CPT/Inf (2009) 8

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

from 25 March to 2 April 2008

The Czech Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2009) 9.

Strasbourg, 5 February 2009

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Copy of the letter transmitting the CPT's report

Ms Jana Koláčková
Secretary of the Committee against Torture
Government Human Rights Council
Vladislavova 4,
CZ - 110 00 PRAGUE 1

Strasbourg, 23 July 2008

Dear Ms Koláčková,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Government of the Czech Republic drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to the Czech Republic from 25 March to 2 April 2008. The report was adopted by the CPT at its 66th meeting, held from 7 to 11 July 2008.

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 Czech authorities to provide **within three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Czech authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.

The CPT would ask, in the event of the responses being forwarded in the Czech language, that they be accompanied by an English or French translation. It would also be most helpful if the Czech 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 report or the future procedure.

Yours sincerely,

Mauro Palma
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

I. INTRODUCTION

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Czech Republic from 25 March to 2 April 2008. The visit was one which appeared to the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

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

- Aleš BUTALA (Head of delegation)
- Pétur HAUKSSON (2nd Vice-President of the CPT).

They were supported by Hugh CHETWYND, Head of Division, and Marco LEIDEKKER of the CPT's Secretariat, and assisted by:

- Timothy HARDING, former Director of the University Institute of Forensic Medicine, Geneva, Switzerland (expert)
- Veronica PIMENOFF, Expert for psychiatry at the Administrative Court of Kuopio, Finland (expert)
- Jurgen VAN POECKE, Director of Bruges Prison, Belgium (expert)
- Alena HANUSOVÁ (interpreter)
- Tomas OPOCENSKY (interpreter)
- Helena REJHOLCOVÁ (interpreter).

A. Context of the visit

3. In the report[1] on the March-April 2006 periodic visit to the Czech Republic, the CPT expressed its serious reservations concerning the specific medical intervention of surgical castration as applied to certain sex-offenders. The response of the Czech authorities did not reassure the Committee. A survey of five psychiatric hospitals indicated that between 2001 and 2006, around 50 sentenced sex-offenders had undergone surgical castration. This number would probably be much higher if all institutions known to accommodate sex offenders sentenced to "protective treatment" were to be canvassed; however, the CPT was informed that no statistics on the number of surgical castrations carried out on sentenced sex-offenders were kept. Further, the Committee was particularly concerned that surgical castration was applied to patients of whom "it had not been possible to form a worthwhile view [..] (they were often alcoholics and mentally retarded individuals)"[2]. For these reasons, the CPT wanted to obtain a more complete picture of the application of the measure of surgical castration in the Czech Republic, and of the procedures and safeguards surrounding each measure.

The CPT's delegation also visited Section E of Valdice Prison, which accommodates two distinct categories of prisoners: persons sentenced to life imprisonment and "dangerous" or "troublesome" high-security prisoners. In its report[3] on the 2006 visit, the CPT raised serious concerns about the treatment of prisoners placed in Section E. The response[4] of the Czech authorities did not allay such concerns or address all of the matters raised by the Committee in its report. The purpose of the visit to Section E was to examine the steps taken by the authorities to implement recommendations made by the CPT after the March-April 2006 periodic visit.

B. Establishments visited

4. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of Justice

- Kuřim Prison
- Valdice Prison (Section E)

Establishments under the authority of the Ministry of Health

- Bohnice Psychiatric Hospital
- Havlíčkův Brod Psychiatric Hospital

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1 See CPT/Inf (2007) 32, paragraph 103.
2 See CPT/Inf (2007) 33, annex No 5.
3 See CPT/Inf (2007) 32, paragraphs 32 to 58 and 71 to 78.
4 See CPT/Inf (2007) 33, pages 8 to 19 and 23 to 27.

C. Cooperation received and consultations held by the delegation

5. In the course of the visit, the CPT's delegation met Dzamila STEHLIKOVA, Minister for Human Rights, Marek ŠNAJDR, First Deputy Minister of Health, Markéta HELLEROVÁ, Deputy Minister of Health, and Martin MOULIS, Deputy Minister of Justice. The delegation also met with leading sexologists in the Czech Republic, and with members of three Commissions responsible for the approval of applications for surgical castration.

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

6. The degree of co-operation received during the visit from the Czech authorities at central and local level was good in some aspects. The delegation was granted immediate access to the detention facilities it wished to visit and to the persons it wanted to interview, and most of the information required to carry out its task was promptly provided. In particular, the delegation would like to thank the CPT's liaison officer, Ms Jana Koláčková, for the assistance provided before and during the visit.

However, two exceptions to the otherwise good co-operation concerned access to individual medical files at Horní Beřkovice Psychiatric Hospital and the provision of accurate information in order to enable the Committee to carry out its task.

7. It should first be recalled that Article 8, paragraph 2 (d), of the Convention obliges Parties to provide the Committee with "information available to [them] which is necessary for the Committee to carry out its task". This certainly includes access to medical records of detained persons; such information can, for a variety of reasons, be of great relevance to the Committee's task of examining the treatment of persons deprived of their liberty. For instance, medical records can be instructive as a point of comparison with information gathered elsewhere (e.g. via direct medical observations, or from verbal accounts given by a particular detainee or other person) on specific subjects - the occurrence of physical ill-treatment in a given case, the psychological effects of a regime on a given prisoner, etc. More generally, an examination of medical records enables visiting delegations to assess in a thorough manner the organisation of the health-care service in a particular establishment of deprivation of liberty (including, inter alia, psychiatric establishments).

When seeking such information, the CPT must have regard to rules of national law and professional ethics. This may well have implications as regards the precise manner in which the information sought is provided to the Committee; however, nothing can justify a refusal to grant access to the information requested, or the granting of access under conditions which would be tantamount to a refusal.

8. In the past, CPT delegations carrying out visits to the Czech Republic have been granted access to medical records of persons deprived of their liberty. Indeed, in the course of the 2008 visit, the CPT's delegation was provided with access to medical records in all establishments visited apart from one. On 30 March 2008, the delegation went to Horní Beřkovice Psychiatric Hospital. In the course of the previous ten years, some 16 surgical castrations have been carried out on patients under "protective treatment" at this hospital. Further, the CPT was led to believe that certain of the patients being accommodated in the hospital had undergone surgical castration or were waiting for the operation to be carried out.

The director of the hospital made it clear to the delegation, from the outset, that access to medical files would not be granted without the consent of each patient. The director also refused to provide the delegation with patients' names or other personal data. Further, the delegation was informed that, should it manage to identify the patients with whom it wished to speak and, subsequently, obtained their consent to access their personal medical files, such files would not be made immediately available to the delegation. Under such circumstances, an effective visit to this hospital was not viable.

9. Apparently, the legal grounds underpinning such a refusal were taken from a circular letter sent by the Ministry of Health on 28 March 2008, several days after the start of the visit. The letter erroneously stated that according to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, Czech law was determinant in deciding whether, and under what conditions, the CPT should be granted access to medical documentation. This letter, blatantly contradicts the text of the credentials, signed by the Minister of Health, which was given to the delegation on 25 March 2008. Further, the authorities did not inform the delegation about the existence of the circular letter; instead, it was the Director of the Horní Beřkovice Psychiatric Hospital who shared its contents with members of the delegation.

At the end of the visit, the head of the legal department of the Ministry of Health expressed the ministry's regret at the timing of the above-mentioned revised legal opinion, and at the fact that it had prevented the delegation from fully carrying out its mandate. A commitment to rectify the situation for the future was undertaken.

The CPT recommends that the Czech authorities take appropriate steps to ensure that effective access to medical files is guaranteed to its delegations in all institutions that the Committee visits, as required by Article 8, paragraph 2 (d), of the Convention. The CPT wishes to receive written confirmation that such steps have been taken.

10. It is also a matter of concern that the CPT's delegation received inaccurate information from the Czech authorities on a number of occasions before, during and after the visit. This was the case, most notably, as regards the number of sex-offenders being held in any one establishment who had been, or who were waiting to be, surgically castrated (for example, the figures concerning Bohnice Psychiatric Hospital and Kuřim Prison were not accurate).

In this connection, **the CPT wishes to stress that the obligation under Article 8, paragraphs 2 (b) and (d), of the Convention, implies that information provided about places of deprivation of liberty and particular persons held within such places should be accurate.**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Treatment of sex-offenders

1. Preliminary remarks

11. Until 30 years ago, surgical castration was an accepted medical intervention in several Council of Europe member States in the treatment of sex-offenders. For ethical reasons and due to doubts about its efficacy, the application of surgical castration for this purpose has been progressively abandoned in most States; however, the Czech Republic has continued to view surgical castration as an appropriate intervention for treating certain sex-offenders.

12. In order to examine the application of the measure of surgical castration in the Czech Republic, the CPT's delegation visited the Bohnice and Havlíčkův Brod Psychiatric Hospitals and Kuřim Prison. It also held interviews with sexologists and other officials involved in the treatment of sex offenders.

The delegation held interviews with 18 sentenced sex-offenders. Among the 18 inmates interviewed, nine persons had been surgically castrated. Of the remaining nine, three persons were in the preparatory stage for undergoing castration, including one to whom castration had been suggested by the treating sexologist and two whose applications had already been approved. Eight inmates were being administered libido-suppressant medication. In addition, members of the CPT's delegation examined 41 files concerning persons who had been surgically castrated in the last eleven years.

2. The nature of the intervention of surgical castration

13. In the Czech Republic, surgical castration of detained sex-offenders is effected by *testicular pulpectomy* ("surgical castration"). This intervention involves the removal of parts of the core of the testes[5] and aims at a permanent reduction of the testosterone level in order to diminish the sexual urges of the offender. The operation does not result in the testosterone level being reduced to zero as glands not affected by the intervention also produce testosterone[6].

14. Surgical castration is an irreversible intervention that always leads to infertility and, in the long run, a significantly increased risk of osteoporosis[7]; other known possible side-effects of the intervention are mental depression and an altered physical appearance, with diminished body hair, oily skin and the increased formation of breast tissue. At the same time, it should be noted that the primary result sought by surgical castration (i.e. to reduce the testosterone level) could be reversed by the administration of testosterone.

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5 As opposed to bilateral orchidectomy, whereby the testes are removed completely.

6 The establishments visited each appeared to have a different objective with respect to the required testosterone level; for example, below 10 nmol per litre of blood in Bohnice Psychiatric Hospital, compared to 12 nmol in Kuřim Prison.

7 At Bohnice Psychiatric Hospital, members of the delegation studied five files of patients castrated some 15 years previously; three of them had since developed osteopenia and one patient osteoporosis.

3. Legal context

a. Law on the care for the people's health

15. Surgical castration in the Czech Republic is regulated by Article 27a of the 1966 "Law on the care for the people's health". The relevant provisions of Article 27a state that surgical castration may only be carried out at the request of the person concerned and that an applicant must be properly advised about the intervention, including its possible side effects, prior to the submission of an application for surgical castration. Further, the operation should be approved by a panel of experts, consisting of a lawyer and at least two physicians specialising in the appropriate field, as well as two other medical doctors who may not be involved in the medical intervention.

16. In their response to the report on the 2006 visit, the Czech authorities indicated that the 1966 "Law on the care for the people's health" would be revised. The proposed draft provisions on the application of surgical castration were provided to the Committee. Contrary to the current Article 27a, the new provisions on surgical castration describe in some detail the target group for such an intervention[8]. Further, "to guarantee a professional and fair approach" the precise composition of the expert commission will be set out. The draft also explicitly states that an incapacitated patient may only be surgically castrated upon authorisation of his legal guardian, endorsement by the expert commission and approval by a court.

b. protective treatment

17. Surgical castration after a sexual offence usually takes place in the context of a measure of protective treatment. This penal measure has already been described in the CPT's report on the 2002 visit to the Czech Republic[9]. Nevertheless, it is helpful to recall its main features. Protective treatment constitutes mandatory hospitalisation in a psychiatric hospital for persons held to be partially or fully criminally irresponsible for their acts. As Czech law does not provide for a minimum severity threshold, protective treatment may be imposed for all types of offences, including those of a relatively minor or non-violent nature. Protective treatment often follows a prison sentence, but the measure may also be directly imposed by a court.

18. In the past, the CPT has criticised various aspects of the protective treatment measure: the absence of a regular review of involuntary admission for the purpose of protective treatment[10]; and the understanding of many health-care professionals and lawyers that a placement in a psychiatric hospital under Article 72 implies an authorisation to treat patients without their consent[11].

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8 "Castration may be performed on an adult male who is dangerous to the community due to his medically verified tendency to commit sex offences, or who suffers from sexually deviant tendencies, upon such a male's written application and upon an endorsement given by an expert commission."

9 See CPT/Inf (2004) 4, paragraph 105.

10 See CPT/Inf (2004) 4, paragraph 139.

11 See CPT/Inf (2007) 32, paragraph 129.

In response to the concerns raised in the CPT's 2006 visit report, the Czech authorities stated that the legal provisions regarding protective treatment would be amended. Indeed, in the course of the 2008 visit, the CPT's delegation was informed that on 1 January 2009 a new Article 72 of the Penal Code would enter into force. The revised Article 72 will limit the duration of a protective treatment measure to a maximum of two years. After this period, the patient will be discharged automatically, unless the competent court decides to prolong the measure by another two years. If the court assesses that a released patient continues to pose a risk to society, a discharge from protective treatment may be accompanied by a court-imposed supervision for a maximum duration of five years.

19. The new legislation would appear to meet some of the issues raised by the CPT in the past. However, it does not address the concern of the CPT that involuntary placement in a psychiatric hospital under criminal law provisions should not include an authorisation for health care staff to impose treatment options on such patients. Patients involuntarily placed in a psychiatric hospital should, as a matter of principle, be placed in a position to give their free and informed consent to treatment options. Every competent patient should be fully informed about the treatment that is intended to be prescribed and given the opportunity to refuse treatment options 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.

The CPT recommends that the Czech authorities review the relevant legislation in the light of the above remarks. In this context, the CPT would like to be informed about the impact of decree 385/2006 on "health care documentation", which entered into force on 1 April 2007[12], on the treatment of patients under protective treatment.

c. "Forensic detention" Act

20. The delegation learned that a new Act on "forensic detention" will enter into force on 1 January 2009. The Act allows for the long-term detention if "it cannot be expected that the imposed protective treatment would lead to sufficient protection of society in view of the character of the mental disorder and the possibilities of influencing the offender". Such persons will be placed in a specially built facility, under the responsibility of the Czech prison service, and their continued placement will be the subject of annual reviews.

It is of concern to this Committee that forensic detention may be of an indefinite nature. Forensic detention may amount to life-long incarceration, in particular, for those patients whose mental disorder cannot be adequately treated. Further, the CPT trusts that this legislation will not result in the Czech authorities providing less treatment, care and support to sexual offenders. **The CPT would like to be informed about the plans with respect to location, staffing and capacity of this new facility, as well as details on the placement criteria, the regime and the judicial safeguards afforded to the inmates.**

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[12] The decree describes in detail the information that all health care documents must contain. In addition to information relating to the nature of the medical intervention, the diagnosis and the medical staff involved, the decree states that the patient must give his consent to the intervention in writing. Such a written consent should contain the following elements: purpose, benefits, consequences and risks of medical intervention; information on the existence of alternatives to the proposed intervention; information about the expected potential secondary effects that the intervention may have in terms of a patient's way of life and ability to work (physical and mental capacity).

4. Main features of the treatment of sex-offenders

21. The treatment of sex-offenders sentenced to protective treatment is the responsibility of "sexologists" (i.e. qualified psychiatrists with a specialisation in the treatment of deviant sexual behaviour)[13], in association with nurses and psychologists. Treatment of persons on protective treatment usually takes place in a psychiatric hospital and, with one exception, Czech prisons do not offer treatment to sex-offenders. As a result, they may spend a considerable time in prison before receiving any treatment. For example, in the Havlíčkův Brod Psychiatric Hospital, the CPT's delegation met an inmate who had spent 19 years in prison before being transferred to a psychiatric hospital in order to start his treatment. The general absence of any treatment programmes for imprisoned sex-offenders is of great concern to the Committee. **The CPT recommends that the Czech authorities take the necessary steps to introduce programmes for the treatment of sex-offenders sentenced to protective treatment while they are held in prison.**

It is noteworthy that most of the sex-offenders interviewed by the delegation stated that they had suffered ill-treatment by other inmates while in prison. Further, they also claimed that, in general, prison officers would make no efforts to protect them and that some prison officers even participated in the ill-treatment. Such allegations lend further credence to the findings of the CPT's delegation at Valdice Prison in the course of both the 2006 and 2008 visits (see paragraph 47).

22. The one exception referred to above concerns Kuřim Prison, in the Brno region, which opened a specialised department for sex-offenders some 10 years ago. The department has a capacity of 45 places and offers a range of treatment, including the possibility of surgical castration. Nevertheless, as the CPT's delegation was told, there is an on-going discussion as to the level of treatment that should be offered by this department.

23. The treatment of deviant sexual behaviour was found to be well-structured in the establishments visited. In general, it followed a plan drawn up after an extensive diagnostic evaluation, based on interviews with the patient, the examination of written reports, such as police reports, a phallometric test[14], testimony from the victim and various psychological tests. However, the delegation also met with surgically castrated patients who had not undergone such an extensive diagnostic evaluation.

The treatment focuses on altering the offenders' system of sexual motivation in order to address the underlying sexual deviation; in particular, patients must go through a process of learning about human sexuality and its disorders. In such an approach, the offence is an expression of the sexual deviation; consequently, the precise nature of the offence is of lesser importance.

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13 To date, all sexologists have graduated from the Charles University Institute of Sexology in Prague. For two years, Brno University has also had an accredited specialisation in sexology.

14 A "phallometric" test measures the response of the penis to different erotic stimuli.

24. The treatment included psychotherapy, group therapy and pharmacological interventions. In Bohnice and Havlíčkův Brod Psychiatric Hospitals, patients could benefit from a progressive regime with increasing privileges; patients who demonstrated clear motivation could benefit from a period of leave of up to 72 hours relatively shortly after their initial placement.

25. Anti-androgens were commonly administered in the psychiatric hospitals visited[15]; at Kuřim Prison anti-androgens are only administered in the six months before transfer to a psychiatric hospital due to financial limitations.

The CPT's delegation did not examine in detail the administration of anti-androgens in the establishments visited. However, in general, the CPT considers that anti-androgen treatment should always be based on a thorough individual psychiatric and medical assessment and that such medication should be given on a purely voluntary basis. As should be the case before starting any medical treatment, the patient should be fully informed of all the potential effects and side effects and should be able to withdraw his consent and have his treatment discontinued at any time. Further, the administration of anti-androgens should be combined with psychotherapy and other forms of counselling in order to further reduce the risk of re-offending. Also, anti-androgen treatment should not be a general condition for the release of sex-offenders, but administered to selected individuals based on an individual assessment. **The CPT recommends that the administration of anti-androgen treatment to patients on protective treatment be reviewed, in the light of the above remarks.**

26. Limited financial resources, such as encountered in Kuřim Prison, also affected treatment in the other establishments visited. For instance, in Havlíčkův Brod Psychiatric Hospital, certain medication, although considered essential, could not be provided to patients[16].

27. In general, it would appear that sex-offenders in protective treatment receive in-patient treatment[17] for, on average, one year, followed by a lengthy period as an out-patient. Out-patients live outside the hospital, subject to certain rules; for example, they must report to a sexologist at specified intervals in order to be examined. If a patient does not comply with the set conditions, a court may decide to revoke the out-patient status and order re-hospitalisation.

After being surgically castrated, patients remain in the hospital as in-patients for a period of between six months and one year, in order to complete their therapeutic programme. Thereafter, most surgically castrated patients become out-patients. However, the CPT's delegation also met patients who had stayed in the hospital for several years after the operation or who had been placed in a social care home or another long term institutional care facility.

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15 In Bohnice Psychiatric Hospital, all but one patient in the sexology ward was administered anti-androgens, while in the Havlíčkův Brod Psychiatric Hospital all the patients in the sexology ward received anti-androgen treatment, with the exception of the patients who had been surgically castrated.

16 Amongst the medication considered necessary, but unavailable to patients for financial reasons were, for instance, Fosamax for limiting the progress of osteopenia, Decaptetyl as an alternative to Androcur, and aversive therapy for alcohol dependence.

17 Prague, Centre for Citizenship, Civil and Human Rights, *"Detention and Treatment of Sex Crime Offenders (in the Czech Republic)"*, page 17 (year unknown).

5. The practice of surgical castration in the Czech Republic

28. In spite of the invasive, irreversible and mutilating nature of surgical castration, there are only limited provisions regulating the application of surgical castration to sex-offenders under protective treatment. There are neither governmental rules[18] nor professional protocols[19] in place that provide guidance on issues such as target groups, psychiatric and criminological monitoring of patients, or medical follow-up.

29. Notwithstanding the absence of guidelines, protocols or other official documentation, the CPT's delegation was told by Czech sexologists and government officials that the application of surgical castration follows a consistent practice. Above all, it was stated that surgical castration was an exceptional measure and that the procedure contained in Article 27a of the 1966 "Law on the Care for People's Health" regulating its application was strictly adhered to. In particular, it was stressed that a patient should give his free and informed consent to surgical castration and that an expert commission should approve the application. Further, with respect to the target groups, the CPT's delegation was told by the sexologists with whom it met that surgical castration would not be offered to first-time offenders, unless they had committed the most serious of offences and all other forms of treatment had failed; nor would surgical castration be applied in prisons or to legally incapacitated persons. Further, it was suggested to the CPT's delegation on various occasions that scientific research provided strong support concerning the efficacy of surgical castration: in particular, various interlocutors reported very low, or even zero, re-offending rates amongst surgically castrated sex-offenders (see paragraph 41).

30. The facts found by the CPT's delegation during its visit to the Czech Republic suggest that the reality is different.

a. the procedure under Article 27a of the 1966 Law

31. As already mentioned above, Article 27a of the 1966 Law describes a two-stage procedure before the measure of surgical castration can be carried out: the first stage concerns the application, based on a request from the person concerned, to an expert commission; the second stage entails the approval of the application by this expert commission.

32. With respect to the application, the delegation's findings indicate that most sentenced sex offenders undergoing treatment became aware of the possibility of surgical castration by reading the sexology literature given to them. The CPT's delegation also noted that in a few cases surgical castration featured as an option in the opinion provided to the court by the experts who had examined their criminal liability, or had been transmitted orally by these experts in the course of the court process.

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18 At a meeting with the members of the CPT's delegation on 2 April 2008, officials from the Ministry of Health announced that a "best-practise"-manual with respect to surgical castration was to be compiled and published in the Ministry's official bulletin.

19 Apparently, the Czech sexological society has had the drafting of professional guidelines under consideration for a long time.

Nevertheless, the delegation met only two[20] sex-offenders sentenced to protective treatment who had put themselves forward spontaneously for surgical castration. The other patients interviewed indicated that the treating sexologist had suggested surgical castration, in several cases within a week of the patient's admission to hospital[21].

33. Once the patient had expressed an interest in undergoing surgical castration, more information on the operation and its consequences was provided. However, the quality of such information varied depending on the establishments visited and even from patient to patient. One surgically castrated person told the delegation that he had not been made aware of the deleterious effect that surgical castration could have on his bone structure. Several patients who had undergone surgical castration told the CPT's delegation that they would never have applied for surgical castration had they been properly informed.

In Bohnice Psychiatric Hospital, the information on surgical castration provided to a patient consisted of scientific literature in Czech, German and English. The delegation was told that if patients could not understand the written material, staff would assist them. When asked why there was no leaflet with clear and concise information about the operation and its side effects, the sexologist in charge of the sexology department admitted that the absence of such a leaflet was indeed an unfortunate omission.

At Kuřim Prison, the scientific literature said to be made available to patients could not be provided to the CPT's delegation. Some inmates complained that they had received no information whatsoever before their application, and that it was only after they had received approval to undergo the operation that contact with the outside world had made them aware of the effects and side-effects of the intervention.

At Havlíčkův Brod Psychiatric Hospital, some of the interviewed patients mentioned that they were given a leaflet containing information about the intervention, but the delegation was not able to verify the quality of the information as staff could not provide the delegation with a copy of the information provided to patients.

34. Patients are encouraged to supplement the information provided by the hospital with additional information obtained via family members or by means of a second opinion. The CPT's delegation learned that most patients discussed surgical castration with their partners and family members, but that a second opinion was never obtained in practice.

35. The patients who had requested surgical castration provided various reasons for accepting or initiating the operation. In practically all the cases, these patients indicated that their application was at least partially instigated by fear of long-term detention. Some patients claimed that the treating sexologist had explicitly told them that surgical castration was the only available option to them and that refusal would mean lifelong detention. In this respect, some of the sexologists interviewed by the delegation themselves affirmed that for certain patients there was no alternative treatment to surgical castration.

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20 One patient in Kuřim Prison and one patient in Havlíčkův Brod Psychiatric Hospital.

21 One interviewed patient, a first-time offender, told the CPT's delegation that surgical castration was suggested by the court-appointed expert in the context of a psychiatric assessment for his trial; at the time he was in a remand prison.

Patients who opt for surgical castration may decide at any moment not to go through with the operation, even after the expert commission has endorsed their application[22]. Such patients would continue to benefit from the general treatment on offer.

36. With respect to the approval by the expert commission, the CPT noted that the commission of the Na Bulovce Hospital in Prague appeared not to comply with the legal requirements laid down in the 1966 Act, as there was no lawyer amongst its membership. It is also of concern that in many of the files examined, the treating sexologist was also a member of the expert commission and, in certain cases, even its chairperson; this is scarcely compatible with an objective review procedure.

Further, the procedural role of the expert commission differed significantly in respect of each hospital. For instance, in Havlíčkův Brod, applicants were interviewed for about 30 minutes and were given the opportunity to ask questions. By contrast, in Prague the applicant would not even appear before the commission in person. It is also noteworthy that in an interview with the CPT's delegation, members of the Prague commission declared themselves to be technically incompetent to assess whether or not surgical castration was advisable in a particular case. In Brno, for some applications the commission seemed to be primarily interested in verifying the consent of the applicant, while for other applications a more comprehensive review was carried out. Further, in Havlíčkův Brod, a second opinion was obtained with respect to all patients, which was neither the case in Prague nor in Brno.

37. In response to questions asked by the delegation at the outset of the visit, the Czech authorities reported that expert commissions would rarely reject an application for surgical castration; indeed, the Ministry of Health had knowledge of only one case where approval to undergo surgical castration had not been granted[23].

b. target group

38. The numbers of persons who have actually been subjected to surgical castration is difficult to verify with precision, given the apparent lack of comprehensive statistical data kept. However, while surgical castration does not appear to be a frequent measure, it is hard to maintain that the intervention is rare. At the end-of-visit talks on 2 April 2008, the First Deputy Minister for Health affirmed to the CPT's delegation that in the last ten years 94 sex-offenders sentenced to protective treatment had undergone surgical castration. This would indicate that in the Czech Republic surgical castration is a regularly used option in the treatment of sex-offenders sentenced to protective treatment.

39. As to the target group, the facts found did not tally with what the CPT's delegation had been told (see paragraph 29). Surgical castration was not only applied exclusively to sexual re-offenders but also to first-time offenders who had committed very serious offences, in respect of whom all other forms of treatment had failed. Neither was it the case that surgical castration would not be applied in prisons or to legally incapacitated persons.

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22 The delegation met two patients, and was informed of a third person, in this position.

23 The delegation learnt of two cases in which the Havlíčkův Brod commission indefinitely "suspended" the approval procedure after one or more members expressed doubts about the application; these could be considered as **de facto** refusals.

40. The CPT's delegation met, or studied the files of, first-time offenders who had undergone surgical castration or who were being processed with that objective in mind. Some of these first-time offenders had committed offences that were non-violent, such as repeated exhibitionism[24]. Moreover, some of them had not even been offered other forms of treatment prior to surgical castration. Overall, in about 50% of the cases examined, surgical castration was carried out after a non-violent offence; some of these patients had been diagnosed with pathological sexual aggression or sadism, but nearly as many were diagnosed as non-violent.

Further, in at least five cases, legally incapacitated offenders were surgically castrated. In all of these instances, the court-appointed guardian had signed the consent form; in two cases, the guardians were mayors of municipalities. In this respect, it is of particular concern to the CPT that an analysis of the material collected by its delegation shows that a considerable number of the surgically castrated offenders suffered from significant mental retardation.

The delegation also found that sex-offenders sentenced to protective treatment and placed in the Kuřim Prison sexology department could apply for surgical castration to be carried out in Pankrać Prison Hospital. Since the opening of the department, two prisoners had undergone surgical castration there, and for two other prisoners the intervention had been approved by the Brno expert commission, but had not been carried out.

c. scientific back-up

41. In discussions with Czech government officials and leading sexologists, it transpired that the reportedly low re-offending rate of surgically castrated sexual offenders formed a cornerstone for the application of the intervention. In the course of the visit, the CPT's delegation was made familiar with the results of four Czech studies that, inter alia, looked at re-offending of surgically castrated sexual offenders. Two of these studies suggest a zero re-offending rate[25] and the other studies reported that castrated sex-offenders who re-offended committed less serious crimes of a sexual nature[26]. As a principle, measures taken to counter re-offending should never be based on efficacy alone. A narrow focus on lowering re-offence rates may open the door for serious human rights abuse. Further, the establishment of a valid conclusion as regards re-offending rates (based on re-conviction data or self-reporting) is notoriously troublesome from a methodological point of view. For example, in the course of its visit to the Czech Republic, the Committee's delegation came across three cases in which sex offenders had committed serious sex related crimes, including serial rape and attempted murder, after they had been surgically castrated.

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[24] For this reason, the frequently heard claim that the only alternative for this category of patients was life-long imprisonment is hardly convincing.

[25] Tauě and Sušioká (1973) and Zimanová, Fuka, Weiss and Hubálek (1988), as quoted in 'Přináší terapeutická kastrace prospěch žadatelům o zákrok?', Brichcín and Kolářský (2006).

[26] Zvěřina, Zimanová and Bártová (1991), as quoted in Brichcín and Kolářský (2006); Brichcín and Kolářský (2006).

6. Conclusion

42. In the Czech Republic, the treatment of sex-offenders under protective treatment is a system developed and carried out by dedicated professionals. The treatment follows treatment plans, which are based on an extensive diagnostic evaluation, and can include psychotherapy.

43. However, the CPT is firmly opposed to one aspect of the treatment of sex-offenders in the Czech Republic, namely the application of surgical castration. The CPT's objections to the use of surgical castration as a means of treatment of sex-offenders are manifold. Firstly, it is an intervention that has irreversible physical effects, and direct or indirect mental health consequences. Further, there is no guarantee that the result sought (i.e. lowering of the testosterone level) is lasting.

As regards re-offending rates, the claimed positive effects are not based on sound scientific evaluation. In any event, the legitimate goal of lowering re-offending rates must be counterbalanced by ethical considerations linked to the fundamental rights of an individual. Surgical castration is not in conformity with recognised international standards, and more specifically, is not mentioned in the authoritative "Standards of care for the Treatment of Adult Sex Offenders" drawn up by the International Association for the Treatment of Sex Offenders (IATSO); attempts by leading Czech sexologists to include the intervention in the guidelines have failed. This clearly indicates that surgical castration is no longer a generally accepted medical intervention in the treatment of sex-offenders.

Moreover, given the context in which the intervention is offered, it is questionable whether consent to the option of surgical castration will always be truly free and informed. As was found during the visit, a situation can easily arise whereby patients or prisoners acquiesce rather than consent, believing that it is the only available option to them to avoid indefinite confinement. Irreversible medical interventions should never be carried out on prisoners and other detained persons, unless there is a clear medical necessity.

When these fundamental objections are combined with the fact that effective alternative therapies for the treatment of sex-offenders are currently available, the case against surgical castration becomes overwhelming.

44. Surgical castration is a mutilating, irreversible intervention and cannot be considered as a medical necessity in the context of the treatment of sex-offenders. The intervention removes a person's ability to procreate and has serious physical and mental consequences.

In the CPT's view, surgical castration of detained sex-offenders amounts to degrading treatment**.**

To sum up, **the CPT calls upon the Czech authorities to bring to an immediate end the application of surgical castration in the context of treatment of sex-offenders.**

B. Section E of Valdice Prison

1. Preliminary remarks

45. Section E is a special stand-alone unit which, at the time of the visit accommodated sixteen persons sentenced to life-imprisonment and 19 "dangerous" and/or "troublesome" high-security prisoners, for an overall capacity of 48.

The unit contains four floors: exercise and work activities take place in the basement; visits and consultations with staff and medical practitioners occur on the ground floor; persons sentenced to life-imprisonment are each allocated a cell on the first floor; and high-security prisoners are accommodated in cells, some of which are double-occupancy, on the second floor. In addition, staff have offices on each floor and two confinement cells are located on the ground floor.

2. Ill-treatment

46. The CPT's delegation received a specific allegation of staff disbursing pepper spray into the cell of a particular prisoner, through the barred inner gate of the cell. On one occasion, the spray was apparently aimed directly at the prisoner's head and he attempted to protect himself by placing a T-shirt over his head. Further, the prisoner in question alleged that no action was taken to alleviate the effects of the spray after its use. The prisoner told the delegation that he believed the reason for the use of the spray was linked to a complaint he had filed with the Czech Helsinki Committee.

There can be no justification for the use of pepper spray against a single prisoner locked in his cell. Pepper spray is a potentially dangerous substance and should not be used in confined spaces. Further, if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered measures of relief. Pepper spray should never be deployed against a prisoner who has already been brought under control. Further, it should not form part of the standard equipment of a prison officer.

The CPT recommends that the Czech authorities draw up a clear directive governing the use of pepper spray, which should include, as a minimum:

- **clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;**
- **the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered measures of relief;**
- **information regarding the qualifications, training and skills of staff members authorised to use pepper spray;**
- **an adequate reporting and inspection mechanism with respect to the use of pepper spray.**

47. In its report on the 2006 visit, the CPT stated that there was a clear atmosphere of intimidation and dread within Section E of Valdice Prison, characterised by a reluctance to complain for fear of being sent to a confinement cell or of being deprived of a privilege or an activity, or even of being placed in a cell where a prisoner might be at risk of sexual abuse. From the information gathered in the course of the 2008 visit, the CPT remains concerned that prisoners who make complaints about their treatment are at risk of being punished by staff.

Further, inter-prisoner intimidation/violence would appear to remain a significant phenomenon in Section E (and most probably also in Section D) of Valdice Prison. The delegation was able to document two recent cases of prisoners who had repeatedly been physically and sexually abused by other prisoners in Section E. Even when a vulnerable prisoner agrees to be placed in a cell with a known abusive prisoner, in the knowledge that he will have to provide fellatio and other sexual favours in return for cigarettes or coffee, such a placement, in the CPT's view, amounts to inhuman or degrading treatment.

Moreover, as was the case in 2006, the delegation was concerned that vulnerable prisoners who had suffered physical abuse and rape while in Section D of Valdice Prison were, subsequently, transferred to Section E because they were perceived as being "troublesome" prisoners. Further, it appeared that these prisoners were often accommodated in the same cell as persons who were known to have perpetrated acts of violence and/or rape on other prisoners. An examination of the records and interviews with prisoners confirmed these findings.

The CPT is concerned that despite the findings presented in its report on the 2006 visit, no action has been taken subsequently to tackle the problem of physical (including sexual) abuse of vulnerable prisoners. The same reasons for prisoners not complaining in 2006 remain valid in 2008: prisoners who complain are punished; the presence of one or two prison officers during medical examinations is common practice which, combined with the general climate of fear, does not permit the establishment of trust between the doctor and a prisoner.

This continuing situation is unacceptable.

48. The CPT has stressed in the past that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The CPT has taken note of Ministry of Justice Regulation 82/2006 on the prevention and timely detection of violence between prisoners, which entered into force on 1 December 2006 and replaced Instruction No. 41 of 9 September 2002.

However, from the delegation's findings, it is evident that Regulation 82/2006 is not being applied effectively in Valdice Prison. Clearly, there is a need to ensure that the individual risk and needs assessment is rigorous and comprehensive. Further, prison officers, as well as specialist staff, should possess the appropriate skills and knowledge to identify situations which might place vulnerable prisoners in harm's way and, thereafter, to be in a position to take the necessary action, including placing a prisoner in a safer environment.

49. In the light of the above remarks**, the CPT recommends that the Czech authorities institute a review of the application of Regulation 82/2006 in Valdice Prison, to ensure that it is effectively implemented. This should include staff being able to identify perpetrators of violent acts against other prisoners and to recognise when vulnerable prisoners might be seeking help through actions that are contrary to the internal prison rules.**

The Committee also recommends that the Czech authorities make it clear to all prison officers and managers that placing a vulnerable prisoner in a cell where he is at risk of being physically and/or sexually abused, either knowingly or when they ought to have known of the risk, is tantamount to inhuman and degrading treatment and will be dealt with accordingly.

3. Persons sentenced to life-imprisonment

a. introduction

50. The legal basis regulating how persons sentenced to life imprisonment should be treated has not changed since the 2006 visit[27]. In its report on that visit, the CPT argued that the placement of persons sentenced to life imprisonment should be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence. It also made reference to the principles contained in the Council of Europe's Committee of Ministers' Recommendation (2003) 23, on the "management by prison administrations of life-sentence and other long-term prisoners" of 9 October 2003.

In their response, the Czech authorities stated that further steps towards integrating life-sentenced prisoners into the general population would be taken. More specifically, the CPT was informed that an amendment to the Confinement Act (No. 169/1999) would be prepared in the course of 2007 to permit the visits and outdoor exercise of this category of prisoner to be conducted together with other inmates[28]. Regrettably, no such amendment has been adopted.

The CPT recommends that the Czech authorities take steps to amend the Confinement Act and other prison regulations, in the light of the above remarks, with a view to integrating life-sentenced prisoners progressively into the general prison population as soon as possible.

b. regime and treatment

51. The delegation found that there has been no improvement in the regime offered to life-sentenced prisoners since the visit in 2006[29]. Only six prisoners were offered the possibility of work, making envelopes for four hours a day, five days a week. Additional efforts should be made to ensure that meaningful work can be offered to all persons sentenced to life imprisonment.

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27 See CPT/Inf (2007) 32, paragraph 41.
28 See CPT/Inf (2007) 33, page 20.
29 See CPT/Inf (2007) 32, paragraphs 43 to 47.

52. In their response to the CPT's report on the 2006 visit, the Czech authorities stated that prisoners who did not work had the opportunity to spend seven hours a day in out-of-cell activities. The CPT's delegation found, once again, that this was not the case in Section E[30]. Life-sentenced prisoners who did not work continued to spend 21 hours or more per day locked up alone in their cells. They were limited to one to two hours of outdoor exercise per day and the possibility of one hour of sport and one hour of cultural activity (board games) several times a week; they could also play games on a computer for one hour a week. But there were no organised activities of any kind. Nor were any educational activities provided; one prisoner was provided with a tape-recorder for two hours twice a week to listen to the language tapes he had bought himself. It should also be noted that all activities (work, sport, cultural) took place in small cell-like rooms which remained unused for the greater part of the day.

Further, the current provision for outdoor exercise in small box-like cubicles remains inadequate; no progress has been made to convert the derelict walking spaces into decent-sized exercise yards. In this respect, **the CPT would like to be informed about the timetable for renovating the exercise area.**

53. Despite claims by the authorities to the contrary, there remains a systematic practice that no more than two (occasionally three) life-sentenced prisoners can ever associate together. Such prisoners are also not permitted to associate with other categories of prisoner within Valdice Prison. In this connection, the CPT wishes to re-emphasise that life-sentenced prisoners are not necessarily more dangerous than other prisoners; many of them have a long-term interest in a stable and conflict-free environment. Therefore, the approach to the management of life-sentenced prisoners (as indeed for all prisoners) should proceed from individual risk and needs assessment to allowing decisions concerning security, including the degree of contact with others, to be made on a case-by-case basis.

54. The concerns identified by the CPT in its report on the 2006 visit about the role of the educators and pedagogues persist. Their approach continues to be based on one of security and control rather than on developing a sense of responsibility and autonomy among the prisoners. There was no proactive approach by educators to engage with the prisoners, and when they did meet, the contact always occurred on opposite sides of a metal grille.

The sentence management plans and the six-monthly reviews appeared to be merely formalistic procedures rather than dynamic tools for building positive relations between staff and prisoners, or for developing meaningful programmes to assist the progress of prisoners. Prisoners met by the delegation had little idea of what activities were available and, as far they were concerned, fulfilling the sentence plan meant not complaining and obeying the rules.

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[30] In fact, an analysis of the level of staff and of the time allocated for activities indicated that it was not possible for prisoners to spend more than a few hours in out-of-cell activities every day, even if they signed up to every activity offered.

The main objective for life-sentenced prisoners was to be placed in classification group one[31], which in turn allowed them to qualify for conditional release or the possibility to be sent to a lower-security prison. In order to progress to group one, prisoners had to obtain positive six-monthly assessments. However, it appeared that such assessments were drawn up without any consultation with the prisoner; all inmates met by the delegation stated that the educator had merely handed the assessment through the bars of the inner-gate of the cell for them to read and sign, with no discussion of its content.

Further, the CPT has serious misgivings about the objectives and content of the sentence management plans. The programmes on offer do not appear to have a clear purpose other than to ensure order in the unit. Most of the other key objectives cannot, in any case, be met because there are no courses or programmes to assist prisoners to fulfil them (no work, no organised activities, little scope for developing hobbies, minimal provision for contact with the outside world, etc.).

55. As the CPT has stated in previous visit reports, life-sentenced prisoners should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release[32].

The CPT reiterates its recommendation that the regime applicable to persons held in Valdice Prison who are sentenced to life imprisonment be fundamentally reviewed, in the light of the above remarks; the regime to be applied should include a significant out-of-cell activity programme, drawn up in consultation with the prisoners, which is both purposeful and varied.

Further, **the CPT wishes to re-emphasise that it can see no justification for systematically keeping such persons apart from other sentenced prisoners or for limiting association to only one or two other inmates.**

In addition, **with reference to the classification system for life-sentenced prisoners, the Committee reiterates its recommendation that the Czech authorities put in place transparent procedures that enable prisoners to clearly identify the action and behaviour required of them in order to qualify for placement within a group with more favourable conditions.**

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31 Persons sentenced to life imprisonment are classified into three groups, with all prisoners starting off in group three. Section E usually holds life-sentenced prisoners in groups three and two. The advantages associated with progression from group three to group two are minimal (for example, an additional hour of television or permission to play on a playstation and computer games in the computer room). Although there is no strict timetable, it normally takes at least five years to progress from group three to group two and even longer to progress to group one. It is understood by prisoners that, if they are to have a realistic possibility of benefiting from conditional release or transfer to a lower-security prison, they must be in group one.

32 See also Rule 103.8 of the Revised European Prison Rules of 2006.

4. High-security prisoners

56. As already indicated, Section E was accommodating 19 high-security prisoners deemed to be "troublesome" or "dangerous". The majority of these prisoners had come from other accommodation blocks of Valdice Prison and were placed in Section E upon the authorisation of the Deputy Director General of the Prison Service, following a proposal from the prison. However, it was also possible for a prisoner to be sent to Section E from another prison or directly from the court.

57. The Committee has already stated that it does not doubt that there may be a need to provide a more secure setting for prisoners whose particularly violent behaviour represents a threat to staff and other prisoners. However, the Committee is concerned that Section E is limited to providing a secure setting, with no clear objectives on how to support prisoners placed in the unit. The operational management of Section E has been left with too much freedom for determining how to interpret the existing regulations, and they have put the emphasis wholly on containment. The result is a unit operating along an "end of the line" vision; an approach that runs counter to the fundamental principles laid down in the Confinement Act (which require efforts to be made to prepare a prisoner to reintegrate into society and to lead a "self-sufficient law-abiding life"), and Regulation 55/2007 concerning Reinforced Structural and Technical Security Wards.

In the CPT's view, there should be a proactive positive process designed to address the prisoner's problems and permit his return to the mainstream prison population. Further, it is essential for the management of prisoners whose personality or behaviour is likely to mean that they will spend considerable periods of time in conditions of high security or control, that decisions reached about their management are not only fair but can be seen to be fair. The absence of such an approach is likely to result in an increased sense of grievance and descent into a vortex of deteriorating behaviour.

The CPT recommends that the Czech authorities initiate a comprehensive review:

- **to define more clearly the purpose of Section E (in terms of mission statement and vision);**
- **to set strategic and operational objectives for Section E and to ensure that the necessary resources are allocated to fulfil the redefined purpose;**
- **to ensure that all personnel who work in Section E are committed to the ethos of the unit, and are properly trained to work with challenging prisoners.**

58. The Committee continues to have grave misgivings concerning the way in which decisions are taken to place prisoners in Section E. In reviewing the files, the CPT's delegation noted once again that no reasoning was provided in the decisions by the Deputy Director General to approve the placement of certain prisoners in Section E.

Moreover, there was no formal process whereby prisoners could express their views about being placed in Section E; nor was there any possibility to appeal against their placement (apart from lodging a complaint with the Deputy Director General). In many cases, prisoners claimed that they had not been informed of the reasons for their placement or what they should do in order to qualify for return to normal prison accommodation. Further, as was the case for life-sentenced prisoners (see paragraph 54), the sentence management plans and the six-monthly reviews occurred without any clear criteria being established and excluded any proper consultation with the prisoner concerned. Indeed, it was often difficult to elucidate the true purpose of placement in Section E; this was illustrated by the fact that it accommodated a number of vulnerable prisoners who could scarcely be categorised as presenting a particularly high security risk.

The CPT recommends that the Czech authorities institute rigorous procedural safeguards prior to and during the placement of prisoners in Section E (including the possibility to appeal the placement), and that the Deputy Director General exercise greater oversight over such placements. Further, there should be a regular multi-disciplinary review of each placement and its purpose every three months.

59. As regards regime, the majority of prisoners were locked in their cells for up to 22 hours a day, with one or two hours of outdoor exercise every day and the possibility to go to the cells used for cultural activities (consisting of only a few limited board games) once a week. Most prisoners were not even permitted to sign up to do a work-out in the designated basement cells containing exercise equipment. Further, no work (apart from cleaning duties undertaken by a couple of prisoners for a few hours a week) or educational courses were available. Watching television inside one's cell was the main activity[33].

60. The CPT has stressed in previous reports that prisoners who present a particularly high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. Special efforts should be made to develop a good internal atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security and of staff safety.

The existence of a satisfactory programme of activities is just as important - if not more so - in a high-security unit as on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in the bubble-like atmosphere of such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature be provided for prisoners.

The Committee recommends that steps be taken to provide these prisoners with a purposeful regime, which includes a diverse range of activities, in the light of the above remarks.

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33 On the first day of its visit, an educator informed the delegation about a group activity that afternoon which turned out to be permission for all inmates in Section E to watch a football match on television in their cells.

5. Medical examinations

61. The CPT's delegation learned that medical examinations of prisoners in Section E continued to take place in the presence of one or two prison officers. Inmates alleged that the prison officers often made comments to them about their medical consultations. The CPT has stressed in previous reports that the routine presence of prison officers during medical examinations breaches the principle of medical confidentiality; in their response to the report on the 2006 visit, the Czech authorities indicated that action would be taken in 2007 to comply with CPT recommendations on this matter. **The CPT calls upon the Czech authorities to take the necessary steps to ensure that all medical examinations of life-sentenced and high-security prisoners be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.**

Further, the Committee also considers that consultations with the psychiatrist (or psychologist) should not take place, as happens at present, through a metal grille (in the same room used for visits) but in a room without physical barriers; this will permit the development of a proper doctor-patient relationship. **The CPT recommends that the Czech authorities take the necessary steps to ensure that such consultations take place in appropriate conditions.**

6. Other issues

62. The staff assigned to work with life-sentenced and high-security prisoners must be carefully chosen. They should be appropriately trained, possess highly developed communication skills and have genuine commitment to the exercise of their skills in a particularly challenging environment. The CPT's delegation observed that relations between staff and prisoners were not based upon a spirit of communication and assistance. Neither were measures taken to encourage direct contact (i.e. without grilles) between prisoners and the different categories of staff that had dealings with them. The CPT's delegation was particularly struck by the passivity of the educators whose primary task appeared to consist of delivering and picking up mail, or of ticking boxes in relation to activities that formed part of the sentence plan[34].

Further, there appeared to be no oversight of the running of Section E by senior prison managers. Neither the Governor nor his Deputy appeared to visit the unit regularly to talk with prisoners and staff. Management of Section E was left in the hands of the special pedagogue, who clearly did not tolerate any complaints by prisoners and who openly told the delegation that he did not believe in the rehabilitation of the prisoners under his responsibility.

The CPT reiterates its recommendation that the Czech authorities ensure that all members of staff assigned to work with life-sentenced and high security prisoners possess the appropriate skills and are provided with the necessary training and leadership to carry out their tasks professionally, including the ability to communicate with, and offer support to, the prisoners.

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[34] One prisoner told the delegation that he had received a negative assessment from an educator for not playing table tennis during his outdoor exercise period (given that this was one of his sentence plan objectives), regardless of the fact that he had been placed alone in the cubicle with the table.

Further, senior managers at Valdice Prison should be seen to be taking a more proactive stance in the management of Section E, by visiting it on a regular basis to talk with both staff and prisoners.

63. The CPT also remains concerned by the system of discipline administered by the staff of Section E, especially by the educators and pedagogues. The approach towards prisoners was based upon control and submission. Any perceived challenge to the established authority resulted in the prisoner being sent to the confinement cell, upon the decision of the educator.

The internal rules continue to permit educators to send prisoners to the confinement cells for up to seven days, with an appeal to the pedagogue. Thus, the disciplinary system remains largely internal to Section E; the formal measure of solitary confinement, which requires the Governor's authorisation, is very rarely imposed. Nevertheless, inmates can spend extended periods of time in the confinement cell. The Committee does not consider that adequate safeguards are in place to prevent an arbitrary use of the measure of placement in confinement, such as the right for prisoners to be heard on the subject of the offences it is alleged they have committed, and to appeal to a higher authority outside of Section E against any sanctions imposed. **The CPT reiterates its recommendation that the Czech authorities review the application of the disciplinary system in Section E**.

64. As to the use of handcuffs, the CPT's delegation observed that they were no longer applied systematically whenever prisoners were taken out of their cells. Instead, handcuffs were only applied for all out-of-cell movements taking place between 3 p.m. and 6 a.m., when there are only two or three prison officers on duty, and on the basis of an individual risk assessment. The Committee welcomes this development and **trusts it will be maintained.**

65. The material conditions in Section E were, as in 2006, satisfactory. However, the cells were still impersonal, and inmates could only keep an absolute minimum of personal belongings within their cells, and they were not allowed to decorate them (other than putting photos or other memorabilia on a small pin board). In line with the approach outlined above to develop personal autonomy and responsibility, **the CPT recommends that prisoners be permitted more scope to personalise their cells.**

66. The CPT has also stressed the importance of prisoners being able to maintain contacts with the outside world in order to reduce the negative effects of institutionalisation upon prisoners serving long sentences. Regrettably, there have been no improvements regarding family visits for life-sentenced prisoners. They continued to take place in a room where there was no possibility for physical contact (Plexiglas separation) or where the prisoner and visitor were separated by a grille.

Further, despite the Czech authorities' written response[35] that life-sentenced prisoners were allowed visits during weekends, the CPT's delegation found that, in fact, the prison management only permitted family visits on weekdays.

The delegation also learned about the difficulties associated with obtaining regular access to a telephone for prisoners in Section E, which resulted in few requests to make a call being made. **Efforts should be made to improve such access.**

The CPT recommends that visits under more open conditions (e.g. around a table) be introduced forthwith for all persons sentenced to life imprisonment, and that withholding such visits be based on an individual risk assessment. Further, the Czech authorities should take the necessary steps to ensure that family visits can take place at weekends.

35 See CPT/Inf (2007) 33, page 22

APPENDIX I

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

Cooperation received by the delegation

recommendations

- appropriate steps to be taken to ensure that effective access to medical files is guaranteed to the CPT's delegations in all institutions that the Committee visits, as required by Article 8, paragraph 2 (d), of the Convention (paragraph 9).

comments

- the obligation under Article 8, paragraphs 2 (b) and (d), of the Convention, implies that information provided about places of deprivation of liberty and particular persons held within such places should be accurate (paragraph 10).

- requests for information

  written confirmation of the steps taken to ensure that CPT's delegations have effective access to medical files (paragraph 9).

Treatment of sex-offenders

recommendations

- the legislation on protective treatment to be reviewed with respect to patients' consent to treatment, in the light of the remarks made in paragraph 19 (paragraph 19);

- the necessary steps to be taken to introduce programmes for the treatment of sex-offenders sentenced to protective treatment while they are held in prison (paragraph 21);

- the administration of anti-androgen treatment to patients on protective treatment to be reviewed, in the light of the remarks made in paragraph 25 (paragraph 25);

- the application of surgical castration in the context of the treatment of sex-offenders to end immediately (paragraph 44).

requests for information

- the impact of decree 385/2006 on "health care documentation", which entered into force on 1 April 2007, on the treatment of patients under protective treatment (paragraph 19);

- the plans with respect to location, staffing and capacity of the new facility for inmates placed in forensic detention, as well as details on the placement criteria, the regime and the judicial safeguards afforded to the inmates (paragraph 20).

Section E of Valdice Prison

Ill-treatment

recommendations

- a clear directive governing the use of pepper spray to be drawn up, which should include, as a minimum:
  - clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;
  - the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered measures of relief;
  - information regarding the qualifications, training and skills of staff members authorised to use pepper spray;
  - an adequate reporting and inspection mechanism with respect to the use of pepper spray (paragraph 46);

- a review be instituted of the application in Valdice Prison of Regulation 82/2006 on the prevention and timely detection of violence between prisoners, to ensure that it is effectively implemented. This should include staff being able to identify perpetrators of violent acts against other prisoners and to recognise when vulnerable prisoners might be seeking help through actions that are contrary to the internal prison rules (paragraph 49);

- the Czech authorities to make it clear to all prison officers and managers that placing a vulnerable prisoner in a cell where he is at risk of being physically and/or sexually abused, either knowingly or when they ought to have known of the risk, is tantamount to inhuman and degrading treatment and will be dealt with accordingly (paragraph 49).

Persons sentenced to life-imprisonment

recommendations

- steps to be taken to amend the Confinement Act and other prison regulations, in the light of the remarks made in paragraph 50, with a view to integrating life-sentenced prisoners progressively into the general prison population as soon as possible (paragraph 50);

- the regime applicable to persons held in Valdice Prison who are sentenced to life-imprisonment to be fundamentally reviewed; the regime to be applied should include a significant out-of-cell activity programme, drawn up in consultation with the prisoners, which is both purposeful and varied (paragraph 55);

- with reference to the classification system for life-sentenced prisoners, transparent procedures to be put in place that enable prisoners to clearly identify the action and behaviour required of them in order to qualify for placement within a group with more favourable conditions (paragraph 55).

comments

- the CPT can see no justification for systematically keeping life-sentenced prisoners apart from other sentenced prisoners or for limiting association to only one or two other inmates (paragraph 55).

requests for information

- the timetable for renovating the exercise area in Section E of Valdice Prison (paragraph 52).

High-security prisoners

- a comprehensive review to be initiated:
  - to define more clearly the purpose of Section E of Valdice Prison (in terms of mission statement and vision);
  - to set strategic and operational objectives for Section E and to ensure that the necessary resources are allocated to fulfil the redefined purpose;
  - to ensure that all personnel who work in Section E are committed to the ethos of the unit, and are properly trained to work with challenging prisoners (paragraph 57);

- rigorous procedural safeguards to be instituted prior to and during the placement of prisoners in Section E of Valdice Prison (including the possibility to appeal the placement), and the Deputy Director General to exercise greater oversight over such placements. Further, there should be a regular multi-disciplinary review of each placement and its purpose every three months (paragraph 58);

- steps to be taken to provide high-security prisoners accommodated in Section E of Valdice Prison with a purposeful regime, which includes a diverse range of activities, in the light of the remarks made in paragraph 60 (paragraph 60).

Medical examinations

recommendations

- the necessary steps to be taken to ensure that all medical examinations of life-sentenced and high-security prisoners are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 61);

- the necessary steps to be taken to ensure that consultations with the psychiatrist (or psychologist) take place in appropriate conditions (paragraph 61).

Other issues

recommendations

- the Czech authorities to ensure that all members of staff assigned to work with life-sentenced and high security prisoners possess the appropriate skills and are provided with the necessary training and leadership to carry out their tasks professionally, including the ability to communicate with, and offer support to, the prisoners (paragraph 62);

- the application of the disciplinary system in Section E of Valdice Prison to be reviewed (paragraph 63);

- prisoners in Section E of Valdice Prison to be permitted more scope to personalise their ells (paragraph 65);

- visits under more open conditions (e.g. around a table) to be introduced forthwith for all persons sentenced to life-imprisonment; the withholding of such visits should be based on an individual risk assessment (paragraph 66);

- the necessary steps to be taken to ensure that family visits can take place at weekends (paragraph 66).

comments

- senior managers at Valdice Prison should be seen to be taking a more proactive stance in the management of Section E, by visiting it on a regular basis to talk with both staff and prisoners (paragraph 62);

- the CPT trusts that the policy of applying handcuffs only on the basis of an individual risk assessment will be maintained (paragraph 64);

- efforts should be made to improve access to the telephone for prisoners in Section E (paragraph 66).

APPENDIX II

LIST OF THE NATIONAL AUTHORITIES AND OTHER PERSONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

Ministry of Health

Marek ŠNAJDR	First Deputy Minister
Markéta HELLEROVÁ	Deputy Minister for Health Care
David KOTRIS	Head of Legislative Department, Ministry of Health
Stanislava PÁNOVÁ	Director of Department of Health Services, Ministry of Health

Ministry of Justice

Martin MOULIS	Deputy Minister
Jaroslav GRUBER	First Deputy to the Director General of the Prison Service
Tomáš HOFFMAN	Legislative Department, Ministry of Justice
Milan HOSPODKA	Head of Department for remand and imprisonment, Prison Service
Tomáš PROCHÁZKA	Legislative Department, Ministry of Justice

Ministry for Human Rights

Dzamila STEHLIKOVA	Minister
Jana KOLÁČKOVÁ	Secretariat of the Government Commission for Human Rights and CPT liaison officer

Specialists in the treatment of sex-offenders

Slavoj BRICHCÍN	Psychiatrist, Bohnice Psychiatric Hospital
Václav FAIT	Psychiatrist, Dobřany Psychiatric Hospital
Martin HOLLÝ	Psychiatrist, Bohnice Psychiatric Hospital
Vladimír ŠUPINA	Dobřany Psychiatric Hospital
Jiří ŠVARC	Psychiatrist, Bohnice Psychiatric Hospital
Jiří TOMEČEK	Director, Horní Beřkovice Psychiatric Hospital
Petr WEISS	First Faculty of Medicine, Charles University
Jana ZIMANOVÁ	Psychiatrist, Horní Beřkovice Psychiatric Hospital
Vladislav ŽIŽKA	Director, Dobřany Psychiatric Hospital