



CPT/Inf (2005) 15

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

from 18 to 22 January 2004

The Maltese Government has requested the publication of this report and of its responses. The Government's responses are set out in document CPT/Inf (2005) 16.

Strasbourg, 25 August 2005

CONTENTS

COPY OF THE LETTER TRANSMITTING THE CPT'S REPORT4

I. INTRODUCTION.....5

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED7

A. Preliminary remarks.....7

B. Ill-treatment.....11

C. Fundamental safeguards13

D. Conditions of detention.....16

E. Medical care.....20

F. Staff issues.....23

G. Discipline.....24

H. Means of restraint25

I. Contact with the outside world25

APPENDIX :
LIST OF THE CPT'S RECOMMENDATIONS,
COMMENTS AND REQUESTS FOR INFORMATION26

Copy of the letter transmitting the CPT's report

Strasbourg, 16 July 2004

Dear Sirs,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Malta drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Malta from 18 to 22 January 2004. The report was adopted by the CPT at its 54th meeting, held from 28 June to 2 July 2004.

The CPT requests the Maltese authorities to provide within three months a response to the recommendations, comments and requests for information set out in the Appendix to the report. It would be most helpful if the Maltese authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully,

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

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I. INTRODUCTION

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Malta from 18 to 22 January 2004¹. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. During the second half of 2003, the CPT received reports which were critical of the conditions under which immigration detainees were held in Malta. These reports also contained allegations of deliberate physical ill-treatment and of the excessive use of force by members of law enforcement agencies, in particular during the enforcement of a removal order. The issue attracted significant publicity and prompted a number of international bodies to visit Malta, among others the Council of Europe's Commissioner for Human Rights, UN Office of the High Commissioner for Human Rights and a delegation of the United Nations High Commissioner for Refugees.

In the light of the available information, the CPT considered that it was necessary to carry out an ad hoc visit to Malta, in order to examine the treatment and living conditions of this category of detained persons, as well as to assess the procedures and means of restraint applied in the context of forcible removals.

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

- Mauro PALMA (Head of delegation)
- Ioanna BABASSIKA
- Eugenijus GEFENAS.

They were supported by Fabrice KELLENS, Head of Unit, and Edo KORLJAN of the CPT's Secretariat, and assisted by:

- Catherine PAULET, Psychiatrist, Regional Medical and Psychological Service, Baumettes Prison, Marseilles, France (expert)
- Aziz TAALAB (interpreter).

4. The delegation visited the following places of detention:

Police establishments

- Police Headquarters, Floriana*
- Ta'Kandja Police Complex, Siggiewi*
- Malta International Airport Custody Centre, Luqa*
- Immigration Reception Centre, Hal Far

¹ The CPT's previous visits to Malta took place in July 1990, July 1995 and May 2001.

* Follow-up visit.

Military establishments

- Lyster Barracks, 1st Regiment, of the Armed Forces, Hal Far
- Safi Barracks, 3rd Regiment of the Armed Forces, Safi.

The delegation also went to Corradino Correctional Facility, as well as Mount Carmel Psychiatric Hospital and St. Luke's Hospital, in order to interview immigration detainees and to consult specific medical files.

5. The degree of cooperation received by the CPT's delegation from the authorities was on the whole very good.

At national level, the delegation held meetings with Mr Tonio BORG, Minister for Justice and Home Affairs, Mr Joseph SAMMUT, Ombudsman, Mr Charles BUTTIGIEG, Refugee Commissioner, Mr John RIZZO, Commissioner of Police, and Colonel Carmel VASSALLO, Deputy Commander of the Armed Forces of Malta. In addition, it met a number of senior officials from the Ministry of Justice and Home Affairs, as well as from the Armed Forces of Malta.

6. As regards cooperation at local level, the delegation was granted prompt access to each of the establishments visited and was provided with the facilities it required in order to carry out its task. Staff in the establishments were generally aware of the possibility of a CPT visit and had at least some knowledge of the Committee's mandate.

The delegation is particularly grateful to Mr Charles DEGUARA, the CPT's liaison officer, who facilitated the delegation's work at very short notice and in a most efficient manner.

7. At the end-of-visit talks held in Valletta on 22 January 2004, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention. The observation, which was confirmed in a letter dated 10 February 2004, concerned an incident which took place on 4 September 2002 in Ta'Kandja Police Complex, when police fired five cartridges of GPR 18 special ammunition (cf. footnote 15) during a violent episode. The delegation requested the authorities to carry out a thorough and independent investigation into this incident, and to inform the CPT of its results.

The Maltese authorities subsequently provided comments on various issues raised by the delegation at the end of the visit, including the immediate observation referred to above. These comments have been taken into account in the relevant sections of the present report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preliminary remarks

8. Malta has experienced a sharp and unprecedented increase in the number of irregular migrants since 2001 (1686 in 2002, as compared to 24 in 2000), a situation which has placed a considerable burden on the authorities. Coming mostly by boat from neighbouring African countries, a great majority of them apply for asylum as soon as they are intercepted by the Armed Forces at sea and/or caught by the police on Maltese territory.

Any person caught on Maltese territory without the right to entry, transit or residence, is considered a prohibited migrant and is detained until his/her deportation (Immigration Act, Act IX of 21 September 1970², Chapter 217, Part IV, Articles 5 (1), 10, 14 (2) and 22 (5)). Pursuant to this Act, the Maltese authorities (i.e. the Principal Immigration Officer) systematically deprive both irregular migrants and asylum seekers of their liberty; both police and military establishments are used for this purpose.

At the time of the visit, some 274 foreign nationals³ were detained in Malta pursuant to the Immigration Act. It would appear that most of them never wanted to enter Malta, their final destination being Italy. In most of the cases, their boats had technical problems *en route* to that country; they were rescued at sea and brought to the mainland.

9. The CPT's delegation was unable to grasp the precise legal basis entitling the Armed Forces of Malta to arrest and hold in their establishments foreign nationals detained under the Immigration Act; conflicting information was provided in this regard during the visit. In their letter of 19 May 2004, the authorities informed the delegation that Legal Notices N° 76/1999 and 152/2002 regulate the holding of such foreign nationals at Lyster and Safi Barracks, respectively. **The CPT would like to receive a copy of Legal Notices N° 76/1999 and N° 152/2002.**

10. The delegation was also informed that lawyers had apparently initiated - on behalf of certain Eritrean and Ethiopian nationals - a case before the Constitutional Court of Malta, dealing with the legality of the detention imposed by the Immigration Act. The CPT understands that the Court was scheduled to consider the case in May 2004 and **would like to receive a copy of the decision in due course.**

11. A number of Council of Europe member States have resorted to detention of foreign nationals who were caught in violation of immigration legislation, usually out of fear that they would abscond. The only "offence" some of these persons had committed was to enter illegally the State concerned. In Malta, even this is no longer the case, as illegal entry was decriminalised on 8 December 2002. The CPT welcomes this decision of the Maltese authorities; it is in line, as regards asylum seekers, with Article 31 of the 1951 Geneva Convention on the Status of Refugees, stipulating that: "no penalties shall be imposed on persons seeking international protection coming directly from a country of persecution on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

² As amended in 1981, 1982, 1983, 1988, 1989, 1990, 1995, 2000 and 2002.

³ The number was the highest in December 2002, when some 900 foreign nationals were detained.

States have the sovereign right to protect their borders and to introduce measures controlling migration within their jurisdiction. Article 5 (1) (f) of the European Convention of Human Rights expressly permits "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition". However, the exercise of this right must be in accordance with a State's other international obligations, including those of a human rights nature falling under the CPT's mandate.

12. During its visit, the CPT's delegation heard repeatedly the argument that the current detention policy of irregular migrants and asylum seekers is a "powerful deterrent", aimed at discouraging any further arrivals of foreign nationals. The authorities indicated that since 2002 the number of asylum seekers entering Malta was decreasing⁴. All senior government officials met by the delegation clearly indicated that the Maltese authorities will continue its "strong detention policy".

In this context, the CPT feels obliged to remind the Maltese authorities that international standards clearly indicate that asylum seekers should not be detained for purposes of deterrence: detention of asylum seekers "as part of a policy to deter future asylum seekers...is contrary to the norms of refugee law" (cf. 1999 UNHCR Detention Guidelines, Guideline 3) and is not justified "where it is imposed with the sole object of discouraging further arrivals" (cf. UNHCR Executive Committee, Note on International Protection (A/AC. 96/643), 9 August 1984).

The CPT would like to receive the comments of the Maltese authorities on this issue.

13. In accordance with the international standards in this area (UNHCR's Executive Committee Conclusion N° 44 (1986) (XXXVII) on Detention of Refugees and Asylum Seekers), deprivation of liberty should not be arbitrary and should be resorted to only in order to verify the identity of the asylum seekers, to determine the elements of their asylum claim (when a decision on the asylum claim cannot otherwise be made), to deal with cases where asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to request asylum (not because they are unable to obtain them in their country of origin), and for the reasons of protection of national security or public order (if an individual asylum seeker is likely to pose a risk to public order or national security).

It follows that such deprivation of liberty should only be resorted to after a careful and individual examination of each case and that its continued need should be the subject of periodic reviews. Further, in the same way as any other form of detention, its lawfulness should be open to challenge before a judicial authority. The above principles should also apply to irregular migrants.

⁴ 502 foreign nationals landed on Maltese shores in 2003.

14. In this connection, the CPT would suggest that alternative (non-custodial) measures be developed and used wherever possible, in particular vis-à-vis asylum seekers. These measures may include various restrictions on movement, but falling short of detention. Supervised release to a non-governmental organisation providing support to asylum seekers (which would, in return, be required to ensure the asylum seeker's presence at various asylum proceedings), regular reporting to the police, to be assigned to a specific residence or to be accommodated in an open centre (where their presence could be monitored) are only a few examples of alternative measures to detention which could usefully be considered. Some other non-custodial measures, typical for criminal justice systems, such as release on bail, warranty, and electronic tagging, could be considered as well. If non-custodial measures are deemed suitable for criminal offenders, they may be applied *a fortiori* to persons who are neither convicted nor suspected of a criminal offence. Further, the above measures are usually less costly than detention.

Resort to alternative measures is of particular importance vis-à-vis asylum seekers, who might have been imprisoned and/or tortured or otherwise ill-treated in their country of origin. In addition, some particularly vulnerable categories, such as women with children (including pregnant women and nursing mothers), juveniles, elderly persons, mentally and physically handicapped persons, etc. should, as a rule, be exempted from detention. Unaccompanied minor asylum seekers should be offered placement in residential homes and/or foster care, or in the care of family members who already reside within the asylum country⁵.

15. The principles highlighted above are in line with the letter and spirit of guiding international instruments in this context, such as the Revised UNHCR Guidelines of 1999 on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers, Recommendation N° 1327 (1997) of the Parliamentary Assembly of the Council of Europe on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe⁶ and, finally, the recent Council of Europe Committee of Ministers' Recommendation (2003) 5 on measures of detention of asylum seekers, adopted on 16 April 2003.

The facts found during the CPT's visit in January 2004 show that most of these principles are not followed in Malta:

- foreign nationals who fail to meet the requirements set out in the Immigration Act are automatically detained; further, this measure is applied indiscriminately both to irregular migrants and asylum seekers;
- detention pursuant to the Immigration Act is of an indefinite and indeterminate duration;

⁵ The delegation was informed that, since April 2003, unaccompanied minors are no longer detained in Malta.

⁶ In this Recommendation, the Assembly recommended *inter alia* that the Committee of Ministers: "vii. urge the member states...g. to give priority to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems".

- foreign nationals in violation of the Immigration Act are detained on the basis of an administrative decision, apparently without any form of effective judicial review⁷. In this regard, two different remedies are available to the foreign national concerned:
 - firstly, Section 137 of the Criminal Code⁸; however, the European Court of Human Rights has recently made clear that this provision may well not provide an effective remedy to challenge the lawfulness of someone's detention (cf. "Kadem vs. Malta", 9 April 2003, and "Sabeur Ben Ali vs. Malta", 29 June 2000)
 - secondly, Article 409A of the same Code⁹; it appears, however, that "this domestic remedy has almost never been used in the past and that its effectiveness, within the meaning of the ECHR, is uncertain"¹⁰.

16. During the visit, the Minister for Justice and Home Affairs informed the CPT's delegation that some 80 Eritreans and Ethiopians were transferred in December 2003 to an open centre. This is a most welcome development.

The Minister also informed the delegation of his plan to create a new mode of redress. More specifically, the Immigration Appeals' Board would be assigned the additional task to review, at a foreign national's request, the detention measure taken against him/her under the Immigration Act (cf. consequential amendment to the Immigration Act, Refugees (Amendment) Act 2004).

However, the effective scope for the Board to exercise its remit has been severely circumscribed in advance: "the Board shall only grant release from custody...where, in its opinion, the continued detention of such person is taking into account all the circumstances of the case, unreasonable as regards duration, or because there is no reasonable prospect of deportation within a reasonable time" (Article 5 (10)).

The Minister indicated that he did not intend to draw up any guidelines or rules regarding the circumstances or specific length of time that would make detention unreasonable. However, the Minister stated that, in his view, a detention period of up to 18 months in this context seemed reasonable¹¹.

⁷ To assess the effectiveness of a judicial review procedure, the European Court of Human Rights has distinguished in particular two criteria: the remedy should be "accessible" and "sufficiently certain".

⁸ "Any magistrate who, in a matter within his powers, fails or refuses to attend to a lawful complaint touching an unlawful detention, and any officer of the Executive Police, who, on a similar complaint made to him, fails to prove that he reported the same to his superior authorities within twenty-four hours, shall, on conviction, be liable to imprisonment for a term from one to six months".

⁹ "Any person who alleges he is being unlawfully detained under the authority of the Police or any other public authority not in connection with any offence with which he is charged or accused before a court may at any time apply to the Court of Magistrates, which shall have the same powers which that court has as a court of enquiry, demanding his release from custody [.....]" (as amended by Ordinance III of 2002, Chapter 87).

¹⁰ Report by Mr Alvaro Gil-Robles, Council of Europe's Commissioner for Human Rights, on his visit to Malta (20-21 October 2003), BCommDH (2003) 30, 18 December 2003, paragraph 11.

¹¹ In their letter dated 19 May 2004, the authorities indicated that "practically all detainees who have been in Malta for at least 18 months have been released".

17. The introduction of a new mode of redress is a step in the right direction; however, it is clear that such an appeal procedure, addressed to an administrative body¹², still falls short of meeting the level of independence and scrutiny expected from a judicial review mechanism. The CPT has in addition some misgivings as regards the restrictions imposed in advance on the Board's mandate (cf. paragraph 16 above).

18. The CPT invites the Maltese authorities to review the existing Immigration and Refugee Acts, taking into account the remarks made in paragraphs 11 to 17 above and, in particular, to consider a more extensive use of non-custodial measures.

Further, the CPT recommends that steps be taken to ensure that any foreign national detained under the Immigration Act benefits from an effective legal remedy enabling him to have the lawfulness of his detention decided speedily before a judicial body. This judicial review should entail an oral hearing with legal assistance and interpretation, if necessary provided free of charge to the person concerned. Moreover, detained foreign nationals should be expressly informed of this legal remedy.

B. Ill-treatment

19. The CPT's delegation received a number of allegations of deliberate physical ill-treatment of foreign nationals by members of the police and/or armed forces in the different establishments visited. The alleged ill-treatment included kicks, punches and blows with batons; apparently, such acts occurred in the aftermath of an attempted escape or in order to obtain information about the exact nationality of foreign nationals (thereby facilitating their deportation). Most of these allegations pre-dated the delegation's visit by at least several weeks. Further, some allegations were heard of excessive use of tear gas by members of law enforcement agencies during the enforcement of removal orders carried out in September-October 2002 (cf. paragraph 32).

20. The delegation received information concerning a particularly serious incident which took place on 3 and 4 September 2002 in Ta'Kandja Police Complex. During a violent episode, the police fired five cartridges of GPR 18¹³ special ammunition with a Special Purpose Automatic Shotgun (SPAS), injuring two foreign nationals. The latter fact was confirmed by medical reports consulted by medical members of the delegation at St. Luke's Hospital, where the persons concerned were treated¹⁴. At the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and requested the Maltese authorities to carry out a thorough and independent investigation into this incident, and to inform the CPT of its results (cf. paragraph 7).

¹² The Immigration Appeal's Board Chairperson is appointed by the President [of the Republic] acting on the advice of the Minister [of Justice and Home Affairs], its members are appointed by the President on advice of the Minister. The fact that its operation can be subjected to a judicial review (under Article 469A of the Code of Organisation and Civil Procedure) does not modify its legal nature, which remains in essence administrative.

¹³ The GPR 18 is a special cartridge containing 18 rubber pellets and liquid CS (cf. report on the enquiry made into the "Incidents at Ta'Kandja illegal immigrants' quarters" (N° P.3145/02 of 23 October 2002, page 6).

¹⁴ The reports revealed that one foreigner was hurt on the left side of the head, just below the left ear (four wounds), and the left arm (one wound), and that a total of 5 rubber pellets were removed. As regards the second detainee, he suffered from wounds to the left arm and back; one rubber pellet was removed.

21. In response, the Maltese authorities forwarded to the CPT on 30 January 2004 a copy of the report on the enquiry made into the "Incidents at Ta'Kandja illegal immigrants quarters" (N° P.3145/02 of 23 October 2002), pursuant to Section 19 of the Malta Police Ordinance, Chapter 164.

The report would appear to be no more than an "internal incident" report, drafted within the Police Force. No outside bodies or authorities seemed to have been involved in the enquiry procedure, at any stage. The criterion of an "independent investigation" is therefore not met. Further, the methodology followed is opened to question; in particular, some 20 police officers were interviewed, but only one foreign national. The two victims, as well as the other foreign nationals who were present at the scene at the time of the incident, were not interviewed. Therefore neither has the criterion of a "thorough investigation" been met. In the light of all the information at its disposal, the CPT also has great difficulties in subscribing to the report's final conclusion that "the use of truncheons could have achieved far worse results".

The CPT was subsequently informed that the Minister for Justice and Home Affairs recently requested the independent Police Board, chaired by a former judge, to investigate this incident further. The Committee welcomes this decision and **would like to receive a copy of the results of the above investigation, once completed.**

22. In this context, the CPT is aware of the provision of the Police Act, which authorises the Minister for Justice and Home Affairs to make regulations concerning the use of force and fire-arms by the Police Force (Article 101). **The Committee would like to be informed whether such regulations have been adopted (including as regards the use of means of restraint during operations for the removal of foreign nationals by air) and, if so, to receive a copy.**

23. The delegation was also informed of the case of an Algerian national who was detained pursuant to the Immigration Act at Hal Far and who committed suicide, by hanging, on 2 November 2003 at the Police Lock-up at Floriana. The foreign national concerned had, on multiple occasions, received psychiatric treatment for depression at Mount Carmel Psychiatric Hospital and had been released from this institution and sent back to the Police Lock-Up the day before he committed suicide. On arrival at the latter establishment, he was placed alone in a cell, despite his previous acts of self-mutilation at the same establishment two months before, and his apparent statements - recorded in the local register of occurrences - that he would commit suicide.

Detaining authorities have a duty of care vis-à-vis all persons deprived of their liberty, whatever their legal status, including those who might wish to harm themselves. The Committee was informed that a judicial investigation had been initiated into this case; **it would like to receive a copy of the results of this judicial investigation in due course.**

24. Reference should also be made to a very recent incident, which occurred on 28 December 2003 at Ta'Kandja Police Complex. On this occasion, the Special Assignment Group (based at Ta'Kandja) intervened in the two dormitories, after a quarrel between two foreign nationals. Foreign nationals detained in the Centre alleged that members of the SAG entered the premises in riot gear (including masks, helmets and batons) and started kicking and punching everyone present and destroying personal belongings and furniture. Apparently, at least two detainees suffered serious injuries. The delegation was informed by the Commissioner of Police that an enquiry was under way; **the CPT would like to receive a copy of the enquiry report, once completed.**

25. The delegation also heard a significant number of allegations of verbal abuse of detainees by members of the police and - to a lesser degree - by members of the armed forces, including insults with racial connotations¹⁵. It would appear that immigration detainees of Black African origin were particularly targeted in this context. More generally, the information gathered by the delegation indicated that staff/detainee relations were rather strained in most of the establishments visited.

26. In view of the frequency, variety and seriousness of the allegations received, it is essential that the Maltese authorities remain vigilant and proactive in this area. **The CPT recommends that the Maltese authorities deliver a clear message to the members of the Police Force and the Armed Forces, entrusted with custodial duties in respect of foreign nationals, that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions.**

27. The CPT is also concerned by the practice followed in most of the establishments visited of calling detainees by their immigration file/tag numbers, and of referring to them similarly in all official documents, including medical files. This practice was felt by many detainees interviewed to be humiliating and degrading, and it is certainly not conducive to the establishment of positive staff/detainee relations. The same goes for the practice of addressing detainees by their presumed nationality ("Sudanese, come here" ..., "Algerian, do that...").

The CPT recommends that an end be immediately put to these practices.

28. It should also be pointed out in this section of the report that the establishments visited displayed a number of negative features - a prison-like environment, a climate of tension, a quasi-total absence of activities, a lack of regular outdoor exercise, inadequate medical/psychiatric care, a lack of information for foreign nationals concerning their situation, leading to uncertainty about their future - which for many of the detainees rendered their detention unbearable. Not surprisingly, cases of self-mutilation, suicide attempts, hunger strikes, vandalism and violence were relatively common. Such a state of affairs could well be considered as amounting to inhuman treatment.

C. Fundamental safeguards

29. Immigration detainees (whether asylum seekers or not) should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a medical doctor. Further, immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.

The immigration legislation in force in Malta contains no specific reference to these fundamental safeguards. **The CPT recommends that specific legal provisions be adopted granting such rights to persons detained under the immigration legislation, as from the outset of their deprivation of liberty by the law enforcement agencies.**

¹⁵ In Malta, such conduct is punishable by law (cf. Criminal Code, Chapter 9, Section 82A).

30. The prohibition of torture and inhuman or degrading treatment or punishment entails the obligation not to send a person to a country where there are substantial grounds for believing that he would run a real risk of being subjected to torture or ill-treatment. In this context, the CPT focuses its attention on the question whether the decision-making process as a whole offers suitable guarantees against persons being sent to countries where they run a risk of torture or ill-treatment. The CPT explores whether the applicable procedure offers the persons concerned a real opportunity to present their cases and whether officials entrusted with handling such cases have been provided with appropriate training and have access to objective and independent information about the human rights situation in the countries concerned. Further, in view of the potential gravity of the interests at stake, the Committee considers that a decision involving the removal of a person from a State's territory should be appealable before another body of an independent nature prior to its implementation, and that such appeal should have a suspensive effect.

31. Many asylum seekers met by the delegation felt that they did not benefit from a real opportunity to present their case.

Firstly, the initial interviews - which are a cornerstone in any asylum procedure - often took place in detention centres, in conditions which did not always guarantee their confidentiality, as police and/or army officers were occasionally present in the interview rooms. Further, the CPT would like to highlight that asylum seekers might be required to describe traumatic experiences, such as accounts of torture and/or ill-treatment (including gender-related violence). For female applicants in particular, the presence of custodial staff during such interviews is inappropriate.

Secondly, many asylum seekers did not speak Maltese or English and language barriers represented a significant problem. For example, no assistance of an interpreter was provided to asylum seekers in order to complete the Preliminary Questionnaire given to them on arrival at the detention centre, although this document proved to be of crucial relevance in the proceedings (the questions mainly referred to the route followed by the person concerned and his/her grounds for asylum). As a result, questionnaires were returned blank (or not returned at all). The practice of fellow detainees occasionally providing interpretation is also highly questionable; a certain number of asylum seekers met by the delegation clearly indicated that they were not at ease with this situation, as they felt that this might put the impartiality of the asylum procedure at risk.

Thirdly, it is axiomatic that immigration detainees seeking protection should be fully informed of their rights under the Refugee Act, as well as the state of the proceedings in their case. The delegation heard many complaints in this respect, in particular relating to the uncertainty under which they were kept for prolonged periods of time, as a consequence of a lack of information.

The CPT recommends that measures be taken to ensure that the initial interviews, as well as any other interview conducted during the asylum proceedings, are carried out in a manner guaranteeing their confidentiality.

Moreover, free, qualified and impartial interpretation should be made available, on request, during the whole procedure and the use of fellow detainees as interpreters should, in principle, be avoided. Finally, female asylum seekers should, as far as possible, be interviewed by female interviewers (assisted, if necessary, by female interpreters).

32. Further, it would appear that the efficiency with which the relevant authorities gather objective and independent information about the human rights situation in the countries concerned could be significantly enhanced (and ultimately, the quality of such information improved). In this context, reference should be made to the case of 220 Eritreans forcibly deported to their country on 30 September and 3 October 2002, in respect of whom reports¹⁶ indicated that they all had been detained immediately on arrival in Eritrea and some of them subsequently tortured. The CPT understands that the Minister for Justice and Home Affairs has requested an enquiry into this case; **it would like to receive a copy of the enquiry report, once completed, as well as an account of any measures taken in the light of the report.**

33. A foreign national detained under the immigration legislation can appeal a decision involving his/her removal from Malta before the Immigration Appeals Board (Immigration Act, Sections 14 (1) and 25 A (5)); **the CPT would like to be informed whether such an appeal has a suspensive effect.**

Decisions granting or denying asylum, as well as the existence of effective possibilities to appeal such decisions, are also of interest for the CPT (as such decisions may have a direct impact on the enforcement - or not - of a removal order vis-à-vis the foreign national concerned). Such an appeal is provided for by the Refugee Act (Article 7 (1)). However, the delegation noted that its effectiveness was seriously undermined by the fact that first instance decisions were not reasoned, despite the explicit requirement of Article 8 (5) of the same Act¹⁷. In practice, the decisions taken by the Refugee Appeals Board usually consisted of a single sentence, confirming the first instance decision: "...The Refugee Appeals Board, after carefully considering your appeal, is unanimously of the opinion that it cannot be upheld". Moreover, the sitting before the Appeals Board was conducted without the foreign national concerned being heard in person¹⁸.

34. **The CPT recommends that immediate steps be taken to ensure that every decision taken by the Refugee Commissioner or the Refugee Appeals Board vis-à-vis a particular foreign national explicitly states the reasons supporting it. In addition, the appeal procedure should include the right for the foreigner concerned to be heard in person before the Refugee Appeals Board.**

35. Access to legal aid should be available, on request, at every stage of the proceedings. The delegation noted that access to legal aid is, in principle, provided for by the Refugee Act; however, it is only granted at the appeals' level¹⁹. In addition, it was informed that legal aid was very rarely granted in practice. **The CPT recommends that measures be taken to ensure that foreign nationals detained under the immigration legislation benefit, on request, from access to legal aid at every stage of the proceedings.**

¹⁶ Cf. Open letter from Amnesty International to the Maltese authorities (EUR 33/002/2004, 7 June 2004). Further reports suggest that 150 to 160 of the Eritreans were still detained in June 2004 (i.e. some 20 months after their deportation from Malta).

¹⁷ "...Any decision by the Commissioner on any application shall be in writing and shall state the reasons supporting it".

¹⁸ The CPT is unaware of a single case of an asylum seeker who had been interviewed by the Board.

¹⁹ "An appellant shall have the right to free legal aid under the same conditions applicable to Maltese nationals" (Article 7 (5)).

36. Further, the length of the proceedings was a problem in itself. Despite the obligation of the Refugee Commissioner to interview asylum seekers within one week of the lodging of their asylum request (Article 8 (2) of the Refugee Act), those interviews took place much later (on occasion, after nine months). Similarly, asylum seekers had to await the decision on their appeals by the Refugee Appeals Board for more than a year, under conditions which could well be considered as amounting to inhuman treatment (cf. paragraph 28).

In the light of the above, **the CPT recommends that the Maltese authorities take steps to ensure that qualified staff, in sufficient numbers, are assigned to the Refugee Commissioner's Office and the Refugee Appeals Board.**

37. Finally, the delegation was surprised to note, in one of the four detention centres visited, the absence of a valid detention order for each foreign national detained. The CPT would like to recall that every detention should be covered by a proper detention order, readily available in the establishment where the person concerned is being held; **it recommends that the Maltese authorities take immediate measures to that effect.**

D. Conditions of detention

38. In the CPT's opinion, it is inappropriate to hold foreign nationals who are neither convicted nor suspected of a criminal offence in a prison-like environment. In those cases where it is deemed necessary to deprive persons of their liberty under immigration legislation for an extended period, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel²⁰.

These centres should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the number of persons involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment, as these persons have not been accused or convicted of any concrete criminal offence. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

39. Detainees held in Malta under the Immigration Act were mainly accommodated in four establishments: Ta'Kandja Police Complex and Hal Far Immigration Reception Centre, run by the Police Force, and at Lyster and Safi Barracks, run by the Armed Forces. With the notable exception of Hal Far Immigration Reception Centre, the other establishments concerned - which could be (and were recently) used to accommodate hundreds of detainees - had never been intended for use as detention facilities. Cold weather posed a particular problem, as none of the establishments had a proper heating system, no winter clothing or footwear was provided and the blankets available were too thin.

²⁰ Cf. 7th General Report on the CPT's Activities, published on 22 August 1997 (CPT/Inf (97)10, paragraph 28).

40. The CPT is very concerned to note that, nine years after its 1995 visit, **Ta’Kandja Police Complex**, located on the premises of the Special Assignment Group, still accommodated fifty male foreign nationals. This establishment remains a grim and oppressive place (cf. CPT/Inf (96) 25, paragraph 19 and CPT/Inf (2002) 16, paragraph 20), despite the fact that some badly needed repairs had been very recently carried out (renovation of the electrical system, new doors, additional showers and washing facilities, slightly better access to artificial light).

41. Conditions prevailing at the new **Immigration Reception Centre at Hal Far** were also unsatisfactory, despite the fact that it had been specifically designated for the purpose of accommodating immigration detainees. The Centre occupied the first floor of a refurbished ex-military building; however, it had been recently damaged by a fire started by detainees. With an official capacity of 100 beds²¹, it accommodated at the time of the visit 77 male foreign nationals. Each of the 18 rooms - equipped only with bunk beds - measured some 15 m² and accommodated up to 6 persons. Notwithstanding the open door regime prevailing in the Centre, the occupancy rate was too high; **no more than four detainees should be accommodated in each room.**

The sanitary facilities were in a deplorable state of repair and cleanliness, and some parts of the sewage system were broken. Moreover, apart from a few exceptions, the rooms were not heated and almost all windows lacked panes. As a result, detainees had covered the windows with carton boards, thereby severely limiting their access to natural light.

42. **Safi Barracks** is a two-storey building which is part of a larger military compound. It has an official capacity of 270 beds²² and accommodated 68 foreign nationals (54 men, 13 women and one child) at the time of the visit. Efforts were made to regroup foreign nationals by (presumed) nationality and to ensure family unity; single males were accommodated on the ground floor, while families and single females were accommodated on the upper floor.

The conditions in the 10 rooms varied significantly. The ground floor offered cramped conditions, as 12 to 15 foreign nationals were being accommodated in 30 m² rooms. **No more than eight detainees should be placed in rooms of such a size.** Sanitary facilities and hygienic conditions also left a lot to be desired. On a more positive note, the upper floor was cleaner and occupancy rates were lower.

Apart from the overcrowding in the rooms on the ground floor, the major problem was the lack of heating during the night, as the temperature could easily drop to 6-8° C in winter time. To protect themselves from the cold, detainees had adopted the same measures as in Hal Far.

²¹ In his 2002 report, the Ombudsman indicated that "these premises cannot take more than 80 persons without serious overcrowding".

²² In the recent past, the establishment accommodated up to 300 persons.

43. **Lyster Barracks**, operated by the Infantry Corps of the Armed Forces, accommodated at the time of the visit 55 male foreign nationals on the second floor of one of its buildings. The 16 dormitories were spacious²³, had good access to natural and artificial light and were well ventilated; however, bedding was worn out and the sanitary facilities were in a deplorable state of cleanliness. As elsewhere, no heating was available in the dormitories.

A large hall was designated for Muslim prayers; there was also a large association room (64m²), which was apparently rarely used.

The building had undergone major renovation some two years ago. Nevertheless, the military staff complained to the delegation about the damage caused by detainees, who expressed their frustration on furniture and equipment. On the whole, the establishment offered rather mediocre conditions of stay.

44. Most of the establishments visited were slightly refurbished immediately before the CPT's visit (electric bulbs were replaced, some broken windows repaired, several showers received plastic covers to ensure a certain level of privacy, some cells were painted, etc.). However, more than cosmetic change is needed to meet the CPT's criteria as regards accommodation for immigration detainees, as set out in its 7th General Report.

The CPT calls upon the Maltese authorities to significantly improve material conditions throughout the establishments accommodating foreign nationals detained pursuant to the immigration legislation, taking into account the above remarks.

45. One of the major complaints heard by the delegation concerned the quality and lack of variety of the food offered to detainees (although quantity was sufficient). Meals were prepared well in advance at Floriana Police Headquarters and delivered to the different establishments. Warm meals were at the best served tepid, as they were transported in makeshift containers. Complaints were also heard to the effect that no special diet was provided for detainees with serious chronic conditions (diabetes, cardio-vascular diseases, etc.)²⁴.

The CPT recommends that the Maltese authorities take measures to remedy these deficiencies.

46. As already indicated, foreign nationals detained pursuant to the immigration legislation frequently spend months and even more than a year in detention. The delegation was therefore concerned to note that no organised activities whatsoever were proposed in any of the establishments visited. Detainees had virtually nothing to do to occupy their time, apart from reading some newspapers/books²⁵ occasionally given by custodial staff, watching TV or outdoor exercise.

²³ However, a few rooms were overcrowded (e.g. room 47, measuring some 18m², accommodated 9 persons of the same nationality); this came about by the choice of those detainees, who grouped themselves by country of origin.

²⁴ Religious requirements of foreign nationals were, however, fully taken into account.

²⁵ In this context, the delegation noted that access to local newspapers had apparently been restricted after the interview given by two detainees to "The Times of Malta" on 4 July 2003. The two detainees were sanctioned by 13 days solitary confinement (24 July to 5 August 2003) in the Police Lock-Up at Floriana, where their stay was registered. It would seem that throughout this period, they did not benefit from outdoor exercise.

47. As regards outdoor exercise, the situation varied considerably from one establishment to another. Detainees at **Ta'Kandja Police Complex** had at their disposal a large yard, fenced with barbed wire, which served as a football pitch and detainees were usually offered 4 hours outdoor exercise every day. However, custodial staff indicated that access to this yard was occasionally denied, as it was not secure enough to prevent escapes.

At **Safi Barracks**, a one-hour outdoor exercise period per day was taking place in a muddy field, encircled by barbwire. **Lyster Barracks** and **Hal Far Immigration Reception Centre** had suitable exercise yards at their disposal. In the first establishment, detainees were offered 2 hours outdoor exercise per day, while in the latter, the outdoor exercise yard was accessible 12 hours per day.

Nevertheless, at all the establishments visited, access to outdoor exercise was conditional upon a sufficient presence of escorting/custodial staff, which could pose a problem, in particular at week-ends. In addition, allegations were heard that outdoor exercise could be discontinued for several days, as a form of collective punishment after a successful escape.

The CPT recommends that immediate measures be taken to ensure that immigration detainees are provided with more developed regime activities and appropriate means of recreation, including access to newspapers/magazines. The longer the period for which persons are detained, the more developed should be the activities offered to them. Moreover, all detainees should be offered at least one hour of outdoor exercise every day, including at week-ends.

48. The delegation also visited other establishments where foreign nationals could be temporarily detained.

The material conditions of stay of passengers refused entry in Malta at **Luqa International Airport** had clearly deteriorated in comparison with the situation observed in 1995 and 2001 (CPT/Inf (96) 25, paragraph 23 and CPT/Inf (2002) 16, paragraph 21). The large, windowless 8-bed dormitory was dirty, toilets were in a deplorable state of cleanliness and the shower was out of use. Moreover, no bed sheets had been provided to the one foreign national in detention, although he had already been in the room for 5 days, waiting for his return flight. Such a state of affairs is not in conformity with a previous statement of the Maltese authorities, according to which "whenever the need arises to keep these detainees in excess of 24 hours they are immediately transferred to the Hal Far Immigration Reception Centre" (cf. CPT/Inf (2002) 17, page 9).

Further, despite the CPT's specific recommendation that exercise in the open air be allowed on a daily basis for immigration detainees held for extended periods (i.e. 24 hours or more) at Luqa International Airport (cf. CPT/Inf (2002) 16, paragraph 21), the delegation was informed that persons detained there for prolonged periods would not be provided with access to the open air.

By its very design, the above room is not suitable to accommodate detainees in excess of 24 hours. **The CPT recommends that passengers detained in excess of 24 hours be transferred to more suitable facilities. The other material deficiencies referred to above should also be remedied.**

49. As already indicated, the delegation visited **Floriana Police Lock-Up**. These facilities were used in the past (mainly during the "emergency situation" in 2002) to accommodate significant groups of foreign nationals in three big dormitories. Each dormitory measured some 150 m² and was equipped with bunk-beds (with mattresses and pillows). Up to 85 detainees had been held per dormitory, in very cramped conditions. Moreover, access to natural light left much to be desired and the adjoining sanitary facilities were quite rudimentary for such a number of detainees (six toilets and three showers, for up to 180 illegal immigrants on a given date). The yard used for outdoor exercise was very small and surrounded by high fencing with barbed wire.

The delegation noted that these facilities were used to accommodate foreign nationals, for three weeks (November - December 2003), after an incident at Hal Far resulting in partial destruction of the furnishings. Given their very design (in particular, the poor access to natural light in the dormitories and the lack of an appropriate outdoor exercise area), as well as the total absence of regime activities, **the Police Lock-Up does not offer suitable accommodation for prolonged periods of detention**.

50. The delegation also visited the Motor and Transport yard ("**Nissen Hut**") located within **Safi Barracks**, an iron hangar which was, until recently, used to accommodate up to 60 foreign nationals. According to the custodial staff and foreign nationals interviewed, this hangar was unbearably hot during the summer and very cold during winter time. The delegation was told that a number of detainees were obliged to spend up to nine months in tents on the same site, due to a lack of proper accommodation. **The CPT recommends that the above mentioned facilities not be used again, even for the shortest period of time.**

E. Medical care

51. All immigration detainees were subject to an initial medical examination organised by the police immediately after their apprehension (before being assigned to a detention centre), and those who needed particular medical attention were taken to St. Luke's Hospital.

52. Medical care at the establishments visited was provided by the public health system. In this context, the delegation noted that, at the time of the visit, none of the establishments had its own health care staff and detainees had to be referred to local health care centres/clinics²⁶. Access to medical care was therefore conditional upon the availability of escorts and means of transport, which was at times problematic. Further, instructions had been given in some establishments (i.e. at Safi Barracks), urging custodial staff at weekends to refer detainees to an outside health centre only in "cases of extreme urgency". This requirement was clearly creating confusion for non-medical staff. Further, arrangements for the distribution of medication (including psychotropic medication) were inappropriate, as it was performed by non-medical staff. Many complaints were also heard to the effect that dental and psychiatric care were provided with significant delays, because of the difficulty encountered by custodial staff in organising the medical appointments.

²⁶ Visits previously organised at the detention centres by Red Cross doctors had stopped.

53. In the CPT's opinion, each of the establishments visited should be staffed with a nurse, working at least on a half-time basis. The presence of this nurse would enable proper medical screening on admission to the establishments. Further, the nurse could deal with requests for outside consultations, the keeping of the medical files, the distribution of medication and the individual follow-up of patients. **The CPT recommends that such a nursing presence be guaranteed in all the establishments visited.**

54. Medical confidentiality was not respected in any of the establishments visited, as medical files/data were kept by custodial (non-medical) staff. Further, many allegations were heard to the effect that medical examinations took place in the presence of custodial staff. **The CPT recommends that medical confidentiality be observed in the same way as in the outside community; in particular, detainees' files should not be accessible to non medical staff but instead be kept under the nurse or doctor's responsibility. Moreover, all medical examinations should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of sight of custodial staff.**

55. Many foreign nationals met expressed their frustration at the difficulties encountered in communication with health care staff, due to language barriers. They would indicate with gestures to the doctor the aching part of their bodies, hoping that the problem would be understood. Such a situation may potentially jeopardise the foreign nationals' health. In some cases, another foreign national was used as an interpreter, a situation which had given rise to difficulties. **The CPT wishes to emphasise that whenever members of the medical and/or nursing staff are unable to make a proper diagnostic because of language problems, they should be able to request without delay the services of a qualified interpreter. Fellow detainees should, in principle, not be used for this purpose.**

56. Several foreign nationals were on hunger strike during the CPT's visit. The delegation was informed that those persons were usually transferred to Mount Carmel Psychiatric Hospital. Such protests were usually initiated by desperate foreign nationals, as they felt this was the only way to draw attention to their indefinite detention. **The CPT would like to be informed of the precise manner in which the management of persons on hunger strike is undertaken in Malta.**

57. The mental health of asylum seekers (and irregular migrants) may be affected by previous traumatic experiences and, at their destination, the loss of accustomed personal and cultural surroundings and uncertainty about their future may lead to further deterioration. It is also known that detaining asylum seekers exacerbates symptoms of depression, anxiety and post-traumatic disorder²⁷.

The medical members of the CPT's delegation observed the detrimental impact of the situation on the physical and psychological state of health of detainees. The poor material conditions, the lack of purposeful activities, the general lack of information and, in particular, the uncertainty about the asylum process (decisive for their future), factors to be considered both individually and together as a combination, contributed to the detainees' feeling of helplessness and abandonment in detention of an indefinite and prolonged nature. Not surprisingly, many problems observed by the medical members of the delegation were of a psychosomatic nature.

²⁷ "Mental health of detained asylum seekers", Allen S. Keller, Barry Rosenfeld, Chau Trinh-Shevrin, Chris Meserve, Emily Sachs, Jonathan A. Leviss, Elizabeth Singer, Hawthorne Smith, John Wilkinson, Glen Kim, Kathleen Allden and Douglas Ford, *The Lancet*, Volume 362, 22 November 2003, pp. 1721-1723.

The significant symptoms of anxiety, depression or post-traumatic stress disorder worsen with time spent in detention and improve on release²⁸. Long lasting-serious deterioration of the mental health also brings about the risk of permanent damage. The accumulation of the above mentioned factors proved to influence the mental health state of the foreign nationals detained for a prolonged period in Malta. Some suffered from reactive affective disorders, like acute depression. Insomnia, anxiety, and depressive conditions were relatively frequent, and - occasionally - very severe. The detainees' distress and the feeling of isolation were also confirmed by the attitudes of mistrust, misunderstanding and hostility.

The CPT's delegation obtained copies of certificates issued by psychiatrists at Mount Carmel Psychiatric Hospital, which illustrated that indeterminate and indefinite detention was conducive to the development of reactive disorders, that such disorders could become so severe that an alternative to detention had to be found and that some detainees had become so suicidal that the unprotected environment of detention was not safe enough for them.

By way of example, the delegation saw a certificate indicating that a foreign national accommodated at Mount Carmel Psychiatric Hospital did not suffer from a specific mental illness, but from a "reactional anxiety to this detention...". In another case, a psychiatrist issued a certificate indicating that a foreign national is "suffering mentally from the prolonged detention and the long delays in any decision being taken as regards his future on the part of both authorities and the Refugee Board. This situation of indeterminate detention is leading to a serious mental suffering of not only Mr ..., but also other detainees. I strongly recommend that an alternative to detention is found for Mr ... In view of his frail physical health and the tribulations he has been through a solution to his situation must be found with extreme urgency". The CPT's delegation obtained another certificate, attesting that a foreign national detained under the immigration legislation admitted at the hospital suffered from a severe mental illness, and that he should not be returned to detention, as he "could become more suicidal and successfully commit suicide in an unprotected environment...".

The CPT's delegation was moreover informed that medical doctors at Mount Carmel Psychiatric Hospital had been instructed - apparently by a senior official from the Ministry of Health - not to issue any such certificate in the future. This would constitute an interference with the independence of the doctors concerned.

The CPT would like to receive the comments of the Maltese authorities on the issues raised in this paragraph.

58. The delegation visited the **Male Acute Ward at Mount Carmel Psychiatric Hospital**, where twelve immigration detainees were accommodated, together with Maltese patients. The conditions in the ward and the care provided to the immigration detainees were globally satisfactory. Nevertheless, the situation within the ward was tense, the patients concerned being in a state of despair and constantly threatening to commit suicide or otherwise harm themselves.

The CPT's delegation was subsequently informed that only four days after its visit, a disturbance took place in the ward, after the staff decided to segregate a foreign patient who was found trying to hang himself with a bed sheet in the toilet. Apparently, the police (including members of the Special Assignment Group) were called in to put an end to the incident. **The CPT would like to receive in due course a detailed account of the above-mentioned incident, as well as an account of any measures taken in response.**

²⁸ Ibidem.

59. None of the twelve patients held was offered daily outdoor exercise, contrary to the specific recommendation previously made by the CPT on this subject (paragraph 89, CPT/Inf (2002) 16). Such a state of affairs is not acceptable. **The CPT calls upon the Maltese authorities to take immediate measures to ensure that all patients are offered at least one hour of outdoor exercise per day, their state of health permitting.**

F. Staff issues

60. The staff of establishments accommodating immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be trained to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

61. The vast majority of police and military officers performing custodial duties in the establishments visited were committed to treating foreign nationals fairly and to meeting their needs to the extent possible. However, none of them had received any specific training before taking up their duties. One officer from the Armed Forces interviewed indicated that he had been "trained to fight foreign troops and not to deal with foreign detainees". Similarly, police officers at Ta'Kandja commented again that the custody of foreign nationals was hardly the vocation of a special intervention unit (cf. also CPT/Inf (96) 25, paragraph 21).

Moreover, police officers at Ta'Kandja Police Complex and at Hal Far Immigration Reception Centre were on detached duty from regular police stations. This situation led to a lack of staff continuity and management control.

Further, in at least one of the establishments visited, members of the CPT's delegation were able to observe clear signs of burnout of the personnel employed, who wished to discontinue their work and to be replaced by another unit.

Already in its 1995 visit report, the CPT recommended that "... as a matter of urgency, the Maltese authorities ... allocate the task of supervising such detainees to suitably qualified staff" (CPT/Inf (96) 25, paragraph 22). **The CPT calls upon the Maltese authorities to implement this recommendation. Moreover, the presence of at least one female custodial staff member should be guaranteed in all establishments accommodating female detainees.**

62. Although some "standing orders" for staff were shown to the delegation by national authorities, these documents were only exceptionally at hand for the custodial staff on duty in the establishments visited. Custodial staff met by the delegation indicated that they had great difficulties in finding the approach they should adopt vis-à-vis detainees. Much depended, in practice, on the goodwill of the duty officer in charge at a given time, and rules seemed to change with each new shift. Not surprisingly, this situation was perceived as arbitrary by the immigration detainees. **The CPT recommends that measures be taken to disseminate a clear set of rules for custodial staff at the establishments visited.**

G. Discipline

63. Different "disciplinary sanctions" were applied in practice vis-à-vis detainees who misbehaved. They usually consisted of warnings, bans on visits (where they existed) and, in the two military establishments visited, placement in the guard lock-up "until such time as determined by the Officer in charge" (as the instructions at Safi Barracks stipulated) or transfer to the Police Lock-up at Floriana (cf. footnotes 26 & 30), for a period which was not determined in advance. The delegation was unable to find any legal basis regulating the imposition of such "disciplinary sanctions".

Police officers met at the Lock-up in Floriana confirmed that foreign nationals were occasionally held there following a "disciplinary offence" (or incident) committed in one of establishments visited. The police inspector in charge decided when the person was to be sent back to the establishment from which he/she had come. The above-mentioned situation lends itself to abuse²⁹.

64. In the CPT's view, it is in the interests of both inmates and staff that clear disciplinary procedures be formally established and applied in practice; any grey areas involve the risk of an unofficial (and uncontrolled) system developing. **The CPT recommends that the Maltese authorities draft formal disciplinary regulations for the establishments which accommodate foreign nationals detained pursuant to the immigration legislation³⁰. These regulations should provide detainees with a right to be heard on the subject of the offences which they are alleged to have committed, and to appeal to a higher authority against any sanctions imposed.**

65. More generally, a written set of "house rules" for detainees was lacking in all the establishments visited. **The CPT recommends that house rules be drafted for all establishments visited and copies made available to foreign nationals detained on their arrival at these establishments, in a variety of languages frequently spoken by them.**

²⁹ For example, a foreign national was, so far as the delegation is aware, detained for two months at the Police Lock-Up in Floriana.

³⁰ This possibility is explicitly referred to in the Immigration Act, Section 34 (2).

H. Means of restraint

66. The use of means of restraint still poses a problem in Malta (cf. CPT/Inf (2002) 16, paragraphs 73-74). In all the establishments visited, the authorities systematically applied handcuffs whenever adult male and female foreign nationals were to leave their accommodation. In practice, each time a detainee was taken to a medical consultation or for an interview with the Refugee Commissioner - the latter often within the detention centre - he/she was systematically handcuffed. Some detainees indicated that they had refused to go to a medical consultation and/or to continue their treatment, because they had to wait in public health care establishments in the presence of other patients, whilst handcuffed, a situation they considered as being very humiliating. During the talks at the end of the visit, the Maltese authorities clearly acknowledged the problem.

67. In the CPT's view, there is no justification for routinely handcuffing immigration detainees outside their accommodation, all the more so when this measure is applied in an already secured environment. The use of handcuffs (as well as other means of restraint) should always be based on an individual risk/needs assessment. **The CPT recommends that the use of handcuffs be reviewed, in light of the above remarks.**

I. Contact with the outside world

68. In the establishments run by the Armed Forces, detainees were able to send as many letters as they wished, provided that they had money to buy stamps. Similarly, a number of visitors (NGOs, religious organisations, Red Cross representatives, etc.) had free access to foreign nationals detained in those establishments pursuant to the immigration legislation. The CPT welcomes this situation.

By contrast, no correspondence or visits (even from close family members residing in Malta) were allowed in the establishments run by the Police Force. **The CPT recommends that measures be taken to remedy this state of affairs.**

69. In all the establishments visited, detainees were given on arrival a telephone card (worth 5 Maltese Liri - sufficient usually for one phone call to an African country) and further cards could be bought. For a number of detainees, this ruled out in practice the possibility of making further phone calls, as they did not have any funds to buy additional cards. On a more positive note, all detainees were able to receive outside calls. **The CPT invites the Maltese authorities to consider improving access to the telephone, by providing detainees without resources with a phone card on a regular basis.**

70. In all the establishments visited, mobile phones were systematically confiscated by the authorities. The CPT wishes to recall that the persons concerned were neither convicted nor suspected of a criminal offence. Bearing this in mind, as well as the already mentioned difficulties in making phone calls, **the CPT invites the authorities to reconsider their policy of systematically confiscating mobile phones.**

APPENDIX

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

A. Preliminary remarks

recommendations

- steps to be taken to ensure that any foreign national detained under the Immigration Act benefits from an effective legal remedy enabling him to have the lawfulness of his detention decided speedily before a judicial body. This judicial review should entail an oral hearing with legal assistance and interpretation, if necessary provided free of charge to the person concerned. Moreover, detained foreign nationals should be expressly informed of this legal remedy (paragraph 18).

comments

- the Maltese authorities are invited to review the existing Immigration and Refugee Acts, taking into account the remarks made in paragraphs 11 to 17 and, in particular, to consider a more extensive use of non-custodial measures (paragraph 18).

requests for information

- a copy of Legal Notices N° 76/1999 and N° 152/2002 (paragraph 9);
- a copy, in due course, of the Maltese Constitutional Court decision's as regards the legality of the detention imposed by the Immigration Act (paragraph 10);
- comments of the Maltese authorities on the issue raised in paragraph 12 (paragraph 12).

B. Ill-treatment

recommendations

- the Maltese authorities to deliver a clear message to the members of the Police Force and the Armed Forces, entrusted with custodial duties in respect of foreign nationals, that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions (paragraph 26);
- to put immediately an end to the practices referred to in paragraph 27 (paragraph 27).

requests for information

- a copy of the results of the independent Police Board investigation, once completed, on the incident which took place on 3 and 4 September 2002 in Ta'Kandja Police Complex (paragraph 21).
- whether regulations concerning the use of force and firearms have been adopted (including as regards the use of means of restraint during operations for the removal of foreign nationals by air) and, if so, to receive a copy (paragraph 22);
- a copy, in due course, of the results of the judicial investigation concerning an Algerian national who committed suicide, by hanging, on 2 November 2003 at the Police Lock-up at Floriana (paragraph 23);
- a copy of the report of the enquiry on the incident which took place on 28 December 2003 at Ta'Kandja Police Complex (paragraph 24).

C. Fundamental safeguards

recommendations

- specific legal provisions to be adopted granting the right to inform a person of one's choice of one's situation and to have access to a lawyer and a medical doctor to persons detained under the immigration legislation, as from the outset of their deprivation of liberty by the law enforcement agencies (paragraph 29);
- measures to be taken to ensure that the initial interviews, as well as any other interview conducted during the asylum proceedings, are carried out in a manner guaranteeing their confidentiality. Free, qualified and impartial interpretation should be made available, on request, during the whole procedure and the use of fellow detainees as interpreters should, in principle, be avoided. Female asylum seekers should as far as possible be interviewed by female interviewers (assisted, if necessary, by female interpreters) (paragraph 31);
- immediate steps to be taken to ensure that every decision taken by the Refugee Commissioner or the Refugee Appeals Board vis-à-vis a particular foreign national explicitly states the reasons supporting it. The appeal procedure should include the right for the foreigner concerned to be heard in person before the Refugee Appeals Board (paragraph 34);
- measures to be taken to ensure that foreign nationals detained under the immigration legislation benefit, on request, from access to legal aid at every stage of the proceedings (paragraph 35);
- the Maltese authorities to take steps to ensure that qualified staff, in sufficient numbers, are assigned to the Refugee Commissioner's Office and the Refugee Appeals Board (paragraph 36);

- the Maltese authorities to take immediate measures to ensure that each detention is covered by a proper detention order, readily available in the establishment where the person concerned is being held (paragraph 37).

requests for information

- a copy of the report of the enquiry into the case of the deportation of 220 Eritreans in September/October 2002, as well as an account of any measures taken in the light of the report (paragraph 32);
- whether an appeal before the Immigration Appeals Board against a decision involving a foreign national's removal from Malta has a suspensive effect (paragraph 33).

D. Conditions of detention

recommendations

- the Maltese authorities to significantly improve material conditions throughout the establishments accommodating foreign nationals detained pursuant to the immigration legislation, taking into account the remarks in paragraphs 38 to 44 (paragraph 44);
- the Maltese authorities to take measures to remedy deficiencies in respect of the quality and lack of variety of food offered to detainees (paragraph 45);
- immediate measures to be taken to ensure that immigration detainees are provided with more developed regime activities and appropriate means of recreation, including access to newspapers/magazines. The longer the period for which persons are detained, the more developed should be the activities offered to them. All detainees should be offered at least one hour of outdoor exercise every day, including at week-ends (paragraph 47);
- passengers at Luqa International Airport detained in excess of 24 hours to be transferred to other, more suitable, facilities. The material deficiencies in the Airport dormitory referred to in paragraph 48 should also be remedied (paragraph 48);
- the "Nissen Hut" site not to be used again for the accommodation of foreign nationals, even for the shortest period of time (paragraph 50).

comments

- no more than four detainees should be accommodated in each room of the Immigration Reception Centre at Hal Far (paragraph 41);
- no more than eight detainees should be placed in the 30 m² rooms at Safi Barracks (paragraph 42);
- the Police Lock-Up does not offer suitable accommodation for prolonged periods of detention (paragraph 49).

E. Medical care

recommendations

- the Maltese authorities to ensure that a nursing presence as indicated in paragraph 53 is guaranteed in all the establishments visited (paragraph 53);
- medical confidentiality to be observed in the same way as in the outside community; in particular, the detainees' files should not be accessible to non-medical staff but instead be kept under the nurse or doctor's responsibility. Moreover, all medical examinations should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of sight of custodial staff (paragraph 54);
- the Maltese authorities to take immediate measures to ensure that all patients at Mount Carmel Psychiatric Hospital are offered at least one hour of outdoor exercise per day, their state of health permitting (paragraph 59).

comments

- whenever members of the medical and/or nursing staff are unable to make a proper diagnostic because of language problems, they should be able to request without delay the services of a qualified interpreter. Fellow detainees should, in principle, not be used for this purpose (paragraph 55).

requests for information

- the precise manner in which the management of persons on hunger strike is undertaken in Malta (paragraph 56);
- comments of the Maltese authorities on the issues raised in paragraph 57 (paragraph 57);
- a detailed account of the incident described in paragraph 58, as well as an account of any measures taken in response (paragraph 58);

F. Staff issues

recommendations

- the task of supervising immigration detainees to be allocated to suitably qualified staff. Moreover, the presence of at least one female custodial staff member should be guaranteed in all establishments accommodating female detainees (paragraph 61);
- measures to be taken to disseminate a clear set of rules for custodial staff at the establishments visited (paragraph 62).

G. Discipline

recommendations

- the Maltese authorities to draft formal disciplinary regulations for the establishments which accommodate foreign nationals detained pursuant to the immigration legislation. These regulations should provide detainees with a right to be heard on the subject of the offences which they are alleged to have committed, and to appeal to a higher authority against any sanctions imposed (paragraph 64);
- house rules to be drafted for all establishments visited and copies made available to foreign nationals detained on their arrival at these establishments, in a variety of languages frequently spoken by them (paragraph 65).

H. Means of restraint

recommendations

- the use of handcuffs to be reviewed, in light of the remarks made in paragraph 67 (paragraph 67).

I. Contact with the outside world

recommendations

- measures to be taken to allow correspondence and visits in the establishments run by the Police Force (paragraph 68).

comments

- the Maltese authorities are invited to consider improving access to the telephone, by providing detainees without resources with a phone card on a regular basis (paragraph 69);
- the Maltese authorities are invited to reconsider their policy of systematically confiscating mobile phones (paragraph 70).