The enlargement of these programs provides for detainees occupation in a wide scale of interest, and opportunities for self-education. Nevertheless, the detainees’ cooperation and positive approach is primordial criterion for the successfulness of these aspirations.

“To the Hungarian authorities to take appropriate measures for address the problems indicated in Paragraph 85 concerning organised sports activities and courtyards for outdoor staying” (Paragraph 85):

The enlargement of sports activities in the framework of outdoor staying is a long-standing matter of concern for the management of the National Penitentiary Establishment at Tiszalök. Taking advantage of the available financing and material conditions, a foot-tennis court has been construed in courtyards near each unit-building and technical blockages have been transferred in the courtyard for assuring sports activities. The management of this establishment continues to pay particular attention to the search for further means; it continues to coordinate with the private contractor. There are concrete conceptions for ceasing shortcomings, remarked by CPT (lack of shelters against inclement weather and of means of rest). The acquisition of sports equipments will begin without delay after having the necessary financing resources.

It must also be underlined that this establishment has a spacious, well equipped covered gymnasium, which provides sports opportunities for detainees in inclement weather.

“That the prison administration and the private contractor co-operate closely at Tiszalök National Penitentiary Establishment to make more work places available as soon as possible. The work provided should preferably have vocational value.” (Paragraph 85):

In order to enlarge the number of work places available for detainees, there are permanent consultations between the management of the Tiszalök penitentiary establishment – with the active participation of the National Penitentiary Administration - and the private economic company contractor. The tight co-operation between the penitentiary and the private contractor is smooth, the evaluation and treatment of problems are resolved with common efforts. The private contractor has as duty the accomplishment of organisational and marketing tasks. In close co-operation with the private contractor, the management of the penitentiary establishment solicits the enlargement of the detainees’ work places. The searching for new fields of detainees’ working is currently in process. Recently, shoe-sewing has been launched, which provides work opportunity for 20 detainees. In the near future, such work will probably be offered for further 30 detainees. In order to enlarge work opportunities for detainees, the commandant of this penitentiary establishment pursued consultations with the mayor of Tiszalök. As a result of their common efforts, there is a perspective for the employment of further 10 detainees by the municipality.

At the same time, the private contractor charged with the maintenance of the Tiszalök penitentiary establishment and the management continue to search for new work opportunities. Unfortunately, it is a fact that the current economic situation in Hungary hampers the attainment of the expectations. Apart from that, a total number of detainees listed for work amounted to 267 in November 2009, and further 24 persons were employed in the framework of employment, financed by national budget.

Comments:

Steps should be taken to maximise access to natural light and ventilation in the cells, where the windows are fitted with shutters to prevent communication with the outside world at the Borsod-Abaúj Zemplén penitentiary establishment (Paragraph 80):

A development program has been elaborated by the management of the Borsod-Abaúj Zemplén County penitentiary establishment which contains also the implementation of measures for maximising access to natural light and ventilation. Accordingly, the purchase of new shutter devices has been foreseen in the budget for 2010. As far as financial funds allow, the implementation of the reconstruction will start as soon as possible.

The Hungarian authorities are invited to check whether the quality of food served to women at Miskolc Prison corresponds to their needs (Paragraph 80):

The quality of food served to female detainees continues to correspond to the norms, fixed by the relevant statutory instruments in force. Apart from this, the management of the establishment makes its best efforts for offering food with quality, quantity and variety to meet the detainees’ needs.

The Hungarian authorities are invited to check the quality and variety of the food served to prisoners at Tiszalök Penitentiary Establishment, in particular at week-ends, and to ensure that the special dietary needs of inmates are taken into account in the preparation of meals (Paragraph 84):

Wholly accepting CPT remarks, the management of the penitentiary endeavours to offer alimentation for detainees, which is of good standard, various and healthy while, taking into consideration dietary, conviction and religious needs.

Alike at other Hungarian penitentiary establishments, food is served three times a day in the National Penitentiary Establishment at Tiszalök too. Warm meal is served twice, and once cold meal is offered to detainees on every day of the week. The management pays particular attention to the special alimentative needs regarding the detainee's health, spirit, conviction and religion. Accordingly, the following special diets are offered for detainees at present: normal, milk-free, salt-free, roborating, diabetic, free from preservatives, protective stomach, low-fat and lightly spiced, protective bile and liver, light mixed, vegetarian, pork flesh-free, pork flesh-free with low fat and lightly spiced, cholesterol-free menus. When necessary, different diets may be combined. The quality and quantity of provided by the private entrepreneur food are controlled every day by the penitentiary management. Menu lists for ten days, drawn up by a qualified dietetic are verified by the doctor and the competent chief specialists, who express their opinion on, and finally the commandant of the establishment gives final approbation. Taking advantage of the gained experience from controls, they endeavour to offer all along more variable and healthy food (fruits, vegetables), to reduce the quantity of canned food. The private contractor has always fairly cooperated with the management in this field.

Request for information:

“The remarks of the Hungarian authorities on the complaints received in certain detention units at Tiszalök Prison that the open-door regime was in practice reduced to two hours (instead of four) (Paragraph 85):

The management of penitentiary establishment at Tiszalök has examined – on the basis of CPT's remarks – the eventual problems relating to the opened /closed doors of cells in the detention units. The commandant of the establishment has taken measures for the reviewing relevant instructions. Taking into account remarks made in the course of the control, and also the dispositions set forth in paragraphs 41, 45 and 47 of the Decree Nr 6/1996. (VII. 12.) IM of the Minister of Justice, the local regularisation has been amended.

It was ascertained on the basis of the remarks made in CPT Report that the problem had emerged in the detention area, where working detainees were accommodated in strict regime. It was essentially provoked by the fact, that some tasks were accomplished in the opened-doors time, which necessitated the staying of the detainees in their cells. It was during these hours, when collecting of letters and demands, and also educator's inspection took place. Nevertheless, the cell-doors were actually opened during these periods too. Up to now the commandant of the penitentiary establishment fixed the periods for open-door regime in the concerned detention units, and the smooth open-door policy is actually assured.

Health-care issues

Recommendations

“Steps to be taken to:

- increase significantly the attendance hours of doctors at Tiszaölök Prison, by employing the equivalent of at least two full-time posts” (Paragraph 86):

Efforts made for filling up the (5) vacant posts of doctors at the National Penitentiary Establishment at Tiszaölök with full-time medical specialists did not succeed, although both the management of this establishment and the National Penitentiary Administration did their bests for recruiting staff, while advertisements were published in different channels. The primary cause of the absence of interest from doctors is the significant backwardness in financial benefits offered by the penitentiary as compared to the civil sphere.

Contracts have been signed with medical service providers for providing health care for prison staff and inmate population (basic medical care by a generalist, dentist, and employment health care, as well as specialised medical ambulatory care in six specialities). The civil contractor provides on the spot services by a diabetician, dermatologist, surgeon, neurologist, and a psychiatrist. That kind of medical care is considered as a significant extra as compared to the medical care for an average non-prison population.

The number of attendance hours of doctors was essentially determined by the consideration, that inmates should be healthy and fit for medium-hard and hard physical work, and they had been accommodated to this establishment having this approach in mind. Accordingly, the need for basic and specialised medical care – as relevant indices prove – is quite much more reasonable in comparison with other penitentiary establishments having similar number of inmate population. If necessary, or if increasing need for health-care services requires, further adjustments in doctors’ attendance hours will take place, but exclusively on the basis of medical indications. The private contractor providing medical services has capacities at present for increasing hours of attendance of medical specialists.

It must be noted in general terms, that the management of the penitentiary establishment at Tiszaölök is able to assure continuous and adequate health-care, in conformity with statutory provisions in the present situation too.

- “Employ the equivalent of one full-time doctor (for the treatment of prisoners) at Sátorajújhely Strict and Medium Regime Penitentiary Establishment” (Paragraph 86):

In certain regions of Hungary, deficiency in the number of general medical doctors’ and specialists number may frequently be observed. Despite all efforts, filling up of vacant prison doctors’ posts and replacement of absent doctors proves to be a very hard task.

The specification of prison staff-list at Sátorajújhely Strict and Medium Regime Penitentiary Establishment contains a full-time post of a generalist/GD, which is the head of the medical section at the same time. Nevertheless, this post is vacant at present. The management of this establishment does its best for offering interesting work-remuneration and other benefits for filling up this post (i.e. by assuring doctor’s service-residence). Nevertheless, no applicants have pretended to this post up to now. Certainly, the management will continue to spare no efforts for filling up the post.

However, it must be outlined that the prisoners are not without adequate health-care, because external health-care providers are obliged to assure basic and specialised medical care for detainees, in conformity with several statutory dispositions, when for objective reasons, it can not be provided in the framework of the penitentiary health-care.

- “The Hungarian authorities make the appropriate arrangements at Miskolc Prison for a replacement in the absence of the dentist.”(Paragraph 88):

The management of the Borsod-Abaúj-Zemplén County Penitentiary Establishment does everything possible to provide the necessary dental care for detainees. Measures had been taken in the absence of the full-time dentist working at this establishment for her replacement; surgeries are held twice a week, each time for two hours. Over that, if necessary, the territorially competent external dentist may be consulted by the detainee, under escort.

- Steps to be taken without delay to employ a psychologist at Miskolc Prison and to ensure regular visits by a psychiatrist at Sátoraljaújhely Prison.” (Paragraph 89):

Similarly to medical doctors, the number of available psychologists and particularly specialised psychologists is very low in Hungary. Considering the system of remunerations applied in the penitentiary, the inclination of specialists towards working with detainees is quite weak. Besides – being in consent with CPT’s recommendation – measure has been taken for the recruitment of a psychologist at the Borsod-Abaúj-Zemplén County Penitentiary Establishment.

At the Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment, a psychologist is employed with the specification of a clinical psychologist. In January 2009, the contract had been terminated with the psychiatrist who had visited this establishment in the past, for ceasing budgetary financing. Despite these circumstances, patients requiring psychiatric treatment are regularly transferred to the Judicial and Observation Psychiatric Institute (IMEI), where decision is rendered on the necessity of a treatment. The acute psychiatric cases are treated by Psychiatric Unit at Erzsébet Municipal Hospital, Sátoraljaújhely. This new practice has been absolutely adequate for the treatment of detainees, suffering from psychiatric diseases.

“Hungarian authorities are called upon to take steps to implement CPT’s long-standing recommendation that medical examinations of prisoners are conducted out of the hearing and – unless the health-care staff member concerned expressly requests otherwise in a given case – out of the sight of non-medical staff.” (Paragraph 90):

The Hungarian authorities would like to express their opinion, that the presence of custodial staff during medical examinations and screening by a nurse of detainees is not considered a current practice in the penitentiary. The general legal rules of Hungarian legislation on Health-Care shall be applied to the detainees’ health-care too. Accordingly, the presence of a member in service of the prison staff during medical consultations is only authorised when it is required by security of the treating member of medical staff, or by considerations for preventing the detainee’s escape. In numerous cases, when a detainee is examined by an external specialist, it happens frequently, that the doctor insists on the presence of the member of the custodial staff by personal motivation. It is not doubtful whether the privacy or the prevention of the life-danger has priority, because the failure of medical intervention of urgency constitutes a higher risk. Accordingly, in each penitentiary establishment – including those three indicated in CPT’s Report – members of custodial staff are present during medical consultations only when it is absolutely necessary.

The architectural design of the Borsod-Abaúj-Zemplén County Penitentiary Establishment assures that medical examinations of detainees are conducted out of the sight and hearing of non-medical staff. Therefore the management of this penitentiary establishment enforces the knowledge and observance by the prison staff of regulatory rules on medical examinations and screening.

At the Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment, a member of the custodial staff is present during medical consultations for inmates, classed to IV grade security regime expressly on the basis of the individual treatment instruction issued for that specific detainee. Staff members endeavour to prevent from disturbing the administration of the medical treatments during its actual time, but in the majority of the cases, this attitude does not mean that they are conducted absolutely out of the hearing and the sight of the custodial staff member. The task of the custodial staff member is to protect the physical integrity of the medical staff, to prevent the escape, and to continuously watch the detainee both inside the penitentiary establishment and when being in an outside medical entity.

At the National Penitentiary Establishment at Tiszalök, civilian specialists and nurses only with little professional routine believe it more reassuring when custodial staff is within easy distance in connexion with enforced appearing of aggressive and unquiet detainees, who present increased danger for the security of the penitentiary establishment. Certainly, they endeavour to restraint the number of such cases to the minimum. The briefing for custody staff members, enforcing the appearing of the detainee for medical purpose takes place regularly with the aim to assure the adequate intimacy and avoidance of their prevailing presence, and special attention of heads of special fields is drawn to this circumstance.

Nursing and prison staff working in Building II of the IMEI be given the clear message that ill-treatment of patients is not acceptable and will be punished accordingly (Paragraph 93):

As it was indicated in the chapter entitled “Ill-treatment”, all forms of ill-treatment, applied by the staff are unacceptable for the Hungarian penitentiary administration, and it takes all means to prevent it. Accordingly, if there is even the faintest suspicion of such behaviour, the head of the concerned penitentiary entity shall take the necessary measures with the purpose of investigating the case, and report the action to the competent prosecutor’s office.

In 2009, the director general – doctor of the IMEI has reported denunciation twice to the military prosecutor’s office for suspicion of ill-treatment applied to the detainees’ prejudice. In both cases, the procedure has been dismissed by the competent authority with the reasoning of lack of criminal offence. It should be noted that the detainee has the opportunity to depose a complaint, remark or concrete denunciation by several ways through the operational system of the IMEI, and besides, he/she may also apply to external instances and authorities in writing. In such cases, the content of the letter must not be censured anyway, even at random.

“The Hungarian authorities review the training and supervision of custodial staff assigned to Building II of the IMEI, in the light of the remark set forth in Paragraph 93, second sentence (Paragraph 93):

There is an obligation to complete multilevel training both by regular staff members and public servants. The appointed nurse and custodial officer in regular service must not take up their duties until they have successfully passed the exam, after having participated in a basic penitentiary training. Security guard supervisors further shall complete a basic training on penitentiary and pass the relevant exam, while nurses – depending on their rank – must complete the relevant basic or medium degree training and pass the prescribed exams. The curriculum of trainings contains in a high number of lessons learning materials on criminal law and security, and students shall get acquainted with appropriate also legal regulation on treatment of detainees. Besides, in the framework of the training on psychology of 14 lessons’ duration, special treatment (management of conflicts, management of aggressive comportments) is also learned, together with theory. The employee is obliged to acquire the Organisational and Operation Rules of the IMEI – which contain also rules on comportment with detainees - and give an account of his/her knowledge in an exam. At the IMEI, members of the custodial staff have the only task of assuring security during medical treatment (care by nurses, medical examinations and treatments by doctors, psychological examinations, educational activities, etc.); they are authorised to proceed individually only under relevant statutory norms. Consequently, they are supervised by and work under the authority of the health-care staff at present too. Notwithstanding, trainings inside the IMEI for staff members in regular regime are organised in order they acquire appropriate knowledge and skills for their special work.

“The Hungarian authorities make efforts to provide more congenial and personalised surroundings for patients in Building II of IMEI.” (Paragraph 95)

“A call system should be installed in all rooms.” (Paragraph 95):

The detailed response of the Hungarian authorities concerning “the removal/re-location” of IMEI shall be given in Paragraph for “Comments”. Nevertheless, it should be noted that the relocation of IMEI would have a significant impact on the actual conditions of this institution. The construction of a new forensic psychiatric institution has been on the agenda for several years yet, and the National Penitentiary Administration urges on the implementation of this long standing project. Consequently, there is not any possibility for major reconstruction of the existent building; reparatory works are basically restricted to the preservation of the state of repair of the building. Therefore, considering the architectural design of the building and the actual conditions of operation of IMEI, more congenial and personalised surroundings for patients would be hard to achieve. Certainly, efforts are made for amending the existing living conditions, as far as possible. The amortisation of the fixed furniture modules in units examined by CPT is more rapid than in other sections; therefore efforts for decoration provide some amelioration only temporarily, for a very short time. According to the previous recommendation of CPT, plans for installation of a call system in all rooms were prepared, but they could not be implemented because of lack of funds for financing.

“Steps to be taken to enable IMEI patients to wear their own clothes during the day, irrespective of their legal status; if necessary, the relevant legislation should be changed.” (Paragraph 96):

CPT recommended in its 2005 visit report wearing own clothes by patients under involuntary treatment. The wearing of own clothes by detained patients, subject to the present examination seems to be even more worrisome.

Under general Hungarian active in-patient care, patients wear bed clothes (pyjama and bathrobe); ordinary outdoor clothes are used quite rarely. However, the cleanliness of the clothing may be assured only by taking daily contacts with the family, even if major risks for outside living environment are not envisaged as regard to the cleaning of clothes soiled with hospital contamination. Taking into account the different needs for treatment of detained patients, such a system could not be run with responsibility. Certain detainees’ groups are constraint to wear uniforms while being in detention by Hungarian penitentiary – that is a usual practice in penitentiary system of other countries too. The own outdoor clothes of detainees are lodged in deposit with the penitentiary establishment implementing the detention. The operation of IMEI in conformity with the recommendation of CPT would result either in delay in the carrying out of urgent medical interventions, or unequal exercising of detainees’ rights, therefore the management of the penitentiary does not support – even at present - the implementation of the measures, recommended by CPT.

“The Hungarian authorities to develop therapeutic and recreational activities for patients accommodated in Building II (Paragraph 97):

The patients, accommodated in Building II of IMEI do not spend a longer period in this institution either they are accommodated for psychiatric, neurological examination, or a treatment. The patients with the following legal status were held in the examined by CPT sections for a quite short duration:

- at the time of CPT visit, 2 persons in pre-trial detention were accommodated for observation of mental state and diagnosis (Section 107 of the Act on criminal proceedings) (the legal deadline is 30 days, the court may extend this deadline on one occasion by one month upon the opinion of the institution performing the observation);
- 6 persons in pre-trial detention under psychiatric treatment, who had been referred by the prison doctor due to acute psychiatric problems (average treatment duration being about 10 days);

- 10 patients in pre-trial detention requiring psychiatric treatment due to symptoms of psychiatric diseases - on the basis of Section 104, Subsection (2) of the Act on Criminal Proceeding, considering, that there was no ground to order a temporary involuntary treatment in a mental institution - the pre-trial detention of which being implemented in IMEI (alongside with medical observation and diagnosis, most of the patients of this group needed immediate medical treatment too. The duration of their treatment as in-patients is considered by the court, taking into account the expertise, given by the IMEI specialists);
- 6 convicted detainees were under observation and diagnosis on the basis of court decision, ordering involuntary treatment for alcohol problems for a duration of 2 weeks;
- 2 convicted detainees were under observation and diagnosis due to personality disorders, the maximal duration of which is 30 days;
- 9 convicted detainees were under medical treatment due to psychiatric symptoms, behaviour disorders, attempted suicide, with the average treatment duration of 10 days.

Summing up the above data, it appears that the average treatment period did not exceed 21 days. Owing to this, there is a possibility for accommodated persons for crisis-intervention activity on the basis of an individual therapeutic scheme. In 2008, in case of 80 from 150 patients transferred due to attempted suicide, a treatment for crisis intervention was medically justified. IMEI admits that the spectrum of recreational amenities is very restricted during medical care of transferred in-patients. These activities do not attach directly to the hospital tasks; even in other hospital departments (in case of internal treatment or surgical intervention on in-patients), the offer of such extra programs cannot be required. The IMEI patients have not announced any demand on such amenities, but following CPT recommendation, IMEI will consider – as existing infrastructure permits – the possibility for implementation of special socio-psychotherapeutic programmes.

“Means of rest and shelter for protection against inclement weather be install in the exercise area of the Building II of IMEI.” (Paragraph 98):

“The seclusion room in Building II of IMEI be equipped with a call bell” (Paragraph 102):

In response to the above recommendations, the lack of the funding for reconstruction should be referred, likewise as in Paragraph 95. There are yet conceptions for installing means of rest and shelter for protection against inclement weather in the exercise area of the Building II of IMEI; the plans will be implemented without delay after having allowed funds for financing. The same statement is valid for the recommendation that the seclusion room be equipped with a call bell. For technical and economic considerations, the fitting up of the call bell would be suitable as part of the integrated signal system, indicated in the response to Paragraph 95.

Comments:

“CPT invites the Hungarian authorities to review the practice, observed at Sátorajújhely Strict and Medium Regime Penitentiary Establishment, of the prison doctor treating both prisoners and prison staff (Paragraph 87):

At all penitentiary establishments, where full-time doctors are working, the basic medical care – which is qualified as health-care by family doctor or labour-hygiene doctor – the medical staff provide health-care both to the penitentiary staff and detainees. The medical content of the health-care is determined by statutory provisions and unified medical directives, and they are without influence to the legal status of the medical staff. The control and surveillance are exercised by national Health-care authorities, granting authorisations including. Approbation of medical and other health-care activities is submitted to strict preconditions, and observance of legal and other regulations is regularly verified. They do not tolerate any difference in respect of health care whether it is provided for prison staff or detainees.

At present, the full-time doctor at the Sátoraljaújhely Strict and Medium Regime Penitentiary Establishment is replaced by a doctor on a contractual basis, treating both detainees and prison staff twice a week, two hours each. During the attendance of the doctor, health-care must really be restricted to the minimal both for the detainees and the prison staff, but this situation had been provoked by reasons external of the penitentiary. Certainly, the management will continue to spare no efforts for filling up the vacant doctor's post, assuring this way the presence of a full-time doctor in the establishment. It should be justified henceforward that the doctor of the penitentiary establishment continues to provide health-care for prison staff too, beside detainees.

The modification of the contract with the replacing doctor has been signed on 09th of March 2009. The proportion of relevant durations, that the doctor has to spend with the treatment of the prison staff and detainees, has been clearly stipulated in the contract. This proportion is fixed in 50% - 50% at present.

“It would be highly desirable for the IMEI to be re-located; this would help to ensure that a medical, rather than a penal, ethos prevails. The Committee urges the Hungarian authorities to find a solution as a matter of priority.” (Paragraph 92):

As indicated above, the construction of a new forensic psychiatric institution has been on the agenda for several years yet, and the National Penitentiary Administration urges on the implementation of this long-standing project. The Hungarian Government is putting this objective on the agenda, and confirmed its insistence by adopting a Government Resolution on the implementation. The building plot for the construction has already been assigned, the architectural and medical needs have been formulated during the preparatory works, while infrastructural and legal issues have been reviewed. Nevertheless, the budgetary allocations, required for the implementation are not yet available at present – because of the economic crisis. However, if functions of the institution were changed, there would be some perspective for the acquirement of funding/subvention from the European Union. The probability for acquiring of this subvention has been debated by the Ministry of Justice and Law Enforcement, and also by the Ministry of Health. In conformity with their common position, if the construction of the new institution is completed as their common investment, the IMEI activities could be enlarged.

“The state of repair of the shower facility in the Building II of IMEI left something to be desired.” (Paragraph 95):

Beside the response in the above paragraph, it must be noted that essential renovations of the existing building are considered not reasonable because of the perspective of re-location of the institution. The absence of positive development in the building's state of repair as compared to the statements made in CPT report on the previous visit is due to this perspective. Certainly, particular attention is paid to the cleaning and preservation of the state of repair of the building.

“CPT invites the IMEI management to take into account the remarks in Paragraph 100 in their policy on resort to means of restraint” (Paragraph 100):

The resort to means of restraint on persons has been regulated by arrangement, issued by the head-physician – director general of the IMEI on the basis of the Act on Health-Care as well as of Decree Nr 60/2004 ESZCSM of the Minister of the Health, Social Affairs and Family. The elaboration of a detailed policy on resort to means of restraint – taking into account CPT's remarks – has started.

Request for information

“Whether the Hungarian authorities are considering the possibility of placing the new Forensic Psychiatric Institution under the responsibility of the Ministry of Health?” (Paragraph 92):

There is a permanent coordination on this issue between the Ministry of Justice and Law Enforcement and the Ministry of Health. The Ministry of Health would further assure conditions for high standard operation of the IMEI, particularly when having in mind the creation of a unity for forensic psychiatric methodological centre, or a forensic section and a high security section are created in the new building complex. Forasmuch this conception is approved and financing would be allowed, preconditions will be met for placing the IMEI under the responsibility of the Ministry of Health, as recommended by CPT.

7. Other issues of relevance of CPT’s mandate

Recommendations

“The Hungarian authorities improve staffing levels at Miskolc and Tiszalök Prisons, in the light of the remarks made in the third subparagraph of Paragraph 104 (Paragraph 104):

“The practice of nursing staff be asked to carry out certain security tasks, and measures be taken to ensure that a sufficient number of female prison staff is on duty at all times at Miskolc Prison” (Paragraph 105):

The staff number at the Borsod-Abaúj-Zemplén County Penitentiary Establishment amounts to 175 posts at present. The management has submitted an application to the National Penitentiary Administration with the purpose of increasing the staff number by the creation of some new posts (releasing the nursing staff from custodial duties on the week-ends, implementation of work-places for a psychologist, sports educator and cultures educator). Nevertheless, the actual staff number of the national penitentiary structure does not permit the enlargement of staff effective at local level from national (central) reserves. It would exclusively be feasible by reducing the staff number in other local establishments. However, this solution would not really resolve, only put forward the basic problem. The only way is for amendment, at present, that the commandant of the penitentiary establishment submits a proposition to the national penitentiary administration – for restructuring the posts between organisational units, and on the basis of professional priorities – within the framework of the assigned staff number, or for changing staff number proportions depending of the workload of each unit. The alternatives for solution are under review at present.

Concerning the National Penitentiary Establishment at Tiszalök, there is a Government resolution on fixing the staff number assigned to this establishment, therefore the enlargement of staff number is beyond the competence of the – otherwise narrow – possibilities of the penitentiary.

“If it is considered necessary for prison officers to carry truncheons, the truncheons should be hidden from view.” (Paragraph 106):

The commandant of each penitentiary establishment shall be responsible for the security of the establishment under his authority. The establishment of the security system – including the provision of means of restraint to certain groups of the prison staff assuming different tasks – is part of the commandant’s attributions. Certainly, the architectural design, the infrastructure of the building, as well as staff number, and the diversity of the detainees’ population number, accommodated in each unit are taken into account while implementing that power and duty. That is the reason why there are differences between each penitentiary establishment – even each unit-building in the same establishment – in the field of wearing means of restraint.

The penitentiary organisation maintains its position that wearing means of restraint of different types in certain detention units is necessary for the security of the penitentiary establishment and detention, as well as the safety of the detainees and prison staff. Resort to means of restraint in cases, determined by statutory norms is not only the power, but the duty of the prison staff.

Nevertheless, considering that truncheon – because of its dimension – can not be carried hidden from view, when wearing truncheons becomes necessary for the custodial staff, it may only be openly worn. This statement is also justified by the fact, that when immediate intervention becomes necessary, there is not enough time for picking up the mean of restraint, stocked in a closed place. The only hidden wearable truncheon is that, dimensions of which – resulting from its technical design – are changeable.

“The Hungarian authorities to amend the relevant legal provisions so as to increase substantially the minimum visiting entitlement” (Paragraph 107):

Being in the same opinion with the Committee in its remark, the Hungarian authorities would like to mention that the necessary suggestions have been submitted in October 2008 for amendment of the relevant legal regulations on this issue (on increasing the minimum visit entitlement for 1 hour). It must be noted that the general practice is conform to this suggestion, – when local material conditions in visiting facilities permit, and as mentioned in Paragraph 108 of the Report – visits, as very important form of contacts with the outside world, are allowed at increased frequency and duration.

At the same time, dispositions set forth in the draft of the new Act on Penitentiary suggest enlarging further perspectives for contacts with the outside world. It means not only increasing time, but also broadening different forms of contacts.

“The visiting facilities at Miskolc Prison be re-designed so as to ensure that prisoners receive visits under appropriate conditions in terms of space, lighting and ventilation.” (Paragraph 108):

At the Borsod-Abaúj-Zemplén County Penitentiary Establishment – in conformity with CPT’s recommendation – a new lighting system has been fitted to ensure that detainees receive visits under appropriate conditions, and some doors and windows have been temporally removed for increasing ventilation of the visiting space. Architectural feasibility plans - for increasing the visiting space- have been drawn up, and implementation costs introduced into the budget for 2010. After having acquired necessary financing funds, the implementation of these plans will start.

“Measures to be taken to improve access to the telephone at Tiszalök Prison.” (Paragraph 109):

According to CPT’s remark, the commandant of the Tiszalök penitentiary establishment ordered an inquiry on the problem of access to the telephone by detainees. It has been established at the issue of the inquiry, that no complaint has been received by prison staff relating to the access to the telephone. A form is used in this establishment for recording telephone calls, which contains the effective completion of telephone calls, and the event withdrawal of demands is also documented. Besides, data, relating to telephone calls are registered by the technical system assuring telephone calls, which may be checked up on later.

At the same time, taking into account CPT’s remarks, the commandant has also reviewed the whole local instructions and the implementation of the latter. As a result of the revision, he ordered to increase the duration and frequency of access to telephone calls, in order to reinforce the detainees’ contacts with the outside world. As a result, the minimal duration of telephone calls has increased to 8 minutes for each call at the Tiszalök National Penitentiary Establishment. The frequency of telephone calls allowed to the detained classed to different security regimes – in particular to that, held in IV Grade security regime – increased to at least one occasion more for all security regimes.

“Appropriate steps to be taken to prevent delays in the dispatching of inmates’ correspondence” (Paragraph 110):

Following CPT delegation’s visit to the National Penitentiary Establishment at Tiszalök, the management has reached the competent representatives of the Hungarian National Postal Service and urged speeding-up of the delivery of letters and other postal consignments to the penitentiary establishment, located far from the inhabited area. According to the relevant statutory dispositions, letters from the establishment shall be forwarded and delivered on the second working day at the latest.

The relevant legal provisions be amended without delay for assuring that the period of time during which prisoners under disciplinary inquiry were held in solitary confinement cells before a decision was taken is including in the overall time in disciplinary isolation” (Paragraph 111):

In the sense of Section 29, Subsection (3) of Decree Nr 11/2996. (X. 15. IM of the Minister of Justice on the disciplinary responsibility of detainees held in penitentiary establishments, the period of time before a decision was taken, is really not included in the overall time in disciplinary isolation.

The Hungarian authorities are of the opinion, that this problem requires regularisation at legislative level. During the debates on professional policy of the draft of the new Hungarian Penitentiary Code, they will endeavour to advocate with their suggestions in order to insert an adequate regularisation of this issue.

“Shortcomings in the cell for disciplinary solitary confinement at the Miskolc penitentiary establishment to be remedied” (Paragraph 112):

At the Borsod-Abaúj-Zemplén Penitentiary Establishment, the necessary reparations required for the remedy of the criticised disciplinary/solitary confinement cells have been completed. The adequate state of repair and hygiene will be assured by increasing the frequency of the controls.

“Steps be taken to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contacts and that any restriction on family contacts as a form of punishment should be used only where the offence relates to such contacts” (Paragraph 113):

Confirming the response above on the promotion of the social reintegration of the detainees, the penitentiary administration considers the reinforcement of detainees’ relations with the outside world as a matter of priority. The measures, having raised CPT’s misgivings, are founded on Section 42 of the Law-Decree Nr 11 of 1979 *on the implementation of punishment and measures*. At the same time, the management of penitentiary establishment attempts to enforce the disposition laid down in the same legal norm, which assures the possibility for receiving by detainees - after having purged the solitary confinement - visits, parcels and purchases for personal use, which have not been benefited because of the implementation of such punishment. No deficiency has been detected in this field by central inspections.

“Special registers on the use of disciplinary/solitary confinement and padded cells be established at Tiszalök Prison” (Paragraph 115):

The commandant of the Tiszalök penitentiary establishment ordered to join a copy of the records on the use of solitary confinement cells (sheet on resort to security confinement) to the special register, introduced expressly for this purpose and filed under particular reference number.

The implementation of disciplinary, security and solitary confinement of detainees is registered by the head of custodial staff in building of unit “F”, as well as by the member of the custodial staff in his/her service log. Both documents shall be kept for a determined period of time; the data may be checked up on even several years later. All the data, remarked by the Committee are documented in all their details in these two registers. Besides, a copy of the record on use of the solitary confinement cells is archived with reference number in the administration system of the penitentiary establishment, treated by the security service, and the other copy remains archived in the education file of the concerned detainee.

“The Hungarian authorities to take appropriate measures and to amend the relevant regulations on the use of restraint, in the light of the comments made in Paragraph 119” (Paragraph 119):

The common position of the Ministry and the National Penitentiary Administration is that the individual and combined use of means of restraint is adequately regulated by the relevant statutory dispositions and instructions issued by the commandant of the National Penitentiary Administration. They think it important to emphasize, that amendments have been made in 2006, namely for the implementation of CPT’s recommendations. The essence of these amendments is the individual – and not general – appreciation of the necessity of their use. Nevertheless, when considering the use of means of restraint – that the Committee appreciated in certain cases as exaggerated – attention must be paid to the fact that regulation on the use of firearms has changed, therefore during movement outside the penitentiary establishment – for preventing escape – primarily the single or combined use of means of restraint is authorised. The overwhelming majority of cases of detainees’ escape took place in the past during effectuating compulsory attendance before a public authority outside a penitentiary establishment or escorting the detainee to an external medical institution.

A particular subparagraph is devoted in the Report to the presentation of the humiliating practice of applying means of restraint during medical consultations or treatment. The primary task of the penitentiary is carrying out the custody of the detainee, and that task has to be accomplished even if the detainee is escorted for being examined by a specialist or suffering a more complicated medical treatment outside the penitentiary establishment. In health-care institutions, the security conditions in polyclinics and hospitals are not quite suitable for the implementation of this task. Having in mind these circumstances, the custodial staff is not always in a position to waive the use of means of restraint. However, the smooth and professional accomplishment of the medical examination or treatment shall be assured in all cases.

“The Hungarian authorities review the regulation on the use of stun devices, in the light of the remarks, made in the third subparagraph of Paragraph 120” (Paragraph 120):

Electronic stun devices are characteristically used with preventive purpose as means of last resort at penitentiary establishments. Such devices are only delivered for persons who have been trained for their use. The relevant regularisation contains exhaustive enumeration of situations, when the use of electronic stun devices is authorised. Apart from this, the prison staff intends to assure the security of penitentiary establishment, the general order of the detention, the protection of the physical integrity of the detainees and its own primarily by use of other available means of coercion and restraint.

The case mentioned in CPT Report could not be investigated because of lack of concrete information; no detainee’s complaint had been made neither to the concerned penitentiary establishment, nor to another authority.

That said, it is important to emphasize, that electronic stun devices have never been used in Hungary from their institution as regular device.

“That the relevant regulations be amended to avoid the use of electric stun body-belts for movements of prisoners, including outside prison establishments” (Paragraph 120):

The practice of using electric stun body-belts has been reviewed following CPT’s remark. It not has been approved during the review that such device had been applied anywhere as a means of restraint or as body-belt for fixing handcuffs. Probably, the remark is founded on erroneous information. Notwithstanding that, the attention of the management of each penitentiary establishment was called to the full observance of the dispositions on the use of electric stun body-belts, and to the necessity of permanent control of their use.

Comments:

“The change of rules for allowing conjugal visits would be a welcome development” (Paragraph 108):

The draft of the new Act on Penitentiary contains a disposition on the institution of family visit without direct surveillance. Therefore, the different detainee’s categories will have the opportunity to enjoy this faculty. While drawing architectural designs of the two new penitentiary establishments finished in 2008, attention was paid to the anticipated assuring of material conditions for this form of contacts.

“At Tiszalök Prison, the space allocated to the prisoners receiving visits and their families in open conditions should be enlarged” (Paragraph 108):

At the National Penitentiary Establishment at Tiszalök, possibilities for enlarging the space for receiving visitors have been examined. The architectural design of the building does not permit the physical enlargement of the visiting room; however, the more opportune arranging of the tables would permit enlargement of the space, available for receiving visits. It happens quite rarely when 20 detainees receive visitors at the same time, therefore by taking out superfluous tables from the room, the space will be enlarged. Besides, the possibility of open-air receiving visitors from time to time is also under examination in the event, when weather permits.

At the Miskolc Penitentiary Establishment, the padded cells should be permanently taken out of service; more suitable facilities should be set up for holding aggressive and/or agitated prisoners” (Paragraph 114):

The management of the Borsod-Abaúj-Zemplén County Penitentiary Establishment – considering the state of the repair of the special security isolation cell – has suspended its use. At present, this cell is used as a store-room until the establishment of adequate material conditions in it.

Request for information

“CPT would like to receive the comments of the Hungarian authorities on the allegation received at Tiszalök National Penitentiary Establishment that detainees had suffered from intimidating remarks from staff and had been refused access to certain activities after having spoken to NGO representatives” (Paragraph 116):

The management of the national penitentiary administration entirely agree with CPT in its statement that no detainee shall suffer any prejudice for having spoken to NGO representatives controlling circumstances in prisons. An inquiry has been instituted by the management of the Tiszalök establishment on the basis of CPT’s remark, but no complaint, accounting on such unacceptable attitude had been received. At the same time, the management of this establishment will spare no efforts to prevent similar phenomena and manifestation in the future. Briefings and information have been given for the prison staff in this matter.

II.**CPT's remarks concerning establishments under the authority and surveillance of the Ministry of Health and Hungarian responses to these remarks****D. Psychiatric establishments****1. Preliminary remarks**Request for information

“CPT would like to receive further information on the restructuring of the psychiatric and social care sectors, including the implementation of the national programme for mental health and the impact of the closure of the OPNI” (Paragraph 124):

The Ministry of Health is engaged in assuring adequate and human conditions for patients in respect of the infrastructure of health-care institutions. Concerning OPNI, a whole reconstruction of the building would have been required for achieving this objective. The reconstruction would have required – even according to the most prudent estimations – 10-12 billion HUF. Therefore, the chief officials of that time of the Ministry of Health judged the reconstruction of the building as an economically irrational solution. The previous ministerial management allowed 3 billion HUF for the establishment of conditions, required for the admission of psychiatric care by other institutions. As a result of this investment, the material conditions for health-care have been ameliorated not only in one, but in all concerned institutions.

Considering the above approach, no more capacity for in-patient special health-care was allowed for OPNI by the Resolution Nr 5972-1/2007-1000 MIN of the Minister for Health, issued for the implementation of the Act CXXXII of 2006 on the development of the health-care service, and that, from the 1st April 2007. After the entry into force of the said Resolution, the previous tasks of the OPNI have been transferred to other institutions. The taking over of these tasks took place continuously, from the 1st April 2007 until to end of 2007. This solution was justified by the requirement of assuring preconditions for adequate conditions for health-care both from professional and nursing approaches, which are better than previously. During the transitory period – with the purpose of assuring continuity of the health-care – the OPNI continued its curing activities until the end of December 2007.

During 2006, the OPNI worked at three sites, in 26 organisational units, with a capacity of 849 beds, the major part of which remained – as public financed capacity after the reorganization - in other institutions, having taken over the OPNI tasks. Besides that, a capacity of 1.901 specialist-doctor work-hours, and 2.069 non-specialist doctor work-hours assured the diagnostic background of the health-care.

The following schedule presents the capacities of in-patient special health-care as before the 31st December 2006 and as after the implementation of the mentioned public administration Resolution, in a breakdown according to each specialisation, which was concerned by the taking over of the OPNI tasks:

Specialisation	Existing number of beds	Remaining as public financed capacity at the institution, which has taken over tasks of OPNI
Neurology-stroke, active	87	70
Internal diseases	20	0
Psychiatry, active (including paediatric psychiatry)	175	197
Psychiatry for infectious patients	20	20
Intensive health-care	8	4
<i>Total of active beds</i>	<i>310</i>	<i>291</i>
Neurology, chronic	30	0
Rehabilitation for psychiatric patients	509	308
<i>Beds for chronic patients</i>	<i>539</i>	<i>308</i>
Total capacity for in-patients	849	599

Three bed-capacity-owners (namely the Municipality of Budapest – 410 beds; Semmelweis University – 95 beds and the Municipality of Pest County – 20 beds) have been concerned in the taking over of OPNI psychiatric profile, with a total institutions' number of seven and total beds' number of 525, while the National Scientific Institution for Neurosurgery assured the accomplishment of OPNI neurological tasks.

The following institutions were concerned in the taking over of OPNI tasks:

Concerning activities on active beds:

<i>Psychiatry specialisations</i>	<i>197 beds</i>
Nyíró Gyula Hospital	40 beds
Szent János Hospital	26 beds
Bajcsy-Zsilinszky Hospital	11 beds
Jahn Ferenc Dél-Pesti Hospital	5 beds
Flór Ferenc Hospital	20 beds
Semmelweis University	95 beds
<i>Neurology – Stroke specialisations</i>	
National Scientific Institution for Neurosurgery	70 beds
National Scientific Institution for Neurosurgery	4 beds
<i>Health-care for contagious patients specialisations</i>	
Nyíró Gyula Hospital	20 beds

Concerning activities on beds for chronic patients:

<i>Rehabilitation for psychiatric patients specialisations</i>	<i>308 beds</i>
Szent István Hospital	243 beds
Nyíró Gyula Hospital	50 beds
Heim Pál Paediatric Hospital	15 beds

Beside the 15 active beds, the final place for paediatric psychiatric care of further 15 beds for rehabilitation has been realised on the site in Delej utca of the Heim Pál Hospital from the subvention resource for tenders for 7.5 billion HUF published of the Ministry of Health. This unit has been put in operation in December 2009.

During the transitory period, the care of patients remained without interruption, in conformity with statutory rules.

Concerning psychiatric / addictologic care system: conforming to the available data, the number of actives beds has decreased by 25% in the past period, while number of beds for rehabilitation has increased by 3,8%. In would be noted that this change is not the direct issue of the closing down of the OPNI, because the number of actives beds and beds for chronic patients and their repartition between each specialisation has been determined by the Act CXXXII of 2006 on the development of the health-care system. Having on mind the occupancy data of beds, it seems that the actual number of active beds is basically sufficient for providing adequate care for patients.

In order to create special units of psychiatric care, negotiations are pending on different alternatives. With the purpose of finding adequate solution for the forensic psychiatric care and special (high) security unit, the possibility for development with resources from European subvention funds is debated at present, with the participation of representatives of each concerned specialisation, and those from the Municipality of Budapest, as well as officials of the Ministry of Justice and Law Enforcement. These activities were not covered even by OPNI.

During the period after closing down OPNI, the following measures have been taken in the field of the psychiatric and addictologic care-system:

According to the Government Resolution Nr 2118/2006. (VI. 30.) Korm. on reorganisation of certain structures and founding measures in order to promote efficient operation of the administration of public budget, the National Institution for Medical Care of Addictology (NIMCA) – as entity, having a partially autonomous economic management with allocations from State budget – has been dissolved by succession of the legal entity. According to the decision by the previous Minister, the tasks of the NIMCA in the field of methodology, data collection, monitoring and research have been transferred to the National Centre for Medical Care of Addictology (NCMCA), which had been created as autonomous organisational entity, but submitted to the authority of the National Centre for Medical Supervision and Methodology (NCMS), while NIMCA's tasks in the domain of health-care services has been transferred to the National Institution for Medical Rehabilitation (NIMR).

The National Centre for Medical Supervision and Methodology (NCMS) / National Centre for Medical Care of Addictology (NCMCA) began work in merit in June of 2008, and prepared its/their scheme of activities, having designated the following priorities:

- participation in the reorganisation of the financing system of ambulatory care of patients, suffering from addictology, elaboration of conceptions and propositions (at the same time, a working group has been established);
- designation of medical themes, conditions and sphere of competences in addictology of young people, co-operation in the field of practical establishment of the care, together with concerned professional organisations;
- activities on making young people aware of the risks or consequences resulting from the use of psychoactive drugs;
- programs on identification of first risk-factors and problems, programs on intervention in an early phase of drugs abuse in the schools and work-places, methodology for targeted prevention programs for high-risks groups;
- support for participation in coordination and implementation of programs on prevention, treatment and development for the Hungarian National Health and Medical Officer Service (ÁNTSZ);
- elaboration and implementation of the methodology for the Hungarian report on alcoholism.

In October 2008 a resolution has been adopted on the establishment of the National Centre for Psychiatry covering the whole methodological activities in the field of the psychiatry.

The National Centre for Psychiatry has been established as autonomous entity subordinated to the

authority of National Centre for Medical Supervision and Methodology and functioning in the framework of the Hungarian National Health and Medical Officer Service. Its registered office – on the basis of an agreement signed with the Semmelweis University – was designated at the University Clinic for Psychiatry and Psychotherapy of the Semmelweis University.

The National Centre for Psychiatry does not pursue health-care for psychiatric patients as principal activity, but it has competency in all issues, relating to the psychiatric care. The main activities of the National Centre for Psychiatry cover the following four fields:

- data collection, data processing (data collection on the conditions for provision of care for psychiatric patients, participation and counselling in the actualisation of professional code-systems, in the analysis of impacts resulting from changes of statutory norms on financing);
- increasing standards of health-care for patients (elaboration of material conditions, professional framework, structure, patients' rights, efficiency-survey of health-care activities, identification of problematic issues and elaboration of a strategy for remedies);
- scientific researches (co-ordination of the researches and transfer of knowledge in the field of Hungarian psychiatry and promotion of international cooperation);
- legal issues connected to the psychiatry (participation in the re-codification of the existing codes, full review of certain Acts, arrangement of some professional and legal domains connected to the care-system of psychiatry and initiative for new legislation).

In December 2008, Decree Nr 52/2008. (XII. 31.) EüM of the Minister of Health on specialised medical boards has been issued, which disposes on the creation of the Special Board for Medical Care of Addictology, beside the Professional Board for Psychiatry. In the sense of the referred decree, the Board shall operate as a professional board, submitting recommendations, expertise and council for the Minister of Health.

Following the expanded debates with professionals and representatives of the society, co-ordinated by the Ministry of Health, the latter adopted the National Program for Mental Health (NPMH) in April 2009. The program has been elaborated in close cooperation with a range of professional organisations (as the Hungarian Society for Psychiatry, the Professional Board for Psychiatry, etc.). Considering, that the NPNH aims primarily at the development of the health-care system in the field of psychiatry, the program has been adopted as conception for the latter. The adoption of this program seems to be suppletory measure in the Hungarian health-care policy.

The National Program for Mental Health (NPMH) is wholly in line with the relevant instruments of the World Health Organisation and documents of the European Union, while its topics and structure are founded on the document entitled "European Pact for Mental Health and Well-being 2008).

The strategic conception aims at attending positive changes in a short time primarily in the following domains:

- prevention of suicides and depression;
- mental health of young people and mental health in education;
- mental health in labour environment;
- mental health of people in third age /late in life;
- stigmatisation in connection with mental diseases and struggle against discrimination.

One of the most important factors menacing mental health of Hungarian population is the excessive consumption of alcohol. At present, there are several efficient complex programs for the effective treatment of alcohol problems. The document entitled “Alcohol policy and strategy – 2009” has been elaborated by the National Institution for Medical Treatment of Addictology, but actualised in 2008 by the National Centre for Medical Treatment of Addictology. This document constitutes an annexe to the National Program for Mental Health (NPMH).

In April 2009, a Program Board has been constituted, assuring the professional co-ordination of the National Program for Mental Health (NPMH). The members of the Board are leading psychiatrist of Hungary, national supervisors on different specialisations of the medicine, representatives of national institutions, presidents of the concerned professional board, as well as representatives of the ministries participating in the NPMH, and also representatives of civilian organisations.

The elaboration of a scheme for treating initiatives from local, regional and national organisations in the form of tenders, which are also in line with the NPMH, is in course at present.

Psychiatry is suffering from an increasingly deficient number of specialists. That is the reason why Decree Nr 122/2009. (VI. 12). Korm of the Government on vocational training with special orientation in higher education on health-care has been amended; the amendment aims at the provision of supplementary pays for specialists who work in specialisations suffering from deficient number of specialists. There are also intentions for promoting the increase of the number of specialists from EU resources.

The solemn putting into operation of the Unit for Psychosomatics and Psychotherapy in Tünderhegy took place in July 2009. This Unit was formerly attached to the OPNI, and afterwards transferred to the National Institution for Medical Rehabilitation. The unit and the attached community facilities – which have been established on a surface of 3000 m² - serve for the treatment of 60 in-patients, 30 patients with treatment in the daytime and leaving in the evening, and permit the performance of 60 hours of ambulatory treatment by doctor-specialists and of 120 ambulatory hours by generalists (GPs). The subvention from the Ministry of Health for financing the construction amounts to 250 millions HUF.

In December 2009, two international conferences took place in the field of the psychiatry /addictology, namely:

- National Centre for Medical Supervision and Methodology / National Centre for Medical Treatment of Addictology organised a common conference with the German Centre for Medical Treatment of Addictology (DHS) entitled: “Decreasing damages provoked by alcohol – possibilities for local interventions”;
- A thematic conference entitled “Prevention of depression and suicide” was organised by Hungary the 10 and 11 December 2009, in Budapest.

Collaterally with the above measures, the development of the activities, linked to the psychiatry /addictology was supported by the Ministry from EU subvention resources, which provided considerable opportunities for this branch of the medicine:

I. 1. Published and currently active tenders schemes:

In the framework of Operative Program for Social Renewal (TÁMOP), subvention may be acquired for physical fitness and human resources development:

Subvention for physical fitness:

The subvention scheme TÁMOP 6.1.2. entitled “Programs for health education and healthy attitudes” provides subvention in an amount of 26 billion HUF until 2013 for the implementation of action programs aiming at the motivation to healthy attitudes at local, regional and national levels with the purpose of implementation of objectives, set forth in National Program for Public Health, and support the achievement of targets, laid down in the National Program for Mental Health.

The main objective foreseen in this scheme is stimulating by supporting community programs – on the actions fields for physical health – the dissemination of individual model-attitudes and community values.

The activities under this scheme are focused particularly on the prevention of depression and suicide, the formation in early age of a personality with good skills for struggle, the elimination of the use of psychoactive drugs; therefore the principal domains for support are preventive and educational programs, aiming at the protection/preservation of mental health. Offers/propositions should be submitted to the published tenders by civilian organisations, budgetary and economic organisations and institutions. The applicants’ activities are facilitated by the fact, that no obligatory self-financing is required.

In the framework of this scheme of value of 2,4 billion HUF, applicants – smaller organisations - are entitled to submit offers in an automatic, simplified procedure for financing programs to be implemented in communes and towns with a population under 10 000 inhabitants. The acquirable subvention amounts to 1-10 millions HUF. The first tender was published on 30 June 2009, and the time-limit for submitting applications was fixed to 8 January 2010.

In the framework of the Operative Program for Social Infrastructure (TIOP) 6.1.2. with a value of 4 billion HUF – allowed for small regions under the least advantageous conditions - 59 offers for projects from self-governments and civilian organisations located in small regions gained preliminary approbation.

The deadline for submission of detailed offers was fixed to the end of October 2009 in a subvention limit of 2,13 billion HUF for regions concerned by convergence requirements, while in Central-Hungary, this amount was fixed in 480,2 millions HUF with the objectives, marked in published tenders. In the second round of the programme, further 23 offers for programs with a total value of 1,1 billion HUF has been submitted for financing from the remaining amounts after the first round.

Subventions for developing human resources

Special programs – entitled TÁMOP 6.2.2. “Training programs for people working in health-care, development of skills and competences, training specialists for under-filled professions” were dedicated for ameliorating the situation concerning deficient professions, as well as the scheme 6.2.4. entitled “Support to Employing” provides opportunities for acquiring subventions also for nurses and doctors working in the psychiatry.

The deadline for submission automatic offers for the scheme with title TÁMOP 6.2.4/A “Support for employing in health-care institutions” expired on 30 September 2009. The total amount of the acquirable subventions was determined in 2,282 billion HUF. A total number of 38 applicants from regions concerned by convergence requirements and from Central Hungary acquired in total about 1,395 billion HUF. The publishing of new tenders for the remaining subventions sums took place on 16th December 2009 with a sum of 1,449 billion HUF for the regions with convergence requirements and about 148 million HUF for applicants from Central-Hungary.

The granted subventions sums may be assigned by grantees to maintain health-care qualified nurses and doctors in this specialisation, to fill up vacant posts of doctors and qualified nurses in certain regions and institutions, which has been established as issues of the reorganisation of health-care system, to filling up vacancies resulting from the retirement to pension of older generation of doctors and nurses and linked to under-filled professions, the recruitment of new employees. The employing institutions have the obligation to employ staff they have engaged in the framework of the tender, or functioning of mobile teams for 12-24 months. The employment in the field of the psychiatry enjoys priority in this scheme.

The tenders published in the framework of the programme TÁMOP 6.2.2/A entitled “Subvention for financing training fees to institutions” for entities from regions with convergence requirements offer resources with an amount of 2,2 billion HUF for the subvention of training or working specialists; an other tender offers to the entities from Central Hungary’s regions a total subvention sum of 600 millions HUF for the same objective. Under-filled professions – like psychiatry – are marked as specialisation of priority in the scheme, but the reintegration to the health-care of persons with health-care specialisation on temporary suspense of work is also supported by granting subvention for financing training fees for qualified nurses and doctors and also by supporting financing of subsidiary charges, linked to the trainings.

The scheme TÁMOP 6.2.2/B, aiming at the implementation of improvement trainings and methodological progress offers a subvention of 700 million HUF for all the regions. The targeted areas are the under-filled professions – as psychiatry. The deadline for submission of offers expired on 30th October 2009 but new offers for the remaining subventions have been published in December 2009.

In the framework of the Operative Program for Social Infrastructure (TIOP) a sum of 74,8 billion HUF is available for the period of 2009-2010 with the purpose of promoting reorganisation of the institutions, providing in-patient health-care and the improvement of infrastructure. Offers may be submitted by organisations from the six regions with convergence requirements.

In the framework of the component “A” of the tender scheme entitled TIOP 2.2.4 “Development of infrastructure for the reorganisation of health-care institutions, providing in-patient care”, applicants – service providers in the field of in-patient-care – may submit offers, among other things, to the following developments:

- reorganisation, development, centralisation of active care-units, attached to central technological block, as well as creation and development of centres for care of cardiac and vascular system diseases;
- establishment of connection of urgency units and sections, providing active in-patient care with the central hospital block;
- establishment and development of hotel-service for parents in connection with paediatric health-care, establishment of “Pro-Baby Hospital”, in conformity with the program entitled “Our Common Wealth is the Child”;
- development of infrastructure of hospital units, assuming care for chronic patients, including improvement of the rehabilitation for children as well as the development of physiotherapy supporting rehabilitation.

Emphasising as priorities the above enumerated domains, the resources assigned for development, will promote the improvement and integration of the rehabilitative cares for psychiatric patients of active and chronic types in early phase, and also the modernisation of the instruments and devices. The deadlines for submission of offers connected to component “A” are fixed to 10-15 February 2009 and to 5-16 April 2009.

In the framework of the Regional Operative Program (ROP), the regions – with exception of the central region – health-care institutions and health-care services providers - may submit applications for subventions for the improvement of in-patient special health-care systems for medical rehabilitation and integrated institutions, as well as of care-systems for psychiatric / suffering from addiction patients. The available subventions for certain regions are as follows:

DAOP-4.1.2/B	1,3 billion HUF
DDOP-3.1.3/C	2,55 billion HUF
ÉAOP-4.1.2/C	3.54 billion HUF
ÉMOP-4.1.2/A	
ÉMOP-4.1.2/B	2,1325 billion HUF
KDOP-5.2.1/C	0,79 billion HUF
NYDOP-5.2.1/C	0,8 billion HUF

The objective of these tenders is to develop care in the field of medical rehabilitation, suitable for the needs and depending on gravity degree or stadium of the disease, as well as the improvement of the care for patients suffering from addiction. In the latter, the regional hospitals, which have lost of active beds or in which the number of active beds has significantly been reduced because of the reorganisation of the health-care system, will have an important role in the enlargement of activities in the field of rehabilitation, and also in the reinforcement of such activities in specialised hospitals, in which the active health-care has been ceased. The objective is the modernisation of the infrastructure, the establishment of the network of integrated system with optimal capacities and efficiency in costs, as well as assuring a continuous and flexible care. Another objective is the improvement of the quality of available human resources, which has to be well trained and able to meet requirements necessary for activities in the field of medical rehabilitation. Psychiatric rehabilitation (including special rehabilitation in psychiatry and psychotherapy, paediatric psychiatry and psychiatry for young people, rehabilitation of patients, suffering from addiction, alcoholism, drug abuse, and other mental diseases) is indicated as an activity capable of acquiring subvention independently from others. The deadline for the submission of applications is fixed from 1st of March 2010 to 30th of April 2010.

1.1 Projects of priority

Among the health-care institutions, having taken over the activities of the OPNI, the development of the Semmelweis University should be carried out through the component entitled “Development of the health-care institutions, providing priority health-care services” in the framework of the scheme “Operative Program for Central-Hungary 4.3.1. – Development of the health-care institutions network, assuming in-patient care in the region of Central-Hungary”. The amount of the available subvention is determined in 7,5 billion HUF. The deadline for the implementation of projects will be 12th of March 2012.

The project will assure the implementation of a complex system of health-care on the basis of an infrastructure which will be adequate to the requirements of modern age. It means that special structures, which are closely interconnected, diagnostic and therapeutic units, which complete each other, will be located on the same site and in the same block. A new unit will be built on the external clinics site. A passage system will be constructed with the buildings of other teaching hospitals (as University Surgical Clinic, Clinic for Internal Diseases I, Otological-Rhinal-Laryngological Clinic, Clinic for Neurology, Clinic for Psychiatry, building in Tömö utca, Clinic for Urology), with the purpose of assuring rapid, safe and independent from inclement weather access to the functions, which will be centralised. The above mentioned development will permit that patients of university clinics, which will be attached to the new block (as the Clinic for Radiology, Gynaecological Clinic II, University Surgical Clinic, Clinic for Internal Diseases I, Otological-Rhinal-Laryngological Clinic, Clinic for Neurology, Clinic for Psychiatry, building in Tömö utca, Clinic for Urology), requiring urgent treatment or care, have definitive health provision within 10-30 minutes.

1.2 Planned projects for development

In the framework of the project entitled “TÁMOP 6.1.2 – Programs for health-education and positive changing of health-attitudes”, a sum of 11,6 billion HUF is available through action plans for 2009-2010. The tenders for subventions from the fund of 5,6 billion HUF assigned for 2009 will be published during the first quarter of 2010, and depending on applications for 2009, this sum will be increased by another sum of 6 billion HUF in the course of 2010.

The publishing of tenders for 2009-2010 in the project “TÁMOP 6.2.2 “Training programs for employees in the health-care, improvement of competences and skills, training of deficient professions and specialisations” will be during the first quarterly of 2010 with a total subvention sum of 3 billion HUF.

The operative and regional projects have been conceived for the establishment of a new – higher – level of special ambulatory health-care system, which will replace the active in-patient health-care. These programs are integrated to the Program for Development of the New Hungary (ÚMFT). The applicants may also submit demands on projects for development in the field of the psychiatry and addictology, and enlarge their ambulatory health-care capacities. The second round of tenders in the framework of the regional operative projects was published for six regions with convergence requirements with a total value of 6,7 billion HUF.

The project TÁMOP 6.2.4/B – connected to the above tenders – will promote the filling up of needs in human resources required in higher level ambulatory and special health-care centres as well as subvention for training courses for adults and employment in the grantees-regions. Publishing of the tenders for components “A” and “B” of the project TÁMOP 6.2.4 will probably take place in the first quarter of 2010, with a sum of 5,84 billion HUF for 2009 and 2010, and over that, further 1 billion HUF, which will be allowed for the small regions under the least favourable conditions.

2. Ill-treatment

Recommendation

CPT recommends that measures be taken at Nyírő Gyula Hospital for ceasing inter-patient violence (Paragraph 126)

The general director of Nyírő Gyula Hospital was invited to examine the possibility of separation of psycho-geriatric patients and patients displaying acute psychotic conditions.

The Ministry of Health is searching at present ways for the establishment of a high security psychiatric section. In order to create such a section, the Ministry of Health initiated manifold consultations with other ministries and the Municipality of Budapest, while representatives of this special domain have elaborated a proposition on personal and material conditions, required for the new units. The developments are significantly restricted by extremely high costs of investment and working staff.

3. Patients' living conditions

Recommendation

“CPT recommends that the bedrooms of the closed wards of Nyírő Gyula Hospital and Sántha Kálmán Hospital be equipped with doors for ensuring proper protection and preserving patients' privacy” (Paragraphs 128 and 129):

The representatives of the concerned hospitals promised to consider the possibility for separating patients and equipping doors to the bedrooms. Nevertheless, the management of the hospitals believes that carrying out these changes will require significantly more human resources, which could only be assured with some restrictions under the current economic situation.

Another difficulty is that Sántha Kálmán Mental Health Centre and Special Hospital is located in a classed historic monument building therefore doors could not be equipped in certain cases, because the walls – with 1 meter of thickness – do not permit enlarging the existing doorway, and building up doors would make the cross-section of the doorway narrower, and that would hamper the movement of patients' beds. Where doors do not hamper the movement of beds and persons, they are equipped at present. Further, an important requirement is preventing accidents.

Considering the importance of CPT recommendation, the Ministry of Health transferred a request to the Professional Board for Psychiatry for taking up position in this question.

“Efforts to be made in the closed wards of Santha Kalman Hospital to offer a more congenial and personalised environment to patients, in particular by providing them with lockable space” (Paragraph 129):

There are regulations issued by the Hungarian National Health and Medical Officer Service on material conditions – furniture – in bedrooms, where patients are accommodated for surveillance (closed wards). That is the reason why personalised and more comfortable environment may not be offered in all the cases. Pieces of furniture may also be sources of accidents; therefore particular attention is required when choosing bedrooms' furniture (i. e. patients suffering from dementia use plant on the floor for eating; psychotic or delirious patients use pots and picture-frames for attacking, etc.). Notwithstanding all that, the bedrooms of surveillance (closed wards) had been equipped with built-up armoires in the visited hospitals. Plants will be placed lofty, and pictures will decorate bedrooms.

It must be noted, that the coloured and rich in stimulus environment seems to be favourable only for patients, displaying certain clinical appearances from professional approach, while for others (i.e. those suffering from mania) such environment even hinders the therapy. Unfortunately, pictures on the wall (which numerous patients feel stranger, because they differ from their home environment) frequently increase hallucinations for paranoid schizophrenic patients, as well as TV sets or radios, the voice of which may also provoke these patients.

In response to CPT's remark aimed at transforming the large-capacity dormitories into accommodation structures based on smaller groups, the Hungarian authorities would like give the following information:

The material conditions of bedrooms and dormitories are often issues of special, professional considerations, because the rooms with larges measures can be easily surveyed by the staff; patients in rooms of smaller dimensions may be even more separated; they may feel themselves closed and isolated from the environment, and opportunities for social interactions with nursing staff and other patients may also be narrowed down. The community and its socialisation effect may also support the care of psychiatric patients, so these factors justify the establishment of large-capacity rooms.

Considering the fact that in certain cases the existence of large-occupancy rooms has therapeutic value, taking position has been demanded from the Professional Board for Psychiatry on the hypothesis when large-capacity bedrooms should be smaller, and when small dormitories are contraindicated.

In the closed ward of Department I at Sántha Ferenc Hospital, patients under surveillance (closed ward) take their meals not in their bed, but at a separate table. As staff in the hospital observed, patients do not wish to eat together with other patients because of their physical condition or state of health. The management of the Department considers at the same time, – if patients wish so too – to serve, in the future, meals in the exterior dinning room. Deficiency in human resources provokes however some problem, because there will always be a certain number of patients, who may not be mobilised, and therefore serving meals in the exterior dinning room would require a double staff number.

“Efforts to be taken to reduce the occupancy levels in the dormitories of Departments VI and VII at Sántha Kalman Hospital (Paragraph 130):

The problem of overcrowding in the building at Kálósemjén, attached to the Sántha Kálmán Hospital will be resolved with the re-location of the Department in February of March 2010.

“CPT recommends that steps be taken at the closed ward of both hospitals, as well as in other psychiatric hospitals in Hungary, to ensure that patients can wear their own clothes as far as possible during their stay (Paragraph 131):

According to the practice at the Sántha Kálmán Hospital, the own clothes and telephone – after taking inventory – are deposited at the closed ward for the protection of the patients and their relatives. Considering, that certain dangerous items – as cigarette-lighter or cutting-tools – may also be hidden into the own clothes; their use may have grave consequences. Beside security considerations, the management of the hospital called also the staff members’ attention to the hygienic issues.

The adequate hygienic environment may be assured only by provision of clean clothes. The hospital clothes may be better and more easily disinfected (washing service providers are not prepared for the washing of clothes at different temperatures, and paying indemnity for eventual damages). It is of common occurrence that new patients bring with them different parasites to the hospital, the rapid propagation may not be prevented by another way. Besides, dirtying of the own clothes impose further problems (storage; what to do with patients, who have not relative? etc.). Other problem may be the existence of accessories belonging to the own clothes (belts, strings and buckles), which are considered as particularly dangerous items. There were a large number of cases, when the staff had prevented patients from hanging/strangulations with these items.

According to the experience of the Ministry of Health and institutions having participated in the study, the problem remarked in CPT Report had not been signalled before by patients, but in order to consider CPT’s recommendation, the Ministry requested the Professional Board for Psychiatry to take position on the issue.

4. Treatment of patients and staff resources

Recommendations

“CPT recommends that an individual treatment plan be drawn up for each patient at Nyírő Gyula Hospital and for patients of the closed ward of Sántha Kalman Hospital (taking into account the special needs of acute, geriatric or long-term patients), comprising the goals of the treatment, the therapeutic means used and the staff members responsible. Patients should be informed of their individual treatment plans and progress; further, they should be involved in the drafting and implementation of these plans (Paragraph 133):

Hungarian authorities believe that present practice of drawing up an individual treatment plan is conforming to CPT’s recommendation. The difference is only in the denomination of the document.

Under the practice of the Sántha Kálmán Hospital, the doctor draws up a plan of therapy for each patient, which will be introduced in the treatment file of the latter. This plan contains the diagnose, the goals of the therapy, the name and signature of the treating doctor, the applied therapy, the medicaments which will be used in urgent cases, the need of psychological diagnosis, the necessity of laboratory analysis, the need of psycho- and socio-therapeutic treatments. The plan of therapy is complemented by a plan of treatment/nursing (which contains the diagnosis, the goals of the treatment, the evaluation and modification of the treatment), as well as a separate plan for rehabilitation, when the health provision aims at rehabilitation, which has separate forms. The therapeutic plan shall be drawn up at the first consultation, and will be complemented every day, continuously, following the patient's needs. The plans and modifications in them shall be documented in all cases upon approval of the treating doctor. The file of treatment contains both the name of the doctor, who has admitted the patient to the hospital, and the treating doctor's name; the file bears the seals of the hospital and the doctor; the treatment/nursing plan contains the signature of members of the staff, concerned with the nursing of the patient.

The patient – depending of his/her state, takes part in the drafting of his/her different plans, and of the essential components of the therapy. The patient shall always be informed of the essential elements of his/her treatment.

The representative of Nyírő Gyula Hospital has similar position. At this hospital, the plan of treatment is contained in the case-history.

In order to take decision on the issue, whether the denomination of the documentation should be changed or not due to CPT's recommendation, the Ministry requested for taking position of the Professional Board for Psychiatry.

It must be noted in rapport to the patients' participation in programs of rehabilitation in different sections of the hospital, that patients spend only the strict minimum of stay in closed ward (under surveillance), and as soon as their state permits, their treatment continues in open units, where the whole inventory of rehabilitation's programs are available for them. Mostly it is old, inert patients, who are nursed for days and even for weeks in closed wards. The rehabilitation of such patients takes place depending on their mental and somatic state.

“CPT recommends that the recording of information at Nyírő Gyula Hospital be reviewed, in the light of remarks” (Paragraph 134):

The attention of the general director of Nyírő Gyula Hospital, run by the Municipality of Budapest has been called to the necessity of the review of the recording of information.

“CPT recommends that immediate steps be taken, at both hospitals, to ensure that all patients whose health so permits are offered at least one hour of outdoor exercise per day” (Paragraph 136):

At the Sántha Kálmán Hospital, smoker patients gain access to the establishment's yard – under staff member accompaniment several times during the day, and during this time, the surveillance of non-smoker patients is also assured. Even old and inert patients, who may be seated in wheel-chair are moved to the establishment's yard, when the weather permits. Often, the patients are allowed to the yard with right-minded visitors too. Nevertheless, the understaffed human resources do not permit the airing for all the patients (particularly of patients, who may be mobilised only with difficulties while assuming all security measures for the adequate psychiatric health-care.

At Nyírő Gyula Hospital, the new closed yard is under construction at present.

“As part of their training, staff should also receive guidance on managing conflicts between patients” (Paragraph 137):

The care for psychiatric patient is a team-work. Each member of the team keeps being informed on the other members' tasks. Managing conflicts between patients is treated on several occasions, and according to the director general's information, debates are pursued on the issue (in the course of consultations between staff members of the unit, in groups, casuistic, trainings courses, where participants are given training on de-escalation techniques too). Besides training described above on conflicts managing between patients, there are sessions in larger groups of professionals, where staff members are treated for putting right their reactions, psychotherapeutic attitudes and manifestations.

At the Sánta Kálmán Hospital, each process is regulated by quality system, which contains also a policy on conflicts managing, and the education of this protocol shall be obligatory for all staff member, participating in psychiatric health-care. The latter shall be documented. As regard to this issue, it was proposed by the management of Nyírő Gyula Hospital that the training on managing conflicts would form part of post-graduate programs.

5. Means of restraint

Comments:

“CPT recommends that the practice of fixating patients in full view of other patients be discontinued without delay; immobilisation should not be applied in the sight of other patients” (Paragraph 139):

The representatives of the Ministry of Health called the attention of the management of the visited hospitals to take measures in order to apply means of mechanical restraint possibly not in view of other patients. The management of the concerned institutions believes, that employing mobile draught-screen and driving out of patients from the room may offer a reassuring solution of this problem.

The use of draught-screen, as means of separation, has been introduced to the protocol/policy on the use of means of restraint. The concerned staff members have been trained to the use of draught-screen. In everyday practice, patients who are able to move, are driven by nursing staff members not participating in the use of the mechanical restraint into farther parties of the room or to the corridor at the beginning of the use of such restraint and their attention is called away from the very beginning of applying of the measure.

“CPT recommends that steps be taken at Nyírő Gyula Hospital and at Sánta Kálmán Hospital to ensure that both the policy and practice concerning the use of means of restraint comply with the requirements specified in Paragraph 141. All psychiatric establishments in Hungary should apply these precepts as regards resort to means of restraint. Patients should also be duly informed (in writing) of the establishment's restraint policy as well as the existing complaints mechanisms in this respect” (Paragraph 141):

As regards introduction of a recording system of any resort to means of restraint in psychiatric hospital, the representatives of the Ministry of Health required for taking position of the Professional Board for Psychiatry.

At the same time, the attention of the management of visited by CPT hospitals was drawn to the observation – review - of the policy on applying measures of restraint. It is particularly important that this policy is in harmony with dispositions, set forth in Act CLIV of 1997 on Health-Care, as well in Decree Nr 60/2004. (VII. 6.) ESzCsM of the Minister of Health, Social Affairs and Family on regulation of the use of means of restraint during admission procedure and care of psychiatric patients.

The Professional Board for Psychiatry has been invited to take position and if necessary, measures following CPT's recommendation in this matter.

6. Safeguards in the context of involuntary hospitalisation

Recommendations

“CPT recommends that court decisions be delivered to patients in writing promptly” (Paragraph 143):

The underlying legislation for judicial proceedings to involuntary admission to a psychiatric hospital is the Act III of 1952 on Civil Procedure. The Ministry of Health – together with the Ministry of Justice and Law Enforcement – submitted an initiative for the amendment of the Civil Procedure Act relating to this issue.

Requests for information

“At Sántha Kálmán Hospital staff interviewed indicated that patients admitted on a voluntary basis would not be allowed to leave the closed wards if they wanted to” (Paragraph 144)

“CPT recommends that procedures be reviewed with the aim of ensuring that all patients, whether voluntary or involuntary, are provided systematically with information about their condition and the treatment prescribed for them and doctors be instructed that they should always seek the patient’s consent to treatment prior to its commencement.”

The form concerning informed consent to treatment should be signed by the patients or (if he/she is incompetent) by his legal/mandated representative (Paragraphs 145-146):

The applied legal dispositions are set forth in the Act on Health Care, which are to be observed by staffs of all psychiatric units. The problem remarked in Paragraph 144 must essentially be connected to nursing tasks. There are cases, when voluntary patients’ state of health is endangered or presenting imminent danger therefore they must temporary be accommodated in closed ward if it is justified from medical-professional approach.

At both hospitals, information sheets for patients, put in the wards contain patients’ rights and domestic rules. At the Sántha Kálmán Special Hospital, patients and their relatives are provided with information booklets on certain diseases. The hospital management calls their attention to the information sheets put on Internet Website. Besides, social workers give verbal information for patients and their relatives on domestic rules, patients’ rights and administrative ways of arrangement social problems. Accessibility data of the patients’ rights representative is also available in all closed wards.

As the necessity of information booklet, suggested by CPT recommendation, the Ministry of Health demanded taking position from the Professional Board for Psychiatry.

“CPT recommends that steps to be taken at both hospitals to set up appropriate facilities in which patients in the closed wards can receive visits” (Paragraph 147):

As contacts of patients in closed wards with outside world, the following remarks need to be made:

- visits of patients take place according to their needs and that of their relatives even now.
- telephone use is restricted in closed wards, but telephone calls can take place in the presence of a social worker.

The management of the Sántha Kálmán Special Hospital regularised the telephone use in the above manner – in order to protect patients, their relatives, nursing staff and to assure adequate functioning of the institution on the basis of the following professional considerations:

Cellular phone is considered as object of worth, therefore it falls under the same regularisation as money or jewellery. Generally, patients in closed wards are mostly incapable, inert, mentally disturbed persons. It happened in some past case, that dement patients had taken away other patients' cellular phone, and threw it into the waste-basket or the toilet. Maniac patients generated sometimes enormous telephone bills, and that significantly impeded the rehabilitation after his/her later recovery. It happened also in a few cases that patients in disturbed mental state, called police telephone numbers and made wrong alarms, unnecessarily disturbing the work of the police. In certain cases, other patients' relatives have stolen cellular phones to the prejudice of inert peoples. Such actions may also throw suspicion of theft to nursing staff members too.

- We would like to mention, that letter of Hungarian authorities of 10 June 2009 referred not to the directives on visits and telephone use, but medico-professional policies. The policies had only been mentioned because the increasing numbers of policies greatly contribute to the establishment of the secure and unified health-care (Paragraph 147).

Request for information

The Committee would like to receive the comments of Hungarian authorities on the judicial reviews of the hospitalisation of patients at Sántha Kálmán Hospital, where the procedure did not appear to be as formalised as in Budapest, and a lawyer/legal counsel was apparently rarely present during reviews (Paragraph 143):

In order to be in position to give adequate response to CPT request, representatives of the Ministry of Health addressed to the Public Foundation for the Protection of rights of children, patients and beneficiaries of social prestations/allowances, which is an independent entity of this Ministry. It must also be noted, that the following institutions provide assistance in protection of patients' rights: Health Insurance Supervisory Authority, the auditors' system, run by National Healthcare Audit and Inspection and Office of the Parliamentary Commissioners. The remarked approach – if existed – has to be remedied.

III.

CPT's remarks concerning the Ministry of Labour and Social Care

CPT's Report suggests new recommendations, contains remarks and requests for information in relation to the psychiatric institutions under the authority of the Ministry of Health, particularly as means of restraint.

Although indirectly, but they concern also some of the social institutions, functioning under the authority of the Ministry of Labour and Social Care. The remarks on psychiatric institutions concern this Ministry, because the personal effect of the dispositions set forth in the Act CLIV of 1997 on Health-Care, as well in Decree Nr 60/2004. (VII. 6.) ESzCsM of the Minister of Health, Social Affairs and Family on regulation of the use of means of restraint during admission procedure and care of psychiatric patients covers inmates of social institutions too. On this occasion, CPT did not visit any social welfare establishment for patients suffering from mental disability, but its recommendations ought to be considered as to these institutions too.

IV.**CPT's remarks, requests for information and responses to them concerning the Hungarian Prosecution Service**

Paragraph 61 of the Report states: "CPT would like to stress the importance of effective action by the prosecuting authorities when information indicative of possible ill-treatment comes to light. In the course of the 2009 visit, CPT's delegation paid particular attention to the manner in which certain investigations into cases involving allegations of ill-treatment of prisoners had been carried out. The delegation assessment of action taken so far by the competent prosecuting authorities in these cases was generally positive."

In previous reports, CPT has also acknowledged the conscientious approach of the prosecution service in this field; it has been reported, that the inspection by prosecution organs in Hungary assured the possibility for significantly contributing to the prevention of ill-treatment, and in general terms, to the provision of adequate conditions of detention.

CPT requested up-to-date information within three months on the investigation into the case of ill-treatment, perpetrated at the Somogy County Penitentiary Establishment. The requested information was sent in due time. Since then, the Military Prosecutor's Office at Kaposvár has completed the investigation, instituted and pursued for cause of crime of aggravated assault causing injury to death, incriminated under Section 170, Subsection (1), and punishable under Section 170, Subsection (6) of the Criminal Code, and other criminal offences.

The case history and matters of fact – to which general attention was paid not only by criminalists of Hungary, but also those of the Members States of the European Union – has been cleared by the military prosecutor's office on the basis of the evidences, collected and acquired with due accuracy in investigation, charged with numerous difficulties during evidentiary procedure.

During the criminal investigation, 134 persons were questioned as witnesses (49 of them several times), 14 persons were interrogated as suspects (12 of them several times) and interrogation reports have been drawn up; there were 19 confrontations, 3 seizures, 2 onsite investigations, and 1 re-enactment. The Institution at Kaposvár of the National Institutes for Forensic Sciences furnished two expertises, while the Forensic Expert Bureau of Specialised Services of the National Security drafted one expertise in this case).

At the beginning of the procedure, 2 persons were apprehended.

In the course of the investigation-phase of the procedure, the Military Prosecutor's Office at Kaposvár informed twice the Consular Section at the Embassy of FRG, and also kept informed the victim's wife, living in Germany (e.g. by sending the autopsy report of forensic doctor), and also the Hungarian partner of the German lawyer, proceeding as the legal representative for the victim.

On 23 July 2009, the Chief Military Prosecutor Office informed the State Prosecutor's Office at Traunstein, Germany, on the state of the criminal proceeding at that time.

According to the data of the expertise drawn up by the forensic doctor and of the definitive autopsy report, it has been established that remand prisoner "A" had suffered injuries in cranial cavity, resulting from the brutality, having perpetrated by penitentiary staff member "B", which had have direct casual correlation with death; it means that the victim's death had been provoked by the author's brutality.

On 23rd of December 2009, on the basis of the established materials of facts the Military Prosecutor's Office at Kaposvár presented indictment to the Somogy County Court, against a total number of 10 chief officers and sub-officers of the Somogy County Penitentiary Establishment.

In the criminal proceedings:

Former penitentiary staff member “C” was accused of having perpetrated the:

- crime of aggravated assault causing injury to death, incriminated under Section 170, Subsection (1), and punishable under Section 170, Subsection (6) of the Criminal Code,
- crime of breach of duty in service, incriminated under Section 348, Subsection (1), and punishable under Section 348, Subsection (2), 1st item of the Criminal Code,
- crime of maltreatment in official proceedings, incriminated and punishable under Section 226, Subsection (1) of the Criminal Code;

Former penitentiary staff member “D” was accused of having perpetrated the:

- crime of breach of duty in service, incriminated under Section 348, Subsection (1), and punishable under Section 348, Subsection (2), 1st item of the Criminal Code,
- crime of maltreatment in official proceedings, incriminated and punishable under Section 226, Subsection (1) of the Criminal Code, committed as co-actor;

Former penitentiary staff member “E” was accused of having perpetrated:

- two counts of crimes of maltreatment in official proceedings, incriminated and punishable under Section 226, Subsection (1) of the Criminal Code,
- crime of breach of duty in service, incriminated under Section 348, Subsection (1), and punishable under Section 348, Subsection (2), 1st item of the Criminal Code, committed as cumulative offence;

Penitentiary staff member “F” was accused of having perpetrated the:

- crime of maltreatment in official proceedings, incriminated and punishable under Section 226, Subsection (1) of the Criminal Code;

Former penitentiary staff member “G” was accused of having perpetrated the:

- crime of harbouring a criminal, perpetrated by an official, incriminated under Section 244, Subsection (1), item b) of the Criminal Code, and punishable under Section 244, Subsection (3), item b) of the Criminal Code;

Penitentiary staff member “H” was accused of having perpetrated the:

- crime of breach of duty in service, incriminated under Section 348, Subsection (1), and punishable under Section 348, Subsection (2), 1st item of the Criminal Code,
- crime of forgery of official document, incriminated and punishable under Section 274, Subsection (1), item a);

Penitentiary staff member “I”, penitentiary staff member “J”, penitentiary staff member “K” were accused of having perpetrated the:

- crime of breach of duty in service, incriminated under Section 348, Subsection (1), but punishable under Section 348, Subsection (2), 1st item of the Criminal Code;

Penitentiary staff member “L” was accused of having perpetrated the:

- crime of infringement of obligation of reporting, incriminated and punishable under Section 350, Subsection (1) of the Criminal Code.

The information requested by CPT within 3 month has also been sent in due time on a case of maltreatment in official proceedings at the Borsod-Abaúj-Zemplén County Penitentiary Establishment; the Hajdú-Bihar County Court has not yet rendered a final judgement on the indictment, presented by the Military Prosecutor’s Office at Debrecen for crime of maltreatment in official proceedings and other criminal offences.

Conclusions

As conclusions and summing up the responses of the Hungarian authorities and organs, it should be highlighted again that according to the Hungarian authorities, CPT's fact findings, recommendations and remarks promote their work and CPT Report includes useful information. They are especially thankful for CPT's endeavour to maintain good co-operation and for its intention to help. The fields, requiring amendment have been revealed with an exemplary accuracy; deficiencies, as well as practices, which differ from that of other countries and which must be amended have been indicated firmly, with insistence. The deficiencies are not only remarked, but there are also recommendations for their remedy. The fact, that results and progress that they have attained are also acknowledged by CPT - is really encouraging.

(The Hungarian response was compiled from written reports and opinions received from the authorities concerned, and the final text was discussed with these organisations and relevant government officials by Prof. Dr. György Vókó, CPT liaison officer.)

APPENDIX

**RESPONSE OF THE HUNGARIAN AUTHORITIES
TO THE REQUESTS FOR INFORMATION MADE IN PARAGRAPHS 17 AND 61
OF THE CPT'S REPORT ON THE VISIT TO HUNGARY IN MARCH-APRIL 2009**

Ref. Ig.0344/2009

To the attention of Mr. Mauro Palma

President of the European *Committee* for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Strasbourg

Dear Mr. President!

The European *Committee* for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Hungary from 24th March to 2nd April 2009 upon which information was requested in paragraphs 17 and 61 of the final report. The affected Hungarian authorities provide the following information:

Ad 17. – In the Budapest Central Detention Facility in the „K” cell – the heavy lighting spotlights (in real terms these are mounted with smaller halogen bulbs) were mounted because of the light sensitiveness of the video-surveillance camera system and as well because of the special wardens and because the net of the cell is so densely woven that under weak internal lighting circumstances the visibility is zero, thus, due to these circumstances the spotlights were mounted in 1996. Inspecting thoroughly all circumstances of the named „K” cell – and bearing in mind the recommendation in the CPT report – the national police commissioner has taken steps to remove the spotlights from the cell.

In the Budapest Central Detention Facility in the „K” cell about the installed cctv system concerning the so-called „blind-spot” – about the detriment of privacy – the national police commissioner was of your opinion. Thus according to the former he has taken steps that the detainee could be monitored during his/her private activities (that is using the toilet or taking a shower) but in a less offending manner with partial concealing of his/her private parts.

Against any detainee in the Budapest Central Detention Facility in the „K” cell more stringent coercive instruments – hand and ankle cuffs, body belts and leash – are still necessarily applied while ushering the detainees within the edifice, according to the police. The stringent coercive measures – sometimes seemingly disproportionate - are being applied in the „K” cell of the Central Detention Facility against the detainees locked up there, because the prospective sentence for those inmates are most probably high and with these measures the possibility of fleeing, attacking of and by these inmates can be avoided or hindered with respect to other specialties of the project.

For the use of these coercive instruments the following rules:

- The XXXIV Act on the Police of 1994
 - The 62/2007 IRM Decree (XII. 23.) about the Service Regulation of the Police
 - The 19/1995. BM Decree (XII. 13.) about police detention rooms and
 - The 19/1996. ORFK Order (VIII. 23.) about the Police Regulation of the Detention room service
- give unambiguous authorization.

Apart from the previously mentioned rules, the regulation of the application of coercive instruments are regulated in the Warden's Order as well, that is coercive instruments can only be applied while ushering an inmate from one place to another but not while they are on the jail yard for free activities.

Ad. 61. 1) Data so far on the investigation of the death case of "A".

At the Kaposvár Military Prosecutor's Office investigation was ordered on 6th February 2009—against unknown person pursuant to Section 170 (1) of the Hungarian Criminal Code for causing death by battery which qualifies under Subsection (6) of this Section and for committing other offences.

On 20th of January 2009 in the evening hours, before the investigation had been ordered, the subordinates of the Siófok Police Headquarters' Tab Police Station held a house search at the apartment of "A" in Karád and used measures of coercion and handcuffs against him. After that the person concerned was taken to the Tab general practitioner who stated wounds on the metacarpus. After that "A" was arrested in Tab. On 21st January, 2009 at 04:30 a.m. he was received at the detention room of the Somogy County Police Headquarters, where he stayed till 23rd January, approx. 08:00 o'clock and during this time – according to the certificate issued by the detention facility's doctor – he endured bruises on his temple, both of his knees, which were, according to the statement of that time, signs of his fall. "A" was escorted to the Kaposvár City Court on 23rd January, 2009 at 08:30, where the judge in charge for the proceedings ordered his pre-trial detention due to the offences of misuse of firearms and ammunition.

After that "A" was escorted by the police to the Penitentiary Facility of Somogy County, where during the reception proceeding significant and large extent of wounds were discovered on the whole body of the person concerned, for that he was immediately taken to the Emergency Facility Centre of the Kaposi Mór Educational Hospital. During the examination the doctors of the hospital discovered numerous different kinds of wounds on the offended and all those wounds were registered. Among these were wounds, indicating head injuries, which, according to the necropsy record of the forensic expert, caused the death of the person concerned. After the medical examination "A" was sent back to the Penitentiary Facility of Somogy County, where his reception occurred and he was placed into the so-called medical detention room due to his wounds and his lately discovered diabetes. The person concerned could not be woken up on 25th January 2009 during the morning hours in the service change period, which was first attributed to the medicament he had been given, and than later – realizing his unconscious state – an ambulance car was called which took him to the Kaposi Mór Educational Hospital. After a medical consultation head surgery was undertaken on him with the intent to remove his subduralis haematoma. The person concerned fell into coma and deceased on the intensive care unit of the hospital.

According to the investigation of the military prosecutor's office 14 persons with different ranks (petit-officers and officers) of the professional staff of the penitentiary facility, respectively those being already suspended have been accused – among them the commander of the penitentiary facility, in the meantime suspended as well – of the suspicion of committing different kinds of offences. Among those persons there are some who assaulted the offended at different times while others committed other offences.

The investigation is still ongoing because new data have emerged on the assault of the offended person; presumably he had already been assaulted at his residence by a civilian before the police took measures. Based on these data it is justified to supplement the medical forensic report, since according to the expert's statement from among the external wounds the cause of death is most likely to be deducted from the blunt trauma caused by a hit on the jaw.

On 16th February, 2009 the Kaposvár Military Prosecutor's Office gave detailed information on the case from the given data that far to the head of consul division of the Embassy of the German Republic, the widow of "A" living in Germany through her legal representative and sent them the medical forensic autopsy report as well. The military prosecutor in charge of the case is in connection with the Hungarian partner of the German lawyer representing the offended, who can thus have a more detailed insight into the developments. The Military Chief Prosecutor's Office informed the relevant Prosecutor's Office in Germany in written form on the state of the facts of the investigation so far on 23rd July, 2009.

The Kaposvár Prosecutor's Office has finished its planned investigation actions but the investigation cannot be closed because the supplementary medical forensic report, which had been requested by them, and which should be the final report as well, was not submitted by the given deadline that is 6th September, 2009. The Kaposvár Institution of Criminal and Forensic Sciences Institution asked for a postponement of the deadline to 10th October, 2009 due to the unavoidable fact that the brain tissue examinatory findings of the deceased "A" would only be ensured to them on 28th September, 2009.

After the reception of this supplementary and final medical forensic report a stand can be taken on the issue of the nature of wounds those suspects who are members of the Somogy County Penitentiary Facility and provably assaulted the deceased have caused in terms of penal law, and also, whether the assault that was committed by them had had an affect on the deadly result.

It can also only be stated from the new medical forensic report whether the assault of those persons that are not under the jurisdiction of the military prosecutor's office and the malpractice of the medical treatment of the deceased are in context with his aggravated state of health or his death and if so, is there a need for conducting investigation by authorities who have jurisdiction and competence over those persons.

Considering the fact that the investigation is still ongoing in the case – it is presumable that according to the new medical report new accusations are to be told to some suspects – I cannot inform you any further on the closing of the case or the measures to be taken based on that decision.

2.) Regarding the event which occurred in the Penitentiary Institution at Borsod-Abaúj-Zemplén County on 2nd September, 2008, we can give you the following information based on the files of the Debrecen Military Prosecutor's Office :

The Commander of the named penitentiary institution on the has filed charges based on the complaint of 8th September, 2008, submitted by a detainee for the offence of mistreatment in official proceedings pursuant to Section 226. of the Hungarian Criminal Code. The summary of the complaint is that on 2nd September, 2008 pre-trial detainee "M" was assaulted in his cell by prison wardens whom he does not know by their names. He stated these on his hearing on 3rd September, 2008.

Based on the complaint, on 9th September, 2008 the military prosecutor charged with the case requested the recordings of the surveillance cameras in the frame of the ordered supplementary report .

After analyzing the recordings the military prosecutor ordered an investigation on the 16 September 2008 in the criminal case and in the course of which he gave a detailed report on the assault.

During the widespread investigation besides the hearing of the witnesses, medical papers and medical forensic opinions were gathered and on 9th September 2008 the assaulted recognized the offenders from photographs. During this investigation phase the assaulted recognized penitentiary staff member "N" who had kicked him on the jaw and nose.

The person concerned was heard by the military prosecutor on the 6 September 2008 as a suspect for committing mistreatment in official proceedings pursuant to Section 226 of the Hungarian Criminal Code and for battery pursuant to Section 170 (1) but qualifies as the (2) Subsection of the Hungarian Criminal Code. The suspect denied having committed these offences.

Beside that, on the same day the hearing of penitentiary staff member "O" took place because of superior's failure to take action pursuant to Section. 361 (1) Subsection. (a) of the Hungarian Criminal Code because as a security officer he had not taken action as a superior officer in order to hinder the offence committed by penitentiary staff member "N" and penitentiary staff member "P" neither had he impeached them who had assaulted the detainee "M" in front of several body members.

Penitentiary staff member "P" was also heard by the military prosecutor on 6th November, 2008 as a suspect after he had been recognized by the assaulted on the photographs. He committed mistreatment in official proceedings pursuant to Section. 226 of the Hungarian Criminal Code and finally the military prosecutor with his decree had terminated the proceedings based on Section. 190 (1) Subsection. c) first phrase of the Hungarian Criminal Procedure Code. The same way on 16th December 2008 the military prosecutor terminated the investigation with his decree against the suspect penitentiary staff member "Q", based on Section. 190 (1) Subsection. c) second phrase of the Hungarian Criminal Procedure Code.

Based on the gathered evidences the Debrecen Military Prosecutor's Office gave an indictment to the Hajdú-Bihar County Court's Military Committee, in which the prosecutor charged penitentiary staff member "N" with mistreatment in official proceedings pursuant to Section. 226 of the Hungarian Criminal Code and aggravated battery pursuant to Section. 170 (1) of the Hungarian Criminal Code but which act qualifies under the (2) Subsection., whereas he charged penitentiary staff member "O" with superior's failure to take action pursuant to Section. 361 (1) a) of the Hungarian Criminal Code.

According to the state of facts of the indictment on 2nd September 2008 penitentiary staff member "N" and penitentiary staff member "O" were on duty as a security supervisor and as a security officer, respectively.

In the institution on level 300 penitentiary staff member "R" was responsible for the cell supervision, who was in charge of supervision of the distribution of the breakfast for the detainees in the morning from 07:00 to 07:10 hours. During this time the detainee "M" found the breakfast insufficient and handed out the dish containing the sour cream cottage through the food slot. The penitentiary staff member concerned claimed, that the officially required amount of food for three persons had been received. For this reason the detainee let the dish fall on the floor in front of the cell's door. The food did not spill over but some drops fell on the shoes and trousers of the supervisor.

After the incident the cell supervisor ordered the cook to pick up the dish and to measure it in the kitchen and then closed the food slot and carried on with the distribution of the breakfast.

The supervisor at that level was replaced by penitentiary staff member "S" at 07:15 hours. Penitentiary staff member "R" on level 200 gave a report to the cell supervisor about what had happened and to the inquiry of the security officer he also told him about the incident during the distribution of breakfast.

Penitentiary staff member "O" called upon the persons in the resting place at 07:40 hours to go upstairs with him to level 300 and on the corridor he told them that one detainee must be separated from the others by disciplinary measures. He told them that detainee "M" dropped the mess-tin with the breakfast in it on the floor in front of the supervisor.

At level 300 penitentiary staff member "R" on the order of the security officer opened the cell door, where he and penitentiary staff member "T" went in and after that the security officer ordered the other detainees to leave the cell except for "M". The detainees leaving the cell were escorted to the bathroom on level 500, and after that the security officer together with the five supervisors arriving at the spot entered the cell. There one of the supervisors, whose identity could not be clarified during the investigation, provoked "M" to start a fight with supervisor in charge for that level and because the detainee did not obey this supervisor hit the detainee behind his left ear with his right elbow. From this hit the assaulted lost his balance and wanted to clutch at the end of the iron bunk bed while his legs were kicked from behind. Due to the assault the detainee fell with his knees onto the floor, and after that he was turned toward the cell door and penitentiary staff member "N" handcuffed him on the back. He was still kneeling when penitentiary staff member "N" kicked him twice on the jaw and once in his nose. Due to the assault his wound behind his left ear and his nose started to bleed. After that in order to treat the wounds of the assaulted he was taken to the medical room and after that the doctor of the institution sent him to an external hospital.

According to the opinion of the medical expert with the assault the detainee endured wounds on the left auricle, and as well the split wound in the area behind the auricle, the area below auricle had a little haemorrhage, the top of the jaw had surface epidermis graze, nasal bone fracture, and haemorrhage under the right conjunctiva. The healing time of the soft parts are within eight days, the fracture of the nasal bone and the healing time as a whole is more than eight days in real terms three weeks.

The expert's opinion excluded the possibility of the wounds' appearing due to falling and stated that the use of outer force as a minimum for three times is highly possible.

Penitentiary staff member "O" did not interrupt the committing of the crime against the detainee and forgot to compile the necessary report in order to impeach his subordinates.

The Hajdú-Bihar County Court's Military Committee held a trial on 24th September 2009 in Miskolc in the criminal case, where the hearing of the two accused as well as the witnesses occurred. The judge adjourned the trial because he had ordered the hearing of the medical expert by the motion of the defence.

Always ready to comply with you and looking forward to assist you anytime I remain

Yours sincerely:

Budapest, 8th October, 2009

Prof. Dr. György Vókó
CPT Liaison Officer