



CPT/Inf (2010) 3

Report

**to the Government of Montenegro
on the visit to Montenegro
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 15 to 22 September 2008

The Government of Montenegro has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2010) 4.

Strasbourg, 9 March 2010

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Copy of the letter transmitting the CPT's report

Mr Zoran Jankovic
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Permanent Representative of Montenegro
to the Council of Europe
18, allée Spach
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Strasbourg, 2 April 2009

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 Montenegrin Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Montenegro from 15 to 22 September 2008. The report was adopted by the CPT at its 68th meeting, held from 2 to 6 March 2009.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Montenegrin authorities to provide **within six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Montenegrin authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in the Montenegrin language, that it be accompanied by an English or French translation. It would be most helpful if the Montenegrin authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully

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

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 visited Montenegro from 15 to 22 September 2008. The visit formed part of the Committee’s programme of periodic visits for 2008 and was the CPT’s first periodic visit to Montenegro as an independent State. The Committee had already visited Montenegro in 2004 as part of its visit to the State Union of Serbia and Montenegro¹.

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

- Renate KICKER, First Vice President of the CPT (Head of delegation)
- Celso DAS NEVES MANATA
- Petros MICHAELIDES
- Vladimir ORTAKOV
- Zoreslava SHKIRYAK-NYZHNYK

who were supported by the following members of the CPT’s Secretariat:

- Petya NESTOROVA (Head of Division)
- Isabelle SERVOZ-GALLUCCI.

They were assisted by:

- Clive MEUX, consultant forensic psychiatrist, Oxford, United Kingdom (expert)
- Eric SVANIDZE, former Head of the International Department of the Prosecutor General’s Office of Georgia (expert)
- Vesna BULATOVIC (interpreter)
- Milica KADIC-AKOVIC (interpreter)
- Tamara JURLINA (interpreter)

¹ The CPT’s report on this visit was made public at the request of the Government of Serbia and Montenegro (see CPT/Inf (2006) 18), together with its response (see CPT/Inf (2006) 19).

- Igor LAKIC (interpreter)
- Jelena PRALAS (interpreter).

B. Establishments visited

3. The delegation visited the following places of detention:

Police establishments

- Bar Police Department
- Berane Police Department
- Bijelo Polje Police Department
- Budva Police Station
- Danilovgrad Police Station
- Kotor Police Station
- Podgorica Police Department
- Ulcinj Police Station

Prison establishments

- Establishment for sentenced prisoners, Podgorica
- Remand prison, Podgorica
- Special prison hospital, Podgorica
- Bijelo Polje Prison

Psychiatric establishments

- Dobrota Special Psychiatric Hospital

Social care establishments

- Komanski Most Institution for people with special needs

Juvenile establishments

- Centre for children and juveniles "Ljubović", Podgorica

C. Consultations held by the delegation and co-operation encountered

4. In the course of the visit, the CPT's delegation held consultations with Miraš RADOVIĆ, Minister of Justice, Jusuf KALAMPEROVIĆ, Minister of Internal Affairs and State Administration, Miodrag RADUNOVIĆ, Minister of Health, Labour and Social Welfare, Ranka ČARAPIĆ, Supreme State Prosecutor, and Božidar VUKSANOVIĆ, Director of the State Administration for the Execution of Penal Sanctions, as well as with senior officials from relevant Ministries and the State Prosecutor's Office. It also met Šefko CRNOVRŠANIN, Ombudsman, and held discussions with members of non-governmental and international organisations active in areas of concern to the CPT.

A list of the national authorities and organisations consulted during the visit is set out in Appendix II to this report.

5. The co-operation received during the visit, both at the central level and locally, was generally of a good standard. The delegation had rapid access to all the places visited (including ones not notified in advance), could interview in private persons deprived of their liberty, as well as consult the relevant documentation, in compliance with the provisions of the Convention. The delegation also benefited from full access to the case files it had requested to see at the Prosecutor's Office in Podgorica and the Office of the Special Prosecutor on Organised Crime. Staff at most establishments had been informed of the fact that the CPT was carrying out a visit to the country and had at least some knowledge of its mandate. Further, the management of the establishments which had first been visited in 2004 were familiar with the report on that visit.

That being said, at the local level, on a number of occasions there seemed to be a lack of understanding of the objectives of CPT visits, which resulted in staff attempting to mislead the delegation. By way of example, at Bar Police Department, staff affirmed that the two cells located in the basement – which were completely dark, dilapidated and dirty – had not been used for some years². This affirmation was contradicted by the presence of recent graffiti on the cell walls (referring to the year 2007) and remains of food and other organic matter on the floor. Further, at Podgorica Police Department, the delegation was told that one of the cells (N1), which was devoid of any means of rest, had not been used for more than a year; however, the examination of documentation revealed that a person had been held in that cell on 14 September 2008.

At Podgorica Remand Prison, repeated attempts were made by staff to mislead the delegation as regards the use for disciplinary purposes of several small cells (measuring some 4 m²) located at one end of the first and second floors. It is noteworthy that in the report on the visit in 2004, the CPT had criticised these cells and had requested that they be no longer used to accommodate prisoners³. Staff affirmed that the cells in question had not been used for some 3 years and that, whenever a prisoner had to be isolated, a normal cell would temporarily be vacated. However, several prisoners interviewed by the delegation, who had been punished by disciplinary isolation in the course of 2008 (as recently as in early September 2008), alleged that they had been held in the cells in question and gave detailed descriptions of conditions in these cells, even quoting with precision certain graffiti inscribed on the walls. Moreover, the delegation saw in the cells mattresses placed on the floor, folded blankets, food remains, a water bottle and fresh urine in a corner. The prison administration could not indicate in a credible way any other premises in which prisoners subject to disciplinary isolation had been kept⁴. During the additional visit to the establishment which the delegation made before leaving the country, it was noted that the cells in question had been cleaned up and their walls repainted.

Attempts to mislead a CPT delegation are not in conformity with the principle of co-operation laid down in Article 3 of the Convention and inevitably leave a poor impression when they are discovered. **The CPT requests the Montenegrin authorities to ensure that such situations are not encountered during future visits.**

² In the report on the visit in 2004, the CPT stressed that the two cells in question should not be used until such time as the shortcomings observed had been rectified (see paragraph 236 of CPT/Inf (2006) 18).

³ See paragraph 289 of CPT/Inf (2006) 18.

⁴ The register of disciplinary punishments did not mention the numbers of the cells in which prisoners had served their disciplinary isolation. The delegation was told that some of the prisoners placed in isolation in the course of 2008 had been held in cells D2, D4 and L4 on the ground floor. However, cell D2 was accommodating 10 prisoners, some of whom had apparently been there for many months without being moved to other cells.

D. Immediate observations under Article 8, paragraph 5, of the Convention

6. At the end of the visit, the CPT's delegation met senior Government officials in order to acquaint them with the main facts found during the visit. On that occasion, the delegation made immediate observations, in pursuance of Article 8, paragraph 5, of the Convention, on two particularly urgent matters.

The first immediate observation concerned the totally unacceptable conditions of detention at **Berane Police Station**. The delegation requested the Montenegrin authorities to provide within one month confirmation that the cells in that establishment had been cleaned and were being maintained in a hygienic state, and that detained persons were ensured ready access to a toilet.

The second immediate observation was made in respect of **Komanski Most Institution for people with special needs**. The conditions in which residents were obliged to live at that establishments could well be described as inhuman and degrading. The delegation requested the Montenegrin authorities to carry out a thorough review of the situation in the establishment, addressing all problematic aspects (material conditions, hygiene, regime, staffing, use of restraints), to develop a strategy for removing children to appropriate alternative accommodation, and to provide the Committee, within three months, with a detailed action plan setting out how the failings observed were to be remedied, including the necessary funding arrangements.

7. In addition, the delegation requested the Montenegrin authorities to provide:

- i) confirmation that all cells in Podgorica Police Department and Danilovgrad Police Station have been provided with a means of rest;
- ii) information on the outcome of the investigation into the alleged ill-treatment of a female prisoner by staff at the Remand Prison in Podgorica;
- iii) information on the steps taken to refurbish all police cells in Montenegro, with a view to bringing them into compliance with the CPT's standards and previous recommendations;
- iv) information as to how the authorities will ensure effective and safe arrangements regarding the staffing of the forensic psychiatric unit at Dobrota Special Psychiatric Hospital.

8. The above-mentioned immediate observations and requests for information were subsequently confirmed in a letter of 9 October 2008.

By letters of 14 November 2008 and 6 February 2009, the Montenegrin authorities provided the information requested and informed the CPT of measures taken in response to the delegation's immediate observations as well as in respect of other remarks contained in the end-of-visit statement. These measures will be assessed later in the report.

However, the Committee wishes to welcome already at this juncture the drafting of an Action Plan for the Prevention of Torture, aimed at addressing the CPT's recommendations in a compressive manner and through a single document which will be presented to the Government for adoption at one of the forthcoming sessions. The Action Plan reportedly sets 14 objectives which are to be reached through 60 measures and activities; it also determines the authorities and institutions responsible for the implementation of the different activities, sets deadlines and indicators to measure the success, and defines the financial aspect of the activities. The establishment of a national mechanism for the prevention of torture, in accordance with the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is also included in the Action Plan. **The CPT would like to receive the Action Plan for the Prevention of Torture once it has been adopted by the Montenegrin Government.**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

9. The legislation related to deprivation of liberty by the police in Montenegro has undergone some developments since the CPT's visit in 2004. In particular, the Law on Police was adopted in May 2005 and the Police Ethics Code in January 2006.⁵ Further, the declaration of Montenegro's independence in May 2006 was followed by the adoption of a new Constitution (2007) and Law on Legal Aid (2008).

Notwithstanding these legal developments, at the time of the 2008 visit, the rules governing the detention of persons by the police continued to be basically the same as those described in the report on the 2004 visit. It should be recalled that the Code of Criminal Procedure (CCP) limits the period of police custody of persons suspected of having committed a criminal offence to a maximum of 48 hours. The police must immediately, and at the latest within 2 hours, issue a provisional detention decision and serve it on the detained person; the person concerned may appeal against this decision to the investigating judge, who has to decide on the appeal within 4 hours of its receipt (Section 234 of the CCP). If within 48 hours the police fails to file a crime report and bring the person to the investigating judge, the person must be released.

Pursuant to Section 231 of the CCP, a person may be summoned to a police station for the collection of information; such a procedure may not last for more than 4 hours. If, in the course of collecting information, the police considers that the summoned person may be deemed a suspect, it must inform him immediately of the criminal offence of which he is charged and of his rights. The 48-hour period of police custody runs from the moment of the person's appearance upon summons⁶.

Further, pursuant to Section 27 of the Law on Police, persons who disturb public order or represent a threat to others may be detained by the police for up to 6 hours; this period may, exceptionally, be prolonged to 12 hours if the identity of the person needs to be established, if a person who has been returned to the country is to be delivered to the competent authorities, or if the person concerned poses a serious threat to the life or health of others.

10. The delegation's findings during the visit suggest that the legal time-limits for police custody are generally respected. However, the delegation did come across some cases in which there was apparently a difference of up to 6 hours between the moment of actual deprivation of liberty and the time indicated in the detention decision.

⁵ Several decrees have also been adopted, in particular on conditions in detention facilities, on conditions for the recruitment of police officers and on disciplinary procedures.

⁶ See Section 234 (1) of the CCP.

It should also be noted that some detained persons met during the visit, who had first been summoned to a police station to provide information and had subsequently been deemed as suspects, indicated that they had spent more than 48 hours in police custody (e.g. 55 hours). In this connection, certain police officers with whom the delegation spoke affirmed that the 48-hour period of police custody started to run from the issuing of a provisional detention decision.

The CPT recommends that the Montenegrin authorities take steps to ensure that detention by the police is carried out in strict conformity with the legislative provisions. In particular, the authorities should issue instructions specifying that the period of police custody runs from the moment a person is obliged to remain with the police, and that this time should appear in the detention decision, even if that decision has been drawn up at a later stage.

2. Torture and other forms of ill-treatment

11. As in 2004, the delegation received numerous allegations of recent deliberate physical ill-treatment of persons deprived of their liberty by the police in Montenegro. Most of those allegations related to ill-treatment inflicted at the time of questioning with a view to extracting confessions or obtaining information. In some cases, ill-treatment was said to have been inflicted also at the time of apprehension. It is noteworthy that certain persons who stated that they were not ill-treated attributed the absence of ill-treatment in their case to the fact that they had immediately confessed to the offences of which they were suspected.

The allegations were received from both men and women, and consisted for the main part of slaps, punches, kicks and blows with truncheons, gun butts or other hard objects. A few detained persons alleged that they had been beaten while handcuffed and their head covered with a bag. In two cases, it was alleged that police officers at Bar Police Station had put a bullet-proof vest on the person concerned and hit him with a baseball bat. Two allegations were also heard of a gun being placed in the detained person's mouth. The ill-treatment alleged was on occasion of such severity that it could be considered to amount to torture. Further, several persons gave accounts of verbal abuse and threats to use physical force in order to make them confess to a crime or provide information.

12. In several cases, the delegation observed physical marks or found medical evidence in the documentation consulted at the prison establishments visited consistent with the allegations made of ill-treatment by the police. By way of example, reference might be made to the following cases:

- a prisoner interviewed at the Remand Prison in Podgorica alleged that, following his apprehension on 29 August 2008 in Podgorica, he had been beaten by police officers who punched him and hit his head on the wall. The person concerned stated that he had lost consciousness as a result and had been taken to a hospital with a fractured skull. The medical record drawn up at the prison upon the person's admission on 31 August 2008 referred to a number of haematomas on his head and body. When met by the delegation, the person concerned displayed a scar on the right side of the forehead;

- a prisoner interviewed at Bijelo Polje Prison alleged that, on 5 September 2008, he had been arrested for an altercation with police officers. After being taken to the police station, he had apparently been hit on the back of the head, as a result of which he had fallen down; following that, he had allegedly been kicked, punched and hit with truncheons all over the body. The record made in the prisoner's medical file at the time of his examination upon admission referred to numerous injuries, *inter alia*, three tramline haematomas, measuring 12-15 x 3.5 cm, on the back, two tramline haematomas, measuring 12 x 7 cm, on the lumbar area, a haematoma on the right temporal area of the head, and haematomas on the knees. Injuries similar to those recorded in the medical documentation were observed by the delegation's doctor;
- another prisoner met at the Remand Prison in Podgorica alleged that, on 18 July 2008, he had been apprehended by police officers who had kicked and punched him, and had prodded him with a gun on the legs. The medical record made at the time of the person's admission to the prison referred to several circular wounds on his legs, which had allegedly been caused by police officers. When met by the delegation, the prisoner concerned was still displaying circular haematomas, measuring about 1 cm in diameter, on his legs.

13. It should be noted that, as in 2004, the delegation found at several police stations visited (in Bar, Budva, Kotor and Podgorica), in offices used for police interviews, various non-standard and unlabelled items (such as baseball bats, a strip of thick plastic-covered electric cable, and a length of hard hollow plastic pipe). Further, at Budva Police Station, the delegation saw a bullet-proof vest lying on a chair in the hallway leading to the cells in the basement, which seemed an unusual place to keep it.

14. The delegation's findings from the 2008 visit suggest that persons deprived of their liberty by the police in Montenegro continue to run a significant risk of being ill-treated while in police custody. Concern about the persistence of ill-treatment by the police was expressed by many of the delegation's official interlocutors, a number of whom felt that information indicative of ill-treatment was not followed by a prompt and effective response, which engendered an atmosphere of impunity. Sustained, determined action is therefore needed to combat ill-treatment by the police.

In their letter of 14 November 2008, sent in response to the delegation's end-of-visit observations, the Montenegrin authorities indicated that all police departments and police stations had been instructed to undertake measures to overcome the shortcomings observed by the delegation. Special emphasis was said to have been placed on the need to remove non-standard and unlabelled items from police premises. Further, it had been emphasised that the use of torture or inhuman and degrading treatment was incompatible with the Montenegrin Constitution, law and police regulations, and that any excessive use or misuse of authority would result in the initiation of proceedings to determine the criminal and disciplinary responsibility of the persons involved.

The CPT welcomes the issuing of the above-mentioned instructions and **recommends that a clear and firm message of “zero tolerance” of ill-treatment be delivered from the highest level and through ongoing training to all police officers. As part of this message, it should be reiterated that all forms of ill-treatment (both at the time of apprehension and during subsequent questioning), as well as threats to use such treatment, are absolutely prohibited, and that both the perpetrators of such acts and those condoning them will be subject to severe sanctions. Police officers should also be reminded that no more force than is strictly 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.**

The Committee also recommends that the attention of prosecutors, judges, prison directors and other competent authorities be drawn to the need to exercise extra vigilance and adopt a more proactive approach in order to ensure that no case of ill-treatment goes unnoticed and unpunished (see also paragraphs 19 and 20). In this context, the national Action Plan for the Prevention of Torture referred to in paragraph 8 should bring together the efforts of all relevant structures in a concerted strategy.

15. In its report on the 2004 visit, the CPT made a number of recommendations aimed at combating ill-treatment by police staff. In their response to that report, the Montenegrin authorities referred to constitutional principles, legal acts and instructions which proclaim the inadmissibility of torture and other forms of ill-treatment and the respect for the dignity of persons deprived of their liberty⁷. Efforts have also been made to step up professional training, through the setting-up in 2006 of a Police Academy in Danilovgrad which provides both initial training for new recruits (a 18-month course) and in-service training (a 4-month course). The delegation was informed that the training curriculum included modules on human rights, professional ethics and interpersonal communication skills. By the time of the 2008 visit, some 68 police officers had undergone initial training and an equal number had followed in-service training⁸.

The CPT recommends that the Montenegrin authorities continue to develop professional training of police officers, with a view to ensuring that all new recruits receive adequate initial training and that police officers already in service are offered systematic ongoing training based on the new curriculum. During the training, particular emphasis should be placed on advanced methods of crime investigation, thereby reducing reliance on information and confessions obtained via interrogations for the purpose of securing convictions. In this context, investment should also be made in the acquisition of modern technical means of inquiry (e.g. criminalistic and laboratory equipment). This should be combined with the adoption of detailed instructions on the questioning of criminal suspects (including initial interviews by operational officers)⁹. It must be made crystal clear that the precise aim of questioning criminal suspects should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to secure a confession from someone already presumed, in the eyes of law enforcement officials, to be guilty.

In addition, the Committee would like to receive more detailed information on the contents of the police training curriculum.

⁷ These principles are set out in the Constitution, the Criminal Code, the Code of Criminal Procedure, the Law on Police and the Police Ethics Code.

⁸ According to the Ministry of Interior, there are some 1,700 uniformed police officers, about 400 of whom were recruited after Montenegro became independent.

⁹ See the CPT's previous recommendation concerning the need to draw up a code of conduct for police interviews, paragraph 251 of CPT/Inf (2006) 18.

16. The CPT has stressed in the past that the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by police officers themselves. The adoption of a Police Ethics Code is an important step. However, the existence of this code is not in itself sufficient to guarantee appropriate behaviour; due attention must be given to sensitising police staff to the code's principles and to applying them in a concrete manner in day-to-day practice. Positive action is required, through training and by example, to promote a culture in which it is regarded as correct and professionally rewarding to belong to a team which abstains from having resort to ill-treatment, and where 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, or should know, on account of his position, that ill-treatment is occurring and fails to act to prevent or report it. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures.

The CPT recommends that the Montenegrin authorities adopt appropriate measures, in the light of the above remarks. In this context, the Committee would like to be informed whether there is a specific obligation under Montenegrin law for police officers to report to their superiors facts which are indicative of torture or inhuman or degrading treatment on the part of colleagues.

17. During the 2008 visit, the Montenegrin authorities informed the delegation of changes to the police complaints and control procedures, pursuant to the 2005 Law on Police. The Internal Control Unit of the Police Directorate is responsible, inter alia, for examining complaints from citizens and media reports containing allegations of ill-treatment. According to Section 96 of the Law on Police, a person may lodge a complaint within 30 days of the event. The police has to reply to the complainant within 60 days and if the person is not satisfied with the response, he can address the Minister of the Interior. Pursuant to the CCP, a person can also complain directly to the Prosecutor's Office if there is a criminal element in the alleged police misbehaviour.

The Law on Police also provides for external control mechanisms, namely the Council of Civil Control over Police Activities and the Parliamentary Committee for Defence and Security. The Council, which is composed of 5 independent members¹⁰, can act upon complaints as well as intervene *ex officio*. The delegation was informed that, since 2006, the Council had examined 85 cases, approximately two-thirds of which related to inappropriate use of force and abuse of authority. As a result of the Council's work, a number of violations had been established and several police officers had been punished (including by removal from office).

The adoption of new police complaints procedures, and in particular of external control mechanisms, is a positive development, capable of contributing to the prevention of ill-treatment by the police. In this context, **it is important to ensure that those persons entrusted with the operational conduct of the investigation concerning complaints against the police are not from the same service as the police officers who are the subject of the investigation** (see also paragraph 26).

¹⁰ The members represent respectively the Bar Association, the Medical Chamber, the Association of Lawyers, the Law Faculty of Podgorica University and the NGO sector. They are elected by Parliament for a period of 5 years.

18. According to information provided by the Ministry of Interior, in 2007, there had been 37 complaints of ill-treatment by police officers, of which 11 were considered as well-founded by the Internal Control Unit; of them, 4 were forwarded to the Prosecutor's Office¹¹ and 7 were dealt with under the disciplinary procedure. In the period from January to August 2008, there had been 24 complaints, of which 7 were considered as well-founded; no decision could be reached on 4 complaints, which were forwarded to the Prosecutor's Office. Disciplinary procedures were opened in 10 cases. The delegation was also informed by the Prosecutor's Office that in the period from 2005 to 2007, there had been 210 cases under Section 167 of the Criminal Code (torture and other forms of ill-treatment); however, no information was provided on the status of those cases.

In order for the CPT to obtain a full picture of the current situation, **the Committee would like the Montenegrin authorities to supply the following information in respect of 2007 and 2008:**

- **the number of complaints of torture and other forms of ill-treatment made against police officers;**
- **an account of disciplinary sanctions imposed as a result;**
- **an account of criminal proceedings instituted, findings made and criminal sanctions imposed.**

19. The CPT has already stressed in the past the importance of the diligent examination by judges and prosecutors of all information regarding possible ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint. It should be noted that some detained persons interviewed during the 2008 visit alleged that the investigating judges before whom they had been brought with a view to being remanded in custody paid no attention to their visible injuries and allegations of ill-treatment, and took no action to investigate the possibility of ill-treatment.

Consequently, the CPT reiterates its recommendation made in paragraph 232 of the report on its 2004 visit that, whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds (e.g. visible injuries) to believe that a person brought before him could have been the victim of ill-treatment.

¹¹ Another 2 complaints, in respect of which the Internal Control Unit could not establish for certain whether they were well-founded, were also forwarded to the Prosecutor's Office.

20. The role played by prison health-care services in the prevention of ill-treatment by the police, through the systematic recording of injuries borne by newly-arrived prisoners, has already been emphasised by the CPT in the report on the 2004 visit¹². The observations made during the 2008 visit suggest that the procedure as regards the recording of injuries is still not satisfactory. Prison doctors recorded the objective medical findings, in a more or less detailed manner, in the personal medical record of the prisoner concerned, and sometimes included a brief reference to allegations made by the person (e.g. “beaten by police officers in Podgorica”). However, there was no conclusion as to whether the injuries observed were consistent with the person’s allegations (i.e. whether they could have been caused in the manner described). It is also noteworthy that the absence of specific registers of traumatic injuries observed on prisoners made it difficult to gain an overview of the situation.

Moreover, notwithstanding the legal obligation to report criminal offences pursuant to Sections 227 and 228 of the CCP, it appeared from conversations with prison doctors that they did not have a formal role in notifying a prosecutor of injuries observed on persons arriving from a police establishment. In this connection, the Director of Bijelo Polje Prison stated that, if a prisoner arrived from police custody with injuries, it was up to the police to inform the Prosecutor’s Office.

The CPT reiterates its recommendation that the record drawn up following the medical examination of newly-arrived prisoners contain: (i) a full account of statements made by the person concerned which are relevant to the examination (including his description of his state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) the doctor’s conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings.

Whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person, the record should be systematically brought to the attention of the relevant prosecutor¹³. Further, the results of the examination, including the above-mentioned statements and the doctor’s conclusions, should be made available to the detained person and his lawyer at their request.

It is also important that no barriers should be placed between persons who allege ill-treatment and doctors who can provide forensic reports recognised by the prosecutorial and judicial authorities. It would appear from the information received during the visit that, at present, only courts may ask for a forensic medical examination. **The CPT recommends that persons who are or have been detained be formally entitled to directly request a medical examination/certificate from a doctor who has received recognised training in forensic medicine.**

¹² See paragraph 233 of CPT/Inf (2006) 18.

¹³ In this context, reference is made to Section 227 of the Code of Criminal Procedure which lays down the obligation of public officials to report criminal offences.

3. Investigations into cases involving allegations of ill-treatment

21. The significant number of allegations of ill-treatment heard by the delegation during the 2008 visit warrants an examination of the accountability system and the efficacy of legal remedies. Assessing the effectiveness of action taken by the competent authorities when ill-treatment may have occurred constitutes an integral part of the CPT's mandate, given the implications that such action has for future conduct by public officials¹⁴.

To avoid any perception of impunity, it is crucial that the prosecuting and investigating authorities take effective action when any information indicative of possible ill-treatment comes to light. In this regard, it is well-established through the case-law of the European Court of Human Rights that, whenever a person was injured while in the hands of public officials, there is a strong presumption that the person concerned was ill-treated and the authorities' duty is to provide a satisfactory and convincing explanation of how the injuries were caused.

The criteria which an investigation into such cases must meet in order to be qualified as "effective" have been established through the abundant case-law of the European Court of Human Rights as well as highlighted in the CPT's 14th General Report. In particular, the investigation should be thorough and comprehensive, it should be conducted in a prompt and expeditious manner, and the persons responsible for carrying out the investigation should be independent from those implicated in the events. Further, there should be a sufficient element of public scrutiny of the investigation or its results, including the involvement of the alleged victims in the procedures and the provision of information to the public on the status of ongoing investigations, to secure accountability in practice as well as in theory.

22. The CPT's delegation examined in detail the investigative and other procedural actions in response to information indicative of ill-treatment during two large-scale police operations in recent years: the police intervention performed on 1 September 2005 at the Remand Prison in Podgorica, and the "anti-terrorist" raid carried out on 9 September 2006 in the suburbs of Podgorica against a group of people of Albanian origin suspected of preparing an illegal obstruction of the parliamentary elections (known as the "Eagles' Flight" operation).

23. The police intervention in the Remand Prison was carried out in the context of a search requested by the Prosecutor's Office and authorised by the Higher Court of Podgorica, within the framework of the investigation into the murder of a high-ranking police officer. The warrant specified that the organisation of the search had been entrusted to the Head of Podgorica Police Directorate (Security Centre) and specified that it should be executed with due respect for the rights of inmates. According to the documentation, on 1 September 2005 at 4.20 a.m., some 80-100 police officers entered 9 cells of the establishment. Despite a decision taken at an earlier meeting between the Deputy Minister of the Interior and the penitentiary authorities, the operation was carried out without prison staff being allowed to monitor the actions of the police. After the intervention, 31 prisoners alleged that they had been subjected to physical force (i.e. beaten inside and outside their cells by masked police officers wearing black uniforms). There were no reports of resistance from inmates that would justify the use of force by the police officers deployed. On 5 September 2005, a medical commission appointed by the Government confirmed that 18 prisoners had sustained injuries.

¹⁴ See the section "Combating impunity" of the CPT's 14th General Report (CPT/Inf (2004) 28).

Although the incident had been immediately reported to the Prosecutor's Office, it was only on 27 October 2005 (i.e. almost two months after the intervention) that the Prosecutor's Office requested the police authorities to indicate who was in charge of the organisation and execution of the intervention and to submit relevant documentation. On 18 December 2006 (i.e. more than a year after the incident), the Prosecutor's Office applied to the investigating judge to initiate proceedings against the Head of Podgorica Police Directorate on the basis of the fact that he was responsible for the conduct of the intervention. The investigative activities subsequently performed involved a forensic assessment of the medical findings concerning injuries sustained by the prisoners, and the questioning of the Head of Podgorica Police Directorate and several police officers involved in the intervention.

Since the end of 2007, no further investigative activities have been carried out and the case remains pending before the court. It is noteworthy that the investigative activities have omitted to question the penitentiary authorities, staff working at the remand prison and all prisoners (both those who were injured and those who had witnessed the intervention). Neither have the necessary steps been taken to seize the internal orders related to the organisation of the intervention and to question senior officials from the Ministry of the Interior who had been involved in its planning, as well as the police officers who drew up the minutes of the search and subsequent reconstruction of events. As a result, the investigation has failed to identify the officials responsible for the organisation and execution of the operation.

24. The "anti-terrorist" operation known as "Eagles' Flight" involved 93 police officers of different subdivisions of the Ministry of the Interior, including special forces and Podgorica Police Directorate (Security Centre). During the operation, several houses in the suburbs of Tuzi and Malesija of Podgorica were searched and 14 persons were apprehended¹⁵. The persons concerned alleged that during the operation, they and members of their families had been hit with truncheons and subjected to verbal abuse with xenophobic connotations. Allegations of physical ill-treatment, with the aim of extracting confessions, were also made concerning the period of police custody at Podgorica Police Directorate and other police stations (e.g. Cetinje) to which the persons concerned were subsequently transferred. Further, it was alleged that detained persons had been slapped, punched and kept in a painful position at the holding facilities of the Higher Court of Podgorica and while being transported for investigative activities on 14/15 September 2006.

The above allegations were made by some of the detained persons at the time of their initial appearance before the investigating judge of Podgorica Higher Court and during subsequent hearings on 11, 12, 14 and 15 September 2006. Several of the persons concerned displayed visible injuries at the court hearing on 11 September 2006 and upon medical examination when admitted to the Remand Prison the following day. The injuries were recorded in the court minutes and the prison medical documentation and were confirmed by a subsequent forensic examination; it is noteworthy that many of the injuries recorded are indicative of truncheon blows¹⁶.

¹⁵ Although some documents examined by the delegation referred to 14 apprehended suspects, other sources suggested a different number (17), and the Special Prosecutor for Organised Crime mentioned 18 suspects and 10 defendants.

¹⁶ X displayed 3 dark red haematomas (10-20 x 4-5 cm), positioned horizontally and covering two-thirds of the left side of his back, a haematoma measuring 20 x 2.5 cm on the right side of the inner part of the chest, a haematoma measuring 6 x 2.5 cm on the left forearm, and two dark blue haematomas measuring 6-8.5 x 2.5 cm on the left side of the buttocks. Y had 5 horizontal and 3 vertical haematomas on the left forearm (8-15 x 5 cm) and on the back side of the chest, and a haematoma measuring 20 x 6 cm on the left buttock. Z displayed a haematoma measuring 25 x 3 cm on the left front side of the chest and a haematoma measuring 4 x 3 cm on the left cheek.

The allegations were followed by formal applications made by the detained persons' lawyers before the investigating judge and the Prosecutor's Office on 14 September, 13 October, 18 October and 28 October 2006. The detained persons indicated that they knew the names of some of the officers implicated in the alleged ill-treatment and could recognise others, describing in detail their appearance.

25. It was only on 15 June and 28 June 2007 (i.e. 9 months after the operation) that the Prosecutor's Office requested in writing that the criminal police perform an identification of the implicated police officers. These requests were ignored by the police¹⁷. Further, no action was taken upon a letter by the President of Podgorica Higher Court, dated 23 November 2006, which stated that court employees had witnessed the ill-treatment of detained persons by police officers and prison escort staff at the court building from 11 to 15 September 2006.

Internal inquiries were carried out by the Internal Control Department of the Police Directorate of the Ministry of Internal Affairs and the Professional and Human Treatment Commission of the penitentiary system. The first inquiry stated that the injuries observed on the persons concerned had been caused due to their resistance to the police. In this context, the police submitted 11 reports on the use of handcuffs and 2 on the combined application of physical force and handcuffs; however, the reports made no reference to the use of truncheons or the infliction of any injuries. The internal inquiry performed by the Professional and Human Treatment Commission contented itself with obtaining written statements from the persons that they had no complaints against the penitentiary system.

Although the investigative opportunities were far from exhausted (in particular, no identification had been performed of the implicated police officers and no plausible justification had been found for the injuries sustained), by letter of 21 June 2008, the Prosecutor's Office informed the Police Directorate of its decision to withdraw the classification of the acts committed against the detained persons as falling under Section 167 (3) of the CC¹⁸. It was stated in the letter that the crime had constituted the infliction of light bodily injuries and should therefore be subject to summary proceedings. This decision appears to be inconsistent with the recorded injuries (see footnote 16).

¹⁷ In spite of this, the Prosecutor's Office did not avail itself of the remedies available in law, such as informing the Government of the failure of the police to proceed upon its request (Section 44 (4) of the CCP) or considering an issue of criminal responsibility for assisting the perpetrator of a criminal offence (Section 387 of the CC).

¹⁸ Criminal proceedings had been opened in July 2007 in respect of the infliction of injuries to the father of one of the men detained during the operation. In that case, the offence had been considered as falling under Sections 167 (2) and (3) of the CC (torture and other forms of ill-treatment). At the time of the CPT's visit, the trial was ongoing.

26. The delegation's examination of the two above-mentioned cases suggests that they have failed to meet the requirements of an "effective" investigation as described in paragraph 21. Firstly, the investigations do not comply with the criteria of thoroughness and comprehensiveness, as is clear from the failure to carry out an identification of those implicated, to question all victims of alleged ill-treatment and witnesses, and to give due weight to medical findings consistent with allegations of ill-treatment. Secondly, the investigations were not initiated promptly and lacked expeditiousness. Thirdly, current arrangements for investigation at the behest of the Prosecutor's Office of possible ill-treatment by the police do not always ensure an adequate level of independence (both institutional and practical)¹⁹. Fourthly, the level of engagement of the alleged victims and their lawyers raise concerns as regards meeting the requirement of public scrutiny over investigations and procedural actions.

In the light of the above, **the CPT recommends that immediate steps be taken to ensure that all investigations into cases involving allegations of ill-treatment fully meet the criteria of an "effective" investigation as established by the European Court of Human Rights. The Committee would also like to be informed of the outcome of the two cases referred to in paragraphs 23 and 24.**

Further, the Committee invites the Montenegrin authorities to take steps to provide information to the public on the outcome of investigations into complaints of ill-treatment by the police, with a view to avoiding any perception of impunity.

27. Some of the prisoners who alleged that they had been ill-treated during the police intervention in the Remand Prison on 1 September 2005 stated that the police officers involved in the operation had worn masks. Further, persons detained in the context of the "Eagles' Flight" operation stated that members of the special forces had been masked.

The CPT has strong misgivings whenever it encounters the practice of members of special intervention forces wearing masks when conducting operations in a custodial setting; this can clearly hamper the identification of potential suspects if and when allegations of ill-treatment arise. As regards special interventions undertaken outside a custodial setting in the context of an "anti-terrorist" operation, the CPT acknowledges that the wearing of masks may be justified. However, subsequent identification of the individual officials concerned should in all cases be made possible (for instance, through the wearing of a distinctive sign/identification number on the uniform). **The CPT recommends that the Montenegrin authorities take the necessary measures in the light of these remarks. If need be, the relevant legal provisions should be amended.**

¹⁹ Pursuant to Section 230 of the CCP, the collection of information and evidence in the course of the initial investigation is entrusted to the police.

4. Safeguards against the ill-treatment of persons deprived of their liberty

28. In the report on the 2004 visit, the CPT examined in detail the formal safeguards against ill-treatment which are offered to persons detained by the police, and their operation in practice. The Committee has placed particular emphasis on three fundamental rights, namely the right of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer, and to have access to a doctor. As stressed by the Committee, these rights should be enjoyed by all categories of persons from the very outset of their deprivation of liberty (i.e. from the moment the persons concerned are obliged to remain with the police). It is equally fundamental that persons detained by the police be informed without delay of their rights, including those mentioned above, in a language they understand.

The legal provisions pertaining to the above-mentioned rights have remained practically unchanged since the CPT's visit to the State Union of Serbia and Montenegro, despite the adoption of the Law on Police in 2005 and the Constitution of Montenegro in 2007. The 2008 visit revealed that the legal provisions still do not fully comply with the standards advocated by the CPT and that their implementation in practice leaves a lot to be desired.

29. As regards notification of custody, according to Article 29 of the Constitution, "at the request of the person deprived of his/her liberty, the authority shall immediately inform a person of his/her choice about his/her deprivation of liberty". This principle is reiterated in Sections 5 (1), 231 (8) and 234 (6) of the CCP.

Most detained persons interviewed by the delegation confirmed that they had been offered the possibility to notify their next-of-kin of their detention shortly after apprehension. However, a few detainees complained that their relatives had been notified of the fact of their detention some time after it had taken place. In this context, it should be noted that the recently introduced 3-page form ("record of the detention of a person deprived of his liberty"²⁰) completed in respect of each detained person did not contain a section concerning notification of custody (such a section existed only in respect of foreign nationals).

The CPT recommends that further steps be taken to ensure that detained persons effectively benefit from the right of notification of custody from the very outset of their deprivation of liberty. In this context, the exercise of the right of notification of custody should be recorded in writing.

30. The right of persons deprived of their liberty by the police to have access to a lawyer is guaranteed in Articles 29 and 37 of the Constitution, as well in various sections of the CCP²¹. The right of access to a lawyer includes the right to have him present during questioning. Further, the Law on Legal Aid, adopted in 2008, provides for legal assistance to all persons summoned or detained by the police.

²⁰ *Zapisnik o zadržavanju lica lišenog slobode (Obr-1).*

²¹ Section 231 (7) (8) and (9), in respect of persons summoned by the police, Section 234 (7), in respect of persons detained by the police, and Section 233 (1), in respect of persons brought before an investigating judge. Further, Section 5 obliges the police to inform detained persons of their right to have access to a lawyer.

The delegation heard various interpretations of the existing legal provisions. Senior police officers met by the delegation were adamant that the right of access to a lawyer became effective as from the outset of deprivation of liberty, for all categories of persons. However, certain officers working at local police stations stated that persons detained for misdemeanour crimes and those suspected of crimes punishable by less than 5 years in prison had no right of access to an *ex officio* lawyer during the 48 hours of police custody.

In practice, relatively few detained persons interviewed by the delegation appeared to have been able to genuinely exercise their right of access to a lawyer in accordance with the law. Several persons who had been summoned by the police indicated that they had gone to the police station accompanied by their lawyers, who could then be present during the interview. In contrast, many persons who had been apprehended by the police stated that they had met a lawyer only on the second day of police custody or when taken to court. It was also alleged that lawyers were not allowed to have confidential meetings with their clients. Further, a number of detainees complained that their requests to contact their lawyers had been declined and an *ex officio* lawyer had been called instead. The delegation spoke with a number of persons who had been assisted by *ex officio* lawyers and who complained that the lawyers concerned had not been effective or reliable.

31. The information gathered during the 2008 visit confirms that the risk of intimidation and ill-treatment is greatest during the period immediately following deprivation of liberty. Consequently, the possibility for persons to have effective access to a lawyer from the very outset of their custody by the police (i.e. from the moment they are obliged to remain with the police) is a fundamental safeguard against ill-treatment. The existence of this possibility will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT acknowledges that it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation.

The CPT calls upon the Montenegrin authorities to take steps to ensure that persons in police custody benefit from an effective right of access to a lawyer (which includes the rights to talk to a lawyer in private and to have a lawyer present during interrogations) as from the moment they are obliged to remain with the police. If necessary, the relevant legal provisions should be revised.

The Committee also recommends that further efforts be made to ensure that the system of legal aid for persons in police custody operates effectively; this should be done in co-operation with the relevant bar associations.

Further, police officers should be given a clear message that they are to respect the right of detained persons to have a lawyer of their own choosing, which is enshrined in the Constitution of Montenegro.

32. With regard to the right of access to a doctor, one positive development since the 2004 visit is the inclusion in the information sheet on rights, which should be given to detained persons at the outset of police custody, of a specific reference to the right to request medical care from a doctor provided by the police or a doctor of the person's own choice. Further, the previously-mentioned "record of the detention of a person deprived of his liberty" contains a specific entry concerning the provision of medical care. On the other hand, as far as the delegation could ascertain, there are still no specific legal provisions guaranteeing the right of persons in police custody to have access to a doctor.

The delegation was informed by officers in the police establishments visited that, upon arrival at the police station, the duty officer assessed the detained person's state of health and, if it seemed necessary, took the person to the local medical centre. Police officers also affirmed that detained persons could contact a doctor of their choice, although this had apparently never happened. It transpired from the examination of documentation and interviews with detained persons that, in certain cases, medical assistance had been provided. On the other hand, a number of remand prisoners interviewed by the delegation claimed that they had been refused access to a doctor while in police custody.

The CPT reiterates its recommendation that the Montenegrin authorities adopt specific legal provisions guaranteeing the right of access to a doctor for persons in police custody. Those provisions should stipulate, *inter alia*, that:

- **a request by a detained person to see a doctor should always be granted without delay; police officers should not seek to vet such requests;**
- **the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer.**

33. As for information on rights, reference has already been made in paragraph 32 to the introduction of an information sheet on rights, which contains a reference to all the above-mentioned safeguards against ill-treatment. However, not all police stations visited had copies of that sheet. It should also be noted that the information sheet was available only in Montenegrin, English and Albanian.

Some of the persons interviewed by the delegation indicated that they had not been given an information sheet on rights. The "record of the detention of a person deprived of his liberty" does contain a section in which the detained person is supposed to confirm with his signature that he has been given an information sheet. However, the delegation's examination of a number of "minutes" revealed that in several of them, this section had been left blank.

After the visit, the Montenegrin authorities informed the CPT, in their letter of 14 November 2008, that work to translate the information sheet into several other languages (German, French and Russian) was underway. The CPT welcomes the Montenegrin authorities' efforts to improve the provision of written information to persons in police custody. **The Committee encourages the authorities to take further steps to ensure that the information sheet on rights is given systematically to all persons apprehended by the police as soon as they are brought into a police station, and is properly explained to them.**

34. The delegation's examination of custody records at the police establishments visited revealed that there was an improvement in record keeping. The introduction of the previously mentioned "record of the detention of a person deprived of his liberty", which contain data regarding various aspects of detention (e.g. times of arrival, transfer and release; provision of information on rights; medical assistance; complaints, etc.), is a positive development. However, the "records of detention" seen by the delegation were not always properly completed, some of the sections being left blank. Further, as already noted in paragraph 29, the "record" does not contain a section concerning notification of custody; neither is there an entry concerning access to a lawyer. **The CPT invites the Montenegrin authorities to take further steps to ensure that a systematic standardised record of key elements of custody (including whether and when the rights of access to a lawyer and notification of custody are exercised) is kept for each person detained.**

35. Mechanisms for the monitoring of police detention facilities are capable of making an important contribution to the prevention of ill-treatment. In Montenegro, there is a system of regular internal inspections by the Internal Control Department of the Police Directorate. A number of other bodies are also entitled to visit police detention facilities (e.g. the Ombudsman, the Council on Civil Control over Police Activities, some NGOs); however, it transpired during the 2008 visit that monitoring visits by such independent outside bodies were, for various reasons, infrequent, which limited their impact. **The CPT invites the Montenegrin authorities to further develop the system of monitoring visits to police establishments by independent outside bodies. In this context, the Committee wishes to stress that, to be fully effective, visits by monitoring groups should be both frequent and unannounced. Further, the monitoring bodies should be empowered to interview detained persons in private and examine all issues related to their treatment (material conditions of detention; custody records and other documentation; exercise of detained persons' rights, etc.)**

5. Conditions of detention

36. The CPT wishes to restate the conditions of detention which should be offered to persons in police custody.

All cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should have access to natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in police custody should be allowed to comply with the needs of nature in clean and respectful of their dignity conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in custody for 24 hours or more should be offered one hour of outdoor exercise every day.

37. Conditions of detention in the police cells seen by the CPT's delegation in 2008 failed to meet many of the above-mentioned criteria. Only Kotor Police Station, where the detention area had benefited from a recent refurbishment, offered on the whole satisfactory conditions of detention; that said, the two cells (measuring some 6 m² each) were deprived of access to natural light. A cell refurbishment had also taken place at Ulcinj Police Station, which had three cells (measuring between 6 and 10 m², and fitted with wooden platforms, blankets, water taps and a ventilation system); however, the artificial lighting was not working.

As regards the rest on the police establishments visited, conditions of detention were very poor: the cells were dimly lit if not totally dark (e.g. the two cells in Danilovgrad had no windows and no artificial lighting), and were poorly ventilated, unheated and often dilapidated and dirty. Detainees were usually not provided with mattresses, and the occasional blankets seen in the cells were dirty. Further, there were no call bells (except in the two basement cells in Budva). As for the toilets and washing facilities, they were generally in a poor state of repair. Although the majority of the police cells were empty at the time of the visit, the examination of custody records revealed that the cells could become considerably overcrowded when large groups of persons were being detained at the same time.

One of the cells in Podgorica and the two cells in Danilovgrad were not provided with any means of rest, detainees having to sleep directly on the floor. After the visit, the Montenegrin authorities informed the CPT that benches had been installed in the cells in question and that there were plans to purchase beds which would be fixed to the floor.

38. The worst conditions were observed at Berane Police Department where, in addition to the above-mentioned shortcomings, the two basement cells were extraordinarily dirty and malodorous, with urine and piles of faeces on the floor; persons held in those cells in the recent past alleged that they had not been allowed to go out to the toilet (there was no toilet in the detention area). The location of the cells, one floor below the duty office, and the absence of call bells, made contact with the duty officer practically impossible.

As noted in paragraph 6, the delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation concerning the cells at Berane Police Department. By letter of 14 November 2008, the Montenegrin authorities informed the CPT of measures taken in response to the delegation's immediate observations. On 15 October 2008, a specialised company had performed a thorough cleaning, disinfection and pest control of the detention premises at Berane. Access to the toilet is now said to be guaranteed by means of more frequent checks of the detention area. Further, there are plans to install in 2009 an intercom "panic button" for direct communication between detainees and police officers. Berane Police Department has also been included as a priority in the plan for reconstruction of police cells in Montenegro.

39. Police officers affirmed that detained persons were being provided with food three times a day. However, the majority of the persons met by the delegation indicated that the only food they had received during their custody had been brought by relatives. The documentation kept at the police establishments visited did not shed any light on the issue of food provision.

In their letter of 14 November 2008, the Montenegrin authorities stated that persons in police custody are provided with meals at regular intervals, either from the police canteen or purchased from local shops, and that the food invoices are sent monthly to the Police Directorate.

40. At the end of the 2008 visit, the CPT's delegation urged the Montenegrin authorities to undertake a programme of refurbishment of all police cells in Montenegro with a view to bringing them into compliance with the CPT's standards and previous recommendations. In their letters of 14 November 2008 and 6 February 2009, the authorities provided detailed information on steps already taken or planned to improve conditions of detention in police establishments.

In May 2008, a thorough reconstruction of the cells in Bar, Cetinje, Herceg Novi, Kotor, Tivat and Ulcinj had been undertaken in accordance with the official regulations on conditions in places for detention²². In June 2008, a contractor had been selected for the refurbishment of the cells in the remainder of the police departments and stations (including those in Bijelo Polje, Berane, Budva and Danilovgrad). However, one of the contractors bidding in the public tender procedure had filed an appeal, thus extending the process of selection. The Commission for the control of public procurement had finally selected a contractor in September 2008 and, by the end of 2008, the refurbishment of the detention areas of 17 police establishments (including those in Berane, Bijelo Polje, Budva, Danilovgrad and Podgorica) had been completed. The works had comprised the improvement of access to natural light and ventilation in the cells, the installation of beds and sanitary facilities, and the provision of drinking water in the cells. Further, in 2009, it is planned to increase the number of cells at Bar Police Department, construct a new building for Podgorica Police Department, improve the provision of bedding to detained persons and install floor-fixed tables and chairs in the cells. There is also a programme for the installation of video surveillance and call bells in police cells, which should cover all police departments and stations by mid-2009.

The CPT has taken note of the measures already taken or envisaged by the Montenegrin authorities to improve conditions of detention in police cells. As part of these efforts, **the Committee recommends that the following measures be implemented as a matter of priority:**

- **police establishments to be equipped with a sufficient number of cells of a reasonable size for their intended occupancy;**
- **adequate in-cell lighting (access to natural light/artificial lighting), ventilation and heating to be provided;**
- **all cells to be equipped with a means of rest (e.g. a bed or a sleeping platform) and persons kept in custody overnight to receive a clean mattress and blankets;**
- **food, including at least one full meal, to be offered at appropriate intervals to detained persons; this implies that police establishments should be allocated a specific budget for this purpose and that a system for recording the actual delivery of food to detained persons be put in place;**
- **toilet and washing facilities to be kept in a good state of repair and detained persons to have ready access to them.**

²² "Rulebook on requirements that must be fulfilled in premises for detention of the persons deprived of liberty", Official Gazette No. 57/06.

B. Prison establishments

1. Preliminary remarks

41. The penitentiary system of Montenegro, which is run by the State Administration for the Execution of Penal Sanctions, comprises four establishments, all of which were visited by the CPT's delegation during the 2008 visit. Three of them - the Institution for sentenced prisoners²³, the Remand Prison and the Special Prison Hospital - are located on the outskirts of Podgorica, in Spuž, and were previously visited by the CPT in 2004.²⁴ The fourth, Bijelo Polje Prison, was visited for the first time by a CPT delegation in 2008.

42. At the time of the 2008 visit, the total number of prisoners in Montenegro stood at around 1,050, including 30 women and 4 juveniles. More than half of the inmates were on remand. While the sentenced prisoner population had remained more or less stable, the number of remand prisoners had increased by 40% since 2004, which had resulted in serious overcrowding. The situation was exacerbated by the lengthy periods of time for which persons could be held on remand²⁵. The overcrowding had a negative impact on all aspects of life in the prisons (material conditions of detention, provision of activities, access to health care, etc.).

The Montenegrin authorities informed the CPT's delegation of various measures conceived to address the problem of overcrowding. An action plan for developing the prison system had been adopted in 2007 as part of the national Judiciary Reform Strategy (2007-2012). This plan included the construction of new prison facilities in Bijelo Polje (with 200 places) and Kotor (with 150 places). The project design had already been developed and construction was expected to start by the end of 2008, the aim being to open the new facilities by the end of 2009. Further, the reconstruction of the semi-open unit at the Institution for sentenced prisoners in Podgorica was expected to provide accommodation for 80 remand prisoners by the end of 2008.

However, the State Administration for the Execution of Penal Sanctions admitted that it was unable to resolve the problem of overcrowding on its own, despite all the efforts to relieve the situation through the construction of new prisons and the reconstruction of existing facilities. There was general agreement among the delegation's interlocutors that the current length of court proceedings in criminal cases, combined with infrequent recourse to alternative preventive measures (e.g. bail) was to blame for the high proportion of remand prisoners and the consequent overcrowding. The Act on the Protection of the Right to Trial within a Reasonable Time, passed in November 2007²⁶ and intended to provide an effective remedy for expediting court proceedings and redress in case of violations, has so far failed to produce the desired effects.

²³ *Kazneno popravni dom (KPD) Podgorica.*

²⁴ See paragraphs 253 to 296 of CPT/Inf (2006) 18.

²⁵ At the Remand Prison in Podgorica, 60 prisoners had spent over one year on remand, including one inmate who had spent 9 years on remand, and 3 who had spent 5 years on remand. At Bijelo Polje Prison, 8 out of the 77 prisoners awaiting trial had spent 5 years or more on remand.

²⁶ *Official Gazette of Montenegro*, No. 11/2007 of 13 December 2007.

43. As was already pointed out by the CPT in the report on the visit in 2004, providing additional accommodation will not always represent in itself a lasting solution to the problem of overcrowding. Indeed, a number of European countries have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level.

It follows that attacking the roots of the problem of overcrowding will require the reconsideration of existing law and practice in relation to custody pending trial. In particular, steps should be taken to ensure that the preventive measure of remand in custody is applied to persons facing criminal charges only when this is really necessary. Further, it is axiomatic that any person remanded in custody should not remain subject to that measure for longer than is strictly necessary. The CPT understands that there are plans to amend the CCP in relation to pre-trial detention. **The Committee recommends that the examination of these proposals be considered a priority, the aim being to shorten the length of court proceedings in criminal cases and to circumscribe more closely the circumstances in which recourse can be had to the preventive measure of remand in custody.**

In their efforts to combat prison overcrowding, the Montenegrin authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

Further, efforts should be made to step up the training provided to judges and prosecutors, with a view to promoting the use of alternatives to imprisonment.

44. As already noted, at the time of the 2008 visit, the country's prison system was holding only 4 juveniles (2 at the Remand prison in Podgorica, 1 at the Institution for sentenced prisoners and 1 at Bijelo Polje Prison). They were being held in cells together with adult prisoners, reportedly at the juveniles' request, to avoid isolation. Although Montenegrin law in principle provides for the separate accommodation of juveniles and adults in prisons, exceptions to this rule can be made: pursuant to Section 489 (2) of the CCP, judges have the power to place juvenile detainees together with adults who will not have a harmful influence on them.

The Institution for sentenced prisoners in Podgorica had a recently-built unit intended for juvenile prisoners; however, at the time of the 2008 visit, this unit was empty. The delegation was informed that the future of the juvenile unit remained to be decided, given that there were only rare cases of juveniles serving imprisonment sentences.

As a general rule, juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time. In the CPT's view, if, exceptionally, juveniles are held in an institution for adults, they must always be accommodated separately from adults, in a distinct unit specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young. The Committee believes that the risks inherent in juvenile prisoners sharing accommodation with adult prisoners are such that this should not occur. Given the small number of juvenile prisoners in Montenegro, arrangements might be made to accommodate remand and sentenced juvenile prisoners together in a specialised unit for juveniles; this would be preferable to mixing juveniles with adults. In the case of there being only one juvenile prisoner of the respective sex, to avoid isolation, he/she should be offered opportunities to participate in out-of-cell activities with adults, under appropriate supervision by staff, and should not be left locked up alone in a cell for extended periods of time. **The CPT recommends that the Montenegrin authorities take steps in the light of the above remarks.**

2. Ill-treatment

45. The delegation heard no allegations of physical ill-treatment by staff at Bijelo Polje Prison. This is a positive reflection on the staff at this establishment. Further, no allegations of ill-treatment were received at the Institution for sentenced prisoners in Podgorica, where many inmates spoke favourably of the staff and stated that their attitude had improved since the new management had been put in place.

However, at the Remand Prison in Podgorica, the delegation received several allegations of physical ill-treatment by staff. The allegations concerned kicks, punches, slaps and blows with truncheons, sometimes after the prisoner concerned had been handcuffed. In some cases, injuries consistent with allegations of ill-treatment were recorded in the inmates' medical files. Further, a number of complaints were heard of verbal abuse by prison staff.

The CPT recommends that a firm message be delivered to staff of the Remand Prison in Podgorica that physical ill-treatment and verbal abuse of prisoners are not acceptable and will be dealt with severely.

46. Particular reference should be made to one recent case of alleged physical ill-treatment by staff at the Remand Prison in Podgorica. When interviewed by the delegation, the inmate concerned alleged that on 5 September 2008, a female prison officer had taken her to meet the establishment's Director. During the meeting, there had apparently been an exchange of verbal abuse between the officer and the prisoner concerned, following which the officer had allegedly slapped the prisoner twice on the face and the prisoner had retaliated by punching her on the nose. The prisoner alleged that she had subsequently been handcuffed behind the back and taken to an isolation cell where she had been beaten by two female prison officers (one of whom was the officer she had hit on the nose). The ill-treatment was said to have consisted of repeated punches, kicks and blows with truncheons, in particular on the prisoner's legs, arms and back. The prisoner indicated that she had remained in the isolation cell for 5 days; during that time, she had allegedly slept on dirty mattresses placed on the floor.

Physical marks consistent with the allegations and, in particular, characteristic signs of truncheon blows, were observed by one of the delegation's doctors upon examination of the prisoner concerned: bruises on the left arm with brown abrasions; many blue-purple haematomas on both legs, with some residual swelling; tramline bruising on the right thigh and over the lower rear renal area; straight bruises on the arms. The prison medical record contained a detailed description of the injuries observed by the prison doctor who had examined the inmate on 5 September 2008; however, there was no reference to the prisoner's allegations concerning the cause of the injuries²⁷.

During the visit to the Remand Prison in Podgorica, the delegation studied the available documentation concerning the prisoner in question. The records contained written statements by the Director, the officer involved in the incident and three other staff members who had witnessed it. The statements referred to the prisoner having been handcuffed and taken to an isolation cell, but there was no mention of any use of physical force or truncheons. On the day following the incident, the inmate was punished by 10 days in disciplinary isolation (of which she had reportedly served only 4).

Following a complaint lodged by the prisoner's mother on 13 September 2008, a preliminary inquiry was opened into the alleged ill-treatment by staff²⁸. During the CPT's visit to Montenegro, the prisoner concerned was reportedly seen by an external forensic doctor appointed by the court as well as by a prosecutor.

The CPT recommends that the competent authorities ensure that an effective investigation be carried out into the above-mentioned case²⁹. The Committee would like to receive information about the outcome of the investigation in due course.

47. In any prison system, prison staff may on occasion have to use force to control violent and/or recalcitrant prisoners. These are clearly high-risk situations in so far as the possible ill-treatment of prisoners is concerned, and as such they call for specific safeguards. In particular, a record should be kept of every instance of resort to means of force against prisoners, with an indication of the precise time and duration of their use. A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. The results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner, who in addition should be entitled, if he so wishes, to undergo a forensic medical examination. Further, means of force should never be applied as a punishment.

The CPT recommends that the Montenegrin authorities take steps to bring the practice in line with the above considerations. In this context, it is important to ensure that prosecutors are systematically notified of any use of means of force by prison staff, and that they are particularly vigilant when examining such cases.

²⁷ The entry stated: "5/9/08: Examined due to injuries. Left lower arm – redness like a stripe, oblique, near elbow 6 x 2.5 cm. Left lower rear side – 2 red stripes, oblique 8-10 x 3cm. Right upper arm – red stripe, oblique, proximal 10 x 3cm. Chest left back – 3 red stripes, 1 near left shoulder blade, 1 below left shoulder blade, 1 above left thigh, 6 – 12 x 3cm, all longitudinal. External right thigh, visible bruise, haematoma, unclear edges, dark blue and forms a rectangle 15 x 10cm. External left thigh, left glutei, 3 red stripes, oblique, 6-10 x 3cm. Diagnosis: erythema mechanicum, antebrachia, multiplex bruises, haematoma."

²⁸ In addition, criminal proceedings have been instituted against the prisoner concerned for having assaulted a prison officer.

²⁹ See paragraph 21 for the criteria of an "effective" investigation.

Further, **prison staff should be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than necessary and that once prisoners have been brought under control, there can be no justification for their being struck.**

48. At Bijelo Polje Prison, the delegation noted that some custodial staff carried truncheons in a conspicuous manner in the prisoner accommodation areas. The CPT would like to stress that, in the interest of promoting positive relations between staff and inmates, prison staff should never carry truncheons in a visible manner inside detention areas. **The CPT recommends that, if it is considered necessary for prison officers to carry truncheons, the truncheons be hidden from view.**

49. More generally, and in order to obtain a clear view of the situation concerning the treatment of prisoners by prison staff, **the CPT would like to receive the following information for 2007 and 2008:**

- **the number of complaints of ill-treatment lodged against prison staff;**
- **an account of the outcome of such complaints, including any disciplinary and/or criminal sanctions imposed.**

50. During the 2008 visit, the CPT's delegation heard several allegations of inter-prisoner violence. In several cases, medical evidence consistent with such allegations was observed in the documentation at the prisons visited. The prison authorities admitted that there were occasional instances of inter-prisoner violence and indicated that they were striving to take the necessary preventive measures (including segregation of the possible perpetrators or victims). **The CPT invites the Montenegrin authorities to develop a strategy aimed at preventing inter-prisoner violence.**

3. Conditions of detention

a. Institution for sentenced prisoners, Podgorica

51. With an official capacity of 566³⁰, on the first day of the visit, the Institution for sentenced prisoners was holding 267 male prisoners (including one juvenile) in the closed section and 76 in the semi-open section. Further, 9 sentenced women were being held in the female unit.

The follow-up visit revealed that a number of positive changes had taken place since 2004. The delegation was impressed by the renovation and construction work in the closed section. Units B, C and D had undergone a complete transformation, and a new disciplinary unit had been built. Only unit A remained unrefurbished and was partly emptied in anticipation of the works.

³⁰ The figure does not include the two newly constructed accommodation blocks and the Special Prison Hospital.

In the refurbished units, the large-capacity dormitories had been converted into 4-bedded cells (measuring some 16 m²), equipped with a fully partitioned sanitary annexe. The cell windows were covered by translucent screens which allowed adequate access to natural light; further, artificial lighting, ventilation and heating in the cells were adequate. On each floor, there was a shower room to which prisoners had access twice a week, as well as a common room with a TV, cooker and fridge. All areas were maintained in good repair and were clean.

In addition, the construction of two new accommodation blocks had just been completed: one was intended for women, juveniles and foreign prisoners (each category to be held in a separate unit), and the other was designed for the relocation of the semi-open unit. The delegation saw cells in the first block intended for 4 persons which measured 16 m² (including a sanitary annexe); conditions in the cells were of a very good standard.

Other notable changes had included the construction of a water supply system within the establishment and the opening of a prison shop where inmates could buy food.

52. As regards activities, a positive point is that sentenced prisoners benefited from an open-door regime during the day. The woodwork and locksmiths' workshops had re-opened since 2004. However, although all 76 prisoners in the semi-closed unit were employed, only 21 prisoners in the closed section had work; clearly, steps must be taken to increase the proportion of sentenced prisoners who work. The delegation was informed of plans to refurbish more workshops (the aim being to engage up to 80% of inmates in work activities), extend the farm within the establishment's perimeter and build a greenhouse for growing vegetables, set up a computer room and construct a new gym.

Outdoor exercise of one hour per day was provided in various yards on the grounds of the prison, which also included a basketball court. However, the yards were not equipped with a shelter against inclement weather.

53. On the first day of the delegation's visit, female prisoners were being accommodated in the same unit as in 2004. However, when the delegation returned to the establishment on 21 September 2008, they had been transferred to the new accommodation block referred to in paragraph 51. Although this had resulted in an improvement of their material conditions, female prisoners expressed concern about the regime in the new unit, in particular possibilities for association and access to the outdoor exercise yard. As concerns work opportunities for female prisoners, they remained the same as described in the report on the visit in 2004³¹.

³¹ Namely a workshop for sorting eggs and a sewing machine.

54. The CPT welcomes the significant efforts which have resulted in positive changes at the Institution for sentenced prisoners in Podgorica and **recommends that further steps be taken to:**

- **pursue the refurbishment programme, in particular in unit A;**
- **diversify the activities offered to both male and female prisoners and engage more prisoners in work and other purposeful activities; in this context, efforts should be made to refurbish all workshops as a matter of priority and to provide educational programmes and vocational training courses.**

The Committee would also like to know whether the two new accommodation buildings have entered into service, and to receive detailed information on the regime applied in the new unit for women.

b. Remand Prison, Podgorica

55. Material conditions in the Remand Prison in Podgorica had deteriorated, due to the alarming level of overcrowding. At the time of the visit, the establishment was holding 512 prisoners for an official capacity of 320. By way of example, a cell measuring 28 m² with 15 sleeping places (provided on 5 three-tier beds) was holding 21 male prisoners. In many cells, prisoners had to sleep on mattresses or sometimes just folded blankets placed directly on the floor. Further, the bedding was often worn or missing. The majority of the cells were stuffy and humid, despite the presence of large windows (separated from the rest of the cell by a barred area used for storing food and drying washed clothes) and air conditioners. Prisoners took their meals in the cells but there were not enough places for all of them to sit.

56. On the first day of the delegation's visit, female remand prisoners were being held in the same cramped, dilapidated and unhygienic cells as in 2004³². Following an observation made by the delegation, while the CPT's visit to Montenegro was still ongoing, the prisoners concerned were transferred to the newly constructed building referred to in paragraph 51, which offered very good conditions of detention. The CPT welcomes this rapid reaction.

At the same time, foreign prisoners had been moved to the cells previously occupied by female remand prisoners, which had led to a drastic deterioration in their conditions of detention (e.g. 20 prisoners were being held in a cell measuring some 18 m² with 13 sleeping places.).

57. The deleterious material conditions described above were exacerbated by the fact that remand prisoners remained for 23 hours or more a day inside their cells, in some cases for several years (see paragraph 42). The only out-of-cell activity available to them was outdoor exercise taken in two 30-minute periods (however, exercise was apparently not available on Fridays). For the rest of the time, prisoners remained in a state of inactivity in their cells, the only forms of distraction being playing board games, listening to the radio or watching TV.

In the CPT's view, the starting point for conceiving regimes for remand prisoners must be

³² See paragraph 272 of CPT/Inf (2006) 18.

the presumption of innocence and the principle that prisoners should be subject to no more restrictions than are strictly necessary to secure their safe confinement and the interests of justice. Any restrictions should be kept to a minimum and be of the shortest possible duration. The current absence of constructive activities for remand prisoners aggravates the experience of imprisonment and renders it more punitive than the regime for sentenced persons. The CPT recognises that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates, poses particular challenges; however, it is not acceptable to leave prisoners to their own devices for months – and even years – at a time. All prisoners (including those on remand) should spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, education, sports, recreation/association, etc.).

58. **The CPT recommends that the Montenegrin authorities take steps to:**

- **significantly reduce the occupancy level in the cells at the Remand Prison in Podgorica, the objective being to comply with the standard of 4 m² of living space per prisoner;**
- **ensure that every prisoner has a bed and appropriate bedding;**
- **undertake a rolling refurbishment of the cells;**
- **ensure that all remand prisoners are offered the possibility to take outdoor exercise every day for at least one hour;**
- **review the regime of remand prisoners, in the light of the remarks in paragraph 57; if necessary, the legislation should be amended.**

c. Bijelo Polje Prison

59. With an official capacity of 150, at the time of the visit, Bijelo Polje Prison was accommodating 122 prisoners (77 on remand and 47 serving short-term sentences). The prisoner population included two women and one juvenile.

The establishment was built in 1950 and its fabric had significantly deteriorated over time. Overcrowding was also observed in the cells for both remand and sentenced prisoners (e.g. 13 prisoners in a cell measuring 30 m²) and various other deficiencies were noted (e.g. poor access to natural light and artificial lighting in the cells, inadequate heating, run-down toilet and shower rooms in the section for sentenced prisoners, missing bed linen, absence of personal hygiene items, etc.). There is no need to comment at length on the material conditions at Bijelo Polje Prison, given that a decision has already been taken to construct a new prison by the end of 2009 (see paragraph 42).

The CPT trusts that the Montenegrin authorities will do their utmost to ensure that the construction of the new prison in Bijelo Polje is completed on time. In the meantime, the Committee recommends that urgent steps be taken to:

- improve toilet and shower arrangements for sentenced prisoners;
- ensure that all cells are appropriately heated for the season;
- provide newly arrived prisoners with bed linen and personal hygiene items.

60. As regards activities, a positive point is that *sentenced prisoners* benefited from an open-door regime during the day. However, only 10 of them had work. **It is essential that the new prison in Bijelo Polje be provided with workshops, sports facilities, a proper library and other possibilities for purposeful activities.**

Similar to the situation observed at the Remand Prison in Podgorica, the only out-of-cell activity available to *remand prisoners* was outdoor exercise (which allegedly took place for less than one hour a day, especially on visiting days). For the rest of the time, these prisoners remained in a state of inactivity in their cells, the only form of distraction being playing board games; there were no electrical sockets in the cells (thereby limiting access to TV), and books required a special authorisation by a judge. **In this respect, the remarks in paragraph 57 and the recommendation in paragraph 58 concerning apply equally to remand prisoners at Bijelo Polje.**

4. Health-care services

61. The provision of health care to prisoners at the *Remand Prison* and the *Institution for sentenced prisoners in Podgorica* was ensured by the *Special Prison Hospital* located on the top floor of the building occupied by the Remand Prison. The hospital had opened in January 2006 and employed, at the time of the 2008 visit, a Head Doctor (trained in internal medicine and cardiology), 13 “medical technicians” (i.e. qualified nurses) and a pharmacist. There was a post for a dentist which was being filled by a visiting dentist, attending 2 or 3 times per week, while the full-time dentist was away on maternity leave. Further, a range of medical specialists held surgeries at the hospital: psychiatrist (see paragraph 67), gynaecologist, rehabilitation specialist, pulmonologist, radiologist, etc. Twenty-four-hour cover was provided by a minimum of 2 medical technicians.

The hospital’s equipment (X-ray machine, ultrasound, steriliser, dental equipment, laboratory facilities, etc.) and examination rooms were of a very good standard, and the pharmacy contained adequate quantities of appropriate medication. There were 8 rooms for prisoners receiving treatment (with a total of 30 beds, of which 23 were occupied at the time of the visit); one of the rooms – intended for holding disturbed patients – was equipped with CCTV. Further, the hospital contained a physical therapy room with a variety of machines and a therapy room for group counselling.

62. Notwithstanding the above-mentioned positive developments, the situation in terms of health-care staff resources remained far from satisfactory. The provision of general health care to prisoners in the Remand Prison and the Institution for sentenced prisoners in Podgorica (i.e. a total of some 850 inmates), in addition to inmates in the hospital, continued to fall on the shoulders of one sole doctor who was on call without interruption. The delegation was informed that attempts to employ a second doctor had proved unsuccessful as the conditions of employment compared unfavourably with those offered by other hospitals. Apart from leaving prisoners vulnerable in the event of the doctor being unavailable, this can lead to long delays in receiving health care and affect its quality (since the doctor does not have enough time for all the prisoners). Not surprisingly, the delegation heard a number of complaints from prisoners concerning delays in access to a doctor. The nursing staff resources were also barely adequate to provide care to both prisoners and in-patients at the hospital.

63. As regards *Bijelo Polje Prison*, the establishment had a contract with a doctor (employed at the local health centre) who held surgeries for up to 4 hours a day and could also be called in in case of need. No nurses were employed at the prison but nurses from the health centre were said to pay visits. Inmates in need of dental or specialist care were taken to the health centre. The delegation noted that the equipment and range of medication available at the prison was very limited and, despite the goodwill and commitment of the doctor, the provision of health care to prisoners was problematic. In their letter of 6 February 2009, the Montenegrin authorities indicated that the procedure for selecting a nurse (“medical technician”) to work at Bijelo Polje Prison was underway.

64. **The CPT recommends that urgent steps be taken to reinforce the health-care resources at the Remand Prison and the Institution for sentenced prisoners in Podgorica and Bijelo Polje Prison, by providing working conditions that are sufficiently attractive to recruit and retain staff, and in particular to:**

- **employ the equivalent of at least one additional full-time doctor and increase nursing staff resources at Podgorica;**
- **employ at least one full-time nurse at Bijelo Polje Prison;**
- **ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the premises of Bijelo Polje Prison, including at night and weekends.**

65. Medical examination of newly arrived prisoners generally took place on the day of admission or on the following day. Reference is made to the observations and recommendations in paragraph 20 concerning screening for and recording of injuries.

Further, **the CPT recommends that a specific register for recording traumatic injuries observed on prisoners (upon arrival and/or in the course of imprisonment) be opened at each prison.**

66. As regards medical records, a personal medical file was opened in respect of each prisoner³³. The confidentiality of medical records was respected.

67. Turning to the provision of psychiatric and psychological care to prisoners, a psychiatrist attended the Special Prison Hospital in Podgorica twice a week or more often if necessary³⁴. The Remand Prison and the Institution for sentenced prisoners each employed a psychologist (whose role, however, was apparently to contribute to the allocation process rather than to do clinical work). Further, one of the medical technicians employed at the hospital was said to have experience from having worked in Dobrota Special Psychiatric Hospital.

At Bijelo Polje Prison, the delegation was informed that all newly arrived prisoners underwent a psychiatric check up at the local health centre and some were monitored by the psychiatrist and/or psychologist employed at that centre.

The CPT recommends that the Montenegrin authorities increase the psychiatric input in the Remand Prison and the Institution for sentenced prisoners in Podgorica and develop the role of prison psychologists.

68. The psychiatrist working at Podgorica indicated that prisoners in need of in-patient hospital treatment were transferred to Dobrota Special Psychiatric Hospital on the recommendation of a commission composed of 3 doctors; in case of emergency, a prisoner could also be transferred to another outside psychiatric clinic. However, the delegation came across a mentally ill prisoner at the Remand Prison in Podgorica who had been sentenced to compulsory treatment but who nevertheless remained at the prison, reportedly because of the lack of a secure forensic psychiatric unit to which he could be transferred (see also paragraph 90). The inmate concerned had been held in conditions of solitary confinement since January 2006; during the first 3 months, he had allegedly been handcuffed to his bed with both hands, and for the following 8 months, with one hand. After complaining to the management, the prisoner had eventually been allowed to go out into the yard for some 15-20 minutes on certain days.

It is axiomatic that prisoners in need of hospital treatment should be promptly transferred to appropriate medical facilities. To keep a mentally ill person in a prison setting, in conditions of solitary confinement and without appropriate human contact and nursing support, may aggravate his illness and could easily constitute inhuman and degrading treatment. Moreover, handcuffing a prisoner to his bed or other immovable objects for such a prolonged period of time is totally unacceptable. **The CPT recommends that the Montenegrin authorities take urgent steps to address the situation of the above-mentioned prisoner, in the light of the preceding remarks.**

³³ Prisoners serving sentences of less than a month had a briefer written protocol.

³⁴ The psychiatrist spent one day in the Remand Prison and the Prison Hospital and the other day in the Institution for sentenced prisoners.

5. Other issues of relevance to the CPTs mandate

a. prison staff

69. In the report on the visit in 2004, the CPT emphasised the importance of adequate staffing levels in prisons and the training of prison staff³⁵. During the 2008 visit, the delegation was informed of progress made in this area. As part of the so-called “staff systematisation process”, 114 more prison staff had been employed (i.e. a 28% increase). The newly created posts included 48 security and surveillance staff at the Institution for sentenced prisoners in Podgorica, 25 at the Remand Prison in Podgorica, and 21 at Bijelo Polje Prison.

The CPT welcomes the steps taken to increase the number of staff working in direct contact with prisoners and **invites the Montenegrin authorities to persevere in their efforts to improve staffing levels in penitentiary establishments. Further, the Committee would like to receive information on the existing training programmes for prison staff (both initial and ongoing).**

b. contact with the outside world

70. The rules on visits for *sentenced prisoners* have changed since the 2004 visit, allowing all such prisoners, irrespective of their classification group, to receive a minimum of two visits of 60 minutes per month as well as additional visits; in practice, most sentenced prisoners met by the delegation indicated that they received one visit per week. Further, conjugal visits are now also allowed. In addition to family members being permitted to attend visits, the prison director can extend the right to visit to unmarried partners. **The CPT wishes to stress that such a right should exist by law rather than being left to the discretion of the prison management** (see also paragraph 71).

71. As regards *remand prisoners*, they are allowed a weekly visit of 30 minutes, subject to authorisation by the competent investigation judge. Remand prisoners interviewed during the visit complained about the time-consuming procedure for obtaining written permission for each visit. Only close family members were permitted to visit, unmarried partners and other informally related persons being excluded. Visits took place as a rule in closely supervised conditions, but remand prisoners with children could meet them in open conditions once a month.

The CPT must stress that, in its opinion, remand prisoners should in principle be entitled to receive visits. Any refusal in a specific case to permit such visits should be specifically substantiated by the needs of the investigation and be applied for a specified period of time. Under no circumstances should visits between a remand prisoner and his family be prohibited for a prolonged period. If it is considered that there is an ongoing risk of collusion, visits should be authorised under supervision. As concerns, more specifically, juvenile remand prisoners, many of them may have behavioural problems related to emotional deprivation or lack of social skills; their contacts with the outside world should be actively promoted.

³⁵ See paragraph 260 of CPT/Inf (2006) 18.

The CPT calls upon the Montenegrin authorities to strengthen the position of remand prisoners as regards the right to receive visits, in the light of the preceding remarks; if necessary, the relevant legislation should be amended.

As regards the impossibility for remand prisoners to receive visits from unmarried partners, **the CPT reiterates its invitation to the Montenegrin authorities to review the regulations in this regard; in the Committee's view, all prisoners should be entitled by law to receive visits from any persons with whom they had an established relationship prior to admission comparable in significance to that of a family member.**

72. At Bijelo Polje Prison, remand prisoners indicated that visits by lawyers during the period of investigation took place, as a rule, in the presence of a person designated by the investigative judge. Further, prisoners' correspondence with their lawyers was also subject to the control and authorisation of a judge. Such an approach is foreseen in Section 73 of the CCP³⁶, albeit only as an exception.

The CPT considers that the confidentiality of contacts between prisoners and lawyers acting on their behalf is a fundamental safeguard against ill-treatment and that, consequently, such contacts should be subject only to scrutiny *ex post facto*, leading if necessary to prohibitive measures vis-à-vis a particular lawyer if the deontological and ethical rules applicable to lawyers have not been observed. **The Committee recommends that the Montenegrin authorities take steps to ensure that the confidentiality of prisoners' contacts with lawyers acting on their behalf is respected.**

73. The visiting facilities at the Institution for sentenced prisoners in Podgorica (including facilities for conjugal visits) were of a good standard. In contrast, no changes had been made to the visit rooms at the Remand Prison in Podgorica (a booth-type facility).

The CPT accepts that in certain cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have visits which take place in booths and/or are monitored. **However, the Committee would like once again to invite the Montenegrin authorities to move towards more open visiting arrangements for remand prisoners in general.**

There was one visiting room at Bijelo Polje Prison which was too small to meet the requirements of the establishment; **the CPT trusts that this failing will be addressed in the new prison building.**

³⁶ Section 73 (1) of the CCP reads: "Exceptionally, the investigative judge may order that the letters sent by the defendant while in detention to the defence attorney or the letters sent by the defence attorney to the defendant be delivered after the judge makes the inspection thereof, if there are reasonable grounds to believe that these means of communication are to be used for the attempted organisation of an escape, or for exerting impact on witnesses, intimidation of witnesses or for any other disturbance of the investigation process. The investigative judge shall be bound to make a record on the inspection. It is for the same reasons that the investigative judge may order that a person acting in an official capacity be present during oral communication between the defendant and his defence attorney".

74. Sentenced prisoners had access to a telephone (in Podgorica, there were pay phones in each unit, and in Bijelo Polje, prisoners were allowed to use their own mobile phones).

Concerning remand prisoners, as with visits, access to a telephone required authorisation by the competent investigation judge. **The recommendation in paragraph 71 applies *mutatis mutandis* to remand prisoners' access to the telephone. If there is a perceived risk of collusion, a particular phone call could be monitored.**

75. The above-mentioned requirement for authorisation by an investigating judge of remand prisoners' visits and access to a telephone also applied to their correspondence and access to books. In the same way as for visits and access to the telephone, **the CPT recommends that the Montenegrin authorities strengthen the position of remand prisoners as regards their correspondence. Further, as regards access to books, the Committee considers that the involvement of a judge in this respect is excessive and should be abolished.**

c. discipline and segregation

76. The most severe disciplinary sanction envisaged by law is placement in a disciplinary cell for a maximum of 10 days in the case of remand prisoners and 30 days in the case of sentenced inmates. If a disciplinary confinement sanction pronounced in respect of a sentenced prisoner has been suspended and the prisoner concerned subsequently commits a new offence, the total period of placement in a disciplinary cell may continue for 45 days³⁷.

In the CPT's view, the existing maximum period of 30 days for placement in a disciplinary cell in relation to a given offence is already very high, in particular if this entails solitary confinement; under no circumstances should such a period of placement in a disciplinary cell be prolonged without there being an interruption. **The CPT recommends that appropriate amendments be made to the disciplinary regulations on this point.**

As regards the disciplinary procedure, the law provides for an oral hearing of the prisoner concerned before the imposition of a disciplinary sanction, the right to be assisted by a lawyer and the right to appeal against the sanction to the Director of the State Administration for the Execution of Penal Sanctions.

The delegation gathered no evidence of excessive resort to disciplinary punishment.

77. The examination of records related to disciplinary sanctions revealed that the documentation was not consistently complete, with prisoner signatures missing from some decisions. Further, it appeared that prisoners were not always given a copy of the disciplinary decision. Moreover, the registers of placement in a disciplinary cell were incomplete; in particular, there were no entries concerning the cell in which the prisoner had been placed and the time the measure had ended.

³⁷ See Section 55 of the Law on Enforcement of Criminal Sanctions.

The CPT recommends that steps be taken to ensure that the documentation and registers concerning disciplinary sanctions are properly maintained, accurately record the times of beginning and ending of the measure, and reflect all other aspects of custody (in particular, the precise location where a prisoner has been held).

The Committee also recommends that prisoners upon whom a disciplinary sanction is imposed always be given a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal.

78. At Bijelo Polje Prison, the delegation met 4 prisoners who had been transferred from the Institution for sentenced prisoners in Podgorica on 28 August 2008 and who were being held in disciplinary confinement cells. According to the Director of Bijelo Polje Prison, they had been transferred for reasons of security and the maintenance of order and discipline³⁸. However, the prisoners concerned claimed that they had not been informed of the reasons for their transfer and had not seen any documentation on the subject.

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

- a prisoner who is transferred from one establishment to another and placed under conditions of disciplinary confinement is informed in writing of the reasons for that measure (it being understood that the reasons given could exclude information which security requirements reasonably justify withholding from the prisoner);
- a prisoner in respect of whom such a measure is envisaged is given an opportunity to express his views on the matter;
- the placement of a prisoner in segregation is for as short a period as possible and is reviewed at least every three months, with a view to re-integrating the prisoner into the mainstream prison population.

79. As for conditions in the disciplinary cells at the establishments visited, the *Institution for sentenced prisoners in Podgorica* had a new disciplinary unit which offered satisfactory conditions of detention, in stark contrast to the unit seen by the CPT's delegation in 2004. There were 8 cells (each measuring some 9 m²), equipped with a bed, mattress and blankets, a table and chair, and a fully partitioned sanitary annexe. Prisoners could take a shower twice a week and had access to individual exercise yards (measuring some 20 m²) twice a day; that said, the yards were not provided with a shelter against inclement weather.

³⁸ Pursuant to Section 59a of the Law on Enforcement of Criminal Sanctions, if there is a need for a prisoner to be transferred from one establishment to another, the decision for transfer should be taken by the Director of the State Administration for the Execution of Penal Sanctions upon the proposal of the Head of the respective establishment.

The *Remand Prison in Podgorica* did not have a designated disciplinary unit; however, as noted in paragraph 5, a number of cells were apparently being used for disciplinary purposes. The cells in question were unfit for human accommodation. Further, prisoners who had recently been placed in disciplinary isolation indicated that they had not been allowed outdoor exercise. In their letter dated 14 November 2008, the Montenegrin authorities stated that the cells in question had been refurbished, their doors had been removed and exercise equipment had been installed in the cells. **The CPT would like to receive information on the precise location where disciplinary confinement takes place at the Remand Prison in Podgorica.**

At *Bijelo Polje Prison*, the disciplinary cells (measuring some 7.5 m²) had no windows. Further, they were equipped with nothing but beds; such cells should also have a floor-fixed table and chair. And it appeared from interviews with prisoners that they had not been allowed to take outdoor exercise on a daily basis.

The CPT reiterates its recommendation that immediate steps be taken to enable all prisoners placed in disciplinary cells to take at least one hour of daily outdoor exercise. Further, the exercise yards should be provided with shelter against inclement weather. Steps should also be taken to ensure that prisoners placed in disciplinary cells are offered access to reading matter.

The Committee also trusts that the deficiencies observed in the disciplinary cells at Bijelo Polje Prison will be avoided in the new prison building. In this connection, the CPT recommends that call bells be installed in the disciplinary cells at the latter establishment.

80. Pursuant to Section 157 of the CCP, remand prisoners' right to receive visits from their relatives may be suspended by the investigative judge as a disciplinary sanction. **The CPT must stress that disciplinary punishment of prisoners should not include a total prohibition of family contacts³⁹ and that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts.**

d. complaints and inspection procedures

81. The delegation noted that complaints boxes had been installed at the Institution for sentenced prisoners in Podgorica and the Special Prison Hospital; **this is a positive step which should be followed in the other prisons in Montenegro.**

However, it transpired during the 2008 visits that there was no systematic approach to the handling of complaints by prisoners, be it in respect of registration, follow-up or the keeping of statistics. None of the prisons visited had a register of complaints. The delegation was informed that prisoners' complaints and the reactions to them were filed in the personal files of the inmates concerned. An examination of prisoners' files selected at random showed that some complaints had remained without a written answer.

³⁹ See also Rule 60(4) of the European Prison Rules.

A structured approach to complaints can be a useful tool in identifying issues that need to be addressed at a general level. **The CPT recommends that the Montenegrin authorities introduce a system for the recording of complaints and their speedy handling.**

82. As regards inspection procedures, penitentiary establishments were visited by investigating judges, the Ombudsman and NGOs. However, such visits appeared to be rather infrequent (e.g. Bijelo Polje Prison had not received any visits in 2008) and limited in scope (i.e. the visitors did not enter into direct contact with prisoners).

The CPT recommends that the Montenegrin authorities develop the system of monitoring of prisons by independent outside bodies. In this context, to be fully effective, monitoring visits should be both frequent and unannounced. Further, the monitoring bodies should be empowered to interview prisoners in private and examine all issues related to their treatment (conditions of detention; medical records and other detention-related documentation; the exercise of prisoners' rights, etc.).

C. Dobrota Special Psychiatric Hospital

1. Preliminary remarks

83. The visit to Dobrota Special Psychiatric Hospital was of a follow-up nature, the establishment having been first visited by the CPT in 2004⁴⁰. With an official capacity of 241, the hospital was accommodating 235 patients at the time of the visit, of whom 45 were forensic patients⁴¹, 70 were involuntary civil patients, and the remainder had been hospitalised on a voluntary basis. Twenty-one of the forensic patients were placed in a new forensic psychiatric unit which had been set up in 2006.

At the outset, the CPT wishes to commend the efforts made by the management of the Hospital to implement the recommendations contained in the report on the visit carried out in 2004.

84. In the period since the CPT's visit in 2004, there have been legislative changes and other reform measures in the area of psychiatry. In particular, a Strategy for Mental Health Improvement was adopted in 2005 and a Law on the Protection and Exercise of the Rights of Mentally Ill Persons (LPRMI) came into force in 2006. The 2008 visit provided an opportunity to assess the implementation of the new legal provisions.

As regards more particularly the Strategy for Mental Health Improvement, it comprises an action plan which, *inter alia*, launches a process of deinstitutionalisation, with the creation of three mental health community centres. **The CPT would like to receive information on the state of implementation of the action plan, in particular as regards the development of programmes for preparing psychiatric patients for reintegration into the community.**

⁴⁰ See paragraphs 297 to 336 of CPT/Inf (2006) 18).

⁴¹ 36 were detained under compulsory treatment orders issued by courts, 3 were sentenced prisoners transferred to the hospital as they had developed psychiatric problems, and 6 were undergoing assessment for the court.

After the visit, by letter dated 6 February 2009, the Montenegrin authorities stated that plans were being made to adopt a Strategic Plan for Development and Advancement of Neuropsychiatry in Montenegro. **The Committee would like to receive more details on this Strategic Plan and its implementation.**

2. Ill-treatment

85. The majority of patients spoke positively about the attitude of the staff, and the atmosphere was relaxed. However, the delegation heard a number of allegations of deliberate physical ill-treatment of patients on the forensic psychiatric unit (consisting of pushes, slaps, kicks and punches), almost exclusively by private security guards. The delegation was informed that one guard had been dismissed in 2007, following a complaint by a patient who had been slapped.

The Director told the delegation that he had been obliged to hire security staff from a private company due to the shortage of ward-based health-care staff and the failure of the Ministry of Justice to provide guards. Some patients told the delegation that they found the presence of such guards intimidating. They were reported to carry truncheons, handcuffs, pepper spray and electric stun devices⁴². There was no clear protocol as to what equipment such staff could carry or access within the hospital, how it may be deployed and the circumstances under which security staff could enter patient areas.

In their letter dated 14 November 2008, the Montenegrin authorities informed the Committee that a decision had been taken by the Ministry of Health, Labour and Social Affairs to establish a protocol defining the rights and responsibilities of the security service, the type of equipment guards may carry and the circumstances in which it may be used. Internal training had also been provided to the guards by the hospital's psychiatrists and psychologists. The CPT welcomes the measures taken and **recommends that the management of Dobrota Special Psychiatric Hospital regularly remind all staff that the ill-treatment of patients is not acceptable and will be punished accordingly.** Further, **the Committee would like to be provided with a copy of the above-mentioned protocol as well as with detailed information on the training offered to security guards.**

86. Although inter-patient violence did not appear to be a substantial problem, the delegation heard of occasional friction between patients, mainly related to the shortage of staff (see paragraph 95). **The CPT recommends that the management takes measures to ensure that staff protect patients from other patients who might cause them harm. This requires not only adequate staff presence and supervision at all times, but also that staff be properly trained in handling challenging situations/patients.**

⁴² Patients interviewed by the delegation indicated that this equipment had been removed a couple of days before the visit.

3. Forensic psychiatric unit (FPU)

87. The former male chronic ward No. 7 had been refurbished and renovated with a view to turning it into a forensic psychiatric unit (FPU). The unit offered material conditions of an adequate standard, with patients being accommodated in 7 rooms (measuring some 12 m²), each equipped with 3 beds. Patients could move freely within the unit during the day and were escorted by the guards to a secure outside exercise area equipped with CCTV surveillance.

The entrance to the dormitories was equipped with barred gates which were shut at night, thereby restricting patients' access to the toilet and obliging them to urinate in bottles. **The CPT recommends that steps be taken to ensure that patients in the FPU have ready access to a proper toilet at all times, including at night.**

88. As already mentioned (see paragraph 85), the hospital employed security staff from a private company responsible for guarding the FPU. Two security guards were present in the unit during the day and one at night. It appeared from conversations with the guards that they had received no specific training in working with psychiatric patients. The delegation was informed that the guards acted exclusively upon instructions given by health-care staff. However, their presence inside the FPU appeared to a large extent to be a substitute for health-care staff: there was only one nurse caring for the 21 patients in the unit for most of the time⁴³. Further, the presence of uniformed guards inside the unit could hardly be seen as contributing to the emergence of a therapeutic environment; if guards are needed, it would be far preferable for the role of such staff to be limited to perimeter security.

Working with mentally ill persons is always a difficult task for all categories of staff involved, but the therapeutic role of staff must not be allowed to take second place to security considerations. Bearing in mind the challenging nature of their work, it is of crucial importance that staff assigned to security-related tasks in a psychiatric hospital be carefully selected and that they receive appropriate training before taking up their duties as well as in-service courses. Further, during the performance of their tasks, they should be closely supervised by – and subject to the authority of – qualified health-care staff. **The CPT recommends that the Montenegrin authorities review the selection, training and supervision of security staff assigned to the FPU, in the light of the above remarks.**

89. In one of the rooms at the FPU, the delegation found a patient whose bed had been separated from the rest of the room with bars. The patient concerned was said to present a direct risk to other patients. In the absence of sufficient staff to monitor the patient, he was being locked within the barred area for lengthy periods of time (apparently sometimes at his own request). **The CPT recommends that all efforts be made to reduce the restrictions placed on the patient in question. Further, a record should be kept of the time during which he is locked up, with a view to ensuring appropriate monitoring.**

⁴³ On weekdays, the morning shift was reinforced by a head nurse.

90. More generally, it appeared that the status of the FPU had not been clearly established, due to the lack of agreement between the Ministry of Health, Labour and Social Welfare and the Ministry of Justice. This left the management of Dobrota Special Psychiatric Hospital without clear guidance on how to organise and manage the unit.

In their letter of 14 November 2008, the Montenegrin authorities informed the CPT that a Memorandum of Cooperation had been signed between the Ministry of Health, Labour and Social Welfare and a Dutch NGO with a view to funding a programme of reform in the field of forensic psychiatry. The project reportedly involves joint activities of the Ministry of Health, Labour and Social Welfare, the Ministry of Justice, and the Ministry of the Interior regarding the drafting of legislation and the improvement of communication in the forensic psychiatry service. Further, in their letter of 6 February 2009, the authorities indicated that an agreement had been reached according to which the State Administration for the Execution of Penal Sanctions would provide a special unit to ensure the security of the FPU. The Ministry of Health, Labour, and Social Welfare was expected to draft regulations concerning, *inter alia*, the type of equipment to be issued to security staff, their assignment to wards and movement. **The CPT would like to receive information on the outcome of these envisaged changes.**

During the visit, the delegation was also told of plans to build a separate forensic psychiatric facility, in the vicinity of Kotor, probably within the perimeter of the new prison. **The CPT would like to receive more information on this matter.**

4. Patients' living conditions

91. Since the visit in 2004, the hospital had undergone significant changes, most wards having been partly or completely refurbished. All the wards were light, airy and clean. In the building for chronic patients, the broken roof had been repaired, windows had been replaced, the dining room had been reconstructed, and a heating system and some ceramic flooring had been installed. The state of the beds and bedding had also improved and the provision of disposable pads had been ensured. The CPT welcomes in particular the replacement of large-capacity dormitories by smaller structures, in compliance with the Committee's previous recommendation. The refurbishment and/or reconstruction of the sanitary facilities had also greatly improved the level of hygiene, which now befits a hospital.

That said, the wards remained rather impersonal, the dormitories containing no other furniture than beds and the occasional bedside table. Further, the outdoor exercise yard of the female chronic ward contained only some dilapidated benches and rubbish was scattered on the ground.

The delegation was told that further renovation work had been planned⁴⁴. The CPT welcomes the ongoing efforts to refurbish the hospital and **recommends that the Montenegrin authorities continue this process in the remaining non-renovated areas. As part of the renovation, efforts should be made to personalise the living environment and provide patients with personal lockable space for their belongings.**

⁴⁴ Including replacement of the beds in the female acute ward and renovation of the showers in the male acute ward. Further, a secure outside exercise area was in the process of construction at the time of the visit.

5. Treatment and activities

92. The treatment provided to patients was mainly based on pharmacotherapy. An examination of medical records and the information obtained by the delegation from interviews with patients and staff indicated that there was no overmedication. Further, some new psychotropic drugs were available, which represented a positive development compared to the situation observed in 2004.

The delegation also found that multidisciplinary working and clinical records had improved, with more frequent and fuller entries in the files and registers. However, patients' files essentially contained information on medication and continued to lack information on their involvement in psycho-social rehabilitative activities.

93. It became clear during the visit that individual written treatment plans had not yet been introduced (despite this being provided for in Section 8 of the LPRMI). Further, although occupational therapy (consisting of pottery, tapestry, painting and crafts) was available in the hospital's renovated workshops, only 40 to 50 patients took part in such activities, due to the shortage of staff and the limited number of places in the workshops.

As for other activities, the outdoor sports yard had been reconstructed and a new gym had been set up in 2007. That said, only a few patients appeared to make use of the gym.

94. As stressed by the CPT in its report on the 2004 visit, psychiatric treatment should involve a treatment plan for each patient composed of both pharmacotherapy and a wide range of rehabilitative and therapeutic activities. The plan should indicate the goals of the treatment, and the therapeutic means used as well as the outcome of regular reviews of the patient's mental health condition and medication. **The Committee reiterates the recommendation made in the report on the visit in 2004, that individual treatment plans be established for each patient, to include a psycho-social rehabilitation component. In this context, greater efforts should be made to increase the offer of therapeutic and rehabilitative activities (e.g. occupational therapy, individual and group psychotherapy, education, sports) and involve more patients in activities adapted to their needs; this implies the recruitment of more staff (see paragraph 95).**

6. Staff issues

95. The situation in terms of staffing levels was comparable to that observed during the 2004 visit. The hospital employed 12 psychiatrists, 3 psychologists, 1 dentist, 2 occupational therapists and 3 social workers. There had been a slight increase in the number of nurses (69 nurses and 3 senior nurses, as compared to 64 nurses in 2004). The delegation was informed that, following the report on the visit in 2004, 17 additional nurses' posts had been repeatedly advertised, but only 13 of them had been filled while 11 nurses had left in the meantime. As a result, nursing presence on the wards remained at unacceptably low levels (e.g. 2 nurses caring for over 40 patients on some wards; 1 nurse caring for 21 patients). This reduced opportunities for adequate psycho-social treatment and escorted outdoor exercise for patients.

The authorities informed the CPT in their letter of 14 November 2008 that staff working at Dobrota Special Hospital received a special remuneration of 15% in addition to their salary, and that there were plans to construct a residential building for employees. Indeed, it is clear that more should be done to provide working conditions that are sufficiently attractive to recruit and retain staff. **The CPT recommends that the Montenegrin authorities define a recruitment strategy based on proper funding and enhanced conditions of service, with a view to ensuring adequate staffing levels at Dobrota Special Psychiatric Hospital.**

96. An on-going training programme for clinical staff, based on a multidisciplinary approach, had reportedly been designed with the assistance of the Institute for Mental Health in Belgrade. The programme was planned to run from September 2008 to June 2009, but had not yet started at the time of the visit. **The CPT would like to receive information on the status of the implementation of the training programme as well as on its content and the number and categories of staff involved.**

The authorities also informed the CPT in their letter dated 14 November 2008 that a co-operation agreement had been signed with the High School of Medicine of Kotor, providing training to nurses. **The CPT would like to receive more information on the content of this training and on the number of nurses from Dobrota Special Psychiatric Hospital involved.**

7. Means of restraint

97. The LPRMI provides for the application of force, isolation and immobilisation as means of physical restraint. Such means should be used only when there is no other way of preventing the person concerned from damaging his/her or other people's life or health or from damaging property of great value, in a manner proportionate to the danger and solely during the period necessary to prevent that danger. The decision to apply means of restraint must be taken by a psychiatrist and in his/her absence, if there is an emergency, it may be taken by a medical doctor, nurse or medical technician who should inform the psychiatrist. The use of means of restraint should be recorded, and the patient's legal guardian and the independent multidisciplinary body immediately notified. The Law also provides for the possibility for health-care staff to ask police officers to help restrain patients under certain circumstances.

98. The delegation found no evidence of the excessive use of means of restraint, and the above-mentioned legal provisions appeared to be complied with. Following a recommendation made in the report on the 2004 visit, properly designed restraint equipment had been acquired. Further, as recommended by the CPT, a written policy on the use of means of restraint had been introduced.

There were two rooms used for restraining patients out of the sight of other patients (one room on the male acute ward and another on the female acute ward). That said, it appeared that instruments of restraint could also be applied on the other wards, in full view of other patients. Furthermore, it should be noted that the register on the use of restraint was not accurately kept (e.g. the duration of the measure was not always noted, the signature of the doctor authorising it was sometimes missing, and the accompanying use of medication was not systematically recorded).

99. While welcoming the improvements already made, the CPT wishes to stress that patients in respect of whom means of mechanical restraint are applied should not be exposed to the view of other patients. Further, whenever a patient is subjected to restraint, a trained member of staff should be continuously present in order to maintain the therapeutic alliance and to provide assistance. In addition, the systematic recording of every instance of use of means of restraint, both in the specific register and the patient's file, should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered and approved it, and an account of any injuries sustained by the patient or staff.

Once means of restraint have been removed, a debriefing of the patient should take place. This provides an opportunity to explain the rationale behind the measure, thus reducing the psychological trauma of the experience as well as restoring the doctor-patient relationship. It also gives the patient an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour.

If recourse is had to chemical restraint such as sedatives, antipsychotics, hypnotics and tranquillisers, they should be subjected to the same safeguards as mechanical restraints.

The CPT recommends that steps be taken at Dobrota Special Psychiatric Hospital to ensure that both the policy and practice concerning the use of means of restraint comply with the above requirements.

8. Safeguards

100. The LPRMI, in force since 2006, stipulates the legal procedures applied in the case of civil commitment to a psychiatric hospital.

Sections 32 to 41 of the LPRMI contain provisions concerning "forced placement" which applies to persons who, due to a mental or behavioural disorder, seriously and directly threaten their own life, health and safety or that of other people. Such persons have to be taken without delay to a health institution for examination. The psychiatrist who examines the person concerned has to decide whether there are grounds for his/her hospitalisation. If there are grounds for hospitalisation, the psychiatrist takes a decision on "forced keeping" and informs the competent court. Within 48 hours, the person's legal guardian, the competent body for social work and an independent multidisciplinary body also have to be informed. The judge, after meeting the person concerned and a panel of three doctors, decides whether to authorise hospitalisation. The initial period of hospitalisation is one month, with subsequent monthly reviews. The same procedure is applied to voluntarily hospitalised patients who subsequently withdraw their consent.

Pursuant to Section 31 of the LPRMI, the decision on hospitalisation is also taken by a court in the following cases: i) if there is a disagreement between the authorised health care worker and the psychiatrist who receive the mentally ill person about the need for hospitalisation; ii) if the person concerned is not capable of giving consent and does not have a legal guardian; iii) if the person is a juvenile or is legally incapacitated due to a mental disorder; iv) if the person is not capable of giving consent and his/her legal guardian has given consent for the placement of that person. Prior to making a decision on placement, the court is obliged to receive a written opinion from a psychiatrist from the list of court experts (preferably one not working at the psychiatric institution in which the person is being kept) as to whether the person concerned requires hospitalisation because adequate therapeutical results cannot be achieved by means of outpatient treatment.

101. The delegation was informed by a judge with whom it met that the law provided for a time-period of 48 hours within which the court had to see the person hospitalised involuntarily and issue a decision on hospitalisation. However, it appeared from the examination of documentation at the hospital that judges met patients who had been hospitalised involuntarily only two weeks after the actual admission. The CPT is concerned by this delay. **It recommends that the Montenegrin authorities take steps to ensure that the existing procedures concerning involuntary hospitalisation are duly followed, and that the legal safeguards in place are truly effective.**

102. As noted in paragraph 83, about half of the persons hospitalised at Dobrota Special Psychiatric Hospital were considered as voluntary patients, including the vast majority of chronic patients. These patients had nevertheless been placed in locked wards. They had been admitted to the Hospital before the entry into force of the LPRMI and their files contained only an admission document signed by the duty psychiatrist.

Pursuant to Section 30 of the LPRMI, mentally ill persons who can understand the purpose and consequences of their placement in a psychiatric institution and are capable of making a decision can be voluntarily hospitalised with their written consent. Consent should be given before an authorised health care worker and the duty psychiatrist, who are obliged to determine the capability of the mentally ill person to give his consent and to issue a written confirmation which is added to the medical documentation. However, the delegation observed that declarations on consent to hospitalisation were almost never present in the patients' files.

The CPT recommends that the cases of all chronic patients be reviewed and that those patients meeting the criteria for involuntary placement be subject to the relevant procedure. In this context, measures should be taken to ensure that written consent to hospitalisation is always sought in compliance with the law.

As regards voluntary chronic patients, efforts should be made to place them in appropriate community-based facilities (see paragraph 84).

103. As previously stressed by the CPT, psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis - be it in the context of civil or criminal proceedings - should not preclude seeking informed consent to treatment. Every competent patient, whether voluntary or involuntary, should be fully informed about the treatment which it is intended to prescribe and given the opportunity to refuse the treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Pursuant to the LPRMI, a patient who is not able to give consent can be subject to treatment only with the consent of his/her guardian, or if there is no guardian, with the approval of the ethical committee of the psychiatric institution. An involuntarily placed person can be treated without his consent only if the absence of consent would pose a risk for his/her health (see Section 17 of the LPRMI). In such a case, the patient should have the treatment explained to him and be involved in the treatment process to the extent possible. In this context, the delegation was informed that a form on consent to treatment had been introduced at the Dobrota Hospital in September 2008.

The CPT welcomes the recent introduction of a form on consent to treatment and **recommends that the procedures be reviewed with a view to ensuring that all patients (and, if they are incompetent, their legal representatives) are provided systematically with information about their condition and the treatment prescribed for them, and that doctors be instructed that they should always seek the patient's consent to treatment prior to its commencement. The form concerning informed consent to treatment should be signed by the patient or (if he is incompetent) by his legal representative. Relevant information should also be provided to patients (and their legal representatives) during and following treatment.**

104. As to placement under the criminal legislation, the procedures had remained unchanged since the 2004 visit⁴⁵. It remains unclear whether the court's decision on compulsory treatment can be appealed against by the patient, his family or legal representative, and whether in this context the patient can ask for an independent opinion by an outside psychiatrist. Further, some patients subject to compulsory treatment by court order stated that they had not had the benefit of a lawyer; others complained that they had not appeared in court in person during the review of the placement.

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

- **patients subject to compulsory treatment are granted the right to appeal against the court's decision and to ask for an independent opinion by an outside psychiatrist;**
- **patients subject to compulsory treatment are assisted by a lawyer during the proceedings, those who are not in a position to pay for a lawyer themselves being provided with legal assistance;**
- **patients subject to compulsory treatment have the effective right to be heard in person by a judge during the review procedures.**

105. The CPT welcomes the introduction of an information leaflet setting out patients' rights and the routine of the hospital. The patients met by the delegation were generally aware of the hospital routine and the activities available, and efforts had been made to inform them of their rights.

106. Arrangements as regards contact with the outside world were satisfactory. There were no restrictions concerning visits and patients could be granted overnight leave. Further, patients could use mobile phones or make phone calls from the duty office.

⁴⁵ See paragraph 331 of CPT/Inf (2006) 18.

107. As regards complaints procedures, boxes had been installed on all the wards, and patients' complaints were examined by the Council for Human Rights Protection of Patients, set up pursuant to Section 49 of the LPRMI. It consisted of five members (a psychiatrist, psychologist and social worker employed by the hospital, a sociologist from the Institute for Public Health in Podgorica, and a lawyer from the local Social Welfare Centre). The Council monitored the implementation of the legal procedures, informed the competent bodies of any violations of patients' rights, took action on complaints by patients, family members or other parties, and was responsible for initiating the procedure for discharge from the hospital.

However, it should be noted that the Council for Human Rights Protection of Patients was appointed by the Executive Board of the Hospital. **The CPT invites the Montenegrin authorities to take steps to ensure that the Council for Human Rights Protection of Patients is truly independent.**

108. The delegation was informed that since the CPT's visit in 2004, no inspections of the Hospital had been carried out. An internal inspection by the Ministry of Health was expected to take place at the end of September 2008. The Ombudsman is also entitled to visit the Hospital but no such visits had yet taken place.

The CPT recommends that the Montenegrin authorities develop a system of regular visits by an independent outside body to Dobrota Special Psychiatric Hospital. This body should be authorised, in particular, to talk privately with patients, examine all issues related to their living conditions and treatment, receive directly any complaints which they might have and make any necessary recommendations.

D. Komanski Most Institution for People with Special Needs

1. Preliminary remarks

109. The Komanski Most Institution for People with Special Needs is located in the outskirts of Podgorica. It occupies a large compound surrounded by a two-meter-high fence, topped with barbed wire, and comprising two residential buildings (Ward A, accommodating the more independent residents, and Ward B for more dependent residents), as well as a number of other auxiliary buildings.

The Institution was set up in 1976 and was originally intended for children with severe mental disabilities. At the time of the visit, it was accommodating 131 residents (76 men, 40 women and 15 minors), aged from 3 to 76 years. The vast majority of residents had spent many years at the Institution, some having been there since its opening. The management informed the delegation of the intention to turn the Institution into a place exclusively for adults as it had been assessed as unsuitable to accommodate children. In this respect, in their letter of 14 November 2008, the Montenegrin authorities indicated that they were considering, with the assistance of UNICEF, the transfer of five or six of the juvenile residents to another institution. **The CPT would like to receive updated information on this issue and on the authorities' strategy for moving all the children to appropriate alternative accommodation, including the time frame for this move.**

110. The legal framework applicable to social-care homes has evolved in recent years with the adoption of the Law on Social and Child Welfare in 2005, the Law on Education of Children with Special Needs in 2005, and the Family Law in 2007. That said, there appeared to be no discharge policy in place due to the absence of a strategy of deinstitutionalisation and the shortage of facilities to prepare residents for a more independent life. **The CPT invites the Montenegrin authorities to take steps to reorganise the system for the provision of care to persons with mental disabilities, including both de-institutionalisation programmes and options for those persons who are not able to benefit from such programmes.** A strategy should be designed to facilitate the re-integration into the community of as many of the residents as possible and to set up properly stratified facilities so that residents within them are of similar abilities and have similar needs.

2. Ill-treatment

111. The delegation heard some allegations of physical ill-treatment of residents by staff, consisting of blows with sticks fashioned from tree branches. Objects closely matching the descriptions provided were found in a staffroom in one of the two accommodation buildings. In some cases, the ill-treatment alleged appeared to have been inflicted as a punishment after a resident had attempted to abscond. However, certain of the delegation's interlocutors suggested that the highly disorganised environment combined with the extremely low staffing levels may have contributed to staff members resorting to such unacceptable means to try and control disturbed residents.

In their letter dated 14 November 2008, the authorities informed the CPT that the Institution's staff had been instructed that the use of sticks was unacceptable and would be subject to sanctions.

Working with mentally disabled people will always be a difficult task for all categories of staff involved. Therefore, proper managerial control is essential to contribute to the prevention of ill-treatment. **A clear message must be given to staff that physical and psychological ill-treatment of residents is unacceptable and will be dealt with severely. The Institution's management should also actively address factors that may have contributed to such staff behaviour (see paragraphs 124 and 125).**

112. The delegation received numerous allegations of inter-resident violence and saw for itself residents pushing, slapping and hitting each other, including, on one occasion, a child being hit by an adult resident resulting in his nose being bloodied. Injuries consistent with allegations of inter-resident violence were observed by the delegation. The frequency of such incidents was obviously due to extremely low staffing levels combined with very difficult living conditions. Further, some female residents complained of sexual harassment by other residents.

The authorities' obligation to care for residents includes the responsibility to protect them from other residents who might cause them harm. This requires an adequate staff presence at all times, including at night and weekends. Staff should be both properly trained and resolved to intervene when necessary. Further, appropriate arrangements should be made for particularly vulnerable patients; in particular, mentally disabled children should not be accommodated together with adults. **The CPT calls upon the Montenegrin authorities to take appropriate steps to protect residents from other residents who might cause them harm, in the light of the above remarks.**

113. The delegation learned that a written complaint had been addressed to the Institution and the Ministry of Health, Labour and Social Welfare by the mother of a female resident, alleging threats and sexual harassment of her daughter. The Institution's Director informed the delegation that following an exchange of letters, representatives from the Ministry and the Ombudsman's office had visited the establishment. **The CPT would like to receive information on any further action taken following this complaint.**

3. Residents' living conditions

114. At the time of the visit, residents' living conditions were appalling.

Ward B was accommodating 67 residents distributed into 12 dormitories. In the totally bare and malodorous rooms, residents (some of whom were physically handicapped or blind as well as mentally disabled) were seen to lie alone, occasionally with their heads covered with a blanket, some naked, with flies crawling on them. In a locked "baby room", the delegation saw 5 bedridden residents, aged between 3 and 19, lying in cots. There was also a locked dayroom where about 25 residents (men, women and children together) were left wandering alone. Further, in an unstaffed and locked part of the ward where residents appeared to be left alone, the delegation found a dayroom in which 7 residents were fixated to furniture (see paragraph 127).

Conditions on *Ward A* were slightly better. It was holding 64 residents, some of whom slept in dormitories with a few personal items in view and doors that residents could lock. However, the majority were accommodated in door-less rooms with broken beds or dirty mattresses placed directly on the floor, without any bedding. Further, in some rooms the window panes were broken.

Residents were mixed in gender and age and it appeared difficult to ensure that men, women and children slept in separate rooms, given the absence of doors and the shortage of staff on the wards.

The level of hygiene, particularly on *Ward B*, holding the more vulnerable and challenging residents, did not befit a care institution. In some of the dormitories, there was urine and faeces on the floor, walls and bedding. Furthermore, the establishment was infested with mice.

115. The sanitary facilities were extremely unhygienic: the toilets were filthy, with faeces wiped on the walls, and some were blocked. Most doors were broken or missing. The washrooms were also dilapidated and dirty, and half of the taps were not functioning. The supply of disposable pads and plastic mattress covers was insufficient for incontinent residents. In addition, female residents interviewed by the delegation alleged that there were insufficient supplies of sanitary protection.

On a more positive note, the kitchen and dining hall were of a good standard, contrasting noticeably with the accommodation buildings. Further, there appeared to be a sufficient quantity of food.

116. The Director told the delegation that he received approximately 6 Euros per resident per day (to cover food, medication, clothing and material costs of care/education), obliging him to rely on private donations and financial support from non-governmental organisations in order to maintain basic levels of care. **The CPT wishes to stress that relying on donations to ensure the basic sustainability of such an institution is not acceptable.** While donations are always welcome, maintaining material conditions and hygiene to a level befitting a care institution requires the allocation of sufficient funds from the State.

117. In their letter of 14 November 2008, the Montenegrin authorities informed the CPT that half of the beds and mattresses had been replaced with new ones, thanks to a donation. All residents on Ward A had been provided with new bedding, and plastic covers had been put on the beds in Ward B. The authorities also indicated that a constant supply of disposable pads had been secured. Reconstruction of the toilets had reportedly started, doors had been replaced and new boilers had been installed. Further, a full clean-up and disinfection of the Institution had been performed.

During the visit, the delegation learned that a donation of 80,000 Euros had been received to refurbish Ward A. **The CPT would like to receive information on the time frame for the refurbishment as well as details of the works envisaged.**

118. **The CPT recommends that the Montenegrin authorities sustain the emerging efforts made to improve living conditions at the Komanski Most Institution and, in particular, take steps to:**

- **allocate a specific budget for the Institution's reconstruction and maintenance;**
- **carry out a comprehensive refurbishment of ward B;**
- **replace all broken doors and windows;**
- **provide more congenial and personalised surroundings for residents, in particular by: ensuring that the rooms offer privacy, providing residents with lockable space for their personal belongings, and improving the decoration and equipment of the dormitories and common areas.**

119. The CPT is of the view that to accommodate children and unrelated adults together inevitably brings with it the possibility of domination and exploitation; therefore, as a rule, children should be accommodated separately from adults. As regards mixed-gender wards, particular precautions are required to ensure that residents are not subjected to inappropriate interaction with other residents which threaten their privacy; in particular, female residents should have their own protected bedrooms and sanitary areas. **The CPT recommends that the Montenegrin authorities take steps in the light of the above remarks.**

4. Care of residents

120. The vast majority of residents received psychotropic medication. The supply of medication was satisfactory and access to somatic care did not appear to be a problem. The Institution was regularly visited by a neuro-psychiatrist (once a week and on call), a general practitioner (twice a week and on call) and a dentist (once a week). Further, individual medical files and medical records were well kept. However, there was clearly scope for greater involvement of health-care staff, including 24-hour health cover (see paragraph 124).

121. Individual treatment and rehabilitation plans had recently been introduced at the Institution. The assessment of residents was ongoing and half of them had been assessed at the time of the visit. That said, the lack of staff made it impossible to implement such plans, which remained largely at a theoretical level.

Further, there was an almost total lack of occupational, educational and recreational activities. Only some 20 residents were involved in such activities. There were also few opportunities for exercise due to the absence of a secure outdoor exercise area and the lack of accompanying staff. Many residents spent much of their time in crowded dayrooms where some sat rocking, shouting or hitting themselves. The delegation was informed that the annual one-week escorted trip to the sea for about 45 residents had been reduced to 25 residents due to funding cuts, thus preventing some residents from participating in one of the rare activities.

122. The treatment of mentally disabled persons should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to appropriate medication and medical care, occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Residents should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work, the aim being to prepare residents for independent or at least more autonomous living.

The CPT recommends that the Montenegrin authorities make efforts to ensure the implementation of the individual treatment and rehabilitation plans by involving all residents in activities adapted to their needs. Achieving this goal will require recruiting more qualified staff (see paragraph 126). Further, the CPT recommends that steps be taken to offer all residents, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious setting, which should also offer shelter from inclement weather.

123. During the visit, the delegation was informed by staff that some residents had sexual relations. The management's approach in this respect was to ensure that most sexually active female residents received an intrauterine device. With regard to pregnancies, the policy was to carry out abortions after evaluation of each case by a council of gynaecologists. A psychiatrist was also consulted, but from the information gathered it appeared that the residents' guardians were not involved in the process. In view of the numerous ethical and legal issues involved (among others, the issue of residents' capacity to express consent to sexual relations and to eventual abortions), **the CPT would welcome the comments of the Montenegrin authorities on the above-mentioned subject.**

5. Staff issues

124. With an official staff complement of 66, at the time of the visit the Institution was employing 45 staff, of whom 9 were on sick leave. The posts of psychiatrist and psychologist were vacant. The vacancies had been advertised several times without success, apparently due to the combination of low salaries in comparison with other health institutions, and the difficulty of the job. On the day of the delegation's arrival, there were only three ward-based staff (one nurse and two carers, which meant that at times there was only one staff member on Ward B) and one work instructor present in the Institution to care for 131 residents. Staff had resorted to using several trusted residents to control the others. Some ward staff were working 24-hour shifts (locking themselves in the staffroom to sleep) and some dedicated staff had felt unable to take annual leave in 2008 due to staff shortages.

125. The extremely low number of staff was at the core of the Institution's inability to provide adequate protection, care, hygiene and regime for the residents. Such a state of affairs is totally unacceptable and amounts in practice to an abandonment of residents. The delegation observed for itself some patients in possession of ward keys, and others policing in a forceful and aggressive manner the dayrooms and ward gates. The delegation was informed that a new staffing plan had recently been designed, adding 28 posts to the existing complement (including 6 educators, 5 nurses, 3 technical instructors, 1 social worker, 10 carers, as well as administrative and security staff). Following the visit, the Montenegrin authorities informed the CPT that 6 posts had been advertised (3 for maintenance and hygiene of the premises, 2 for security guards, and 1 for a nurse) and 5 of them had already been filled.

126. **The CPT recommends that the Montenegrin authorities explore the possibilities of providing enhanced conditions of service for staff, so as to facilitate appropriate staff recruitment and retention, and offer both initial and ongoing training to staff. The numbers of staff in direct contact with residents should be substantially increased, including nurses, educators, work therapists, social workers, etc.**

6. Means of restraint

127. The low staffing levels, combined with a lack of alternative strategies and material and regime provision, resulted in a considerable reliance on the use of physical restraint. On Ward B, the delegation found, in an unstaffed and locked area, patients fixated to beds or other furniture, mostly with torn strips of cloth but also by chains and padlocks; one of them was sitting on a bench completely naked. **The CPT must stress that chaining residents is totally unacceptable and could well be considered as amounting to inhuman and degrading treatment, in addition to being potentially physically harmful.**

Further, in the dormitories, some beds had soft restraints attached to them. The fact that the Institution's gate, locked wards and dayroom entrances were manned by residents, some in overt possession of soft restraints, clearly indicated that they could be involved in the restraining of other residents.

The delegation also found, behind the sanitary facilities on Ward B, in a room whose door had been tied using a strip of cloth, a woman lying on a bed under a blanket. The staff present told the delegation that the resident had been placed in isolation conditions because she had attempted to abscond. The room was entirely unsuited for use as a seclusion room and there was no supervision of the resident. **The CPT recommends that steps be taken to ensure that this room is never again used for such a purpose. Moreover, the Committee wishes to stress that seclusion should never be used as a punishment vis-à-vis mentally disabled persons.**

128. In their letter of 14 November 2008, the Montenegrin authorities informed the CPT that all chains and padlocks had been removed and replaced by leather fixations. Based on a decision of the psychiatrist, five residents had been placed under a regime of part-time fixation, and one under full-time fixation. In the psychiatrist's absence, a decision concerning the restraining of a resident can be taken by a nurse who should immediately inform the psychiatrist. In case of resort to means of restraint, the resident concerned is placed under continuous supervision by a staff member. The authorities also informed the CPT that any resort to means of restraint is now recorded in the medical documentation, including the name of the person ordering the measure.

The CPT welcomes the removal of chains and padlocks from the Komanski Most Institution; indeed, they are totally unsuitable as a means of mechanical restraint and have no place in a social care home.

The Committee would like to receive further information on the precise nature of the regime applied to the six above-mentioned residents as well as the supervision arrangements in place. In this context, the Committee wishes to stress that fixation for days on end cannot be justified from a medical viewpoint and amounts, in its view, to ill-treatment.

129. The CPT understands that, on occasion, there may be a need to restrain or isolate residents to protect themselves or others and, exceptionally, to resort to instruments of mechanical restraint. However, there should be a clearly-defined policy in this respect. That policy should state that initial attempts to restrain agitated or violent residents should, as far as possible, be non-physical (e.g. verbal instruction) and that, where physical restraint is necessary, it should in principle be limited to manual control. Further, alternatives to restraint should be actively looked for by the staff together with the residents.

Resort to restraint or isolation shall only very rarely be justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his approval. If, exceptionally, recourse is had to instruments of mechanical restraint, they should be removed at the earliest opportunity. Residents subject to means of mechanical restraint or isolation should, at all times, have their mental and physical state continuously and directly monitored by a member of the health-care staff. Further, mechanical restraint should be applied exclusively by care staff (nurses or orderlies) and should never take place in the presence of other residents. The adoption of a policy on the use of restraints or isolation should be accompanied by practical training, which must involve all staff concerned (doctors, nurses, orderlies, etc.) and be regularly updated. Residents should also be duly informed of the establishment's restraint policy as well as the existing complaints mechanisms in this respect.

Further, every instance of restraint of a resident (manual control, mechanical or chemical restraint) should be recorded in a specific register established for this purpose (as well as in the resident's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by residents or staff. This will greatly facilitate both the management of such incidents and oversight as to the frequency of their occurrence.

The CPT welcomes the efforts made by the Montenegrin authorities as regards resort to means of restraint and **recommends that further steps be taken to ensure that a comprehensive and clearly-defined policy on the use of such means is introduced, applying the above-described precepts.**

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130. The above-described dreadful material conditions, in which residents were obliged to live for years, combined with many other negative factors – extremely low staffing levels, an almost total lack of activities, inappropriate use of means of restraint – could fairly be described as amounting to inhuman and degrading treatment.

As already mentioned (see paragraph 6), at the end of the visit the delegation invoked Article 8, paragraph 5, of the Convention and requested the Montenegrin authorities to provide the CPT, within 3 months, with a detailed action plan setting out how the failings observed in terms of material conditions, hygiene, regime, staffing issues, and resort to means of restraint, would be addressed.

The two letters sent by the authorities after the visit refer to a number of steps taken or planned at the Komanski Most Institution (see also paragraphs 109, 117, 125 and 128). As regards in particular children residing in the Institution, several foreign experts had visited the establishment since October 2008 and had provided staff with support and training on working with children. Further, plans for the reconstruction of the premises were being made in order to ensure the separation of children from adults and provide children with adequate accommodation designed for their needs.

While taking note of the above-mentioned steps, the CPT remains convinced of the need for a comprehensive review of the situation at the Komanski Most Institution, which addresses in a strategic manner all problematic aspects mentioned above. **The Committee calls upon the Montenegrin authorities to carry out such a review and to draw up a detailed action plan for reforming the Komanski Most Institution.**

7. Safeguards

131. On account of their vulnerability, mentally disabled persons warrant particular attention to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in an institution should always be surrounded by appropriate safeguards. The procedure of placement should offer guarantees of independence, impartiality as well as objective medical expertise.

132. The delegation was informed that all residents had been placed at the Komanski Most Institution by the Social Welfare Centre in the area of the resident's family, which was also entrusted with the guardianship of the residents. Discharge was reportedly also decided by the competent Social Welfare Centre.

Ex officio placement by the public authorities⁴⁶ in social care institutions should always be surrounded by appropriate safeguards. In particular, the procedure by which *ex officio* placement is decided should offer guarantees of independence and impartiality as well as being based on objective medical, psycho-social and educational expertise. The CPT considers that persons involuntarily placed in an institution must have the right to bring proceedings by which the lawfulness of their placement is speedily decided by a court. It is also crucial that the need for placement be regularly reviewed and that this review afford the same guarantees as those surrounding the placement procedure.

The CPT recommends that the Montenegrin authorities take steps to ensure that the procedure for placement of persons with mental disabilities in social care institutions complies with the above requirements. In particular, such persons should enjoy the effective right to apply to a court for a prompt ruling on the legality of their placement and enjoy appropriate legal safeguards (i.e. right to a lawyer, possibility of being heard by a judge, etc.).

The Committee would also like to receive information on the procedure for consent to treatment in respect of persons admitted to institutions for persons with mental disabilities, as well as on the system in place to review at regular intervals the need for continuing the placement.

⁴⁶ Or placement decisions by public authorities following a formal request by a family member or guardian.

133. Upon examination of the files, it appeared that only some of the adult residents had been deprived of their legal capacity by a court decision⁴⁷. As regards the remainder of the residents, the Institution's management informed the delegation that the relevant Social Welfare Centre was considered as their guardian. This state of affairs is clearly far from optimal. The potential conflict of interest which arises when a Social Welfare Centre is appointed as a guardian and at the same time is responsible for admission and discharge decisions needs be addressed. **The CPT recommends that the Montenegrin authorities take the necessary steps to avoid such a conflict of interest.**

134. There were no specific arrangements for providing residents and their families with information concerning the stay at the Institution. The CPT considers that an introductory brochure setting out the establishment's routine, the rules for admission and discharge, residents' rights and the possibilities to lodge formal complaints, on a confidential basis, with clearly designated outside bodies, should be issued to the families/guardians of each resident. **The CPT recommends that such a brochure be drawn up and systematically distributed to residents, their families and guardians.**

135. Arrangements for residents' contacts with the outside world were satisfactory. There were no restrictions on visits and some residents could go on leave to visit their families or foster families. The more independent residents could make phone calls from an office, and some had mobile phones. That said, the delegation was informed that only some 16% of residents maintained contact with their families. **The CPT invites the Montenegrin authorities to pursue their efforts to encourage residents' contacts with the outside world (e.g. by means of inviting voluntary visitors, NGOs, etc.).**

136. The CPT attaches great importance to social care homes being visited on a regular basis by an independent outside body which is responsible for the inspection of residents' care. This body should be authorised, in particular, to talk privately with residents, and make any necessary recommendations to the authorities on ways to improve the care and conditions afforded to residents. Visits by such a body - which could also be competent to receive complaints from residents or their families - would, in the Committee's view, constitute an important safeguard for residents in social care institutions.

The delegation was informed that inspections were being carried out by the Ministry of Health, Labour and Social Welfare. Independent bodies such as the Ombudsman, UNICEF and some NGOs had also visited the Institution. **The CPT invites the Montenegrin authorities to introduce a firm legal basis for regular visits to the Komanski Most Institution by bodies which are independent of the social care authorities, taking into account the above remarks.**

⁴⁷ The procedure appears to be applied when a resident has private property.

E. Centre for children and juveniles “Ljubović”, Podgorica

137. The CPT’s delegation visited for the first time in Montenegro a juvenile establishment under the responsibility of the Ministry of Health, Labour and Social Welfare: the Centre for children and juveniles “Ljubović”. The Centre, built in the 1960s, occupies a compound on the outskirts of Podgorica. It had accommodated up to 100 juveniles in the past, but over the years its use had significantly decreased and at the time of the CPT’s visit, the establishment was accommodating 19 juveniles (aged from 7 to 18 years), including 5 girls. Only 7 juveniles were present when the delegation visited the Centre on Saturday, 20 September 2008, the remainder spending the weekend outside the establishment with their relatives or foster families.

138. The Centre was holding a mixture of juveniles with different profiles and needs: juveniles subjected to “institutional measures” by court order, pursuant to the Law on Enforcement of Criminal Sanctions (including those kept after the expiration of the measure until the completion of their education or vocational training⁴⁸); juveniles placed for social protection; juveniles awaiting admission to an orphanage (2 were present at the time of the visit); and foreign juveniles who had been apprehended by the police while illegally crossing the border and who were awaiting return to their countries (2 were present at the time of the visit)⁴⁹.

Six juveniles had been placed by court decision for the enforcement of an “institutional measure”, which could last from 6 months to 2 years⁵⁰. A prolongation of the placement was decided on the basis of periodic reports submitted by the administration of the institution, and legal assistance was provided to the juveniles concerned.

Another 11 juveniles had been placed under social protection arrangements and some had spent more than 3 years at the establishment. Despite discussions with staff, the delegation was not able to obtain a clear picture of the placement procedures applied in social protection cases. It appeared that such juveniles could be placed both upon a decision of the competent Social Welfare Centre and a court order⁵¹. Further, the issue of guardianship remained unclear to the delegation.

The CPT would like to receive detailed information on the procedures applied in respect of juveniles admitted to the Ljubović Centre pursuant to social protection legislation, in particular as regards placement, review and discharge, applicable time-limits, availability of legal assistance and guardianship.

The Committee also recommends that the current mixing of different categories of juveniles, with different profiles and needs, be addressed in a coherent manner.

⁴⁸ Pursuant to Section 143 of the Law on Enforcement of Criminal Sanctions.

⁴⁹ In addition, the institution was considered the official place of residence of 4 young adults (aged from 18 to 21)

living in the community who had to report to the Centre once a week.

⁵⁰ See Section 92 of the CC and Section 499 of the CCP.

⁵¹ According to the list of residents provided by the Centre, 10 of the juveniles in question had been placed by decision of the competent Social Welfare Centre, and 1 by court decision.

139. No allegations of ill-treatment by staff were made by the few residents present at the time of the visit, and the delegation gathered no other evidence of such treatment.

140. As to material conditions, the premises showed clear signs of dilapidation and abandonment. Many of the rooms in the two-storey residential building were not being used, and the school building lay empty. In the parts of the residential building which were occupied, juveniles were accommodated in small “apartments”(comprising a bedroom with two to three beds, a common room with a TV and cooker, and a bathroom/toilet) which were shared by several juveniles of the same sex. The rooms were spacious and had good access to natural light, ventilation and artificial lighting. The furniture was rather old but juveniles had decorated their rooms in an attempt to create a homely atmosphere.

The two foreign juveniles awaiting return to their country were held in a room which was dirty and the beds had no sheets. **The CPT recommends that these deficiencies be corrected.**

The delegation was informed by staff of plans to demolish the residential building (which was reportedly not solid enough due to construction deficiencies) and build a new one in the near future. In the meantime, juveniles would be temporarily accommodated in the former school. **The CPT would like to receive information on the precise timetable for the envisaged works.**

141. The delegation heard no strong complaints from the children as regards food, but some of them indicated that they would like to receive more fruit and dairy products. Staff assured the delegation that the diet was based on national norms followed in all educational establishments. **The CPT invites the Montenegrin authorities to verify that the food provided at the Ljubović Centre corresponds to the needs of juveniles.**

142. Concerning the programme of activities, the delegation was informed that juveniles were either attending a local school or following vocational training outside the institution. Further, some of them were said to be working in the Centre’s metal workshop (producing sports equipment). In their free time, juveniles could go out to the city. As regards physical education, the establishment had both an outdoor playground and an indoor gym, and offered a wide range of sports activities. There was also a small library.

However, it appeared that the Centre lacked sufficient staff and material resources to provide programmes of activities designed to cater for the needs of the different groups of juveniles. Thus on the day of the delegation’s visit, the two children (aged respectively 11 and 14) who were awaiting placement in an orphanage and who had already spent 2 months at the Centre, were locked in a sparsely furnished room, staring at a TV, with no toys or staff to engage with them.

The CPT recommends that steps be taken to develop the programme of activities offered at the Ljubović Centre, with a view to responding to the needs of the different groups of juveniles.

143. As regards staff, at the time of the visit the Centre employed a total of 38 staff members, including 12 educators, 3 assistant educators, 6 work instructors and 4 security staff. In 2009, 6 additional posts were expected to be added to the staff complement (including 4 educators, 1 instructor and one security staff).

Despite what appeared to be an adequate staff complement, on the day of the delegation's visit (Saturday), the few juveniles who had remained at the Centre for the weekend were locked in their rooms (i.e. 2 boys and 1 girl in the girl's apartment, the 2 foreign juveniles together, and the 2 children awaiting admission to an orphanage together)⁵². This state of affairs appeared to be linked to the shortage of staff on duty: when the delegation arrived at the Centre, only 1 educator and 1 security staff (responsible for the perimeter) were present. **The CPT would like to receive the comments of the Montenegrin authorities on this matter.**

144. Turning to health care, the Centre employed one full-time nurse. The delegation was informed that, upon admission, juveniles were taken to a hospital for a check-up and then assigned to a GP (through the schools they attended). There were reportedly no problems of access to specialised services in outside hospital facilities.

145. With respect to contact with the outside world, juveniles could spend weekends and holidays with their families and there were no limitations on visits or phone calls.

146. As regards discipline, the juvenile interviewed by the delegation alleged that in the event of absconding from the Centre, upon their return they were locked in their rooms, deprived of the right to leave the territory for a period of time or deprived of pocket money. However, there were no prescribed disciplinary sanctions and procedures in the Centre's internal regulations, and the version of the house rules posted on the wall contained a non-exhaustive list of disciplinary sanctions. The delegation was informed that isolation was not being used as a disciplinary sanction, and it observed for itself that the room previously used as an isolator had been converted into a storage room. Staff and juveniles interviewed during the visit confirmed that the room in question had not been used for isolating juveniles for more than a year.

The CPT recommends that a clear disciplinary procedure be introduced at the Ljubović Centre and that juveniles be duly informed of it.

147. Finally, it should be noted that the main log-book of the establishment was out of date, the last entry having been made on 19 June 2008. **The CPT recommends that steps be taken at the Ljubović Centre to ensure that record keeping is up-to-date and accurate.**

⁵² The delegation was also informed that at night (from 9 p.m. till 6.30 a.m.), juveniles were locked in their rooms.

APPENDIX I

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

Introduction

comments

- the Montenegrin authorities are requested to ensure that situations similar to those described in paragraph 5 are not encountered during future visits (paragraph 5).

requests for information

- a copy of the Action Plan for the Prevention of Torture once it has been adopted by the Montenegrin Government (paragraph 8).

Police establishments

Preliminary remarks

recommendations

- the Montenegrin authorities to take steps to ensure that detention by the police is carried out in strict conformity with the legislative provisions. In particular, the authorities should issue instructions specifying that the period of police custody runs from the moment a person is obliged to remain with the police and that this time should appear in the detention decision, even if that decision has been drawn up at a later stage (paragraph 10).

Torture and other forms of ill-treatment

recommendations

- a clear and firm message of “zero tolerance” of ill-treatment to be delivered from the highest level and through ongoing training to all police officers. As part of this message, it should be reiterated that all forms of ill-treatment (both at the time of apprehension and during subsequent questioning), as well as threats to use such treatment, are absolutely prohibited, and that both the perpetrators of such acts and those condoning them will be subject to severe sanctions (paragraph 14);
- police officers to be reminded that no more force than is strictly 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 14);

- the attention of prosecutors, judges, prison directors and other competent authorities to be drawn to the need to exercise extra vigilance and adopt a more proactive approach in order to ensure that no case of ill-treatment goes unnoticed and unpunished. In this context, the national Action Plan for the Prevention of Torture should bring together the efforts of all relevant structures in a concerted strategy (paragraph 14);
- the Montenegrin authorities to continue to develop professional training of police officers, with a view to ensuring that all new recruits receive adequate initial training and that police officers already in service are offered systematic ongoing training based on the new curriculum (paragraph 15);
- during the training of police officers, particular emphasis to be placed on advanced methods of crime investigation, thereby reducing reliance on information and confessions obtained via interrogations for the purpose of securing convictions. In this context, investment should also be made in the acquisition of modern technical means of inquiry (e.g. criminalistic and laboratory equipment). This should be combined with the adoption of detailed instructions on the questioning of criminal suspects (including initial interviews by operational officers) (paragraph 15);
- the Montenegrin authorities to adopt appropriate measures, in the light of the remarks made in paragraph 16, to sensitise police officers to the principles of the Police Ethics Code and to promote a culture in which the use of ill-treatment is unequivocally rejected by police officers themselves (paragraph 16);
- whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor to record the allegations in writing, to order immediately a forensic medical examination and to take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds (e.g. visible injuries) to believe that a person brought before him could have been the victim of ill-treatment (paragraph 19);
- the record drawn up following the medical examination of newly-arrived prisoners to contain: (i) a full account of statements made by the person concerned which are relevant to the examination (including his description of his 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 the objective medical findings (paragraph 20);
- whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person, the record to be systematically brought to the attention of the relevant prosecutor (paragraph 20);
- the results of the medical examination, including the statements made by the detained person and the doctor's conclusions, to be made available to the person concerned and his lawyer at their request (paragraph 20);

- persons who are or have been detained to be formally entitled to directly request a medical examination/certificate from a doctor who has received recognised training in forensic medicine (paragraph 20).

comments

- it is important to ensure that those persons entrusted with the operational conduct of the investigation concerning complaints against the police are not from the same service as the police officers who are the subject of the investigation (paragraph 17).

requests for information

- detailed information on the contents of the police training curriculum (paragraph 15);
- whether there is a specific obligation under Montenegrin law for police officers to report to their superiors facts which are indicative of torture or inhuman or degrading treatment on the part of colleagues (paragraph 16);
- the following information in respect of 2007 and 2008:
 - the number of complaints of torture and other forms of ill-treatment made against police officers;
 - an account of disciplinary sanctions imposed as a result;
 - an account of criminal proceedings instituted and criminal sanctions imposed (paragraph 18).

Investigations into cases involving allegations of ill-treatment

recommendations

- immediate steps to be taken to ensure that all investigations into cases involving allegations of ill-treatment fully meet the criteria of an “effective” investigation as established by the European Court of Human Rights (paragraph 26);
- the necessary measures to be taken in the light of the remarks made in paragraph 27 concerning operations by members of special intervention forces. If need be, the relevant legal provisions should be amended (paragraph 27).

comments

- the Montenegrin authorities are invited to take steps to provide information to the public on the outcome of investigations into complaints of ill-treatment by the police, with a view to avoiding any perception of impunity (paragraph 26);

requests for information

- the outcome of the two cases referred to in paragraphs 23 and 24 (paragraph 26).

Safeguards against the ill-treatment of persons deprived of their liberty

recommendations

- further steps to be taken to ensure that detained persons effectively benefit from the right of notification of custody from the very outset of their deprivation of liberty. In this context, the exercise of the right of notification of custody should be recorded in writing (paragraph 29);
- the Montenegrin authorities to take steps to ensure that persons in police custody benefit from an effective right of access to a lawyer (which includes the rights to talk to a lawyer in private and to have a lawyer present during interrogations) as from the moment they are obliged to remain with the police. If necessary, the relevant legal provisions should be revised (paragraph 31);
- further efforts to be made to ensure that the system of legal aid for persons in police custody operates effectively; this should be done in co-operation with the relevant bar associations (paragraph 31);
- police officers to be given a clear message that they are to respect the right of detained persons to have a lawyer of their own choosing, which is enshrined in the Constitution of Montenegro (paragraph 31);
- the Montenegrin authorities to adopt specific legal provisions guaranteeing the right of access to a doctor for persons in police custody. Those provisions should stipulate, *inter alia*, that:
 - a request by a detained person to see a doctor should always be granted without delay; police officers should not seek to vet such requests;
 - the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer (paragraph 32).

comments

- the Montenegrin authorities are encouraged to take further steps to ensure that the information sheet on rights is given systematically to all persons apprehended by the police as soon as they are brought into a police station, and is properly explained to them (paragraph 33);

- the Montenegrin authorities are invited to take further steps to ensure that a systematic standardised record of key elements of custody (including whether and when the rights of access to a lawyer and notification of custody are exercised) is kept for each person detained (paragraph 34);
- the Montenegrin authorities are invited to further develop the system of monitoring visits to police establishments by independent outside bodies. In order to be fully effective, visits by monitoring groups should be both frequent and unannounced. Further, the monitoring bodies should be empowered to interview detained persons in private and examine all issues related to their treatment (material conditions of detention; custody records and other documentation; exercise of detained persons' rights, etc.) (paragraph 35).

Conditions of detention

recommendations

- the following measures to be implemented as a matter of priority:
 - police establishments to be equipped with a sufficient number of cells of a reasonable size for their intended occupancy;
 - adequate in-cell lighting (access to natural light/artificial lighting), ventilation and heating to be provided;
 - all cells to be equipped with a means of rest (e.g. a bed or a sleeping platform) and persons kept in custody overnight to receive a clean mattress and blankets;
 - food, including at least one full meal, to be offered at appropriate intervals to detained persons; this implies that police establishments should be allocated a specific budget for this purpose and that a system for recording the actual delivery of food to detained persons be put in place;
 - toilet and washing facilities to be kept in a good state of repair and detained persons to have ready access to them(paragraph 40).

Prison establishments

Preliminary remarks

recommendations

- the examination of the proposals to amend the CCP in relation to pre-trial detention to be considered a priority, the aim being to shorten the length of court proceedings in criminal cases and to circumscribe more closely the circumstances in which recourse can be had to the preventive measure of remand in custody (paragraph 43);
- in their efforts to combat prison overcrowding, the Montenegrin authorities to be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures (paragraph 43), Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- efforts to be made to step up the training provided to judges and prosecutors, with a view to promoting the use of alternatives to imprisonment (paragraph 43);
- the Montenegrin authorities to take steps in the light of the remarks made in paragraph 44 concerning juvenile prisoners (paragraph 44).

Ill-treatment

recommendations

- a firm message to be delivered to staff of the Remand Prison in Podgorica that physical ill-treatment and verbal abuse of prisoners are not acceptable and will be dealt with severely (paragraph 45);
- the competent authorities to ensure that an effective investigation is carried out into the case referred to in paragraph 46 (paragraph 46);
- the Montenegrin authorities to take steps to bring the practice in line with the considerations outlined in paragraph 47. In this context, it is important to ensure that prosecutors are systematically notified of any use of means of force by prison staff, and that they are particularly vigilant when examining such cases (paragraph 47);
- prison staff to be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than necessary and that once prisoners have been brought under control, there can be no justification for their being struck (paragraph 47);
- if it is considered necessary for prison officers to carry truncheons, the truncheons should be hidden from view (paragraph 48).

comments

- the Montenegrin authorities are invited to develop a strategy aimed at preventing inter-prisoner violence (paragraph 50).

requests for information

- the outcome of the investigation into the case referred to in paragraph 46 (paragraph 46);
- the following information for 2007 and 2008:
 - the number of complaints of ill-treatment lodged against prison staff;
 - an account of the outcome of such complaints, including any disciplinary and/or criminal sanctions imposed.(paragraph 49).

Conditions of detention

recommendations

- further steps to be taken at the Institution for sentenced prisoners in Podgorica to:
 - pursue the refurbishment programme, in particular in unit A;
 - diversify the activities offered to both male and female prisoners and engage more prisoners in work and other purposeful activities; in this context, efforts should be made to refurbish all workshops as a matter of priority and to provide educational programmes and vocational training courses(paragraph 54);
- the Montenegrin authorities to take steps at the Remand Prison in Podgorica to:
 - significantly reduce the occupancy level in the cells, the objective being to comply with the standard of 4 m² of living space per prisoner;
 - ensure that every prisoner has a bed and appropriate bedding;
 - undertake a rolling refurbishment of the cells;
 - ensure that all remand prisoners are offered the possibility to take outdoor exercise every day for at least one hour;
 - review the regime of remand prisoners, in the light of the remarks in paragraph 57; if necessary, the legislation should be amended(paragraph 58);

- urgent steps to be taken at Bijelo Polje Prison to:
 - improve toilet and shower arrangements for sentenced prisoners;
 - ensure that all cells are appropriately heated for the season;
 - provide newly arrived prisoners with bed linen and personal hygiene items (paragraph 59);

comments

- the CPT trusts that the Montenegrin authorities will do their utmost to ensure that the construction of the new prison in Bijelo Polje is completed on time (paragraph 59);
- it is essential that the new prison in Bijelo Polje be provided with workshops, sports facilities, a proper library and other possibilities for purposeful activities (paragraph 60);
- the remarks in paragraph 57 and the recommendation in paragraph 58 apply equally to remand prisoners at Bijelo Polje (paragraph 60).

requests for information

- whether the two new accommodation buildings at the Institution for sentenced prisoners in Podgorica have entered into service, and detailed information on the regime applied in the new unit for women (paragraph 54).

Health-care services

recommendations

- urgent steps to be taken to reinforce the health-care resources at the Remand Prison and the Institution for sentenced prisoners in Podgorica and Bijelo Polje Prison, by providing working conditions that are sufficiently attractive to recruit and retain staff, and in particular to:
 - employ the equivalent of at least one additional full-time doctor and increase nursing staff resources at Podgorica;
 - employ at least one full-time nurse at Bijelo Polje Prison;
 - ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the premises of Bijelo Polje Prison, including at night and weekends (paragraph 64);
- a specific register for recording traumatic injuries observed on prisoners (upon arrival and/or in the course of imprisonment) to be opened at each prison (paragraph 65);

- the Montenegrin authorities to increase the psychiatric input in the Remand Prison and the Institution for sentenced prisoners in Podgorica and to develop the role of prison psychologists (paragraph 67);
- the Montenegrin authorities to take urgent steps to address the situation of the prisoner referred to in paragraph 68 (paragraph 68).

Other issues of relevance to the CPTs mandate

recommendations

- the Montenegrin authorities to strengthen the position of remand prisoners as regards the right to receive visits, in the light of the remarks in paragraph 71; if necessary, the relevant legislation should be amended (paragraph 71);
- the Montenegrin authorities to take steps to ensure that the confidentiality of prisoners' contacts with lawyers acting on their behalf is respected (paragraph 72);
- as concerns remand prisoners' access to a telephone, the recommendation in paragraph 71 applies *mutatis mutandis*. If there is a perceived risk of collusion, a particular phone call could be monitored (paragraph 74);
- the Montenegrin authorities to strengthen the position of remand prisoners as regards their correspondence (paragraph 75);
- appropriate amendments to be made to the disciplinary regulations concerning placement in a disciplinary cell, in the light of the remarks in paragraph 76 (paragraph 76);
- steps to be taken to ensure that the documentation and registers concerning disciplinary sanctions are properly maintained, accurately record the times of beginning and ending of the measure, and reflect all other aspects of custody (in particular, the precise location where a prisoner has been held (paragraph 77);
- prisoners upon whom a disciplinary sanction is imposed always to be given a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal (paragraph 77);
- the Montenegrin authorities to take steps to ensure that:
 - a prisoner who is transferred from one establishment to another and placed under conditions of disciplinary confinement is informed in writing of the reasons for that measure (it being understood that the reasons given could exclude information which security requirements reasonably justify withholding from the prisoner);
 - a prisoner in respect of whom such a measure is envisaged is given an opportunity to express his views on the matter;
 - the placement of a prisoner in segregation is for as short a period as possible and is reviewed at least every three months, with a view to re-integrating the prisoner into the mainstream prison population (paragraph 78);

- immediate steps to be taken to enable all prisoners placed in disciplinary cells to take at least one hour of daily outdoor exercise. Further, the exercise yards should be provided with shelter against inclement weather (paragraph 79);
- steps to be taken to ensure that prisoners placed in disciplinary cells are offered access to reading matter (paragraph 79);
- call bells to be installed in the disciplinary cells at the new prison in Bijelo Polje (paragraph 79);
- the Montenegrin authorities to introduce a system for the recording of complaints and their speedy handling (paragraph 81);
- the Montenegrin authorities to develop the system of monitoring of prisons by independent outside bodies. In this context, to be fully effective, monitoring visits should be both frequent and unannounced. Further, the monitoring bodies should be empowered to interview prisoners in private and examine all issues related to their treatment (conditions of detention; medical records and other detention-related documentation; the exercise of prisoners' rights, etc.) (paragraph 82).

comments

- the Montenegrin authorities are invited to persevere in their efforts to improve staffing levels in penitentiary establishments (paragraph 69);
- the right of sentenced prisoners to receive visits from unmarried partners should exist by law rather than being left to the discretion of the prison management (paragraph 70);
- the Montenegrin authorities are invited to review the regulations so as to enable remand prisoners to receive visits from unmarried partners; in the Committee's view, all prisoners should be entitled by law to receive visits from any persons with whom they had an established relationship prior to admission comparable in significance to that of a family member (paragraph 71);
- the Montenegrin authorities are invited to move towards more open visiting arrangements for remand prisoners in general (paragraph 73);

- the CPT trusts that the visiting facilities in the new prison in Bijelo Polje will be sufficient to meet the requirements of the establishment (paragraph 73);
- as regards access to books for remand prisoners, the Committee considers that the involvement of a judge in this respect is excessive and should be abolished (paragraph 75);
- the Committee trusts that the deficiencies observed in the disciplinary cells at Bijelo Polje Prison will be avoided in the new prison building (paragraph 79);
- disciplinary punishment of prisoners should not include a total prohibition of family contacts and any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts (paragraph 80);
- the installation of complaints boxes at the Institution for sentenced prisoners in Podgorica and the Special Prison Hospital is a positive step which should be followed in the other prisons in Montenegro (paragraph 81).

requests for information

- the existing training programmes for prison staff (both initial and ongoing) (paragraph 69);
- the precise location where disciplinary confinement takes place at the Remand Prison in Podgorica (paragraph 79).

Dobrota Special Psychiatric Hospital

Preliminary remarks

requests for information

- the state of implementation of the action plan concerning the Strategy for Mental Health Improvement, in particular as regards the development of programmes for preparing psychiatric patients for reintegration into the community (paragraph 84);
- more details on the Strategic Plan for Development and Advancement of Neuropsychiatry in Montenegro and its implementation (paragraph 84).

Ill-treatment

recommendations

- the management of Dobrota Special Psychiatric Hospital to regularly remind all staff that the ill-treatment of patients is not acceptable and will be punished accordingly (paragraph 85).
- the management to take measures to ensure that staff protect patients from other patients who might cause them harm. This requires not only adequate staff presence and supervision at all times, but also that staff be properly trained in handling challenging situations/patients (paragraph 86).

requests for information

- a copy of the protocol defining the rights and responsibilities of the security service and detailed information on the training offered to security guards (paragraph 85).

Forensic psychiatric unit (FPU)

recommendations

- steps to be taken to ensure that patients in the FPU have ready access to a proper toilet at all times, including at night (paragraph 87);
- the Montenegrin authorities to review the selection, training and supervision of security staff assigned to the FPU, in the light of the remarks in paragraph 88 (paragraph 88);
- efforts to be made to reduce the restrictions placed on the patient referred to in paragraph 89. Further, a record should be kept of the time during which he is locked up, with a view to ensuring appropriate monitoring (paragraph 89).

requests for information

- the outcome of the envisaged changes in the field of forensic psychiatry (paragraph 90);
- information on the plans to build a separate forensic psychiatric facility in the vicinity of Kotor (paragraph 90).

Patients' living conditions

recommendations

- the Montenegrin authorities to continue the refurbishment of the remaining non-renovated areas of the hospital. As part of the refurbishment, efforts should be made to personalise the living environment and provide patients with personal lockable space for their belongings (paragraph 91).

Treatment and activities

recommendations

- individual treatment plans to be established for each patient, to include a psycho-social rehabilitation component. In this context, greater efforts should be made to increase the offer of therapeutic and rehabilitative activities (e.g. occupational therapy, individual and group psychotherapy, education, sports) and involve more patients in activities adapted to their needs; this implies the recruitment of more staff (paragraph 94).

Staff issues

recommendations

- the Montenegrin authorities to define a recruitment strategy based on proper funding and enhanced conditions of service, with a view to ensuring adequate staffing levels at Dobrota Special Psychiatric Hospital (paragraph 95).

requests for information

- the status of the implementation of the on-going training programme for clinical staff, its content and the number and categories of staff involved (paragraph 96);
- the content of the training programme for nurses developed in cooperation with the High School of Medicine of Kotor and the number of nurses from Dobrota Special Psychiatric Hospital involved (paragraph 96).

Means of restraint

recommendations

- steps to be taken at Dobrota Special Psychiatric Hospital to ensure that both the policy and practice concerning the use of means of restraint comply with the requirements set out in paragraph 99 (paragraph 99).

Safeguards

recommendations

- the Montenegrin authorities to take steps to ensure that the existing procedures concerning involuntary hospitalisation are duly followed, and that the legal safeguards in place are truly effective (paragraph 101);

- the cases of all chronic patients to be reviewed and those patients meeting the criteria for involuntary placement to be subject to the relevant procedure. In this context, measures to be taken to ensure that written consent to hospitalisation is always sought in compliance with the law (paragraph 102);
- the procedures related to consent to treatment to be reviewed with a view to ensuring that all patients (and, if they are incompetent, their legal representatives) are provided systematically with information about their condition and the treatment prescribed for them, and doctors to be instructed that they should always seek the patient's consent to treatment prior to its commencement. The form concerning informed consent to treatment should be signed by the patient or (if he is incompetent) by his legal representative. Relevant information should also be provided to patients (and their legal representatives) during and following treatment (paragraph 103);
- as regards placement pursuant to the criminal legislation, the Montenegrin authorities to take steps to ensure that:
 - patients subject to compulsory treatment are granted the right to appeal against the court's decision and to ask for an independent opinion by an outside psychiatrist;
 - patients subject to compulsory treatment are assisted by a lawyer during the proceedings, those who are not in a position to pay for a lawyer themselves being provided with legal assistance;
 - patients subject to compulsory treatment have the effective right to be heard in person by a judge during the review procedures.(paragraph 104);
- the Montenegrin authorities to develop a system of regular visits by an independent outside body to Dobrota Special Psychiatric Hospital. This body should be authorised, in particular, to talk privately with patients, examine all issues related to their living conditions and treatment, receive directly any complaints which they might have and make any necessary recommendations (paragraph 108).

comments

- efforts should be made to place voluntary chronic patients in appropriate community-based facilities (paragraph 102);
- the Montenegrin authorities are invited to take steps to ensure that the Council for Human Rights Protection of Patients is truly independent (paragraph 107).

Komanski Most Institution for People with Special Needs

Preliminary remarks

comments

- the Montenegrin authorities are invited to take steps to reorganise the system for the provision of care to persons with mental disabilities, including both de-institutionalisation programmes and options for those persons who are not able to benefit from such programmes (paragraph 110).

requests for information

- updated information on the planned transfer of certain juvenile residents to another institution and on the authorities' strategy for moving all the children from the Komanski Most Institution to appropriate alternative accommodation, including the time frame for this move (paragraph 109).

Ill-treatment

recommendations

- a clear message to be given to staff that physical and psychological ill-treatment of residents is unacceptable and will be dealt with severely. The Institution's management should also actively address factors that may have contributed to such staff behaviour (paragraph 111);
- the Montenegrin authorities to take appropriate steps to protect residents from other residents who might cause them harm, in the light of the remarks in paragraph 112 (paragraph 112).

requests for information

- any further action taken following the complaint referred to in paragraph 113 (paragraph 113).

Residents' living conditions

recommendations

- the Montenegrin authorities to sustain the emerging efforts made to improve living conditions at the Komanski Most Institution and, in particular, to take steps to:
 - allocate a specific budget for the Institution's reconstruction and maintenance;
 - carry out a comprehensive refurbishment of ward B;
 - replace all broken doors and windows;

- provide more congenial and personalised surroundings for residents, in particular by: ensuring that the rooms offer privacy, providing residents with lockable space for their personal belongings, and improving the decoration and equipment of the dormitories and common areas

(paragraph 118);

- the Montenegrin authorities to take steps to accommodate children separately from unrelated adults, and to ensure that female residents have their own protected bedrooms and sanitary areas (paragraph 119).

comments

- relying on donations to ensure the basic sustainability of the Komanski Most Institution is not acceptable (paragraph 116).

requests for information

- the time frame for the refurbishment of Ward A and details of the works envisaged (paragraph 117).

Care of residents

recommendations

- the Montenegrin authorities to make efforts to ensure the implementation of the individual treatment and rehabilitation plans by involving all residents in activities adapted to their needs. Achieving this goal will require recruiting more qualified staff (paragraph 122);
- steps to be taken to offer all residents, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious setting, which should also offer shelter from inclement weather (paragraph 122).

requests for information

- comments from the Montenegrin authorities on the subject of sexual relations between residents at the Komanski Most Institution (paragraph 123).

Staff issues

recommendations

- the Montenegrin authorities to explore the possibilities of providing enhanced conditions of service for staff, so as to facilitate appropriate staff recruitment and retention, and offer both initial and ongoing training to staff. The numbers of staff in direct contact with residents should be substantially increased, including nurses, educators, work therapists, social workers, etc. (paragraph 126).

Means of restraint

recommendations

- steps to be taken to ensure that the room behind the sanitary facilities on Ward B is never again used for the purpose of seclusion (paragraph 127);
- further steps to be taken to ensure that a comprehensive and clearly-defined policy on the use of means of restraint is introduced, applying the precepts described in paragraph 129 (paragraph 129);
- the Montenegrin authorities to carry out a comprehensive review of the situation at the Komanski Most Institution and to draw up a detailed action plan for its reform (paragraph 130).

comments

- chaining residents is totally unacceptable and could well be considered as amounting to inhuman and degrading treatment, in addition to being potentially physically harmful (paragraph 127);
- seclusion should never be used as a punishment vis-à-vis mentally disabled persons (paragraph 127);
- fixation for days on end cannot be justified from a medical viewpoint and amounts, in the CPT's view, to ill-treatment (paragraph 128).

requests for information

- the precise nature of the regime applied to the six residents referred to in paragraph 128 and the supervision arrangements in place (paragraph 128).

Safeguards

recommendations

- the Montenegrin authorities to take steps to ensure that the procedure for placement of persons with mental disabilities in social care institutions complies with the requirements set out in paragraph 132. In particular, such persons should enjoy the effective right to apply to a court for a prompt ruling on the legality of their placement and enjoy appropriate legal safeguards (i.e. right to a lawyer, possibility of being heard by a judge, etc.) (paragraph 132);
- the Montenegrin authorities to take the necessary steps to avoid the potential conflict of interest which arises when a Social Welfare Centre is appointed as a guardian and at the same time is responsible for admission and discharge decisions (paragraph 133);

- an information brochure to be drawn up and systematically distributed to residents, their families and guardians (paragraph 134).

comments

- the Montenegrin authorities are invited to pursue their efforts to encourage residents' contacts with the outside world (e.g. by means of inviting voluntary visitors, NGOs, etc.) (paragraph 135);
- the Montenegrin authorities are invited to introduce a firm legal basis for regular visits to the Komanski Most Institution by bodies which are independent of the social care authorities, taking into account the remarks in paragraph 136 (paragraph 136).

requests for information

- the procedure for consent to treatment in respect of persons admitted to institutions for persons with mental disabilities, and the system in place to review at regular intervals the need for continuing the placement (paragraph 132).

Centre for children and juveniles "Ljubović", Podgorica

recommendations

- the current mixing of different categories of juveniles, with different profiles and needs, to be addressed in a coherent manner (paragraph 138);
- the deficiencies regarding material conditions referred to in paragraph 140 to be corrected (paragraph 140);
- steps to be taken to develop the programme of activities offered at the Ljubović Centre, with a view to responding to the needs of the different groups of juveniles (paragraph 142);
- a clear disciplinary procedure to be introduced at the Ljubović Centre and juveniles to be duly informed of it (paragraph 146);
- steps to be taken at the Ljubović Centre to ensure that record keeping is up-to-date and accurate (paragraph 147).

comments

- the Montenegrin authorities to verify that the food provided at the Ljubović Centre corresponds to the needs of juveniles (paragraph 141).

requests for information

- the procedures applied in respect of juveniles admitted to the Ljubović Centre pursuant to social protection legislation, in particular as regards placement, review and discharge, applicable time-limits, availability of legal assistance and guardianship (paragraph 138);
- the precise timetable for the works envisaged to demolish the residential building and build a new one (paragraph 140);
- the comments of the Montenegrin authorities on the staffing issue highlighted in the second subparagraph of paragraph 143 (paragraph 143).

APPENDIX II

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

National authorities

Ministry of Justice

| | |
|-----------------------|---|
| Mr Miraš RADOVIĆ | Minister of Justice |
| Mr Božidar VUKSANOVIĆ | Director of the Institution for the Execution of Criminal Sanctions |
| Mr Vojislav MARKOVIĆ | Deputy Director of the Institution for the Execution of Criminal Sanctions |
| Ms Anka CEROVIĆ | Head of the Legal Department of the Institution for the Execution of Criminal Sanctions |
| Mr Milan KRSMANOVIĆ | Adviser for the execution of criminal sanctions in the Ministry of Justice |
| Ms Marija JOVOVIĆ | Public Relations Officer, Institution for the Execution of Criminal Sanctions |

Ministry of the Internal Affairs and State Administration

| | |
|-----------------------|---|
| Mr Jusuf KALAMPEROVIĆ | Minister of Internal Affairs and Public Administration |
| Ms Nada VUKANIĆ | Deputy Minister of Internal Affairs and Public Administration |
| Mr Veselin VELJOVIĆ | Director of the Police Directorate |
| Mr Slavko STOJANOVIĆ | Deputy Director of the Police Directorate |

Ministry of Health, Labour and Social Welfare

| | |
|-----------------------|---|
| Mr Miodrag RADUNOVIĆ | Minister of Health, Labour and Social Welfare |
| Ms Snežana MIJUŠKOVIĆ | Deputy Minister for Social Welfare |
| Mr Krsto NIKOLIĆ | Advisor for Health Affairs in the Ministry of Health, Labour and Social Welfare |
| Mr Goran MIŠKOVIĆ | Adviser for Social Affairs in the Ministry of Health, Labour and Social Welfare |
| Mr Aleksandar TOMČUK | Director of the Special Psychiatric Hospital of Dobrota |
| Ms Nevenka PAVLIČIĆ | Member of the National Commission for Mental Health |

State Prosecutor's Office

Ms Ranka ČARAPIĆ

Ms Tatjana MARKOVIĆ

Ms Sonja VUKOVIĆ

Supreme State Prosecutor

Deputy Supreme State Prosecutor

Deputy Supreme State Prosecutor

Office of the Ombudsman

Mr Šefko CRNOVRŠANIN

Ombudsman

International organisations

OSCE Office in Montenegro

UNICEF

Non-governmental organisations

Council of Civil Control over Police Activities

Human Rights Action

Montenegrin Helsinki Committee for Human Rights