



## **Report**

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

**from 5 to 17 June 2013**

The Polish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2014) 22.

Strasbourg, 25 June 2014

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

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POLAND

Strasbourg, 27 November 2013

Dear Ms Żygas,

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 Poland drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Poland from 5 to 17 June 2013. The report was adopted by the CPT at its 82nd meeting, held from 4 to 8 November 2013.

The recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Polish authorities to provide within **six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the authorities of Poland to provide, in that response, reactions to the comments formulated in this report as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in the Polish language, that it be accompanied by an English or French translation.

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

Yours sincerely,

Lətif Hüseynov  
President of the European Committee for the  
Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Poland from 5 to 17 June 2013. The visit formed part of the CPT’s programme of periodic visits for 2013 and was the Committee’s fifth visit to Poland<sup>1</sup>.

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

- James McMANUS (Head of delegation)
- Celso DAS NEVES MANATA
- Mykola GNATOVSKYY, 2nd Vice-President of the CPT
- Stefan KRAKOWSKI
- Costakis PARASKEVA
- Marika VÄLI.

They were supported by Borys WÓDZ (Head of Division), Isabelle SERVOZ-GALLUCCI and Almut SCHRÖDER of the CPT’s Secretariat, and assisted by:

- Eric DURAND, medical doctor, France (expert),
- Andrzej GRZĄDKOWSKI (interpreter)
- Aleksander JAKIMOWICZ (interpreter)
- Piotr PASTUSZKO (interpreter)
- Aleksandra SOBCZAK (interpreter)
- Przemyslaw WNUK (interpreter)
- Artur ZAPAŁOWSKI (interpreter).

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<sup>1</sup> The first periodic visit took place in June/July 1996, the second in May 2000, the third in October 2004 and the fourth in November/December 2009. All visit reports and related Government responses have been made public (at the request of the Polish authorities) and can be found on the CPT’s website: <http://www.cpt.coe.int/en/states/pol.htm>.

**B. Establishments visited**

3. The delegation visited the following places of deprivation of liberty:

Establishments under the responsibility of the Ministry of the Interior

- Municipal Police Department, Bydgoszcz
- Municipal Police Department, Lublin
- Police Station, Kunickiego St. 49A, Lublin
- Municipal Police Department, Szczecin
- Metropolitan Police Department, Warsaw
- District Police Department, Warsaw VII, Grenadierów St. 73/75, Warsaw
- District Police Department, Warsaw VII, Umińskiego St. 22, Warsaw
- Police Department Warsaw-Wawer, Mrówcza St. 210, Warsaw
- Police Station Warsaw-Białołęka, Myśliborska St. 65, Warsaw
- Police establishment for children, Bydgoszcz
- Police establishment for children, Lublin
- Police establishment for children, Szczecin
- Police establishment for children, Warsaw

Establishments under the responsibility of the Ministry of Justice

- Bydgoszcz Remand Prison and Prison Hospital
- Lublin Remand Prison
- Szczecin Remand Prison and Prison Hospital
- Warsaw-Grochów Remand Prison
- Warsaw-Mokotów Remand Prison and Prison Hospital

Other establishments

Sobering-up centre, Warsaw.

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

4. In the course of the visit, the CPT's delegation held consultations with Stanisław CHMIELEWSKI, Secretary of State of the Ministry of Justice, Piotr STACHAŃCZYK, Secretary of State of the Ministry of the Interior, Jacek WŁODARSKI, Director of the Prison Service, and Marzena KOWALSKA, Deputy Prosecutor General, as well as other senior officials from the Ministries of Justice and the Interior, and from the Prosecutor General's Office.

The delegation also had meetings with Irena LIPOWICZ, Human Rights Defender (Ombudsperson) and representatives of the Helsinki Foundation for Human Rights.

A list of the national authorities and non-governmental organisations with which the delegation held consultations is set out in Appendix II.

5. The CPT wishes to express its appreciation of the efficient assistance provided to its delegation before, during and after the visit, by the liaison officers appointed by the Polish authorities, Agnieszka ŻYGAS and Dawid GROCHOWSKI from the Ministry of Justice.

6. The co-operation provided to the CPT's delegation by both the national authorities and staff at the establishments visited was excellent. The delegation enjoyed immediate access to all the places visited (including ones not notified in advance), was able to speak in private with persons deprived of their liberty and was provided with all the information necessary for the carrying out of its task.

7. That said, as already stressed after previous CPT visits to Poland, the principle of co-operation between State Parties and the Committee is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the CPT's recommendations. In this respect, the Committee is concerned to note that after five periodic visits by the CPT to Poland, little action has been taken to implement several of its long-standing recommendations e.g. as regards the fundamental safeguards for persons deprived of their liberty by law enforcement agencies, the (still very impoverished) regime for remand prisoners and the prison health-care services.

Furthermore, the Committee notes with concern that the legal norm of living space per prisoner has not yet been brought into conformity with the CPT's standard (i.e. at least 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells, sanitary annexe excluded, and at least 6 m<sup>2</sup> in single-occupancy cells), and that the very restrictive provisions governing contacts with the outside world for remand prisoners have not been amended. The Committee will return to these issues later in this report.

8. The CPT wishes to emphasise that a persistent failure to improve the situation in the light of the Committee's recommendations could oblige it to consider having recourse to Article 10, paragraph 2, of the Convention<sup>2</sup>. The Committee trusts that the action taken by the Polish authorities in response to this report will render such a step unnecessary.

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<sup>2</sup> "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

**D. Requests made at the end of the visit**

9. On 17 June 2013, the CPT's delegation met representatives of the Polish authorities in Warsaw, in order to acquaint them with the main facts found during the visit. On this occasion, the delegation made requests concerning certain matters.

10. The delegation pointed out that the privacy of communal toilets and showers was not respected at the Municipal Police Department in Lublin, the Metropolitan Police Department in Warsaw and at Warsaw-Białołęka Police Department<sup>3</sup>; further, at Bydgoszcz Municipal Police Department, the CCTV coverage included the in-cell toilets. The delegation requested to receive, within one month, confirmation that the above-mentioned deficiencies had been remedied.

In addition, the delegation asked to be provided, within one month, with information related to the investigation carried out into the death, at Bydgoszcz Prison Hospital, of A\* on 8 March 2012, following an episode of 36.5 hours of fixation.

The delegation also recalled the request made at the meeting with the representatives of the Office of the Prosecutor General on 5 June 2013, namely to be provided with copies of the investigation files concerning the alleged ill-treatment of B\* (a remand prisoner who arrived at Racibòrz Prison on 26 September 2009 and who had been detained by the police on 24 September 2009) and C\* (a remand prisoner who arrived at Katowice Remand Prison on 9 October 2009 and who had been detained by the police on 7 October 2009 in Krakòw).

11. The above-mentioned requests were subsequently confirmed in a letter of 28 June 2013 from the Executive Secretary of the CPT.

By letter of 24 July 2013, the Polish authorities informed the CPT of the measures taken in response to the delegation's requests. The Committee will consider those measures later in this report.

**E. National Preventive Mechanism**

12. Since January 2008, the tasks of the National Preventive Mechanism (NPM), pursuant to Poland's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), have been assigned to the Human Rights Defender (Ombudsperson). The CPT's delegation met the Ombudsperson and members of her NPM team at the outset of the visit.

It appeared from the discussion that the budget for the Polish NPM has been increasing slowly but steadily i.e. from 1,265,000 PLN (in 2011), through 1,872,000 PLN (in 2012) up to 2,804,000 PLN (in 2013). Also the staffing of the NPM had been on the increase, by one post per year on average (at the time of the visit, it consisted of 13 persons). This has permitted a steady rise in the number of visits to places of deprivation of liberty (including police establishments, prisons, juvenile detention facilities, social homes and sobering-up centres) – from 76 in 2008 to 124 in 2012.

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<sup>3</sup> See paragraph 35.

\* In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

Despite these positive trends and the unquestionable commitment of the staff of the Polish NPM, it appeared clearly from the delegation's findings during the visit that a further increase in resources (both human and financial) would be required for the Polish NPM to perform efficiently the role of a national monitoring mechanism of places of deprivation of liberty, capable of carrying out frequent and unannounced visits to all types of such places throughout the country.

Indeed, in most of the establishments visited by the CPT, the most recent visit by the NPM dated back to some years before, and as a rule it had not been a comprehensive monitoring visit<sup>4</sup>.

**The CPT recommends that steps be taken to further increase the resources made available to the National Preventive Mechanism, in the light of the above remarks.**

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<sup>4</sup> But, instead, a visit following an individual complaint focused on the follow-up to that complaint.

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

### A. Police

#### 1. Preliminary remarks

13. The legal framework governing the detention of adult criminal suspects by the police has remained basically unchanged since the CPT's previous visit. Persons apprehended by the police must be brought before the court within 48 hours of apprehension with a request for applying temporary arrest. The apprehended person must be released if, within 24 hours from that moment, he/she has not received a copy of the court decision ordering temporary arrest.

As had been the case during the 2009 visit, the information gathered by the CPT's delegation during this visit suggests that apprehended persons who were not subsequently released were usually transferred to a remand establishment well within the 72-hour period.

14. The legal provisions applicable to the detention of juveniles suspected of a criminal offence have undergone (and, in part, are still in the process of undergoing) certain amendments.

In general, such juveniles have to be released from police detention if, within 72 hours, a court decision on the placement in a shelter for juveniles, an appropriate protective educational facility or an appropriate treatment facility has not been issued. Further, recent amendments to Section 40 (7) of the Act on the Procedure in Juvenile Cases (Juvenile Act) have introduced a 5-day time-limit for the holding in a police establishment for children (PID) of juveniles who have absconded from a shelter or an educational or correctional facility. A new Section 40a of the Juvenile Act allows the police to hold in a PID, for up to 24 hours, a juvenile who is being transferred to a shelter or an educational or correctional facility, in case of a "justified interruption of convoy". Finally, further amendments (which were under consideration in the Parliament at the time of the visit) aim at introducing a 5-day limit for holding juveniles in a PID after a court decision has been issued, pending their transfer to another institution<sup>5</sup>. **The CPT would like to receive, in due course, confirmation of the entry into force of the latter amendment to the Juvenile Act.**

It should be stressed that, unlike during the 2009 visit, the delegation generally did not come across detention periods in police establishments for children exceeding a week (and usually the stays were shorter, no more than a few days). This is a welcome development.

15. Pursuant to the legislation currently in force, the police may hold intoxicated persons for up to 24 hours; they should be released as soon as they can pass a breathalyser test.

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<sup>5</sup> Currently, there is no such time-limit (see also paragraph 11 of the report on the CPT's 2009 periodic visit to Poland, document CPT/Inf (2011) 20).

Further, amendments to the Police Act<sup>6</sup>, in force as of 13 June 2012, allow the police to hold apprehended persons in “transit rooms” (in local police stations) for the time needed to prepare a transfer to a police detention facility, a PID or a prison (but in any case for no longer than 6 hours), as well as in “temporary transit rooms” (which may be set up outside police establishments) for the time required to decide on how to proceed further with the person (but in any case, for no longer than 8 hours).

It should be stressed that the time spent in the above-mentioned rooms is included within the maximum permitted length of police custody referred to in paragraphs 13 and 14 above.

## **2. Ill-treatment**

16. The majority of the persons met by the delegation who were, or had recently been, detained by the police, indicated that they had been correctly treated. Nevertheless, the delegation did receive a significant number of allegations of physical ill-treatment of persons taken into police custody (including from detained juveniles), both at the time of apprehension and during subsequent questioning (in some cases, with a view to extracting a confession or another statement).

In the main, the allegations referred to slaps, punches, kicks and truncheon blows, and tight handcuffing. In a very small number of cases, the ill-treatment alleged was of such a severity that it would amount to torture, such as truncheon blows on the soles of the feet, the infliction of electric shocks using an electrical discharge weapon, and burning a person’s arm with a cigarette.

Further, several persons alleged that they had been threatened and/or verbally abused while in police custody.

17. In some cases, the delegation gathered medical evidence which was consistent with allegations of physical ill-treatment received. For example:

- a person interviewed by the delegation at Warsaw-Grochów Remand Prison alleged that, while being questioned in a police station approximately a week prior to the interview, he was placed on the floor, face down and handcuffed behind his back, kicked and struck with a truncheon, in particular on his chest and feet. Subsequently, the hood of his jacket was reportedly placed over his head and he was taken to a cell where, as he was lying on the floor, a hard blunt object was allegedly pressed to his left ear. Upon examination by a medical member of the CPT’s delegation, the person concerned was found to display: on both sides of the thorax, round-oval shaped greenish yellow haematomas measuring on the left side 3 x 4 cm and on the right side 5 x 6 cm; behind the left ear, an oedema and hyperaemia, painful on palpation; on both wrists, two parallel dark red excoriations (scratches);

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<sup>6</sup> Section 15 (7) b.

- a person interviewed at a police establishment alleged that, some eight days prior to the interview, he had been apprehended by the police in another town, attached to a radiator pipe at a police station, and struck several times with a truncheon, on his legs, shoulders and chest, by the police officer who was questioning him; he was also allegedly burnt with a cigarette on his left arm. Other police officers present at the scene apparently watched but did not intervene. He said that he was subsequently transferred to Lublin Municipal Police Department, where the duty officer in the detention facility refused to admit him because he bore visible injuries. He was then transferred to the Military Hospital for a medical examination, where the doctor found “no visible injuries” (a statement recorded in the medical file at the Municipal Police Department), after which he was taken back and admitted to the above-mentioned Police Department. Upon examination by a medical member of the delegation, the person concerned was found to display: on the left subclavian area, an irregular yellowish purple haematoma measuring 4 x 3 cm; on the posterior surface of the left upper arm, an oblong haematoma measuring 6 x 4 cm, of the same colour; on the anterior surface of the right thigh, in the middle and the lower third, haematomas measuring 5 x 4 and 4 x 7 cm; on the anterior surface of the left thigh, two hematomas measuring 3 x 4 and 3 x 5 cm; on the interior surface in the upper third of the left forearm, a rounded pink excoriation, greyish-white in the middle (possibly caused by a cigarette).

18. While examining the medical and other relevant records in police establishments, the delegation also came across cases in which persons detained by the police had sustained injuries in circumstances that may have involved police ill-treatment. Two such cases merit particular mention here:

- At the District Police Department Warsaw VII (Umińskiego St. 22), the delegation examined the case of D\*, who had sustained a contusion of the forehead while being detained at the above-mentioned establishment on 18 March 2013. He was subsequently taken to Warsaw-Grochów Hospital where the doctor drew up the following certificate: “patient sustained a head trauma, with no loss of consciousness on 18 March at approximately 8 p.m. The patient reported an injury to the head (frontal region) and to the cervical spine sustained the day before”. The delegation saw a report on this incident written by the police officer present in the detention area of the District Police Department Warsaw VII on the evening of 18 March 2013, which stated as follows: “around 7.25 p.m., D held in cell No.1 requested permission to leave the cell to use the lavatory. When in the corridor, he attempted to contact [...] held in cell No. 6 [another suspect in the same case]. When I admonished him, he ignored the admonition. When entering the lavatory, he made a half turn towards cell No. 6. In order to speed up D’s entrance to the lavatory, I wanted to shut the lavatory door behind him as quickly as possible, as a result of which he hit his head on the lavatory door. D sustained a cut to the skin of the forehead. He did not request medical assistance, declaring that the incident was caused by his own clumsiness. During the shift handover proceedings, at approximately 7.45 p.m., he changed his mind and requested that an ambulance be summoned. The officer on duty of the District Police Station was notified and an ambulance was summoned”.

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\* In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

The delegation also read the report written by another police officer present at the establishment in the night of 18 to 19 March 2013, who mentioned *inter alia* that at 3.30 a.m. on 19 March, the officer involved in the above-mentioned incident had asked him whether he would be able to play or record the CCTV footage. He reportedly replied that only the system administrator was authorised to do so;

- At the Municipal Police Department in Bydgoszcz, the delegation found, in the medical register, information according to which E\*, admitted to the establishment at 10.55 p.m. on 9 January 2013, without any visible lesions, was transferred to a city hospital at 1.05 a.m. on 10 January 2013. The hospital's doctor noted a "crashed wound" and a "skin lesion" on E's chin.

In both of the above-mentioned cases, according to the information provided to the delegation, an internal inquiry and/or criminal investigation has been initiated. **The CPT would like to be provided, in due course, with information about the outcome of these inquiries/investigations, including on any disciplinary and/or criminal sanctions imposed.**

19. At the Metropolitan Police Department in Warsaw, the delegation examined, *inter alia*, the case of F\*, brought to the establishment at 3.10 a.m. on 12 May 2013 and transferred to the Warsaw sobering-up centre at 5 a.m. on that same morning. While there was no mention of any injuries on F's apprehension protocol (instead, a note made by the admitting police officer stated: "healthy, does not require examination, lack of external visible lesions of the body"), a note made by another admitting police officer at 7.15 p.m. on that same day (after F had been brought back from the sobering-up centre at 5 p.m.) stated that: "At the time of admission, he had a bruise of the eye (a black eye). According to his statement, it happened yesterday". Questioned on what might have happened, the police officers present at the Metropolitan Police Department during the delegation's visit stated that the detainee had probably been struck at the sobering-up centre.

The delegation verified this matter at the sobering-up centre. The relevant registers confirmed that F had indeed stayed at the establishment from 5 a.m. to 5 p.m. on 12 May 2013. However, the medical examination performed by one of the centre's doctors shortly after his arrival revealed the presence of a lesion (ecchymosis/black eye) under F's left eye. This would indicate that F sustained his injury either during his stay at the Metropolitan Police Department or during his transfer to the sobering-up centre.

**The CPT would like to receive clarification of this case, together with information on any inquiry/investigation initiated and on its outcome.**

20. At the outset of the visit, the delegation was informed by the Polish authorities of the steps taken to combat ill-treatment by the police, in the light of the recommendations made in the report on the CPT's 2009 visit.

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\* In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

These steps included the introduction of new selection criteria for police officers (with psychological tests to assess the risk of violent behaviour in stress situations) and of a new curriculum in police schools (comprising the element of training as regards respect of human dignity in high-risk situations such as apprehension), new in-service courses for all heads of police units in “ensuring respect for human rights in police management”, and initiation of an “early intervention system” with the aim of ensuring respect for professional and ethical standards in daily police work (including workshops for police managers and the production of an electronic newsletter based on the “lessons learned” approach).

The delegation was also informed that all complaints of police ill-treatment must now be directly and immediately transmitted to the relevant prosecutor, in addition to the relevant police human rights plenipotentiary and the Internal Affairs Bureau of the Police. The Prosecutor General issued instructions to all prosecutors, reminding them of the need to avoid delays in examining complaints of police ill-treatment, and to start proceedings at once and prevent destruction of evidence, in particular by immediately ordering forensic medical examinations. The above-mentioned instructions also reminded prosecutors of the need to obtain, without delay, information on the exact circumstances of the alleged ill-treatment (time, location, type of ill-treatment, persons involved, etc.) and to interrogate all the police officers involved (separately from each other). Further, investigations into cases of alleged ill-treatment are now systematically carried out by prosecutors from a different region than that in which the police officer(s) concerned work (in order to ensure objectivity) and all such investigations are monitored on an on-going basis by prosecutors-co-ordinators appointed at the level of district and appeal prosecutors’ offices.

21. It should be added that, pursuant to an order issued by the Minister of the Interior on 1 January 2010, the Internal Affairs Bureau of the Main Police Command and the Human Rights Plenipotentiary of the Chief Police Commander (as well as that of the Chief Commander of the Border Guard) are required to systematically and immediately inform the Human Rights Defender of all the complaints they receive of ill-treatment by police (and Border Guard) officers. The Human Rights Defender is also automatically informed of any incident involving a police officer and resulting in death or serious injury, as well as cases when there is *prima facie* suspicion of an unjustified use of force and means of coercion.

22. After the meeting at the Ministry of the Interior on 5 June 2013, the CPT’s delegation was provided with statistical information concerning the disciplinary procedures and sanctions vis-à-vis police officers following complaints of ill-treatment in respect of the years 2011 and 2012<sup>7</sup>.

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<sup>7</sup> In 2011, there were 17 disciplinary inquiries against police officers for violence or threats towards persons in their custody, as a result of which two officers were dismissed from the police. In the same period, there were 15 criminal investigations for alleged ill-treatment (resulting in two dismissals and three other disciplinary punishments) and 407 criminal investigations for alleged exceeding authority (resulting in 51 dismissals and 41 other punishments). The analogous figures in respect of 2012 were as follows: 18 criminal investigations and no sanctions (violence/threats), four criminal investigations and no sanctions (ill-treatment), 333 criminal investigations resulting in 45 dismissals and 34 other punishments (exceeding authority).

In order to obtain an updated picture of the situation, **the Committee would like to receive the following information, in respect of 2013 and the first quarter of 2014:**

- **the number of complaints of ill-treatment made against police officers and the number of criminal/disciplinary proceedings which have been instituted as a result;**
- **an account of criminal/disciplinary sanctions imposed following such complaints.**

23. Whilst taking due note of the different measures referred to in paragraphs 20 and 21, the delegation's findings during the 2013 visit clearly indicate that persons taken into police custody in Poland still run an appreciable risk of being ill-treated. **The CPT calls upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by police officers. Police officers throughout the country should receive a firm reminder that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly.**

24. It is also essential to promote a police culture where it is regarded as unprofessional to work and associate with colleagues who resort to ill-treatment. More precisely, proper conduct by police staff vis-à-vis detained persons must be fostered, in particular by doing more to encourage police officers to prevent colleagues from ill-treating detained persons and to report, through appropriate channels, all cases of ill-treatment by colleagues. There must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring/has occurred and fails to act to prevent or report it. This implies the development of a clear reporting line to a distinct authority outside of the police unit concerned as well as a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice. **The CPT recommends the adoption of such “whistle-blower” protective measures.**

25. Of course, effective investigations capable of leading to the identification and punishment of those responsible for ill-treatment are also essential. Whenever an investigation is initiated by a prosecutor into possible police ill-treatment, the question will arise of who will be responsible for the operational conduct of that investigation. In this context, it is extremely important that the persons entrusted with the operational conduct of the investigation be independent of those implicated in the events. As stressed in several judgments of the ECtHR<sup>8</sup>, they should be completely separate from the agency concerned. Consequently, **the CPT recommends that when prosecutors require operational support from another service for the investigation of cases of possible ill-treatment by the police, that support be sought from a completely independent source rather than from the regional police commands.**

Of course, it would be far preferable for the prosecutors concerned to use their own investigators.

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<sup>8</sup> See e.g. Holodenko v. Latvia no. 17215/07 (2 July 2013), Mikiashvili v. Georgia no. 18996/06 (9 October 2012), Taraburca v. Moldova no. 18919/10 (6 December 2011).

### 3. Safeguards against ill-treatment

26. As regards the fundamental safeguards against ill-treatment advocated by the CPT – namely the right to notify one's detention to a third party, the right of access to a lawyer and to a doctor, and the right to be informed of the above-mentioned rights – the delegation has not seen any real improvement in their application since the Committee's previous visits.

27. Concerning the right of notification of custody, it is expressly mentioned in the apprehension protocol which is drawn up shortly after a person's deprivation of liberty and signed by the detained person. However, the delegation's interviews with detained persons clearly indicated that many of them were in practice not aware of this right. In this connection, the CPT regrets that detained persons are still not provided with a specific information sheet setting out their rights in a clear manner. This issue will be dealt with in paragraph 31 below.

Other detained persons who had sought to make use of their right of notification of custody complained that they did not know whether notification had been given. Consequently, **the Committee reiterates its recommendation that steps be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention.**

28. As on previous visits, the delegation observed that it was the exception rather than the rule for persons in police custody to benefit from access to a lawyer. Despite the CPT's long-standing recommendation to this effect, there is still no provision in Polish law allowing for the appointment of an *ex officio* lawyer before the stage of court proceedings. Therefore, persons in police custody who are not in a position to pay for legal services are effectively deprived of the right of access to a lawyer. **The CPT calls upon the Polish authorities to develop, without further delay, a fully-fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer, to be applicable from the very outset of police custody. The relevant legislation should be amended.**

29. The delegation again heard many allegations according to which, even in those rare cases when the detained persons did meet their lawyer while in police custody, such meetings systematically took place in the presence of a police officer. This is totally unacceptable.

The right of access to a lawyer must include the right to meet him/her, and in private. Seen as a safeguard against ill-treatment (as distinct from a means of ensuring a fair trial), it is clearly essential for the lawyer to be in the direct physical presence of the detained person. This is the only way of being able to make an accurate assessment of the physical and psychological state of the person concerned. Likewise, if the meeting with the lawyer is not in private, the detained person may well not feel free to disclose the manner in which he/she is being treated.

In this context, it is noteworthy that at the meeting at the Ministry of the Interior, the delegation was informed that, following a December 2012 decision by the Constitutional Court (which stated that the confidentiality of client-lawyer conversations at police establishments may only be restricted if it is duly motivated in a specific case), the Parliament was now considering amendments to the CCP which would ensure that persons detained by the police have in all cases the right to talk to a lawyer in private. If adopted, this amendment would address one of the long-standing concerns of the Committee, related to the current wording of Section 245 (1) of the CCP<sup>9</sup>. **The CPT would like to be informed, in due course, of the entry into force of this amendment and to receive the text of the amendment. Pending this, instructions should be issued to bring the practice into conformity with the above-mentioned Constitutional Court decision.**

30. As regards access to a doctor, the delegation was informed that, pursuant to an order of the Minister of the Interior of 13 September 2012, the decision on the presence of police officers during the medical examination of persons in police custody should be taken by the examining doctor. The CPT welcomes this positive development. That said, the delegation's observations in the police establishments visited suggest that the confidentiality of medical examinations (and relevant medical documentation) is not yet respected in practice. Further, despite the Committee's earlier recommendations, injuries observed on persons brought to police detention facilities are not always duly recorded.

**The CPT calls upon the Polish authorities to implement the recommendation made in the 2009 visit report, that all medical examinations be conducted out of the hearing and - unless the doctor requests otherwise - out of the sight of police officers. The Committee also recommends that information concerning detained persons' health be kept in a manner which ensures respect for medical confidentiality. Health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given.**

As regards the documenting of medical examinations and reporting of injuries, the CPT recommends that steps be taken to ensure that:

- **the records drawn up following the medical examination of detained persons in police establishments contain: (i) an account of statements made by the persons concerned which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) the health-care professional's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;**
- **whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned. Detained persons and their lawyers should be entitled to receive a copy of that record at the same time.**

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<sup>9</sup> Section 245 (1) of the CCP provides for the presence of a police officer during meetings with the lawyer.

In addition, the CPT reiterates once again its long-standing recommendation that persons deprived of their liberty by the police be expressly guaranteed the right of access to a doctor (including a doctor of their own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) from the very outset of their deprivation of liberty. The relevant provision should make clear that a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests.

31. In respect of information on rights, as had been the case during the 2009 visit, many of the detained persons interviewed by the delegation alleged that they had not been informed of their rights and/or did not understand them. The system observed during the 2009 visit was still in use, i.e. there was a section with information on the detainee's rights on the standard forms of apprehension protocol which the detained persons were asked to sign. However, in most cases (and contrary to the regulations in force) a copy of the protocol was not given to the detainee but was instead kept by police officers (unless the detainee requested otherwise).

Consequently, the CPT reiterates its recommendation that the Polish authorities take steps to ensure that all persons detained by the police are fully informed of their fundamental rights as from the 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 the provision of clear verbal information at the time of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon the first arrival at a police establishment) by the provision of written information on detained persons' rights.

For this purpose, the Committee recommends once again that the Polish authorities draw up a written form setting out detained persons' rights in a straightforward manner. Persons detained should be asked to sign a statement attesting that they have been informed of their rights and always be given a copy of the above-mentioned written form. The form should be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case.

32. The information gathered by the delegation clearly indicates that juveniles in police custody are still often interviewed and requested to make statements and sign documents without the presence of a lawyer or another trusted adult assisting the juvenile, in flagrant violation of the relevant Polish legislation. **The CPT calls upon the Polish authorities to ensure, without further delay, that all juveniles who are detained by the police benefit from the relevant specific safeguards for juveniles provided by the law. In addition, those safeguards should apply to all persons under 18 years of age<sup>10</sup>.**

At the end of the visit, the CPT's delegation was informed of draft amendments to the Juvenile Act, currently under preparation, aimed at increasing and facilitating access to a lawyer for juveniles in police custody. **The Committee would like to receive more detailed information on these amendments and their planned entry into force.**

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<sup>10</sup> It remains the case that the specific safeguards for juveniles apply only to persons below the age of 17.

33. In general, custody records, both in electronic and paper form, were adequately kept in the police establishments visited. This represented a positive development as compared to the situation observed by the CPT during previous visits<sup>11</sup>. The delegation was able to verify, through the consultation of a variety of registers and forms, relevant information such as the time of admission/release/transfer of apprehended persons, as well as the application of safeguards.

One exception to this generally favourable assessment concerns the Bydgoszcz Municipal Police Department, **where the main custody register contained a number of errors and omissions.**

#### 4. Conditions of detention

##### a. police cells

34. The conditions at the police establishments visited were generally adequate, and in some cases even good, for the period of custody provided by law (i.e. a maximum of 72 hours).

Cells were of a sufficient size (e.g. 8 to 12 m<sup>2</sup> for two persons; 12 to 15 m<sup>2</sup> for three persons), adequately equipped (with beds or sleeping platforms, a table and a bench or stools, as well as a call system), clean and in a good state of repair. Further, most of the cells had adequate lighting. However, **access to natural light was limited in some of the cells at the Municipal Police Department in Szczecin, and ventilation was rather poor in a number of cells at the Bydgoszcz and Lublin Municipal Police Departments.**

For the night, detained persons received mattresses, blankets and pillows. Food (including at least one warm meal) was offered to detained persons three times a day.

In some of the establishments (e.g. in Bydgoszcz and Szczecin), cells were equipped with sanitary annexes, which were partially screened. In other police establishments, detained persons had ready access to communal toilets and washrooms which were in a good state of repair and cleanliness.

However, similar to the situation observed in 2009, persons in police custody could not benefit from outdoor exercise. **The CPT reiterates its recommendation that all persons held for 24 hours or more in police custody be offered outdoor exercise every day.**

35. As already mentioned (see paragraph 10), at the Municipal Police Department in Lublin, the Metropolitan Police Department in Warsaw and at the Warsaw-Białoleka Police Department, the privacy of the communal toilets and showers was not respected<sup>12</sup>; moreover, at the Bydgoszcz Municipal Police Department, the CCTV coverage included the in-cell toilets. This was of particular concern to the female detainees, especially as none of the police establishments concerned employed female custodial officers.

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<sup>11</sup> See paragraph 34 of CPT/Inf (2011) 20.

<sup>12</sup> They were fitted with short "saloon-type" revolving doors or with doors with large windows permitting a view from the corridor.

At the end-of-the-visit talks in Warsaw, the delegation stated that such a state of affairs is not acceptable and should be remedied without delay. The delegation added that other solutions, reconciling the imperative of security with the need to provide minimum conditions of human dignity while using toilets and showers, should be found. The delegation requested to receive confirmation, within one month, that the above-mentioned deficiencies have been remedied.

In their letter of 24 July 2013, the Polish authorities informed the CPT that the CCTV system in the above-mentioned establishments had been modified so as to exclude coverage of the toilet and shower areas. This is a positive step. That said, the response makes no mention of any change to the design of the toilet and shower doors. **The CPT would like to be informed whether any such changes are planned.**

Further, **the Committee recommends that steps be taken to ensure that a female custodial officer is always present when female detainees are accommodated at the Municipal Police Departments in Bydgoszcz and Lublin, the Warsaw-Białoleka Police Department and the Metropolitan Police Department.**

36. Unlike in the other police establishments visited, custodial staff at the Metropolitan Police Department in Warsaw did not wear any identification while performing their duties. **The CPT recommends that custodial staff at the Metropolitan Police Department in Warsaw be required to wear some form of identification in a visible place on their uniforms.**

b. police establishments for children

37. The delegation visited four police establishments for children (PID), in Bydgoszcz, Lublin, Szczecin and Warsaw.

Material conditions of detention were generally satisfactory in all the establishments visited, in terms of living space (e.g. bedrooms for four juveniles measuring between 18 and 28 m<sup>2</sup>), lighting and ventilation, equipment, sanitary and washing facilities, food and cleanliness; that said, **the bedrooms had a somewhat austere appearance** (absence of pictures, posters, plants, etc.). The delegation noted that juveniles were provided with tracksuits (and no longer pyjamas as had previously been the case) which they wore during the day.

In all four PIDs visited, activities offered to juveniles could be considered adequate for short stays. During the day, juveniles had access to an activity room, where they could watch TV or DVD/video, play table-tennis, use fitness equipment, read, and play various board games. Further, officers with pedagogical training organised some basic schooling and group discussions.

The delegation was pleased to note that, unlike in 2009, juveniles detained in all the PIDs visited were able to take outdoor exercise on a daily basis. However, the exercise yards, although sufficient in size and fitted with some seating and sports equipment, were not protected against inclement weather; **the Committee invites the Polish authorities to remedy this deficiency.**

38. In the Bydgoszcz and Warsaw PIDs, the delegation observed that CCTV coverage included the bedrooms and showers that could be used by girls, whilst the presence of female staff on every shift was not systematically ensured. **The CPT recommends that ways be sought to address this problem.**

39. The delegation observed that most of the juveniles were taken to a health-care facility prior to admission to a PID; consequently, they arrived with a medical certificate confirming that their state of health was not an obstacle to their detention. In other cases, visiting doctors or nurses would be asked to examine a juvenile if the admitting officer observed any visible injuries or if the juvenile complained about his/her state of health.

## **B. Prison establishments**

### **1. Preliminary remarks**

40. The delegation carried out first-time visits to Bydgoszcz Remand Prison and Prison Hospital, Lublin Remand Prison, Szczecin Remand Prison and Prison Hospital, and Warsaw-Grochów Remand Prison. It also carried out a follow-up visit to Warsaw-Mokotów Remand Prison and Prison Hospital.

Although these establishments were officially called “remand prisons”, a name which probably correctly reflected their original purpose, all of them accommodated a wide variety of categories of inmates and, as a matter of fact, sentenced prisoners formed the great majority of their respective populations.

41. At the time of the visit, the prison population in Poland stood at 84,893 inmates<sup>13</sup> for an overall capacity of some 84,500 places based on the Polish legal standard of 3 m<sup>2</sup> per prisoner. The delegation was informed that 967 new prison places were to be created in the course of 2013, and a further 265 new places by 2015. It should also be noted that the Electronic Surveillance Act<sup>14</sup>, adopted shortly before the CPT’s 2009 visit, had become fully operational and it was being applied to some 5,500 persons at the time of the 2013 visit.

However, despite the above-mentioned measures (both those planned and those already implemented), overcrowding remained a problem in all the establishments visited. Efforts had been made to ensure that prisoners were offered at least 3 m<sup>2</sup> of living space in multi-occupancy cells. As for the CPT’s standard of at least 4 m<sup>2</sup> of living space per prisoner, it was met in some of the cells in the prisons visited, but this was not the case for most prisoners.

42. The CPT wishes to recall that a strategy for the sustainable reduction of the prison population should include a variety of steps to ensure that imprisonment really is the measure of last resort. This implies, in the first place, an emphasis on non-custodial measures and the availability to the judiciary, especially in less serious cases, of alternatives to custodial sentences together with an encouragement to use those options. Further, the adoption of measures to facilitate the reintegration into society of persons who have been deprived of their liberty could reduce the rate of re-offending.

**The CPT calls upon the Polish authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison.**

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<sup>13</sup> Including some 8 % on remand.

<sup>14</sup> “Act on the Electronic Surveillance of Persons Serving a Sentence of Imprisonment outside Penitentiary Facilities”.

In so doing, the Polish authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules.

Appropriate action should also be taken *vis-à-vis* the prosecutorial and judicial authorities with a view to ensuring their full understanding of the policies being pursued, thereby avoiding unnecessary pre-trial custody and sentencing practices.

The CPT also calls upon the Polish authorities to revise as soon as possible the norms fixed by legislation for living space per prisoner so that, in all penitentiary establishments, there is at least 4 m<sup>2</sup> per inmate in multi-occupancy cells and at least 6 m<sup>2</sup> in single occupancy cells, not counting the area taken up by any in-cell toilet facility.

43. The situation as regards the provision of organised activities (work, vocational training, education, sports, etc.) to inmates in the establishments visited was still generally very unsatisfactory<sup>15</sup>. As regards in particular remand prisoners, the almost total lack of activities rendered their situation considerably worse than that of sentenced prisoners. Taken together with limited living space, poor material conditions in some of the establishments visited and reduced opportunities for association, this produced a regime which was both oppressive and stultifying for persons who in principle benefit from the presumption of innocence. **The CPT calls upon the Polish authorities to take the necessary steps to develop the programmes of activities for both remand and sentenced prisoners. The aim should be to ensure that every prisoner is able to spend a reasonable part of the day (eight hours or more) outside his/her cell, engaged in purposeful activities of a varied nature (work, education, vocational training, sport, etc.).**

44. At the time of the visit, juvenile offenders (i.e. prisoners below the age of 18) were being accommodated in three of the five establishments visited<sup>16</sup>. The delegation noted that efforts were made to place juveniles with “young prisoners” (i.e. inmates younger than 21). That said, in the absence of change in the relevant Polish legislation, juveniles could still be placed in the same cell with one or more adult prisoners.

The CPT has repeatedly expressed its reservations about the practice of accommodating juveniles with adults. The Committee wishes to stress again that if, exceptionally, juveniles are held in an institution for adults, they must always be accommodated separately from adults, in a distinct unit specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young. The CPT believes that the risks inherent in juveniles sharing accommodation with adult prisoners are such that this should not occur<sup>17</sup>.

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<sup>15</sup> See paragraphs 69 to 72 below.

<sup>16</sup> According to the Polish legislation (Section 115 (10) of the CC), a person who has committed a criminal offence while aged 17 or more (and, in the case of a number of particularly grave offences enumerated exhaustively in Section 10 (2) of the CC, aged 15 or more) may be placed in a prison for adults.

<sup>17</sup> In this respect, reference should also be had to Article 37 (c) of the UN Convention on the Rights of the Child, Article 10 (3) of the International Covenant on Civil and Political Rights, and Section 59.1 of the Recommendation Committee of Ministers of the Council of Europe CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

The Committee reiterates its recommendation that the Polish authorities take the appropriate steps in the light of the above remarks. The relevant legislation should be amended if necessary.

## 2. Ill-treatment

45. The delegation did not receive any allegations, nor gather any evidence of recent physical ill-treatment by staff at Lublin, Szczecin, Warsaw-Grochów or Warsaw-Mokotów Remand Prisons and at the three prison hospitals visited. The relations between staff and prisoners appeared to be generally good.

However, at Bydgoszcz Remand Prison, the delegation received some isolated allegations of physical ill-treatment (consisting of punches and kicks) by custodial staff. Further, a few allegations of verbal abuse of foreign inmates were heard at Warsaw-Mokotów Remand Prison. **The CPT recommends that the management of Bydgoszcz Remand Prison deliver a clear message to staff that physical ill-treatment of prisoners is a criminal offence and will be punished accordingly. Staff at Warsaw-Mokotów Remand Prison should be reminded that verbal abuse of prisoners is not acceptable.**

46. Inter-prisoner violence did not appear to be a problem at Bydgoszcz, Lublin, Warsaw-Grochów and Warsaw-Mokotów Remand Prisons. That said, at Szczecin Remand Prison, the delegation heard of some incidents of inter-prisoner violence. **The CPT recommends that the management and staff of Szczecin Remand Prison be instructed to exercise constant vigilance and use all appropriate means at their disposal to prevent and combat inter-prisoner violence and intimidation.**

47. The delegation was informed that a part of Warsaw-Mokotów Remand Prison had been taken out of service and occasionally served as a training site for the special forces units of the Polish Army (prior to their deployment on NATO and UN missions), to prepare them for possible dangerous situations such as hostage-taking and captivity. Such an exercise had been organised a few days before the CPT's visit, and some inmates accommodated in adjoining units, who had not been informed in advance of the training exercise, genuinely believed that other prisoners had been severely ill-treated/tortured in the establishment. In the Committee's view, exercises of such kind should never, due to their potentially intimidating nature, take place in a functioning prison; other dedicated sites should be provided for military exercises. **The CPT invites the Polish authorities to discontinue this practice at Warsaw-Mokotów Remand Prison and, as appropriate, in any other functioning penitentiary establishments.**

### 3. Prisoners classified as “dangerous” (“N” status)

48. At the outset of the visit, the delegation was informed that the total number of prisoners classified as “dangerous” in Poland stood at 188 (including 156 sentenced and 32 remand prisoners); there had been a continued reduction in the number of such prisoners throughout the country in the recent years<sup>18</sup>. Further, the delegation observed that the quarterly reviews of the “N” status had become much more meaningful since the 2009 visit and that many prisoners had recently been moved off the “N” status in the establishments visited. The CPT welcomes these positive developments.

Having said that, the Committee remains of the view that the Polish authorities should refine the procedure for allocating a prisoner to "N" status, and for reviewing this allocation, with a view to ensuring that only those inmates who pose an on-going high risk if accommodated in the mainstream of the prison population are accorded "N" status. The reviews of placements in “N” units should form part of a positive process designed to address the prisoners’ problems and permit their re-integration into the mainstream prison population as soon as possible. **The CPT recommends that the Polish authorities take steps in the light of the above remarks.**

49. With regard to the material conditions of detention of “N” status prisoners, Bydgoszcz Remand Prison had five cells reserved for such inmates, while Lublin and Warsaw-Mokotów Remand Prisons had separate “N” units.

At *Bydgoszcz Remand Prison* the five “N” cells (with a total capacity of 11) were accommodating three prisoners at the time of the visit. They were located in a separate section of a corridor of one of the accommodation blocks. The single cell measured a mere 5.5 m<sup>2</sup>, the double cells some 6 m<sup>2</sup> and the triple cells some 9 m<sup>2</sup>. The cells were well equipped, but the cell windows were covered with opaque panes and metal bars, preventing a view to the outside and obstructing access to natural light and fresh air. The two exercise yards used by “N” status prisoners were small, of an oppressive design (surrounded by high walls and topped with metal wiring) and lacked shelter against inclement weather.

The “N” unit at *Lublin Remand Prison* was accommodating ten prisoners at the time of the visit, for a capacity of 28. The unit was located in the recently built (2006) accommodation building, offering material conditions that were markedly better than in the rest of the prison (see paragraph 57). Single cells measured over 7 m<sup>2</sup>, double cells from 7 to over 9 m<sup>2</sup>, and triple cells some 10 m<sup>2</sup>. The cells were generally well equipped. That said, as in Bydgoszcz, the cell windows were covered with opaque panes. Further, artificial lighting was insufficient for reading. The “N” unit had one small and bare exercise yard, a common room, shower facilities, and a medical room.

The “N” unit at *Warsaw-Mokotów Remand Prison* was accommodating 17 prisoners at the time of the visit<sup>19</sup>. The unit was clean and in a good state of repair. In terms of material conditions, the main difference as compared with the 2004 visit<sup>20</sup> was that cell windows could now be opened. That said, some inmates still complained that the cells could become very hot in the summer. The unit possessed five exercise yards equipped with a basketball hoop, but no shelter against inclement weather.

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<sup>18</sup> By comparison, there had been 348 prisoners with “N” status at the time of the CPT’s 2009 visit.

<sup>19</sup> It had been accommodating 38 prisoners in October 2004, when the CPT visited it for the first time.

<sup>20</sup> A description of this unit can be found in paragraph 74 of the report on the 2004 visit, CPT/Inf (2006) 11.

The CPT recommends that steps be taken in the “N” cells and units in the establishments visited in order to:

- either enlarge or take out of service the cell at Bydgoszcz Remand Prison measuring 5.5 m<sup>2</sup>;
- reduce the cell occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per “N” status prisoner in multi-occupancy cells;
- remedy the deficiencies as regards access to natural light, artificial lighting and ventilation described above;
- reconsider the design of the cell windows so as to allow inmates to see outside their cells;
- equip the exercise yards with some shelter against inclement weather.

It would also be desirable to find larger outdoor exercise facilities for “N” status prisoners at Bydgoszcz Remand Prison and Lublin Remand Prison (see also paragraph 72 below).

50. In the absence of any legislative changes, the regime applied to “N” status prisoners remained very restrictive and similar to the one described in the reports on the 2004 and 2009 visits<sup>21</sup>. Out-of-cell time consisted of one hour of outdoor exercise per day (taken either alone or in the company of a cellmate), a weekly shower, and access to a common room (equipped with table-tennis tables, exercise bikes and DVD players) up to four times a week at Lublin Remand Prison and twice a week at Warsaw-Mokotów Remand Prison. However, there was no common room for “N” prisoners at Bydgoszcz Remand Prison.

No work was available for “N” status prisoners, and only those accommodated at Warsaw-Mokotów Remand Prison had access to some educational activities. As for other diversions, “N” status prisoners at Lublin and Warsaw-Mokotów Remand Prisons were provided with some hobby materials and could watch TV inside their cells; further, those in Mokotów could play basketball and other sports in the exercise yards.

The delegation noted that, in each of the three establishments, staff working with “N” status prisoners (both the educators and the custodial officers) were making genuine efforts to maintain regular interaction with the inmates and to facilitate their contact with the outside world<sup>22</sup>. While commending these efforts, the CPT must stress again that the regime for “N” status prisoners should be fundamentally reviewed. Solitary confinement or small-group isolation for extended periods is more likely to de-socialise than re-socialise prisoners. Instead, there should be a structured programme of constructive and preferably out-of-cell activities for this category of inmates. **The CPT calls upon the Polish authorities to review the regime applied to “N” status prisoners and to develop individual plans aimed at providing appropriate mental and physical stimulation to such prisoners.**

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<sup>21</sup> See paragraph 77 of CPT/Inf (2006) 11, and paragraph 91 of CPT/Inf (2011) 20.

<sup>22</sup> “N” status prisoners were entitled to up to three visits and two phone calls per month (in the case of sentenced inmates). For those on remand, phone calls were prohibited and visits depended on the discretion of the relevant prosecutor (see also paragraph 95).

At Bydgoszcz Remand Prison, the delegation was informed of plans to transform one of the accommodation cells into a common room. **The CPT would like to receive confirmation this has been done.**

It is also noteworthy that a possibility of open-type visits had recently been introduced at Warsaw-Mokotów Remand Prison. **This is a most welcome development, which should be followed in other establishments accommodating “N” status prisoners.**

51. The security measures applied to “N” status prisoners in the establishments visited varied on the basis of an individual risk assessment, reviewed on a quarterly basis and aimed at reducing the level of restraints imposed on them. Some inmates were systematically ankle cuffed whenever they were taken out of their cells, others were only handcuffed, and, at Lublin and Warsaw-Mokotów Remand Prisons, a number of prisoners had no cuffs at all while moving within the unit. All restraints were removed during the outdoor exercise and visits in the three prisons concerned (see, however, paragraph 80 below).

At Lublin and Warsaw-Mokotów Remand Prisons, all staff interviews with "N" status prisoners (including medical and psychological consultations) were conducted, as a rule, through a cage-like structure in a specific room. Such a structure did not exist at Bydgoszcz but the five “N” cells had bars immediately behind the cell door, through which interviews with staff took place. As stressed by the CPT in the reports on the 2004 and 2009 visits, such an approach could be considered as degrading, both for prisoners and staff. Further, it is not conducive to the development of a good staff/inmate relationship and a genuine therapeutic relationship during medical and psychological interviews. **The CPT again calls upon the Polish authorities to put an end to this practice.**

The delegation also observed that “N” status prisoners were obliged to wear red overalls at all times when outside their units and when being transferred outside the establishment (including when attending court hearings). In the Committee’s view, this requirement is both excessive and unnecessarily stigmatising; **it should be discontinued immediately.**

52. Strip-searches of “N” status prisoners were now only conducted on the basis of an individual risk assessment, which is an improvement as compared with the situation observed during the previous visits. Having said that, “N” status prisoners could still be required to squat totally naked in view of custodial staff and any prisoner(s) sharing the cell while all their clothes were being examined. **The CPT recommends that strip searches be always carried out in an appropriate setting and in a manner respectful of human dignity** (see also paragraph 106).

#### 4. Material conditions of detention

##### a. Bydgoszcz Remand Prison

53. Bydgoszcz Remand Prison dates back to the 1930s, but has undergone major reconstruction in the 1980s. It consists of a closed-type facility – located in the centre of Bydgoszcz, next to the court building – and two external open-type facilities out of town. The delegation focussed on the closed-type facility, consisting of a remand prison for men and women, a closed-type unit for sentenced males and females, and a prison hospital. At the time of the visit, there were 415 inmates – including 40 females – in the closed-type facility (for an official capacity of 463), of whom 308 were sentenced prisoners and 107 on remand.<sup>23</sup> This included two male juveniles and three “N” status prisoners. As regards the prison hospital, it was accommodating 60 patients (official capacity of 80) at the time of the visit (see paragraphs 87 to 90 below).

54. The closed-type facility had two five-storey accommodation blocks. The cells measured from some 6 to 25 m<sup>2</sup> and could accommodate from two to eight prisoners each. Their equipment consisted of bunk beds, tables, stools, shelves, as well as a sanitary annexe with hot water, usually only partially screened. Many cell windows were covered with opaque panes (“blinds”) preventing the inmates from seeing outside and restricting access to natural light and fresh air.

Cells were generally in an acceptable state of repair (with the exception of the call system, which was often not functioning) but in a relatively poor state of cleanliness and hygiene (including as regards the bedding and the toilets). Some inmates complained of vermin infestation.

On a more positive note, the delegation observed on-going refurbishment throughout the establishment, consisting essentially of fully partitioning the in-cell toilets and renovating the communal shower facilities.

55. **The CPT recommends that steps be taken at Bydgoszcz Remand Prison in order to:**

- **reduce the cell occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells; cells measuring some 6 m<sup>2</sup> should not hold more than one prisoner each;**
- **review the design of the cell windows so as to allow inmates to see outside their cells, improve access to natural light and ensure better ventilation;**
- **ensure that all the cells (including the in-cell toilets and the bedding) are maintained in a clean condition; this should include regular de-infestation;**
- **pursue the refurbishment programme and, in this context, ensure that the call system is operational in all the cells, and that all in-cell toilets are fully partitioned (i.e. up to the ceiling).**

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<sup>23</sup> At the time of the visit, the whole establishment was holding 690 inmates (official capacity of 726). All the official capacities referred to in this chapter are calculated according to the current Polish legal norm of 3 m<sup>2</sup> of living space per prisoner.

b. Lublin Remand Prison

56. Lublin Remand Prison, located in the town of Lublin, was opened in the 1960s. It is a closed-type facility accommodating prisoners placed in a closed or a semi-open regime; it also has an “N” unit (see paragraph 49). With an official capacity of 1,075, the establishment was accommodating 926 male and 64 female prisoners at the time of the delegation’s visit. There were 676 sentenced inmates (including 10 with “N” status and one lifer) and 314 prisoners on remand. Accommodation was provided in six one to four-storey blocks, one of which had been built recently. The five other blocks, dating back to the 1960s, were undergoing partial refurbishment.

57. In some of the cells, the CPT’s standard of 4 m<sup>2</sup> of living space per prisoner was respected<sup>24</sup>; however, the vast majority of the inmates lived in cramped conditions<sup>25</sup>.

In the five old accommodation blocks, the cells were generally in a poor state of repair, artificial lighting was insufficient and ventilation inadequate. Further, the in-cell sanitary annexes were not always fully partitioned. On a positive note, hot water was available in the cells, bedding was clean and changed every two weeks and all the cells had a working call system. Also the communal shower facilities were in an adequate state of repair, although some of the shower heads were missing.

In the recently constructed four-storey building the conditions were generally adequate, and the cells (including fully partitioned in-cell sanitary annexes) were clean and in a good state of repair.

However, most of the cell windows in all the blocks were covered with opaque panes of a design similar to that seen in Bydgoszcz (see paragraph 54). Further, throughout the establishment the delegation received many complaints from male inmates about the insufficient provision of certain hygiene products (toiletries and detergent).

58. **The CPT recommends that steps be taken at Lublin Remand Prison to:**

- **reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells;**
- **pursue the refurbishment in the five old accommodation blocks and ensure that all the cells are well lit and equipped with fully partitioned sanitary annexes, and that all missing shower heads are replaced;**
- **review the design of the cell windows so as to allow the inmates to see outside their cells and to ensure better ventilation;**
- **ensure that all prisoners have adequate quantities of essential hygiene products as well as cleaning products for their cells.**

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<sup>24</sup> E.g. four inmates in a cell measuring some 16 m<sup>2</sup>; three inmates in a cell measuring some 14 m<sup>2</sup>; eight prisoners in a cell measuring some 33 m<sup>2</sup>.

<sup>25</sup> E.g. three prisoners in a cell measuring some 9 m<sup>2</sup>; five prisoners in a cell measuring some 15 m<sup>2</sup>; eight prisoners in a cell measuring some 26 m<sup>2</sup>.

c. Szczecin Remand Prison

59. Szczecin Remand Prison, located in the centre of the city, is a closed-type facility comprising also a prison hospital. Most of the buildings were constructed in the end of the 19<sup>th</sup> century. With an official capacity of 532, the establishment was accommodating 453 male inmates, including 309 sentenced prisoners and 144 prisoners on remand; two of the male inmates were below the age of 18. The hospital, with an official capacity of 84, was accommodating 57 patients including five women (see paragraphs 91 to 93 below).

60. There were two accommodation blocks, one for sentenced prisoners and one for those on remand. The cells, measuring between 7 m<sup>2</sup> and 37 m<sup>2</sup>, were accommodating from two to 12 inmates each. They were equipped with bunk beds, tables, stools, shelves, in-cell sanitary annexes with hot water supply, and a functioning call system. Access to natural light and artificial lighting were mostly adequate, and the cells were generally clean. Also the communal shower facilities were in a good state of repair and cleanliness. It is noteworthy that some refurbishment, involving in particular the full partitioning of in-cell sanitary annexes, was underway in the prison.

However, most of the accommodation areas were quite dilapidated and some of the cells suffered from a humidity problem. The delegation also noted the presence, on the windows of the cells in the remand block situated on the street side, of opaque plates similar to those already described in paragraph 54 above.

61. **The CPT recommends that steps be taken at Szczecin Remand Prison to:**

- **reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells; cells measuring some 7 m<sup>2</sup> should not hold more than one prisoner;**
- **pursue the refurbishment programme (including the installation of a full partition in all the in-cell sanitary annexes) and remedy the humidity problem present in some of the cells;**
- **review the design of the cell windows in the remand block on the street side, so as to improve access to natural light and ensure better ventilation.**

d. Warsaw-Grochów Remand Prison

62. Warsaw-Grochów Remand Prison was opened in 1970. It is located in the far outskirts of the Polish capital. Like the other establishments visited, despite its name (“remand prison”) and the fact that it was originally intended for accommodating only female inmates on remand, it is presently a multi-purpose prison for remand and sentenced inmates of both sexes on a closed and a semi-open regime. With an official capacity of 734, Warsaw-Grochów Remand Prison was accommodating 722 inmates (including 415 females) at the time of the visit, of whom 579 were sentenced and 143 on remand. This figure also included two life-sentenced prisoners.

63. Inmates were accommodated in five one-storey buildings and one two-storey building, the latter being reserved for female inmates. The whole facility was in an acceptable state of repair, and most of the cells were clean and well ventilated, enjoyed good access to natural light and had good artificial lighting. Cells were equipped with bunk beds, tables, stools, lockers or shelves and large boxes for personal items. Full-partitioning of the in-cell sanitary annexes was in progress in the facility, and hot water was available in each cell.

However, the delegation saw cramped conditions of detention in virtually all of the pavilions. The cells, measuring from some 8 m<sup>2</sup> to approximately 25 m<sup>2</sup> (including sanitary annexes), could accommodate from two to eight prisoners each. Further, some cells, especially in Pavilion D, were damp and in a poor state of repair. One cell (No. 425) in that latter Pavilion, originally a communal/recreation room, measured some 50 m<sup>2</sup> and was accommodating 16 prisoners; it was particularly dilapidated, dirty and damp. The same could be said of Cell No. 323 in Pavilion C.

The recently completed (2009) two-storey building (Pavilion F) for the female inmates offered in many respects the best conditions. However, the delegation observed that all cell windows were covered with opaque panes of the kind already mentioned earlier in this report (see paragraph 54). Some cell windows in Pavilions D and E were also covered with such opaque panes.

64. **The CPT recommends that steps be taken at Warsaw-Grochów Remand Prison to:**

- **reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells;**
- **pursue the refurbishment programme (including the full partitioning of in-cell sanitary annexes), with a particular emphasis on the cells in Pavilion D; cell No. 425 in that Pavilion and Cell No. 323 in Pavilion C should be taken out of use pending full refurbishment;**
- **review the design of the cell windows in Pavilions D, E and F so as to improve access to natural light, ensure better ventilation and allow inmates to see outside their cells.**

e. follow-up visit to Warsaw-Mokotów Remand Prison

65. Warsaw-Mokotów Remand Prison had previously been visited by the CPT in 2004 and had been the subject of a number of recommendations in the report on that visit.<sup>26</sup> The purpose of this follow-up visit was to review the implementation of those recommendations. With an official capacity of 805, the establishment was holding 803 male inmates at the time of the visit (615 sentenced and 188 on remand), including 17 “N” status prisoners, five life-sentenced prisoners and three male juveniles. As regards the prison hospital, it was accommodating 116 patients (including three women) against the official capacity of 154 (see paragraphs 82 to 86).

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<sup>26</sup> See paragraphs 95 to 101 of CPT/Inf (2006) 11.

66. Out of the three main accommodation blocks<sup>27</sup>, one had recently been refurbished entirely while the two others had undergone partial refurbishment (new roof, electricity and plumbing, as well as redecoration of some cells). Further, the installation of full partitioning of in-cell sanitary annexes was underway in all the accommodation areas, and a wing with 81 places was temporarily closed for renovation. As for the communal shower facilities, they were in an acceptable state of repair.

The majority of the cells were well lit and ventilated, and clean. However, conditions in most of the cells were cramped, even if the Polish legal standard of 3 m<sup>2</sup> of living space per prisoner was observed in all of them.

67. **The CPT recommends that steps be taken at Warsaw-Mokotów Remand Prison to:**

- **reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells;**
- **pursue the refurbishment programme, including the full partitioning of in-cell sanitary annexes.**

\* \* \*

68. The delegation noted that in all the prisons visited, male inmates could shower once a week and female inmates twice a week, as provided for in the Polish legislation. In this respect, **the CPT encourages the Polish authorities to allow male prisoners at least two showers per week, with a view to complying with Rule 19.4 of the Revised European Prison Rules<sup>28</sup>.**

## **5. Programmes of activities**

69. As already mentioned in paragraph 43 above, the situation as regards the programmes of activities offered in Polish prisons was unsatisfactory. Despite efforts noted to offer work and (in some of the establishments visited) education or vocational training to the sentenced prisoners, it remained the case that the bulk of the prisoner population (including the vast majority of remand prisoners and some two-thirds of the sentenced prisoners) had no organised out-of-cell activities. Purposeful activities are of crucial importance for the well-being of any prisoner. As regards more specifically sentenced prisoners, such activities are essential to render meaningful a term of imprisonment, rehabilitate them and prepare them for life in the community.

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<sup>27</sup> There were also three other blocks: one for the “N” status prisoners (see paragraph 49) and two for the prison hospital (see paragraphs 82 to 86).

<sup>28</sup> “Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene”.

Some work<sup>29</sup> was available in all the establishments visited, but almost exclusively for sentenced prisoners: 90 sentenced prisoners at Bydgoszcz Remand Prison<sup>30</sup>; 235 sentenced prisoners and 20 remand prisoners at Lublin Remand Prison<sup>31</sup>; 98 sentenced prisoners and 14 remand prisoners at Szczecin Remand Prison<sup>32</sup>; 148 sentenced prisoners and one remand prisoner at Warsaw-Grochów Remand Prison; and 203 sentenced prisoners at Warsaw-Mokotów Remand Prison<sup>33</sup>.

Similarly, access to education and/or vocational training was very limited and usually reserved for sentenced prisoners<sup>34</sup>. There was no general education available for inmates at Bydgoszcz, Lublin, and Szczecin Remand Prisons.

As regards young prisoners, the delegation was pleased to note that they could attend school at Warsaw-Mokotów Remand Prison. However, it was of particular concern that young prisoners, and in particular juveniles, were not offered any education or other activities adapted to their needs at Bydgoszcz, Lublin and Szczecin Remand Prisons. It should be noted that the Law on the Execution of Criminal Sanctions stipulates that an inmate below 21 years of age should be granted, as a priority, the possibility to follow school or vocational training<sup>35</sup>.

Prevention courses on self-control, anger management, drugs, aggression, cognitive skills, and family reintegration were offered at Bydgoszcz Remand Prison<sup>36</sup>. Similarly, courses on social skills, drugs and alcohol, cognitive skills, and anger management were offered at Lublin Remand Prison<sup>37</sup>.

70. As for cultural and recreational activities, all inmates had access to common rooms: up to three times a week at Lublin Remand Prison, up to twice a week at Bydgoszcz and Szczecin Remand Prisons, but only once a week at Warsaw-Grochów and Warsaw-Mokotów Remand Prisons. The common rooms were equipped with TV and board games in all establishments visited, and additionally with table-tennis tables at Lublin, Szczecin and Warsaw-Grochów Remand Prisons. Efforts were made at Lublin and Warsaw-Mokotów Remand Prisons to organise cultural activities such as concerts and artistic competitions.

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<sup>29</sup> Consisting of unpaid work for the majority of inmates, in charity/public organisations/social care homes outside the prison and maintenance and cleaning tasks within the prison, as well as work in the kitchen.

<sup>30</sup> They worked in maintenance and cleaning tasks, hair-dressing, and radio operation and in the hospital, kitchen and prison workshop. 39 prisoners had paid jobs, and 51 unpaid ones.

<sup>31</sup> About one third of them had paid jobs.

<sup>32</sup> Likewise, about one third had paid jobs.

<sup>33</sup> Paid jobs were available in the printing shop attached to the prison and in the mechanical shop; unpaid jobs in maintenance and cleaning tasks within the prison and at the hospital. Six sentenced inmates performed voluntary work outside the prison.

<sup>34</sup> For example, sentenced prisoners were attending paving, tiling and gardening courses at Bydgoszcz Remand Prison; 38 inmates were following courses in general construction, 12 in computer technology and 12 in hairdressing at Szczecin Remand Prison; 11 sentenced prisoners were attending the vocational school at Warsaw-Grochów Remand Prison; 74 inmates were attending the general secondary school and 21 others were following various training courses (bookbinding, printing, plastering and painting) at Warsaw-Mokotów Remand Prison.

<sup>35</sup> Section 130 (3) of the LECS.

<sup>36</sup> 13 such programmes were offered in 2013, and 22 in 2012, all EU-funded.

<sup>37</sup> 48 such programmes were offered in 2013, and 56 in 2012. 115 inmates including 5 remand prisoners had followed these courses.

In all the establishments visited, personal TV sets were allowed in the cells, and music was transmitted by an internal radio system (with a programme produced by inmates at Bydgoszcz, Lublin and Warsaw-Mokotów Remand Prisons). Inmates could borrow books either from a central library or from the common rooms at the establishments visited.

71. The inadequate provision of purposeful activities for prisoners has been the subject of recommendations in the reports on previous CPT's visits. Although the Polish authorities have clearly made efforts to address this problem, there remains considerable scope for improvement. **Reference is made in this respect to the general recommendation in paragraph 43 above.**

As was stressed in the report on the 2009 visit, although a lack of purposeful activities is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme. Reference should be made in this respect to Rules 50.1 and 77 of the European Rules for Juvenile Offenders<sup>38</sup>. **If the establishments visited are to continue to hold juveniles in the future, the CPT recommends that the necessary steps be taken to enable them to follow a regime appropriate to their age group.**

72. As regards outdoor exercise, inmates in all the establishments visited had access to one hour of outdoor exercise per day (plus an additional hour per week for young prisoners).

In addition, inmates at Warsaw-Grochów Remand Prison had access twice a month for one hour to a volleyball pitch (up to twice a month at Warsaw-Mokotów Remand Prison). Inmates at Lublin Remand prison could use an outside sports hall from May to October. By contrast, prisoners at Bydgoszcz and Szczecin Remand Prisons had no organised sports activities; **the CPT recommends that steps be taken to remedy this shortcoming.**

In all the establishments visited, the design of the exercise yards left much to be desired. Yards were usually very small, contained at best only a bench, and had no shelter against inclement weather. **The Committee recommends that steps be taken to ensure that all inmates in the prisons visited have the possibility to take their daily outdoor exercise in conditions which enable them to physically exert themselves. Further, all the exercise yards should be equipped with some protection against inclement weather.**

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<sup>38</sup> Rule 50.1: "Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending."  
Rule 77: "Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release."

## 6. Health care

### health-care services in the establishments visited

73. The health-care team at *Bydgoszcz Remand Prison* consisted of three general practitioners (two full-time and one half-time), two part-time dentists (equivalent to a full-time post), a part-time radiologist<sup>39</sup>, and six nurses (two full-time and four half-time)<sup>40</sup>. This team had the support on an on-going basis from the staff resources of the prison hospital, located on the establishment's premises, which provided 24-hour medical cover seven days a week (see paragraph 87 below). Further, various specialists<sup>41</sup> held regular consultations both at the prison and the hospital.

At *Lublin Remand Prison*, the health-care team consisted of two general practitioners (one full-time and one part-time), one part-time psychiatrist<sup>42</sup>, a dentist, a part-time neurologist<sup>43</sup>, a part-time gynaecologist<sup>44</sup>, and a part-time radiologist<sup>45</sup>. There were nine nurses (seven full-time and two part-time, the latter working exclusively on weekends). There was no presence of health-care personnel at night; in case of need, the emergency services would be called. Such a health-care staff complement is clearly insufficient for an establishment accommodating some 1,000 inmates.

As regards *Szczecin Remand Prison*, the health-care team consisted of one full-time general practitioner (who was also on-call outside his normal working hours) and nine full-time nurses (ensuring a permanent nursing cover). Similar to the situation observed at *Bydgoszcz Remand Prison*, the above-mentioned team could at all times (i.e. on a 24/7 basis) rely on the support of the health-care staff of the on-site prison hospital (see paragraph 91). Further, the prison had signed contracts with 15 outside specialists<sup>46</sup> who held consultations both in the prison and in the prison hospital.

The health-care team at *Warsaw-Grochów Remand Prison* consisted of five medical doctors<sup>47</sup> (equivalent to 2.75 full-time posts), two part-time dentists (equivalent to one full-time post), and seven full-time nurses. The half-time post of psychiatrist was vacant at the time of the visit. A nurse was present at weekends from 8 a.m. to 4 p.m. However, there was no medical presence at night. In case of need, the emergency services would be called.

As regards *Warsaw-Mokotów Remand Prison*, the health-care team working exclusively for the remand prison consisted of five medical doctors<sup>48</sup> (three full-time and two half-time) and 11 full-time nurses. A nurse was present at night and at weekends. Further, this team could count on the support of the prison hospital, located on the establishment's premises, which provided 24-hour medical cover seven days a week (see paragraph 82 below). In addition, various outside specialists<sup>49</sup> held regular consultations both at the prison and the hospital.

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<sup>39</sup> Equivalent to 60% of a full-time post.

<sup>40</sup> One nurse was present on weekends, from 7 a.m. to 7 p.m.

<sup>41</sup> For the equivalent of 8.05 full-time posts (see paragraph 87 below).

<sup>42</sup> Equivalent to 55% of a full-time post.

<sup>43</sup> Equivalent to 25% of a full-time post.

<sup>44</sup> Equivalent to 25% of a full-time post.

<sup>45</sup> Equivalent to 40% of a full-time post.

<sup>46</sup> Occupying the equivalent of 12.65 full-time posts (see paragraph 91 below).

<sup>47</sup> Including a neurologist, a gynaecologist, a general practitioner and a dermatologist.

<sup>48</sup> Including two general practitioners and an orthopaedist.

<sup>49</sup> Occupying the equivalent of 22.67 full-time posts (see also paragraph 82 below).

To sum up, at Bydgoszcz, Szczecin and Warsaw-Mokotów Remand Prisons, the level of health-care staff appeared to be adequate. However, as already indicated, this was certainly not the case at Lublin Remand Prison. **The CPT recommends that the health-care complement at Lublin Remand Prison be reinforced:**

- **by the recruitment of at least one further full-time general practitioner and the equivalent of at least two more full-time nurses;**
- **by creating a full time post of psychiatrist.**

Further, at Warsaw-Grochów Remand Prison, the vacant post of psychiatrist should be filled without delay.

**The Committee also recommends that the Polish authorities ensure that someone qualified to provide first aid, preferably a person with a recognised nursing qualification, is always present at Lublin and Warsaw-Grochów Remand Prisons.**

74. The delegation received complaints about delays in gaining access to health care (general and specialist) in all the establishments visited. For example, at Warsaw-Grochów Remand Prison, the delegation was told that the waiting time for a consultation with a psychiatrist, a dentist or an ophthalmologist could reach several months. At Lublin Remand Prison, it could take up to several weeks to see a dentist and up to three months to see a neurologist.

The Committee wishes to recall that the prison authorities are responsible for the health care of all prisoners; all efforts possible must be made to ensure that a precise diagnosis is promptly established and that adequate treatment required by the state of health of the person concerned is provided to all prisoners. **The CPT recommends that the Polish authorities take steps accordingly.**

75. In Bydgoszcz, both at the Remand Prison and at the Prison Hospital, as well as at Warsaw-Grochów Remand Prison, the delegation received complaints from prisoners about the quality of the health care provided (lack of any other than basic medication, superficial medical examinations, etc.). It is noteworthy that, as far as the shortage of medication is concerned, the directors and doctors of the two above-mentioned establishments themselves drew the delegation's attention to the problem. **The Committee would welcome the observations of the Polish authorities on this subject.**

76. Newly-arrived prisoners were in principle seen by a doctor or a nurse reporting to a doctor within 48 hours following arrival. The medical admission procedure included the screening for tuberculosis (an X-ray of the thorax). Other tests (e.g. for HIV, hepatitis B/C) could be performed on a voluntary basis. Having said that, none of the establishments visited offered a systematic screening for transmissible viral diseases (e.g. hepatitis, HIV)<sup>50</sup>.

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<sup>50</sup> Apart from the hospital of Szczecin Remand Prison, where all inmates admitted there would undergo a systematic urine test, as well as a hepatitis B/C test.

Information gathered by the delegation in all the prisons visited (including from the examination of medical files and other documentation) clearly indicated that the medical examination upon arrival was of a superficial character, and usually consisted merely of an interview.

As already stressed by the Committee in the past, every newly-arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after admission; save in exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned.

**The CPT recommends that measures be taken to improve the procedure of medical examination of newly-arrived prisoners in all the establishments visited, in the light of the above remarks.**

77. As already noted in previous reports, prison health-care services can make a significant contribution to the prevention of ill-treatment by law enforcement agencies, through the systematic recording of injuries observed on newly-arrived prisoners and, if appropriate, the provision of information to the relevant authorities. Any signs of violence observed when a prisoner is being medically screened on admission to such an establishment should be fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions. The same approach should be followed whenever a prisoner is medically examined following a violent episode within the prison.

In this respect, the delegation was concerned to note that, with the exception of Lublin Remand Prison, the recording of injuries observed on newly-arrived prisoners was not satisfactory. Information on injuries observed – in those limited number of cases when it was available – was only entered in the prisoners' individual files. Further, the descriptions were superficial and did not contain doctors' observations as to the consistency between any allegations made and the objective medical findings. In addition, there was no systematic transmission of information on injuries observed to the relevant prosecutor, unless the person concerned had lodged a complaint. Moreover, none of the establishments visited kept a specific register to record such injuries.

On a positive note, it should be noted that efforts were made by the doctors at Lublin Remand Prison to record fully, in the prisoners' individual files, any lesions observed on prisoners.

78. As stressed in paragraph 76 above, **newly-arrived prisoners should have a thorough medical examination. Further, the CPT recommends that the Polish authorities ensure that the record drawn up after that medical examination contains:**

- (i) an account of statements made by the person which are relevant to the medical examination (including his/her 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 observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

The record should also contain the results of additional examinations performed, detailed conclusions of any specialised consultations and an account of treatment given for injuries and of any further procedures conducted.

The recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, a special trauma register should be kept in every penitentiary establishment, in which all types of injuries should be recorded.

The Committee also recommends that the existing procedures be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the prisoner. The results of the examination should also be made available to the prisoner concerned and his or her lawyer.

79. Regarding the confidentiality of medical information, as had been the case in the past, only health-care staff had access to prisoners' medical files. That said, the CPT is concerned by the fact that medical examinations of prisoners continued to often take place in the presence of custodial officers.

The Committee acknowledges that special measures may be required during medical examinations in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for prison 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 detainee becomes agitated or threatening during a medical examination. **The CPT reiterates its recommendation that the Polish authorities take steps to bring the practice in line with the above considerations. Medical examinations of prisoners should always be conducted out of the hearing of non-medical staff and – unless the doctor concerned requests otherwise in a specific case – out of the sight of such staff.**

80. The situation as regards the medical examinations of "N" status prisoners has also remained unchanged, i.e. in addition to the presence of non-medical staff, such inmates were still systematically handcuffed (and sometimes also ankle-cuffed) while being examined<sup>51</sup>.

The CPT must stress again that the practice of applying means of restraint to prisoners during medical examinations infringes upon the dignity of the prisoners concerned, prohibits the development of a proper doctor-patient relationship and may even be prejudicial to the establishment of objective medical observations.

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<sup>51</sup> See also paragraph 51.

**The CPT urges the Polish authorities to abandon the policy of routine application of means of restraint to "N" status prisoners during medical examinations.**

81. As regards drug-related problems, methadone programmes were available in all the establishments visited. However, none of the prisons visited had put in place any harm reduction measures (such as, for instance, the provision of bleach and information on how to sterilise needles, needle-exchange programmes or the supply of condoms). Moreover, it transpired from the discussions with prison doctors that they remained highly sceptical about implementing methadone programmes and harm reduction measures in a prison setting.

The CPT wishes to stress again that the management of drug-addicted prisoners must be varied – combining detoxification, psychological support, socio-educational programmes, rehabilitation and substitution programmes – and linked to a real prevention policy. This policy should highlight the risks of HIV or hepatitis B/C infection through drug use and address methods of transmission and means of protection. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and co-operate closely with the other (psycho-socio-educational) staff involved.

**The CPT reiterates the recommendation made in previous visit reports that the Polish authorities develop and implement a comprehensive policy for the provision of care to prisoners with drug-related problems. Specific training on this subject should be organised for the prisons' health-care staff.**

b. follow-up visit to the hospital at Warsaw-Mokotów Remand Prison

82. The hospital was accommodating 116 patients at the time of the visit, for an official capacity of 154 beds. It comprised the following wards: surgery (31 beds and 16 patients), orthopaedics (32 beds and 26 patients), internal diseases (40 beds and 28 patients) and psychiatry (51 beds and 46 patients, including 34 patients receiving treatment and 12 undergoing assessment). The hospital catered for several regions and, as regards orthopaedics, it had a nationwide coverage.

The staff comprised the equivalent of 22.67 full-time doctors<sup>52</sup> and a number of external specialists<sup>53</sup> who regularly visited the hospital, as well as 40 nurses, and three psychologists. The hospital offered a 24-hour medical cover for the entire remand prison with the presence, at night and weekends, of an internist, an orthopaedist, a psychiatrist, and four nurses (one in each ward).

The medical equipment and supply of materials appeared to be adequate, and there was no shortage of medication. To sum up, the level of healthcare appeared to be satisfactory.

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<sup>52</sup> I.e. five general practitioners, two specialists in internal diseases, an orthopaedist, an ophthalmologist, an ear, nose and throat specialist, a specialist in infectious diseases, seven psychiatrists, a specialist in addiction, two dentists, and a radiologist.

<sup>53</sup> E.g. specialists in neurosurgery, urology, gastroenterology, stomatology, and lung diseases.

83. Some of the patients' rooms offered sufficient living space (e.g. rooms measuring approximately 14 m<sup>2</sup> were accommodating two patients, and rooms measuring some 27 m<sup>2</sup> were accommodating six patients); however, **conditions were rather cramped in most of the rooms** (e.g. four patients in a room measuring under 15 m<sup>2</sup>).

Access to natural light, artificial lighting and ventilation were generally adequate. The delegation noted that refurbishment (wall painting, replacement of tiles, renovation of communal sanitary facilities) had taken place in several wards.

That said, the patients' rooms in the psychiatric ward offered an austere environment, with nothing but the beds, bedside tables and stools. **The CPT recommends that steps be taken to provide a more congenial and personalised environment in the psychiatric ward of the hospital of Warsaw-Mokotów Remand Prison.**

Moreover, the in-cell sanitary annexes in all the patients' rooms were only partially screened, and the overall state of cleanliness of the hospital premises left something to be desired. **The Committee recommends that steps be taken to remedy these deficiencies; equipping the sanitary annexes with full partitioning should be seen as a priority.**

On a more positive note, it should be noted that communal sanitary facilities in the internal diseases ward were adapted for the needs of persons with disabilities, which was not the case in any other hospital wards (not even in the orthopaedics ward). **Consideration should be given to equipping the communal sanitary facilities in the other wards of the hospital in the same way.**

84. The treatment offered to psychiatric patients included pharmacotherapy and psychotherapy. Psychiatric patients were also offered one hour of outdoor exercise every day. However, there was no common room nor were there any organised activities. **The CPT reiterates its recommendation that steps be taken in the psychiatric ward of the hospital of Warsaw-Mokotów Remand Prison to develop a broader range of psycho-social therapeutic activities for patients, in particular for those who remain in the ward for extended periods; occupational therapy should be an integral part of the rehabilitation programme. In this context, consideration should be given to recruiting an occupational therapist.**

85. The delegation observed that patients in the psychiatric ward were dressed around the clock in pyjamas, including when taking outdoor exercise and receiving visits. In this respect, the Committee wishes to stress that the practice of continuously dressing ambulant psychiatric patients in pyjamas is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process. **The CPT recommends that steps be taken at the hospital of Warsaw-Mokotów Remand Prison to ensure that an individualised approach is followed as regards patients' clothing. Patients should be allowed to wear their day clothes during daytime.**

86. The use of means of restraint was governed by the 1995 Mental Health Act and the 2012 regulation by the Minister of Health<sup>54</sup>; as far as the delegation could ascertain, the practice at the psychiatric ward of the hospital of Warsaw-Mokotów Remand Prison was in conformity with these provisions. A specific room equipped with two beds and covered by CCTV was set aside for immobilisation and seclusion; that said, there was no continuous staff presence while the above-mentioned room was in use. In the CPT's view, every immobilised patient should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff, who can offer immediate human contact to the person concerned, reduce his/her anxiety, communicate with the individual and rapidly respond, including to the individual's personal needs. Such individualised staff supervision should be performed from within the room or very near the door (within hearing so that personal contact can be established immediately). **The Committee recommends that the current practice at the psychiatric ward of the hospital of Warsaw-Mokotów Remand Prison be modified accordingly.**

The register for the use of means of restraint (including seclusion) was well kept and a specific form for each case of restraint gave detailed information on the measure applied, the duration, and regular monitoring by medical staff (with entries every 15 minutes).

However, it appeared that means of mechanical restraint were applied rather frequently in the psychiatric ward<sup>55</sup>, and that their average duration (12 hours, usually overnight) was relatively long. In two cases, the delegation found that patients had been fixated for periods of 25 and 32 hours, respectively. In the CPT's opinion, if recourse is had to mechanical restraint or seclusion, the maximum duration should ordinarily not exceed six hours and should under no circumstances exceed 24 hours. If patients in psychiatric institutions are secluded or mechanically restrained for more than 24 hours, immediate measures should be taken to end the use of restraint. Such measures should include having the patient moved to a better staffed and more specialised unit, reassessment of diagnosis and treatment as well as review by independent experts. **The CPT recommends that the practice followed in the psychiatric ward of the hospital at Warsaw-Mokotów Remand Prison (and, as appropriate, elsewhere) be reviewed in the light of the above-remarks.**

c. hospital at Bydgoszcz Remand Prison

87. The hospital at Bydgoszcz Remand Prison was accommodating 60 patients (for an official capacity of 80) at the time of the visit. It comprised three wards: internal medicine (30 beds and 16 patients), surgery (30 beds and 24 patients) and ear, nose and throat (20 beds and 20 patients). The hospital catered for several regions and, as regards ear, nose and throat treatment, it had a nationwide coverage.

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<sup>54</sup> Authorised means of restraint include holding, chemical restraint, immobilisation and seclusion for no more than four hours at a time (renewable). The decision to resort to means of restraint (and its renewal) must be taken by a doctor, who defines the type of measures to be applied and personally supervises its execution; in the absence of a doctor, a nurse can take this decision and must notify a doctor without delay. Every case of resort to means of restraint (and its renewal) must be recorded in the medical documentation, and more specifically on a form containing the reasons/circumstances for the measure, as well as the duration of immobilisation or seclusion.

<sup>55</sup> 53 cases between January and June 2013.

The staff comprised four full-time doctors<sup>56</sup>, 15 specialists (for the equivalent of 8.05 full-time posts) who regularly visited the prison<sup>57</sup>, and 32 nurses (26 full-time and six part-time). The hospital offered a 24-hour medical cover for the entire remand prison with the presence, at night and weekends, of at least one doctor and two nurses.

Similar to the hospital of Warsaw-Mokotów Remand Prison, the delegation found the overall level of the health-care provided at the Bydgoszcz Prison Hospital (including in terms of the medical equipment, supply of materials and medication) to be satisfactory.

88. The delegation gained a positive impression of the living conditions at the hospital. The wards had recently been entirely refurbished and the hospital was well maintained. The patients' rooms were equipped with beds, bed-side tables and stools, were bright, clean and well ventilated, and all had a fully partitioned in-cell sanitary annexe (with a wash-basin and a toilet). However, **conditions in some of the rooms were rather cramped, with less than 4 m<sup>2</sup> of living space per patient.**

The delegation was concerned to note that the policy at Bydgoszcz Remand Prison Hospital was to require patients to wear pyjamas whenever they had to leave their rooms (i.e. for consultations, outdoor exercise, visits). As stressed in paragraph 85 above, this practice is not conducive to strengthening a sense of personal identity and self-esteem of the patients; **the CPT recommends that it be discontinued.**

89. The CPT's delegation also noted that there was a total prohibition on smoking in the prison hospital (including during outdoor exercise). However, in contrast to the provision of treatment for persons suffering from drug or alcohol withdrawal, no support was given to smokers, such as the provision of nicotine "patches" during their stay in the hospital (which could be prolonged). **The CPT would welcome the observations of the Polish authorities on this matter.**

90. During the visit, the delegation came across the case of a prisoner who had been admitted to the hospital of Bydgoszcz Remand Prison on 6 March 2012 with alcohol withdrawal symptoms (*delirium tremens*), and was almost immediately fixated by medical decision (at 4.45 p.m.) due to his agitation, for a total period of 36.5 hours<sup>58</sup>. **Such a prolonged period of fixation can have no medical justification.**

On 8 March 2012 at 5.15 a.m., the mechanical restraint was removed after the patient's condition had worsened dramatically. He died at 6.45 a.m., after the emergency services had tried to resuscitate him. As already mentioned in paragraph 10, at the end of the visit, the delegation asked to be provided with information related to the investigation carried out into the death of this patient.

By letter of 24 July 2013, the Polish authorities informed the CPT that a criminal investigation for suspicion of manslaughter (Section 155 of the CC) had been launched by the South District Prosecutor of Bydgoszcz on 9 March 2012.

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<sup>56</sup> Two specialists in internal diseases, and two ear, nose and throat specialists.

<sup>57</sup> E.g. specialists in neurology, surgery, dermatology, orthopaedics, stomatology, gynaecology, ophthalmology micro-biology, and ear, nose and throat.

<sup>58</sup> During this period, his condition was monitored by the health-care staff every 15 minutes.

The conclusion of the investigation, based on the autopsy of the body, the examination of the place where the person died, the interviews of witnesses, including the medical and custodial staff involved, was that the person died because of a cardiac and respiratory failure due to a disease of the coronary system with an additional cause of hepatitis C.<sup>59</sup> The Polish authorities also informed the Committee that this case was currently being re-examined by the General Prosecutor's Office; **the CPT would like to receive information on the outcome of this re-examination.**

d. hospital at Szczecin Remand Prison

91. The hospital at Szczecin Remand Prison had a total capacity of 84 beds and comprised an internal medicine ward (with a capacity of 28) and a psychiatry ward (with a capacity of 56). At the time of the visit, there were 59 patients (18 in the internal medicine ward and 41<sup>60</sup> in the psychiatric ward). The medical staff consisted of the equivalent of three full-time psychiatrists, two full-time general practitioners, and 12.65 full-time visiting specialists<sup>61</sup>. There was also the equivalent of 17 full-time nurses. Doctors worked from 7.30 a.m. to 3.30 p.m.; one doctor was on call after that time and there were always two doctors present on weekends. Nursing presence was ensured on a 24-hour basis, seven days a week.

Similar to the other prison hospitals visited, the level of the health-care provided at the Szczecin hospital (including as concerns the medical equipment, supply of materials and the medication) appeared generally satisfactory.

92. As the hospital was not operating at its full capacity, the vast majority of patients were offered at least 4 m<sup>2</sup> of living space per person, and often more (e.g. two patients in some 12 m<sup>2</sup>, three in 14 m<sup>2</sup>, four in some 20 m<sup>2</sup>, and five in some 30 m<sup>2</sup>). The rooms were equipped with beds, bed-side tables and chairs. They were bright, clean and well ventilated. Communal shower facilities were in a good state of repair, and one shower was equipped for person with disabilities.

However, as in the other two prison hospitals, patients were dressed around the clock in pyjamas, including when taking outdoor exercise and receiving visits. **Reference is made in this respect to the recommendation in paragraph 85 above.**

93. The treatment offered to psychiatric patients consisted of a combination of pharmacotherapy, psychotherapy<sup>62</sup> and occupational therapy<sup>63</sup>, and appeared adequate. Patients had access to two well-equipped recreation/art therapy rooms.

The psychiatric ward had an "isolation room" equipped with a bed and covered by CCTV; that said, there was no continuous staff supervision during the measure. **Reference is made to the recommendation in paragraph 86, which applies equally here.**

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<sup>59</sup> The CPT was provided with a copy of the relevant documentation.

<sup>60</sup> 32 psychiatric patients were receiving treatment and nine were undergoing assessment.

<sup>61</sup> Including general practitioners, a surgeon, a cardiologist, a neurologist, an ophthalmologist, a psychiatrist, a urologist and two dentists.

<sup>62</sup> Provided by four part-time psychologists

<sup>63</sup> The hospital employed a full-time occupational therapist.

Resort to means of restraint was rare according to the doctors and registers consulted by the delegation<sup>64</sup>, and the related documentation was well kept.

## 7. Other issues

contact with the outside world

94. The rules and practice applicable to sentenced prisoners as regards correspondence and access to a telephone have remained as described in the report on the 2009 visit<sup>65</sup>, i.e. they can be considered on the whole adequate. However, this is not the case as regards visits, especially for prisoners in the closed-type regime; they are entitled to only two one-hour visits per month.

The CPT considers that as a minimum, all categories of prisoners should be entitled to the equivalent of at least one hour of visiting time per week. Preferably, prisoners should be able to receive a visit every week. **The Committee recommends that the relevant legislation be amended accordingly.**

95. In the absence of any change in the legislation since the 2009 visit, the CPT remains concerned by the situation with respect to contacts with the outside world for remand prisoners.

Visits for remand prisoners continue to require authorisation by the organ of inquiry and there is still a total ban on telephone calls. The delegation noted that, in many cases, restrictions on visits for remand prisoners (either an outright ban or authorisation of a closed-type visit, through plexi-glass only) could continue for weeks or even months on end. Furthermore, nearly all the remand prisoners interviewed by the delegation complained about long delays in the outgoing and incoming correspondence, reportedly due to the censorship requirement.

As stressed by the CPT many times in the past, remand prisoners should, as a rule, be able to receive visits and be allowed to communicate with their family and other persons (including by telephone) in the same way as convicted prisoners; this is also the position taken in the European Prison Rules<sup>66</sup>. **The CPT calls upon the Polish authorities to bring the relevant Polish legislation into conformity with these principles without further delay.**

96. The visiting facilities were of a very good standard in all the establishments visited. That said, the delegation received many complaints (and observed it at Warsaw-Grochów and Lublin Remand Prisons) about long waiting times and queues of visitors outside the establishments.

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<sup>64</sup> 28 cases in 2012 and 15 in 2013 until the time of the visit.

<sup>65</sup> See paragraph 136 of CPT/Inf (2011) 20.

<sup>66</sup> Rule 99: Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners: a. shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners; b. may receive additional visits and have additional access to other forms of communication; and c. shall have access to books, newspapers and other news media.

While understanding the problems related to the large turnover of prisoners in the establishments visited (in particular, as regards the remand population), **the CPT again invites the Polish authorities to consider introducing a visit booking system (at least for sentenced prisoners) in all penitentiary establishments, with a view to avoiding prolonged queuing outside the establishments.**

97. The delegation spoke with a few sentenced prisoners who complained that they were not allowed to meet their close relatives (mother, brother, etc.) who were also sentenced and imprisoned but accommodated in another part of the same establishment (or in a different prison). **The Committee would welcome the observations of the Polish authorities on this subject.**

b. discipline

98. The delegation found that there was no excessive recourse to disciplinary punishments in the prisons visited<sup>67</sup> and that the use of disciplinary isolation cells was well documented. Also the conditions in disciplinary isolation cells in the establishments visited were on the whole acceptable.

However, the CPT notes that the maximum period of placement in a disciplinary isolation cell for sentenced prisoners remains 28 days (14 days for remand prisoners)<sup>68</sup>. Given the potentially very damaging effects of such measure, **the Committee recommends that the maximum period of disciplinary isolation be no more than 14 days for a given offence, and preferably be lower. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system<sup>69</sup>.**

99. The CPT has some concerns as regards various aspects of the disciplinary procedure. In particular, prisoners subject to the sanction of placement in a disciplinary cell were not provided with a written notice of the disciplinary charge brought against them, and were generally not informed (or only informed orally) of the available avenues of complaint against the disciplinary sanction. It would also appear that they were not always heard in person on the subject of the alleged disciplinary offence.

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<sup>67</sup> For example, during the first five months of 2013, the sanction of placement in a disciplinary isolation cell had been applied 22 times at Warsaw-Grochów Remand Prison, 11 times at Warsaw-Mokotów Remand Prison, six times at Szczecin Remand Prison, and only twice at Lublin Remand Prison.

<sup>68</sup> Generally, the length of disciplinary isolation in the prisons visited varied between a week and 14 days, although a few longer placements were found in the relevant registers.

<sup>69</sup> See also 21st General Report of the CPT's activities (CPT/Inf (2011) 28), paragraph 56 (b).

Consequently, the Committee recommends that prisoners facing disciplinary charges be formally guaranteed the following rights:

- to be informed promptly, in a language which they understand and in detail, of the nature of the charge brought against them;
- to be given sufficient time to prepare their defence and to be heard in person by the decision-making authority;
- to call witnesses on their own behalf and to cross-examine evidence given against them;
- to be heard in mitigation of punishment, in cases where found guilty by the director;
- to receive a copy of the disciplinary decision, setting out the modalities of lodging an appeal.

100. Further, the CPT continues to have serious misgivings about the role of prison doctors in the procedure of placement in a disciplinary cell. In most of the establishments visited, a doctor confirmed the prisoner's fitness to be placed in the disciplinary cell. As stressed in the Committee's previous report<sup>70</sup>, this is detrimental to the doctor-patient relationship that should exist between a prison doctor and inmates. **The CPT calls upon the Polish authorities to review the existing regulations and practice concerning the role of prison doctors in relation to disciplinary matters. In so doing, regard should be had to the comments made by the CPT in its 21st General Report<sup>71</sup>.**

101. As already stressed in the report on the visit carried out in 2009<sup>72</sup>, the CPT is also concerned by the fact that prisoners placed in a disciplinary cell are, as a rule, automatically deprived of contact with the outside world (the right to receive visits, to write letters or to make phone calls). In the Committee's view, rules governing disciplinary punishment of prisoners should not involve a total prohibition of family contact, and any restrictions on family contact as a punishment should be imposed only where the offence relates to such contact<sup>73</sup>. **The CPT recommends that the rules governing disciplinary sanctions be revised accordingly.**

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<sup>70</sup> See paragraph 142 of CPT/Inf (2011) 20.

<sup>71</sup> See paragraphs 62 and 63 of CPT/Inf (2011) 28.

<sup>72</sup> See paragraph 140 of CPT/Inf (2011) 20.

<sup>73</sup> See also Rule 60 (4) of the European Prison Rules and the Commentary thereto.

c. means of restraint

102. On the whole, the recourse to means of restraint (and to placements in a security cell) did not appear excessive in the prisons visited<sup>74</sup>; further, as with disciplinary sanctions, incidents of recourse to means of restraint and placement in security cell were well recorded and documented (including the preserved CCTV recordings). It is noteworthy that, pursuant to the recently-adopted Act on the Means of Coercion, the maximum length of placement in a security cell has been limited to 48 hours.

103. Having said that, the delegation did come across some cases (especially at Lublin Remand Prison) where means of restraint appeared to have been used excessively, for what would seem to be a punitive rather than security-related purpose.

In one such case, an inmate at the above-mentioned establishment had been placed in a security cell for approximately 57 hours<sup>75</sup> and was restrained with a body belt for over four hours, despite the fact that his agitated behaviour had ceased soon after his transfer to the security cell and that (as observed by the delegation on the CCTV record) he had not displayed any agitated/aggressive behaviour subsequently. It is noteworthy that, immediately after release from the security cell, the prisoner in question was transferred to a psychiatric hospital.

Also at Lublin Remand Prison, a prisoner had recently been held in the security cell, restrained with a body belt and handcuffs and made to wear a helmet, for a total of 19 hours and 5 minutes following a suicide attempt. He had received no medical attention during this period.

104. As already stated in the reports on the 2004 and 2009 visits, the CPT fully recognizes that it could be necessary, on rare occasions, to resort to mechanical means of restraint in a prison setting. However, in the Committee's opinion, the approach to mechanical restraint in prisons should take into consideration the following principles and minimum standards:

- regarding its appropriate use, mechanical restraint should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail satisfactorily to contain those risks; it should never be used as a punishment or to compensate for shortages of trained staff; it should not be used in a non-medical setting when hospitalisation would be a more appropriate intervention;
- any resort to mechanical restraint should be immediately brought to the attention of a medical doctor in order to assess whether the mental state of the prisoner concerned requires hospitalisation or whether any other measure is required in the light of the prisoner's medical condition;
- the equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint, and staff must be trained in the use of the equipment; metal cuffs should never be used;

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<sup>74</sup> In the course of the first five months of 2013, there had been no placements in a security cell at Warsaw-Grochów and Warsaw-Mokotów Remand Prisons. At Bydgoszcz and Szczecin Remand Prisons, the security cells had been used in one case each, and at Lublin Remand Prison in three cases.

<sup>75</sup> The incident in question occurred on 18/19 January 2013.

- the duration of mechanical restraint should be for the shortest possible time (usually minutes rather than hours);
- persons subject to mechanical restraint should receive full information on the reasons for the intervention;
- the management of any establishment which might use mechanical restraint should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved<sup>76</sup>;
- a special register should be kept to record all cases in which recourse is had to means of restraint; 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 person who ordered or approved it, and an account of any injuries sustained by the prisoner or staff;
- further, the inmate concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint. This discussion should always involve a senior member of the health-care staff or another senior member of staff with appropriate training.

**The Committee recommends that the Polish authorities take the necessary steps to ensure that all the principles and minimum safeguards set out above are applied in prison establishments resorting to mechanical restraint, including through the adoption of the necessary regulations and the provision of appropriate training to staff.**

105. As regards the role of the doctor in restraint procedures, the delegation noted that the introduction of the new Act on the Means of Coercion had created some confusion amongst health care staff in the prisons visited. According to the new Act, the doctor is no more automatically involved in the application of restraint measures, including application of a body belt and placement in a security cell. A medical examination of the prisoner is only foreseen upon request of prison staff in case where there is a medical indication for it (visible injury or other symptoms of threat to life or health). This was being applied in Szczecin Remand Prison with the consequence that e.g. most of the inmates placed in a security cell would not be seen by a doctor at all. In the other establishments visited, it appeared that the custodial staff would as a matter of routine apply the previous practice to call the doctor before placement in the security cell.

As already indicated in paragraph 104 above, **a medical doctor should always be notified in the event of a prisoner being subjected to mechanical restraint.**

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<sup>76</sup> In particular, an individual subject to mechanical restraint should have his/her mental and physical state continuously and directly monitored by an identified and suitably trained member of staff who has not been involved in the circumstances which gave rise to the application of the measure. The staff member concerned should offer immediate human contact to the restrained person, communicate with the individual and rapidly respond to the individual's personal needs. Such individualised staff supervision should be performed from within the room or very near the door (within hearing and so that personal contact can be established immediately).

d. strip searches

106. The CPT's delegation gathered information about what clearly appeared to be an excessive resort to strip searches in two of the prisons visited<sup>77</sup>.

At Warsaw-Grochów Remand Prison, female inmates from Pavilion F were reportedly routinely strip searched each time they entered or left their unit. In the CPT's view, such a practice could be considered as amounting to degrading treatment. A strip search is a very invasive and potentially degrading measure. Therefore, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision. Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing. **The Committee recommends that the Polish authorities review the current practice at Pavilion F of Warsaw-Grochów Remand Prison, in the light of the above remarks.**

Further, at Lublin Remand Prison the delegation received complaints from prisoners about random strip searches which their female visitors were reportedly required to undergo for a visit to take place. In view of the impact which they can have on the maintenance of prisoners' relationships with their family and friends, **the CPT invites the Polish authorities to review the approach to strip searches of prisoners' visitors at Lublin Remand Prison. If there exist serious security concerns (based on specific information) regarding a particular visitor, a closed-type and/or a supervised visit could be arranged instead of imposing a strip search on the visitor.**

e. staff

107. The staffing levels appeared on the whole adequate at Bydgoszcz, Szczecin and Warsaw-Mokotów Remand Prisons. However, the custodial staff complement was rather low at Lublin Remand Prison<sup>78</sup> and certainly insufficient at Warsaw-Grochów Remand Prison<sup>79</sup>. **The CPT recommends that steps be taken to increase the number of custodial officers working in the two above-mentioned establishments.**

There was also a shortage of female custodial officers at Lublin Remand Prison, a point emphasized by the director of the establishment himself. This meant that, most of the time, no female officer was on duty in the female unit. **The Committee recommends that additional female custodial staff be recruited at Lublin Remand Prison.**

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<sup>77</sup> As regards "N"-status prisoners, see paragraph 52.

<sup>78</sup> 193 officers for some 1,000 prisoners.

<sup>79</sup> 107 officers for 722 inmates.

108. The CPT's delegation observed that some custodial staff carried truncheons in full view of inmates inside the detention areas at Bydgoszcz Remand Prison; this was not the case in the other establishments visited.

As stressed by the Committee in the past, openly carrying truncheons is not conducive to developing positive relations between staff and inmates. If it is considered necessary for prison officers to be equipped with truncheons, **the CPT recommends that they be hidden from view.**

More generally, **the Committee invites the Polish authorities to phase out the carrying of truncheons by custodial staff in detention areas.**

f. complaints and inspections

109. The situation as regards complaints procedures was similar to that observed during the 2009 visit<sup>80</sup>. Prisoners in the establishments visited were generally aware of the avenues of complaint available and were making frequent use of them.

As regards independent inspections, the establishments visited by the delegation were inspected by a penitentiary judge at most once a year and (as already mentioned in paragraph 12) even more infrequently by the staff of the Ombudsperson/NPM. Departmental inspections by the Regional Directorates of Prison Service and Prison Service Headquarters from Warsaw were more frequent, but these were not external independent mechanisms.

**The CPT recommends that steps be taken to establish a system under which each penitentiary establishment will be visited on a frequent basis by an independent body authorised to inspect the prison's premises and to receive complaints from inmates about their treatment in the establishment.**

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<sup>80</sup> See paragraph 146 of CPT/Inf (2011) 20.

### C. Sobering-up centres

110. The delegation visited one sobering-up centre, in Warsaw<sup>81</sup>. The centre, with an official capacity of 124, is run and financed by the Warsaw municipal authorities. It was accommodating 30 persons at the time of the visit. The delegation was informed that, on average, the centre admitted some 100 persons a day. The mean stay was 12-13 hours, which is well within the legal maximum of 24 hours (see paragraph 15).

The placement in such centres is governed by the 1982 Act on the Promotion of Sobriety and the Fight against Alcoholism, and the Ordinance of the Minister of Health of 4 February 2004 on Placement and Discharge of Intoxicated Persons in Sobering-up Centres. Pursuant to this legislation, newly arrived persons must be promptly examined by a doctor who determines whether or not there are medical grounds for placement in a sobering-up centre, a hospital or any other medical facility.

In 2012, the Parliament adopted a bill amending the 1982 Act. In the beginning of 2013, the President appealed to the Constitutional Tribunal to review the constitutionality of these amendments. The CPT understands that, *inter alia*, pursuant to new provisions added by the said amendments, forced treatment of intoxicated persons could be applied, as well as other direct coercive measures (which are not specifically enumerated). The vagueness of these provisions has reportedly raised many concerns in Poland. **The CPT would like to be informed about the current situation with respect to the above-mentioned amendments to the 1982 Act.**

111. The CPT's delegation did not gather any evidence of physical ill-treatment of intoxicated persons by staff working in the Warsaw sobering-up centre. On the contrary, the delegation was impressed by the professional, caring and humane attitude of the staff vis-à-vis persons in their charge.

112. The excellent material conditions of the centre should also be put on record. All the premises were clean, well ventilated, adequately equipped and in an excellent state of repair. There were separate rooms for men, women, juveniles, and persons with problems of hygiene. Rooms were equipped with a call system and CCTV.

113. The staffing levels were adequate. There was a 24-hour medical presence, and at any time there was always one doctor, one or two nurses and some 12 ancillary staff. There was also a constant presence of at least two female staff.

114. Some rooms were equipped with beds with four- or five-point fixation magnetic belts. Fixation could only be ordered by a doctor; it lasted in principle for a maximum of two hours but could exceptionally be prolonged. Restrained persons were monitored on an on-going basis by a nurse or a doctor, and this monitoring was recorded every 15 minutes on an individual chart and in a specific register.

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<sup>81</sup> Located at 2/4 Kolska St.

The review of the medical documentation revealed that the above-mentioned procedure was scrupulously and meticulously implemented, and that the limit of two hours was exceeded only extremely rarely.

Staff received annual training on restraint as well as on psychological techniques for resolving disputes.

115. All persons admitted to the centre met a psychologist specialising in addiction problems before leaving the establishment. Further, they (and, if they agreed, their relatives) were offered detoxification and further counselling, as well as the possibility to attend support group meetings.

116. To sum up, the delegation gained a positive impression of the Warsaw sobering-up centre.

## **APPENDIX I**

### **List of the CPT's recommendations, comments and requests for information**

#### **National Preventive Mechanism**

##### recommendations

- steps to be taken to further increase the resources made available to the National Preventive Mechanism, in the light of the remarks made in paragraph 12 (paragraph 12).

#### **Police**

##### **Preliminary remarks**

##### requests for information

- in due course, confirmation of the entry into force of the amendment to the Juvenile Act introducing a 5-day limit for holding juveniles in a police establishment for children (PID) after a court decision has been issued, pending their transfer to another institution (paragraph 14).

#### **Ill-treatment**

##### recommendations

- the Polish authorities to pursue rigorously their efforts to combat ill-treatment by police officers. Police officers throughout the country should receive a firm reminder that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are unlawful and will be punished accordingly (paragraph 23);
- “whistle-blower” protective measures to be adopted (paragraph 24);
- when prosecutors require operational support from another service for the investigation of cases of possible ill-treatment by the police, support to be sought from a completely independent source rather than from the regional police commands (paragraph 25).

##### requests for information

- in due course, information about the outcome of the inquiries/investigations into the cases of D and E, including on any disciplinary and/or criminal sanctions imposed (paragraph 18);
- clarification of the case of F, together with information on any inquiry/investigation initiated

and on its outcome (paragraph 19);

- the following information, in respect of 2013 and the first quarter of 2014:
  - the number of complaints of ill-treatment made against police officers and the number of criminal/disciplinary proceedings which have been instituted as a result;
  - an account of criminal/disciplinary sanctions imposed following such complaints

(paragraph 22).

### **Safeguards against ill-treatment**

#### recommendations

- steps to be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention (paragraph 27);
- the Polish authorities to develop, without further delay, a fully-fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer, to be applicable from the very outset of police custody. The relevant legislation should be amended (paragraph 28);
- the Polish authorities to implement the recommendation made in the 2009 visit report, that all medical examinations be conducted out of the hearing and - unless the doctor requests otherwise - out of the sight of police officers (paragraph 30);
- information concerning detained persons' health to be kept in a manner which ensures respect for medical confidentiality. Health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given (paragraph 30);
- as regards the documenting of medical examinations and reporting of injuries, steps to be taken to ensure that:
  - the records drawn up following the medical examination of detained persons in police establishments contain: (i) an account of statements made by the persons concerned which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) the health-care professional's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings;

- whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned. Detained persons and their lawyers should be entitled to receive a copy of that record at the same time

(paragraph 30);

- persons deprived of their liberty by the police to be expressly guaranteed the right of access to a doctor (including a doctor of their own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) from the very outset of their deprivation of liberty. The relevant provision should make clear that a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests (paragraph 30);
- the Polish authorities to take steps to ensure that all persons detained by the police are fully informed of their fundamental rights as from the 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 the provision of clear verbal information at the time of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon the first arrival at a police establishment) by the provision of written information on detained persons' rights (paragraph 31);
- the Polish authorities to draw up a written form setting out detained persons' rights in a straightforward manner. Persons detained should be asked to sign a statement attesting that they have been informed of their rights and always be given a copy of the above-mentioned written form. The form should be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case (paragraph 31);
- the Polish authorities to ensure, without further delay, that all juveniles who are detained by the police benefit from the relevant specific safeguards for juveniles provided by the law. Those safeguards should apply to all persons under 18 years of age (paragraph 32).

#### comments

- pending the entry into force of amendments to the Code of Criminal Procedure (CCP) which would ensure that persons detained by the police have in all cases the right to talk to a lawyer in private, instructions should be issued to bring the practice into conformity with the Constitutional Court decision referred to in paragraph 29 (paragraph 29);
- the main custody register at the Bydgoszcz Municipal Police Department contained a number of errors and omissions (paragraph 33).

requests for information

- in due course, information on the entry into force of the amendment to the CCP which will ensure that persons detained by the police have in all cases the right to talk to a lawyer in private, as well as the text of the amendment (paragraph 29);
- more detailed information on the amendments to the Juvenile Act, currently under preparation, aimed at increasing and facilitating access to a lawyer for juveniles in police custody, and their planned entry into force (paragraph 32).

**Conditions of detention**

recommendations

- all persons held for 24 hours or more in police custody to be offered outdoor exercise every day (paragraph 34);
- steps to be taken to ensure that a female custodial officer is always present when female detainees are accommodated at the Municipal Police Departments in Bydgoszcz and Lublin, the Warsaw-Białołęka Police Department and the Metropolitan Police Department (paragraph 35);
- custodial staff at the Metropolitan Police Department in Warsaw to be required to wear some form of identification in a visible place on their uniforms (paragraph 36);
- ways to be sought to address the problem of CCTV coverage in bedrooms and showers in the Bydgoszcz and Warsaw PIDs (paragraph 38).

comments

- access to natural light was limited in some of the cells at the Municipal Police Department in Szczecin, and ventilation was rather poor in a number of cells at the Bydgoszcz and Lublin Municipal Police Departments (paragraph 34);
- the bedrooms at the four police establishments for children (PID), in Bydgoszcz, Lublin, Szczecin and Warsaw had a somewhat austere appearance (paragraph 37);
- the Polish authorities are invited to equip the exercise yards in the four PIDs visited by the CPT with a shelter against inclement weather (paragraph 37).

requests for information

- whether any changes are planned to the design of the toilet and shower doors at the Municipal Police Department in Lublin, the Metropolitan Police Department in Warsaw and at the Warsaw-Białołęka Police Department (paragraph 35).

## **Prison establishments**

### **Preliminary remarks**

#### recommendations

- the Polish authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison. In so doing, the Polish authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules (paragraph 42);
- appropriate action to be taken vis-à-vis the prosecutorial and judicial authorities with a view to ensuring their full understanding of the policies being pursued, thereby avoiding unnecessary pre-trial custody and sentencing practices (paragraph 42);
- the Polish authorities to revise as soon as possible the norms fixed by legislation for living space per prisoner so that, in all penitentiary establishments, there is at least 4 m<sup>2</sup> per inmate in multi-occupancy cells and at least 6 m<sup>2</sup> in single occupancy cells, not counting the area taken up by any in-cell toilet facility (paragraph 42);
- the Polish authorities to take the necessary steps to develop the programmes of activities for both remand and sentenced prisoners. The aim should be to ensure that every prisoner is able to spend a reasonable part of the day (eight hours or more) outside his/her cell, engaged in purposeful activities of a varied nature (work, education, vocational training, sport, etc.) (paragraph 43);
- juveniles held in an institution for adults to be accommodated separately from adults, in a distinct unit specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young. The relevant legislation should be amended if necessary (paragraph 44).

### **Ill-treatment**

#### recommendations

- the management of Bydgoszcz Remand Prison to deliver a clear message to staff that physical ill-treatment of prisoners is a criminal offence and will be punished accordingly. Staff at Warsaw-Mokotów Remand Prison should be reminded that verbal abuse of prisoners is not acceptable (paragraph 45);

- the management and staff of Szczecin Remand Prison to be instructed to exercise constant vigilance and use all appropriate means at their disposal to prevent and combat inter-prisoner violence and intimidation (paragraph 46).

comments

- the Polish authorities are invited to discontinue the practice of using a part of the premises of Warsaw-Mokotów Remand Prison, or of any other functioning prison, as a training site for special forces units of the Polish Army (paragraph 47).

**Prisoners classified as “dangerous” (“N” status)**

recommendations

- the Polish authorities to take steps to refine the procedure for allocating a prisoner to “N” status and reviewing this allocation, in the light of the remarks made in paragraph 48 (paragraph 48);
- steps to be taken in the “N” cells and units in the establishments visited in order to:
  - either enlarge or take out of service the cell at Bydgoszcz Remand Prison measuring 5.5 m<sup>2</sup>;
  - reduce the cell occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per “N” status prisoner in multi-occupancy cells;
  - remedy the deficiencies as regards access to natural light, artificial lighting and ventilation described in paragraph 49;
  - reconsider the design of the cell windows so as to allow inmates to see outside their cells;
  - equip the exercise yards with some shelter against inclement weather

(paragraph 49);

- the Polish authorities to review the regime applied to "N" status prisoners and to develop individual plans aimed at providing appropriate mental and physical stimulation to such prisoners (paragraph 50);
- the Polish authorities to put an end to the practice of staff interviews with "N" status prisoners (including medical and psychological consultations) being conducted through a cage-like structure in a specific room at Lublin and Warsaw-Mokotów Remand Prisons, and through bars placed immediately behind the cell doors at Bydgoszcz Remand Prison (paragraph 51);

- the practice of obliging “N” status prisoners to wear red overalls at all times when outside their units and when transferred outside the establishment to be discontinued immediately (paragraph 51);
- strip searches of “N” status prisoners to be always carried out in an appropriate setting and in a manner respectful of human dignity (paragraph 52).

#### comments

- it would be desirable to find larger outdoor exercise facilities for “N” status prisoners at Bydgoszcz Remand Prison and Lublin Remand Prison (paragraph 49);
- the introduction of open-type visits for “N” status prisoners at Warsaw-Mokotów Remand Prison is a most welcome development, which should be followed in other establishments accommodating such prisoners (paragraph 50).

#### requests for information

- confirmation that one of the accommodation cells for “N” status prisoners at Bydgoszcz Remand Prison has been transformed into a common room (paragraph 50).

### **Material conditions of detention**

#### recommendations

- steps to be taken at Bydgoszcz Remand Prison in order to:
  - reduce the cell occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells; cells measuring some 6 m<sup>2</sup> should not hold more than one prisoner each;
  - review the design of the cell windows so as to allow inmates to see outside their cells, improve access to natural light and ensure better ventilation;
  - ensure that all the cells (including the in-cell toilets and the bedding) are maintained in a clean condition; this should include regular de-infestation;
  - pursue the refurbishment programme and, in this context, ensure that the call system is operational in all the cells, and that all in-cell toilets are fully partitioned (i.e. up to the ceiling)

(paragraph 55);

- steps to be taken at Lublin Remand Prison to:

- reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells;
- pursue the refurbishment in the five old accommodation blocks and ensure that all the cells are well lit and equipped with fully partitioned sanitary annexes, and that all missing shower heads are replaced;
- review the design of the cell windows so as to allow the inmates to see outside their cells and to ensure better ventilation;
- ensure that all prisoners have adequate quantities of essential hygiene products as well as cleaning products for their cells

(paragraph 58);

- steps to be taken at Szczecin Remand Prison to:

- reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells; cells measuring some 7 m<sup>2</sup> should not hold more than one prisoner;
- pursue the refurbishment programme (including the installation of a full partition in all the in-cell sanitary annexes) and remedy the humidity problem present in some of the cells;
- review the design of the cell windows in the remand block on the street side, so as to improve access to natural light and ensure better ventilation

(paragraph 61);

- steps to be taken at Warsaw-Grochów Remand Prison to:

- reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells;
- pursue the refurbishment programme (including the full partitioning of in-cell sanitary annexes), with a particular emphasis on the cells in Pavilion D; cell No. 425 in that Pavilion and Cell No. 323 in Pavilion C should be taken out of use pending full refurbishment;
- review the design of the cell windows in Pavilions D, E and F so as to improve access to natural light, ensure better ventilation and allow inmates to see outside their cells

(paragraph 64);

- steps to be taken at Warsaw-Mokotów Remand Prison to:
  - reduce the occupancy rates with a view to offering a minimum of 4 m<sup>2</sup> of living space per prisoner in multi-occupancy cells;
  - pursue the refurbishment programme, including the full partitioning of in-cell sanitary annexes

(paragraph 67).

#### comments

- the Polish authorities are encouraged to allow male prisoners at least two showers per week, with a view to complying with Rule 19.4 of the Revised European Prison Rules (paragraph 68).

### **Programmes of activities**

#### recommendations

- if the establishments visited are to continue to hold juveniles in the future, the necessary steps to be taken to enable them to follow a regime appropriate to their age group (paragraph 71);
- steps to be taken to offer organised sports activities to prisoners at Bydgoszcz and Szczecin Remand Prisons (paragraph 72);
- steps to be taken to ensure that all inmates in the prisons visited have the possibility to take their daily outdoor exercise in conditions which enable them to physically exert themselves. Further, all the exercise yards should be equipped with some protection against inclement weather (paragraph 72).

### **Health care**

#### recommendations

- the health-care complement at Lublin Remand Prison to be reinforced:
  - by the recruitment of at least one further full-time general practitioner and the equivalent of at least two more full-time nurses;
  - by creating a full time post of psychiatrist

(paragraph 73);

- the vacant post of psychiatrist at Warsaw-Grochów Remand Prison to be filled without delay (paragraph 73);
- the Polish authorities to ensure that someone qualified to provide first aid, preferably a person with a recognised nursing qualification, is always present at Lublin and Warsaw-Grochów Remand Prisons (paragraph 73);
- the Polish authorities to take steps to ensure that a precise diagnosis is promptly established and that adequate treatment required by the state of health of the person concerned is provided to all prisoners (paragraph 74);
- measures to be taken to improve the procedure of medical examination of newly-arrived prisoners in all the establishments visited, in the light of the remarks in paragraph 76 (paragraph 76);
- the Polish authorities to ensure that the record drawn up after the medical examination of newly-arrived prisoners contains:
  - i) an account of statements made by the person which are relevant to the medical examination (including his/her 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 observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings(paragraph 78);
- the record drawn up after the medical examination to also contain the results of additional examinations performed, detailed conclusions of any specialised consultations and an account of treatment given for injuries and of any further procedures conducted (paragraph 78);
- the recording of the medical examination in cases of traumatic injuries to be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, a special trauma register should be kept in every penitentiary establishment, in which all types of injuries should be recorded (paragraph 78);
- the existing procedures to be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the prisoner. The results of the examination should also be made available to the prisoner concerned and his or her lawyer (paragraph 78);

- the Polish authorities to take steps to bring the practice in line with the considerations set out in paragraph 79. Medical examinations of prisoners should always be conducted out of the hearing of non-medical staff and – unless the doctor concerned requests otherwise in a specific case – out of the sight of such staff (paragraph 79);
- the Polish authorities to abandon the policy of routine application of means of restraint to "N" status prisoners during medical examinations (paragraph 80);
- the Polish authorities to develop and implement a comprehensive policy for the provision of care to prisoners with drug-related problems. Specific training on this subject should be organised for the prisons' health-care staff (paragraph 81);
- steps to be taken to provide a more congenial and personalised environment in the psychiatric ward of the hospital of Warsaw-Mokotów Remand Prison (paragraph 83);
- steps to be taken to remedy the deficiencies at the hospital of Warsaw-Mokotów Remand Prison mentioned in paragraph 83; equipping the sanitary annexes in all the patients' rooms at the hospital with full partitioning should be seen as a priority (paragraph 83);
- steps to be taken in the psychiatric ward of the hospital of Warsaw-Mokotów Remand Prison to develop a broader range of psycho-social therapeutic activities for patients, in particular for those who remain in the ward for extended periods; occupational therapy should be an integral part of the rehabilitation programme. In this context, consideration should be given to recruiting an occupational therapist (paragraph 84);
- steps to be taken at the hospitals of Warsaw-Mokotów and Szczecin Remand Prisons to ensure that an individualised approach is followed as regards patients' clothing. Patients should be allowed to wear their day clothes during daytime (paragraphs 85 and 92);
- the current practice at the psychiatric wards of the hospitals of Warsaw-Mokotów and Szczecin Remand Prisons as regards the use of means of restraint to be modified, in the light of the remarks in paragraph 86 (paragraphs 86 and 93);
- the practice followed in the psychiatric ward of the hospital at Warsaw-Mokotów Remand Prison (and, as appropriate, elsewhere) as regards the duration of application of means of mechanical restraint to be reviewed, in the light of the remarks in paragraph 86 (paragraph 86);
- the policy at Bydgoszcz Remand Prison Hospital requiring patients to wear pyjamas whenever they have to leave their rooms (i.e. for consultations, outdoor exercise, visits) to be discontinued (paragraph 88).

comments

- conditions were rather cramped in most of the rooms in the hospital at Warsaw-Mokotów Remand Prison (paragraph 83);

- consideration should be given to adapting the communal sanitary facilities in all the wards of the hospital at Warsaw-Mokotów Remand Prison for the needs of persons with disabilities (paragraph 83);
- conditions in some of the rooms in the hospital at Bydgoszcz Remand Prison were rather cramped, with less than 4 m<sup>2</sup> of living space per patient (paragraph 88);
- a period of fixation of 36.5 hours can have no medical justification (paragraph 90).

#### requests for information

- the observations of the Polish authorities on the complaints about the quality of health care provided which were received by the delegation from prisoners at Bydgoszcz, in both the Remand Prison and the Prison Hospital, as well as at Warsaw-Grochów Remand Prison (paragraph 75);
- the observations of the Polish authorities on the lack of support for patients who were smokers during their stay at the hospital of Bydgoszcz Remand Prison (paragraph 89);
- the outcome of the re-examination of the case of the prisoner referred to in paragraph 90, who died at the hospital of Bydgoszcz Remand Prison on 8 March 2012 (paragraph 90).

#### **Other issues**

#### recommendations

- the relevant legislation to be amended so as to entitle all categories of prisoners to the equivalent of at least one hour of visiting time per week; preferably, prisoners should be able to receive a visit every week (paragraph 94);
- the Polish authorities to bring, without further delay, the relevant Polish legislation into conformity with the principle according to which remand prisoners should, as a rule, be able to receive visits and be allowed to communicate with their family and other persons (including by telephone) in the same way as convicted prisoners (paragraph 95);
- the maximum period of disciplinary isolation to be no more than 14 days for a given offence, and preferably to be lower. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system (paragraph 98);
- prisoners facing disciplinary charges to be formally guaranteed the following rights:
  - to be informed promptly, in a language which they understand and in detail, of the nature of the charge brought against them;

- to be given sufficient time to prepare their defence and to be heard in person by the decision-making authority;
- to call witnesses on their own behalf and to cross-examine evidence given against them;
- to be heard in mitigation of punishment, in cases where found guilty by the director;
- to receive a copy of the disciplinary decision, setting out the modalities of lodging an appeal

(paragraph 99);

- the Polish authorities to review the existing regulations and practice concerning the role of prison doctors in relation to disciplinary matters. In so doing, regard should be had to the comments made by the CPT in its 21st General Report (paragraph 100);
- the rules governing disciplinary sanctions to be revised to ensure that they do not involve a total prohibition of family contact, and that any restrictions on family contact as a punishment are imposed only where the offence relates to such contact (paragraph 101);
- the Polish authorities to take the necessary steps to ensure that all the principles and minimum safeguards set out in paragraph 104 are applied in prison establishments resorting to mechanical restraint, including through the adoption of the necessary regulations and the provision of appropriate training to staff (paragraph 104);
- a medical doctor to be always notified in the event of a prisoner being subjected to mechanical restraint (paragraph 105);
- the Polish authorities to review the current practice with regard to strip searches at Pavilion F of Warsaw-Grochów Remand Prison, in the light of the remarks in paragraph 106 (paragraph 106);
- steps to be taken to increase the number of custodial officers working at Lublin Remand Prison and at Warsaw-Grochów Remand Prison (paragraph 107);
- additional female custodial staff to be recruited at Lublin Remand Prison (paragraph 107);
- truncheons to be hidden from view (if it is considered necessary for prison officers to carry them) (paragraph 108);
- steps to be taken to establish a system under which each penitentiary establishment will be visited on a frequent basis by an independent body authorised to inspect the prison's premises and to receive complaints from inmates about their treatment in the establishment (paragraph 109).

comments

- the Polish authorities are invited to consider introducing a visit booking system (at least for sentenced prisoners) in all penitentiary establishments, with a view to avoiding prolonged queuing outside the establishments (paragraph 96);
- the Polish authorities are invited to review the approach to strip searches of prisoners' visitors at Lublin Remand Prison. If there exist serious security concerns (based on specific information) regarding a particular visitor, a closed-type and/or a supervised visit could be arranged instead of imposing a strip search on the visitor (paragraph 106);
- the Polish authorities are invited to phase out the carrying of truncheons by custodial staff in detention areas (paragraph 108).

requests for information

- the observations of the Polish authorities on the complaints received from some sentenced prisoners that they were not allowed to meet their close relatives (mother, brother, etc.) who were also sentenced and imprisoned but accommodated in another part of the same establishment (or in a different prison) (paragraph 97).

**Sobering-up centres**

requests for information

- the current situation with respect to the draft amendments to the 1982 Act on the Promotion of Sobriety and the Fight against Alcoholism (paragraph 110).

## **APPENDIX II**

### **List of the national authorities and non-governmental organisations with which the CPT's delegation held consultations**

#### **A. National authorities**

##### **Ministry of Justice**

Mr Stanisław CHMIELEWSKI	Secretary of State
Mr Wojciech WĘGRZYN	Under-Secretary of State
Ms Agnieszka DĄBROWIECKA	Deputy Director, International Co-operation and Human Rights Department
Mr Tomasz DARKOWSKI	Director, Criminal Law Department
Mr Jacek WŁODARSKI	Director General of the Prison Service
Mr Leszek MARKUSZEWSKI	Director of the Health Care Bureau, Central Board of Prison Service
Ms Luiza SAŁAPA	Director of the Penitentiary Bureau, Central Board of Prison Service
Mr Michał ZOŃ	Director of the Legal Bureau, Central Board of Prison Service
Mr Dawid GROCHOWSKI	Liaison officer of the CPT
Ms Agnieszka ŻYGAS	Liaison officer of the CPT

##### **Ministry of Interior**

Mr Piotr STACHAŃCZYK	Secretary of State
Ms Danuta GŁOWACKA-MAZUR	Director of the Control, Complaints and Suggestions Department
Ms Anna TULEJ	Deputy Director, International Co-operation and European Funds Department
Ms Jolanta ZABORSKA	Deputy Director, Supervision Department
Mr Krzysztof GAJEWSKI	First Deputy Chief Police Commander
Mr Andrzej PILASZKIEWICZ	Deputy Chief Commander of the Border Guard
Mr Ryszard GARBARZ	Deputy Director of the Prevention and Road Traffic Bureau, Main Police Command
Mr Krzysztof ŁASZKIEWICZ	Human Rights Plenipotentiary of the Main Police Command
Ms Krystyna GĘSIK	Control Bureau of the Main Police Command

##### **Prosecutor General's Office**

Ms Marzena KOWALSKA	Deputy Prosecutor General
Mr Zbigniew GÓRSZCZYK	Director, Organised Crime and Corruption Department

**Office of the Human Rights Defender**

Ms Irena LIPOWICZ	Human Rights Defender
Mr Ryszard CZERNIAWSKI	Deputy Human Rights Defender
Ms Katarzyna ŁAKOMA	Director of the Administrative and Economic Law Team
Mr Dariusz ZBROJA	Deputy Director of the Criminal Law Team
Ms Justyna Róża LEWANDOWSKA	Director of the National Preventive Mechanism (NPM)
Mr Marcin MAZUR	Deputy Director of the NPM

**B. Non-governmental organisations**

Helsinki Foundation for Human Rights