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**Report to the United Nations Interim Administration in Kosovo (UNMIK) on the visit to Kosovo carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

**from 21 to 29 March 2007**

UNMIK has requested the publication of this report and of its response. The response of UNMIK is set out in document CPT/Inf (2009) 4.

Strasbourg, 20 January 2009

*All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

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**Copy of the letter transmitting the CPT's report**

Mr Joachim Rücker  
Special Representative of the Secretary-General  
of the United Nations in Kosovo  
UNMIK Headquarters  
PRISTINA - KOSOVO

Strasbourg, 25 July 2007

Dear Sir

In pursuance of Article 6, paragraph 1, of the Agreement signed on 23 August 2004 between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Kosovo from 21 to 29 March 2007. The report was adopted by the CPT at its 63<sup>rd</sup> meeting, held from 2 to 6 July 2007.

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 6 of the above-mentioned Agreement, the Committee requests UNMIK 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 UNMIK 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.

I am at your entire disposal if you have any questions concerning either the CPT's 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 3 of the Agreement signed on 23 August 2004 between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Agreement"; reproduced in Appendix III), a delegation of the CPT carried out a visit to Kosovo from 21 to 29 March 2007<sup>1</sup>.

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

- Mauro PALMA (President of the CPT, Head of Delegation)
- Andres LEHTMETS (2<sup>nd</sup> Vice-President of the CPT)
- Anna GAVRILOVA-ANCHEVA
- Roland MARQUET.

They were supported by the following members of the CPT's Secretariat:

- Fabrice KELLENS, Deputy Executive Secretary of the CPT
- Michael NEURAUTER, Head of Division

and assisted by:

- Eric DURAND, medical doctor, former Head of medical services at Fleury-Mérogis Prison, France (expert)
- Michael KELLETT, former Detective Chief Inspector in the Lancashire Constabulary, United Kingdom (expert)
- Rezija ČOLAKOVIĆ (interpreter)
- Blerim DERVISHI (interpreter)
- Ermal DIDA (interpreter)
- Leonora DOBROSHI (interpreter)
- Danica KRALJEVIC (interpreter)
- Glauk KRYEZIU (interpreter)
- Andrijana MILETIC (interpreter)
- Biljana OBRADOVIC-VULJNOVIC (interpreter)
- Mark RODIQI (interpreter).

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<sup>1</sup> The Agreement was implemented after arrangements had been made with NATO in July 2006, allowing the CPT to visit also places where persons may be deprived of their liberty by KFOR.

**B. Establishments visited**

3. The delegation visited the following places of detention:

Police establishments

- Deçan/Dečani Police Station
- Gjilan/Gnjilane Police Station
- Istog/Istok Police Station
- Mitrovica/Mitrovicë North Police Station
- Mitrovicë/Mitrovica South Police Station
- Pejë/Peć Police Station
- Prishtinë/Priština Police Station No. 1
- Prishtinë/Priština Police Station No. 2
- Viti/Vitina Police Station

Penitentiary establishments

- Dubrava Prison
- Lipjan/Lipljan Correctional Centre
- Gjilan/Gnjilane Detention Centre
- Mitrovica/Mitrovicë Detention Centre
- Pejë/Peć Detention Centre
- Prishtinë/Priština Detention Centre

Psychiatric/social welfare institutions

- Unit for Psychiatry and Neurology of Mitrovica/Mitrovicë Regional Hospital
- Psychiatric Clinic of Prishtinë/Priština University Hospital
- Shtime/Štimlje “Special Institute” (Institution for persons with mental disabilities and Integration Centre for Mental Health).

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

4. The CPT's delegation received very good co-operation throughout the visit both from UNMIK and the Provisional Institutions of Self-Government. In particular, the reception received at all places of deprivation of liberty visited, including those which had not been notified in advance, was very good, and the delegation had rapid access to all establishments and the information required to carry out its task.

5. In the course of the visit, the delegation held consultations with Mr Joachim RÜCKER, Special Representative of the Secretary-General of the United Nations in Kosovo (SRSG), Mr Steven P. SCHOOK, Principal Deputy SRSG, and representatives of the Provisional Institutions of Self-Government, including Messrs Sadik IDRIZ, Minister of Health, Ibrahim SELMANAJ, Minister of Labour and Social Welfare, Jonuz SALIHAI, Minister of Justice, and Blerim KUQI, Minister of Internal Affairs, as well as senior officials of UNMIK and the Provisional Institutions of Self-Government. It also met Mr Hilmi JASHARI, Acting Ombudsman of Kosovo, and representatives of various International Organisations and NGOs.

A list of all authorities, International and non-governmental organisations met by the delegation is set out in Appendix II to this report.

**D. Immediate observations under Article 4, paragraph 5, of the Agreement**

6. At the end-of-visit talks on 29 March 2007, the delegation made three immediate observations under Article 4, paragraph 5, of the Agreement:

The first immediate observation concerned the use of completely bare cells, such as cell No. 1 in Block 5 at Dubrava Prison, to hold, for periods of up to 48 hours, "agitated" prisoners. The delegation stressed that the above-mentioned cell at Dubrava Prison was, in its present state, totally unfit for use as accommodation for any prisoner and requested it to be immediately withdrawn from service (deadline: one month).

The second immediate observation was made in respect of cells found at Pejë/Peć Detention Centre (Block D), which measured less than 4 m<sup>2</sup> and the design of which was very similar, if not identical, to disciplinary cells. The delegation emphasised that such cells, by virtue of their size alone, were entirely unsuitable for use as prisoner accommodation and it requested that they be immediately withdrawn from service (deadline: one month).

The third immediate observation related to the total lack of outdoor exercise for patients in the forensic unit ("prison ward") at the Psychiatric Clinic of the University Hospital in Prishtinë/Priština. The delegation requested the relevant authorities to take immediate steps to ensure that all patients held in that unit are offered, if their state of health so permits, at least one hour of outdoor exercise every day (deadline: 15 June 2007).

The above-mentioned observations were confirmed in a letter dated 30 April 2007 addressed by the President of the CPT to the SRSG.

7. On 26 June 2007, UNMIK provided comments on various issues raised by the delegation at the end of the visit, including the above-mentioned immediate observations. This information has been taken into account in the relevant sections of the present report.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Police custody

#### 1. Preliminary remarks

8. The delegation visited a total of nine police stations in Kosovo, at: Deçan/Deçani; Gjilan/Gnjilane; Istog/Istok; Mitrovica/Mitrovicë North; Mitrovicë/Mitrovica South; Pejë/Peć; Prishtinë/Priština No. 1; Prishtinë/Priština No. 2; Viti/Vitina.

9. Under Section 212, paragraph 4, of the Provisional Criminal Procedure Code of Kosovo (PCPC)<sup>2</sup>, a person may be held in police custody for a period not exceeding 72 hours. In the case of juveniles, the maximum duration of police custody is limited to 24 hours (Section 63, paragraph 2, of the PCPC).

#### 2. Ill-treatment

10. In the course of the visit, the delegation received a number of allegations of physical ill-treatment of persons held by officers of the Kosovo Police Service (KPS) in police stations throughout Kosovo. Allegations of ill-treatment of varying degrees of severity were made by persons who had been held in the following police stations: Deçan/Deçani, Ferizaj/Uroševac, Graçanicë/Gračanica, Istog/Istok, Kaçanik/Kaçanik, Lipjan/Lipljan, Mitrovica/Mitrovicë North and South, Prishtinë/ Priština Nos. 1, 2, 3 and 4, Prizren, Skenderaj/Srbica and Viti/Vitina.

The allegations concerned, in the main, punches, slaps and kicks by KPS officers attempting to obtain confessions from criminal suspects being interviewed. In a few cases, the severity of the ill-treatment alleged was such that it could easily be described as torture (such as a mock execution or prolonged and severe beatings). Further, a number of detained persons alleged that KPS officers had exerted psychological pressure on them not to lodge a complaint regarding the ill-treatment sustained.

11. It is noteworthy that no allegations of ill-treatment were received in respect of international police officers (CIVPOL). On the other hand, a number of detained persons affirmed to the delegation that they had been ill-treated by KPS officers after international police officers had left the establishment. In some cases, the ill-treatment had allegedly immediately stopped when a CIVPOL officer arrived at the police station. In one case, a detained person met by the delegation claimed that, at Deçan/Deçani Police Station, a medical intervention by a doctor (i.e. stitching of the wound of the lips) was obstructed by a police officer, after he had been beaten and punched in the face by that officer. Only upon the intervention of an international police officer, who arrived later, was the doctor allegedly able to complete the medical intervention.

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<sup>2</sup> Promulgated by UNMIK Regulation No. 2003/26.

12. All the allegations received related to incidents which had occurred some weeks prior to the delegation's visit, and no signs of injury were visible. However, in at least two cases, photographs displaying lesions had been taken on admission of the persons concerned to Mitrovica/Mitrovicë and Prishtinë/Priština Detention Centres.

Further, the consultation of medical files by the delegation revealed signs consistent with allegations received.

**13. The CPT recommends that a formal statement emanating from the highest competent political authority be delivered to all KPS officers (including to officers of the criminal police), reminding them that they should be respectful of the rights of persons in their custody and that the ill-treatment of such persons will be the subject of severe sanctions. They should also be reminded that no more force than is strictly necessary is to be used when apprehending a person.**

**Further, appropriate steps should be taken to ensure that persons who may have been victims of ill-treatment by police officers are effectively able to lodge a formal complaint.**

14. One of the most effective means of preventing ill-treatment by police officers lies in the diligent examination by the competent authorities of all relevant information regarding alleged ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint; failing to do so will contribute to creating a climate of impunity. In this connection, judges and prosecutors are in a particularly crucial position.

It is a matter of concern that several detained persons met by the delegation indicated that they had sustained visible injuries from police ill-treatment and that they had mentioned to the judge the cause for these injuries. However, no action whatsoever had allegedly been taken by the judge in these cases. Some persons also claimed that they had not dared to inform the judge of the ill-treatment sustained, since the police officer who had inflicted the injuries had been present during the court hearing.

**The CPT recommends the relevant authorities to ensure that, whenever an apprehended person brought before a prosecutor or judge alleges ill-treatment by the police, those allegations are recorded in writing, a forensic medical examination is immediately ordered, and the necessary steps are taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor or judge should request a forensic medical examination whenever there are other grounds (e.g. visible injuries; a person's general appearance or demeanour) to believe that ill-treatment may have occurred.**

**Further, the Committee recommends that appropriate steps be taken to ensure that prosecutors/judges conduct proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated.**

15. The CPT wishes to emphasise the crucial role doctors can play in the prevention of ill-treatment, especially in the context of the medical screening conducted upon admission to a remand detention facility, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities. However, the delegation observed a number of shortcomings in this regard in various detention centres visited<sup>3</sup>. In this connection, **reference is made to the remarks and recommendations made in paragraphs 91 to 95.**

16. It is axiomatic that all complaints of ill-treatment by police officers must be the subject of an effective investigation leading, where appropriate, to the imposition of a suitable sanction. This will have a very strong dissuasive effect.

The CPT welcomes the fact that the Kosovo Police Inspectorate<sup>4</sup> (KPI), which was established in 2006, will shortly be fully operational (with a staff complement of 50 posts). Thus, a comprehensive mechanism will be in place for monitoring the police. The KPI will be entrusted, among other things, to investigate complaints of serious police misconduct and to carry out criminal investigations into such complaints under the guidance of prosecutors, while the Professional Standards Unit (PSU) will remain responsible for the investigation of minor offences.

**The CPT would like to receive an account of all complaints of police ill-treatment received by the KPI in 2007 and the outcome of the relevant disciplinary and/or criminal proceedings (allegations, brief descriptions of the findings of the relevant court or body, verdict, sentence/sanction imposed).**

17. The inspection of police detention facilities by an independent authority can also make an important contribution towards the prevention of ill-treatment of persons held by the police, and more generally, help to improve, if necessary, conditions of detention. To be fully effective, visits by such an authority should be both frequent and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of detained persons: the recording of detention; information provided to detained persons on their rights and the actual exercise of those rights (in particular the three rights referred to in paragraph 21); compliance with rules governing the questioning of criminal suspects; and material conditions of detention.

18. Inspections of police facilities were being carried out on a regular basis by various bodies. The KPI conducts both ordinary<sup>5</sup> and extraordinary<sup>6</sup> inspections. Inspections of police detention facilities were also carried out by the Ombudsperson of Kosovo. In addition, conditions of detention in police detention facilities were monitored by the OSCE<sup>7</sup>.

**The CPT would like to receive detailed information on any ordinary or extraordinary inspections carried out by the KPI since April 2007 (objectives, conclusions, etc.).**

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<sup>3</sup> By way of example, at the Prishtinë/Priština Detention Centre, no injuries at all were recorded in the medical file of a detainee upon admission, while a photograph taken upon admission was found in the administrative file, displaying clearly visible bruises around the eye.

<sup>4</sup> According to Section 9, paragraphs 2 and 3, of UNMIK Regulation No. 2005/54 on the Framework and Guiding Principles of the Kosovo Police Service, the KPI is an executive agency within the Ministry of Internal Affairs and is entirely independent of the KPS.

<sup>5</sup> Thus far, the KPI has carried out four ordinary inspections. The last inspection took place in October 2006 and focused on the "KPS arrest and detention management performance".

<sup>6</sup> Most recently, an extraordinary inspection was carried by the KPI in February 2007, in order to assess the conduct of the KPS during the civil disturbances in Prishtinë/Priština on 10 February 2007.

<sup>7</sup> "The Holding Cell Report: A Reassessment", Department of Human Rights and Rule of Law (Nov. 2005).

19. Finally, the CPT would like to refer to a serious incident, involving formed police units (FPU) of the KPS and CIVPOL, as well as NATO Mobile Support Units (MSU). During a violent demonstration on 10 February 2007 in Prishtinë/Priština, tear gas canisters and rubber bullets were discharged towards a crowd of demonstrators who were trying to approach Government buildings. Reportedly, two demonstrators were killed, several seriously injured and many of them detained.

Shortly afterwards, a task force was set up to carry out an investigation into the above-mentioned incident. In addition, on 14 February 2007, the SRSG appointed a special investigating prosecutor, Mr Robert L. Dean, to supervise an “independent inquiry into the circumstances of the two deaths which resulted from the police action”. The specially assigned investigating prosecutor and the task force dedicated their inquiry into reconstructing how and why two protestors were killed and others seriously wounded, whether such actions were justified and avoidable, whether the evidence supported criminal charges for the shootings against any individual, and to provide guidance for future police operations. In addition, Prosecutor Dean examined the prevailing standards for the proper usage and deployment of rubber bullets by police in exercising crowd control functions and the operational planning and decision making process by UNMIK Police on 10 February 2007.

In the course of the visit, the delegation had fruitful consultations with the Special Prosecutor, as well as with the CIVPOL Deputy Police Commissioner for Operations and the Director for Operations. On this occasion, the delegation was provided with detailed information concerning some specific issues (UNMIK Police Policy and Procedure; assets; training; the characteristics of tear gas and rubber bullets for each of the FPU’s involved, etc.). The CPT also took note of the interim report on the investigation made available by the Prosecution Office on 16 April 2007.

20. On 4 July 2007, the CPT received a copy of the Second Report of the Special Prosecutor to the SRSG regarding the deaths and serious wounding of protestors during the 10 February 2007 demonstrations in Prishtinë/Priština (dated 29 June 2007). Unlike the April Report, the June Report is not aiming at an assessment of criminal responsibility, but at “a review of the prevailing law and an assessment and critique of practices and procedures employed by the UNMIK police in planning and carrying out the police functions prior to and during the 10 February protests”. The report concluded that “it was the improper deployment of the rubber bullets by at least one and perhaps two Romanian FPU gunners that was the direct and proximate cause of the unnecessary and unjustified deaths inflicted that day”. It also contains a list of factors which appeared to have contributed to the fatal incident<sup>8</sup>.

**The CPT would like to be informed of the concrete measures taken by the relevant authorities in the light of the above-mentioned investigations, with a view to preventing similar incidents from occurring in the future.**

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<sup>8</sup> In particular, (1) the legal environment of contributing nations (there is a divergence between Romanian domestic law and generally accepted international law and guiding UN principles on the use of deadly force and very possible on the use of rubber bullets); (2) obsolete ammunition (the ammunition used by FPU Romania was outdated by 13 years); (3) an ambiguity of operational order; (4) a breakdown in chain of command; (5) a breakdown in supervision; and (6) an ambiguity and imprecision in authorization to deploy rubber bullets.

### 3. Safeguards

21. The CPT attaches great importance to three fundamental safeguards against ill-treatment for persons deprived of their liberty by the police, namely the right to notify a family member or another third person of the fact of detention, the right of access to a lawyer and the right of access to a doctor. These rights should apply from the very outset of deprivation of liberty, in other words, as from the moment when the person concerned is obliged to remain with the police. These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons deprived of their liberty (e.g. persons placed in administrative detention, persons detained under aliens legislation, etc.). Furthermore, persons detained by the police should be expressly informed, without delay and in a language they understand, of all their rights, including those referred to above.

22. In Kosovo, the above-mentioned rights all apply, in principle, from the very moment a person has been deprived of his/her liberty<sup>9</sup>. However, the implementation in practice of these rights was not always satisfactory, in particular, as regards the right of detained persons to have access to a lawyer.

23. The right of notification of custody is set out in Section 14, paragraphs 1 and 3<sup>10</sup>, and Section 215, paragraph 1<sup>11</sup>, of the PCPC. The information gathered during the visit from interviews with detained persons and the consultation of individual files would suggest that this right was generally well respected (including in the case of juveniles, where the notification of custody to the legal representative or the Centre for Social Work is mandatory<sup>12</sup>).

According to Section 215, paragraph 4, of the PCPC, notification of custody of an adult person may be delayed for up to 24 hours on the decision of the public prosecutor if “the delay is required by the exceptional needs of the investigation of the case”. The information gathered during the visit indicated that the possibility of delaying the exercise of the right of notification was rarely resorted to (as regards the provision of information to detained persons of the right of notification, see paragraph 29).

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<sup>9</sup> As regards immigration detainees, the rights of detained persons set out in the PCPC apply *mutatis mutandis* (under Section 20, paragraph 2, of UNMIK Regulation No. 2005/16 on the Movement of Persons into and out of Kosovo).

<sup>10</sup> A person deprived of his/her liberty enjoys the right to notify or have notified a family member or another appropriate person of his or her choice about the arrest *throughout the time of the deprivation of liberty* (emphasis added).

<sup>11</sup> An arrested person has the right to notify or to require the police to notify a family member of another appropriate person of his or her choice about the arrest and the place of detention *immediately after the arrest* (emphasis added).

<sup>12</sup> Section 215, paragraph 2, of the PCPC.

24. The PCPC<sup>13</sup> and UNMIK Regulation No. 2006/36 on Legal Aid<sup>14</sup> contain various provisions which formally guarantee the right of a detained person to have access to a lawyer and, if appropriate, to benefit from free legal aid, “from the moment of arrest onwards”. Section 213, paragraph 3, of the PCPC stipulates that an “arrested person has the right to communicate confidentially with the defence counsel orally and in writing”<sup>15</sup>. If the arrested person is suspected of terrorism or organised crime and there are grounds to believe that the defence counsel chosen by the arrested person is involved in the commission of the criminal offence or will obstruct the conduct of the investigation, the pre-trial judge may, upon the application of the public prosecutor, order that an alternative defence counsel be appointed to represent the arrested person for a maximum period of 72 hours from the time of arrest<sup>16</sup>.

25. A number of detained persons claimed that they were not able to contact a lawyer at the outset of their deprivation of liberty, but only at the time the initial period of questioning with a criminal police officer started (which, in some cases happened several hours after the deprivation of liberty). In some cases, the right of access to a lawyer allegedly only became effective after the initial period of questioning.

It should also be added that a number of detained persons met by the delegation stated that they had not consulted a lawyer, since they could not afford to pay for one. This would suggest that the persons concerned were not properly informed about the possibility of having a lawyer appointed *ex officio*. In this connection, reference is made to the remarks and recommendation made in paragraph 29.

26. The CPT wishes to emphasise that in its experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

**The CPT recommends that steps be taken to ensure that the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, as from the very outset of their deprivation of liberty.**

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<sup>13</sup> Sections 12, 14, paragraphs 1 and 3, 213, 214, paragraph 4, and 218, paragraph 1, of the PCPC.

<sup>14</sup> See in particular Section 15.

<sup>15</sup> Section 213, paragraph 3, of the PCPC also states that “[c]ommunications between an arrested person and his or her defence counsel may be within sight but not within the hearing of a police officer”.

<sup>16</sup> Section 213, paragraph 5, of the PCPC.

27. The right of a detained person to have access to a doctor (including to one of his/her own choice) is embodied in Sections 214, paragraph 1, item 6<sup>17</sup>, and 216, paragraphs 1 and 2<sup>18</sup>, of the PCPC.

From the information gathered during the visit, it would appear that the right of access to a doctor was guaranteed in practice.

However, this positive assessment is subject to a major qualification. It is a matter of serious concern that, in almost all police establishments visited, medical examinations were systematically carried out in the presence of a police officer. Such a state of affairs seriously undermines the effectiveness of this fundamental safeguard against ill-treatment; it is also in flagrant contradiction with the principle of medical confidentiality. In this connection, **the remarks and recommendation made in paragraph 95 apply equally to police establishments.**

28. Further, in several police establishments visited, the confidentiality of medical data was not guaranteed, as medical certificates were kept in detained persons' administrative files and thus accessible to non-medical staff. **Steps should be taken to remedy this deficiency.**

29. As regards information on rights, Section 14, paragraph 1, of the PCPC, provides that any person deprived of liberty shall be informed promptly, in a language which he or she understands, of the right to notify or have notified a family member or another appropriate person of his or her choice about the arrest and of the right to legal assistance of his or her own choice.

However, it would appear that, in practice, detained persons were often not informed of their rights promptly. The pattern that emerged from the visit was that notification orally on arrest rarely occurred, and written notification in the form of an information sheet was often delayed (in some cases for several hours), that is to say until the moment when suspects were first interviewed by an officer of the criminal police.

**The CPT recommends that steps be taken to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights (including the right of access to a doctor) as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear information given verbally at the very outset of custody, and supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a sheet in writing, setting out the rights of detained persons in a straightforward manner. This sheet should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.**

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<sup>17</sup> “An arrested person has the following rights: (...) to receive a medical examination and medical treatment, including psychiatric treatment”.

<sup>18</sup> “ (1) An arrested person has the right, upon request, to be examined by a doctor or dentist of his or her own choice as promptly as possible after his or her arrest at any time during detention. (2) An arrested person has the right to medical treatment, including psychiatric treatment, whenever necessary, upon the request of the arrested person or family members”.

30. The delegation found evidence that, on occasion, persons who were in reality criminal suspects had been the subject of interviews prior to formal arrest, and this without their rights having been notified to them. By way of example, at Pejë/Peć Police Station, the delegation encountered a man who was ostensibly being interviewed as a “witness” and had therefore not been informed of his rights. After the interview, the investigator informed the delegation that, in actual fact, the person concerned had already been identified as a criminal suspect involved in a serious case and that he was, “for the moment”, not free to leave the police station.

This is a flagrant example of the police circumventing existing legal safeguards by interviewing a suspect without informing him of his rights. **Steps should be taken to put an end to such practices.**

31. The delegation also observed that, on several occasions, detained suspects had been transferred to interview rooms located outside police detention facilities and, sometimes, they were even taken to such rooms immediately after their apprehension, prior to being transferred to a custody facility. By way of example, at Prishtinë/Priština Police Station No. 2, there were offices of the Regional Crime Squad (as well as the offices of other specialist units) and suspects were frequently interviewed there; however, the police station did not contain any detention facilities.

It is evident that such a practice gives rise to the possibility of abuse and certainly means that the safeguards against ill-treatment are more likely to be breached. The CPT recognises that, in the present situation, interviewing suspects only at police stations with detention facilities may cause considerable logistical problems. However, **the longer-term objective should be to conduct interviews, as a rule, only at such facilities.**

As regards the keeping of custody records in the event of suspects being transferred to interview rooms outside police detention facilities, reference is made to the remarks and recommendations made in the following paragraph.

32. In the course of the visit, the delegation observed a number of shortcomings regarding the keeping of custody records:

(a) The delegation was surprised when it was informed by the Captain-in-Charge of the Regional Crime Squad at Prishtinë/Priština Police Station No. 2 that he had no idea whether or not any suspects were being held there at the time and that the only way to find out was to go into every office in the building to check. No register existed for recording when detained persons were brought into the building for interview, and the only record was held on individual case files and on custody files at the detention facility at Prishtinë/Priština Police Station No. 1.

(b) There were a variety of versions of custody records in use in Kosovo; the delegation saw at least six different versions, and presumably there were even more different types of records in circulation. The CPT fully shares the concerns expressed in this regard by the KPI in its November 2006 Interim Inspection Report<sup>19</sup>.

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<sup>19</sup> See paragraph 2.2.

(c) The standard of completion of custody records was rather poor. The delegation saw numerous examples of incorrectly completed records, signatures in the wrong place, no signatures where there should have been signatures, entries obliterated with typewriter correction fluid, etc. This is particularly serious with regard to access to a lawyer – many custody records were lacking in signatures in this respect.

(d) The storage and retention of custody records appeared to be problematic, as was also noted by the Police Inspectorate in its November 2006 Interim Inspection Report<sup>20</sup>. On several occasions, the delegation failed to find specific custody records at certain police stations, even when the person concerned had definitely been detained there.

(e) From discussions with police officers at various police stations visited, it became clear that there was no uniform system for sending original custody records with a detainee when he was transferred to another police station, and copies of records were not always kept at the original station. This can and obviously does lead to records being lost and to incomplete records being maintained.

(f) The delegation was informed by senior police officers that the requirement to open a custody record did not begin until the prosecutor authorised detention for a period of up to 72 hours. In practice, the record was not opened until the suspect arrived at the cells, which could be some time after he/she was first detained, or even after an interview had taken place.

33. The CPT considers that the fundamental guarantees of persons placed in police custody would be reinforced if a single and comprehensive custody record were kept for each of these persons. In this record would be entered all aspects of custody and all measures taken in connection with it (when and for what reason(s) the custodial measure was taken; when the person arrived on police premises; when he/she was informed of his/her rights; whether he/she showed signs of injury, health problems, mental disorder, etc.; in which cell(s) he/she was placed; when fed; when questioned; when he/she had contacts with and/or visits from close relatives, a lawyer, a doctor or a representative of the consular services; when transferred; when brought before a prosecutor; when remanded or released, etc.).

**The Committee recommends that, at every police station in Kosovo, a single and comprehensive custody record be opened in respect of each detained person.**

Further, steps should be taken to ensure that:

- **the custody record is sent with the detainee when he/she is transferred to another police station, with a copy being kept at the original police station;**
- **the requirement to open a custody record applies from the moment a detainee arrives at a police station (i.e. even during the first six hours of detention, prior to the prosecutor authorising detention for up to 72 hours);**
- **the requirement to open a custody record applies even in police stations without detention facilities but where suspects are first held for the purpose of being interviewed.**

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<sup>20</sup> See paragraph 2.9.

#### 4. Conditions of detention

34. Custody by the police in Kosovo is, in principle, of relatively short duration. Consequently, physical conditions of detention cannot be expected to be as good in police establishments as in other places of detention where persons may be held for lengthy periods. However, certain elementary material requirements should be met.

All police cells should be clean, 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 enjoy access to natural light. Further, cells should be equipped with a means of rest, 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 when necessary, in clean and decent 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 for extended periods (24 hours or more) should be provided with appropriate personal hygiene items and, as far as possible, be offered outdoor exercise every day.

35. With the notable exception of Istog/Istok Police Station, material conditions at the police stations visited were poor. Many cells were too small for the number of persons being held there, lacked natural light and/or sufficient artificial lighting, and were in a poor state of cleanliness. The CPT is particularly concerned by the size of the two cells of Deçan/Dečani Police Station, both of which measure some 2.5 m<sup>2</sup>. In the Committee's view, **cells of such a size should only be used for temporary holding purposes, for no longer than a few hours, and should never be used as overnight accommodation.**

36. The CPT would like to express its appreciation of the monitoring performed made by the OSCE Department of Human Rights and Rule of Law of the conditions of detention in police detention facilities in Kosovo. Following visits to all 89 police custody cells in Kosovo, the prevailing conditions were assessed against the relevant standards of the CPT and documented in detail in "The Holding Cell Report: A Reassessment" in November 2005.

Regrettably, the information gathered during the CPT's visit demonstrated that hardly any improvements had been made to the conditions of detention in the police stations visited since the publication of the above-mentioned report<sup>21</sup>. In some respects, the situation had even deteriorated since then.

37. In the light of the above, **the CPT recommends that steps be taken without delay to ensure that the material conditions of detention are significantly improved in the police stations visited (and, if necessary, in other police detention facilities in Kosovo), in particular, as regards access to natural light, ventilation and hygiene.**

Further, **the Committee recommends that the authorities develop a detailed plan to progressively refurbish all police detention facilities in Kosovo.**

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<sup>21</sup> Various shortcomings were also confirmed by the KPI in its Interim Inspection Report of November 2006 on the "KPS Arrest and Detention Management Performance".

## 5. Other issues

38. The CPT is concerned about the manner in which handcuffs were apparently used in some cases. By way of example, a detained person claimed that he had been handcuffed to a radiator at Fushë Kosovë/Kosovo Polje Police Station for several hours. Another detained person alleged that he had been handcuffed by one hand to a chair (which was fixed to the floor) whilst being questioned by a criminal police officer.

The Committee has serious reservations about the practice of handcuffing detained persons to fixed objects. It may be acceptable in exceptional circumstances (e.g. handcuffing to a railing in a custody office when several detained persons are waiting to be processed). However, **resort to such means is not acceptable if they are applied for a prolonged period or in full view of others.** Further, **there can be no justification for the use of handcuffs while a suspect is being interviewed.** More generally, **handcuffs should not be used as a substitute for proper holding facilities.**

39. The CPT also has misgivings about the inappropriate display of political symbols, as observed by the delegation at Prishtinë/Priština Police Station No. 1. Within the complex was the administration/intelligence office where, among other things, computerised records of those held at the station were maintained. In the office, displayed on open view, were two photographs of the KPS officer responsible for maintaining the records in the uniform of the Kosovo Liberation Army (*UÇK*).

Although detained persons did not have access to the office and therefore would normally not be able to see the photographs, the display of such material is, in the CPT's view, undesirable in a police station, since it may call into question the impartiality of the officers concerned<sup>22</sup>. **The Committee would like to receive the comments of UNMIK on this matter.**

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<sup>22</sup> Cf., in this connection, also Sections IV-K ("Attitude and Impartiality") and V-D ("Using influence of office for political purpose") of the "Rules of Conduct and Behavior" of KPS Policies and Procedures.

## **B. Penitentiary establishments**

### **1. Preliminary remarks**

40. The CPT's delegation visited six penitentiary establishments: Dubrava Prison, Lipjan/Lipljan Correctional Centre and the Detention Centres in Gjilan/Gnjilane, Mitrovica/Mitrovicë, Pejë/Peć and Prishtinë/Priština.

41. **Dubrava Prison** is Kosovo's largest prison establishment, occupying a vast area in the middle of the countryside, some distance away from the village of the same name. Built in 1976, the prison complex suffered serious bomb damage during the 1999 war – about a hundred inmates lost their lives – and, since then, has undergone substantial rebuilding and renovation work. The prison has eight detention blocks and a separate block where the Prison Hospital and the infirmary are located. With an official capacity of 1,105 places, the establishment was accommodating 884 male prisoners (787 sentenced and 97 on remand) at the time of the visit.

**Lipjan/Lipljan Correctional Centre**, which is located on large premises some 20 km south of Prishtinë/Priština serves as the sole detention facility in Kosovo for female and juvenile prisoners (both sentenced and remand). Due to the lack of any appropriate educational establishment in Kosovo, juveniles subject to a placement, by court order, in a “disciplinary centre”<sup>23</sup>, an “educational institution”<sup>24</sup> or an “educational-correctional institution”<sup>25</sup> are also being held at Lipjan/Lipljan Correctional Centre. The Centre has an official capacity of 152 places. At the time of the visit, it was accommodating 36 female prisoners (26 sentenced and ten on remand) and 48 juveniles (32 sentenced, eight on remand and eight who were subject to a placement in an educational institution).

All **detention centres visited** were designed as pre-trial detention facilities, but also accommodated a considerable number of sentenced prisoners, most of them serving short terms. However, especially at Mitrovica/Mitrovicë Detention Centre, a number of inmates were serving very long sentences (of up to 20 years). Female or juvenile inmates were never admitted to detention centres, but immediately transferred to Lipjan/Lipljan Correctional Centre. At the time of the visit, Gjilan/Gnjilane Detention Centre (capacity: 90 places) was accommodating 85 inmates (including 24 sentenced), Mitrovica/Mitrovicë Detention Centre (capacity: 79 places) 47 inmates (including 23 sentenced), Pejë/Peć Detention Centre (capacity: 76 places) 75 inmates (including 13 sentenced) and Prishtinë/Priština Detention Centre (capacity: 65 places) 60 inmates (including 6 sentenced).

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<sup>23</sup> Under Section 19 of the Juvenile Justice Code of Kosovo (JJC - promulgated by UNMIK Regulation No. 2004/8).

<sup>24</sup> Under Section 24 of the JJC.

<sup>25</sup> Under Section 25 of the JJC.

## 2. Ill-treatment

42. The delegation received no allegations of deliberate physical ill-treatment by custodial staff in any of the detention centres visited. However, some allegations of this kind were heard at Dubrava Prison and Lipjan/Lipljan Correctional Centre. Further, several inmates met at Lipjan/Lipljan and the Prishtinë/Priština Detention Centre complained about instances of verbal abuse by prison officers.

**The CPT recommends that the management at Dubrava Prison, Lipjan/Lipljan Correctional Centre and Prishtinë/Priština Detention Centre remind their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be punished accordingly.**

43. At Dubrava Prison, a number of allegations of ill-treatment and/or excessive use of force by members of the establishment's Intervention Unit (commonly referred to as "Delta Bravo") were received by the delegation. These allegations mainly related to the excessive use of force during interventions (blows with truncheons or other blunt objects, kicks, punches, slaps, etc.), including in cases where the prisoners concerned had already been brought under control. Further, in virtually all the blocks at Dubrava, the delegation heard numerous allegations of brutal and provocative behaviour by members of the Intervention Unit in the context of cell searches.

Some allegations were also heard at Lipjan/Lipljan Correctional Centre of ill-treatment and/or excessive use of force by members of the Centre's Intervention Unit.

44. Three relatively recent cases are particularly noteworthy in this respect, as they illustrate various of the issues involved.

The first case involved the alleged ill-treatment and/or excessive use of force by members of the Intervention Unit at Dubrava Prison, intervening after a scuffle between two prisoners on 22 February 2007. One of the two prisoners was allegedly taken by members of the Special Unit to the Prison School and beaten there, whilst being held on the ground and handcuffed, in the presence of the Prison Director (as well as prisoners). Subsequently, the prisoner concerned was apparently taken to the disciplinary section (Block 5) and seen by a doctor, who declared him fit for punishment (which did not prevent the prisoner concerned being transferred to hospital, two days later).

The documents consulted by the delegation (Intervention Unit, Security Department, etc.) relating to this incident make no reference to the above-mentioned allegations of ill-treatment/excessive use of force. When the incident was raised by the delegation with the Director, the latter did not deny the fact that he had been present on the scene and that he had failed to react to the actions of the Intervention Unit. This kind of attitude can only generate a sense of impunity among staff of the Intervention Unit (not to mention the other members of the prison staff) and, as far as the prisoners are concerned, seriously undermine the authority of the Director of the establishment. **The CPT recommends that an independent inquiry be carried out into the incident in question and that, if necessary, appropriate sanctions be imposed at all levels.**

45. In the second case, at Dubrava, a group of four prisoners were allegedly beaten by members of the Intervention Unit with truncheons during a cell search on 20 February 2007. More specifically, the ill-treatment was said to have begun in the isolation cell on the same floor, where the four prisoners concerned had been placed during the search, and had continued in the security cell (so-called "VS" cell) on the ground floor, in order to make them reveal who owned a knife and a SIM card found during the search. After owning up, one of the prisoners concerned claimed to have been placed in an isolation cell and seen, on the same day, by one of the prison doctors, who, without actually entering the isolation cell, allegedly pronounced that "everything is ok", in the presence of a prison officer.

46. The third case involved an alleged collective beating of prisoners at Lipjan/Lipljan Correctional Centre. On 23 February 2005, after a mobile phone had been discovered during a cell search in the unit accommodating « high risk » prisoners in Block D, the juveniles concerned were allegedly placed, for several hours, in the isolation cells located on the ground floor of the building. Afterwards, they were allegedly sent back to their cells. When going up the stairs, they were beaten one after another by members of the Intervention Unit (wearing masks), using both rubber and metal sticks. One juvenile allegedly sustained a fracture of one of his arms as a result of the beating, while others were said to have sustained less serious injuries. It is further claimed that the juveniles concerned had requested to be photographed and to make a complaint to the Council for the Defence of Human Rights and Freedoms, but that both requests had been denied.

47. All the above-mentioned incidents had occurred several weeks or more before the delegation's visit; consequently no conclusions can be drawn from the fact that the prisoners concerned did not have any visible lesions at the time of the visit. Consultation of their medical files revealed that the entries were limited, at best, to recording the fact that the prisoner had been seen by a doctor in an isolation cell. In this connection, **the CPT wishes to stress that every prisoner in respect of whom force has been used should be entitled to be examined immediately by a doctor and, if necessary, receive treatment.** As regards the recording of injuries and the presence of prison officers during medical consultations, **reference is made to the remarks and recommendations in paragraphs 91 to 95.**

48. The delegation had a lengthy discussion with the Head of the Intervention Unit at Dubrava Prison. The Unit comprises 14 members, and its tasks include: cell searches; intervention to deal with active or passive resistance; use of means of restraint and control (at the request of the Director or one of his Deputies); training of security guards in restraint and control techniques; prison perimeter security patrols, etc. The Unit's staff are recruited and selected from among the prison staff and must be physically fit. They are given one week's basic training in restraint and control techniques, and then engage in physical training every day (50% of the daily programme, with the remainder devoted to the above-mentioned tasks).

49. The CPT does not question the need for special intervention units, capable of intervening in penitentiary establishments in Kosovo as a measure of last resort. However, basic precautions must be taken to prevent inappropriate reactions linked to a strong feeling of belonging to an elite force, united by the dangers it has to face. These precautions include firm professional management attentive to any misconduct, which it is vital to punish, and a staff rotation policy. Moreover, to be able to assess how interventions are carried out, it is essential that the reports of interventions drawn up by the team leaders be as detailed as possible. In the present cases, they were astonishingly brief. Finally, the aforementioned incident of 22 February 2007 does not appear to have been dealt with as it should have been at the subsequent debriefing organised with the staff, and no disciplinary inquiry was carried out by the Head of Unit.

50. In the light of the above, **the CPT recommends that immediate steps be taken at Dubrava Prison and Lipjan/Lipljan Correctional Centre to ensure that, whenever allegations of ill-treatment emerge following an intervention by the Intervention Unit, an internal investigation is immediately carried out (without prejudice to any inquiries to be carried out by administrative and/or judicial authorities).** Further, **detailed intervention reports should be drawn up by the team leaders concerned, after each intervention.**

Further, **the Committee invites the relevant authorities to introduce a rotation policy for members of Intervention Units.**

More generally, **it is essential that great care be taken with the selection, recruitment, training (including stress management), physical training and equipping of the members of special units, in order to ensure that they are the best suited to dealing appropriately (i.e. using minimum force) with situations of risk.**

51. The CPT is aware of the fact that the tasks of intervention units are often difficult and dangerous and that often the use of force against prisoners will be necessary when performing those tasks. Any force used during the intervention must nevertheless be limited to what is strictly necessary. In addition, as soon as recalcitrant prisoners have been brought under control, there can be no justification for them being struck. **The CPT recommends that all members of the Intervention Units at Dubrava Prison and Lipjan/Lipljan Correctional Centre be reminded accordingly.**

52. It should also be noted that the members of the Intervention Units often wore masks during interventions, and did not display badges or other insignia enabling their identification. The CPT is opposed to the wearing of balaclavas by members of Intervention Units - or any other prison staff - within the confines of a prison. In particular, this may well prevent the identification and punishment of those responsible when acts of ill-treatment occur.

The Committee does acknowledge that, for operational reasons, the wearing of some form of face protection may prove necessary. However, in that case, the wearing of clearly visible tags on the uniform with a name or number should enable the identification of the staff concerned, at any time, by the authorities responsible for the operations and by those tasked with any monitoring, as well as by prisoners.

**The CPT recommends that steps be taken by the relevant authorities to ensure that the above precepts are implemented in practice in all penitentiary establishments in Kosovo.**

### 3. Material conditions of detention

#### a. Dubrava Prison

53. Material conditions of detention at Dubrava Prison<sup>26</sup> varied considerably from one block to another, and sometimes even between two units in the same block.

They could be considered on the whole good in the recently built or heavily renovated blocks (such as Blocks 2 and 6) and satisfactory in Block 1. The living space provided for each prisoner in Block 6 (a new block commissioned in September 2005) was adequate; the standard cell (about 20 m<sup>2</sup>) accommodated four prisoners. Conditions were more cramped in Block 2, with cells of 20 m<sup>2</sup> accommodating up to six prisoners (with three sets of bunk-beds) and cells of about 15 m<sup>2</sup> up to four prisoners. In Block 1, the cells measured about 15 m<sup>2</sup> and, depending on the circumstances, could take up to three prisoners. The cells in these three blocks were very well lit and ventilated and comprehensively equipped (beds and bedding, tables, chairs, wardrobe, toilet and sink screened off).

54. On the other hand, the material conditions were mediocre in Block 5 and even poor, in some cases very poor, in parts of Blocks 7 and 8. Certain parts of these blocks were severely overcrowded (with only 2 m<sup>2</sup> of living space per prisoner). In one cell in Block 7, for example, the delegation saw eight prisoners in a cell of 16.5 m<sup>2</sup>; another cell of a similar size in Block 8 (Unit V1) was shared by six prisoners. Furthermore, the delegation was told that the situation had been worse several months previously, as unit V2 in Block 8, which was accommodating 24 prisoners at the time of the visit, had housed up to 77 in 2006.

The negative effects of overcrowding were compounded by the advanced state of dilapidation of some of the premises visited<sup>27</sup>, as well as problems of hygiene and upkeep<sup>28</sup>.

By letter of 26 June 2007, UNMIK informed the CPT that “[r]efurbishments of Blocks 4 and 8 are scheduled for this year (2007). However, due to budgetary constraints, no further refurbishment of prison cells will be possible during the current fiscal year”.

**The CPT recommends that steps be taken without delay to renovate the blocks at Dubrava Prison which have not yet benefited from such work. Efforts should also be made to reduce occupancy levels in those cells which are currently overcrowded; the aim should be to provide at least 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells and 9 m<sup>2</sup> of living space in single cells.**

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<sup>26</sup> The delegation focused its visit on Blocks 1, 2, 5, 6, 7 and 8.

<sup>27</sup> The electrical circuits in some of the buildings (in parts of Blocks 5 and 8, for example) were exposed or out of order.

<sup>28</sup> In November 2006, numerous prisoners went on hunger strike in protest against the prevailing conditions of detention.

55. The delegation also paid attention to the arrangements made to ensure the prisoners' physical safety. In this connection, it observed that, following a hostage-taking and failed escape incident in Block 1 in December 2005, the keys to the padlocks for all the cell doors in the establishment, and the emergency exits of all the blocks, were centralised in a safe place at night. Such a system inevitably raises the question whether a swift evacuation of a unit - or even an entire block – would be possible in the event of a serious incident (such as a fire)<sup>29</sup>. When this issue was raised with the prison management, the latter said it was certain that if an incident did occur, the staff on duty (who had access to all the keys) would react quickly enough to avoid any serious problems. Nevertheless, it also acknowledged that it had never carried out a night-time evacuation drill, in real conditions, so that it could effectively validate the safety of the evacuation procedures in place. The delegation was told that the management intended to carry out such a drill in the weeks following the visit.

**The CPT would like to be informed in detail of the outcome of that drill, as well as of any measures subsequently taken.**

b. Lipjan/Lipljan Correctional Centre

56. Material conditions of detention were on the whole acceptable at Lipjan/Lipljan Correctional Centre, in terms of its state of repair, living space<sup>30</sup>, hygiene and access to natural light and artificial lighting. All cells were similarly equipped with beds, tables and chairs, and a fully partitioned toilet. Cells in the female unit were also well decorated. The delegation gained a particularly favourable impression of the Mother and Child Unit, which was located in a separate building. It measured some 40 m<sup>2</sup> and comprised a living room, kitchen unit, bedroom and bathroom, all of which were well-furnished and had very good access to natural light and ventilation.

57. That said, a number of shortcomings were found by the delegation in the centre.

Material conditions in the *juvenile unit* were rather austere and created an oppressive atmosphere.

In the *female unit*, the sub-unit for sentenced prisoners was overcrowded at the time of the visit (26 inmates, including one juvenile, for an official capacity of 21 places). As a consequence, two inmates were being temporarily accommodated in one of the disciplinary cells<sup>31</sup>. Further, access to natural light was limited in one cell (No. 9), due to the fact that the window was divided into two parts by the wall partitioning the toilet from the living area. In addition, female inmates were not provided with sanitary towels. The latter were available in the prison shop, but several women indicated that they did not have the money to purchase such items.

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<sup>29</sup> The CPT's concerns are also linked to the fact that in August 2004 a fire broke out in Block 2, causing the death of five prisoners, apparently by asphyxiation. The "evening key-collecting" system had not yet been introduced at that time.

<sup>30</sup> In the female section, most of the inmates were held in double cells (measuring some 11 m<sup>2</sup>), and some were held in four-bed cells (measuring some 16 m<sup>2</sup>).

<sup>31</sup> The situation of the two women concerned was alleviated by the fact that both worked in the kitchen and spent most of the day outside their cell.

More generally, the CPT is concerned by some of the existing security arrangements, which may be detrimental to the safety of prisoners. First, the fire hoses were not easily accessible, as the locks to the cabinets in which they were stored were secured by the type of plastic seal used for 'plastic handcuffs', which could not be opened without strong cutting implements. Secondly, similar to the situation at Dubrava, the keys for the cells were taken from each block and held in the central control room at night. In the case of fire or other incident where access to a cell was needed, someone had to go and fetch them. Officers spoken to admitted that in the event of an incident, it was unlikely that entry to cells could be effected in time.

**The CPT recommends that appropriate steps be taken by the relevant authorities to remedy the above-mentioned shortcomings at Lipjan/Lipljan Correctional Centre.**

c. detention centres visited

58. Material conditions in the detention centres visited varied considerably from one centre to another. They were generally satisfactory at Gjilan/Gnjilane and Mitrovica/Mitrovicë, less so at Prishtinë/Priština and very poor at Pejë/Peć.

*Gjilan/Gnjilane Detention Centre* was in a reasonably good state of repair and cleanliness. However, the living space for inmates was rather limited in the larger cells (some 18 m<sup>2</sup> for six inmates) and clearly insufficient in the smaller cells, which measured less than 6 m<sup>2</sup> and were used for double occupancy). An indoor sports room had recently been refurbished, but still lacked any equipment. Further, a number of inmates indicated that they could not afford to purchase personal hygiene products.

At *Mitrovica/Mitrovicë Detention Centre*, material conditions of detention were also generally satisfactory. That said, many inmates complained about extremely high temperatures in the cells during the summer, and the living space per inmate was clearly insufficient in some of the smaller cells. By way of example, the delegation found cells measuring a mere 5 m<sup>2</sup> which were accommodating two inmates. Such a state of affairs is not acceptable.

At *Prishtinë/Priština Detention Centre*, conditions in the cells were generally acceptable. However, in some of the cells, access to natural light was rather limited. Further, some of the showers were lacking shower heads. A number of inmates also claimed that personal hygiene products were not provided regularly, and that cleaning material was not provided at all. As regards the prisoners' safety, several inmates claimed that staff had been unable to open a cell door for more than one hour after staff had been alerted of an epileptic seizure of a fellow-inmate.

Material conditions of detention were generally very poor at *Pejë/Peć Detention Centre*, especially in Blocks B and D. In both blocks, many of the cells had no windows, and ventilation was very poor. Further, inmates were being held in cramped conditions<sup>32</sup>. It is a matter of serious concern that, in Block D, some detainees were being held for weeks or even months in cells of less than 4 m<sup>2</sup>, the design of which was very similar, if not identical, to disciplinary cells.

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<sup>32</sup> By way of example, many cells measuring some 11 m<sup>2</sup> (including the sanitary annex) were holding four inmates.

In the CPT's view, such cells, by virtue of their size alone, should not be used as detainee accommodation. During the end-of-visit talks, the delegation made an immediate observation under Article 4, paragraph 5, of the Agreement, and requested that the above-mentioned cells be immediately withdrawn from service as inmate accommodation.

By letter of 26 June 2007, UNMIK informed the CPT that four cells of the kind described above had been taken out of service at Pejë/Peć Detention Centre.

**59. The CPT recommends that appropriate steps be taken by the relevant authorities to remedy the above-mentioned shortcomings in the detention centres visited. In particular, steps should be taken to ensure that:**

- **at Mitrovica/Mitrovicë and Gjilan/Gnjilane Detention Centres, cells measuring between five and six square metres are used for single occupancy only;**
- **at Pejë/Peć and Prishtinë/Priština Detention Centres, all cells have adequate access to natural light.**

More generally, **the Committee wishes to recall that the aim should be to provide at least 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells and 9 m<sup>2</sup> of living space in single cells.**

#### **4. Regime**

##### **a. Dubrava Prison**

60. The detention regime in Dubrava Prison is based on a four-level classification: basic, standard, advanced and improved.

Prisoners are admitted to the establishment on the basic regime and have no particular activity available to them during the day, other than outdoor exercise (two hours a day maximum) and limited access to television (one hour a day). They are locked in their cells for the remainder of the time.

The standard regime entails significant privileges, such as an "open-cell" regime for most of the day<sup>33</sup>, as well as extra periods of outdoor exercise, and the possibility to engage in sports activities (except at weekends) or visit the "fitness" room.

The advanced regime entitles prisoners to benefit from temporary leave and makes training activities available to them (if there are sufficient training places, which unfortunately is far from being the case), as well as four visits and phone calls each month. The prisoners on this regime were mostly accommodated in Blocks 4 and 7.

The improved regime is the most fully developed. The prisoners are prepared for semi-custodial status, are entitled to even more trips outside and generally have a paid job. They were all held in Block 6.

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<sup>33</sup> The cell doors were closed briefly three times a day (for the time it took for a roll-call of prisoners) and also during the night.

61. For an establishment such as Dubrava, which is supposed to accommodate all convicted persons from Kosovo<sup>34</sup>, including those serving very long sentences (up to 40 years' imprisonment), providing a programme of activities geared to setting prisoners on their way to reinsertion and preparing them to return to society, including through appropriate training, is crucial. Unfortunately, it has to be said that hardly any prisoners<sup>35</sup> benefited from a detention regime that would favour their reinsertion. For all the others (the vast majority), the day was punctuated by periods of outdoor exercise, possibly with some television viewing.

The CPT welcomes the initial efforts undertaken by the management of Dubrava Prison to set up training and activities worthy of the name<sup>36</sup>. Providing a satisfactory programme of activities (work, education and sport) is of crucial importance for the well-being of prisoners. The aim should be to ensure that prisoners are able to spend a reasonable part of the day outside their cell, engaging in varied, purposeful activities. Furthermore, individualised treatment plans should be set up for all sentenced prisoners. **The Committee recommends that steps be taken to significantly expand the activities and training available to the inmates of Dubrava Prison. Special attention should be given to setting up individualised treatment plans for prisoners and to the regime for those serving long sentences.**

62. Another requirement for a satisfactory detention regime is the appropriate distribution and classification of prisoners according to various criteria, including their legal status and security considerations. In this respect, the delegation could see that generally accepted principles, such as the separation of remand and sentenced prisoners, first offenders and re-offenders, prisoners serving short or long sentences, young and elderly prisoners etc., were far from being respected<sup>37</sup>. Clearly, the detention-block construction and renovation work between 2000 and 2005 greatly complicated the management's task. Nevertheless, **the time has come for the management to make efforts to more closely comply with the prisoner distribution and classification principles which it itself has advocated.**

63. However, what concerned the CPT the most were the recurrent allegations of nepotism at Dubrava Prison. During its visit to the establishment, the delegation was deluged with complaints concerning the adverse effects of the favouritism and corruption which, it was claimed, afflicted the establishment. A great many prisoners maintained that one family clan controlled the prison, and that moving from one detention regime to another or changing block or even receiving certain specialised medical care cost a considerable amount of money. The delegation's initial concerns were when confronted with these allegations reinforced by the apparent lack of clear and transparent criteria governing arrangements for transfers between detention regimes/blocks, which made the staff's margin of discretion all the greater.

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<sup>34</sup> Except for women and minors, imprisoned in the Correctional Centre in Lipjan/Lipljan.

<sup>35</sup> According to the lists provided by the management, only four prisoners had benefited from vocational training in a workshop in 2006 and none in 2007. A number of training courses in information technologies (IT) had been run in 2006 (47 courses on word processing and spreadsheet software) and some activities were due to be set up in 2007 (for 17 prisoners).

<sup>36</sup> By letter of 26 June 2007, UNMIK informed the CPT that "vocational training workshops started in the week commencing 14 May 2007".

<sup>37</sup> The prisoners spoken to by the delegation during its visit to Block 8 were serving sentences ranging from five days to 25 years and those in Block 5 from one month to 25 years. In the same block, there was a prisoner aged 71 sharing a cell with a prisoner aged 23.

64. Given the seriousness of the allegations received, the delegation raised this question during the end-of-visit talks in Prishtinë/Priština with the Minister of Justice, who immediately acknowledged the delegation's analysis and expressed his willingness to tackle the problem. The CPT welcomes this realisation, at governmental level, of the problems of nepotism (and corruption) at Dubrava Prison. It wishes to emphasise that a system which exploits, or is broadly perceived as exploiting, persons deprived of their liberty by a public authority is manifestly unacceptable. More specifically, prisoners' exercise of their rights and obtaining of privileges should never be dependent on money paid to staff nor on unwarranted services rendered to them. Conduct of this kind is tantamount to abuse of authority and must be severely sanctioned.

**The CPT recommends that the authorities deliver a clear message to staff, both in supervisory posts and at a lower level, that abusing their position by accepting or demanding rewards from prisoners is not acceptable and that any acts of this kind will be the subject of severe sanctions. This message should be reiterated regularly and in an appropriate manner.**

65. As already mentioned, the absence of well-established criteria governing arrangements for transfers between detention regimes/blocks very much paved the way for these abusive practices. **The CPT recommends that clear and transparent rules and criteria be drawn up, in particular for detention regimes and the distribution of prisoners. Further, prisoners should be informed of these rules and criteria through appropriate channels.**

66. In addition to the "normal" detention blocks, Dubrava Prison has a high-security block (Block 1). This block was used exclusively to hold both remand and sentenced prisoners<sup>38</sup> prosecuted for war crimes, acts of terrorism or offences linked to organised crime, all of whom, except one, were classified as security level "A" (see, in this connection, paragraphs 69 to 71).

Block 1 was like a "prison within a prison", with its prisoners totally cut off from the rest of the complex: the activities, visits from families and the medical surgery are all organised in such a way as to ensure that they leave this secure area as little as possible<sup>39</sup>. That said, within their block, the prisoners enjoyed detention conditions and a regime (basic, standard or advanced) that were among the best in the entire establishment (with the notable exception of the policy of systematic "cell rotation", implemented every fortnight, cf. paragraph 73).

67. Efforts were clearly being made by the management to implement a detention regime in Block 1 inspired by the principles developed by the CPT for high-security units<sup>40</sup>. In particular, these principles provide that prisoners presenting a particularly high degree of risk in terms of security must, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. Furthermore, the management was also aware of the concept of "dynamic security".

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<sup>38</sup> At the time of the visit, Block 1 was accommodating 29 prisoners (for a capacity of 53), only one of whom had been finally sentenced; the others were appealing against the sentence at first instance (18 prisoners) or on remand (10 prisoners).

<sup>39</sup> A special courtroom had even been installed inside the prison complex, to avoid the need to transfer these prisoners to town for court appearances.

<sup>40</sup> For further details, see "CPT Standards" (CPT/Inf/E (2002) 1 - Rev. 2006, Section II, paragraph 32).

68. Even so, further progress is required as regards the activities made available to prisoners in Block 1. The existence of a satisfactory programme of activities is just as important - if not more so - in a high-security unit than in an ordinary unit. 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 found in a normal prison environment. Nevertheless, this should not mean that only work of a tedious nature be provided for prisoners. **The CPT recommends that steps be taken to develop within Block 1 a programme of activities inspired by the aforementioned principles.**

69. The delegation also inquired about the system of security classification in force within the establishment, which determined whether prisoners were to be admitted to Block 1. For the CPT, it goes without saying that prisoners should not be subject to a special security regime for any longer than the risk they present makes necessary and this calls, therefore, for regular reviews of placement decisions. Such reviews should always be based on the continuous assessment of the individual prisoner by staff specially trained to carry out such assessment. Moreover, prisoners should, as far as possible, be kept fully informed of the reasons for their placement and, if necessary, its renewal; this will, inter alia, enable them to make effective use of avenues of appeal against that measure.

70. In total, four different high-security levels were provided for: "A-external" (for high-security prisoners whose contacts with the outside world had to be supervised); "A-internal" (for high-security prisoners whose contacts within the prison had to be supervised); "E-high" (for prisoners at high risk of escape); "E-normal" (for prisoners at normal risk of escape). In principle, "category A" prisoners are always separated from the other prisoners.

71. The decision to place a prisoner at security level "A" is taken by a court, and is based on an opinion drawn up by the Prisoner Oversight Committee (POC). The base criterion applied relates to the nature of the crime committed (for convicted prisoners) or allegedly committed (for prisoners on remand), the impact on the society and the consequences of a potential escape. This means that the prisoner arrives at Dubrava Prison (or at a detention centre) with a predetermined security level<sup>41</sup>.

Only a decision by the POC at a later date can give rise to a reclassification decision. However, the review procedures do not provide for input from prison staff. Examination of individual files, chosen at random by the delegation, showed that these review procedures were essentially theoretical. The delegation could not identify any case where a review had resulted in a change in security classification.

Clearly, the security classification system in place in Kosovo should be reviewed and brought into line with the criteria set out in paragraph 69 and the principles laid down in the European Prison Rules (specifically Rules 51 to 53). In particular, this system should incorporate the concepts of individualisation of the measure, proportionality, regular review (in particular but not exclusively) on the basis of opinions of prison staff, and the possibility for the prisoner concerned to appeal against the classification. **The CPT recommends that the security classification system in Kosovo be reviewed, in the light of the above remarks.**

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<sup>41</sup> By way of example, one prisoner's file stated: "Any individual serving a sentence of 20 years or more should be considered as a high-risk prisoner and classified at level "A", on grounds of the length of the sentence and their age. In this case, the prisoner is 24 years old". Similar statements were to be found in a number of other files. Some prisoners had been classified "A" upon arrival at the establishment in 2001, and their status had not been reviewed since.

72. The security level relating to the risk of escape (“E”) was determined by the Prison Administration<sup>42</sup> and based principally on any previous escape attempts, as well as on the maintenance of links by the prisoner concerned - or not - with his criminal circle (especially where organised crime was concerned). Under the regulations in force, level “E” classification must be reviewed every 28 days; however, such review did not appear to be occurring in practice. Furthermore, as with the previously mentioned system, it would appear that no avenue of appeal for challenging such decisions was available to the prisoners. **The CPT would like to receive the comments of UNMIK on the latter two issues.**

73. The CPT must express its concern about the policy of systematic "cell rotation", implemented every fortnight, within Block 1 (where almost all “category A” prisoners were accommodated). This was the only real complaint made by these prisoners, who otherwise accepted the situation they were in. Such a measure is likely to affect the mental state of the prisoners concerned in the long term. As one of the prisoners said to the delegation: "It's depressing, changing cell over and over again, I end up not knowing any more who I am or where I'm going...".

In its letter of 26 June 2007, UNMIK indicated that “[t]he practice of cell rotation every 14 days only applies to “Category A” prisoners and detainees, as a security measure for maximum security prisoners/detainees. Given the extremely high risk of a relatively small number of prisoners/detainees, the Department of Justice/PMD is reluctant to change this practice”.

In the CPT’s view, the explanations provided by UNMIK are far from convincing. The Committee acknowledges that in certain circumstances (for example, when credible information on a possible escape is received either inside or outside the prison), it may prove necessary to take the step, without giving any prior warning, of moving the prisoner out of his/her present cell or even out of the establishment. However, measures of this kind should be the exception and not the rule; any decision in this respect should, inter alia, observe the aforementioned principles of proportionality.

**The CPT recommends that the authorities put an end to the policy of systematic "cell rotation" as practised at Dubrava Prison, in the light of the preceding remarks.**

74. Finally, the CPT wishes to raise the question of the role of the dozen or so international police officers assigned to Block 1. The Committee has misgivings, as a matter of principle, about the presence of police officers within a prison establishment, and even more so when they are in direct contact with prisoners (which did not seem to be the case in Block 1 at the time of the visit). That said, the deployment of international police officers, begun in May 2006, was to be a temporary arrangement. While there are concrete arguments for maintaining the presence of international staff in Block 1, only personnel with sound experience of working in prisons should be deployed there<sup>43</sup>. This would also make it possible to provide ongoing training for local staff who have to deal with prisoners presenting a high-security risk. **The CPT would like to receive the comments of UNMIK on this matter.**

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<sup>42</sup> Regarding prisoners in Block 1, the classification relating to the risk of escape was still the task of the international officials of UNMIK. For information, on 14 March 2007: 32 prisoners were classified “A-internal” (all in Block 1); eight prisoners were classified “A-external” (one in Block 1, three in Block 2, one in Block 3, one in Block 4, and two in Block 6); 19 prisoners were classified “E-high” (of whom 18 were already classified “A”) and one prisoner (in Block 5) was classified “E-normal”.

<sup>43</sup> According to the information available to the delegation, the United Kingdom, the United States and Italy had been approached with a request for suitable additional prison staff, apparently without success.

b. Lipjan/Lipljan Correctional Centre

75. In the *female section*, all sentenced prisoners were under the standard regime. They were able to move freely outside their cells during the day, and most of them were engaged in various activities (such as cooking, cleaning, sewing or farming). Every day, they had access to a pleasantly laid-out garden for two hours. Twice a week, they could also use a fitness room for one hour.

The situation for female remand prisoners was far less favourable. Out-of-cell activities were limited to outdoor exercise twice a day for one hour and access to a kitchenette in a very small communal room. For the rest of the time, they were locked up in their cells, the only occupation being watching television, playing board games or reading. Hardly any of them was offered work or any other purposeful activities. In this connection, **the recommendation made in paragraph 61 applies equally to female remand prisoners at Lipjan/Lipljan Correctional Centre.**

76. Efforts were clearly being made at Lipjan/Lipljan to provide *juvenile prisoners* with school education and sports activities (fitness room, volleyball, basketball). Juveniles who were subject to the standard regime (nine at the time of the visit) were also offered a total of three hours of outdoor exercise every day. Inmates under the advanced regime (nine at the time of the visit), could go out into the open air for four hours a day and were provided additional sports activities.

A total of five teachers (three employed by the Ministry of Education and two who were contracted) provided basic schooling every morning for three hours from Monday to Friday (Albanian and English languages, mathematics, computer training, geography, history and arts). In addition, there were physical education classes in the afternoons.

That said, it is a matter of concern that the majority of staff dealing with juveniles had no specialised training for this purpose. According to the Director, there were plans to improve this situation. **The CPT would like to be informed of the concrete steps taken thus far in this respect.**

c. detention centres visited

77. As the authorities themselves are well aware, the present conditions in the detention centres visited are hardly suitable for long-term detention and, even more so, for prisoners serving lengthy sentences, as the centres do not have any suitable facilities (e.g. communal rooms) to organise a regime worthy of the name. That said, tangible efforts were being made by the management in some detention centres visited (in particular, at Gjilan/Gnjilane and Mitrovica/Mitrovicë) to provide work and other activities for prisoners.

78. As regards *sentenced prisoners*, the situation varied from one detention centre to another. The situation was most favourable at Prishtinë/Priština, where all six convicts present at the time of the visit were offered work (kitchen, maintenance). At Gjilan/Gnjilane, eight out of the 24 convicts were able to work (cleaning, kitchen, laundry, library, cutting hair), while, at Mitrovica/Mitrovicë, twelve prisoners shared five posts (cleaning, kitchen, maintenance)<sup>44</sup>. Regrettably, hardly any work was offered to prisoners at Pejë/Peć.

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<sup>44</sup> At Mitrovica/Mitrovicë, a course of tailoring was planned to start shortly.

The CPT is particularly concerned about the precarious situation of several convicts at Mitrovica/Mitrovicë Detention Centre, who were serving sentences of up to 20 years<sup>45</sup>, without being offered any purposeful activities. Such an impoverished regime is obviously detrimental to the mental state of the prisoners concerned. According to the Director of the centre, several of the prisoners concerned were suffering from psychological problems. **A viable, alternative, solution should be found as a matter of priority for prisoners serving long prison terms at Mitrovica/Mitrovicë.**

79. In all the detention centres visited, the vast majority of *remand prisoners*, if not all of them, were subject to a very impoverished regime. Out-of-cell activities were usually limited to outdoor exercise twice a day for one hour (with some sports activities). For the rest of the time, remand prisoners were locked up in their cells, in a state of enforced idleness. Their only source of distraction was reading, playing board games or watching television. The situation appeared to be particularly precarious at Pejë/Peć and Prishtinë/Priština, where prisoners were not offered any sports activities and were not provided with reading material. Further, at Pejë/Peć, many cells were not equipped with a television set.

80. As already indicated in paragraph 61, the aim should be to ensure that all prisoners, whether sentenced or on remand, spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature. In this connection, **the recommendation made in paragraph 61 applies equally to all detention centres visited, and, if appropriate, to other detention centres in Kosovo.**

Further, **the CPT recommends that, as a first step, the authorities explore the possibility of keeping cell-doors open during part of the day in the detention centres visited.**

81. In several of the detention centres visited, there were prisoners who were classified as category “A” or “E” and were thus systematically subjected to a system of “cell rotation”. In this connection, **the remarks and recommendations made in paragraphs 69 to 73 apply equally to detention centres in Kosovo.**

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<sup>45</sup> In order to allow the prisoners concerned to be located in close proximity to their families (and for their own safety), they were not held at Dubrava Prison.

## 5. Health care

### a. staff and facilities

82. At *Dubrava Prison* (including at the Prison Hospital Unit), the health-care staff comprised a total of eight doctors<sup>46</sup> and about 30 nurses. Such high staffing levels made it possible to cover the needs of an establishment accommodating up to 1,100 inmates (and, among other things, to dispense round-the-clock medical and nursing care in the establishment, both day and night, as well as at weekends).

However, the post of dentist had been vacant for some time, whereas dental consultations had previously been organised twice a week.

By letter of 26 June 2007, UNMIK confirmed that a full-time dentist had recently been recruited. The CPT welcomes this development.

83. Health-care staffing levels appeared to be generally satisfactory at *Lipjan/Lipljan Correctional Centre*<sup>47</sup>, as well as in all the detention centres visited<sup>48</sup>. In all these establishments, nursing staff were present around the clock.

84. Health-care facilities were generally acceptable in all the penitentiary establishments visited and of a good standard at the Prison Hospital Unit at Dubrava Prison. That said, it is a matter of concern that Mitrovica/Mitrovicë and Pejë/Peć Detention Centres lacked a dental chair and other equipment. As a consequence, the dentist Mitrovica/Mitrovicë was prevented from providing proper dental care, with the exception of extractions (see also paragraph 89). **The CPT recommends that immediate steps be taken to remedy this deficiency.**

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<sup>46</sup> There were six local doctors and two doctors seconded by UNMIK (an internal medicine practitioner and a psychiatrist). All of them worked full-time in the establishment (except for the psychiatrist).

<sup>47</sup> There were two general practitioners (working half-time), one psychiatrist (present twice a week for two to three hours), one dentist (present three times a week for half a day) and ten nurses. In addition, a psychologist was employed three days a week.

<sup>48</sup> At Gjilan/Gnjilane Detention Centre, the health-care team included two doctors (general practitioner and psychiatrist) and six nurses. Mitrovica/Mitrovicë and Pejë/Peć Detention Centres each employed three doctors (general practitioner, psychiatrist, dentist) and six nurses. At Prishtinë/Priština Detention Centre, there was one general practitioner (working half-time) and six nurses.

b. treatment and access to health care

85. At *Dubrava Prison*, somatic care was organised on the basis of rotating visits to the different blocks (two visits per block per week) except, obviously, for emergencies, which, in principle, were dealt with as quickly as possible. A medical examination request form was used, which was filled in by the prisoners. The forms were then handed to prison staff, who in turn passed them on to the Heads of Blocks; they were then logged in a register and forwarded to the deputy directors responsible for the blocks, who took the decision whether or not to follow up the request.

In short, it was a cumbersome administrative procedure, causing delays which were complained of by numerous prisoners, and in which unqualified staff took decisions that should be taken solely by medical staff (such as decisions to "filter" the requests sent to the health-care service, which were observed by the delegation at first hand).

**The CPT recommends that steps be taken at Dubrava Prison to ensure that any request for a medical consultation made by a prisoner is forwarded without undue delay to the health-care service and that consultations are organised in all the blocks on working days (and not just twice a week). Further, the Committee would like to recall that non-medical staff should not seek to screen requests for medical consultations.**

86. At Dubrava, specialised care was provided by various specialist doctors, who were usually present in the establishment once or twice a month. Hospitalisations generally took place in the hospitals in Prishtinë/Priština or Pejë/Peć. At first sight, hospitalisations of this kind did not appear to pose any particular problems. However, the delegation found that, in certain cases, there had been considerable delays (often of months), particularly for surgery. **The CPT would like to receive the comments of UNMIK on this point.**

87. As already mentioned, psychiatric care was provided in the psychiatric unit (15 beds) at Dubrava by one part-time psychiatrist, supported by two psychiatric nurses, an occupational therapist, and a psychologist who was present once a week. On average, about fifteen psychiatric consultations were held each month in the establishment.

The CPT welcomes the fact that a full-time psychologist was being recruited. However, given the prevalence of mental disorders in the prison and of problems related to drug addiction, the presence of a part-time psychiatrist appears to be insufficient. **The Committee recommends that the presence of a psychiatrist at Dubrava Prison be increased to the equivalent of one full-time post.**

88. The delegation gained a favourable impression of the health care provided at *Lipjan/Lipljan Correctional Centre*; no particular comment on this subject is called for.

89. The general health care provided in the *detention centres visited* was, on the whole, adequate.

That said, the provision of dental care constituted a serious problem in each of the detention centres visited; all attempts by the establishments' management to recruit dentists had failed thus far<sup>49</sup>. As a result, prisoners often had to wait for weeks or months to see a dentist. Apparently, the authorities at the highest level were aware of the problem and were making considerable efforts to find a solution.

**The CPT recommends that the relevant authorities redouble their efforts to ensure that, at all detention centres visited, prisoners can receive adequate dental care.**

90. Further, access to psychiatric care seemed to be problematic in some of the establishments visited. At Prishtinë/Priština, a number of prisoners complained about long delays in receiving psychiatric consultations.

The situation appeared to be particularly problematic at Mitrovica/Mitrovicë. In principle, prisoners could be transferred for inpatient treatment to the Psychiatric Clinic in Prishtinë/Priština, but ethnic Serb prisoners usually refused to be treated in Prishtinë/Priština (also for fear of inter-patient violence). As a consequence, the prisoners concerned were transferred to the Regional Hospital in Northern Mitrovica/Mitrovicë. However, according to the centre's management, it had become very difficult to transfer inmates in need of in-patient psychiatric care to that hospital, because of disagreements about the payment of hospital bills by the Kosovo Correctional Service. **The CPT would like to receive the comments of UNMIK on this matter.**

c. medical screening and recording of injuries

91. As regards medical screening, the CPT welcomes the fact that, in all establishments visited, newly-arrived prisoners were always seen by a nurse and a doctor within 24 hours of admission (including at weekends).

However, a number of shortcomings were observed in most of the establishments visited. First, the examination of medical files by the delegation revealed that the descriptions of injuries detected (upon admission or after violent incidents within the prison) were not always recorded<sup>50</sup> or not recorded in detail, and that no additional information was given. Secondly, in some cases, the medical examination upon admission was rather perfunctory (e.g. only pulse and blood pressure being checked). Thirdly, newly-arrived prisoners were not systematically screened for transmissible diseases in any of the establishments visited. Given the characteristics of the inmate populations (e.g. lack of access to health care in the community, practices at risk for transmissible diseases, etc.), the lack of such screening is of particular concern.

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<sup>49</sup> At Mitrovica/Mitrovicë Detention Centre, there was a part-time dentist, but the centre lacked basic equipment for dental interventions.

<sup>50</sup> As already indicated in footnote 3, the delegation found that, at the Prishtinë/ Priština Detention Centre, no injuries at all were recorded in the medical file of a detainee upon admission, while a photograph taken upon admission was found in the administrative file, displaying clearly visible bruises around the eye.

92. The CPT considers that the file drawn up after the examination of a newly-arrived prisoner – whether entering the prison system or in transit – should contain:

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

In his conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; this will enable the relevant authorities and, in particular prosecutors, to properly assess the information set out in the record. Upon request, the doctor's conclusions should be made available to the prisoner and his/her lawyer.

The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison. In addition, if the prisoner so requests, the doctor should provide him/her with a certificate describing injuries observed.

**The CPT recommends that steps be taken in all penitentiary establishments in Kosovo to ensure that the above-mentioned precepts are fully implemented in practice.**

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

Finally, **steps should be taken to ensure that newly-arrived prisoners are screened for transmissible diseases.**

93. The delegation noted that a specific register for recording injuries observed on prisoners upon admission or sustained in prison (self-mutilation, inter-prisoner violence or other causes) was not kept in any of the penitentiary establishments visited. In the CPT's view, **it would be desirable for such a register to be set up in all penitentiary establishments.** A register of this kind would enable the establishment, inter alia, to monitor levels of violence within the establishment.

94. It is a matter of serious concern that, with the notable exception of Lipjan/Lipljan Correctional Centre, medical examinations were systematically carried out in the presence of prison officers in all penitentiary establishments visited.

In the CPT's view, there can be no justification for custodial staff being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination.

95. By letter of 26 June 2007, UNMIK informed the CPT that “clear, written instructions have been issued to all Directors of Prison or Detention facilities stating that all medical examinations must be carried out in sight but out of hearing of a prison officer. Exceptions can be made only at the request of the medical doctor, on grounds of personal safety”.

Whilst acknowledging the steps taken by UNMIK, the CPT considers that medical examinations of prisoners (whether on arrival or at a later stage) should, as a rule, be conducted also out of the sight of prison officers, unless the doctor concerned requests otherwise in a particular case. **The CPT recommends that the management of Dubrava Prison and of all detention centres in Kosovo be instructed accordingly.**

96. In all penitentiary establishments visited, the delegation observed that prisoners were not systematically provided with basic information about transmissible diseases (such as tuberculosis, AIDS and hepatitis) by health-care staff. **It would be desirable for such information to be systematically given by health-care staff to prisoners in written form (e.g. leaflets), in a language they understand.**

## 6. Other issues

### a. discipline

97. The legal framework governing disciplinary matters is set out in Sections 108 to 119 of the Law on the Execution of Sentences<sup>51</sup> and Sections 295 and 296 of the PCPC, as well as in Section 5.1 of the “Standard Operating Procedures” (SOP, issued by the Commissioner of the Kosovo Correctional Service (KCS) in March 2006).

Sentenced and remand prisoners may be subjected to the following disciplinary sanctions: reprimand, deprivation of an assigned privilege (for a maximum of 15 days), an order to make restitution (maximum 25 € taking also into account the financial situation of the prisoner concerned) and solitary confinement (only for adult prisoners<sup>52</sup>, for no more than 15 days, and, in the case of multiple offences, 30 days<sup>53</sup>). In respect of remand prisoners (including juveniles), visits and correspondence may also be prohibited or restricted, for disciplinary reasons, by court decision<sup>54</sup> (the law does not specify any time limits for this purpose).

The delegation did not find indications of excessive resort to disciplinary sanctions (including solitary confinement) in any of the penitentiary establishments visited. Further, prisoners’ contacts with the outside world had hardly ever been restricted for disciplinary reasons. This is a welcome development.

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<sup>51</sup> Promulgated by UNMIK Regulation No. 2004/46.

<sup>52</sup> See Section 135, paragraph 2, of the JJC.

<sup>53</sup> A prisoner may not spend more than two months per year in solitary confinement.

<sup>54</sup> Visits by or correspondence with a lawyer, doctors, the Ombudsperson and representatives of diplomatic missions are exempt from such restrictions.

Nonetheless, the CPT wishes to stress that contacts with the family should never be totally prohibited as punishment<sup>55</sup>. Further, restrictions on contacts with the outside world should only be imposed for the shortest possible time and should, as a rule, not be applied to juvenile prisoners. **The Committee recommends that these precepts be implemented in all penitentiary establishments in Kosovo.**

98. As regards disciplinary procedures, the above-mentioned legal provisions contain various safeguards advocated by the CPT, such as the rights of the prisoners concerned to be heard in person (by the disciplinary board, which is chaired by the Director), to call witnesses on their own behalf and to cross-examine evidence given against them, to receive a copy of the disciplinary decision, and to lodge an appeal against that decision (to the KCS Commissioner in the case of sentenced prisoners or to the court in the case of remand prisoners).

That said, prisoners are granted the right to lodge an appeal against a disciplinary decision only if they are punished by solitary confinement<sup>56</sup> or, in the case of remand prisoners, by having their visits or correspondence prohibited or restricted<sup>57</sup>. Such a state of affairs is highly unsatisfactory and is also at variance with the Revised European Prison Rules<sup>58</sup>. **The CPT recommends that steps be taken to ensure that all prisoners subjected to a disciplinary punishment are granted a formal right to lodge an appeal.**

99. From the consultation of disciplinary registers and files, as well as consultations with staff, it transpired that, in all penitentiary establishments visited, disciplinary procedures were usually carried out in accordance with the above-mentioned legal requirements.

However, a number of shortcomings were identified in some of the establishments visited. For instance, at the Gjilan/Gnjilane Detention Centre, the prisoners concerned were not always heard by the disciplinary board before a decision on the matter was taken by the Director. Further, in most establishments visited, disciplinary decisions were not reasoned.

**The CPT recommends that steps be taken in all penitentiary establishments visited to ensure that all prisoners:**

- **are given a hearing in disciplinary proceedings;**
- **receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision.**

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<sup>55</sup> Cf. also Rule 60.4 of the "Revised European Prison Rules" (Recommendation R (2006) 2 of the Committee of Ministers of the Council of Europe).

<sup>56</sup> It is also noteworthy that any disciplinary sanction may have an impact on decisions on early release.

<sup>57</sup> Section 115, paragraph 1, of the Law on the Execution of Sentences and Section 295, paragraph 4, of the PCPC.

<sup>58</sup> See Rule 61.

100. The CPT has misgivings about the involvement of doctors in disciplinary proceedings against prisoners<sup>59</sup>. It wishes to stress that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers' Recommendation (2006) 2 on the European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed.

**The CPT recommends that existing legal arrangements and practice concerning the role of prison doctors in relation to disciplinary matters be reviewed. In so doing, regard should be had to the Revised European Prison Rules and the comments made by the CPT in paragraph 53 of its 15<sup>th</sup> General Report (CPT/Inf (2005) 17).**

101. With one exception, the material conditions in disciplinary cells were acceptable in all of the penitentiary establishments visited. The exception concerned the sole disciplinary cell at Mitrovica/Mitrovicë Detention Centre, which was claustrophobic (with a surface of less than 4 m<sup>2</sup> and a distance of just one metre between two of the walls) and poorly equipped (there was only a folding bed, which was fixed to the wall in an upright position during the day, and a chair). **The CPT must stress that, by virtue of its size alone, the above-mentioned cell is not fit for overnight accommodation. An alternative solution should be found for prisoners subjected to solitary confinement.**

b. security cells

102. Most of the penitentiary establishments visited had special security cells (so-called "VS-cells" – *vetmia speciale*), which were being used for accommodating violent and/or agitated prisoners.

At Dubrava Prison, one such cell was found in Block 5, which was totally devoid of any equipment and used to hold agitated prisoners for periods of up to 48 hours. Such a state of affairs is not acceptable.

During the end-of-visit talks, the delegation stressed that in its present state, the above-mentioned cell was totally unfit for use as accommodation for any prisoner. In pursuance of Article 4, paragraph 5, of the Agreement, it made an immediate observation and requested that the cell in question be immediately withdrawn from service.

By letter of 26 June 2007, UNMIK informed the CPT that the above-mentioned cell had been withdrawn from service.

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<sup>59</sup> Section 114, paragraph 4, of the Law on the Execution of Sentences, stipulates that "the disciplinary punishment of solitary confinement may not imposed before a written medical opinion is obtained which states that the convicted person is in a physical and psychological condition to endure a period of time of solitary confinement in the room in which solitary confinement is executed".

c. contact with the outside world

103. According to the relevant legal provisions and SOPs, prisoners are entitled to send and receive letters<sup>60</sup>, receive visits<sup>61</sup> (for adult prisoners, at least one one-hour visit per month and one three-hour visit every three months; for juveniles, one hour per week for juveniles) and make telephone calls<sup>62</sup> (once a week for five to ten minutes).

The information gathered during the visit showed that the above-mentioned rules were generally respected in all penitentiary establishments visited. In several establishments visited, the actual visit entitlement was more favourable than the minimum entitlement provided for by law (e.g. sentenced prisoners could receive a one-hour visit every week and remand prisoners a 30-minute visit every week). The CPT welcomes this development.

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<sup>60</sup> Sections 60 and 61 of the Law on the Execution of Sentences and Section 294, paragraph 4, of the PCPC.

<sup>61</sup> Sections 64 to 68 of the Law on the Execution of Sentences; Section 294, paragraphs 1 and 2, of the PCPC; Section 116 of the JJC; Standard Operating Practice 7.1.

<sup>62</sup> Section 62 of the Law on the Execution of Sentences.

## C. Psychiatric/social welfare establishments

### 1. Preliminary remarks

104. The delegation visited the Psychiatric Clinic at Prishtinë/Priština University Hospital and the Unit for Psychiatry and Neurology at Mitrovica/Mitrovicë Regional Hospital, as well as “Shtime/Štimlje Special Institute”.

The **Psychiatric Clinic at Prishtinë/Priština University Hospital** comprises two closed units, an emergency/intensive care unit (capacity: 14 beds) and a forensic unit (“prison ward”; capacity: 8 beds), as well as various open units (general psychiatric units for male and female patients, unit for drug addicts, day-care centre for children). The delegation focused its visit on the two closed units. It also interviewed patients who were subject to compulsory treatment ordered by a criminal court<sup>63</sup>. At the time of the visit, nine patients (including two women) were being accommodated in the emergency unit and four male patients in the forensic unit.

The prison-like atmosphere in the forensic unit was striking. The only staff being present in the unit were prison officers, and patients were often handcuffed when brought to the office of the doctor outside the unit. Further, patients were offered no outdoor exercise at all for prolonged periods (see paragraphs 109, 110 and 118).

**Mitrovica/Mitrovicë Regional Hospital** is located in the city centre of Northern Mitrovica/Mitrovicë. The Unit for Psychiatry and Neurology of the hospital had an official capacity of 40 beds (20 for psychiatric and 20 for neurological patients) and was accommodating 13 psychiatric patients (including six women) at the time of visit. Due to the lack of an appropriate infrastructure for accommodating involuntary patients, such patients were only being held in the hospital for a short time. Usually, they were then transferred for further treatment to a psychiatric hospital in Serbia proper.

**Shtime/Štimlje “Special Institute”** was opened some decades ago as an institution for persons suffering from mental disabilities. Over the years, it became the largest social welfare institution in Kosovo, accommodating hundreds of persons of all age groups who were suffering from mental and/or physical disabilities, mental illnesses or who were in need of care for other reasons (alcoholics, abandoned children, etc.). In 2000, a non-admission policy was introduced and a process of de-institutionalisation initiated, the aim being to progressively transfer all residents/patients to community-based care centres throughout Kosovo and, ultimately, to decommission the whole establishment<sup>64</sup>. In September 2006, the “Special Institute” was formally divided into two separate institutions, one for persons with mental disabilities under the Ministry of Labour and Social Welfare and the other an Integration Centre for Mental Health for chronic psychiatric patients under the Ministry of Health. At the time of the visit, the former was accommodating 74 residents (30 man and 44 women) and the latter 72 patients (39 man and 33 women).

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<sup>63</sup> Due to the lack of appropriate facilities in Kosovo, the patients concerned were being held in the open unit for male psychiatric patients.

<sup>64</sup> Thus far, five centres for adults and two for children have been opened; they are all affiliated to Shtime/Štimlje “Special Institute”.

105. The CPT noted that the Regional Hospital in Northern Mitrovica/Mitrovicë was, as a matter of fact, exclusively administered (in terms of budget, management, staff, supervision, etc.) by the Ministry of Health of Serbia proper. Representatives of UNMIK affirmed to the delegation that UNMIK did not exercise any control over this establishment (as the latter formed part of the so-called “parallel structures”).

Nevertheless, **the Committee requests UNMIK to make every effort possible to facilitate the implementation in practice of the recommendations and comments made in paragraphs 111, 112, 123, 127, 131 to 133, 136, 138 and 139 in respect of the Unit for Psychiatry and Neurology of Mitrovica/Mitrovicë Regional Hospital.**

## 2. Ill-treatment

106. The delegation received no allegations of ill-treatment by staff at the *Psychiatric Clinic in Prishtinë/Priština* and the *Regional Hospital in Mitrovica/Mitrovicë*. The atmosphere in both establishments was relaxed (to a lesser extent in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština), and staff-patient relations were good.

However, some allegations of physical ill-treatment (such as slaps) by orderlies were received at *Shtime/Štimlje “Special Institute”*.

By letter of 26 June 2007, UNMIK informed the CPT that “the Director of Mental Health Department reminded the medical workers in the Centre of their job responsibilities and medical ethics. He also warned that should the Ministry of Health (MoH) be informed about any ill-treatment, that it will undertake adequate disciplinary measures”.

This is a welcome development. **The CPT recommends that the same message be delivered to staff of the Institution for persons with mental disabilities at Shtime/Štimlje.**

107. Further, a number of patients/residents, mostly women, met at *Shtime/Štimlje* alleged that they had been subjected to violence and/or intimidation by other patients/residents<sup>65</sup>. No such allegations were received in the other psychiatric establishments visited.

**The CPT recommends that staff at Shtime/Štimlje employ all means at their disposal to prevent inter-patient/resident violence and intimidation; in order to tackle this problem, staff should be alert to signs of trouble and both determined and properly trained to intervene when necessary.**

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<sup>65</sup> By way of example, a female resident who displayed a “black eye” alleged that she had been assaulted with a stick and punched by a fellow-resident.

### 3. Patients'/residents' living conditions

108. In any psychiatric/social welfare establishment, the aim should be to offer material conditions which are conducive to the treatment and well-being of patients/residents; in psychiatric terms, a positive therapeutic environment. Creating such an environment involves, first of all, providing sufficient living space per person, as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements. Particular attention should also be given to the decoration of both patients'/residents' rooms and recreation areas.

109. Living conditions in the emergency/intensive care unit at the *Psychiatric Clinic in Prishtinë/Priština* were, on the whole, very good and do not call for any particular comment.

However, the material conditions in the forensic unit were very prison-like and hardly conducive to the creation of a therapeutic environment. It is a matter of serious concern that patients were being kept there in a state of total idleness: they did not have any possibility to go into the open air, nor were they provided with reading material or a radio or TV, and they had no possibility to make telephone calls. It should be added that patients were being held in such conditions for months on end. At the time of the visit, one patient had been kept in the forensic unit for nine months and, previously, another patient had been held there for 18 months.

110. During the end-of-visit talks, the delegation requested the relevant authorities to take immediate steps to ensure that all patients held in the forensic unit of the Psychiatric Clinic in Prishtinë/Priština are offered, if their state of health so permits, at least one hour of outdoor exercise every day.

By letter of 26 June 2007, UNMIK informed the CPT that “[f]ollowing discussions between the Ministry of Health and the Ministry of Justice it is now possible for detainees/prisoners at Pristina Hospital to make telephone calls. Also, on request of the Ministry of Justice, a room has been available for meetings in private, such as consultations with lawyers. In addition, a TV will be provided by the MoJ/KCS. A system of fresh air exercise of one hour daily in the hospital grounds is under discussion between the Ministry of Health and the Ministry of Justice/KCS. There are no specific areas within the Clinic that can be used for this purpose; both Ministries are working to find an appropriate solution“.

Whilst acknowledging the steps taken thus far by UNMIK, **the CPT recommends that the authorities pursue their efforts as a matter of priority to ensure that all patients held in the forensic unit of the Psychiatric Clinic in Prishtinë/Priština are offered, if their state of health so permits, at least one hour of outdoor exercise every day.**

111. Material conditions in the *Unit for Psychiatry and Neurology at Mitrovica/Mitrovicë Regional Hospital* were generally satisfactory. All rooms were of a reasonable size (some 20 m<sup>2</sup> for four, and, on occasion, five patients), had basic furniture and were well lit and clean. However, due to the total lack of any decoration, the atmosphere was rather austere. **Steps should be taken by the relevant authorities to remedy this shortcoming.**

112. The CPT is concerned by the almost total lack of recreational activities (such as TV, radio, books, newspapers) in the hospital. Further, no provision was made for outdoor exercise for psychiatric patients who were not able to leave the unit on their own. Even if most patients usually stay in the hospital only for a relatively short time, a solution must be found to allow patients whose state of health so permits, to go outside for at least one hour per day.

**The Committee recommends that steps be taken by the relevant authorities to ensure that at Mitrovica/Mitrovicë Regional Hospital:**

- **some recreational activities are offered to psychiatric patients;**
- **all psychiatric patients whose state of health so permits are offered at least one hour of outdoor exercise per day.**

113. At *Shtime/Štimlje Special Institute*, material conditions were generally satisfactory in the new Institution for persons with mental disabilities, which falls under the authority of the Ministry of Labour and Social Affairs. The whole establishment was in a relatively good state of repair and cleanliness. Bedrooms provided sufficient living space (some 16 m<sup>2</sup> for 4 persons), had large windows, and were equipped with beds, bedside tables and cupboards. On each floor, there was a day room with a television set and new sofas. However, residents' rooms were devoid of any personal belongings. **Steps should be taken to offer a more personalised environment to residents in the Institution for persons with mental disabilities at Shtime/Štimlje.**

114. The delegation gained a favourable impression of the socio-rehabilitative and recreational activities were available to residents (e.g. sewing, tailoring, handicrafts, painting, sports). Residents were also able to move freely within the premises of the institution (including in the large park).

115. In contrast, conditions for patients in the Integration Centre for Mental Health under the Ministry of Health were very poor. Although bedrooms were adequate in terms of living space (more than 9 m<sup>2</sup> for single or double occupancy) and access to natural light, many of them, as well as all day rooms, were dilapidated, and some of the furniture was broken. Further, the level of hygiene was far from satisfactory, and the smell of urine permeated many parts of the centre (despite the windows being open)<sup>66</sup>.

The CPT is very concerned by the fact that the Centre apparently still lacked the necessary funds to ensure even the basic needs of patients, such as adequate clothing or shoes<sup>67</sup>. The delegation was also informed that the payment for heating and the provision of food was still not secured. It is also a matter of concern that no organised activities whatsoever were offered to patients.

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<sup>66</sup> Shortly before the CPT's visit, the entire basement area, which offered appalling living conditions (the bedrooms being partly flooded, dirty and very malodorous), was taken out of service as patient accommodation.

<sup>67</sup> A number of patients did not have any shoes at all. Due to the lack of belts for trousers, some patients were obliged to continuously hold up their trousers with their hands whilst walking in the garden.

116. By letter of 26 June 2007, UNMIK informed the CPT that “to cover the expenses for heating during the last winter and for provision of food, the MoH redirected 106,000 Euros to the Shtime/Stimlje Centre from the accounts of other mental health integration centres in Kosovo. In order to solve the problem of providing the patients of the Shtime/Stimlje institution with adequate clothing and footwear, the medical workers of this integration centre intensified their donor-finding activities, which has resulted in several donations by Italian and French KFOR contingents and international NGO Caritas (clothing, shoes and medication were provided). Considerable funds are required to change the beds, mattresses and other furniture. Also, budget is lacking for the organization of daily activities of the patients. Despite the fact that the MoH took over the Mental Health Integration Centre in Shtime/Stimlje in September 2006, and despite a timely request for a new budget line for the fiscal year 2007, the necessary funds have not been allocated to the Centre”.

The CPT welcomes the steps taken thus far by the relevant authorities. However, it is a matter of particular concern that, after almost one year of existence, the Integration Centre for Mental Health is still not provided with a proper budget.

**The Committee recommends that additional steps be taken as a matter of priority to improve the living conditions for patients at the Integration Centre for Mental Health at Shtime/Štimlje, in the light of the above remarks.**

#### **4. Staff**

117. At the outset, the CPT wishes to stress that in all psychiatric establishments visited, the vast majority of patients/residents met by the delegation expressed their appreciation of the manner in which they were treated by staff and, in particular, by nursing staff.

118. The health-care staffing levels in the emergency/intensive care unit at the *Psychiatric Clinic in Prishtinë/Priština* were in many respects adequate, with three doctors (who also worked for other units) and 17 nurses. In addition, the unit was visited by a psychologist who worked for the entire psychiatric clinic (and was one of the few psychologists who were employed in the Kosovo health system).

The situation was less favourable in the forensic unit, which was covered by staff from the general psychiatric unit for male patients. The health-care team included one chief psychiatrist and three psychiatrists (who also worked in other units of the clinic), as well as seven nurses. However, the presence of health-care staff was limited to five daily visits by a nurse, in order to administer the prescribed medication, and one daily visit by a doctor. Thus, the only staff present on an ongoing basis in the unit were five or six prison officers (employed by Prishtinë/Priština Detention Centre)<sup>68</sup>; the officers had all received a one-week special training for their assignment.

**The CPT recommends that steps be taken to ensure the regular attendance of a member of health-care staff in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština.**

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<sup>68</sup> In addition, the entrance to the unit was guarded by an armed police officer.

119. At the *Unit for Psychiatry and Neurology at Mitrovica/Mitrovicë Regional Hospital*, the doctor/nurse staffing levels were very good. There were six doctors (including two psychiatrists) and 30 nurses, all of whom worked for the whole unit (with 40 beds). In addition, the hospital employed two psychologists.

120. At *Shtime/Štimlje “Special Institute”*, health-care staffing levels were on the whole adequate in the Institution for persons with mental disabilities, which employed one doctor, 16 nurses and 24 orderlies.

However, health-care staffing levels in the Integration Centre for Mental Health were insufficient, with only one psychiatrist working half-time (in addition to the Director, who was a psychiatrist himself), 16 nurses and 8 orderlies.

**The CPT recommends that steps be taken by the relevant authorities to ensure that in the Integration Centre for Mental Health at Shtime/Štimlje:**

- **the psychiatric care is increased by having an equivalent of at least one full-time psychiatrist’s post;**
- **the number of nursing staff and orderlies is increased.**

## **5. Treatment**

121. Psychiatric treatment should be based on an individualised approach, which implies the drawing-up of a treatment plan for each patient indicating the goals of the treatment, the therapeutic means used and the staff member responsible. The treatment plan should also include regular reviews of the patient’s state of mental health and reviews of the patient’s medication.

It should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients 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 long-term patients to be offered education and suitable work.

122. The supply of medicines appeared to be on the whole adequate in all psychiatric establishments visited. Further, no cases of overmedication were found in any of the establishments visited (see, however, paragraph 125).

123. The delegation noted that hardly any form of treatment, other than pharmacotherapy, was provided in the psychiatric establishments visited. It should also be noted that in the Institution for persons with mental disabilities at Shtime/Štimlje, more than half of the residents were receiving psychotropic medication on a regular basis.

**The CPT recommends that steps be taken in all psychiatric establishments visited, in particular at Shtime/Štimlje, to develop treatment and rehabilitative activities for psychiatric patients/residents, which would also allow a reduction in the use of psychotropic medication.**

## 6. Restraint of agitated and/or violent patients/residents

124. In any psychiatric/social welfare establishment, the restraint of agitated and/or violent patients/residents may on occasion be necessary. However, this is an area of particular concern to the CPT, given the potential for abuse and ill-treatment.

It is essential that the restraint of patients/residents be the subject of a clearly-defined policy. That policy should make it clear that initial attempts to restrain agitated or violent patients 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.

Resort to mechanical restraint 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 physical restraint, they should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment. Patients subject to means of mechanical restraint should, at all times, have their mental and physical state continuously and directly monitored by a member of the health-care staff.

Further, every instance of restraint of a patient/resident (manual control, mechanical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient'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 patients or staff. This will greatly facilitate both the management of such incidents and an oversight as to the frequency of their occurrence.

125. In all psychiatric establishments visited, agitated patients were usually brought under control with sedative medication ("chemical restraint"). Mechanical restraints (such as clothes straps) were hardly used, if at all. Only in the emergency/intensive care unit at the Psychiatric Clinic in Prishtinë/Priština were there also seclusion rooms.

As regards chemical restraint, the delegation met one patient in the emergency/intensive care unit at the Psychiatric Clinic in Prishtinë/Priština who displayed clear symptoms of overmedication (he had received additional neuroleptic medication following a violent incident two days before with another patient). In addition, he had apparently not been given any corrective treatment (i.e. Biperidin) The delegation was assured by the doctor in charge that she would immediately look into the matter.

Further, the delegation was informed that, in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština, agitated patients were, on occasion, handcuffed to their bed, until sedative medication that had been injected took effect. **The CPT recommends that an end be put to this practice; if mechanical restraint is temporarily required, appropriate alternative means should be used (e.g. straps).**

126. At the Integration Centre for Mental Health at Shtime/Štimlje, the delegation noted that nurses appeared to be entitled to change the doses of medication that had been prescribed in advance (*pro re nata*). Instances of chemical restraint were not systematically brought to the attention of the doctor.

The CPT wishes to stress that the administration of chemical restraint should always be ordered by a doctor; **it recommends that the nursing staff at Shtime/Štimlje be instructed accordingly.**

127. In none of the establishments visited were instances of resort to restraints (mechanical restraint, seclusion, chemical restraint) recorded in a specific register. **The CPT recommends that specific registers detailing the use of means of restraint be established in all psychiatric establishments visited.**

## 7. Safeguards

128. On account of their vulnerability, the mentally ill and mentally handicapped warrant particular attention to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in a psychiatric establishment should always be surrounded by appropriate safeguards.

### a. initial placement and discharge procedures

129. The procedure by which involuntary placement in a psychiatric/social welfare establishment is decided should offer guarantees of independence and impartiality as well as objective psychiatric expertise. Further, such placement should cease as soon as it is no longer required by the patient's/resident's mental state. Consequently, the need for placement should be reviewed at regular intervals by an appropriate authority. In addition, the patient/resident himself/herself should be able to request at reasonable intervals that the necessity for placement be reviewed by a judicial authority.

130. The applicable law in Kosovo contains a number of provisions concerning the involuntary placement of a civil nature of patients in psychiatric establishments. According to the Law on Non-contested Procedures of 1986, psychiatric establishments are obliged to notify every involuntary placement to the competent court "immediately or within three days"<sup>69</sup>. The person concerned has to be examined by three medical specialists who have to submit an expert opinion to the court within eight days<sup>70</sup>. The court has to decide on the involuntary placement within eight days from notification (or within 15 days if more time is needed to establish a diagnosis).

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<sup>69</sup> See Section 46. The same procedure applies whenever voluntary patients withdraw their consent to placement in a psychiatric establishment (Section 47).

<sup>70</sup> Sections 49 and 38.

As a rule, the patient concerned has to be heard in person by the court, before a decision is taken on the involuntary placement. In its decision, the court has to determine the duration of the placement order, which cannot exceed one year<sup>71</sup>. The person concerned (or his/her guardian) can lodge an appeal against the placement order within three days<sup>72</sup>. During the involuntary placement, the patient concerned, his/her guardian or next-of-kin may at any time submit to the court a request for discharge<sup>73</sup>. Upon expiry, placement orders can be renewed for a maximum period of one year at a time<sup>74</sup>.

131. The above-mentioned provisions of the Law on Non-contested Procedures satisfy to a large extent the CPT's standards regarding the involuntary placement of patients in a psychiatric establishment. However, it is a matter of grave concern that, in practice, these provisions have never been applied in any of the establishments visited. Consequently, patients have been deprived of their liberty, sometimes for years on end, without benefiting from any appropriate safeguards. In practice, the consent form is often signed by a family member if the patient concerned does not consent to his/her placement.

**The CPT recommends that steps be taken without delay to ensure that the relevant legal provisions applicable in Kosovo which govern the involuntary placement of patients are effectively implemented. To this end, the competent courts should be informed of all persons who are currently being held in any of the psychiatric establishments visited on an involuntary basis.**

132. As regards persons who are deprived of their legal capacity, the delegation was informed that, in the Institution for persons with mental disabilities at Shtime/Štimlje, the vast majority of residents were clearly unable to give a valid consent to their placement. However, only a small number of them had a guardian appointed. In some cases, a guardian had apparently been appointed a long time before, but could no longer be traced.

In this connection, the CPT welcomes the fact that first steps had recently been taken by the management at Shtime/Štimlje to notify such cases to the competent court, with a view to having a guardian appointed<sup>75</sup>. **The Committee recommends that steps be taken at Shtime/Štimlje and, if appropriate, in other social welfare/psychiatric establishments in Kosovo, to ensure that all residents/patients who were presumed to be unable to consent to their placement are notified to the competent court.**

133. From the examination of individual files of residents/patients in respect of whom the court proceedings to appoint a guardian had already been completed, it transpired that the residents/patients concerned had been examined by a psychiatrist. However, they had not always been heard in person by the judge, and had not received a copy of the court decision.

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<sup>71</sup> Section 51.

<sup>72</sup> Sections 55 and 39.

<sup>73</sup> Section 52.

<sup>74</sup> Section 53.

<sup>75</sup> Guardians were to be appointed by the competent social welfare centre, on the basis of the court decision.

**The CPT recommends that steps be taken by the relevant authorities to ensure that, in the context of court proceedings to deprive a resident/patient of his/her legal capacity and to appoint a guardian, the persons concerned are:**

- **granted the right to be heard in person by the court;**
- **given a copy of the court decision;**
- **informed in writing and verbally of the possibility and modalities to lodge an appeal against the court decision.**

**Further, the Committee recommends that steps be taken to ensure that the need for placement in a psychiatric/social welfare institution of persons under guardianship is reviewed at regular intervals by an appropriate authority.**

134. The CPT is concerned about the situation of a group of some 20 patients/residents of Serbian origin who had been held at Shtime/Štimlje for many years. They all had an official identity, but no documentation could be found regarding their initial placement. It was also unclear whether a guardian had ever been appointed for them (according to staff, they were all unable to consent to their placement in the establishment). Since all their relatives lived in Serbia proper, attempts had repeatedly been made by the management to transfer them to appropriate care institutions in Serbia proper. However, all these attempts had apparently failed so far. **The CPT would like to receive the comments of UNMIK on this matter.**

135. As regards forensic psychiatry, the placement of offenders who are under assessment or who have been declared criminally irresponsible and who are subject to mandatory treatment in a psychiatric establishment is regulated by UNMIK Regulation No. 2004/34 on Criminal Proceedings Involving Perpetrators with a Mental Disorder<sup>76</sup>. The relevant provisions provide for appropriate safeguards and do not call for any particular comment.

According to the above-mentioned regulation, placements for mandatory treatment in a psychiatric establishment are for an indeterminate period, but have to be reviewed by a court at six-monthly intervals<sup>77</sup>. However, from the consultation of the files of the two patients held at the Psychiatric Clinic in Prishtinë/Priština for the purpose of mandatory treatment at the time of the visit, it transpired that no such review had been carried out by a court, despite the fact that the initial placement decision had been taken more than a year before in one case, and more than six months before in the other.

**The CPT recommends that steps be taken by the relevant authorities to ensure that all placements for mandatory treatment are subject to regular review, as provided for by law.**

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<sup>76</sup> Sections 10 to 24 and Section 33.

<sup>77</sup> Section 21, paragraph 3. According to Section 21, paragraph 4, a measure of mandatory treatment may also be terminated by the court *ex officio* or at the request of the patient concerned, his/her defence lawyer, the health-care institution or the competent Guardianship Authority.

b. safeguards during placement

136. An introductory brochure setting out the establishment's routine and patients'/residents' rights should be issued to each patient/resident on admission, as well as to their families. Any patients/residents unable to understand this brochure should receive appropriate assistance.

In all psychiatric/social welfare establishments visited, newly-admitted patients/residents received relevant information verbally. However, no written information was provided<sup>78</sup>. **The CPT recommends that steps be taken at all psychiatric/social welfare establishments visited to ensure that all patients/residents (as well as their families) are provided on admission with an introductory brochure setting out the establishment's routine and their rights.**

137. The CPT also wishes to emphasise that patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. Every patient/resident, whether voluntary or involuntary, should be given the opportunity to refuse – either in person or through the guardian – 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.

Of course, consent to treatment can only be qualified as free and informed if it is based on full and accurate information about the patient's condition and the treatment which is proposed. In this connection, it is essential that all patients be provided systematically with relevant information as to their condition and the treatment proposed for them. Relevant information should also be provided following treatment (results, etc.).

138. The CPT welcomes the fact that the above-mentioned precepts are embodied in Sections 9 to 15 of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System<sup>79</sup>.

However, it appeared that, in practice, the admission of a person to the psychiatric establishments visited on an involuntary basis was usually construed as authorising treatment without his or her consent.

**The CPT recommends that steps be taken at all psychiatric/social welfare establishments visited to ensure that all patients/residents, including those placed there on an involuntary basis, are given the opportunity to refuse – either in person or through their guardian – treatment or any other medical intervention, in the light of the above remarks.**

139. An effective complaints procedure is another basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist, enabling patients/residents to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

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<sup>78</sup> An information brochure was apparently in preparation at the Psychiatric Clinic in Prishtinë/Priština.

<sup>79</sup> Promulgated by UNMIK Regulation No. 2004/47.

In all psychiatric/social welfare establishments visited, patients/residents (as well as their guardians and next-of-kin) could submit complaints on a confidential basis to the management as well as to the Ombudsman. However, a number of patients/residents appeared to be unaware of the existing complaints procedures.

**The CPT recommends that, at all psychiatric/social welfare establishments visited, patients/residents be informed in the introductory leaflet/brochure issued upon admission of their right, as well as of the modalities, to lodge complaints.**

140. As regards external supervision, the CPT noted that the Ombudsperson of Kosovo carried out visits to psychiatric establishments on a regular basis, during which patients/residents were also interviewed in private.

During its consultations with representatives of the Ministry of Health, the delegation was informed that, in the past, Boards of Visitors had carried out visits (including unannounced ones) to psychiatric establishments, but that, due to budgetary cuts, the board was no longer operational. **The CPT recommends that the system of Boards of Visitors be re-activated and the boards be provided with adequate resources to enable them to carry out their tasks effectively.** Further, **the Committee invites the authorities to establish a visiting mechanism of this kind for social welfare establishments.**

141. In all psychiatric establishments visited, the existing arrangements for contact with the outside world were satisfactory. Patients/residents were able to send and receive correspondence, have access to the telephone, and receive visits from their family and friends.

**APPENDIX I**

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

**A. Police custody**

**Ill-treatment**

recommendations

- a formal statement emanating from the highest competent political authority to be delivered to all KPS officers (including to officers of the criminal police), reminding them that they should be respectful of the rights of persons in their custody and that the ill-treatment of such persons will be the subject of severe sanctions. They should also be reminded that no more force than is strictly necessary is to be used when apprehending a person (paragraph 13);
- appropriate steps to be taken to ensure that persons who may have been victims of ill-treatment by police officers are effectively able to lodge a formal complaint (paragraph 13);
- the relevant authorities to ensure that, whenever an apprehended person brought before a prosecutor or judge alleges ill-treatment by the police, those allegations are recorded in writing, a forensic medical examination is immediately ordered, and the necessary steps are taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor or judge should request a forensic medical examination whenever there are other grounds (e.g. visible injuries; a person's general appearance or demeanour) to believe that ill-treatment may have occurred (paragraph 14);
- appropriate steps to be taken to ensure that prosecutors/judges conduct proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated (paragraph 14).

requests for information

- an account of all complaints of police ill-treatment received by the Kosovo Police Inspectorate (KPI) in 2007 and the outcome of the relevant disciplinary and/or criminal proceedings (allegations, brief descriptions of the findings of the relevant court or body, verdict, sentence/sanction imposed) (paragraph 16);
- detailed information on any ordinary or extraordinary inspections carried out by the KPI since April 2007 (objectives, conclusions, etc.) (paragraph 18);
- the concrete measures taken by the relevant authorities in the light of the investigations referred to in paragraphs 19 and 20, with a view to preventing similar incidents from occurring in the future (paragraph 20).

## Safeguards

### recommendations

- steps to be taken to ensure that the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, as from the very outset of their deprivation of liberty (paragraph 26);
- steps to be taken in all police establishments to ensure that all medical examinations of detainees are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of police officers (paragraph 27);
- steps to be taken to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights (including the right of access to a doctor) as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear information given verbally at the very outset of custody, and supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a sheet in writing, setting out the rights of detained persons in a straightforward manner. This sheet should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights (paragraph 29);
- at every police station in Kosovo, a single and comprehensive custody record to be opened in respect of each detained person (paragraph 33);
- steps to be taken to ensure that:
  - the custody record is sent with the detainee when he/she is transferred to another police station, with a copy being kept at the original police station;
  - the requirement to open a custody record applies from the moment a detainee arrives at a police station (i.e. even during the first six hours of detention, prior to the prosecutor authorising detention for up to 72 hours);
  - the requirement to open a custody record applies even in police stations without detention facilities but where suspects are first held for the purpose of being interviewed (paragraph 33).

comments

- steps should be taken to guarantee the confidentiality of medical data in all police establishments (paragraph 28);
- steps should be taken to put an end to the practice of interviewing suspects as “witnesses” without informing them of their rights (paragraph 30);
- the longer-term objective should be to conduct interviews, as a rule, only at police stations with detention facilities (paragraph 31).

**Conditions of detention**

recommendations

- steps to be taken without delay to ensure that the material conditions of detention are significantly improved in the police stations visited (and, if necessary, in other police detention facilities in Kosovo), in particular, as regards access to natural light, ventilation and hygiene (paragraph 37);
- the authorities to develop a detailed plan to progressively refurbish all police detention facilities in Kosovo (paragraph 37).

comments

- cells measuring some 2.5 m<sup>2</sup> (such as those found at Deçan/Dečani Police Station) should only be used for temporary holding purposes, for no longer than a few hours, and should never be used as overnight accommodation (paragraph 35).

**Other issues**

comments

- resort to handcuffing detainees to fixed objects is not acceptable if such means are applied for a prolonged period or in full view of others. Further, there can be no justification for the use of handcuffs while a suspect is being interviewed. More generally, handcuffs should not be used as a substitute for proper holding facilities (paragraph 38).

requests for information

- the comments of UNMIK regarding the display of political symbols observed by the delegation at Prishtinë/Priština Police Station No. 1 (paragraph 39).

## **B. Penitentiary establishments**

### **Ill-treatment**

#### recommendations

- the management at Dubrava Prison, Lipjan/Lipljan Correctional Centre and Prishtinë/Priština Detention Centre to remind their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be punished accordingly (paragraph 42);
- an independent inquiry to be carried out into the incident referred to in paragraph 44, regarding the alleged ill-treatment/excessive use of force by members of the Intervention Unit at Dubrava Prison and, if necessary, appropriate sanctions to be imposed at all levels (paragraph 44);
- immediate steps to be taken at Dubrava Prison and Lipjan/Lipljan Correctional Centre to ensure that, whenever allegations of ill-treatment emerge following an intervention by the Intervention Unit, an internal investigation is immediately carried out (without prejudice to any inquiries to be carried out by administrative and/or judicial authorities). Further, detailed intervention reports should be drawn up by the team leaders concerned, after each intervention (paragraph 50);
- all members of the Intervention Units at Dubrava Prison and Lipjan/Lipljan Correctional Centre to be reminded that any force used against prisoners during interventions must be limited to what is strictly necessary and that, as soon as recalcitrant prisoners have been brought under control, there can be no justification for them being struck (paragraph 51);
- steps to be taken by the relevant authorities to ensure that the precepts set out in paragraph 52 are implemented in practice in all penitentiary establishments in Kosovo (paragraph 52).

#### comments

- every prisoner in respect of whom force has been used should be entitled to be examined immediately by a doctor and, if necessary, receive treatment (paragraph 47);
- the relevant authorities are invited to introduce a rotation policy for members of prison intervention units (paragraph 50);
- it is essential that great care be taken with the selection, recruitment, training (including stress management), physical training and equipping of the members of special units, in order to ensure that they are the best suited to dealing appropriately (i.e. using minimum force) with situations of risk (paragraph 50).

## **Material conditions of detention**

### recommendations

- steps to be taken without delay to renovate the blocks at Dubrava Prison which have not yet benefited from such work. Efforts should also be made to reduce occupancy levels in those cells which are currently overcrowded (paragraph 54);
- appropriate steps to be taken by the relevant authorities in the juvenile and female units at Lipjan/Lipljan Correctional Centre to remedy the shortcomings described in paragraph 57 (paragraph 57);
- appropriate steps to be taken by the relevant authorities to remedy the shortcomings observed in the detention centres visited (as described in paragraph 58). In particular, steps should be taken to ensure that:
  - at Mitrovica/Mitrovicë and Gjilan/Gnjilane Detention Centres, cells measuring between five and six square metres are used for single occupancy only;
  - at Pejë/Peć and Prishtinë/Priština Detention Centres, all cells have adequate access to natural light (paragraph 59).

### comments

- the aim should be to provide in all penitentiary establishments at least 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells and 9 m<sup>2</sup> of living space in single cells (paragraphs 54 and 59).

### requests for information

- detailed information on the outcome of the night-time evacuation drill referred to in paragraph 55, as well as on any measures subsequently taken at Dubrava Prison (paragraph 55).

## **Regime**

### recommendations

- steps to be taken to significantly expand the activities and training available to the inmates of Dubrava Prison. Special attention should be given to setting up individualised treatment plans for prisoners and to the regime for those serving long sentences (paragraph 61);
- the authorities to deliver a clear message to staff at Dubrava Prison, both in supervisory posts and at a lower level, that abusing their position by accepting or demanding rewards from prisoners is not acceptable and that any acts of this kind will be the subject of severe sanctions. This message should be reiterated regularly and in an appropriate manner (paragraph 64);
- clear and transparent rules and criteria to be drawn up at Dubrava Prison, in particular for detention regimes and the distribution of prisoners. Further, prisoners should be informed of these rules and criteria through appropriate channels (paragraph 65);
- steps to be taken at Dubrava Prison to develop within Block 1 a programme of activities inspired by the principles set out in paragraphs 67 and 68 (paragraph 68);
- the security classification system in penitentiary establishments in Kosovo to be reviewed, in the light of the remarks made in paragraphs 69 and 71 (paragraphs 71 and 81);
- the authorities to put an end to the policy of systematic "cell rotation" at Dubrava Prison and in the detention centres visited, in the light of the remarks made in paragraph 73 (paragraphs 73 and 81);
- steps to be taken to significantly expand the activities and training available to female prisoners at Lipjan/Lipljan Correctional Centre and inmates at all detention centres visited, and, if appropriate, at other detention centres in Kosovo. Special attention should be given to setting up individualised treatment plans for inmates and to the regime for those serving long sentences (paragraphs 75 and 80);
- as a first step, the authorities to explore the possibility of keeping cell-doors open during part of the day in the detention centres visited (paragraph 80);
- a viable, alternative, solution regarding activities to be found as a matter of priority for prisoners serving long prison terms at Mitrovica/Mitrovicë Detention Centre (paragraph 78).

### comments

- the time has come for the management at Dubrava Prison to make efforts to more closely comply with the prisoner distribution and classification principles which it itself has advocated (paragraph 62).

requests for information

- the comments of UNMIK on the delegation's observation that, at Dubrava Prison, security level "E" classifications were not reviewed every 28 days (contrary to the regulations in force) and that no avenue of appeal for challenging such decisions was apparently available to the prisoners (paragraph 72);
- the comments of UNMIK on the remarks made by the CPT regarding the presence of international police officers in Block 1 at Dubrava Prison (paragraph 74);
- the concrete steps taken thus far at Lipjan/Lipljan Correctional Centre to provide specialised training to staff dealing with juveniles (paragraph 76).

**Health care**

recommendations

- immediate steps to be taken at Mitrovica/Mitrovicë and Pejë/Peć Detention Centres to remedy the lack of dental chairs and other equipment (paragraph 84);
- steps to be taken at Dubrava Prison to ensure that any request for a medical consultation made by a prisoner is forwarded without undue delay to the health-care service and that consultations are organised in all the blocks on working days (and not just twice a week) (paragraph 85);
- the presence of a psychiatrist at Dubrava Prison to be increased to the equivalent of one full-time post (paragraph 87);
- the relevant authorities to redouble their efforts to ensure that, at all detention centres visited, prisoners can receive adequate dental care (paragraph 89);
- steps to be taken in all penitentiary establishments in Kosovo to ensure that the precepts set out in paragraph 92 regarding medical screening of newly-arrived prisoners and the recording of injuries are fully implemented in practice (paragraph 92);
- existing procedures to be reviewed in order to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor (paragraph 92);
- steps to be taken to ensure that newly-arrived prisoners are screened for transmissible diseases (paragraph 92);
- the management of Dubrava Prison and of all detention centres in Kosovo to be instructed that all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the sight of prison officers, unless the doctor concerned requests otherwise in a particular case (paragraph 95).

comments

- non-medical staff should not seek to screen requests for medical consultations (paragraph 85);
- it would be desirable that a specific register for recording injuries observed on prisoners upon admission or sustained in prison be set up in all penitentiary establishments (paragraph 93);
- it would be desirable for basic information about transmissible diseases (such as tuberculosis, AIDS and hepatitis) to be systematically given by health-care staff to prisoners in written form (e.g. leaflets), in a language they understand (paragraph 96).

requests for information

- the comments of UNMIK on the delegation's observation at Dubrava Prison that in certain cases there had been considerable delays in hospitalising prisoners, particularly for surgery (paragraph 86);
- the comments of UNMIK on the reported difficulties in transferring inmates in need of psychiatric care from Mitrovica/Mitrovicë Detention Centre to the Regional Hospital in Northern Mitrovica/Mitrovicë (paragraph 90).

**Other issues**

recommendations

- the precepts that contacts with the family should never be totally prohibited as punishment and that restrictions on contacts with the outside world should only be imposed for the shortest possible time and should, as a rule, not be applied to juvenile prisoners, to be implemented in all penitentiary establishments in Kosovo (paragraph 97);
- steps to be taken to ensure that all prisoners subjected to a disciplinary punishment are granted a formal right to lodge an appeal (paragraph 98);
- steps to be taken in all penitentiary establishments visited to ensure that all prisoners:
  - are given a hearing in disciplinary proceedings;
  - receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision (paragraph 99);
- existing legal arrangements and practice concerning the role of prison doctors in relation to disciplinary matters to be reviewed. In so doing, regard should be had to the Revised European Prison Rules and the comments made by the CPT in paragraph 53 of its 15<sup>th</sup> General Report (CPT/Inf (2005) 17) (paragraph 100).

comments

- by virtue of its size alone, the disciplinary cell at Mitrovica/Mitrovicë Detention Centre is not fit for overnight accommodation. An alternative solution should be found for prisoners subjected to solitary confinement (paragraph 101).

**C. Psychiatric/social welfare establishments**

**Preliminary remarks**

comments

- the CPT requests UNMIK to make every effort possible to facilitate the implementation in practice of the recommendations and comments made in paragraphs 111, 112, 123, 127, 131 to 133, 136, 138 and 139 in respect of the Unit for Psychiatry and Neurology of Mitrovica/Mitrovicë Regional Hospital (paragraph 105).

**Ill-treatment**

recommendations

- staff at the Institution for persons with mental disabilities at Shtime/Štimlje to be reminded that all forms of ill-treatment of residents are not acceptable and will be the subject of sanctions (paragraph 106);
- staff at Shtime/Štimlje “Special Institute” to employ all means at their disposal to prevent inter-patient/resident violence and intimidation; in order to tackle this problem, staff should be alert to signs of trouble and both determined and properly trained to intervene when necessary (paragraph 107).

**Patients'/residents' living conditions**

recommendations

- the authorities to pursue their efforts as a matter of priority to ensure that all patients held in the forensic unit of the Psychiatric Clinic in Prishtinë/Priština are offered, if their state of health so permits, at least one hour of outdoor exercise every day (paragraph 110);

- steps to be taken by the relevant authorities to ensure that at Mitrovica/Mitrovicë Regional Hospital:
  - some recreational activities are offered to psychiatric patients;
  - all psychiatric patients whose state of health so permits are offered at least one hour of outdoor exercise per day (paragraph 112);
- additional steps to be taken as a matter of priority to improve the living conditions for patients at the Integration Centre for Mental Health at Shtime/Štimlje, in the light of the remarks made in paragraphs 115 and 116 (paragraph 116).

#### comments

- steps should be taken by the relevant authorities to provide some decoration in the Unit for Psychiatry and Neurology at Mitrovica/Mitrovicë Regional Hospital (paragraph 111);
- steps should be taken to offer a more personalised environment to residents in the Institution for persons with mental disabilities at Shtime/Štimlje (paragraph 113).

### **Staff**

#### recommendations

- steps to be taken to ensure the regular attendance of a member of health-care staff in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština (paragraph 118);
- steps to be taken by the relevant authorities to ensure that in the Integration Centre for Mental Health at Shtime/Štimlje:
  - the psychiatric care is increased by having an equivalent of at least one full-time psychiatrist's post;
  - the number of nursing staff and orderlies is increased (paragraph 120).

### **Treatment**

#### recommendations

- steps to be taken in all psychiatric establishments visited, in particular at Shtime/Štimlje "Special Institute", to develop treatment and rehabilitative activities for psychiatric patients/residents, which would also allow a reduction in the use of psychotropic medication (paragraph 123).

## **Restraint of agitated and/or violent patients/residents**

### recommendations

- in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština, an end to be put to the practice of handcuffing agitated patients to their bed ; if mechanical restraint is temporarily required, appropriate alternative means should be used (e.g. straps) (paragraph 125);
- nursing staff in the Integration Centre for Mental Health at Shtime/Štimlje to be instructed that the administration of chemical restraint should always be ordered by a doctor (paragraph 126);
- specific registers detailing the use of means of restraint to be established in all psychiatric establishments visited (paragraph 127).

## **Safeguards**

### recommendations

- steps to be taken without delay to ensure that the relevant legal provisions applicable in Kosovo which govern the involuntary placement of patients are effectively implemented. To this end, the competent courts should be informed of all persons who are currently being held in any of the psychiatric establishments visited on an involuntary basis (paragraph 131);
- steps to be taken at Shtime/Štimlje “Special Institute” and, if appropriate, in other social welfare/psychiatric establishments in Kosovo, to ensure that all residents/patients who were presumed to be unable to consent to their placement are notified to the competent court (paragraph 132);
- steps to be taken by the relevant authorities to ensure that, in the context of court proceedings to deprive a resident/patient of his/her legal capacity and to appoint a guardian, the persons concerned are:
  - granted the right to be heard in person by the court;
  - given a copy of the court decision;
  - informed in writing and verbally of the possibility and modalities to lodge an appeal against the court decision(paragraph 133);
- steps to be taken to ensure that the need for placement in a psychiatric/social welfare institution of persons under guardianship is reviewed at regular intervals by an appropriate authority (paragraph 133);

- steps to be taken by the relevant authorities to ensure that all placements for mandatory treatment are subject to regular review, as provided for by law (paragraph 135);
- steps to be taken at all psychiatric/social welfare establishments visited to ensure that all patients/residents (as well as their families) are provided on admission with an introductory brochure setting out the establishment's routine and their rights (paragraph 136);
- steps to be taken at all psychiatric/social welfare establishments visited to ensure that all patients/residents, including those placed there on an involuntary basis, are given the opportunity to refuse – either in person or through their guardian – treatment or any other medical intervention, in the light of the remarks made in paragraphs 137 and 138 (paragraph 138);
- at all psychiatric/social welfare establishments visited, patients/residents to be informed in the introductory leaflet/brochure issued upon admission of their right, as well as of the modalities, to lodge complaints (paragraph 139);
- the system of Boards of Visitors to be re-activated and the boards to be provided with adequate resources to enable them to carry out their tasks effectively (paragraph 140).

comments

- the authorities are invited to establish for social welfare establishments a visiting mechanism similar to the Boards of Visitors (paragraph 140).

requests for information

- the comments of UNMIK regarding the difficulties experienced by the management at Shtime/Štimlje “Special Institute” in arranging the transfer of a group of some 20 patients/residents of Serbian origin held in the establishment to appropriate care institutions in Serbia proper (paragraph 134).

**APPENDIX II**

**LIST OF THE AUTHORITIES, INTERNATIONAL ORGANISATIONS  
AND NGOS MET BY THE DELEGATION**

**UNMIK**

Mr Joachim RÜCKER	Special Representative of the Secretary-General of the United Nations in Kosovo (SRSG)
Mr Steven P. SCHOOK	Principal Deputy SRSG
Ms Patricia WARING	Director of Civil Administration
Ms Emma SHITAKHA	Chief of Staff
Mr Robert L. DEAN	International Prosecutor, Department of Justice
Mr William J. IRVINE	Head of Penal Management Division (PMD), Department of Justice
Mr Jeffrey CHESTER	Head of Operations, PMD, Department of Justice
Dr Annibale F.G. PETRONE	Head of Medical Service, PMD, Department of Justice
Mr Trygve KALLEBERG	OiC Police Commissioner, CIVPOL
Mr Scott ANDERSON	Deputy Police Commissioner Operations, CIVPOL
Mr Lars FINSTAD	Director for Operations, CIVPOL
Mr Patrick MORRISON	Director, Division of Public Information
Mr Neithart HOEFER-WISSING	Office of Political Affairs

**OSCE (Pillar III – Institution Building)**

Mr Henry W. McGOWEN	Director of Human Rights, Decentralization and Communities
Mr D. Christopher DECKER	Head of Human Rights Division

**Provisional Institutions of Self-Government in Kosovo**

Mr Jonuz SALIHAI	Minister of Justice
Mr Blerim KUQI	Minister of Internal Affairs
Mr Sadik IDRIZ	Minister of Health
Mr Ibrahim SELMANAJ	Minister of Labour and Social Welfare
Mr Xhevat MEXHUANI	Commissioner, Kosovo Correctional Service (KCS), Ministry of Justice
Mr Milazim GJOCAJ	Head of Medical Services, KCS, Ministry of Justice
Mr Enver RRUSTEMI	Executive Head of Kosovo Police Inspectorate (KPI), Ministry of Internal Affairs

**Other bodies**

Mr Hilmi JASHARI	Acting Ombudsman of Kosovo
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**International Organisations**

Representatives of the:

International Committee of the Red Cross (ICRC)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

United Nations Children's Fund (UNICEF)

**NGOs**

Council for the Defence of Human Rights and Freedoms

Kosova Rehabilitation Centre for Torture Victims

**APPENDIX III**

**AGREEMENT BETWEEN THE UNITED NATIONS INTERIM ADMINISTRATION  
MISSION IN KOSOVO AND THE COUNCIL OF EUROPE ON TECHNICAL  
ARRANGEMENTS RELATED TO THE EUROPEAN CONVENTION  
FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT**

The United Nations Interim Administration Mission in Kosovo (“UNMIK”) and the Council of Europe, collectively referred to as the “Parties”,

Recalling the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the Convention”) of 26 November 1987,

Noting that the Convention has been ratified by 45 States, including Serbia and Montenegro,

Considering United Nations Security Council resolution 1244 (1999) of 10 June 1999, which, recognising the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (now Serbia and Montenegro), establishes the authority of UNMIK, as the international civil presence, to provide an interim administration for Kosovo,

Taking account of UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, which provides for the responsibilities of the Provisional Institutions of Self-Government,

Having regard to the decision adopted on 30 June 2004 by the Committee of Ministers of the Council of Europe,

Emphasising that the present Agreement does not make UNMIK a Party to the Convention and that it is without prejudice to the future status of Kosovo to be determined in accordance with Security Council resolution 1244 (1999),

With a view to promoting technical cooperation between the Parties and facilitating the functions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the Committee”), including providing access to any place within Kosovo where persons are deprived of their liberty by UNMIK,

Have agreed as follows:

**Article 1**

**Visits by the Committee to Kosovo**

1.1 The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty in Kosovo with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

1.2 UNMIK shall permit visits, in accordance with the present Agreement, to any place in Kosovo where persons are deprived of their liberty by an authority of UNMIK.

1.3 The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.

#### Article 2

##### Co-operation

In the application of the present Agreement, the Committee and UNMIK shall co-operate with each other.

#### Article 3

##### Organisation of Visits of the Committee

3.1 The Committee shall organise visits to places referred to in Article 1.2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.

3.2 As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

#### Article 4

##### Notification and Modalities of Visits

4.1 The Committee shall notify UNMIK of its intention to carry out a visit and forward a copy of this notification to the Chairperson of the Committee of Ministers of the Council of Europe. After such notification, it may at any time visit any place referred to in Article 1.2.

4.2 UNMIK shall provide the Committee with the following facilities to carry out its task:

- (a) Access to Kosovo and the right to travel without restriction;
- (b) Full information on the places where persons deprived of their liberty are being held by an authority of UNMIK;
- (c) Unlimited access to any place where persons are deprived of their liberty by an authority of UNMIK, including the right to move inside such places without restriction;
- (d) Other information available to UNMIK which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of law and professional ethics.

4.3 The Committee may interview in private persons deprived of their liberty.

4.4 The Committee may communicate freely with any person whom it believes can supply relevant information.

4.5 If necessary, the Committee may immediately communicate observations to the competent authorities of UNMIK.

Article 5  
Representations against Visits

5.1 In exceptional circumstances, UNMIK may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of security in Kosovo, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.

5.2 Following such representations, the Committee and UNMIK shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, UNMIK shall provide information to the Committee about any person concerned.

Article 6  
Visit Reports

6.1 After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by UNMIK. It shall transmit to the latter its report containing any recommendations it considers necessary and shall forward a copy of the report to the Chairperson of the Committee of Ministers of the Council of Europe. The Committee may consult with UNMIK with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

6.2 If UNMIK fail to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after UNMIK has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

Article 7  
Confidentiality

7.1 The information gathered by the Committee in relation to a visit, its report and its consultations with UNMIK shall be confidential.

7.2 The Committee shall publish its report, together with any comments of UNMIK, whenever requested to do so by UNMIK.

7.3 However, no personal data shall be published without the express consent of the person concerned.

Article 8  
Experts and Other Persons Assisting the Committee

8.1 The names of persons assisting the Committee shall be specified in the notification under Article 4.1.

8.2 Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Agreement and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.

8.3 UNMIK may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place where persons are deprived of their liberty by an authority of UNMIK.

Article 9  
Appointment of Points of Contact

UNMIK shall inform the Committee of the name and address of the authority competent to receive notifications, and of any liaison officer they may appoint.

Article 10  
Privileges and Immunities

The Committee, its members and experts referred to in Articles 3.2 and 8 shall enjoy the privileges and immunities set out in the Annex to the present Agreement.

Article 11  
Amendment

The present Agreement may only be amended by written agreement of the Parties.

Article 12  
Settlement of disputes

Any disputes or disagreements with respect to the interpretation or implementation of the present Agreement shall be resolved amicably through co-operation between the Committee and UNMIK and, if necessary, by good faith negotiations between the Parties.

Article 13  
Entry into force

The present Agreement shall enter into force upon signature by the duly authorised representatives of the Parties and shall remain in force for the duration of UNMIK's mandate as interim administration in Kosovo under the authority of the United Nations, unless terminated in accordance with Article 14.

Article 14  
Termination

Either Party may at any time terminate the present Agreement by means of a notification addressed to the other Party. The termination shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the notification, unless otherwise agreed to by the Parties in writing.

IN WITNESS WHEREOF, the undersigned, being fully authorised thereto, have on behalf of the Parties signed the present Agreement.

Done at Pristina, this 23 August 2004, in English and in French, the English text being authentic, in two copies, one of which shall be deposited in the archives of the Council of Europe and the other transmitted to UNMIK.

FOR THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO	FOR THE COUNCIL OF EUROPE
Special Representative of the Secretary-General	Secretary General