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Response

of the Polish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Poland

from 5 to 17 June 2013

The Polish Government has requested the publication of this response. The report of the CPT on its June 2013 visit to Poland is set out in document CPT/Inf (2014) 21.

Strasbourg, 25 June 2014

List of abbreviations:

CF – correctional facility / correctional facilities

ECHR –European Convention on Human Rights,

ECrHR – European Court of Human Rights,

EHDP - establishment for holding detained persons or persons in need of sobering-up

EMS – electronic monitoring system,

EPC – Act of 6 June 1997 – the Executive Penal Code,

HRD – Human Rights Defender (Ombudsman),

hs – healthcare service,

MJ – Ministry of Justice,

mor – means of restraint

NPM – National Preventive Mechanism,

OPCAT – Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,

PC – Act of 6 June 1997 – the Penal Code,

PEC – Police establishment for children,

PPC – Act of 6 June 1997 – the Penal Procedure Code,

PS – Prison Service

RP – remand prison/remand prisons

Report of the Polish authorities for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The Polish authorities would like to express their thanks to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment for submission of the Report which is a result of a periodic visit carried out in Poland on 5 – 17 June 2013.

The Polish authorities fully appreciate the activity of the Committee within the scope of raising standards of functioning of state institutions housing persons deprived of liberty, and standards of treatment of such persons. They also express a will of fulfilment, as far as possible, of post-visit recommendations.

This reply of the Polish authorities follows the layout of the Committee's Report, according to the recommendations included therein.

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);

The Government of Poland, since the time of ratification of OPCAT in 2008, has been undertaking actions aimed at providing the National Preventive Mechanism (functioning as a separate unit in the Office of HRD) with a possibility of effective actions, in particular through ensuring its full independence, including financial independence, as well as a possibility of exercising all the rights stipulated in OPCAT.

As far as the rights stipulated in OPCAT are concerned (in particular with regard to access to all detention centres and persons who are held therein, conduct of talks with such persons in private and access to documents), representatives of NPM may exercise them in practice.

Meanwhile, as far as financial issues are concerned, for the purpose of ensuring the financial independence of NPM from the Government, as required by OPCAT, the funds necessary for the fulfilment of the tasks thereof are transferred from the budget which is at the disposal of HRD, and their value is each time individually determined by the Parliament.

In 2008, the whole budget of HRD amounted to nearly PLN 32 million. In the middle of 2008, HRD obtained an additional amount of PLN 426 thousand for the activity of NPM from the budgetary reserves (the costs of financing of NPM were not taken into account in the state budget for 2008 due to the fact that the OPCAT ratification procedure ended in 2007). This occurred at the initiative of MJ and it constituted a departure, justified in the opinion of the Government, from the general principle of independence of NPM. In 2009, the whole budget of HRD amounted to more than PLN 33 million, and an additional amount of PLN 1.4 million was transferred to HRD from the budgetary reserves for the activity of NPM.

The allocations for HRD within the state budget amounted to:

- for 2010 - the amount of PLN 33.6 million,
- for 2011 - the amount of nearly PLN 35.5 million,
- for 2012 - the amount of PLN 38 million (PLN 36.5 million of this amount was expended)
- for 2013 - the amount of PLN 39 million,
- for 2014 - the amount of nearly PLN 39.2 million.

Despite the fact that the funds for NPM grow, HRD notes that they are insufficient. However, this state of affairs is a result of unfavourable budgetary situation of the Polish State, results from the economic crisis pertaining for the past few years. The consequence of this situation is limitation of the expenditure of the State, affecting the funds transferred for financing of the functioning of many institutions, including HRD.

Police

Preliminary remarks

requests for information

- 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 after a court decision has been issued, pending their transfer to another institution.

On 2 January 2014 an amendment of the Juvenile Act entered into force. The new regulation stipulates a 5-day limit for holding juveniles in a police establishment for children, and during this time a child must be placed in an appropriate foster family, institution, centre or shelter. A decision on placement of the child in PEC is taken by the court.

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);

The Police, for the purpose of prevention and combating incidents of ill-treatment of detained persons, issues reminders, on an on-going basis, during official briefings of the management force, during central, regional briefings and briefings of the police force, at all administrative levels, to police officers that all forms of ill-treatment of persons deprived of their liberty (including verbal abuse) are unlawful and will be punished accordingly. Also circulars distributed among all organizational units of the Police remind police officers that there is no acceptance for ill-treatment of persons deprived of their liberty by police officers, that such conduct will be punished and that penal sanctions may be imposed in case of such conduct.

Moreover, within the Early Intervention System, each Police unit receives a newsletter describing cases of improper conduct of police officers towards detained persons.

Any information concerning cases of torture or ill-treatment of persons detained by the Police is an object of interest of plenipotentiaries for the protection of human rights, operating within the structures of the Police. One of the forms of reacting to such notifications (in addition to penal legal and disciplinary actions) is constituted by organizing workshops for police officers from the unit where such breaches might have occurred.

Moreover, the Police implements a number of educational actions for the purpose of increasing the awareness and sensitivity of police officers in the area of respecting human rights, and, most of all, respecting a right of each person respect of his/her dignity. Since 2011, workshops have been conducted for managerial staff, entitled “Human rights in Police Administration”, and Police schools use a specialised guidebook entitled “To serve and to protect”. In 2013, in co-operation with, *inter alia*, HRD, an educational publication was issued for police officers, entitled “Man first. Anti-discriminatory actions in Police units”, where emphasis is placed on practical methods of solving difficult situations which may be encountered by police officers during their day-to-day service. The guidebook was distributed in all Police units in the quantity of approx. 4000 units, and its electronic version is available on Police websites.

Moreover, there is a number of mechanisms which is aimed at ensuring proper conduct of police officers. Units operate within the structures of the Police which are responsible for supervision of this formation, although the process of detecting irregularities in the operation thereof is also conducted by external institutions.

The former ones include the Control Office of the Main Police Headquarters and control departments at other Police units, which are established to react to incidents of irregularities in the operations of the Police force. On the other hand, the Office for Internal Affairs at the Main Police Headquarters and territorial administrations are obliged to react in matters of offences committed by police officers. Ombudsmen for service discipline monitor the compliance with the rules of conduct. Moreover, in 2004, a police network of ombudsmen for the protection of human rights was established. The internal control system is supplemented by the Early Intervention System established in 2012.

HRD, on the other hand, is an institution independent of the Police. It is provided even with unconfirmed information regarding any instances of violation of law by police officers. The National Prevention Mechanism also operates at HRD and its roles include, for instance, the visiting of Police detention centres. The Prosecution Office is another important body reacting to violations of law by police officers and conducting independent inquiries in matters of such offences.

- *"whistle-blower" protective measures to be adopted (paragraph 24);*

The Police has not adopted any specific procedure of protection of the so-called whistle-blowers because, so far, no need has been detecting of implementing such mechanisms. To date, no instances have been noted of any notifications submitted by police officers informing of any violations of law that they require protection due to ostracism or any physical threats.

An obligation of the police officer to react in the event of detecting any violations of law by other police officers constitutes a legal obligations, and his/her failure to comply therewith may entail penal and disciplinary liability, and police officers are regularly and categorically reminded thereof. In each such situation, a police officer may report the relevant information to the Office for Internal Affairs at the Main Police Headquarters responsible for combating crimes committed by police officers.

- *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).*

Penal proceedings against police officers may never be conducted by the Police, and must always be conducted by a prosecutor. Thanks to such regulations, information about possible ill-treatment by a police officer is verified by an independent body - the Prosecution Office. In addition, in order to ensure even a higher level of objectivity, what is practised in such situations is the transfer of the matter to an organizational unit of the Prosecution Office other than that having jurisdiction for a given Police unit.

The General Prosecution Office monitors penal proceedings concerning all offences committed by police officers, including, *inter alia*, offences consisting of the abuse of people in order to force testimonies and the abuse of persons deprived of their liberty. In each Regional and Appellate Prosecution Office a co-ordinator was appointed for the affairs concerning offences committed by police officers, whose duty is to monitor and supervise such inquiries. Such prosecutors co-operate with the Office for Internal Affairs operating within the structures of the Main Police Headquarters, which is responsible for combatting offences committed by police officers.

Moreover, the Chief Commander of the Police obliged Commanders of Provincial Police Department and the Commander of Metropolitan Police to impose an obligation on their subordinate police officers to immediately provide prosecutors with any information indicating a possibility of occurrence of incidents of ill-treatment of persons detained by the Police. The Chief Commander of the Police also obliged the said commanders to increase supervision of the contents of official notes and reports prepared in connection with injuries suffered by persons held in detention rooms and complaints lodged by detained persons. Police officers were also reminded of their duty to undertake actions specified by law in the event of receipt of any such information.

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);

In the case of D, as a result of notification of the Commander of the District Police Department Warsaw VII, the District Prosecution Office for Warsaw - Praga Południe conducted inspection proceedings. It was established that D, on 17 March 2013, in EHDP at 22 Umińskiego Street in Warsaw, while entering the toilet, suddenly turned around when the police officer was closing the door behind him. The closing door hit the head of D and, in consequence, the latter suffered a head injury and was transported to hospital. After dressing the wound, the patient was released with recommendation of a surgical examination.

[*] 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.

In the course of the disciplinary proceedings conducted by the Police, the police officer was punished with a penalty of a reprimand for a violation of a duty to respect human rights and for leaving D for a few seconds without any supervision, in the corridor of EHDP. The District Prosecutor for Warsaw - Praga Południe refused to institute any inquiry in this matter because the act did not bear the characteristics of a prohibited act. The decision is final.

In the case of E, upon the receipt of the comments of CPT in this matter, on 19 March 2014, explanatory activities were undertaken at the Municipal Police Department in Bydgoszcz. In the course thereof, it was established that D's face was hit by another detained person, that E was provided with medical assistance in hospital, and then he was placed in a separate cell. E was also advised by police officers of a possibility of reporting the incident of violating his personal inviolability by a co-detained person.

- clarification of the case of F[*], together with information on any inquiry/investigation initiated and on its outcome (paragraph 19);

In the case of the events of 12 May 2014, an inquiry is currently pending at the Regional Prosecution Office in Warsaw (case ref. no. V Ds. 155/13). The inquiry concerns an abuse of authority by police officers (such as participation in an assault, addressing threats of commitment of an offence, unjustified use of direct coercive measures, failure to provide one's rank and name) in relations with two detainees. F is a witness in the matter, because he was present at the time of intervention by the police officers. The proceedings are pending.

- 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).*

[*] 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.

In 2013, the Police considered 802 complaints lodged in the category of Inhuman and Degrading Treatment and in the category of Violation of the Right to Freedom, and 18 of them were confirmed. 9 complaints were referred to competent prosecution offices, and two of them were brought to the court as a result of lodging a bill of indictment. In one of them, court proceedings are pending, and in the other, the proceedings were conditionally discontinued by the court. In some of those cases, parallel disciplinary proceedings were instituted, in consequence whereof 1 warning was issued of incomplete suitability for service in the position held, and disciplinary talks were conducted with 4 police officers. 2 proceedings are still pending.

In the case of the other 9 complaints, 2 disciplinary proceedings were instituted, one of which was discontinued due to the fact of retirement of the accused, and, in consequence of the other, the police officer was punished with a reprimand. A disciplinary talk without institution of proceedings was conducted with 1 police officer, and instructions were given to 5 other police officers.

During the first quarter of 2014, 8 complaints were confirmed. In consequence of consideration thereof, in one case a warning was issued of incomplete suitability for service in the position held. 1 police officer was considered guilty of a breach of official discipline, but no penalty was imposed, disciplinary talks were conducted with 3 police officers and one talk was conducted for the purpose of giving instruction. 2 proceedings are still pending.

Notwithstanding disciplinary actions, in 3 cases, complaints were referred to competent prosecution offices (cases are pending).

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 Police recognizes the importance of notification of close relatives or other persons of the fact of detention. Currently, work is being conducted on modification of the form of report on detention in connection with an amendment to the provisions of the PPC. Such modification includes, among others, a possibility of noting information in such document regarding the way of fulfilment of the detained person's request for notification of his/her relatives of his/her detention.

- 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);

Poland notices a problem connected with the introduction in the national legal system of regulations establishing a common and coherent system of free legal aid available during the pre-trial stage, including aid for persons detained by the Police who are not in a position to cover the costs of services rendered by a professional representative. At present, analytical work is being conducted at MJ in this field, in particular with regard to free legal aid at the pre-court stage and with regard to establishment of entities which would take decisions on granting such free legal aid. The role is being considered which could be served in the free legal aid system by professional self-governing bodies of legal counsels and attorneys-at-law, as well as by the local self-government. The concept of providing authorized persons with vouchers for a certain number of legal advice sessions is also taken into account, depending on the nature and degree of complexity of the case. At the same time, it should be noted that due to the development of the conceptual work, the shape of the solutions under discussion may change.

- 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);

According to the provisions of the Regulation of the Minister of Justice of 13 September 2012, it is the doctor performing the examination who takes a decision on whether or not a police officer should be present in the course of examination of a detained person. The examination of a detained person is conducted in the premises of the Police unit or at the

nearest medical establishment suitable from the point of view of the condition of health of a given person. If the examination is conducted in the premises of the Police unit, it is conducted out of the reach of monitoring and without the presence of any third parties. At the same time, it should be noted that the Police has not noted any complaints of detainees regarding the method of conducting such examination.

- *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);*

The course and results of medical examination conducted at the EHDP is documented by the doctor in a book of medical visits. Information contained therein is of significant importance for the security of the persons who are inside, because it includes, among other things, recommendations regarding *future method of treatment of the* examined detainee, including information about prescribed medications and dosage thereof, as well as an opinion of the doctor regarding advisability of continued detention of the examined person at the detention centre. For this reason, police officers who are on duty in the detention centre must hold special authorization to have access to the medical documentation of detained persons or persons brought for the purpose of sobering-up. A right of access to such documentation is also vested in entities authorized thereto by law, e.g. penitentiary judges visiting the premises for the purpose of supervision and evaluation of the level of medical care of detainees. Moreover, authorization to have access to the official documentation may be granted to entities which hold a relevant consent from the Chief Commander of the Police, such as non-governmental organizations acting for the benefit of protection of rights of persons deprived of their liberty. Such authorization was obtained by, for instance, representatives of the Helsinki Foundation for Human Rights. However, access of such entities to the medical documentation of a detained person is possible only upon the obtainment of a prior written consent of such person.

The binding provisions do not directly regulate the issue of storage of the book of medical visits. Nevertheless, such book should, just like any other official documentation, be stored in a manner preventing access of unauthorized persons to information contained therein.

Additional safeguarding of confidentiality of medical information is guaranteed by a duty of respect for official secrecy imposed on each police officer.

- 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);

The aforementioned data concerning the condition of health of the detained person, including the data which may indicate instances of ill-treatment, are included in the relevant documents. Draft documents drawn-up in connection with the conducted examination are specified by the provisions of law. One of such documents is the "Medical Certificate", where a doctor, on the basis of the conducted examination, determines that there are or there are not medical counter-indications for detention of a given person in the EHDP. The doctor may also specify his/her recommendations concerning the administration of medications and their dosage.

Meanwhile, the book of medical visits specifies the date and time of examination; the first and last names of the examined person or of the person given medical aid; the age of the person; reasons for the examination or giving medical aid; result of the examination or the scope of the given medical aid, or recommendations as to the future method of treatment; information about prescribed medications and methods of their dosage; details concerning advisability of continued detention of the person in the establishment; a legible signature or stamp of the person conducting the examination or giving the medical aid.

According to the binding regulations, in the event of a person who has visible bodily injuries, a document required in order to admit the person to the detention centre is an official note (or a report) specifying the circumstances of occurrence of such injuries, signed by the police officers escorting a given person. Such person should mandatorily be subjected to medical examination even before he/she is admitted to the detention room.

The binding legal solutions concerning medical examination of persons detained by the Police constitute a guarantee of maintenance of transparency of actions of this force, and any type of doubts concerning the reasons of occurrence of injuries, due to the fact of their documentation, may be subjected to clarification proceedings.

Police officers are obliged to accept requests, motions and complaints from persons detained in the detention room and transfer the same to their superiors or other designated officers.

As far as the second part of this recommendation is concerned, the Police is obliged to immediately provide the competent prosecutor with information concerning the possibilities of commitment of acts of ill-treatment by police officers. The Chief Commander of the Police obliged heads of Police units to increase supervision of the contents of official notes (reports) drawn-up in connection with injuries of detained persons and to conduct a wider analysis of the lodged complaints.

It should also be emphasised that both the detained person himself/herself and the representative thereof have a right to review the files of the conducted proceedings.

- 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 binding legal regulations guarantee persons detained by the Police a wide scope of access to medical care. The provisions of the Regulation of the Minister of Internal Affairs of 13 September 2012 regarding medical examination of persons detained by the Police stipulate access to medical examination each time: (i) the detainee declares that he/she suffers from diseases requiring regular or periodic treatment, an interruption whereof would lead to a threat of life or health, (ii) any injuries are visible on the detainee's body or (iii) the detainee demands medical examination. At this point it should be emphasised that in all cases, the Police is absolutely obliged to transport the detainee to the nearest centre offering medical aid, and the justification of the examination may not be undermined by police officers or by any other entities.

What is more, pregnant women, breastfeeding women, persons suffering from contagious diseases, persons suffering from mental disorders or juvenile persons who have consumed alcohol or another substance having a similar effect are subjected to medical examination after their detention by force of law. In the event of specialised medical examination, the general regulations concerning the rendering of medical services apply, and access to such services is possible only upon the issuance of an appropriate referral by a GP who has the first contact with the person.

The aforementioned provisions guarantee detained persons a sufficient degree of medical care, and therefore the Government of the Republic of Poland does not share the position of CPT regarding a need of introducing regulations which would provide for access of detained persons to any doctor of his/her choice. Such a solution would give rise to significant organizational complications. It should be emphasised that examination of the condition of health of a detained person is conducted at each request of such detainee, and the evaluation of the condition of health may be performed only by a doctor who is capable of determining a need of further examination. Such evaluation is made solely based on the medical criteria, taking into account the welfare of the detainees. GPs who have the first contact with detained patient are civil employees, who do not have any organizational ties with the Police, and therefore, there may not be any doubts as to the objectivism of the conducted examination.

- 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 [order the drawing-up of] 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 provisions of PPC and the Law on the Police regulate in detail the rights and duties of police officers in the course of detention of persons. They stipulate that a detained person should be immediately notified of the reasons of detention and of the rights such person has, including the right of using the services of an attorney-at-law, and that the detained person should be heard.

The instruction, due to the specific nature of apprehension (it often happens in the street, sometimes it is combined with a necessity of application of direct coercive measures), is delivered orally and covers mainly procedural issues, including a right to contact a lawyer or a doctor, and a right to lodge a complaint against the detention. Then, when the person is already at the police station, a report on detention is drawn up, and the text thereof confirms in writing the fact of apprehension and the accompanying circumstances. In the report on the detention, the detained person confirms by his/her signature that he/she has been advised of his/her rights and duties. The detainee also places a statement on his/her condition of health and whether or not he/she intends to exercise a right to contact a doctor. The detained person is provided with a copy of the report on detention, and this fact is also confirmed by the detainee by means of his/her signature. Therefore, this procedure meets the requirements formulated by CPT.

The instructions currently used by the Police have been developed on the basis of experience and come down to quotation of the relevant provisions of PPC – therefore, they may be fairly difficult to understand by the detained person. In order to eliminate this difficulty and adapt the instruction to the requirements of Directive 2012/13/EU regarding the right to information in penal proceedings, in the coming months the Minister of Justice will issue drafts of clearly-formulated instructions which are fully comprehensible for detainees. This will contribute to unification of practice and will guarantee protection of detained persons' rights.

It should also be indicated that persons admitted to the EHDP confirm the reviewing of the rules of their stay at the EHDP by placing their signatures on the relevant document. The rules contain information about, *inter alia*, rights of detainees, living conditions and binding rules of conduct. A copy of this document, including a list of institutions operating in the sector of protection of human rights, is placed in the rooms for detained persons or for persons escorted for the purpose of sobering-up.

- 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).

The Police implements the recommendation of CPT.

According to the Juvenile Act, the state authorities must mainly follow the welfare of the juvenile. The Police fully respects this principle and is determined in application thereof in contacts with juveniles. Additional guarantee is constituted by supervision of the Police's actions by family courts.

Questioning of a juvenile by the Police takes place in the presence of parents, guardian, defence counsel of the juvenile, and if this is impossible at any given time to ensure their presence - of another designated person. In justified cases, where a suspicion arises that the juvenile has committed an offence, the Police may detain him/her, and then place him/her in PEC, if a justified concern arises that the juvenile will hide or conceal traces of commitment of the offence, or when it is impossible to determine the identity of the juvenile.

A detained juvenile is immediately informed about the reasons of detention and about his/her rights. The Police immediately notifies the juvenile's family or guardian of detention, and in addition, immediately, but no later than within 24 hours of the time of detention, notifies the family court of detention.

comments

- pending the entry into force of amendments to the Code of Criminal Procedure (PPC) 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;

requests for information

- in due course, information on the entry into force of the amendment to the PPC 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);

The situation which raised CPT's concerns has been eliminated.

On 20 November 2013, a relevant amendment to the provision of Art. 245 of PPC entered into force, which – as failing to indicate the grounds justifying the right of the police officer conducting the detention procedure to be present during the conversation of the detainee with his/her lawyer – was considered by the Constitutional Tribunal to be in contradiction with the Constitution.

The current wording of the provision ensures the consistency thereof with the Constitution:

Art. 245. § 1.

A detained person, at his/her request, should be immediately provided with a possibility of establishment, in any available form, of contact with a lawyer, as well as an opportunity of conducting a direct conversation with such lawyer, in exceptional cases, justified by special circumstances, the detaining officer may reserve the right to be present during such conversation.

- the main custody register at the Bydgoszcz Municipal Police Department contained a number of errors and omissions (paragraph 33).

After the visit of CPT, the Control Department of the Provincial Police Department in Bydgoszcz conducted an inspection of the EHDP located at the Municipal Police Department in Bydgoszcz. The inspection did not reveal any errors and omissions in the electronic register of detained persons or persons escorted for the purpose of sobering-up.

- 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).

Amendments to the Juvenile Act entered into force on 2 January 2014. A new provision was introduced obliging the Police to immediately advise a detained juvenile of reasons of detention and of his/her rights, and in particular of his/her right to contact a lawyer, to refuse to testify or answer individual questions and a right to lodge a complaint regarding any activities violating his/her rights. Moreover, the Police is obliged to provide a detained juvenile with an opportunity of contacting his/her parents, guardian or lawyer.

The introduced amendments fully comply with international standards or protection of child's rights to defence and legal aid.

The current wording of the provision of Art. 32g § 3 of the Juvenile Act:

A detained juvenile shall be immediately advised of reasons of detention and of his/her rights, and in particular of his/her right to use the services of a lawyer, to refuse to testify or answer individual questions and a right to lodge a complaint regarding any activities violating his/her rights. A detained juvenile should be immediately questioned. A detained juvenile shall be provided, at his/her request, with an opportunity of contacting his/her parents, guardian or lawyer.

Conditions of detention

recommendations

- all persons held for 24 hours or more in police custody to be offered outdoor exercise every day (paragraph 34);

The construction of a courtyard next to premises designated for detained persons or persons escorted for the purpose of sobering-up would entail high financial expenditure and does not seem justified, considering short duration, which does not exceed 72 hours, of their stay in such premises.

- 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);

According to the ordinance of the Chief Commander of the Police, a manager of a given unit organizes the service in such a manner as to ensure that at least one officer is present at all times, however those regulations do not specify the gender of such officer. Nevertheless, persons admitted to the establishment should be inspected, as far as possible, by officers of the same gander. In practice, if no female police officer is on duty in a given establishment, for the purpose of inspection of the admitted woman, another female police officer who is on duty in the police unit or the officer escorting the detained person is called.

- 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);

The provisions of law require police officers and employees performing tasks in detention rooms to leave a certain number of items outside, for instance a metal, individual identification badge, which could be used by the detained person to harm himself/herself or other persons.

However, other methods are provided for obtaining information by a detained person regarding the details of the police officer.

Firstly, a duty of the officer to provide his/her rank, first name and last name derives from the Act on Police and the relevant Regulation of the Council of Ministers, according to which a police officer, while performing official functions, is obliged to show his/her official ID card in such a manner that the person concerned is able to read and note down the number thereof, the authority which issued the card, and the name of the police officer. Those provisions contributed to the establishment of a standard and good practice of conduct of a police officer in each contact with citizens.

Secondly, certain elements of the police officer's uniform have sewn-on tags with names, Thirdly, the identity of a police officer is possible to be determined on the basis of the official documentation kept at a given EHDP.

- *ways to be sought to address the problem of CCTV coverage in bedrooms and showers in the Bydgoszcz and Warsaw PECs (paragraph 38).*

The binding provisions, contained in the relevant Regulation of the Minister of Internal Affairs, provide for the equipment of PEC with facilities used to monitor and register image. They also provide for installation of cameras in, *inter alia*, bedrooms and sanitary rooms for juveniles, however, in order to monitor the parts of the sanitary room which are used for the purpose of performing activities connected with personal hygiene, in particular showers and toilets, cameras should be used which are equipped with a function preventing the showing of intimate body parts and performance by a juvenile of intimate physiological activities.

In PEC in Bydgoszcz, two female police officers are employed, which means that there is no possibility of a female police officer to be present during each shift. Moreover, in sanitary rooms for boys and girls, where showers, toilets and a separate space with a wash basin and a space serving as a changing room are located, there has never been a visual monitoring system installed. All showers have curtains, and all toilets have doors in order to ensure privacy and full intimacy. It should be indicated that even though camera sets are installed in bedrooms in PEC, juveniles perform all their hygienic and physiological activities in sanitary rooms, which are not covered by the visual monitoring system.

On the other hand, in PEC of the Escort Department of the Metropolitan Police Department in Warsaw, there is no monitoring camera system in sanitary rooms and bathrooms, such cameras are installed however in bedrooms and corridors. There are 5 female police officers employed, which means that instances where no female police officer is on duty during any shift are very infrequent. Notwithstanding the above, the Manager of that Establishment for Children was instructed to undertake actions aimed at ensuring the presence of a female police officer on duty during each shift, also by delegating female police officers from other organizational units.

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);*

Access to natural light in the EHDP in Szczecin is partly affected by the fact that the windows overlook a yard surrounded by the buildings of the Provincial Police Department in Szczecin. Those windows have matte glass which is penetrated by natural light, so there is no need of using artificial lighting during the day. Nevertheless, in December 2013, the detention rooms at the Municipal Police Department in Szczecin were visited by a penitentiary judge of the Circuit Court in Szczecin, who did not detect any irregularities.

Moreover, in 2011, in all detention rooms at the Provincial Police Department in Bydgoszcz, the ventilation system was replaced with a system which provides for threefold exchange of air in the room. Additionally, if a need arises, an electric ventilation system may be turned on. In connection with the remarks formulated by CPT in March 2014, an inspection was conducted of rooms at the Municipal Police Department in Bydgoszcz, during which a broken ventilator was detected in one of the rooms. The defect will be removed by 30 June 2014. On the other hand, as far as the Provincial Police Department in Lublin is concerned, at the turn of 2013 and 2014, the gravitation ventilation was improved.

- the bedrooms at the four police establishments for children (PEC), in Bydgoszcz, Lublin, Szczecin and Warsaw had a somewhat austere appearance (paragraph 37);

The appearance of PEC results from a necessity of ensuring the safety of juveniles placed therein, which is the main duty of police officers serving in those establishments, and which is to be ensured by application of the provisions of the relevant Regulation of the Minister of Internal Affairs. Any items constituting the equipment of the rooms must be secured in such a manner that it is not possible to use them in any way which constitutes a threat to health or life or which facilitates escape, and this may give an impression of being austere.

- the Polish authorities are invited to equip the exercise yards in the four PECs visited by the CPT with a shelter against inclement weather (paragraph 37).

The recommendation of CPT was analysed, however in the nearest future there are no plans for installation of any shelter against inclement weather. In order to provide juveniles with physical activities also in the event of inclement weather, the manager of the establishment may take a decision on conducting physical activities in the playroom.

<u>requests for information</u>

- CPT would like to obtain 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).

According to the Investment Programme prepared for the Municipal Police Department in Lublin, renovation work inside the establishment, including replacement of doors, is planned for 2016-2018. The implementation period may be shortened in the event of obtainment of additional funds.

Meanwhile, in the EHDP, the solutions applied at the Metropolitan Police Department provide for full privacy of performing physiological functions. Police officers supervising such activities do not have any possibility of seeing intimate body parts of detained persons.

In the case of Warsaw - Białołęka Police Department, as far as it is financially possible, activities will be undertaken aimed at reconstruction of the sanitary premises and construction of walls. *Ad hoc* solution will consist of equipment of the said rooms with curtains for the purpose of increasing the comfort of detained persons. There are no plans, however, for replacement of entrance doors to bathrooms, which is dictated by a necessity of ensuring proper supervision of detained persons. Moreover, schedules of duty hours of police officers will be designed in such a manner as to ensure the presence of female police officers at the time of admission of women to those premises.

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).*

The concern of CPT regarding the general nature of the aforementioned provisions was reflected by the judgement of the Constitutional Tribunal which concluded that they were inconsistent with the Constitution. Therefore, on 1 January 2014, an amendment entered into force to the Act on the Promotion of Sobriety and the Fight against Alcoholism, taking into account the judgement of the Constitutional Tribunal, and which introduced detailed conditions providing for application of direct coercive measures against an intoxicated detained person, as well as a provision authorizing a competent authority (the Minister of Health) to issue a regulation and specifying the scope of matters referred for regulation by means of such act, as well as guidelines concerning the text of it. Therefore, currently binding provisions are specific enough, and the rules of conduct with regard to escorted persons, as well as the latter’s rights and duties are regulated by law.

Currently, legislative work is being conducted on adoption of the said regulation of the Minister of Health. Its draft has been referred to public consultations.

Prison establishments

Preliminary remarks

- 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);

- 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 m² per inmate in multi-occupancy cells and at least 6 m² in single occupancy cells, not counting the area taken up by any in-cell toilet facility (paragraph 42);

Current state

Prison overcrowding has for a few years been the biggest problem of the Polish penitentiary system. The Polish authorities take substantial efforts to solve it.

Requirements as to the minimum area of a residential cell are set out in EPC. Standard residential area per one inmate is defined as 3 m^2 and as of today this is the maximum area to be assured by the Polish state to prisoners. Nevertheless, Poland will take all effort to raise the standard to the level of 4 m^2.

In 2013 the Prison Service operated 156 RP and CF as well as 37 external wards with a total of 87,311 places in residential wards. As of 31 December 2013 there were 78,884 prisoners. Relative to 2012, the number dropped by 5,050 people, i.e. 15%. As of 30 April 2014, the ratio of prisoners to full capacities of residential wards in penitentiary establishments was 93.4 % and has remained stable for a few months.

1. Actions taken with a view to decreasing prison overcrowding

A vast number of activities have been taken since 2000 to decrease the population of penitentiary establishments, including *inter alia*:

1. Acquisition of additional residential rooms,

2. Introduction of the electronic monitoring system (EMS). The possibility of serving the penalty of deprivation of liberty outside a penitentiary establishment under EMS was introduced into the Polish legal system in 2007, initially for a limited time. In 2013 this system of punishment was introduced permanently. Its present capacity is 7,500 people and plans are made to increase it. The number of people under EMS rose systematically: in 2009 EMP was applied with respect to 35 people, in 2010 – to 615, and in 2013 – to 27,653. Furthermore, the number of prisoners released from RP and CF and subjected to EMS was 13,651 (2009–2013). Poland ranks second in Europe as to the number of monitored individuals.

3. Encouraging directors of penitentiary establishments to more often file (when appropriate) applications for conditional release (parole) after a sentenced individual has served at least half of the penalty.

4. Introduction into the EPC since early 2012 of the principles that a substitute penalty of deprivation of liberty and a substitute penalty of remand in custody is applied as a last resort in the event of an unpaid fine. The deferred execution of the above penalties offers the sentenced individuals a chance to pay the fine, which as a consequence may relieve them from the obligation to serve a substitute penalty and thus limit the number of people deprived of liberty.

5. In September 2013 a few minor offences previously carrying the penalty of deprivation of liberty were re-qualified as misdemeanours carrying the penalty of remand in custody for a maximum period of 30 days, the penalty of limitation of liberty or a fine (e.g. riding a bicycle under the influence, theft of an object worth less than PLN 420). It was recognised that the penalty of deprivation of liberty (a minimum of 1 month) is ill-suited to the gravity and extent of the social consequences of the offences. This will limit the numbers of people remanded in custody for petty offences.

6. Introduction of amended principles of ruling on and executing the penalty of limitation of liberty with a view to increasing its use via, *inter alia*, extending the number of entities offering employment to prisoners and the State Treasury covering partial employment costs (costs of medical examinations and insurance of employed sentenced prisoners).

7. Initiation of all kinds of pro-social activities of prisoners, held when possible on CF premises but first of all outside these premise to alleviate the inconvenience of overcrowding.

Envisaged amendments

Work is in progress now on the government draft amendments of the PC and certain other laws. The draft includes solutions which aim at increasing the efficacy and extending the use of non-isolation penalties, including the use of EMS. The draft law envisages that (when possible and justifiable) the sanctions of limitation of liberty and fine would have primacy over the penalty of deprivation of liberty (including a conditional suspension of its execution) and a broader application of EMS in the execution of penalties, sanctions and preventive measures. Work on the draft law is at present carried out in the Council of Ministers.

- *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);*

Statistics show a very significant and steady decrease in the number of both applications filed by public prosecutors for remand in custody and pre-trial custody. The number of such applications in the period 2005–2012 dropped by 43% (from 38,519 filed in 2005 to 21,984 submitted in 2012; a drop in 2012 relative to 2011 was nearly 12%). Furthermore, in the above seven-year period the number of judicial decisions on suspects' remand in custody dropped by 45% (relative to the statistics for 2011; in 2012 the drop was nearly 11%). The above figures indicate the efficacy of the activities taken by MJ with a view to limiting remand in custody exclusively to cases when it is absolutely necessary for securing the adequate course of proceedings. It is in order to point out the following:

- MJ administrative supervision over the application of remand in custody has taken place since October 2008. Presidents of appellate courts were then obliged to supervise all penal proceedings taking place in courts within their appellate districts where the aggregate duration of remand in custody exceeds 2 years, indicating the obligation of meetings the standards of use of this sanction arising from international standards. Furthermore, in 2013 the Minister of Justice took over supervision of similar cases where remand in custody is applied for over one year;

- an amended PPC will enter into force on 1 July 2015; it prohibits the use of remand in custody in cases subject to a penalty not exceeding 2 years of deprivation of liberty (possible earlier) and introduces a principle that the very fact that a given offence carries a stringent penalty cannot constitute (unlike at present) the sole and routine reason for the application of this isolation sanction;

- The National School of Judiciary and Public Prosecution, subordinate to the Minister of Justice, is responsible for training programs for judges and public prosecutors, including legal apprentices, and holds regular trainings to disseminate international standards concerning *inter alia* remand in custody. For instance, in 2012 periodic trainings were begun concerning the violations of the ECHR most frequently recognised by ECrHR in cases against Poland concerning the operation of the justice system, including excessive length of remand in custody. Around 800 judges have attended trainings since 2012. Ultimately, over the 5–7 year period all judges of courts of common jurisdiction are to attend relevant trainings.

- *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);*

In 2013 penitentiary establishments held a total of 7,626 reintegration programs catering to various groups of remand and sentenced prisoners in the following areas: aggression and violence prevention, substance abuse prevention, prevention of crime-related attitudes, occupational activation, social and cognitive skills enhancement, family integration, ecology, culture and education, sports etc. These programs were attended by a total of 134,495 prisoners, including 2,342 remand prisoners.

Furthermore, to the extent possible, the prisoners are given an opportunity to work. In 2013 an average of 25,327 remand and sentenced prisoners were employed each month in penitentiary establishments. 9,184 remand and sentenced prisoners (37% of the total) received remuneration for their work and 16,143 remand and sentenced prisoners received no remuneration. The employment rate of remand and sentenced prisoners was 38.8%.

Actions have been taken in recent years to enhance the variety of activities offered to inmates of CFs and RPs. In 2014, PS Director General extended special supervision over the manner of execution and frequency of cultural, educational and sports activities for remand prisoners held outside residential cells, finding the offer available earlier inadequate. Given the depopulation of penitentiary establishments, he moreover ordered the re-conversion of common rooms into residential cells to intensify the above activities.

The need to assure both an adequate course of criminal proceedings and order and security in penitentiary establishments by isolating accomplices to an offence and a large number of isolation groups hamper the organisation of leisure activities for individuals under pre-trial detention that would allow them “to spend a reasonable part of the day (eight hours or more)” outside their cells. Furthermore, individuals under pre-trial detention remain at the disposal of law enforcement, judicial and prosecutorial authorities, participating in pre-trial and trial proceedings, which limits their amount of free time. Nevertheless, the penitentiary authorities take action with a view to offering this group of inmates participation in the widest possible number of activities outside residential cells.

As regards the inmates in CF of semi-open and open regimes, they remain outside a residential cell and move about CF premises at a time and in places designated in the CF inner regulations.

- 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).

The fundamental principle of the Polish penitentiary system is to accommodate juveniles separately from adults. Such regulations are set out in the EPC and in relevant regulations of the Minister of Justice.

The Polish penitentiary system includes four CF regimes, *inter alia* CFs for juveniles. Their operation fulfils the principle of individual approach to juveniles as a category of prisoners of special significance. CFs for juveniles are tailored to sentenced prisoners under 21 years of age and an older prisoner can serve a sentence there only in justified cases. Relevant provisions allow an adult to serve a sentence in CFs for juveniles with his/her consent only on condition that the adult was not sentenced for a felony nor is considered "dangerous" and s/he displays a proper attitude and this situation is further justified by social reintegration reasons. A relevant decision is taken by the penitentiary board. An adult has the same rights as a juvenile.

In the case of individuals remanded in custody, if there are special educational reasons for accommodating an adult with a juvenile/juveniles, the adult, who has not served the principal penalty of deprivation of liberty and displays a proper attitude may be, upon his/her consent, accommodated in a residential cell with a juvenile/juveniles. Accommodation in residential cells takes into account the need to assure order and security in a RP, doctor's orders, psychological and rehabilitation aspects, the need to foster a proper atmosphere, and the need to prevent self-aggression and commitment of crimes of persons remanded in custody.

The above solutions allowing the accommodation of an adult with a juvenile/juveniles are used extremely rarely and in special situations that call for assuring safety to a juvenile prisoner or creating an environment conducive to the correction of his/her conduct – an alternative for an immature group of peers participating in the criminal subculture.

Staff of penitentiary establishments pay special attention to educational criteria to be met by remand and sentenced prisoners to be accommodated in one cell with a juvenile/juveniles. Practice shows that these are individuals with positive recommendations of expert psychologists and with a positive penitentiary, social and criminological outlook and with a stable family status.

Irrespective of the above, during the upcoming amendment of the EPC the Polish Government will consider the introduction of amendments corresponding with the CPT recommendation concerning separate accommodation of persons under 18 and adults.

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 question of ill-treatment of prisoners by staff of the Bydgoszcz RP and of Warsaw-Mokotów RP is monitored on an ongoing basis by the administration of the above penitentiary establishments. During daily briefings prior to commencing their job, custodial staff are sensitised and obligated to react to both incidents of improper conduct of staff towards the inmates and of the inmates towards staff. All staff members are aware of disciplinary and penal consequences for improper, degrading and inhuman treatment of prisoners. Furthermore, the management of penitentiary establishments controls the legality of staff dealing with prisoners during audits, inspections and visitations of wards.

In connection with the CPT recommendation:

- Bydgoszcz RP held in 2013 a training for custodial staff on the rights of persons deprived of liberty with a view to solving problems in relations between staff and prisoners. The above question is moreover addressed by trainings and workshops in 2014. The trainings are scheduled on three different dates to help all custodial staff to attend.

- at Warsaw-Mokotów RP in 2014 the question of improper conduct to persons deprived of liberty will be stressed during official staff briefings with respect to its non-compliance with binding legislation, including CPT standards, and relevant disciplinary and penal consequences.

- 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).

In connection with the CPT recommendation an additional training was held for staff of Szczecin RP dedicated to the prevention and combating inter-prisoner violence and intimidation. All penitentiary establishments hold programs aimed at preventing aggression and inter-prisoner violence; furthermore there are periodic trainings for staff who have direct contact with prisoners. This question is monitored by PS on an ongoing basis and relevant incidents are discussed and analysed without delay in penitentiary establishments.

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);

Exercises with units of the Polish Army took place at Warsaw-Mokotów RP within the framework of cooperation of penitentiary establishments with entities in charge of state external security. This was a one-off exercise which stemmed from the nature of the penitentiary establishment and was not a periodic form of PS training agenda. No other penitentiary establishments have held such exercises. The exercises were preceded by a series of logistical preparations and took place in the administrative section of the penitentiary establishment and in sections where remand prisoners do not live. The course of the exercises affected neither safety and security nor the adopted course of service in the penitentiary establishment. PS does not envisage a continuation of such exercises in penitentiary establishments.

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);

Under the Polish penal law, the criteria of assigning a person to the category of prisoners posing a significant social risk or a serious hazard to the security of a penitentiary establishment are set out in the EPC.

Persons allocated to the "N" category (hereinafter: "N" status prisoners) are by law accommodated in a designated ward or cell of a RP or a closed-regime CF in conditions offering enhanced protection of society and security of penitentiary establishments. The penitentiary board is an authority eligible for assigning a prisoner to serve the sentence in the above conditions; the penitentiary board furthermore reviews relevant decisions at least once every three months, analysing e.g. the presence or absence of reasons for allocating a person to the "N" category. Each decision is notified to the penitentiary judge (and in the case of a person remanded in custody – to the authority having jurisdiction over the prisoner), who may revoke such a decision should it be unlawful. Decisions of the penitentiary board on allocating a person to the "N" category and the review of this decision may be appealed by the prisoner to a court of law on account of their unlawfulness (Art. 7 EPC).

Frequent review of this category of prisoners guarantees a realistic assessment of the prisoner's status and helps establish if an enhanced protection system should be continued with respect to him/her. In the execution of ECrHR rulings, penitentiary boards were obliged to an especially profound, case-by-case analysis of the justifiability of the allocation decision and justifiability of the prisoner's continued allocation. Special importance is attached to the actual hazard posed by the prisoner and the incidence or absence of reasons justifying this allocation. The changes observed in prisoners' conduct are analysed more broadly.

A steady drop in the number of "N" status prisoners in recent years confirms the adequate operation of the allocation and review mechanism. In 2009 there were 337 prisoners of the "N" category, while in 2013 – 189, the lowest number since 1999.

Notwithstanding the above, the Ministry of Justice carries out work with a view to eliminating all provisions implying automatic designation and review of the "N" status.

- 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 m²;

- reduce the cell occupancy rates with a view to offering a minimum of 4 m² 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);*

According to EPC, the area in a residential cell assigned to a prisoner of the "N" category is no less than 3 m^2. The cell indicated in this recommendation also complies with the above requirements. Cells are fitted with a place for sleeping, have adequate hygienic conditions, adequate air inflow, adequate temperature, and lighting. No more than three "N" status prisoners can occupy one residential cell and they cannot be accommodated in a cell with other prisoners.

In line with the regulations in force, light intensity in a residential cell is identical to that of residential rooms in apartments, i.e. 100 lx, and in places designated for reading and writing 200 lx. In connection with the CPT recommendation, measurements of light intensity were carried out in all cells at Bydgoszcz RP and each time the result exceeded 200 lx.

By way of explanation: window blinds are used in closed-regime CF and in RP to assure the security of the establishment and to prevent illegal contacts of prisoners with one another and with the outside world, which contacts might affect security in penitentiary establishments and unlawfully impact the course of pre-trial proceedings (in the case of individuals remanded in custody). A decision on the use of blinds takes into account the location of the residential pavilion with respect to other buildings on the premises of the establishment and outside its walls. In connection with the CPT recommendation, Bydgoszcz RP will analyse the design of windows, in particular with a view to improving access to daylight and ensuring better ventilation.

Exercise yards are gradually, depending on the financial means available, fitted with roofs providing shelter in the event of inclement weather. This question is regularly monitored during audits of penitentiary establishments.

- 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);

Adult “N” status prisoners can choose the system in which they serve their sentence of deprivation of liberty, i.e. a system of programmatic impact or an ordinary system. In the ordinary system the prisoner may use types of employment and education as well as cultural, educational and sports activities available in the CF. No individual plans are developed for such prisoners aimed at providing appropriate mental and physical stimulation. Such a plan is developed in cooperation with the prisoner who has agreed to serve his sentence in the individual plan system. The plan assumes the prisoner’s active participation in social reintegration via execution of specific tasks aimed at the solution of the problems which triggered the crimes committed by him/her.

“N” status prisoners qualified for therapy (requiring specialist activities) are covered by individual therapy plans, preceded by a diagnosis containing e.g. a description of the causes of the disorders, the nature of the mental and physical condition, a description of the prisoner’s problems and assessment of the motives for participation in the therapy plan. An individual therapy plan defines the scope of activities conducted, their objectives, methods, and criteria of program implementation.

An individual stimulation plan and an individual therapy plan define methods and means for providing appropriate mental and physical stimulation to a prisoner.

“N” status prisoners are covered by penitentiary stimulation plans that are restricted because of their posing a serious social risk or a security hazard in penitentiary establishments. Furthermore, they are covered by penitentiary stimulation meant first and foremost to alleviate emotional tension and reduce aggressive or self-aggressive behaviour tendencies. Each prisoner, including dangerous ones, with symptoms showing a worsening of their mental state are provided psychological and psychiatric assistance. “N” status prisoners are furthermore covered by enhanced psychological supervision to alleviate the tension induced by isolation.

Polish prison authorities have developed principles of organisation and conditions of use of penitentiary activities with respect to “N” status remand and sentenced prisoners who are accommodated in conditions that assure an enhanced protection of society and security of the correctional facility. These solutions are meant to intensify and harmonise impact on dangerous prisoners, in particular to:

- prevent negative consequences of limited social contact through cultural, educational, sports, and social reintegration activities,
- take action to reduce stress and aggression levels,
- facilitate starting or continuing education (in particular to juvenile prisoners),
- take on employment (in the ward),
- participate in educational and prevention programs.

The CPT recommendations concerning individual plans aimed at providing appropriate mental and physical stimulation to dangerous prisoners have been taken into consideration and are put into practice in accordance with relevant legislation.

- 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);

Although any presence of bars is justified by legal provisions concerning precautionary measures, PS shares the opinion of the CPT that interviews and psychological consultations with “N” status prisoners should not be conducted through a cage-like structure. As a consequence, the binding regulations will be adjusted to eliminate the above practice.

- 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);

Upon analysis of the CPT recommendation, the Polish authorities concluded that compliance with it would not be justified.

"N" status prisoners, pursuant to the EPC, cannot use their own clothing and footwear. They receive a winter coat, winter cap, sweatshirt, and orange or red trousers. This is first and foremost justified by assuring security for staff and other prisoners. This colour of clothes allows an easier identification of "N" status prisoner and signals to other individuals that they must pay special attention when dealing with such a prisoner. No change of the colour of clothes of "N" status prisoners is currently envisaged.

- *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).*

Poland complies with the above recommendation.

The principles and procedures of strip searches of prisoners and other people in penitentiary establishments are set out in EPC and the regulation of the Minister of Justice on the protection of penitentiary establishments. Strip searches and checks of clothing and footwear are at all times conducted by PS staff in a room, in the absence of third parties and persons of the opposite sex. These activities are performed by people of the same sex, in a manner respectful of human dignity and in accordance with the principles of humanitarianism and rule of law.

PS staff at each stage (in all types of schools, during in-house trainings and during briefings) receive training on the principles and manner of conducting strip searches. Compliance with these principles is monitored on an ongoing basis by management of penitentiary establishments, commanders of shifts and PS administration.

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);*

Because of the limited size of premises and location of the penitentiary establishment in city centre, it is impossible to install additional outdoor exercise facilities for "N" status prisoners at Bydgoszcz RP.

At the Lublin RP installation of outdoor exercise facilities in yards for such prisoners is envisaged in the future, however at present the prisoners already have access to a stationary exercise bike in the common room.

- 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).

Poland complies with the above recommendation.

Visits for "N" status prisoners in all penitentiary establishments are allowed to assure direct contact with the visitor, unless there is a high security risk for the visitor or the prisoner has received a disciplinary sanction in the form of visits without direct contact with the visitor. In such cases decisions are taken by the director of the penitentiary establishment. With respect to "N" status remand prisoners, the course of a visit is specified in a visit permit by the authority who has jurisdiction over the remanded person.

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).

On 16 January 2014 a residential cell previously used by prisoners of the "N" status was converted into a common room for this category of prisoners.

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 m² of living space per prisoner in multi-occupancy cells; cells measuring some 6 m² 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);

As of 30 April 2014 there were 383 remand prisoners per the total capacity of 460 places at Bydgoszcz RP, which accounts for 83,3% of the capacity of the penitentiary establishment, taking into consideration the standard of 3 m^2 according to Polish law. At this point the Polish authorities represent that efforts will be made in all establishments to reach the 4 m^2 standard for one prisoner.

The penitentiary establishment will analyse the construction of windows with a view to improving access to natural light and ensuring better ventilation.

The CPT recommendations on the clean condition of cells are complied with. De-infestation of residential cells is carried out on an ongoing basis on request. Pursuant to the provisions of the regulation of the Minister of Justice on living conditions in RP and CF, bedding is changed every other week or more often, if and when necessary.

The renovation program will be continued. Bydgoszcz RP regularly and on an ongoing basis removes the faults of the call system. Work is in progress to fully partition in-cell sanitary annexes. In 2013 in-cell toilets were partitioned in 22 residential cells of the penitentiary establishment; 30 in-cell toilets will be partitioned in 2014.

- steps to be taken at Lublin Remand Prison to:

- reduce the occupancy rates with a view to offering a minimum of 4 m² 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);

As of 30 April 2014 there were 1,030 remand prisoners per the total capacity of 1,075 places at Lublin RP, which accounts for 95,8% of the capacity of the penitentiary establishment.

The penitentiary establishment will continue to renovate the older pavilions. The missing shower heads in the bathrooms of the RPs were installed. Analysis will be made of the possible changes in the structure of window blinds to increase access of natural light and offer prisoners a partial outside view by replacing the upper part of the blind with a transparent material.

At present the kind and amount of hygiene products assigned to prisoners by the administration of penitentiary establishments are regulated under a relevant regulation of the Minister of Justice, and cleaning products are provided in line with inner regulations of directors of penitentiary establishments. To improve the hygiene of prisoners and cleanliness in cells, as well as to harmonise these conditions in various penitentiary establishments, in January 2014 a new regulation of the Minister of Justice was issued on living standards of RP and CF (it will enter into force on 14 August 2014). The regulation *inter alia* imposes an obligation of providing prisoners with hygiene products and cleaning products in residential cells by the 5th day of each month, increases the monthly amounts of some products, such as toilet tissue, shavers and shampoo as well as defines precisely the question of providing cleaning products in residential cells, which were previously supplied pursuant to inner regulations adopted by directors of penitentiary establishments. Questions of assuring adequate living conditions to prisoners is monitored on a regular basis and is analysed during audits in penitentiary establishments.

- steps to be taken at Szczecin Remand Prison to:

- reduce the occupancy rates with a view to offering a minimum of 4 m² of living space per prisoner in multi-occupancy cells; cells measuring some 7 m² 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);

As of 30 April 2014 there were 452 remand prisoners per the total capacity of 616 places at Szczecin RP, which accounts for 73.3% of the capacity of this penitentiary establishment.

Also the cells with the size of ca. 7 m^2 at Szczecin RP meet the standard of 3 m^2 of space per one prisoner. In 2008 Szczecin RP finished refurbishment consisting in installing partitions in in-cell sanitary annexes. All the annexes are fully partitioned. In late July and early August 2013 renovation of the roof of Pavilion B was conducted to eliminate leaks that resulted in dampness. The windows of Pavilion B overlooking the street are fitted with blinds that prevent contacts of remand prisoners with third parties. In the opinion of PS the blinds do not limit ingress of light and fresh air to the cell. However, given that renovation work, including wall insulation, is planned for 2015 and the blinds will be dismounted for the duration of the refurbishment, the management of the penitentiary establishment will revisit the need of their re-installation.

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

- reduce the occupancy rates with a view to offering a minimum of 4 m² 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);

As of 30 April 2014 there were 695 remand prisoners per the total capacity of 734 places at Warsaw-Grochów RP, which accounts for 94,7% of the capacity of this penitentiary establishment.

This penitentiary establishment has a program of partitioning in-cell sanitary annexes. In the period 2012–2013 these annexes were fully partitioned in 56 residential cells, 30 others will be partitioned in 2014. Residential cells No. 323 and 425 have been renovated.

Analysis of the blinds used in the penitentiary establishment showed that they do not limit ingress of air or daylight. Because they prevent illegal contacts of the remand prisoners, their further use, in the face of the category of Warsaw-Grochów RP, is necessary.

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

- reduce the occupancy rates with a view to offering a minimum of 4 m² of living space per prisoner in multi-occupancy cells;

- pursue the refurbishment programme, including the full partitioning of in-cell sanitary annexes (paragraph 67).

As of 30 April 2014 there were 795 remand prisoners per the total capacity of 959 places at Warsaw-Mokotów RP, which accounts for 82,9% of the capacity of the penitentiary establishment.

This penitentiary establishment has a program of partitioning in-cell sanitary annexes. In the period 2011–2013 these annexes were fully partitioned in 148 residential cells, 33 others will be partitioned in 2014.

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);

Under currently binding regulations, male prisoners have the right to a bath at least once a week. The fact that more frequent baths are impossible is only due to technical and logistical constraints. In some penitentiary establishments additional baths are impossible because of the insufficient capacity of the facilities. However, where the existing infrastructure makes it possible, additional baths were introduced e.g. in Medyka CF, Kwidzyn CF, Oleśnica CF as well as in Poznań RP and Prudnik RP.

The Polish penitentiary system, within its budgetary means, modernises and will continue to modernise the infrastructure of penitentiary establishments to introduce an additional bath for all male prisoners in the near future.

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);

For information concerning correctional facilities for juveniles and planned legislative analyses concerning separate accommodation of people under 18 years of age – see reply to recommendation of paragraph 44.

The EPC does not single out prisoners who are under 18 years of age (hereinafter, the working term: “minors”). They are juveniles (i.e. people who have not reached the age of 21) and are subject to the same penitentiary action as all juveniles. This stems from the conviction that special attention should be paid to all persons under the age of 21 with a view to their effective social reintegration.

For the last 5 years the number of minors in the total number of remand and sentenced prisoners in RP and CF has not exceeded 1%. As of 31 December 2013 there were 304 remand and sentenced prisoners under the age of 18 in Polish penitentiary establishments, including:

- in the age group 15–16 – 1 remand prisoner, sentenced prisoners - 0,
- in the age group 17–18 – 203 remand prisoners, 100 sentenced prisoners.

There was a total of 2,398 juveniles in Polish penitentiary establishments, including 1,787 sentenced prisoners (ca. 2.5% of the total number of sentenced prisoners) and 711 remand prisoners (ca. 11% of the total number of remand prisoners).

Minors are obliged to pursue education and to attend school. Minor sentenced prisoners are placed in CFs with schools appropriate to their age and are covered by mandatory education. They continue their interrupted education in the same school type. Currently such schools operate in 20 penitentiary establishments and they need to meet the same requirements as normal schools.

Minor sentenced prisoners are the only prisoners who are covered by an obligatory system of programed impact when serving a sentence of deprivation of liberty. The execution of the penalty of deprivation of liberty aims at triggering in the prisoner the will to cooperate in developing socially desirable attitudes, in particular the sense of responsibility and observance of legal order, and thus prevent them from re-offending. Individual impact programs, established jointly with the prisoner, take into account the types of employment or education the sentenced prisoners are to pursue, contacts to be maintained (in particular with close relatives), and the capacity to meet obligations and other activities indispensable for preparing prisoners for social reintegration. Impact is exerted on the prisoners through e.g. work, education, cultural, social and educational activities as well as awards and disciplinary sanctions.

Furthermore, in July 2012 PS Director General advised regional directors about the questions of conduct with juveniles and e.g. ordered a training for custodial staff on international standards and the CPT recommendations submitted to the Polish authorities as a follow-up of preceding visits.

- 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).

Location of Bydgoszcz RP in the very city centre and the size of the establishment, limited by the geophysics of the area, make it impossible to build a sports court. Therefore the dominant form of recreation of the prisoners is participation in sports activities in common rooms. Prisoners in the External Ward subordinated to Bydgoszcz RP can freely use the sports facilities and organised sports activities outside the premises of the establishment. Between April and October 2013 a group of a dozen or so prisoners took part in sports activities held within the social rehabilitation program on municipal sports facilities. The establishment audited (as well as – when possible because of financial means – the other establishments) action will be taken to install in all exercise yards roofed sections to protect prisoners against inclement weather.

Szczecin RP plans to buy in the near future exercise equipment to be used in the exercise yards of the establishment, which moreover runs a program of social re-adaptation "Education through sport", attended in 2013 by 128 prisoners. The program is continued in 2014. At Szczecin RP juvenile prisoners may take an additional walk. Furthermore, the facility operates a fitness room to be used by remand prisoners supervised by tutors. Sports activities are held outside the establishment. There are table tennis facilities in a few residential wards. Because of the architectural restrictions of the establishment, it is impossible to build a pitch or a gym. Exercise yards at Szczecin RP are fitted with benches and are partly roofed, to provide protection against precipitation. One of the yards is furthermore fitted with an exercise bar, loops and facilities for basketball. The adjustment of one exercise yard for the purpose of collective games is being considered.

Providing remand and sentenced prisoners with outdoor physical exercise is monitored on an ongoing basis by the prison authorities. Restrictions in the number of outdoor sports activities and the number of their participants stem moreover from the need to meet the obligation of isolating groups of remand prisoners to secure an adequate course of proceedings.

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);*

Lublin RP, apart from two general practitioners, including one employed full-time (PS officer, head of the outpatient centre) and one half-time, there is a general practitioner working on a contract-basis. In April 2014 one more physician was hired. At present there is seven full-time nursing personnel (PS officers), their work being supported by two additional nurses working on a contract-basis. A psychiatrist is employed at Lublin RP part-time (0.55 of a full-time job). Employment of an additional specialist working on a contract-basis is being considered.

- the vacant post of psychiatrist at Warsaw-Grochów Remand Prison to be filled without delay (paragraph 73);

On 17 June 2013 Warsaw-Grochów RP employed a part-time psychiatrist (0.25 of a full-time job). Psychiatric counselling is offered systematically and on an ongoing basis.

- 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 above recommendation is implemented by first aid trainings for custodial staff working in residential wards. When prisoners need to be provided with medical assistance outside the working hours of the outpatient centre, they use the help of the State Emergency Medical Service.

- 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);

The obligation to provide a sentenced prisoner with medical care rests with the administration of penitentiary establishments. Relevant decisions are taken by the director of penitentiary establishments, who is subject to judicial and hierarchical supervision.

The only restriction of the prisoner's right to health care as compared to the general population is the exclusion of the freedom to choose the physician. This limitation is in accordance with the Polish Constitution; it is not excessive, set out in a law and indispensable for assuring safety and security to citizens. This situation cannot be deemed as inadequate treatment.

Prison hs performs the obligation of providing health care to prisoners first of all in medical entities of RP and CF. Penitentiary establishments with hospitals provide medical care around the clock. Furthermore, PS cooperates with external medical entities, in particular as to providing highly specialised services and in emergency situations, when the patient's life or health are at risk. Medical personnel provides services to prisoners without undue delay, whereas urgent consultations are provided immediately. In such situations prisoners are sometimes provided with medical services in better conditions than other patients.

In 2013 general practitioners and specialist physicians provided assistance in 1,665,063 cases in the outpatient regime, including 1,638,835 within medical entities for prisoners and 26,228 in external health care entities. At the same time 8,368 prisoners were hospitalised in hospitals in penitentiary establishments, and 1,458 prisoners were treated in hospitals outside penitentiary establishments.

The Supreme Audit Office indicated in a report on the results of the 2012 audit in penitentiary establishments concerning the provision of health care to prisoners as follows: "Penitentiary establishments within their budgetary means have assured prisoners round-the-clock medical care and access to immediate and comprehensive set of health care services, despite the increased demand for such services".

- 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);

An examination by a physician and a nurse of newly-arrived prisoners is carried out without delay. As a matter of principle, on the day of arrival in a RP, the prisoner is assessed as to his/her sanitary and epidemiological status and is interviewed about previous illnesses, including e.g. tuberculosis, epilepsy, HIV (with the prisoner's consent, a free of charge examination in this respect is offered). The medical examination procedure includes moreover an X-ray of the chest to detect tuberculosis, while examinations detecting viral hepatitis are conducted when medical indications so warrant.

Furthermore, individuals arrested by the Police prior to detention in a RP or a CF hold medical examinations in general hs facilities with a view to determining if they can stay in a penitentiary establishment.

A possible implementation of a different system would call for the presence of medical personnel in nearly 150 penitentiary establishments on days off, e.g. as on-call work, which would require employment of additional medical personnel and substantial outlays on salaries. Such a model would double the functions of the State Emergency Medical Service.

- 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;

(i) 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);

Medical files kept in health care entities for persons deprived of liberty generally cover as to their scope the information defined in the CPT recommendation.

Pursuant to legislation in force, if injuries are identified in the prisoner, a physician makes a record of this fact in the medical file along with the description of the place and scope of the trauma. Furthermore, the physician makes a relevant report and submits it to the director of the penitentiary establishment. Comprehensive information contained in the medical file about the health status, including injuries, if applicable, is available to the prisoner and persons authorised by him/her as well as to entities offering health care services.

There is no special form with a body chart for marking traumatic injuries and no special trauma register. Such information is recorded in the medical file in a descriptive form. The introduction of other documents such as e.g. a “trauma register” would demand that the medical personnel should unnecessarily double records.

- 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);

On 26 February 2014 the Constitutional Tribunal ruled on the non-compliance with the Constitution of provisions requiring that non-medical staff should be always present during the provision of health care to a prisoner, recognising that this solution would disproportionately restrict the prisoner’s right to privacy. Pursuant to the decision of the Tribunal, the provisions become invalid as of 8 March 2015. Poland will take legislative action to adopt instead provisions adjusted to the standards set out in the ruling of the Constitutional Tribunal and in the CPT recommendation.

- the Polish authorities to abandon the policy of routine application of means of restraint to "N" status prisoners during medical examinations (paragraph 80);

Analysis conducted on the basis of the CPT recommendation of the application of mor to “N” status prisoners during medical examinations showed that the means were not used routinely. Their application was in compliance with the law.

The application of preventive means to “N” status prisoners during medical examinations is set out in a relevant law. By law, to prevent an escape of a person deprived of liberty or to prevent symptoms of his/her active aggression or self-aggression the following preventive means may be used: physical force, a hardhat, cuffs, and a restraining belt. Furthermore, during the performance of official obligations in direct contact with “N” status prisoner, the ward head and a staff member cooperating with the ward head perform their duties in protective vests and have at their disposal personal alarm signalling devices and mor permitted by law. Studies indicated that in practice preventive means (cuffs) are used exclusively for bringing “N” status prisoners for a medical examination and upon its conclusion. During medical examinations “N” status prisoners are uncuffed and treated like

other patients, except in situations when, e.g. they behave aggressively, posing a risk for the physician carrying out the examination. The practice of applying mors is thus in line with the CPT's recommendations.

- 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);

At present, patients addicted to drugs are assured the care of a medical doctor, a nurse and a psychologist, and in order to continue therapy they are referred to prison therapy wards for persons addicted to intoxicants or psychotropic substances. If necessary, prisoners addicted to drugs are subjected to detoxification.

Furthermore, all remand and sentenced prisoners, when admitted to the establishment, are sensitised to questions related to HIV infections and take part in trainings when they are offered information on the health hazards of drugs and on reducing their harmful effects.

At present the prison hs participates in the implementation of the *National Program of Drug Abuse Prevention*, under which 23 penitentiary establishments have launched substitution programs. Prison hs personnel and therapists (holding relevant certificates) provide prisoners with substitution comprehensive medical and therapeutic care in line with relevant legal provisions.

Trainings on substitution programs and reduction of harmful effects, held for medical personnel and nurses, are organised periodically and take place in cooperation with the National Office for Drug Abuse Prevention. Furthermore, these subjects are addressed by inner trainings in penitentiary establishments.

Because of the yearly increases in the number of people who need substitution therapy, action was taken to introduce in each penitentiary establishment the "*Substitution therapy program for prisoners in penitentiary establishments in Poland*", tailored to prisoners addicted to intoxicants.

- 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);

The management of the establishment will consider action to provide a more congenial and personalised environment in the psychiatric ward of the hospital of Warsaw-Mokotów RP, taking into account safety requirements.

In connection with the CPT recommendation the state of cleanliness of the above hospital was monitored. The Polish authorities cannot agree with the statement that "the level of cleanliness on hospital premises left a bit to be desired". This area is systematically cleaned, as confirmed by regular sanitary and epidemiological audits.

With respect to the cell size per one prisoner, as of 6 May 2014 all cells meet the EPC standard of 3 m^2, and over half the cells meet the standard of 4 m^2 or more.

Furthermore, in the internal ward sanitary annexes were fully partitioned. The 2014 refurbishment schedule includes the partition of annexes in other hospital wards.

- 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);

In connection with the CPT recommendation analysis of the situation was carried out in the hospital indicated. Regrettably, under the present circumstances, because of the location of the psychiatric ward, it is impossible to designate a room for occupational therapy and as a result there is no justification for employing a therapist.

- 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 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).

At the hospitals of Warsaw-Mokotów and Szczecin RPs patients can wear their own clothes and the decision whether the remand prisoners will wear day clothes or pyjamas is exclusively theirs. Practice shows that in a majority of cases patients prefer hospital pyjamas; this situation occurred during the visit of CPT representatives.

At the Bydgoszcz RP Hospital patients wear pyjamas in line with the rules of the hospital because of medical and epidemiological concerns. In the opinion of the management of the RP, pyjamas are a fitting clothing for a prisoner who, as a patient, spends most of the time in bed and is subject to medical examinations and interventions that require undressing, frequently a few times daily. No relevant amendments to the rules are being envisaged for the time being.

Patients of the aforementioned hospitals during visits, walks and when leaving for consultation outside the ward wear bathrobes and are provided with jackets, in line with the season of the year. Furthermore, it is in order to note that hospital clothing is washed and disinfected in special conditions, which is of prime significance in case of surgery wards.

In the period of 2012–2013 no applications, requests or complaints were lodged with Szczecin RP and Warsaw–Mokotów RP concerning the stigmatisation of patients because of their use of hospital pyjamas. In 2013 there was one complaint at Bydgoszcz RP (concerning the quality of the pyjamas received by the prisoner). As a result of an audit of the situation, the complaint was found unjustified.

- 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);

Pursuant to Polish law, the mor can be used with respect to people with mental disorders e.g. when they make an assault on their own or another person's life or health or exercise violence to destroy or damage objects around them. Decisions on the use of mor are made by medical doctors and each case of the use of these means is recorded in the medical file. Mor are applied solely when the reasons for their use present themselves. Furthermore, the conduct of the prisoner to whom the mor were applied is controlled via the monitoring system and direct monitoring by a staff member, which takes place many times during a day.

In the psychiatric ward of the Warsaw-Mokotów RP Hospital, the patient subjected to mor is accommodated in a monitored cell. Nurses monitor the state of the fixated patient every 15 minutes, help during meals as well as physiological and hygienic activities.

At the Szczecin RP Hospital mor are used in the psychiatric ward of the hospital in a single cell under constant supervision of nurses. According to the PS, the indicated kind of monitoring is adequate.

Comments

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

All the residential cells in the hospital wards meet the standard of 3 m^2 per prisoner.

- *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);*

Plans are made to adapt and furnish with equipment for persons with disabilities a bath in the general surgery ward and in the ward of forensic psychiatry. For technical reasons it is unfeasible to adapt the communal sanitary facilities for the needs of persons with disabilities.

- *conditions in some of the rooms in the hospital at Bydgoszcz Remand Prison were rather cramped, with less than 4 m² of living space per patient (paragraph 88);*

The hospital ward at the Bydgoszcz RP has 10 hospital cells that meet the standard of 4 m^2 per prisoner and 10 cells that meet the standard of 3 m^2 per one prisoner. All the hospital rooms with beds meet the requirement of accessibility of beds at least on two sides and the distance between the beds offers free access to patients.

- *a period of fixation of 36.5 hours can have no medical justification (paragraph 90).*

The incident of such protracted fixation at Bydgoszcz RP was analysed by the prosecution authority (explanations – see below – a reply to the recommendation of paragraph 90 in the section "Requests for information").

Ever since the above events, a regulation of the Minster of Health has entered into force[1], introducing additional requirements for the usage of restraining measures, which in turn raised the level of protection of the persons to whom these measures are being applied. The Regulation defines the aggregate time of fixation for a maximum of 4 hours. A decision to restrain a person is taken or authorised immediately by a medical doctor. A continued use of this restraining measure can be prolonged by a medical doctor upon a medical examination of the patient only for two other periods not exceeding six hours. After this time continued fixation of the patient is possible for successive 6-hour periods only upon an examination and moreover upon receipt of an expert opinion of another psychiatrist. Upon 24 hours of fixation a physician is obliged to notify the head ward doctor about this fact. During fixation, the physical status of the patient is monitored by a nurse no less than every 15 minutes, also when the patient is asleep.

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);*

There was no instance at the Bydgoszcz RP of treatment being denied to a prisoner for lack of medications. When an establishment admits a patient who takes a medication unavailable at a given moment, a medical doctor orders temporarily a replacement medication (from the same group or a medication of a similar application), to continue therapy in the best interest of the patient.

[1] Regulation of the Minister of Health of 28 June 2012 on the use and documentation of use of means of restraint and assessment of the justifiability of such use (Journal of Laws 2012 item 740).

At present Warsaw-Grochów RP assures the supply of medications. It is in order to note that a decision on the manner and place of treatment is made by the prison medical doctor, whose conduct is set out e.g. in the law on the professions of the medical doctor and the dental practitioner. In the event of alleged violations of the law raised in a complaint, they are considered by the Screener for Professional Liability of Physicians.

- 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);

Polish penitentiary establishments carry out a nationwide Program of Limiting the Consequences of Smoking, which *inter alia* provides the following support to smoking addicts among prisoners: anti-smoking counselling, dissemination of a healthy lifestyle and educational programs. Last year the following educational programs were carried out at the Bydgoszcz RP concerning the tobacco addiction: "A Curvy Road", "Out of Control", "Life Without a Fag", and "Healthy Body, Healthy Mind". In line with the binding guidelines, the pharmacological treatment of the tobacco addiction (including nicotine substitution therapy) is offered to patients who consent to it and are adequately motivated and ready to quit smoking, with due consideration to potential side effects of this therapy.

- 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).

District Prosecution Office Bydgoszcz–Południe in Bydgoszcz carried out an investigation, file No. 2 Ds. 404/12, on the involuntary homicide of A*, i.e. concerning an offence under Art. 155 PC, concluded with a decision on the absence of reasons for further action in this case. A higher-instance prosecution office, i.e. the Regional Prosecution Office in Bydgoszcz, on request of the General Prosecution Office, analysed the investigation file of the District Prosecution Office Bydgoszcz–Południe in Bydgoszcz and found no reasons for questioning the position of the District Prosecutor for Bydgoszcz–Południe.

In the opinion of the Regional Prosecution Office in Bydgoszcz, the action taken with respect to A was meant to increase the chances of his recovery. The prolonged use of restraining belts was motivated by the assurance of pharmacological treatment, whose efficacy was seriously impaired by the symptoms of delirium and psycho-motor agitation. A

* 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.

decision on the use of mor and on prolongation of restraint was taken in keeping with the regulation of the Minister of Health and Social Care of 23 August 1995, in force on the day of the event. The application of the above mor was documented in a manner set out in regulations in force at that time.

Furthermore, the Prosecution Office indicated that the evidence gathered in the course of proceedings in no way justifies the allegation that A's death may have been caused by the 36-hour fixation. The medical treatment applied was without doubt adequate to the patient's state of health. It was justifiably admitted that the admission of A to the penitentiary establishment and the use of mor in the form of restraining belts were legal. Furthermore, the medical file of the post-mortem examination of A's body, the resultant assessment and the aforementioned circumstances disprove the allegation that this prolonged restraint of the patient may have contributed to his death. The action taken was meant to facilitate recovery and according to the opinion of the establishment cannot be seen as a violation of the ban on inhuman or degrading treatment.

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 have analysed the CPT's recommendation, however in their opinion the regulations currently in force, in particular taking into account the possibility of increasing the prisoners' visiting rights as a reward, allow the prisoners to maintain external relations.

CFs differ in particular as to the extent of protective measures and isolation of prisoners and their resultant obligations and rights concerning movement around and outside the facility; therefore in the highest regime CFs (of the closed type) the number of visits is limited to two per month. Prisoners in semi-open CFs have the right to three visits per month and in open-type prisons to an unlimited number of visits. Irrespective of the CF type, the prisoner may be granted as an award a permission for an additional or longer visit, a visit

without the presence of a monitoring person or for a visit in a separate room without the presence of a monitoring person.

- *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 preventive measure in the form of remand in custody is meant to secure the adequate course of criminal proceedings. The fundamental premises for its use is, on the one hand, a justified concern that the suspect or defendant will induce the provision of false witness or explanation or in another illegal way hamper criminal proceedings, and on the other hand a justified concern that he/she may escape or hide. Therefore the principles of prisoners' communication with the outside world must involve limitations and a certain measure of control of the law enforcement and judicial authorities.

Current status

By law, a remand prisoner may be visited on receipt of the consent of the authority having jurisdiction over him/her (court or prosecutor).

A remand prisoner is eligible for at least one visit per month with a person from the close circle of relatives. A refusal of consent to a visit with such a person may only take place when there is a justified concern that the visit will be used for illegal hampering of criminal proceedings or for commission of an offence, in particular instigating a crime. A refusal of consent to a visit of a person under remand in custody with a close relative may be appealed by the remand prisoner or the person applying for a visit to the court having jurisdiction over the remand prisoner, and in pre-trial proceedings to the public prosecutor of a higher prosecution authority.

When there are no contraindications for more frequent contacts with the outside world, more frequent visits are permitted.

Suggested changes

MJ works on an amendment of PC to e.g. assure to a remand prisoner the use of a telephone conditional on consent of the authority having jurisdiction over him/her and provided there are no reasons for a refusal of such consent, i.e.:

- a justified concern that the phone call may be used for illegally hampering criminal proceedings or for committing an offence, in particular instigating a crime, or

- the earlier use or prolongation of remand in custody was based on a justified concern that the remand prisoner would induce the provision of false witness or explanation or in another illegal way hamper criminal proceedings or when such a concern presented itself already during remand in custody, applied or prolonged for another reason.

A refusal of consent to contact by telephone will be appealed.

The current draft is considered by the Council of Ministers.

- 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);

The sanction of solitary confinement may be applied with respect to a prisoner who has seriously violated the CF discipline and order. Reasons for this sanction include, in vast majority of cases, aggressive behaviour towards fellow prisoners or supervisors and repeated violations and obstruction of other educational actions.

This sanction is applied very rarely and only in cases of especially serious violations of discipline as set out in the regulations. Before its application a medical doctor or a psychologist issues a written expert evaluation of the prisoner’s capacity for this sanction and its use in excess of 14 days requires consent of the penitentiary judge. Often the execution of the sanction is conditionally suspended for a period of up to 3 months and part of it may be lifted when it resulted in a desirable educational effect and the prisoner has understood the consequences of repeating a violation leading to disciplinary liability. In the vast majority of cases the above sanction is applied for a period of up to 14 days and therefore is short, as

suggested by CPT. A refusal of visits and the use of a payphone will be the most serious inconveniences for the prisoner, but EPC allows the possibility of the prisoner being allowed a visit or a telephone call when being subjected to the sanction.

A re-application of a disciplinary sanction cannot take place so that it might be a direct extension of the same sanction, unless the total duration of the sanctions applied does not exceed the upper limit of the duration of this sanction.

In reference to the CPT recommendation it should be noted that in the case of the most serious violations of discipline (e.g. battery and assault of a fellow prisoner) there may be a coincidence of a violation of discipline and an offence. This means that the prisoner's action is both an offence (battery) and a violation of the internal regulations (violation of order in a CF). Then the prisoner is placed in an isolation cell and, at the same time, a public prosecutor is notified without delay and decides whether criminal charges should be pressed. In this case the prisoner remains in an isolation cell only because of the violation of order in a CF, not for the battery, and only for a short time, i.e. up to 14 days.

In 2013 the disciplinary sanction under consideration was used 4,080 times, with respect to ca. 4.6 % of the total number of prisoners of that year. The average duration of the above disciplinary sanction was 12 days, which means the practice of its application remains in line with the CPT's recommendation.

- *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 guarantees of rights of prisoners facing disciplinary charges are set out in the EPC. A decision on the application of a disciplinary sanction is made in writing and communicated to the prisoner (EPC does not make it mandatory to submit to the prisoner a copy of the decision) along with the indication that an appeal may be brought. The prisoner may file a complaint concerning the decision, which he/she is notified about by the CF director or a person authorised by the director during the execution of the above sanction.

If the prisoner files a complaint, decisions on the application of a disciplinary sanction are made available to penitentiary supervision authorities and other institutions authorised pursuant to relevant regulations (e.g. the Ombudsman) to determine whether or not the sanction was justifiably applied.

- 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);

Polish authorities analysed the above recommendation and deemed that introducing the indicated changes would not be appropriate considering the protection of prisoners' rights.

A disciplinary sanction in the form of placement in an isolation cell is a burdensome sanction with specific inconveniences arising from the prisoner's stay in a single-occupancy cell. Therefore, before its imposition, the prisoner is offered a consultation with a medical doctor or psychologist to assess his/her physical and mental capacity for serving this sanction and to rule out possible self-aggression inclinations. An opinion of a medical doctor on the possible health effects of the sanction may, depending on its observations, be the reason for its refutation, the imposition of a different sanction or the imposition of a conditionally suspended sanction. Positive relations between a medical doctor or psychologist and the prisoner are not disturbed since their actions are motivated by concerns about the prisoner's safety.

At present no relevant amendment to the EPC is envisaged.

- 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 application of disciplinary sanctions does not entail an absolute prohibition of contacts. Prisoners subjected to disciplinary sanctions (except those placed in a disciplinary cell) may use pay phones and enjoy visits of close relatives. Prisoners accommodated in isolation cells also have the right to send and receive correspondence.

- 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);

The recommendation is implemented.

Prior to the use of mor PS staff are obliged to call on the person to behave in line with the law and to forewarn of the possibility of use of mor in the event of non-compliance with the commands. Such a person is, then, warned about the consequences of their improper behaviour and has a chance to amend it. Only when the above actions of PS staff prove inefficient can they apply mor. This procedure may only be refrained from in the event of a direct risk to the life or health of PS staff or another person. When deciding on the use of mor, PS staff follow the principle of the use of a measure proportionate to the degree of the risk involved and the selection of a measure which will be the least inconvenient to the person with respect to whom it will be applied.

When applying mor, PS staff are obliged to exercise due care and take into account the properties of a particular mor, which might pose a risk to the life or health of PS staff or another person.

Fully concurring with the statement included in the recommendation that the duration of use of mor should be as short as possible, the new regulations concerning mor[2] e.g. specify the maximum duration of the measure in the form of accommodation in a restraining cell (48 hours).

Ongoing monitoring of this phenomenon is meant in particular to limit instances of the application of mor as well as to reduce the duration of their use. A steady drop in the instances of use of mor has been observed; in 2011 there were 1,557 such cases, in 2012 – 1,012, while in 2013 – 746.

[2] The Law of 24 May 2013 on means of restraint and firearms.

Legal provisions on the manner of use of mor, including the law on mor and firearms, are precise and clear and therefore there is no need for the management of individual penitentiary establishments to issue additional written guidelines, which would only reiterate the binding regulations.

The mor used by PS were designed in a manner assuring a minimum inconvenience for the person subjected to them. Each PS staff member is trained as to the use of mor. These questions are a permanent element of trainings conducted in PS training centres and of periodic internal trainings carried out in penitentiary establishments.

Each and every instance of use of mor is recorded in the Central Database of Prisoners Noe.NET. A relevant record contains the following data: time and place of the use of mor, the person taking the decision, the mor applied, the reason for application, and a short description of the circumstance of use. The system moreover generates a relevant memo, in line with the requirements specified by law.

- a medical doctor to be always notified in the event of a prisoner being subjected to mechanical restraint (paragraph 105);

Polish law does not provide for mandatory notification of a medical doctor of each instance of use of mor. This need appears always in the case when the use of mor caused an injury or another visible life-or-health-threatening symptoms. In the opinion of PS such a requirement ensures an adequate standard of protection of the prisoners' rights.

- 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);

The practice of strip searches in the above Pavilion was analysed and found in accordance with relevant regulations. The searches carried out at Warsaw-Grochów RP when a prisoner leaves and returns to the residential ward are cursory and involve a superficial inspection of clothes, footwear and objects possessed by the prisoners. The searches are preventive in nature and are conducted in a manner respectful of human dignity, with due adherence to the principles of humanitarianism and observance of law. In justified cases, in the interest of order or security, strip searches are conducted. Detailed information on the

practice with regard to strip searches is provided in the reply to the recommendation set forth in paragraph 106 (in the “Remarks” section).

- steps to be taken to increase the number of custodial officers working at Lublin Remand Prison and at Warsaw-Grochów Remand Prison (paragraph 107);

In the opinion of the Polish authorities the current number of custodial officers in the indicated establishments is adequate. The ratio of prisoners per 1 custodial officer as adopted by PS in 2013 was 3.16. This ratio in 2013 at Lublin RP was 3.18, and at Warsaw–Grochów RP: 3.81. Thus the number of full-time posts of custodial officers corresponds to the capacity of the above establishments and shows an adequate employment limit.

- additional female custodial staff to be recruited at Lublin Remand Prison (paragraph 107);

Efforts will be taken during the recruitment procedure to employ additional female custodial staff at Lublin RP.

- truncheons to be hidden from view (if it is considered necessary for prison officers to carry them) (paragraph 108);

The Polish authorities have analysed the above recommendation and deemed that complying with it is not possible due to security requirements.

In line with the binding regulations, a decision on the specific equipment worn by staff on duty in direct contact with prisoners is made by the head of the penitentiary establishment, taking into account the assessment of the risk factors that can occur on duty. The aim of equipping staff with truncheons is only to provide them with a sense of security and a possibility of defence against assault. Due to the latter it is an imperative that staff has the possibility of using a truncheon immediately if the need arises. To ensure its full accessibility – and due to its size – a truncheon is fixed to the main belt thus making it impossible to conceal from view.

- 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).

Poland applies a vast number of mechanisms of independent inspection of CF and RP.

A. Penitentiary establishments are inspected first of all by penitentiary judges at part of penitentiary supervision. When exercising such supervision the judge enjoys a wide array of empowerments, including *inter alia* visitations of RP and CF, the right of unencumbered access to penitentiary establishments, talks with prisoners in the absence of third parties, and review of their applications, complaints and requests. Furthermore, the authority executing the sanction or an isolation measure is obliged to notify such a judge about its decisions, e.g. a refusal of access to correspondence or monitoring of phone calls. When identifying irregularities in the conduct of the above authorities, the penitentiary judge issues recommendations with a view to eliminating them. For the prerogatives of the penitentiary judge as to the "N" status prisoners – see the reply to the recommendation of paragraph 48. The prerogatives of penitentiary judges allow an ongoing and independent monitoring of the operations of penitentiary establishments.

B. Given that Poland is a State Party to OPCAT, all penitentiary establishments in Poland may be inspected by SPT. Poland will guarantee to SPT delegation members all the prerogatives defined under OPCAT.

C. Independent audits of penitentiary establishments are carried out also by the National Prevention Mechanism, which role is performed in Poland by a dedicated department of the Office of the Ombudsman. The NPM enjoys in practice the prerogatives set out in OPCAT, in particular free access to penitentiary establishments, to documents and to unencumbered contact with prisoners in the absence of third parties. The Ombudsman may receive communications of prisoners and take specific action with respect to them (e.g. submit the information included in the complaint to the prosecution authority, file a cassation appeal on a given case to the Supreme Court or apply to the Constitutional Tribunal for considering compliance with the constitution of particular provisions related to prisoners).

D. So-called social monitoring is an important aspect of external inspection. Pursuant to the EPC, the execution of e.g. penalties of deprivation of liberty may involve representative of non-governmental organisations committed to assisting prisoners and their families or coordination of cooperation of society with RP and CF. Such people may, e.g. provide legal and medical assistance to prisoners and their families, maintain contacts with prisoners and perform tasks of social rehabilitation programs via e.g. social, cultural or educational

activities. E.g. the Helsinki Foundation of Human Rights is a non-governmental organisation very actively committed to visits in penitentiary establishments.

D. Penitentiary establishments are moreover regularly inspected by specialised entities, e.g. State Sanitation Inspectorate, State Labour Inspectorate (both institutions may accept and consider complaints), and the Technical Supervision Authority.

E. Furthermore, prisoners' correspondence, including that concerning complaints, with domestic and international human rights protection institutions is never censored.

To sum up, the multiple types of actions and the nature of the entities conducting them justifies a statement that the mechanism of independent external audits of penitentiary establishments is adequate.

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 have analysed the CPT recommendation. They found, however, that introducing the proposed changes would not be justifiable.

At present, CF Director determines in inner schedules the days, hours, place and order of visits. Visits take place in line with EPC provisions. Given the different characteristics of penitentiary establishments, the introduction of a visit booking system may disturb contact of prisoners with close relatives. This applies in particular to newly-arrived prisoners and those transferred from other penitentiary establishments. A booking system would require a plan and distribution of visits into particular visit days for individual prisoners, and would make it difficult to offer a visit to a prisoner wishing to be visited immediately after admission to the penitentiary establishment.

- *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);*

Analysis conducted after the CPT recommendation of the approach to strip searches of prisoners' visitors at Lublin RP showed that the practice is in compliance with the law and its complete discontinuation might pose a risk.

The principles and procedures of strip searches of prisoners and other persons in a CF and a RP are set out e.g. in the EPC and in the regulation of the Council of Ministers[3]. According to them, strip searches involve a body search and an examination of clothing, underclothes and footwear as well as an inspection of objects possessed by the prisoner of other people. Body searches and inspections an examination of clothing and footwear are conducted by PS staff at all times in a separate room, in the absence of third parties and persons of the opposite sex. Such searches are conducted by persons of the same sex.

Such searches must often be of preventive nature, but are always done in a manner respectful of human dignity, with due observance of the principles of humanitarianism and observance of law. Searches are conducted to identify possible dangerous and banned objects, to prevent an escape and in other justified cases. A discontinuation of these principles would pose a real threat to the security of penitentiary establishments, PS staff or prisoners.

Decisions on strip searches of a person other than a prisoner is made by the head of the establishment. This action is recorded in a special report with all relevant information about the search, including the reason for the search. Furthermore, PS staff are obliged to notify the person who has been searched about his/her right to file a complaint to the court as to the manner of conducting this activity.

Analysis of strip searches conducted in 2013 of visitors at Lublin RP indicates that out of 36 searches, in 11 cases dangerous or banned objects were found, while in 2 cases the visitors swallowed the objects they carried. It is in order to point out that strip searches were conducted with respect to persons selected on the basis of effects of prevention activities; sometimes however the persons to be searched were chosen at random to draw their attention to the fact that the ban on bringing certain objects will be successfully enforced).

- the Polish authorities are invited to phase out the carrying of truncheons by custodial staff in detention areas (paragraph 108);

Information on the above question was provided in the reply to the recommendation set forth in paragraph 108.

[3] Regulation of the Council of Ministers of 4 August 2010 on the mode of operation of Prison Service staff on duty.

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);

Close relatives of prisoners who serve a sentence in the same CF may contact one another in line with the provisions on visits as set out in the EPC, upon entering their names on the visits schedule, on days when visits are possible in a particular establishment. When close relatives of prisoners serve the penalty of deprivation of liberty in another penitentiary establishment of the same type, it is possible to transport such close relatives to this establishment. All relevant requests are considered on a case by case basis by PS and if the above formal conditions are met, as a matter of principle they are accepted.