



CPT/Inf (2006) 36

**Report to the Government of
"the former Yugoslav Republic of Macedonia"
on the visit to "the former Yugoslav Republic of
Macedonia" carried out by the European Committee
for the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment (CPT)**

from 12 to 19 July 2004

The Government of "the former Yugoslav Republic of Macedonia" has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2006) 37.

Strasbourg, 15 November 2006

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Copy of the letter transmitting the CPT's report

Strasbourg, 22 November 2004

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of "the former Yugoslav Republic of Macedonia" drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to "the former Yugoslav Republic of Macedonia" from 12 to 19 July 2004. The report was adopted by the CPT at its 55th meeting, held from 8 to 12 November 2004.

I would like to draw your attention to paragraph 64 of the report, in which the CPT requests the national authorities to provide two responses - the first **within three months** and the second **within six months** - setting out the measures taken upon the visit report. The CPT would ask, in the event of the above-mentioned responses being forwarded in Macedonian, that they be accompanied by an English or French translation. It would also be most helpful if the authorities could provide a copy of the responses in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully,

Silvia CASALE
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

Mr Zvonimir JANKULOSKI
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of "the former Yugoslav
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cc: Ms Svetlana GELEVA, Head of Political Affairs Sector (Multilateral Relations),
Ministry of Foreign Affairs, Skopje

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to "the former Yugoslav Republic of Macedonia" from 12 to 19 July 2004.¹ The visit was one which appeared to the CPT "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

The visit was essentially a follow-up to the CPT's previous visits in October 2001, July 2002, and - in certain respects - November 2002. One of its primary aims was to examine current treatment of persons deprived of their liberty by the law enforcement agencies (Ministry of the Interior). An important related objective was to re-evaluate the response by the competent authorities following the emergence of information indicative of ill-treatment. In this context, the delegation reviewed the status of certain cases already examined by the CPT in the context of previous visits, as well as assessing the action taken in respect of cases where ill-treatment had been alleged in the period since the November 2002 visit. The delegation also carried out a follow-up examination of the situation in remand prisons.

2. The visit was carried out by the following members of the CPT:

- Mauro PALMA (Head of delegation)
- Marija DEFINIS-GOJANOVIĆ
- Eric SVANIDZE.

They were supported by Bojana URUMOVA from the CPT's Secretariat and assisted by

- Dan DERMENGIU, Associate Professor, Chair of Forensic Medicine Department, Medical Faculty "Carol Davila", Bucharest, Romania (expert)
- Vladimir OGNJANOVSKI (interpreter)
- Petrit SARACINI (interpreter)
- Jasna ŠOPTRAJANOVA (interpreter).

¹ This was the CPT's fifth visit to "the former Yugoslav Republic of Macedonia". Two of the previous visits were periodic (17 to 27 May 1998 and 18 to 27 November 2002), and two were ad hoc visits focussing on police and accountability issues (21 to 26 October 2001 and 15 to 19 July 2002). All of the preceding visit reports and the Government responses have been published (documents CPT/Inf (2001) 20, (2001) 21, (2003) 3, (2003) 4, (2003) 5, (2003) 24, (2004) 29 and (2004) 30).

B. Establishments visited

3. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of the Interior

- Gevgelija Police Station
- Premises of the Directorate for Security and Counterintelligence (UBK), Gevgelija
- Kumanovo Police Station
- Premises of the UBK, Kumanovo
- Bit Pazar Police Station (Skopje)
- Čair Police Station (Skopje)
- Veles Police Station

Establishments under the authority of the Ministry of Justice

- Gevgelija Prison
- Skopje Prison
- Štip Prison.

In addition, the delegation went to Idrizovo Prison to carry out certain specific tasks.

C. Consultations held by the delegation

4. During the visit, the delegation held talks with Siljan AVRAMOVSKI, the Minister for the Interior, as well as with senior officials from the Ministries of Justice, the Interior, and Foreign Affairs. It also held talks with Aleksandar PRČEVSKI, the Prosecutor-General, as well as judicial authorities, and met Branko NAUMOSKI, the Ombudsman.

A list of the authorities and organisations with which the delegation held consultations is set out in Appendix II to this report.

D. Cooperation between the CPT and the authorities of "the former Yugoslav Republic of Macedonia"

5. The cooperation received by the CPT's delegation from the national authorities during the visit was very good. The delegation had a frank and constructive exchange of views with most of its interlocutors, and met with a very good reception at the places it visited, including those which had not been notified in advance. However, at the delegation's initial appearance at the Regional Department of the Directorate for Security and Counterintelligence (UBK) in Gevgelija, it transpired that the relevant official was unaware of the CPT's mandate. While the issue was subsequently resolved satisfactorily, **the CPT trusts that efforts will continue to be made with a view to ensuring that all relevant authorities, including those working at local level, receive detailed information on the Committee's mandate and their obligations vis-à-vis visiting delegations.**

6. With one exception concerning certain UBK files, the delegation was granted prompt and unrestricted access to the documentation (judicial files, etc.) it requested.

In relation to one of the cases it pursued during the visit, the delegation was shown a register of operative activities at the Kumanovo operative unit of the UBK, which recorded that "informal talks" had been carried out with the person concerned (cf. paragraphs 19 to 23 below) on three different occasions in the Spring of 2003. When the delegation sought to examine the documents pertaining to the "informal talks" in question, it was informed that they had been transmitted to the UBK Headquarters in Skopje, in accordance with applicable procedures. During the visit, access to those records was not provided; this is not in conformity with Article 8, paragraph 2 (d), of the Convention.²

The CPT requests that the relevant authorities provide the foregoing documents.

7. The scope of the principle of cooperation is not limited to ensuring that its delegations have rapid access to all places they wish to visit and are provided promptly with all information requested. Meeting the principle of cooperation also entails taking effective measures to implement the Committee's key recommendations. In this connection, some progress has been made on substantive issues; in particular - as compared to previous visits - the delegation received fewer allegations of ill-treatment of persons deprived of their liberty by law enforcement agencies. However, serious problems remain as regards the integrity of the system for accountability, which is a fundamental issue related to the treatment of persons deprived of their liberty by law enforcement agencies. Further, the Committee has been obliged to reiterate most of its previous recommendations concerning the practical application of formal safeguards against ill-treatment and prison issues.

² At the end of the visit, the delegation was provided with other materials concerning this case - which had already been transmitted to the Committee together with the response to the November 2002 visit report (cf. pp. 17 to 18 of CPT/Inf (2004) 30) - but not the documents requested.

The CPT must stress that if such a state of affairs were to persist, it would be obliged to consider having resort to Article 10, paragraph 2, of the Convention.³ As a signal of the will to change the status quo, steps must be taken without delay to implement the CPT's recommendations on combating impunity (cf. paragraph 37 below).

8. Some improvements were observed as regards the dissemination of CPT reports to the relevant officials. Nevertheless, the delegation once again encountered officials - including some in senior positions - who lacked familiarity with previous CPT reports, despite the fact that those reports had focused on serious problems falling under their responsibility. In this respect, **the CPT would like to recall the importance of Parties bringing the contents of the report drawn up after a visit to the attention of all the relevant authorities and staff, in an appropriate form. Further, translations of CPT reports in the relevant languages should be made widely available, and it would be desirable to make use of them in the training of different categories of staff working with persons deprived of their liberty.**

E. Immediate observation under Article 8, paragraph 5, of the Convention

9. At the end-of-visit talks on 19 July 2004, the delegation made an immediate observation as regards conditions of detention in remand prisons, and called upon the national authorities to take urgent steps to improve the situation. The observation was confirmed in a letter dated 5 August 2004 addressed by the Executive Secretary of the CPT to the Permanent Representative of "the former Yugoslav Republic of Macedonia" to the Council of Europe, in which the authorities were requested to provide, within three months, an account of the measures taken in response.

The authorities provided a response on 5 November 2004, which is taken into account in the relevant section of the present report (cf. paragraph 54).

³ Article 10, paragraph 2, reads as follows: "If the Party fails to cooperate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

10. The CPT's delegation carried out follow-up visits to the police station and the premises of the UBK in Kumanovo and, in Skopje, Bit Pazar and Čair Police Stations. It also visited, for the first time, the police stations in Gevgelija and Veles, as well as the premises of the UBK in Gevgelija.

11. In the period since the November 2002 visit, the national authorities have set into motion system-wide reforms of the Ministry of the Interior, most of them undertaken in cooperation with the international community and, increasingly, local non-governmental organisations. Initiatives have included measures to combat corruption (in cooperation with Transparency International⁴ and the Macedonian Helsinki Committee for Human Rights); community policing projects (with OSCE); continued efforts to provide professional training incorporating human rights principles to new police officers, and the adoption of a Code of Police Ethics in January 2004 (based on the European Code of Police Ethics); reform of the Sector for Internal Control and Professional Standards (SVKPS)⁵ (with the participation of the European Union Proxima Mission⁶); and the gradual transfer of border security functions from the Border Guard (under the authority of the Ministry of Defence) to the Border Police (Ministry of the Interior).

It should also be noted that amendments to the Code of Criminal Procedure entered into force on 22 October 2004. The relevant provisions will be discussed in subsequent sections of this report (cf. paragraphs 38 to 43).

12. The above-mentioned reforms constitute welcome steps towards building and maintaining a professional police service which has the confidence of the general public. The challenge now is to make sure that they translate into substantial improvements in practice. As the CPT had occasion to point out previously, attacking the root of the problem of torture and other forms of ill-treatment involves above all transforming mentalities, a process which is required not only amongst law enforcement officials but throughout the criminal justice system.

⁴ Transparency International is a non-governmental organisation devoted to combating corruption.

⁵ In Macedonian, the denomination is *Sektor za vnatrešna kontrola i profesionalni standardi*. The SVKPS was previously called the Unit for Professional Standards, abbreviated as EPS (from *Edinica za profesionalni standardi*). Cf. also paragraphs 27 to 30 below.

⁶ The European Union Proxima Mission was deployed in 15 December 2003 to participate in the comprehensive reform of the Ministry of the Interior, with a view to providing support in "activities in the field of institutional capacity-building, rule of law, promotion of reform in the criminal justice system, fight against organised crime and development of policing standards in accordance with international policing standards" (cf. p. 8 of CPT/Inf (2004) 30).

During talks with the delegation at the outset of the visit, the Minister of the Interior himself acknowledged the importance of effecting "a change of consciousness in each official of the Ministry of the Interior", and stated that efforts to achieve this "must continue further, with even greater insistence and diligence". The CPT fully agrees, and intends to offer every possible assistance to the national authorities to meet the challenge; this was the spirit in which its previous visits were organised, and the same will be true of visits to follow.

2. Ill-treatment

13. As compared to the CPT's previous visits to "the former Yugoslav Republic of Macedonia", the delegation received fewer allegations of ill-treatment of persons deprived of their liberty by law enforcement agencies under the authority of the Ministry of the Interior.

While the magnitude of the problem appears to have diminished, the amount of information indicative of ill-treatment of diverse categories of persons - including minors - remains significant. It comprises allegations of practices ranging from excessive force at the time of apprehension to severe beating with batons or wooden sticks in order to extract a confession or obtain information; in some cases, the allegations were supported by other evidence, including of a medical nature. Certain cases relating to the period since the November 2002 visit, where the ill-treatment alleged was of a severe nature, involved the UBK.⁷

14. It should be added that after the July 2004 visit, the Committee has continued to receive reports of ill-treatment by law enforcement officials. A recent example⁸ concerned four men from Skopje who were reportedly severely beaten by law enforcement officials and subsequently released. **The CPT would like to receive further information concerning that incident, and the measures taken in response.**

15. The information gathered during the CPT's July 2004 visit demonstrates that there is no room for complacency. It is therefore essential that the national authorities maintain the impetus in their quest to overcome the problem of ill-treatment by law enforcement officials. The fact that credible reports continue to appear of ill-treatment by such officials underscores this point.

The CPT recommends that senior police officers regularly instruct their subordinates that: ill-treatment will not be tolerated; all relevant information regarding alleged ill-treatment will be investigated; and perpetrators of ill-treatment will be subject to severe sanctions.

⁷ Cf. paragraphs 21 and 24 below.

⁸ The alleged incident was reported in the 8 October 2004 issue of *Fakti*.

16. As regards, more particularly, the alleged use of excessive force at the time of apprehension, the CPT fully recognises that the arrest of a criminal suspect is often a hazardous task, in particular if the person concerned resists apprehension and/or is someone whom the police have good reason to believe represents an immediate danger. The circumstances of an apprehension may be such that injuries are sustained by the person concerned (and by police officers) without this being the result of an intention to inflict ill-treatment. However, no more force than is reasonably necessary should be used when effecting an apprehension. Furthermore, once apprehended persons have been brought under control, there can be no justification for their being struck by police officers. **The CPT recommends that police officers be reminded of these precepts.**

3. Combating impunity

a. introduction

17. The integrity of the system of accountability for law enforcement officials in cases of alleged ill-treatment in “the former Yugoslav Republic of Macedonia” has been a principal focus of the CPT’s attention – as well as a major source of concern - ever since the October 2001 visit. Repeated examinations of the issue by visiting delegations have clearly established that, even when detained persons do indicate to an investigating judge and/or a prosecutor that they have been ill-treated, there is no guarantee that any effective investigation will be set into motion. Further, as regards internal accountability procedures, the Committee concluded that there was considerable room for improvement in the manner in which police complaints were investigated. The CPT therefore made a number of recommendations aimed at combating impunity, and called upon the national authorities to implement them.⁹

The written responses given by the national authorities concerning the issue of impunity have thus far been inadequate. It is evident that no effective follow-up action has been taken in respect of most of the specific cases set out in previous reports where the Committee had found that there had been a failure to carry out an effective investigation; at best, there have been certain acknowledgements that the situation is highly problematic.¹⁰ While such statements may be encouraging, they are only the first step, and must be followed by concrete and resolute action to combat impunity.

⁹ Cf. paragraphs 28, 34, and 56 to 64 of CPT/Inf (2003) 3, paragraphs 13 to 32 of CPT/Inf (2003) 5, and paragraphs 28 to 33 of CPT/Inf (2004) 29.

¹⁰ The President of the Basic Court in Tetovo indicated that the findings of the CPT in the Ratae test case for accountability (cf. paragraphs 19 to 25 of CPT/Inf (2003) 5) were “accurate and realistically described” (cf. p. 10 of CPT/Inf (2003) 24).

Credit should be given to the Macedonian Association of Judges and OSCE for organising the April 2004 conference in Ohrid for judges and prosecutors on the international and domestic obligations regarding the treatment of detainees and prisoners;¹¹ the conclusions adopted closely followed the recommendations made by the CPT in this area. The Ministry of Justice transmitted those conclusions to all the courts, public prosecutors' offices, and the Republic Judicial Council; however, at his meeting with the delegation on 14 July 2004, the Prosecutor-General, who did not attend the Ohrid conference, affirmed that he was not aware of them. Clearly, it will take a concerted effort by all parties involved to ensure that the conclusions of the conference are given full effect in practice.

18. During the July 2004 visit, the delegation reviewed the question of the contribution made by judicial and prosecutorial authorities to combating impunity, by examining the degree to which law enforcement officials had been held accountable for their actions vis-à-vis two persons who had been deprived of their liberty, and remanded in custody by decision of the Basic Court in Kumanovo, in late May/early June 2003. In both cases, the first-instance trials and appellate review had been completed, and the delegation was able to examine the complete court records. The delegation also interviewed the Prosecutor-General, the President and other judges from the Basic Court in Kumanovo, and officers from the Kumanovo Police and operative unit of the UBK; it also examined the relevant files, including medical records in Skopje Prison.

In addition, the delegation carried out a follow-up examination of internal accountability procedures (cf. paragraphs 27 to 30).

b. new test cases for accountability

i. *the case of A.A.*

19. On 10 June 2003 A.A. was summoned to the Kumanovo Police Station for an official talk. The relevant records kept in the establishment (the daily logbook and the register for apprehended persons) did not record him as being deprived of his liberty.¹² However, it has been confirmed that he was detained as from 10 am on 10 June 2003.¹³ Although there have been conflicting versions as to the length of his detention, it is clear that he remained in police custody until the evening of 12 June 2003, which is when he was brought before an investigating judge from Kumanovo Basic Court, who issued a decision to remand him in custody. He was admitted to Skopje Prison at 11 pm on 12 June 2003.

¹¹ Some 100 participants attended the seminar, including: judges from trial and appellate courts and the Supreme Court; the president of the Republic Judicial Council; the UN Special Rapporteur on Torture; and representatives of the Ministry of Justice, the Ministry of the Interior, local non-governmental organisations, the Registry of the European Court of Human Rights, and the CPT.

¹² Moreover, there was no form "Official Note on detention of a person" (designated under the Regulations for the Ministry of the Interior as Form No. 12) in A.A.'s file at Kumanovo Police Station.

¹³ Cf. inter alia p. 17 of CPT/Inf (2004) 40.

20. The Kumanovo Sector for Internal Affairs¹⁴ addressed two requests - dated, respectively, 11 and 12 June 2003 - to the Kumanovo Basic Court. In each of the documents, the investigating judge was requested to authorise the police to hold A.A. for an additional 24-hour period; the reason given was that "more time is needed to work with the person" or simply that "a need emerged to detain the person for an additional 24 hours". No written reply to those requests was found in any of the files examined by the delegation.

The decision to remand A.A. in custody, which was dated 12 June 2003, expressly ordered that the remand imprisonment commence as from the day prior to the date of the decision (i.e., as from 11 June 2003).

21. When examined by a doctor on the day after his admission to Skopje Prison (i.e., on 13 June 2003), A.A. was found to display "diffuse bruises on the back, both shoulders, buttocks and legs, and a pea-sized dry wound in the region of the hollow of the left elbow". The relevant medical records also noted that "the inmate complained of severe kidney pain", and that a urology examination in October failed to find an objective cause for the pain. The foregoing documents were sent to the public prosecutor in charge of A.A.'s trial and included in the judicial file at Kumanovo Basic Court.

On 20 June 2003, representatives of the Ombudsman's office visited A.A. in Skopje Prison, following allegations made by the latter of ill-treatment by law enforcement officials and incommunicado detention during the four-day period from 8 to 12 June 2003. The Ombudsman's representatives observed the injuries displayed by A.A. and set out their conclusions concerning the case in a written document, which was also included in the court file. Their conclusions essentially confirmed A.A.'s allegations of ill-treatment and incommunicado detention during the above-mentioned period (cf. also the following sub-paragraph). A few days later (26 June 2003), the Ombudsman's office referred the case to the Ministry of the Interior Sector for Internal Control and Professional Standards (SVKPS).

At various stages during his trial,¹⁵A.A. and his lawyers stated that he was abducted in Kumanovo some days prior to 10 June 2003 by a group of persons thought to be UBK officers; the date cited most consistently was 8 June. According to the defendant, the officers - some of whom were masked - placed him in an automobile with no license plates, covered his head with a black bag, and then drove him to a house in a countryside location unknown to him, where he was punched, kicked, and beaten with baseball bats and metal rods and burned with a heated metal object in order to extract a confession. The alleged ill-treatment continued over several days, in different places (villas or cottages) in the countryside; he was forced to memorise a statement to be repeated to the investigating judge, before whom he was finally brought on 12 June 2003. A.A. reported the same version of the facts to the SVKPS.

¹⁴ A "Sector for Internal Affairs" (SUVR) is an organisational unit of the Ministry of the Interior.

¹⁵ A.A. was charged with and subsequently convicted of certain offences falling under Chapter 28 of the Criminal Code (Offences against the State).

22. The judge who conducted A.A.'s trial indicated to the delegation that "nothing supported [A.A.'s] allegations" which, as he pointed out, were only first made at trial.¹⁶ Because those allegations had not been made at the defendant's first appearance before the investigating judge, he considered that they could not be followed up during the phase of the trial.

The investigating judge who was on duty on 12 June 2003 was interviewed by the delegation; she stated that A.A. "was in good health" when brought before her and "did not report anything". When the delegation observed that the medical report drawn up on the following day in Skopje Prison was indicative of possible ill-treatment (cf. paragraph 21 above), she replied that she had not been requested to take an interest in the case. She also stated that she did not consider it her duty to react to the fact that he had been held in police custody for more than twice the lawful limit. Further, she acknowledged that she had back-dated the remand decision (cf. paragraph 20 above) following a consultation with the investigation judge who was in charge of the case, and expressed the view that doing so amounted to a remedy for the prolonged period of police custody.

When addressing the issue of police requests to prolong detention in clear violation of Article 12 of the Constitution and Section 3(3) of the Code of Criminal Procedure, the judges interviewed indicated that they did not reject such requests in writing, but merely ignored them. In this regard, senior UBK officers confirmed that it was the practice to request courts to authorise extensions of the 24-hour limit in difficult cases.

23. To sum up, the delegation found that there had been a lack of reaction by judicial and prosecutorial authorities in the face of information clearly indicative of severe ill-treatment of A.A. and violations of the police detention limit by law enforcement officials relating to the period in question. The information included the defendant's statements in court, which were corroborated by medical reports as well as by the Ombudsman, and the relevant police and judicial files. As for the absence of a response to the police requests to prolong A.A.'s detention, taken together with the deliberate back-dating of the decision to remand him in custody, it could well be argued that the judges involved were complicit in the violation of the police detention limit.

¹⁶ A.A.'s first-instance trial started on 30 October 2003; its last session took place on 1 December 2003.

ii. the case of R.B.

24. The case of R.B. contains elements which are strikingly similar to the case of A.A. According to information provided to a Commission of the Ministry of the Interior¹⁷ by R.B., he was abducted at 10 am on 23 May 2003 near Kumanovo Police Station by four or five persons who handcuffed him, covered his head with his jacket, and forced him into a vehicle. After a drive of some 2.5 hours, the party arrived at a certain unspecified building, where R.B. was held for five days. During that period, he was "ill-treated and beaten on the body with thick wooden sticks". On the evening of 28 May 2003, he was taken to Kumanovo Police Station, then to Kumanovo Basic Court, where he spent the night; on the following morning, three of the persons who had been with him in the undisclosed location appeared, asked him "why did you change [your statement]", and struck him with a broom handle a few times. R.B. was remanded in custody on the same day (29 May 2003) by decision of the Basic Court in Kumanovo and transferred to Skopje Prison. His prison medical file recorded that, on arrival, he displayed "bruises on the ribs".

Based on its interviews with R.B. and members of his family, as well as on other information, the Commission of the Ministry of the Interior concluded:

"In the period from 23 to 29 May 2003, [R.B.] was neither at his home, nor in Skopje Prison, but on 28 May 2003 there was a criminal charge submitted against him. There is no written evidence which justifies his presence on the premises of SVR [Sector for Internal Affairs] - Kumanovo (indicating whether the person was summoned or apprehended), and he is not recorded in the daily logbook or Form 11 for 28 May 2003, even though a criminal charge was submitted against him by SVR-Kumanovo .

As to the UBK, the Commission considers that the cooperation offered by the UBK, is not such as it should be. As a result it was impossible to speak with everyone who was involved in the operation. During the investigation some gaps appeared, which could have been filled if the interviews sought (including by the Minister) had been facilitated from the very beginning."

25. The CPT fully shares the misgivings of the Commission of the Ministry of the Interior regarding the whereabouts of R.B. from 23 to 29 May 2003. As in the A.A. case, the records kept in Kumanovo Police Station did not record R.B. as being deprived of his liberty. Nevertheless, the Committee's delegation found evidence that he had contact with law enforcement officials during the days prior to the date when he was remanded in custody (29 May 2003). The evidence included:

- a confirmation from SVR-Kumanovo dated 26 May 2003 regarding objects temporarily confiscated from R.B. and, on the back of that form, a handwritten statement signed and dated (26 May 2003) by R.B.;
- a descriptive sketch (relating to a crime), hand-drawn, labelled and signed by R.B., transmitted to SVR-Kumanovo by fax on 27 May 2003;

¹⁷ Cf. Report dated 25 June 2003 by the Commission formed according to Decision No. 15.1-28033/1 (2 June 2003) by the Minister for the Interior to review the operative actions performed by authorised officials in the village of Sopot (Kumanovo region) on 26 May 2003. The Commission interviewed R.B. in Skopje Remand Prison on 24 June 2003.

- a criminal charge against R.B. submitted by SVR-Kumanovo on 28 May 2003 to the Kumanovo Basic Public Prosecutor's Office, containing a reference to an informative talk carried out with R.B.¹⁸

26. The delegation discussed the case of R.B. as well as the report of the Commission of the Ministry of the Interior with judges from the Kumanovo Basic Court and the Prosecutor-General. It is clear from those discussions that judicial and prosecutorial authorities were aware of R.B.'s allegations relating to the period between 23 and 29 May 2003, both from the Commission's report and from the allegations made by R.B. in court in October 2003;¹⁹ further, certain of the information recorded in the Commission's report suggests that R.B. may have alleged ill-treatment at Kumanovo Basic Court on 28 May 2003. However, no action was taken to investigate R.B.'s allegations and other information, even though there were indications of: ill-treatment by law enforcement officials, thought to be UBK officers; incommunicado detention in a clandestine location; and detention extending the limit for lawful detention by a factor of six.

c. internal accountability procedures²⁰

27. The body responsible for processing complaints against the police is the Sector for Internal Control and Professional Standards (hereinafter "SVKPS" or "the Sector"), which is organised within the framework of the Ministry of the Interior, with the Head of the SVKPS reporting directly to the Minister. The SVKPS comprises investigative and complaints departments and may initiate investigations in the absence of a complaint.

In response to observations made by the CPT²¹, the Regulations for the SVKPS were amended to require it to notify directly - without delay - the competent prosecutorial and/or judicial authorities of every case in which the conduct of police officers may be criminal in nature, in addition to informing members of the criminal police. The CPT welcomes this development; **it would like to receive a copy of the amended Regulations.**

¹⁸ The Commission of the Ministry of the Interior examined the document in question, i.e. Official note No. 2292 dated 28 May 2003 relating to the talk with R.B. However, that document was not included in either the court or police files which were provided to the delegation.

¹⁹ R.B. testified at the trial of S.S. on 21 October 2003; his own trial took place on 22 October 2003.

²⁰ The CPT's previous remarks and recommendations on internal accountability procedures for law enforcement officers in "the former Yugoslav Republic of Macedonia" may be found in paragraphs 59 to 64 of CPT/Inf (2003) 3 and 31 to 33 of CPT/Inf (2003) 29.

²¹ Cf. paragraph 3 of the letter dated 20 April 2004 of the President of the CPT to the national authorities.

28. Recently, the resources of the SVKPS have been reinforced, with the team presently numbering 36 officers,²² 10 of whom have been assigned to regional units. Statistics reveal that the volume of cases processed by the Sector, as well as the number of disciplinary proceedings initiated as a result, have increased.²³ Further, there appear to have been improvements as regards the publicising of the Sector's functions and the registration of complaints. Those are positive developments; nevertheless, there remains room for improvement in the manner in which complaints are investigated.

29. The delegation reviewed the action taken by the SVKPS in respect of cases processed in the first half of 2004 concerning use of force or means of coercion by law enforcement officials.²⁴ As in November 2002, it was found that cases were at times investigated in a rather superficial manner, and that all reasonable steps were not systematically being taken to secure evidence regarding the incidents forming the subject of the complaint or request. There continued to be avoidance of the issue of whether the type of force or means of coercion used by the officers concerned was necessary or proportionate in the circumstances. In a number of cases, the SVKPS failed to interview the very persons alleging ill-treatment; in others, there was a tendency for the Sector to rely unquestioningly on information given by police officers or recorded in police registers,²⁵ while discrediting a complainant's entire account - even if supported by solid circumstantial evidence - whenever there was any reason to doubt his credibility (e.g., a criminal record, prior drug use, etc.) or the veracity of any portion of his account. The following example illustrates some of the foregoing shortcomings:

In a recent²⁶ case involving allegations of ill-treatment (including falaka), in support of which the complainant submitted photographs and a medical certificate, the SVKPS concluded that there was "insufficient evidence" of use of means of coercion, "despite the submitted photographs and medical certificate [...] [t]he fact remains that four of the five authorised officials who had contact with [the complainant] on the day in question maintain that no means of coercion were employed." In support of its conclusion, the SVKPS noted that the complainant was "well-known to the [police] for a long period as a user and dealer of narcotic drugs." The SVKPS dismissed the case as unfounded without having interviewed a number of key eyewitnesses, including: the persons present at the snack bar which was the site of the complainant's apprehension; one of the police officers involved in the apprehension and transport and present during the subsequent questioning in the police station, when the alleged ill-treatment was inflicted; and the doctor who issued the medical certificate.

30. The delegation also reviewed the action taken by the SVKPS in respect of the case of N.A., which was already examined by the CPT during the October 2001 visit. It may be recalled that N.A. was apparently beaten to death in August 2001 by a number of different persons - many of whom were allegedly law enforcement officials.²⁷ In the meantime (27 May 2002), a private criminal complaint against an unknown perpetrator had been submitted by the family of the decedent and two of the three other persons who had been apprehended and allegedly ill-treated together with him.

²² In November 2002, the Unit for Professional Standards was staffed by 13 officers.

²³ In 2002, 220 complaints were received by the UPS, 66 of which led to disciplinary proceedings; in contrast, 770 cases were processed in 2003, with 273 resulting in such proceedings.

²⁴ In the period from 1 January to 12 July 2004 the SVKPS processed 15 cases on the use of force.

²⁵ Cf. in this regard paragraphs 19, 24 and 25 above and paragraphs 42 and 43 below.

²⁶ The alleged ill-treatment took place on 21 April 2004 in Prilep Police Station (cf. SVKPS Official Note No. 13-534-4, dated 10 June 2004).

²⁷ Cf. paragraphs 31 to 34 of CPT/Inf (2003) 3.

A number of steps were subsequently taken by the Sector in relation to this case, which it had taken up following a complaint forwarded by the Ombudsman in 2003 on behalf of the family of N.A. Those steps included: interviews with the other persons who were apprehended along with N.A.; examination of the documentation in Centar Police Station in Skopje, where the persons were detained on the date in question; and identification and interviews with a number of the officers involved in or present during the deprivation of liberty of N.A. and the others, from the time of apprehension to the time of release from the police station.²⁸ Two officers who were on duty at Centar Police Station at the relevant time indicated that UBK officers from the Karpoš operative unit in Skopje had questioned N.A. and the three other persons; further, the daily logbook recorded that a UBK officer from the Centar operative unit had questioned them. However, the UBK officers were apparently not interviewed by the SVKPS.

A near-total lack of recollection or knowledge of the case by the officers interviewed - especially as regards the alleged severe beating at the place of apprehension (the perimeter of the State Hospital in Skopje) and during the subsequent detention of the persons in Centar Police Station - was observed by the SVKPS in its summary of the case.²⁹ As for the officer who was Head of Centar Police Station at the time, he affirmed to the SVKPS that while he could recall the case, he had no knowledge of either the alleged ill-treatment or of the death of N.A. The SVKPS concluded that it "cannot determine which persons-police officers directly participated in the physical ill-treatment and who inflicted fatal consequences upon N.A. This could eventually be done by the investigating judge in charge of the case, by questioning the persons named [...], confrontation, identification, etc."

The conclusions reached by the SVKPS in this case highlight *inter alia* the obstacles which may be posed for investigators due to a reluctance to report ill-treatment by colleagues (on which cf. paragraph 36 below).

d. assessment and action proposed

31. In its three most recent reports, the CPT was highly critical of the inaction of the relevant authorities in "the former Yugoslav Republic of Macedonia" in the face of allegations and other information indicative of ill-treatment. From all the information gathered during the July 2004 visit, it would appear that there has been no real improvement in this regard; the delegation's detailed examination of certain specific cases and its interviews with the authorities concerned leads the CPT to conclude that judges and prosecutors continue to display little interest even when there is *prima facie* evidence of ill-treatment. Moreover, despite some encouraging *indicia* of progress, problems also remain in the system of internal accountability procedures.

All too often, there is a tendency among the relevant authorities to avoid responsibility for taking the steps essential for an effective investigation. It is also not uncommon for those authorities to display an inclination to protect law enforcement officials subject of allegations. It will undoubtedly take concerted action throughout the criminal justice system and the Ministry of the Interior to overcome the inertia and apparent bias which are currently undermining the system of accountability for such officials.

²⁸ N.A. was apparently taken from Centar Police Station to the Trauma Ward of Skopje City Hospital, where he died five hours later (cf. paragraph 31 of CPT/Inf (2003) 3).

²⁹ Cf. SVKPS Official note No. 12-249 (dated 2 July 2003).

32. Prosecutorial and judicial authorities have a key role to play. It is imperative that they take resolute action when any information indicative of ill-treatment emerges in the course of proceedings before them. Similarly, they must conduct the proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated. In this regard, the CPT strongly disagrees with the approach described by the Prosecutor-General, who considers that prosecutors "are experienced and take into account only those allegations which are supported by other evidence".³⁰

It should be recalled yet again that, whenever criminal suspects brought before prosecutorial or judicial authorities allege ill-treatment, those allegations should be recorded in writing, a forensic medical examination (including, if appropriate, by a forensic psychiatrist) should be immediately ordered, and the necessary steps taken to ensure that allegations are properly investigated. Such an approach should be followed whether or not the persons concerned bear visible external injuries. Even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.

It is also important that no barriers should be placed between persons who allege ill-treatment (who may well have been released without being brought before a prosecutor or judge) and doctors who can provide forensic reports recognised by the prosecutorial and judicial authorities. Access to a such a doctor should not be made subject to prior authorisation by an investigating authority. Further, the Sector for Internal Control and Professional Standards (SVKPS) should have the possibility to refer cases directly for a forensic medical examination.

33. The principles of an effective investigation into possible ill-treatment by law enforcement officers - set out by the CPT in the report on its July 2002 visit³¹ - should be recalled. For one, it is essential that the persons responsible for carrying out the investigation are *independent* from those implicated in the events. Further, prosecutorial authorities must exercise close and effective supervision of the operational conduct of a criminal investigation into possible ill-treatment by law enforcement officials. They should be provided with clear guidance as to the manner in which they are expected to supervise such investigations.

An investigation must comply with the criterion of *thoroughness*. It must be capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances and to the identification and, if appropriate, the punishment of those concerned. This is not an obligation of result, but of means. It requires that all reasonable steps be taken to secure evidence concerning the incident, including, inter alia, to identify and interview the alleged victims, suspects and eyewitnesses (e.g. police officers on duty, other detainees), to seize instruments which may have been used in ill-treatment, and to gather forensic evidence. *Comprehensiveness* is another requirement; where there are numerous alleged incidents and facts related to possible ill-treatment, the scope of the investigation must not be unduly circumscribed. To be effective, the investigation must also be conducted in a *prompt* and reasonably *expeditious* manner.

³⁰ At the same time, the Prosecutor-General opined that "there were no grounds to believe" A.A., but did not comment on the other evidence indicative of possible ill-treatment in that case.

³¹ Cf. paragraph 30 of CPT/Inf (2003) 5.

34. It is axiomatic that no matter how effective an investigation may be, it will be of little avail if the sanctions imposed for ill-treatment are inadequate. When ill-treatment has been proven, the imposition of a suitable penalty should follow. This will have a very strong dissuasive effect. Conversely, the imposition of light sentences can only generate a climate of impunity.

35. Vigilance and a proactive stance adopted by the management of prisons can also make a crucial contribution to combating impunity. Such an approach was not in evidence at the prisons visited; the action to be taken to tackle this problem is set out in a subsequent section of this report.³²

36. Combating impunity must start at home, that is within the agency concerned - in this case, the Ministry of the Interior. Too often the esprit de corps leads to a willingness to stick together and help each other when allegations of ill-treatment are made, to cover up the illegal actions of colleagues. Positive action is required, through training and by example, to promote a culture where it is regarded as unprofessional - and unsafe from a career path standpoint - to work and associate with colleagues who have resort to ill-treatment, and where it is correct and professionally rewarding to belong to a team which abstains from such acts. An atmosphere must be created in which the right thing to do is to report ill-treatment by colleagues; there must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows that ill-treatment is occurring and fails to act to prevent or report it.

37. The CPT calls upon the relevant authorities to take vigorous and sustained action to ensure that the precepts set out in paragraphs 31 to 36 above, as well as in paragraphs 25 to 42 of the Committee's 14th General Report (CPT/Inf (2004) 28), are systematically applied in practice.

As a first step, **effective investigations should be carried out into each of the specific test cases for accountability raised by the CPT in the reports on the visits in October 2001, July and November 2002, as well as in the present visit report (cf. paragraphs 28, 34, and 56 to 64 of CPT/Inf (2003) 3, paragraphs 13 to 32 of CPT/Inf (2003) 5, paragraphs 28 to 33 of CPT/Inf (2004) 29, as well as paragraphs 19 to 26, 29 and 30 above).**

³² Cf. paragraphs 47 and 57 below.

4. Safeguards against ill-treatment

38. The practical application of the existing formal legal and/or regulatory provisions regarding safeguards against ill-treatment has been a recurrent theme in the ongoing dialogue between the CPT and the national authorities. In each of its previous visit reports, the Committee made - or reiterated - recommendations to rectify the continuing lack of compliance with the foregoing provisions; in most respects, the response to those recommendations has been inadequate or non-existent.³³

The recent amendments to the Code of Criminal Procedure contain certain positive features, including more detailed requirements concerning access to a lawyer and custody registers, as well as the introduction of a system of custody officers; these modifications render the existing legal framework even more developed on the issue of safeguards. However, their effectiveness will ultimately depend on the existence of a determined intention to ensure that they are complied with in practice. The key elements for ensuring that such an intention does indeed exist, and is sustained, are appropriate training for all concerned and an effective system of control by both internal and external authorities.

39. The information gathered during the July 2004 visit would indicate that the right of notification of custody was still not fully effective in practice. Certain persons interviewed alleged that they had not been given an opportunity to notify their relatives of their custody prior to their first appearance before a judge. Further, in some of the forms examined during the visit, the relevant entries were left blank.

The CPT recommends that appropriate action be taken to ensure that the right of notification of custody is rendered fully effective in practice, with respect to all categories of persons deprived of their liberty by law enforcement officials, as from the very outset of deprivation of liberty.

40. The formal right of access to a lawyer for persons held by the police³⁴ was evaluated as favourable by the CPT as early as its first visit in May 1998.³⁵ Nevertheless, the information gathered by the delegation in July 2004 once again revealed a wide gap between law and practice. A significant time could elapse before apprehended persons had any contact with a lawyer; in most cases - and always, in cases of court-appointed lawyers - such contact first occurred at a person's first appearance before a court. In other words, all persons who could not afford to pay for a lawyer were deprived of this important safeguard during the initial phase of police custody, which is precisely when the risk of ill-treatment is the greatest.

³³ Cf. paragraphs 28 to 46 of CPT/Inf (2001) 20, 47 to 55 of CPT/Inf (2003) 3, 39 to 45 of CPT/Inf (2003) 5, and 36 of (2004) 29, as well as paragraph 4 of the letter dated 20 April 2004 of the President of the CPT to the national authorities.

³⁴ Under Section 188(3) of the Code of Criminal Procedure.

³⁵ Cf. paragraph 35 of CPT/Inf (2001) 20.

The amendments to the Code of Criminal Procedure appear to provide a solution to this problem. Under the relevant provision, when requested by the person being held, law enforcement officials shall "enable the person to contact his lawyer *or find a lawyer for him* [emphasis added]" and shall delay all proceedings - for a maximum of two hours from the time when the lawyer was contacted - until the defence lawyer arrives.³⁶ **The CPT would like to receive confirmation that under the amended Code of Criminal Procedure, persons without the means to pay for legal services will be provided with such services free of charge at all stages of police procedures.**

More generally, **the CPT calls upon the relevant authorities to take action without delay to ensure that the right of access to a lawyer for persons deprived of their liberty by law enforcement agencies is rendered fully effective in practice, as from the very outset of deprivation of liberty.**

41. The right of persons in police custody to have access to a doctor is still not formally guaranteed. **The CPT reiterates its recommendation that specific legal provisions be adopted on this subject. Those provisions should stipulate inter alia that:**

- **a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities** (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
- **all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, are to take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;**
- **the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the detained person and his lawyer.**

³⁶ The prior (1997) version of the Code of Criminal Procedure did not contain the words "enable the person to contact his lawyer or find a lawyer for him"; further, it stipulated that police shall delay all proceedings for a maximum of two hours from the moment when the person held was given an opportunity to inform the lawyer (not the time when the lawyer was actually contacted).

42. The introduction of the system of custody officers, as provided by the amendments to the Code of Criminal Procedure,³⁷ has the potential to curb violations of the 24-hour police detention limit and to improve recording of various aspects of police custody, which was still unsatisfactory in July 2004.³⁸ Under the amendments, persons shall be held in "specially equipped police stations" determined by the Minister for the Interior. For every person held, a custody officer shall keep a separate register containing detailed headings; for certain matters (for example, the time and date of deprivation of liberty, the time and date of release, the receipt of information on rights) the signature of the detainee must be obtained and, if necessary, the absence of a signature explained. The foregoing provisions conform closely to the Committee's requirements;³⁹ as such, they have the potential to make a significant contribution as a safeguard against ill-treatment, as well as to facilitate internal and external supervision mechanisms.

The CPT trusts that the national authorities will take the necessary steps to ensure that the provisions in Section 188(7) of the amended Code of Criminal Procedure (2004) are fully applied in practice.

43. The information gathered during the July 2004 visit, including as regards reports of incommunicado detention in clandestine locations, continues to raise questions regarding the compliance of UBK officers with the general legal and regulatory framework,⁴⁰ despite assurances to the contrary given by the national authorities.⁴¹ Gaps were once again observed in the registers and daily logbooks kept at police establishments in cases involving the UBK; for example, the delegation found that the general registers at Gevgelija Police Station did not record the fact that certain persons had been detained by UBK officers from the operative unit located in the same building.

The CPT calls upon the relevant authorities to take steps to ensure the strict compliance of UBK officers with the legal and regulatory framework for police custody.

³⁷ Cf. Section 74 of the amendments, which relate to Section 188 of the Code of Criminal Procedure.

³⁸ Cf. in this regard paragraphs 19 to 26 above.

³⁹ The new Section 188(7) of the amended Code of Criminal Procedure (2004) corresponds nearly verbatim to existing CPT recommendations and standards.

⁴⁰ Cf. paragraphs 21, 22, 24, 26 and 30 above, as well as paragraph 47 below.

⁴¹ The Minister for the Interior informed the delegation on 13 July 2004 that "the UBK is an integral part of the Ministry of the Interior"; further, the response to the report on the CPT's visit in November 2002 emphasised that "the legislation applied to police custody of persons and the rights they are to be provided for are obligatory for all authorized personnel of the Ministry of the Interior and are respected also by the UBK" (cf. pp. 6-7 of CPT/Inf (2004) 30).

5. Material conditions

44. All of the police establishments visited were used for overnight accommodation, which took place mainly in basement-level cells.⁴² The delegation noted an improvement in the state of hygiene of the cells in Kumanovo and Bit Pazar Police Stations; further, the cells in Kumanovo had been equipped with a call system. Nevertheless, the overall situation of the police premises in the country remained unsatisfactory. Artificial lighting was poor, most cells lacked heating or call systems, and some were devoid of such basic items as mattresses (Gevgelija, Veles). In many cases, basic standards of cleanliness were still not being met; as for Gevgelija Police Station, recent flooding had rendered its cells so filthy and damp as to be unusable, even for short periods of detention. Veles was the only police station where there was a fund for the provision of food to detained persons; in all other establishments, detainees could only obtain food if they had the means to pay for it.

Certain establishments (Gevgelija, Čair) had temporary holding areas where narrow benches were the only available means of rest. Those premises were sometimes used for prolonged detention, which is totally unacceptable; for example, at Gevgelija Police Station there were immigration detainees who had been held for three days in such conditions.

In their response to the CPT's recommendation on material conditions in police establishments made in the November 2002 visit report, the national authorities indicated that "the elimination of deficiencies depends on the financial material possibilities of the Ministry of the Interior". However, no mention was made of independent inspections of police premises in this context.

The CPT recommends that the national authorities devise and pursue, as a matter of urgency, a properly-resourced strategy to improve and maintain conditions of detention in police establishments throughout the country, in light of the above remarks; frequent independent inspections of police premises should form an integral part of that strategy.

⁴² The delegation was informed that the basement-level cells at Čair Police Station were not in use. While police officers indicated that persons were not detained in the establishment overnight, this was contradicted by the information recorded in the register. It would appear that such persons were held in the ground-floor holding cell.

B. Remand Prisons

1. Preliminary remarks

45. The delegation carried out a follow up visit to the remand section of Skopje Prison; it also paid visits to the remand sections of Gevgelija and Štip Prisons.

Gevgelija Prison is located in the southern part of the country, in the vicinity of the border town of Gevgelija. With a dozen inmates (including one woman), its remand section was filled to capacity at the time of the visit.

Skopje Prison has the largest remand section in "the former Yugoslav Republic of Macedonia". The section was overcrowded at the time of the visit; for an official capacity of 105,⁴³ it held 130 inmates on 13 July 2004, including six adult women and a few male minors.

Štip Prison is located on the outskirts of the town of the same name in the eastern part of the country. While its remand section has an official capacity of 40, it held only five men on 15 July 2004.

2. Ill-treatment

46. No allegations of physical ill-treatment of inmates by custodial staff were heard at Gevgelija or Štip Remand Prisons. In contrast, the delegation did receive a few such allegations at Skopje Prison. By way of example, a male minor alleged that he had recently been beaten by prison staff, who reportedly punched and kicked him, and struck him with batons; apparently, he had not reported the incident to the prison doctor. When examined by one of the delegation's doctors, he displayed two 12 x 0.7 cm parallel, violet-blue bruises on the antero-medial side of the right thigh, as well as two 9 x 0.7 parallel violet-blue bruises on the anterior side of the left thigh. Those injuries are consistent with the person's allegations of being beaten in the manner which he described.

The CPT recommends that the relevant authorities deliver the clear message to custodial staff at Skopje Prison that the ill-treatment of prisoners by prison officers is not acceptable and will be the subject of severe sanctions.

In order to gain an up-to-date nationwide picture, **the CPT would like to receive the following information for the period from 1 January 2004 to the present time:**

- **the number of complaints lodged of ill-treatment by custodial staff in establishments under the authority of the Ministry of Justice and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;**
- **an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment by custodial staff.**

⁴³ This figure is cited from documents furnished by the Ministry of Justice during the visit; the director of Skopje Prison provided a slightly higher figure (120).

47. Certain persons, including A.A.,⁴⁴ claimed that they had been ill-treated in a remand prison by law enforcement officials - thought to be UBK officers - whose entry into the establishment was apparently unauthorised and unrecorded. In this context, it should be stressed that contacts between law enforcement officials and inmates held on remand are regulated by Section 142 of the Code of Criminal Procedure, which stipulates that any interviews of remand prisoners by law enforcement officials must be authorised by the relevant judge and must take place in his or her presence.⁴⁵ Further, any contact by law enforcement officials with an accused person - including for the purpose of photographing the person concerned or taking fingerprints - must be authorised by the investigating judge.⁴⁶

The CPT recommends that steps be taken to guarantee that:

- **Section 142, paragraph (5), of the Code of Criminal Procedure is fully complied with in practice; and**
- **a full record is kept at the prison concerned in respect of every contact of law enforcement officials with persons held on remand.**

48. At Skopje Prison, there were once again allegations of over-zealous application of means of restraint, i.e. handcuffing persons to fixtures such as pipes or radiators, sometimes for prolonged periods. Although the commander of the prison's security service (responsible for custodial prison officers) had been demoted due to application of leg cuffing, the prison director indicated that handcuffing persons to fixed objects in corridors was an authorised manner of dealing with agitated prisoners.⁴⁷ If prisoners with mental health problems became agitated, they would be handcuffed to a fixed object (e.g., a bed) inside their cells until the arrival of an ambulance. There was a daily bulletin in which resort to handcuffing was recorded, and the officers concerned were required to draw up a report; in addition, it was mandatory to inform the relevant court (given that remand prisoners were involved). However, there was no separate register on the use of means of restraint.

⁴⁴ A.A. made such allegations to representatives of the Ombudsman's Office on two separate occasions (20 June and 24 September 2003); the allegations were recorded by the Ombudsman's representatives and transmitted to the Basic Court in Kumanovo. AA. also made those allegations at his first-instance trial (30 October 2003).

⁴⁵ Section 142, paragraph (5), of the Code of Criminal Procedure reads as follows:
"With the authorisation of the investigating judge or Chairman of the Court Chamber, the Ministry of the Interior may gather information from persons who are imprisoned on remand, if this is necessary to discover other criminal offences perpetrated by the same person or his accomplices or criminal offences perpetrated by other persons. Such information shall be gathered at a time determined by the investigating judge and in his presence, or in the presence of a person designated by the investigating judge or Chairman of the Court Chamber."

⁴⁶ Cf. Section 155(4) of the Code of Criminal Procedure.

⁴⁷ In contrast, management at Gevgelija and Štip Prisons emphasised that violent prisoners could be handcuffed, but not to fixed objects.

The CPT recognises that prison staff will on occasion have to use force to control violent prisoners. This is clearly a high-risk situation insofar as the possible ill-treatment of prisoners is concerned, and as such calls for specific safeguards. In this connection, it should be stressed that resort to instruments of physical restraint will only rarely be justified. If, exceptionally, recourse is had to instruments of physical restraint, they should be removed at the earliest opportunity; they should never be applied, nor their application prolonged, as a punishment. Further, in cases where a prisoner is, or becomes, highly agitated, prison staff should immediately contact a doctor and act in accordance with his or her opinion. Every instance of the use of force or of means of physical restraint against prisoners should be recorded in detail in a specific register established for this purpose (as well as in the prisoner's file); this will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence.

The CPT recommends that steps be taken to ensure that the foregoing precepts are strictly observed in practice.

3. Staff issues

49. In the November 2002 visit report, the CPT recommended that the national authorities conduct a review, without delay, of staffing arrangements throughout the prison system, with the objective of ensuring that the number of prison officers employed is sufficient to ensure staff safety and the physical and mental integrity of inmates. In response to that recommendation, the Government approved funds for the employment of 34 persons.

However, the degree of understaffing remained acute in July 2004; 460 prison/correctional staff - 240 of whom were in the security service (custodial officers) - were responsible for a total prison population of 1858,⁴⁸ amounting to a 1:8 ratio of custodial officers to inmates. The scale of the problem appears even more clear if one considers the number of officers present during a particular shift; at Skopje Prison (accommodating some 300 inmates), there were at most 15 officers present in the establishment at any given time. One of the many negative consequences of this situation was very limited interaction between staff and remand prisoners; for example, due to the lack of female custodial officers at Gevgelija Prison, the only female remand prisoner held at the establishment had very little human contact.

The CPT recommends that the national authorities continue to pursue vigorously their efforts towards increasing the staff complement in prisons.

50. The CPT has repeatedly emphasised that building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation; as well as rendering the work of prison staff far more rewarding, this will have the additional benefit of enhancing control and security in a prison. The facts found during the July 2004 visit indicate that there remains much room for progress in this area.

The CPT recommends that the national authorities continue to give high priority to the development of prison staff training, both initial and ongoing. In the course of such training, considerable emphasis should be placed on the acquisition of interpersonal communication skills.

⁴⁸ This figure includes the 20 juveniles held in the Educational-Correctional Institution.

4. Conditions of detention

51. As regards material conditions, prisoner accommodation in the remand section at **Gevgelija Prison** consisted of six double-occupancy cells measuring some 8 m², which were clean and appropriately furnished; however, the in-cell sanitary annexes were only partially partitioned (waist-level). Positive features included a large exercise area and a recently-refurbished communal shower room.

The material conditions in the remand section at **Štip Prison** were essentially the same, albeit somewhat less satisfactory due to the design of the semi-partitioned sanitary annexes, which were not fitted with sinks.

Material conditions in the remand section at **Skopje Prison** were described in paragraph 44 of the report on the November 2002 visit (CPT/Inf (2004) 29). Although some renovation work had taken place since that visit, this was limited to painting and tile-work and the provision of new beds and cupboards. In fact, a number of deficiencies remained (old mattresses, inadequate plumbing/infrastructure resulting in pervasive dampness), many cells were dilapidated and unhygienic, and certain of them were overcrowded. For example, the delegation saw 12 m² cells which were accommodating four persons, and a 7.4 m² cell with three young occupants ranging in age from 16 to 18; two of them slept on a two-tier bunk bed, while the third used a mattress on the floor. Except for the fact that they had better partitioning, the lavatories were identical to those in the remand section of Štip Prison. Moreover, as in November 2002, showers were still allowed only once every fourteen days.

In each of the remand sections visited, many of the cells displayed deficiencies as regards access to natural light and ventilation. In a number of cases, remand prisoners lacked basic personal hygiene products.

52. The CPT reiterates its recommendation that serious efforts be made to reduce occupancy levels in remand prisons. In multi-occupancy cells, the aim should be to provide a minimum of 4 m² of living space per prisoner (sanitary facilities excluded); official capacities should be calculated accordingly. Where applicable, sanitary annexes should be fitted with sinks as well as lavatories, and their partitioning in multi-occupancy cells should be improved. More generally, the authorities should continue to take all necessary steps - and explore all available channels - with a view to improving material conditions in prison establishments, having regard to the remarks in paragraph 51.

53. There has been no improvement as regards the provision of a regime of activities to remand prisoners. Notwithstanding the CPT's recommendations, prisoners were not granted even one hour of outdoor exercise (not to mention the legal minimum of two hours, as foreseen by Section 194(1) of the Code of Criminal Procedure). As a result, remand prisoners - including juveniles - were locked up for more than 23 ½ hours per day, their only diversions being conversations with their cellmates, board or card games, reading, or listening to the radio. This is all the more serious given the lengthy periods of detention in a remand section; in a number of cases, such periods exceeded two years.

The CPT calls upon the national authorities to take steps as a matter of urgency to radically improve activities for remand prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; education; sport). The legislative framework governing remand imprisonment must be revised accordingly.

54. As already mentioned (cf. paragraph 9), at the end-of-visit talks on 19 July 2004, the delegation made an immediate observation and requested the national authorities to take urgent steps to improve conditions of detention in remand prisons and, in particular, to ensure that:

- (1) all prisoners are granted at least one hour of outdoor exercise per day;
- (2) each prisoner (throughout the prison system) is allowed at least one hot shower per week.

In response to the immediate observation, the national authorities indicated that "prison authorities undertake measures [to remedy the situation] within their possibilities". **The CPT would like to receive confirmation that all remand prisoners are now in fact being granted at least one hour of outdoor exercise per day, and that each prisoner (throughout the prison system) is in fact being allowed at least one hot shower per week.**

5. Medical care

55. The Director of the Prison Administration acknowledged that health care staffing levels in prisons were "below par", despite the fact that the health care team at Skopje Prison had been reinforced by a full-time doctor (as of December 2003) and a nurse. Neither Gevgelija nor Štip Prisons⁴⁹ had any health care personnel whatsoever; instead, each establishment was visited by a doctor twice a week. As in November 2002, a psychiatrist was available for consultations at Skopje Prison once a week.

The CPT recommends that nursing resources at Skopje Prison be further increased, and that both Gevgelija and Štip Prisons be regularly visited by a nurse. More generally, every support should be given to initiatives to achieve the staffing levels necessary to provide satisfactory medical treatment and nursing care for inmates.

56. Health care facilities were of an acceptable standard in the prisons visited. For example, the medical office located in the remand section of Gevgelija Prison possessed an appropriate supply of medicines, gloves, and equipment for measuring blood pressure. The medical unit at Skopje Prison consisted of two rooms with standard equipment for general practitioners.

⁴⁹ At the time of the visit, the total number of prisoners (remand and sentenced) was 44 at Gevgelija, 80 at Štip, and 300 at Skopje.

57. At all three establishments visited, there were procedures to medically screen newly-arrived prisoners. However, the information gathered during this visit revealed that effective measures had not been taken to implement the CPT's previous recommendation regarding the records to be drawn up following such screening.⁵⁰ The records examined were insufficiently detailed, with superficial descriptions of injuries and allegations; the exact dimensions, location, colour, or number of injuries were not recorded, nor were the objective medical findings followed by the doctor's conclusion. There was no separate column in the files for noting any relevant statement made by the person undergoing the examination. Further, information regarding injuries displayed by prisoners and corresponding accounts of ill-treatment were not systematically being brought to the attention of the relevant prosecutor.

The CPT reiterates its recommendation that the record drawn up by prison doctors following a medical examination of a prisoner, whether newly-arrived or not, should contain:

- (i) a full account of statements made by the person concerned which are relevant to the medical examination (including the person's description of his or her state of health and any allegations of ill-treatment);**
- (ii) a full account of objective medical findings based on a thorough examination;**
- (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and objective medical findings.**

Moreover, **the CPT recommends that existing procedures be reviewed to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is brought to the attention of the relevant public prosecutor.**

58. Medical examinations of prisoners at Skopje Prison were regularly taking place in the presence of prison officers. Such an arrangement may well deter prisoners from providing accounts of the origin of their injuries, in addition to being in contravention of the principles of medical confidentiality. **The CPT recommends that medical examinations of prisoners be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers.**

6. Other issues

59. Visits to remand prisoners remained subject to approval by the investigating judge. The delegation found that current practice did not permit such prisoners to maintain appropriate contact with the outside world. Remand prisoners were being granted only one or two visits from their families per month, each lasting 15 to 20 minutes.

The CPT recommends that the question of visits to remand prisoners be reviewed. The objective should be to offer them the equivalent of at least a visit every week, and of at least 30 minutes duration.

⁵⁰ Cf. paragraph 53 of CPT/Inf (2004) 29.

60. Visits by relatives to remand prisoners generally took place under closed conditions, i.e. with glass panels separating inmates from visitors. For example, the visiting facilities at Skopje Prison consisted of a 24 m² room divided in two by a counter with a plexiglass barrier, and a row of metal chairs fixed to the floor on either side with no partitioning between them. The CPT fully understands that closed visiting arrangements may be necessary in some cases; however, this should not constitute the rule. Further, although the delegation did not observe the room in Skopje Prison in use, it was informed that it could be crowded with up to ten inmates - and their visitors - at a time; needless to say, this is totally unsuitable. **The CPT recommends that the visiting arrangements for remand prisoners at Skopje Prison as well as other establishments be improved, in light of the foregoing remarks; as far as possible, such prisoners should be able to receive visits under reasonably open conditions.**

61. Concerning the principle of confidentiality of contacts between remand prisoners and their lawyers, the recommendation previously made by the CPT on the subject⁵¹ has apparently not been implemented. In many - if not most - cases, judges were still ordering that such visits be supervised, despite the fact that the CPT's recommendation was transmitted by the Ministry of Justice to all courts, the Republic Judicial Council, and the Prosecutor-General on 2 October 2003.⁵² **The CPT calls upon the national authorities to ensure that the practice of supervising such contacts is reviewed without delay.**

62. The CPT is greatly concerned by the continuing lack of appropriate facilities for juveniles in "the former Yugoslav Republic of Macedonia". The Educational-Correctional Institution - which has been "dislocated" for three years now⁵³ - remained in the block for adult sentenced inmates at Skopje Prison. Such a situation is totally unacceptable; the authorities must be unwavering in their efforts to relocate the minors to an appropriate centre specifically designed for persons of this age. Similarly, urgent measures must be taken to improve the situation of juveniles held on remand, which had not changed one iota since November 2002.⁵⁴

The CPT calls upon the national authorities to attach a very high priority to finding a suitable alternative to the present location of the Educational-Correctional Institution.

Further, the Committee reiterates its recommendation that the relevant authorities strive to ensure that all juvenile prisoners, including those on remand, are held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with young persons. In the meantime, the necessary steps must be taken to ensure that juveniles placed in prisons - including remand prisons - are provided with a full programme of educational activities (including physical education) and are accommodated separately from adult prisoners.

⁵¹ Cf. paragraphs 41 and 42 of CPT/Inf (2003) 5 and paragraph 54 of CPT/Inf (2004) 29.

⁵² Cf. Ministry of Justice communication No. 11-81/11 dated 2 October 2003 and p. 8 of CPT/Inf (2004) 30.

⁵³ Cf. paragraph 39 of CPT/Inf (2004) 29.

⁵⁴ Compare paragraphs 51 and 53 above with paragraphs 56 to 57 of CPT/Inf (2004) 29.

III. ACTION ON THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

63. The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I.
64. The Committee requests the authorities of "the former Yugoslav Republic of Macedonia":
- i. to provide **within three months** a response concerning the recommendations, comments and requests for information set out in paragraphs 6, 14, 27, 37, 40, 43, 46, 47, 48, 53, 54, 57, 58, 61, and 62;
 - ii. to provide **within six months** a response concerning the recommendations, comments and requests for information set out in paragraphs 5, 8, 15, 16, 39, 41, 42, 44, 49, 50, 52, 55, 59, and 60.

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Cooperation between the CPT and the authorities of "the former Yugoslav Republic of Macedonia"

comments

- efforts should continue to be made with a view to ensuring that all the relevant authorities, including those working at local level, receive detailed information on the Committee's mandate and their obligations vis-à-vis visiting delegations (paragraph 5);
- the CPT would like to recall the importance of Parties bringing the contents of the report drawn up after a visit by the Committee to the attention of all the relevant authorities and staff, in an appropriate form (paragraph 8);
- translations of CPT reports should be widely available, and it would be desirable to make use of them in the training of different categories of staff working with persons deprived of their liberty (paragraph 8).

requests for information

- the documents pertaining to the "informal talks" carried out with A.A. on three different occasions in the Spring of 2003 (paragraph 6).

Law enforcement agencies

Ill-treatment

recommendations

- senior police officers to regularly instruct their subordinates that: ill-treatment will not be tolerated; all relevant information regarding alleged ill-treatment will be investigated; and perpetrators of ill-treatment will be subject to severe sanctions (paragraph 15);
- police officers to be reminded that no more force than is reasonably necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for their being struck (paragraph 16).

requests for information

- further information concerning the incident referred to in paragraph 14, and the measures taken in response (paragraph 14).

Combating impunity

recommendations

- the relevant authorities to take vigorous and sustained action to ensure that the precepts set out in paragraphs 31 to 36 of the present report, as well as in paragraphs 25 to 42 of the Committee's 14th General Report (CPT/Inf (2004) 28), are systematically applied in practice (paragraph 37);
- effective investigations to be carried out into each of the specific test cases for accountability raised by the CPT in the reports on the visits in October 2001, July and November 2002, as well as in the present visit report (paragraph 37).

requests for information

- a copy of the amended Regulations for the SVKPS (paragraph 27).

Safeguards against ill-treatment

recommendations

- appropriate action to be taken to ensure that the right of notification of custody is rendered fully effective in practice, with respect to all categories of persons deprived of their liberty by law enforcement officials, as from the very outset of deprivation of liberty (paragraph 39);
- the relevant authorities to take action without delay to ensure that the right of access to a lawyer for persons deprived of their liberty by law enforcement agencies is rendered fully effective in practice, as from the very outset of deprivation of liberty (paragraph 40);
- specific legal provisions to be adopted on the right of persons in police custody to have access to a doctor, stipulating inter alia that:
 - a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities;
 - all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, are to take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;
 - the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the detained person and his lawyer (paragraph 41);

- the relevant authorities to take steps to ensure the strict compliance of UBK officers with the legal and regulatory framework for police custody (paragraph 43).

comments

- the CPT trusts that the national authorities will take the necessary steps to ensure that the provisions in Section 188(7) of the amended Code of Criminal Procedure (2004) are fully applied in practice (paragraph 42).

requests for information

- confirmation that under the amended Code of Criminal Procedure, persons without the means to pay for legal services will be provided with such services free of charge at all stages of police procedures (paragraph 40).

Material conditions

recommendations

- the national authorities to devise and pursue, as a matter of urgency, a properly-resourced strategy to improve and maintain conditions of detention in police establishments throughout the country; frequent independent inspections of police premises should form an integral part of that strategy (paragraph 44).

Remand Prisons

Ill-treatment

recommendations

- the relevant authorities to deliver the clear message to custodial staff at Skopje Prison that the ill-treatment of prisoners by prison officers is not acceptable and will be the subject of severe sanctions (paragraph 46);
- steps to be taken to guarantee that: Section 142, paragraph (5), of the Code of Criminal Procedure is fully complied with in practice; a full record is kept at the prison concerned in respect of every contact of law enforcement officials with persons held on remand (paragraph 47);
- steps to be taken to ensure that the precepts set out in paragraph 48, regarding resort to means of physical restraint, are strictly observed in practice (paragraph 48).

requests for information

- for the period from 1 January 2004 to the present time:
 - the number of complaints lodged of ill-treatment by custodial staff in establishments under the authority of the Ministry of Justice and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;

- an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment by custodial staff (paragraph 46).

Staff issues

recommendations

- the national authorities to continue to pursue vigorously their efforts towards increasing the staff complement in prisons (paragraph 49);
- the national authorities to continue to give high priority to the development of prison staff training, both initial and ongoing. In the course of such training, considerable emphasis should be placed on the acquisition of interpersonal communication skills (paragraph 50).

Conditions of detention

recommendations

- serious efforts to be made to reduce occupancy levels in remand prisons. In multi-occupancy cells, the aim should be to provide a minimum of 4 m² of living space per prisoner (sanitary facilities excluded); official capacities should be calculated accordingly. Where applicable, sanitary annexes should be fitted with sinks as well as lavatories, and their partitioning in multi-occupancy cells should be improved. More generally, the authorities should continue to take all necessary steps - and explore all available channels - with a view to improving material conditions in prison establishments, having regard to the remarks in paragraph 51 (paragraph 52);
- the national authorities to take steps as a matter of urgency to radically improve activities for remand prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; education; sport). The legislative framework governing remand imprisonment must be revised accordingly (paragraph 53).

requests for information

- confirmation that all remand prisoners are now in fact being granted at least one hour of outdoor exercise per day, and that each prisoner (throughout the prison system) is in fact being allowed at least one hot shower per week (paragraph 54).

Medical care

recommendations

- nursing resources at Skopje Prison to be further increased, and both Gevgelija and Štip Prisons to be regularly visited by a nurse. More generally, every support should be given to initiatives to achieve the staffing levels necessary to provide satisfactory medical treatment and nursing care for inmates (paragraph 55);

- the record drawn up by prison doctors following a medical examination of a prisoner, whether newly-arrived or not, to contain:
 - (i) a full account of statements made by the person concerned which are relevant to the medical examination (including the person's description of his or her state of health and any allegations of ill-treatment);
 - (ii) a full account of objective medical findings based on a thorough examination;
 - (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and objective medical findings (paragraph 57);
- existing procedures to be reviewed to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is brought to the attention of the relevant public prosecutor (paragraph 57);
- medical examinations of prisoners to be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers (paragraph 58).

Other issues

recommendations

- the question of visits to remand prisoners to be reviewed. The objective should be to offer them the equivalent of at least a visit every week, and of at least 30 minutes duration (paragraph 59);
- the visiting arrangements for remand prisoners at Skopje Prison as well as other establishments to be improved, in light of the remarks made in paragraph 60; as far as possible, such prisoners should be able to receive visits under reasonably open conditions (paragraph 60);
- the national authorities to ensure that the practice of supervising contacts between remand prisoners and their lawyers is reviewed without delay (paragraph 61);
- the national authorities to attach a very high priority to finding a suitable alternative to the present location of the Educational-Correctional Institution (paragraph 62);
- the relevant authorities to strive to ensure that all juvenile prisoners, including those on remand, are held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with young persons. In the meantime, the necessary steps must be taken to ensure that juveniles placed in prisons - including remand prisons - are provided with a full programme of educational activities (including physical education) and are accommodated separately from adult prisoners (paragraph 62).

APPENDIX II

**LIST OF THE AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

A. Ministerial authorities

Ministry of Justice

Tanja ALTANDŽIEVA
Snežana MOJSOVA

Ljupčo BELIČEV
Katerina LEVKOVA-JOVESKA

Deputy Minister of Justice
Head of Sector for European Integration
and International Legal Cooperation
Director of the Prison Administration
Head of Unit, Prisons Administration

Ministry of the Interior

Siljan AVRAMOVSKI
Radivoja JOVANOVSKI
Trpe STOJANOVSKI

Besir DEHARI

Marjan ZDRAVKOVSKI

Vasile JANEVSKI

Minister for the Interior
State Secretary
Assistant Minister (European
Integration and International Legal
Cooperation)
Deputy Director of the Bureau for
Public Security
Deputy Director of the Directorate for
Security and Counterintelligence
(UBK)
Head of the Sector for Internal Control
and Professional Standards (SVKPS)

Ministry of Foreign Affairs

Igor DŽUNDEV
Svetlana GELEVA

State Secretary
Head of Department of Multilateral
Relations (Principal Liaison Officer)

B. Other authorities

Aleksandar PRČEVSKI
Branko NAUMOSKI

Prosecutor-General
Ombudsman

C. International organisations

Organisation for Security and Cooperation in Europe (OSCE)
European Union Police Mission Proxima
International Committee of the Red Cross (ICRC)

D. Non-governmental organisations

Macedonian Helsinki Committee for Human Rights
Civic Society Resource Centre (CSRC)