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Report

to the Government of the United Kingdom on the visit to Gibraltar carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 13 to 17 November 2014

The Government of the United Kingdom has requested the publication of this report and of the response of the Government of Gibraltar. The response is set out in document CPT/Inf (2015) 41.

Strasbourg, 19 November 2015

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Copy of the letter transmitting the CPT's report

Ms Farah Ziaulla
Deputy Director
Head of Human Rights & Security Policy
Ministry of Justice,
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London
SW1H 9AJ, United Kingdom

Strasbourg, 17 March 2015

Dear Ms Ziaulla,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Gibraltar from 13 to 17 November 2014. The report was adopted by the CPT at its 86th meeting, held from 3 to 6 March 2015.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the national authorities to provide within **three months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the national authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

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

Yours sincerely,

Mykola Gnatovskyy
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

EXECUTIVE SUMMARY

This was the first visit by the CPT to the British Overseas Territory of Gibraltar. The CPT's delegation examined the treatment and conditions of detention afforded to persons held in various places of deprivation of liberty across Gibraltar. The co-operation received from both the Gibraltarian authorities and the staff at the establishments visited was excellent.

Law enforcement agencies

The CPT's delegation found that most people deprived of their liberty by the police were treated in a correct manner. It did, however, receive some allegations of excessive use of force by police officers at the time of apprehension and of rough treatment during subsequent questioning as well as of handcuffs being applied excessively tightly at the time of arrest. The CPT recommends that the authorities make it clear that all forms of ill-treatment are prohibited, and that the perpetrators of ill-treatment will be punished.

The material conditions of the custody cells in New Mole House Police Station were generally of a good standard. There was, however, a lack of access to natural light in the cells, no privacy from the in-cell video-surveillance and no access to meaningful outside exercise for persons held longer than 24 hours. As regards safeguards for those deprived of their liberty by the police, the lack of legal aid meant that many detained persons did not have effective access to a lawyer prior to their first Court hearing. The CPT recommends that the authorities pursue their initiative to introduce a Duty Solicitor Scheme. The CPT's delegation also found that access to a doctor was, in practice, filtered by the duty custody sergeant. Effective access to a doctor should be granted upon request of the detained person and the right of access to a doctor should be guaranteed in law. Lastly, every effort should be made to avoid the detention of mentally-ill persons in New Mole House Police Station, and police officers should be provided with basic training on how to care for mentally-ill persons when they have to intervene and transport such persons to hospital.

As regards the material conditions at the Customs' holding facility at the Four-Corners' land border, these were currently not suitable for holding persons. Should the pending amendments to the relevant legislation come into effect authorising detention by Customs officials, the CPT recommends that the holding room not be used as a designated place of custody.

Windmill Hill Prison

The CPT's delegation observed generally good relations between staff and inmates. There were no allegations received during the visit of physical or psychological ill-treatment by prison staff towards the prisoners, although some tensions between prisoners did exist. There was, however, no clear anti-bullying policy in operation. Material conditions were generally satisfactory but a number of deficiencies required action, namely: many cells had corroded windows and vents; problems with hot water; non-functional flushes for some toilets and blocked drains. Further, cells of less than 8m² should not accommodate more than one prisoner.

At the time of the visit, two juveniles, one of whom was a 14-year-old, were being held in the prison. There were no specific rules for managing juveniles – as was evident by the disciplinary and induction procedures, no tailored regime was in place to support them and staff were not specifically trained to work with juveniles. In sum, Windmill Hill Prison is not a suitable place to accommodate juveniles. The CPT recommends that the Gibraltarian authorities develop a strategy for addressing the specific needs of juveniles deprived of their liberty, which might include establishing a small unit with a few secure places. As long as juveniles are kept in the prison, additional efforts must be made to provide them with a full range of purposeful activities and socio-educative support.

The provision of health-care in the prison suffered from a number of structural deficiencies. The CPT recommends that the authorities completely review the provision of healthcare to assess the somatic, psychiatric, dental, and other medical needs of the prisoners. This will require increasing doctor attendance and hiring the equivalent of one full-time registered nurse. The CPT also recommends that prompt and proper medical screening of every newly arrived prisoner be undertaken by a healthcare professional and that the existing injuries' recording procedures be reviewed. Further, a practice of conducting thorough autopsies and inquiries into all deaths in custody should be established.

The CPT is critical of the length of disciplinary punishments in which prisoners are confined to their cells alone for 23 hours a day for as long as six weeks with no stimulation. Likewise, the week-long induction procedure was found to be overly restrictive; the authorities' decision to reduce it to a maximum of 48 hours is welcome. As regards the regime, the CPT recommends that the range of purposeful activities be expanded, that all inmates be offered a minimum of one hour of daily outside exercise and that sentence plans be drawn up for all prisoners.

Court holding cells and military facilities

The CPT noted that while the conditions were generally adequate in the Court holding cells, a register was absent as was any recording procedures for those persons detained. The CPT welcomes the steps subsequently taken by the authorities to address this matter. As regards the custody cells at the Royal Gibraltar Regiment's military barracks, the CPT requests information about amendments to the legislation that would authorise the use of this military custody suite.

King George V Mental Health Hospital

The CPT's delegation observed staff providing care and treatment to patients in a dedicated and professional manner, in a challenging environment. Living conditions, however, were generally very poor but the imminent transfer of all patients to a new facility on the premises of the former Naval Hospital will provide a radical improvement. Further information on the new facility is requested notably in respect of the range of treatments offered to patients. The delegation found that the majority of patients on the long-stay ward appeared to be more in need of social care support than psychiatric in-patient treatment, and the CPT recommends that their situation be reviewed. Further recommendations are made for a central register to be introduced for the administration of ECT and for a clear policy for documenting and recording injuries to patients to be established and widely promoted.

In respect of the use of means of restraint, a specific register should be established to record all instances of recourse to manual restraint and seclusion. As regards the safeguards surrounding the placement of a patient involuntarily in hospital, the CPT recommends that long-term involuntary treatment orders always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two. Further, any extension of an involuntary treatment order should require a second independent external opinion prior to the decision on prolongation. It also recommends that patients should be placed in a position to give their free and informed consent to treatment and that the Mental Health Bill 2014 be amended to reflect this right. Lastly, a system of independent inspections of psychiatric establishments should be established.

I. INTRODUCTION

1. Gibraltar, an Overseas Territory of the United Kingdom, comprises a 6.5 square kilometre peninsula with a population of approximately 30,000 and has a land border with Spain. As a British Overseas Territory it has its own constitution, domestic laws and a substantial measure of responsibility for the conduct of its own internal affairs. Her Majesty's Government of the United Kingdom, via the Governor, retains responsibility for Gibraltar's internal security, defence and external affairs. The Government of Gibraltar has responsibility for all areas not specifically assigned to the Governor, including economic and environmental management and provision of education, health-care and other social and public services.

2. The judicial system of Gibraltar is based almost entirely on the English system. There is a Magistrates' Court presided over by a Stipendiary Magistrate or, in his absence, by lay Magistrates. The Supreme Court of Gibraltar has a criminal jurisdiction similar to that of the English Crown Court, and a civil jurisdiction which is equivalent to that of the English High Court. There is also a Court of Appeal for Gibraltar.

3. The United Kingdom ratified the European Convention for the Prevention of Torture in June 1988 and extended the application of the ECPT to Gibraltar in September 1988; it entered into force on 2 February 1989.

4. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, a delegation of the CPT carried out a visit to Gibraltar from 13 – 17 November 2014. It was the CPT's first visit to Gibraltar.

5. The visit to Gibraltar was carried out by the following CPT members:

- Wolfgang HEINZ (Head of Delegation)
- Jari PIRJOLA
- Ömer MÜSLÜMANOĞLU.

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

- Hugh CHETWYND (Head of Division)
- Francesca GORDON

and assisted by:

- Veronica PIMENOFF, expert for psychiatry at the administrative court of Helsinki and of the administrative court of Åland (Finland).

6. The CPT's delegation enjoyed excellent cooperation at all levels. It had unlimited access to all places it wished to visit, was able to meet with those persons with whom it wanted to speak in private and was provided with access to all the information it required. In particular, the CPT would like to thank the CPT liaison officers, Mr Gomez and Mr Sacramento, for the assistance provided both before and during the visit.

In the course of the visit, the CPT's delegation met the Chief Minister, the Hon. Fabian PICARDO, the Minister for Health and Environment, the Hon. John CORTES, the Minister for Equality, Social Services and the Elderly, the Hon. Samantha SACRAMENTO and the Minister for Justice, Hon. Gilbert LICUDI. The delegation also met senior officials from the Prison Service, Royal Gibraltar Police Force, Gibraltar Customs, Coastguard and Borders Agency, Psychiatric hospital, Social and Welfare Services, the Courts, the Ministry of Defence and other relevant departments. Further, the delegation met Mario HOOK, Gibraltar Public Services Ombudsman and Michael CAETANO, Chairman of the Gibraltar Prison Board. The CPT's delegation also met the Deputy Governor of Gibraltar, Alison MACMILLAN.

7. The delegation visited the following establishments:

- New Mole House Police Station
- HM Prison Windmill Hill
- King George V Psychiatric Hospital
- The Port and Land border facilities: Gibraltar Customs
- The Royal Gibraltar Regiment
- The Supreme and Magistrates' Court holding cells

The delegation also visited Tangiers View Children's Home and the Giraldi Home with a view to determining whether any of the children or residents, respectively, were deprived of their liberty.

II. FACTS FOUND AND ACTION PROPOSED

A. Law enforcement agencies

1. Legal framework

8. Law enforcement is undertaken jointly by the Royal Gibraltar Police Force (RGP) and Gibraltar Customs. At the time of the visit the RGP force comprised over 220 officers, divided into a number of units. The Police Act 2006 outlines the responsibilities for policing in Gibraltar of the Governor of the United Kingdom and the Gibraltarian Government respectively.

9. The Criminal Procedure and Evidence Act 2011 (CPEA) and the Police Act 2006 authorise the powers of arrest and custody in the custody cells in New Mole House Police Station, which is the only designated place of police custody in Gibraltar pursuant to Section 56(1) and Schedule 3 of the CPEA. The rules governing police custody are set out in the Police Act 2006 and Police (Discipline) Regulations 1991 as well as in the CPEA.

The CPEA outlines the permissible lengths of police detention. It specifies that a person cannot be kept in police detention for more than 24 hours from the time at which the person arrived at the station,[1] without being charged. If it is necessary to secure evidence or investigate further, with the authorisation of the relevant police superintendent, detention without charge can be extended up to 36 hours.[2] The Magistrates' Court can issue a warrant for further detention after expiration of the 36 hour-time limit on the grounds of securing more evidence or continuing the investigation[3] and thereafter can issue an extension of the warrant for further detention.[4] The warrants for further detention and for an extension of the warrant of further detention cannot be longer than 36 hours.[5] The maximum period of detention permissible is no longer than 96 hours.

Various safeguards are afforded to detained persons and are guaranteed by law. These include notification of the grounds of continued detention and of the right to make representations before any continued detention.[6] There is a right to periodic review of the lawfulness of police detention. The first review should be conducted within six hours after initial detention and thereafter within every nine hours.[7]

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1 Section 65(2), CPEA.
2 Section 66, CPEA.
3 Section 67, CPEA.
4 Section 68, CPEA.
5 Section 67 (11)(b), CPEA.
6 Section 66(4)(5), CPEA.
7 Section 63, CPEA.

10. Gibraltar Customs controls all entry points into the Bay of Gibraltar and land ports. In addition, it undertakes shore patrols, and is responsible for controlling imports and exports, and for collecting import duties and also patrolling the Bay of Gibraltar. Gibraltar Customs officers have the power to arrest any person suspected of committing an offence against the Imports and Exports Act. A person who has been arrested under this section should be handed over into the charge of a police officer as soon as is practicable. Where there is a suspicion of having committed an offence relating to a Class A or a Class B drug and there are reasonable grounds to suspect that a person has such a drug concealed on him, an officer of at least the rank of Customs Surveyor may authorise that that person be kept in the custody of customs officers for a period not exceeding 96 hours[8] (see paragraph 24).

2. Ill-treatment

11. The CPT's delegation found that the majority of detained persons interviewed, including prisoners at Windmill Hill Prison and patients at King George V Mental Health Hospital, reported that they had been generally treated in a correct manner by the police. Nevertheless, the delegation did receive some allegations of physical ill-treatment of persons detained in police custody.

These allegations mostly concerned excessive use of force by police officers at the time of apprehension and rough treatment during subsequent questioning. In two cases, police officers allegedly threw the non-resisting apprehended persons to the ground and shouted abuse at them; in one of these cases, a police officer allegedly kicked the apprehended person while he was lying on the ground and apparently exerted psychological pressure by threatening to involve respective family members unless a confession was forthcoming.

Other allegations concerned handcuffs being applied excessively tightly at the time of arrest. During the visit, the delegation members observed visible red marks on the wrists of one detained person who made such an allegation. From information gathered, the delegation noted that red marks on the wrists of newly-arrived detainees were not infrequent.

The CPT recognises that the arrest of a suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when effecting an arrest. Where it is deemed essential to handcuff a person at the time of apprehension or during the period of custody, the handcuffs should under no circumstances be excessively tight[9] and should be applied only for as long as is strictly necessary.

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8 Imports and Exports Act, 1986 (as amended), article 9(2).

9 It should be noted that excessively tight handcuffing can have serious medical consequences (for example, sometimes causing a severe and permanent impairment of the hand(s)).

The Committee recommends that it should be made clear that all forms of ill-treatment (be they at the time of police apprehension, transportation or during subsequent questioning) are absolutely prohibited, and that the perpetrators of ill-treatment will be punished accordingly.

Further, **the CPT recommends that police officers should be reminded regularly, and in an appropriate manner, of the need to respect the above-mentioned basic principles when effecting an arrest.**

3. Safeguards against ill-treatment

12. The CPT attaches particular importance to three fundamental safeguards for persons deprived of their liberty by the police: the right of those concerned to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These three rights represent fundamental safeguards against ill-treatment of persons deprived of their liberty, which should apply from the very outset of custody. In addition, it is important that all detained persons are informed of their rights in a language they understand.

13. The CPT was pleased to note that the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation as from the very outset of custody operated in a satisfactory manner in practice. This right was listed in the information provided to detained persons upon arrival to police custody; there were no complaints made to the delegation that it was not adhered to in practice. Further, the delegation noted that this right was guaranteed in law.[10]

14. The right of access to a lawyer is adequately enshrined in law in Gibraltar.[11] However such a right was only accessible at the detainee's own expense. According to the information gathered by the delegation, there was no scheme in place to ensure that a duty solicitor might be available to visit the police station upon request. Detained persons were provided with information on arrival at the police station that specified the right to a lawyer as well as the provision of a list of lawyers to contact. However, according to information gathered by the delegation, some detained persons were reluctant to contact a lawyer for reasons of prohibitive costs. This situation was not uncommon, according to the custody sergeants.

In the CPT's experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is greatest. The possibility for persons taken into police custody to have access to a lawyer during that period will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. In the Committee's view, for this right to act as an effective safeguard against ill-treatment, it should include the lawyer's presence at the police station, in principle also during questioning. If a detained person cannot afford a lawyer then a duty solicitor arrangement should be put in place.

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10 Section 83, CPEA.

11 Gibraltar Constitution 2006, Article 3(2); and Section 85, CPEA.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that they were discussing the introduction of the Duty Solicitor Scheme in conjunction with the Bar Council.

The CPT welcomes this initiative and recommends that the Gibraltarian authorities pursue these discussions with a view to ensuring that all persons arrested by the police are guaranteed an effective right to a lawyer as from the outset of their deprivation of liberty.

15. As concerns the right of access to a doctor, the delegation noted that the right to 'urgent medical assistance' was included in the information given to detained persons in police custody. The delegation, however, observed that the onus was placed on the detained person to persuade the police that they needed such assistance. One person met by the delegation had her initial request to see a doctor refused as the custody sergeant told her that her case was not severe enough; she had visible red marks on her wrists and stated that she also had chest pain from where the arresting officers had allegedly pushed her. The same custody sergeants on duty told the delegation that only in severe cases, where the custody staff thought it necessary, would the doctor be called.

The CPT notes that it is the duty of the custody sergeant to call a doctor whenever a request is made by a detained person, but it is not for the police officers to decide whether a detained person is in need of medical attention. The CPT must stress that a doctor should always be called without delay when a person in police custody requests a medical examination. Police officials should not seek to filter such requests.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that they will review the Royal Gibraltar Police's process in this regard to bring it in line with the CPT's comments on detained persons' effective access to a doctor as set out in its Preliminary Observations sent to the authorities on 1 December 2014.

The CPT recommends that appropriate steps be taken to ensure that this requirement is met. Further, detained persons should be expressly informed of their right of access to a doctor in all cases.

16. The CPT notes that the written information that was given to detained persons in police custody included the 'right to urgent medical assistance'; however, this right was not guaranteed in law.

The CPT recommends that the authorities guarantee the right of access to a doctor in law.

17. Information on rights was available in written form and in several languages at New Mole House Police Station, and according to interviews with detained persons and custody sergeants, it was clear that detained persons were in practice offered a copy.

18. As regards the custody records at the police station, these were handwritten and kept in the custody area until the relevant detained person had left police custody, whereupon the records were sent to the archives. From a random sample checked, the delegation found these to be well kept and thoroughly completed, including notes made on any injuries or marks seen by the custody sergeants on persons arriving at the custody suite.

19. The CPT has consistently stated that the existence of effective mechanisms to tackle police misconduct is an important safeguard against ill-treatment of persons deprived of their liberty. The existence of effective procedures and mechanisms for examining complaints and other relevant information regarding alleged ill-treatment by the police is an important safeguard against ill-treatment of persons deprived of their liberty.

Interviews conducted by the delegation at the police station and at the prison, including with custody staff, highlighted that there was no immediate avenue for detainees in police custody at New Mole House Police Station to make a confidential complaint. Detained persons who wanted to complain were informed by custody sergeants that they had to wait until they left police custody and presented themselves in person at the Police Complaints Board established within the Gibraltar Police Authority. The delegation also noted the absence of any complaints forms or boxes in the police station.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that complaints against police were lodged with the Police Complaints' Board but if a detainee had grounds for a complaint s/he could raise this with the Custody Staff at the police station in the first instance or alternatively with the Reviewing Officer.

All persons deprived of their liberty by the police should be informed in writing about their right to make a complaint against the police and appropriate complaints forms in relevant languages should be made available. In the context of Gibraltar, the Committee considers that persons detained by the police ought to be able to make written complaints at any moment and place them in a locked complaints box located in the custody area. This locked box should be emptied on a regular basis by a person not from the custody area, preferably by an independent police body. This can have a significant preventive or deterrent effect as regards ill-treatment as well as providing management with feedback on problems.

The CPT recommends that information about the complaints procedures and mechanisms available should be included in the initial written information given to detained persons on arrival; and the provision of a locked complaints box with relevant confidential complaints forms should be available and emptied regularly by an independent police body.

4. Conditions of detention

20. In general, the physical conditions of police custody should meet certain elementary material requirements. All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons kept in police custody for 24 hours or more should be offered outdoor exercise every day.

21. Material conditions at New Mole House Police Station were of a generally good standard. The five (single occupancy) cells measured approximately 8m² and were well-ventilated and clean, and equipped with a plinth, mattress, toilet and artificial lighting. The holding cell measured approximately 13.5m² and did not have in-cell sanitation, however, the delegation was informed that it was only used for short holding periods and detained persons were escorted to the nearby toilet upon request. There was also a closed shower room in the custody area. Microwaved meals and hot drinks were provided at regular intervals as well as when detainees requested them and there were no complaints made about the quality. Nevertheless, the delegation observed that there was no access to natural light in all the cells and that the cells did not possess call-bells, with the result that detained persons had to bang on the cell doors to attract the custody sergeants' attention. Further, the delegation noted that there was no ready access to drinking water in the cells.

The CPT recommends that the Gibraltarian authorities take the necessary steps to remedy these deficiencies.

Further, the delegation noted that the entirety of each cell was exposed on CCTV, as the camera was positioned in such a way that the detained person was even visible when using the toilet. Custody sergeants, when asked about this, replied that they temporarily switched the camera off when the toilets were being used. The CPT has no objection to the use of a closed-circuit video surveillance system for keeping detention areas under surveillance. However, given the intrusive nature of such monitoring, it is necessary to have a comprehensive regulatory framework that provides, inter alia, for the specific grounds on which in-cell video surveillance may be authorised, the procedure to be followed and the criteria to be used. It is also essential that the privacy of detained persons be preserved when they are using a toilet and washing themselves.

The CPT recommends that the authorities put in place the necessary regulatory framework for in-cell video surveillance and that steps be taken to ensure that the privacy of detained persons in police custody cells is preserved.

22. The CPT has consistently recommended that persons held for 24 hours or more in police custody be offered access to outdoor exercise every day. Detained persons were occasionally held in New Mole House Police Station for longer than 24 hours, particularly over weekends until the Courts opened on Monday morning. There was a very small barred external area appended to the side of the custody-suite wall, with bars on three sides and the roof, which measured only 3m², and was used essentially for cigarette breaks offered to detained persons at the custody officer's discretion. This is not sufficient as an outdoor exercise yard for meaningful exercise.

The CPT recommends that steps be taken to ensure that all detained persons held for 24 hours or more in police custody at New Mole House be offered outdoor exercise.

23. As regards mentally ill persons, the delegation was informed that the police often detain and transport agitated persons to the Acute Ward of King George V Mental Health Hospital (KGV). Further, in the course of the visit the delegation spoke with a patient who had been detained in New Mole House Police Station overnight before being brought to KGV and who had found the experience distressing. The CPT considers that holding mentally ill persons in a police station is not appropriate and that they ought to be transferred immediately to the mental health hospital. Further, police are not trained to care for mentally ill persons.

The CPT recommends that every effort be made to avoid detaining mentally ill persons in New Mole House Police Station. Further, police officers should be provided with basic training on how to care for mentally ill persons for those occasions when they are called upon to intervene and transport such persons to hospital.

5. Gibraltar Customs

24. As mentioned in paragraph 10, Gibraltar Customs may arrest and authorise that a person be kept in the custody of customs officers for a period not exceeding 96 hours.[12] There however appeared to be no safeguards available for detained persons arrested pursuant to the Imports and Exports Act 1986.

25. The Customs' facilities at the Four-Corners land border included a small holding room, with an adjacent 'observation toilet', for detaining persons believed to be concealing unlawful substances (e.g. drugs) or items inside their body ("body packers"). However, the delegation was informed that the room had not been used for some two years as the only authorised place of detention under the CPEA was New Mole House Police Station. Suspected "body packers" were currently taken to the custody cells at New Mole House Police Station. Customs' officials informed the delegation that there might be amendments made to the CPEA in the future to enable the holding room at the Customs' facilities to be authorised for use.

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12 Imports and Exports Act, 1986 (as amended), Article 9(2).

The CPT would like to receive more information about any pending amendments to the legislation and the envisaged timeframe that would authorise customs officials to detain persons in a holding room, designated as a place of custody. Further, the CPT wishes to receive confirmation that the safeguards contained in the CPEA as well as the right of access to a doctor apply equally to all persons detained by Gibraltar Customs.

Further, the Committee would like to be informed if there are any special procedures in place at New Mole House Police Station for dealing with body packers and, in particular, whether suspected body packers have immediate access to a healthcare professional whether day or night.

26. As concerns the material conditions of the holding room and adjacent "observation toilet", the delegation observed that the holding room measured a mere 4m², had no access to natural light and was not equipped with any means of rest. In sum, it was not suitable for holding persons for more than a few hours. In addition, no records were available for the delegation to check in order to verify the exact time that a person had been last detained there, and for how long.

Should the pending amendments to the relevant legislation come into effect authorising detention by Customs officials of up to 96 hours, the CPT recommends that the above-mentioned holding room not be used as a designated place of custody and alternative arrangements be made for keeping detained persons.

B. Windmill Hill Prison

1. Preliminary remarks

27. Windmill Hill Prison was built in 2010 to replace the old Moorish castle prison. Perched high up on the Rock overlooking the Bay of Gibraltar it is Gibraltar's only operational prison. It has six small accommodation wings on three floors catering to all types of prisoner groups: on the ground floor were F Wing for the female prisoners, A wing for vulnerable persons, B wing for juveniles and C wing for adult male prisoners on an enhanced or privileged regime; on the upper floors were D wing for the general sentenced population and E wing for remand prisoners. There was also a Segregation unit on the ground floor.

As the prison is expected to perform the functions of an entire Prison Service, it accommodates all categories of prisoner, from those sentenced for non-payment of debts, to those sentenced to long sentences for financial "white-collar" offences, to prisoners sentenced to life imprisonment.

28. The official capacity of the prison was 98 and at the time of the visit the prison accommodated 52 inmates, of whom 49 were male and three were female. Two of the male inmates were juveniles, of whom one was a 14 year-old. Thirteen prisoners were on remand.

29. Foreign nationals, detained pursuant to section 59 of the Immigration, Asylum and Refugee Act, were also held in Windmill Hill Prison prior to deportation for a maximum of 28 days renewable by the Magistrates Court or the Governor. The authorities informed the delegation that the number of immigration detainees held at Windmill Hill Prison during a year was extremely low. The delegation noted that none were present at the time of the visit.

Nevertheless, the CPT recalls that, in its opinion, a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence. In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel. Moreover, the CPT considers that whenever immigration detainees are held in prison they should be kept separately from remand and sentenced prisoners, and be offered a different regime.

The Committee recommends that the Gibraltarian authorities review the current arrangements for accommodating persons detained for immigration offences.

2. Ill-treatment

30. The delegation observed a relatively relaxed atmosphere in the prison, with generally good relations between staff and inmates. There were no allegations received during the visit of physical or psychological ill-treatment by prison staff towards the prisoners.

Some tensions between prisoners did exist, but there was no systematic inter-prisoner violence or intimidation evident and staff took measures to separate bullying prisoners when such cases were brought to their attention. Nevertheless, there was no clear anti-bullying policy in operation and no proactive steps had been taken by prison officers to address potential problems.

The CPT recommends that clear written procedures be put in place to address and prevent inter-prisoner violence and intimidation.

3. Conditions of detention

31. In respect of the material conditions, the delegation observed that the relatively new prison provided vastly improved conditions compared with those of the former Moorish Castle prison. All cells were adequately equipped with a bed, table and chair and shelving, and in-cell sanitation. The cells also possessed a call bell, with each call logged and response times noted. However, the cells measured only some 7.5m² (including the in-cell sanitation annex), which is sufficient for single occupancy but not for accommodating two persons as was the case in most cells in Windmill Hill Prison.[13]

Further, in those cells overlooking the Bay, many of the cells' windows and vents had been corroded by the weather, resulting in wind and rain entering the cells during inclement weather. Additionally, there were problems with hot water, non-functional flushes for some toilets and blocked drains.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that they planned to undertake maintenance work from the exterior of the building once a year to minimise the ingress of water and wind, and that a rolling programme of cell water supply maintenance will be introduced. The CPT welcomes these initiatives.

The CPT recommends that the Gibraltarian authorities take the necessary steps to remedy the remaining deficiencies and to ensure that no more than one prisoner is accommodated in a cell of less than 8m²; if necessary Section 23 of the Prison Act should be amended to reflect this requirement.

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[13] See, for example, the report on the 2001 visit to the United Kingdom, (CPT/Inf (2002) 6, paragraph 52), where the CPT recommended that "cells measuring 8.5 m² or less be used to accommodate no more than one prisoner (save in exceptional cases when it would be inadvisable for a prisoner to be left alone)" or the report on the 2010 visit to Ireland (CPT/Inf (2011) 3, paragraph 41) or the report on the 2012 visit to Slovenia (CPT/Inf (2013) 16, paragraph 36).

32. As regards regime, the aim should be for all prisoners to spend a large part of the day engaged in purposeful activity of a varied nature. At the time of the visit the activities on offer to the prisoners included access to the gym, courses on literacy, numeracy, information technology and languages, sports and a popular handicraft/carpentry workshop. Nevertheless, many prisoners criticised the lack of more purposeful organised activities on offer and noted that these had limited availability in practice. For example, many prisoners were only allowed to attend the workshop for approximately an hour a week.

The situation of female prisoners was of even greater concern as they were effectively only offered access to one workshop for one hour once a week, access to the gym for one hour three times a week and access to education classes once a week (despite other prisoners being allowed access to education three times a week, according to information given by the authorities) due to restrictions surrounding the compulsory separation of female and male prisoners. Further, their situation was exacerbated by the fact that during 'unlock' time they were in effect confined to their small unit for around 21 hours of the day.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that, in addition to the above-listed activities, a new carpentry course will be offered to all prisoners, and that additional activities are being also considered. These represent positive developments which need to be built upon.

The CPT recommends that the Gibraltarian authorities continue to expand the range of – and opportunities for – prisoner activities, with a view to ensuring that all prisoners spend a large part of the day engaged in purposeful activity of a varied nature. In particular, greater efforts should be made to provide female prisoners with more meaningful activities outside the female unit and to ensure that they enjoy access to activities on an equal basis with male prisoners. Consideration might also be given to offering activities in which both male and female prisoners may participate together.

33. Further, while prisoners were entitled to one hour of daily exercise, almost all the prisoners interviewed alleged that this was often cancelled in practice, either due to a lack of staff being available or inclement weather, as there was no protection from the weather.

The CPT acknowledges that this issue had previously been raised as a recurrent concern by the Prison Board, and had been investigated by prison management over a selected test month (October 2014). Information communicated to the CPT on 2 February 2015 by the authorities informed the CPT that statistics show that on numerous occasions, prisoners declined their daily exercise allocation. However, it appeared from information gathered by the delegation that, at the time of the visit, the cancellation of outdoor exercise continued to be problematic.

Further, the Gibraltarian authorities also informed the CPT by communication of 2 February 2015 that providing protection from inclement weather in the exercise yard was impractical (other than the provision of raincoats to the prisoners).

The Committee recommends that all inmates must be offered a minimum of one hour of outdoor exercise every day. Further, it recommends that the authorities examine the feasibility of installing a shelter in the yard from inclement weather.

34. As regards individual sentence planning, the delegation was informed that although previously the probation services had undertaken some sentence-planning work with individual prisoners, this had recently stopped due to resource constraints. The only form of sentence planning at the time of the visit took the form of visits by a general counsellor, substance misuse counsellor and clinical psychologist who worked with some individual prisoners and provided some group sessions. Save for this, the delegation did not see any individual sentence planning undertaken systematically for every prisoner nor other regular programmes or courses addressing offending behaviour for the majority of the prisoners. This deficiency was exacerbated by the general lack of purposeful activities available, and facilitated the creation of an environment that was not geared for meaningful offender rehabilitation or reintegration into society.

As recalled by the European Prison Rules, deprivation of liberty must be executed within the framework of a plan ultimately leading to preparation for release.[14] To this end, prisons must, within the framework of sentence plans, be able to offer sentenced prisoners satisfactory regime activities. The CPT recalls that "imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment"[15]. Further, in relation to the detention of life-sentenced prisoners in Windmill Hill Prison, reference should be made to the Revised European Prison Rules[16] which state in Rule 103.8 that "particular attention shall be paid to providing appropriate sentence plans and regimes for life-sentenced prisoners", taking into consideration the principles and norms laid down in the Council of Europe Recommendation on the "management by prison administrations of life-sentence and other long term prisoners".

The CPT invites the Gibraltarian authorities to ensure the proactive involvement of prison officers in drawing up and implementing sentence plans, and to take steps to ensure that all prisoners have a sentence plan and that such plans are reviewed regularly; this is especially important for those serving long or life sentences.

4. Juveniles

35. One of the cardinal principles enshrined in the United Nations Convention on the Rights of the Child[17] and in the European Rules for juvenile offenders[18] is that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time and that in all action concerning them, their best interests shall be a primary consideration.[19]

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14 Rule 103.2.

15 See Rule 102.2 of the European Prison Rules.

16 Adopted on 11 January 2006 by the Council of Europe's Committee of Ministers [Rec (2006) 2].

17 Articles 3 and 37.b of the United Nations Convention on the Rights of the Child.

18 Rules 5 and 10 of the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11).

19 See General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1) by the Committee on the Rights of the Child. See also the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines").

36. At the time of the visit, two male juveniles, one of whom was 14 years old, were being held in separate cells in Wing B between the vulnerable prisoner unit (Wing A) and the enhanced prisoner unit (Wing C). The material conditions in the six-cell unit were similar to those described above for the rest of the prison.

As regards the regime, both juveniles attended a carpentry workshop for two hours a week and could visit the gym twice per week for one hour. Further, the 14-year-old was offered two hours of schooling every week and was provided with "homework" while the other juvenile (a foreign national of 17 years old) was still waiting after two months to be offered some schooling. For the rest of the time, the juveniles were confined to their wing with no purposeful activities to fill their time. Clearly such a regime is totally insufficient, as juveniles should be provided with a full programme of education, sport, vocational training, recreation and other purposeful out-of-cell activities. Moreover, each juvenile should have an individualised plan drawn up upon admission, specifying the objectives, the timeframe, and the means through which the objectives should be attained. The aim should be to best utilise the time that the juvenile concerned spends in detention to develop skills and competences that assist him or her to reintegrate into the community.

37. Newly-admitted juveniles were also confined to their cells for a period of one week as a period of induction to acclimatise themselves to the prison. During this time, juveniles were only offered two periods of half an hour in the exercise yard every day, and for the rest of the time they remained in their cells with nothing to do – television was only permitted after four months – and only very few visitors. The 14-year-old juvenile had spent a week confined to his cell in June 2014 and again in September 2014, when he was admitted for a second time.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that the period of induction for juveniles would be reviewed and would be reduced to a maximum of 24 hours. This development is to be welcomed. The CPT considers that an induction procedure, if performed properly, can identify at least certain of those at risk of self-harm and relieve some of the anxiety experienced by all newly-arrived prisoners. Further, it can acquaint prisoners with the regime and running of the prison, and ensure that they had been able to contact their family. The Committee considers that such basic procedures on admission are vital in assisting inmates entering the criminal justice system to adjust to prison life (see paragraphs 54 and 55). **The CPT would like to be informed of the content of the revised induction programme.**

38. The custody and care of juveniles deprived of their liberty is a particularly challenging task. It should be taken into account that many of them have suffered physical, sexual or psychological violence. The staff called upon to fulfil that task should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the juveniles in their charge. All such staff, including those with purely custodial duties, should receive professional training, both during induction and on an on-going basis, and benefit from appropriate external support and supervision in the exercise of their duties.

At the time of the visit, prison officers were doing their best to provide support to the 14-year-old through engaging him in conversation, and providing him with an over-sized coat so he could go outside when the weather was cold and wet. There was minimal staff interaction with the other juvenile as no staff member spoke his native language Arabic, and his French was minimal. However, the staff were not trained to work with juveniles and did not possess specific skills for managing challenging young persons nor did they benefit from any external support and supervision.

The CPT recommends that staff working with juveniles receive the appropriate training and supervision. Further, where staff do not have a knowledge of the languages spoken by inmates at Windmill Hill Prison increased use of translation services should be available to facilitate communication.

39. The CPT also considers that any disciplinary measures applied to juveniles should be specifically tailored to their situation and not be the same disciplinary procedures as for adults. The Committee notes that Regulation 57 of the Prison Regulations 2011 provides for a differentiated set of disciplinary punishments for young adults (i.e. prisoners under the age of 21). However, there is nothing specific in the Regulations or the Act with reference to juveniles and the sanctions provided for in Regulation 57, such as 10 days of cellular confinement or 21 days' forfeiture of privileges, are not appropriate for juveniles. In the CPT's view, any form of isolation of juveniles is a measure that can compromise their physical and/or mental well-being and should therefore be applied only as a means of last resort; solitary confinement as a disciplinary measure should only be imposed for very short periods and under no circumstances for more than three days.. Moreover, restorative conflict resolution should be given priority over formal disciplinary procedures and sanctions.

In June 2014, the 14-year-old boy had been found with tobacco in his possession and as a result was immediately confined to his cell for six days with half an hour of outdoor exercise in the morning and the evening. He did not apparently have access to school during this period and was not offered any other activities.

The CPT recommends that the Gibraltarian authorities draw up specific regulations for the discipline and security of juveniles in prison.

40. In sum, Windmill Hill Prison is not a suitable place to accommodate juveniles and especially not a 14-year-old boy. The CPT recognises the challenges of providing a secure location for juveniles who commit serious offences in a small jurisdiction such as Gibraltar. Nevertheless, consideration should be given to providing a more child-centred environment for juveniles who must be deprived of their liberty. **To this end, the CPT recommends that the Gibraltarian authorities develop a strategy for addressing the specific needs of juveniles deprived of their liberty, which might include establishing a small unit with a few secure places. The experience of other similar jurisdictions such as Guernsey and Jersey may be instructive.**

As long as juveniles are kept in Windmill Hill Prison, the CPT recommends that additional efforts must be made to provide them with a full range of purposeful activities and socio-educative support.

5. Health-care services

a. somatic care

41. The Committee considers that a prison health-care service should be able to provide medical treatment and nursing care, as well as physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community (equivalence of care, while also taking into account the special needs of the prison population).

However, at Windmill Hill Prison there were no full-time medically qualified personnel; instead, an external doctor and psychiatrist each visited approximately once a week. A dentist visited the prison once a month, the frequency of which was not sufficient for dental treatments that required continuous treatment, such as root fillings, where delays could, and according to some prisoners did, lead to infection and extraction. There were three prison officers with some limited first aid training, acting as "hospital officers", who were present from 8 a.m. until 8 p.m. on rotation seven days a week. An ambulance was called in cases of emergency or if medical attention was needed during the night. These hospital officers did the rounds on the prison wings, distributing medicine and preparing a list of prisoners who wanted to see the doctor. The hospital officers informed the delegation that they had received minimal training and needed first-aid refresher courses and did not feel sufficiently trained to carry out their tasks. They also highlighted various difficulties in contacting the external doctors when needed. Further, the hospital officers were not infrequently deployed on the accommodation wings as prison officers.

The CPT underlines its concerns that there is an insufficient qualified medical personnel (doctors or nurses) presence at Windmill Hill Prison and considers that too great a reliance is placed on the insufficiently trained 'hospital officers' and the local ambulance service. In addition, the dual function of the hospital officers in performing medical and ordinary prison officer functions compromises the hospital officers' independence vis-à-vis the prisoners. Further, in the CPT's view, it is not within the competence of prison officers to provide primary health care or to dispense prescription medication – primary health-care should be only provided by a medically qualified healthcare professional and dispensing medication should only be carried out by a nurse or a trained pharmaceutical dispenser. The Committee considers that for a prison such as Windmill Hill Prison there should be the equivalent of a full-time registered nurse present at the establishment.

The CPT recommends that the authorities completely review the provision of health-care at Windmill Hill Prison with a view to assessing the somatic, psychiatric, dental and health-care needs of the prison, in light of the above remarks, and to inform the Committee accordingly. This will necessitate increasing the attendance of a doctor at the prison and ensuring the recruitment of the equivalent of one full-time registered nurse. In parallel, the Gibraltarian authorities should progressively abolish the practice of involving 'hospital officers' in the performance of health-care duties at Windmill Hill Prison.

If the scheme's continued use is considered justified in the short-term, the CPT invites the authorities to ensure that the 'hospital officers' receive proper first-aid training and their dual role of ordinary prison officers be abolished. Further, the CPT considers that there should always be someone competent on the premises who is trained to provide first aid, including at night and at weekends.

42. A prison health-care service should be able to provide medical treatment and nursing care in conditions comparable to those enjoyed by patients in the outside community and provisions in terms of medical premises, installations and equipment, should be geared accordingly.

At Windmill Hill Prison the delegation observed that the prison health-care facilities and equipment were deficient in many aspects. There was no first-aid box in the prison despite alleged repeated requests made to the prison management for this to be provided. There was an automatic external defibrillator but not a single person in the prison had been trained to use it. Further, the delegation noted that the health-care consultation room was cramped. The dentist's chair installed in the centre of the room occupied almost all available space, while the examination bed was crammed into one corner of the room. As there was no separate dental surgery, the dentist had to perform his work in the surgery of the general practitioner where the hospital officers were also located.

The consultation room is inadequate for those responsible for health-care to properly perform their duties.

The CPT recommends that the authorities take steps to ensure that all the health-care equipment is readily available and fully functional and regularly checked. Further, it recommends that an additional room should be made available for the purpose of undertaking health-care consultations.

43. The Committee considers that all newly-arrived prisoners should be subjected, as soon as possible, and no later than 24 hours after their admission, to a comprehensive medical examination by a *health-care professional* under conditions guaranteeing medical confidentiality.

At Windmill Hill Prison the delegation was concerned that as the on-call doctor only visited the prison once a week, on a Wednesday, inmates had to wait several days or as long as a week before undergoing a proper medical assessment. The Committee considers that such a delay hinders the detection of injuries and exposes prisoners entering the prison with alcohol or drug withdrawal symptoms to a significant degree of risk. From information gathered by the delegation during the visit it was clear that medical screening was not undertaken by a medical doctor or fully qualified nurse (reporting to a doctor) promptly or comprehensively for every newly-arrived prisoner at the prison; instead, a medical interview is undertaken, and a questionnaire completed, by non-medically qualified prison officers with insufficient training.

The CPT recommends that the Gibraltarian authorities take steps to ensure that every newly-arrived prisoner be properly interviewed and physically assessed by a medical doctor, or a fully qualified nurse reporting to a doctor, during the initial screening. Such screening should always take place within 24 hours of a person's admission to prison, and preferably on the day of arrival at the establishment; if necessary, Section 41 of the Prison Act 2011 should be amended accordingly. Further, the prison health-care service should have in place a screening tool to enable it to properly assess the health-care needs of each newly-admitted prisoner.

44. As concerns the medical records, the delegation observed that these were handwritten and many were illegible and had been incompletely or superficially filled out; dates of admittance and examination by doctors were missing as were the respective signatures. While there was a type of form available for recording any injuries and evidence of injuries were noted in the medical records, some of the relevant records inspected by the delegation were only partially completed, and not dated or signed, with the result that it was unclear whether the report of the injury had been passed on to a competent authority to investigate.

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

The CPT recommends that the authorities review the existing procedures 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 competent authorities (e.g. the 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.

The Committee also wishes to recall that any record drawn up after such an examination should contain:

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

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

The recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. This should take place in addition to the recording of injuries in the special trauma register. Further, a copy of the record should be made available to the prisoner concerned and his or her lawyer.

b. deaths in custody

45. The CPT's delegation was informed that there had been two deaths in custody since Windmill Hill Prison had become operational in 2010. From the information given to the delegation, one case concerned a suicide which had subsequently been the object of an investigation and, in the other case, the inmate had reportedly died of natural causes. The latter case raised issues of concern for the delegation.

Prisoner A. had arrived at Windmill Hill Prison on 28 September 2010. There was no evidence in the files made available to the delegation that he had received any medical screening upon admission. The prisoner died the next day. According to the available records, the time of death was not noted. The only entry found in the records was a reference to medication that the prisoner took, comprising Tegretol and Heminevrin. These medications are typically given if there is a suspicion that a prisoner is suffering from severe alcohol withdrawal with a possibility of developing delirium tremens (DT), and they constitute one of the establishment's alcohol and benzodiazepine withdrawal regimes. DT is the most severe form of ethanol withdrawal manifested by global confusion and autonomic hyperactivity, which can progress to cardiovascular collapse. DT is a medical emergency with a high mortality rate, making early recognition and treatment essential. The CPT considers that any person in a state of DT should not be left alone in a prison cell without on-going supervision and monitoring of the person's vital functions and transfer to hospital. The prisoner in this case was not subject to supervision and monitoring. Further, it was unclear whether an investigation into this death in custody had been carried out.

In light of this case, the CPT reiterates the fundamental importance that every newly-arrived prisoner be properly interviewed and physically assessed by a health-care professional within 24 hours of arrival at the establishment (see paragraph 43). The CPT also considers that in line with Recommendation 99(3) of the Committee of Ministers, in cases where death may be due to unnatural causes, the competent authority, accompanied by one or more medico-legal experts, should where appropriate investigate the scene, examine the body and decide whether an autopsy should be carried out.[20] Autopsies should be carried out in the case of all obvious or suspected unnatural deaths.[21]

The CPT recommends that the Gibraltarian authorities institute a practice of carrying out thorough autopsies and inquiries into all deaths in custody with a view to learning lessons and improving operating procedures within the prison. If necessary, the legislation should be amended accordingly. It also requests a copy of the report into any inquiry that might have been conducted into either of the above-mentioned deaths in Windmill Hill Prison.

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20 Article 1, Principles and Rules relating to medico-legal autopsy procedures, Recommendation 99(3) of the Committee of Ministers.

21 Article 2, Principles and Rules relating to medico-legal autopsy procedures, Recommendation 99(3) of the Committee of Ministers.

c. suicide prevention

46. The CPT reiterates the importance of medical screening of newly-arrived prisoners, in particular in the interests of suicide prevention. As regards suicide prevention policies, the CPT considers that a standard screening algorithm to assess the risk of suicide (and self-harm) in prison is important; such a tool should, in particular, ensure that drug and/or alcohol dependence are adequately taken into account in the screening process as factors potentially heightening the risk of suicide. Further, steps should be taken to ensure that information on an inmate at risk of suicide or self-harm is transmitted in full and promptly to all those who have a role in caring for the prisoner.

At Windmill Hill Prison the delegation was not able to gather enough information to obtain a clear overall picture of the prison's suicide prevention approach. However, it did consider that prisoners displaying (severe) ethanol withdrawal symptoms were not paid adequate attention: the alcohol and benzodiazepine withdrawal regime did not address the need for monitoring prisoners with (severe) ethanol withdrawal symptoms and there were also no algorithms available to guide the 'hospital officers' to adequately deal with prisoners suffering from withdrawal. Further, the delegation noted that prisoners in withdrawal were the responsibility of the 'hospital officers' who had not been provided with sufficient training and skills to perform their quasi-health-care role adequately and to prevent fatalities.

The CPT recommends that the Gibraltarian authorities take the necessary steps to ensure that an adequate screening algorithm be introduced to assess the risk of suicide and self-harm in the prison. It also recommends that drug and/or alcohol dependence are adequately taken into account in the screening process as factors potentially heightening the risk of suicide.

Further, the CPT recommends that regular systematic monitoring of prisoners with (severe) ethanol withdrawal symptoms be introduced.

d. psychiatric care

47. A psychiatrist visited the prison once a week and was responsible for the provision of mental health services, assisted by a clinical psychologist. The psychiatrist was away at the time of the delegation's visit and the delegation did not receive any complaints about the mental health services' provision at the prison. Additionally, an external counsellor regularly visited the prison and addressed 'social cases' and drug users. Many prisoners praised the counsellor's work in the prison.

6. Other issues

a. prison staff

48. At the time of the visit, Windmill Hill Prison had a full complement of staff which included 55 custodial officers.

The delegation observed relatively relaxed staff-inmate relations, with many prisoners based in Gibraltar known to staff members. The challenge is for staff to maintain a constructive and positive approach towards inmates while at the same time ensuring that they treat prisoners equally and are not seen to be favouring one group over another. The staff in Windmill Hill Prison, especially in the small female unit, informed the delegation that maintaining psychological and professional distance from the prisoners was sometimes a challenge. Staff interviewed mentioned their own difficulties with working long hours in the small female unit in a close environment, compounded by the small population size of Gibraltar where, at times, the staff knew the female prisoners personally in the community.

In light of these comments, the CPT invites the prison authorities to look into ways in which to help prison staff maintain adequate distance in their professional lives to be able to maintain a constructive and positive approach towards inmates while at the same time ensuring that they treat prisoners fairly. **The CPT invites the authorities to consider rotating staff between wings more frequently and to establish mixed sex staffing in the female wing of Windmill Hill Prison.**

b. disciplinary procedures

49. It is in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice; any grey zones in this area involve the risk of unofficial (and uncontrolled) systems developing. Disciplinary procedures should provide prisoners with a right to be heard on the subject of the offences it is alleged they have committed, and to appeal to an independent authority against any sanctions imposed.

Further, if other procedures exist - alongside the formal disciplinary procedure - under which a prisoner may be involuntarily separated from other inmates for discipline-related/security reasons (e.g. in the interests of "good order" within an establishment), these procedures should also be accompanied by effective safeguards.

50. At Windmill Hill Prison, Regulations 49 to 62 of the Prison Regulations 2011 set out the procedures for inquiring into a breach of discipline as well as listing the acts which are considered to constitute such a breach. The regulations provide for certain safeguards, notably: prisoners are to be informed in writing of the charges against them and given sufficient time to prepare their defence; they are also allowed to cross-examine evidence given against them, and to make a plea in mitigation to the Superintendent before the imposition of any penalty. The maximum period of cellular confinement that may be imposed by a Superintendent is 21 days.

However, the Regulations do not explicitly provide for prisoners to call witnesses to testify on their behalf and there is no provision for appealing the decision of the Superintendent. Further, the CPT's delegation observed that, in practice, disciplinary files did not include a written record of the prisoner's statement and prisoners did not receive a copy of the decision. The delegation also received several complaints from prisoners about a lack of fairness in the disciplinary procedures. In particular, it would appear that extensive use was made of confining a prisoner to his cell once he had been placed on report, which was usually several days but could last up to 10 days.[22] The CPT is of the opinion that, in most cases, provisional disciplinary isolation, prior to a formal charge being brought, should not need to last longer than a few hours (which should also be sufficient time for a prisoner to "cool down" after a violent incident).

51. The CPT welcomes the fact that the punishment of cellular confinement was not imposed in practice. Nevertheless, the law provides for the possibility of a period of up to 21 days of cellular confinement for serious breaches of discipline. The CPT wishes to recall that in its view a punishment of solitary confinement for a disciplinary offence should not exceed 14 days and **it recommends that the Gibraltarian authorities amend the legislation accordingly.**

52. Prisoners who were found guilty of a breach of discipline, such as being found with a prohibited item or acting violently, would receive a sanction of forfeiture of privileges (i.e. those privileges permitted under Regulation 7 of the Prison Regulations 2011). In essence, this means that once a prisoner has been adjudicated and found guilty he will be placed in a cell on his own, with no radio or television, no cigarettes and only a bible for as long as the sanction lasted. Each prisoner would be offered one hour of outdoor exercise every day but would not participate in any other activities and was in practice confined to his cell for 23 hours a day. The sanction loss of all privileges could last up to 42 days and the delegation came across quite a few cases of 30 days or more of "loss of all privileges".[23]

By communication of 2 February 2015, the Gibraltarian authorities impressed upon the CPT that when a punishment of forfeiture of privileges was imposed, not all privileges were removed; notably, the prisoner remained on the accommodation wings, could converse through the door with other prisoners and when out of his cell one hour a day could associate with other prisoners. Nevertheless, it remains the case that in practice a prisoner is confined to his cell for a period of 23 hours a day with nothing to do in the cell for periods of up to six weeks. The CPT considers that this is excessive and it deprives the prisoner of almost all stimulation. It would be preferable that serious assaults on other prisoners or staff be prosecuted and that the sanction of forfeiture of privileges whereby a prisoner is confined to his or her cell for 23 hours a day be reviewed. The maximum period should be shortened to around 14 days and prisoners should have access to in-cell stimulation (books or television).

The CPT recommends that the Gibraltarian authorities review the disciplinary practices at Windmill Hill Prison, in the light of the foregoing remarks.

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22 Case of prisoner LC placed on report on 12 October on which date he was confined to his cell until 23 October 2014 when he was permitted to associate with other prisoners even though his adjudication was still pending.

23 The term « loss of all privileges » or LOAP was found in the wing registers kept by the officers and in the main disciplinary register.

53. As regards administrative segregation, Standing Order 25 sets out the formal procedures and includes safeguards such as informing the prisoner of the reasons for segregation both orally and in writing and the avenues available for appealing the measure. The use of administrative segregation was not resorted to frequently. The main concern related to the need for much more rigorous record-keeping and the introduction of a centralised register. By communication of 2 February 2015, the Gibraltarian authorities recognised that the record keeping needed to be improved and informed the Committee that new instructions had been issued. **The CPT would like to receive a copy of these instructions.**

Moreover, as regards the two segregation cells (measuring some 7.5m² and 5.5m²), the Gibraltarian authorities recognised that the absence of access to natural light was a problem and that they would explore possibilities of making alterations to the cells to allow access to natural light. Further, neither of the cells possessed in-cell sanitation and prisoners were provided with buckets or had to get staff to take them to the toilet off the corridor of the unit. The poor design of the cells means that the prison authorities must ensure that persons placed in these cells can access the toilets whenever required. **The CPT encourages the authorities to limit the use of these cells to periods not exceeding 24 hours.**

c. prison induction procedures

54. Reception and first night procedures as a whole have an important role to play; performed properly, they can identify at least certain of those at risk of self-harm and relieve some of the anxiety experienced by all newly-arrived prisoners. The induction procedure at Windmill Hill Prison comprised an initial seven nights on a basic regime (so-called the 'Third Division' regime) designed, according to the prison management, to allow prisoners to acclimatise to the prison and to be interviewed by the relevant staff.

The delegation received many complaints from prisoners that this regime was extremely restrictive in practice. It involved a regime of 23 hours a day locked in the cell for a duration of seven days applicable to all newly-arrived prisoners, regardless of their age (including juveniles) or status (i.e. remand). This regime also prohibited any access to activities other than the one hour of outdoor exercise and specified that no television was permitted for the first four months after the prisoners' arrival. Further, the delegation observed that not only were all prisoners, including juveniles (see paragraph 37) and remand prisoners, left in conditions akin to solitary confinement but also other than one or two induction interviews no assessment of the prisoner was carried out. The delegation found both the duration of the confinement and the regime itself to be excessive.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that they agreed that the induction process was out-dated and in need of review. As such, the prison authorities have decided to reduce the process to a maximum of 48 hours. **The CPT welcomes this development and would like to be informed of the precise content of the induction process.**

55. The delegation noted that some information on the written rules, procedures and rights relating to the prisoners' stay in the prison was available in two languages, English and Spanish. However, it was not given out in a written form on a systematic basis according to many prisoners interviewed. This led the delegation to have concerns that this could create a dependence on other prisoners, incentivises informal avenues to obtain information about prison procedures and exposes prisoners to bullying or power relationships.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that they would be increasing the number of languages in which the prisoner information packs were available and that they would make the information packs more readily accessible to prisoners: one pack would be systematically issued on admission and copies would be made available on all the wings. The CPT welcomes these developments.

The Committee looks forward to receiving confirmation of the languages that will be available and confirmation that these information packs are being systematically distributed to all prisoners. Further, the Committee invites the authorities to consider establishing a registration system or log to record that every prisoner has received such an information pack.

d. contact with the outside world

56. The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. Above all, inmates must be given the opportunity to maintain their relationships with their family and friends, and especially with their spouse or partner and their children. The continuation of such relations can be of critical importance for all concerned, particularly in the context of prisoners' social rehabilitation. The guiding principle should be to promote contact with the outside world as often as possible; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources.

Access to correspondence and general use of the telephone was reasonable in Windmill Hill Prison and prisoners were generally content with the system in place and the rights were guaranteed in law.[24] Further, the access of prisoners to regular visits was generally adequate in Windmill Hill Prison: prisoners were allowed one visit per week of no more than one hour; remand and civil prisoners were entitled to regular extra visits and could, at the discretion of the Superintendent, receive daily visits of 15 minutes' duration from Monday until Friday with consideration given to the accumulation of three visits in each week to be taken on a Friday. Visits took place in open conditions, with visual supervision by staff. That said, some prisoners raised concerns about the timing of visits. The female prisoners in particular underlined that their permitted weekly afternoon visiting times, which were in force during the delegation's visit, hindered prisoners' contact with their school-age children and by extension often their own parents, who cared for those children, or working relatives.

By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that Windmill Hill Prison offers evening visits to cater for those prisoners with children of school age or working relatives and visitation time is available to both male and female inmates. The CPT welcomes this information and **recommends that prisoners be clearly informed about this possibility.**

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[24] Prison Regulations 2011, Section 25.

e. complaints and inspections procedures

57. Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. As regards complaints procedures, prisoners should have avenues open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate complaints authority. In addition to addressing the individual case involved, the CPT considers that a careful analysis of complaints can be a useful tool in identifying issues to be addressed at a general level.

58. The delegation was pleased to note that there was an *external* complaints' mechanism in the form of the Prison Board,[25] which was well established and composed of lay visitors. The Prison Board attended the prison regularly and was understood by the prisoners interviewed as a means to have their complaints heard. However, it was clear this was the only avenue for prisoner complaints in practice. The Gibraltar Ombudsman informed the delegation that he did not generally receive complaints from prisoners and prisoners believed that there was no other avenue available to complain confidentially. The delegation observed that the prison lacked a formalised *internal* complaints' procedure: there were no forms for internal complaints and no complaints boxes, and internal complaints were not systematically recorded and followed up (other than those given orally to the Prison Board visitor).

The CPT underlines that prisoners should be able to make written complaints at any moment and place them in a locked complaints box located in each accommodation unit (complaint forms should be freely available). All written complaints should be registered centrally within a prison before being allocated to a particular service for consideration. In all cases, internal complaints should be processed expeditiously (with any delays duly justified in writing) and prisoners should be informed within clearly defined time periods of the action taken to address their concerns or of the reasons for not upholding the complaint. Further, statistics on the types of internal complaints made should be kept as an indicator to the management of areas of discontent within the prison.

The CPT recommends that the authorities review the internal complaints procedures in Windmill Hill Prison, in the light of the above remarks.

59. The CPT attaches particular importance to regular visits to prison establishments by an independent body (for example, a visiting committee with responsibility for carrying out inspections) with authority to receive – and, if necessary, take action on – prisoners' complaints and to visit the premises. During such visits, the persons concerned should make themselves "visible" to both the prison authorities and staff and the prisoners. They should not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative by visiting the establishments' detention areas and entering into contact with inmates.

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25 Mandated under the Prison Act 2011; this Act inter alia establishes the mandate of the Prison Board and official visitors permitted, including judges, magistrates and Justices of the Peaces in sections 7-17.

Given this, the CPT noted the regularity of visits and reports conducted by the Gibraltar Prison Board as well as their initiatives to check the food with external dieticians and to contact the organisation of pharmacists in order to inspect the quality and dispensing of medicines at the prison. That said, a few prisoners perceived the Prison Board as an extension of the prison management and had limited faith in its ability to address their complaints meaningfully, and some criticised their lack of regular or prompt responses. The CPT considers it important that the Prison Board does, and is perceived to, maintain its distance from prison management at Windmill Hill Prison and that it spends as much time as possible in direct and confidential contact with prisoners.

The CPT invites the authorities to examine avenues to strengthen prisoner confidence in the current monitoring system. Further, it would like to be informed whether the Gibraltarian authorities intend to invite Her Majesty's Inspectorate of Prisons or other similar independent bodies from the United Kingdom to carry out periodic inspections.

C. Court holding cells

60. The Gibraltar Magistrates' and Supreme Court premises contained nine holding cells in which persons could be held between the hours of 9 a.m. and 8 p.m.[26]. Eight of the cells measured some 2.5 m² and were used for holding only one person at a time, whereas the ninth cell, which was approximately 3m², was used to hold up to three persons. All the cells had adequate artificial lighting and ventilation, were clean, and had means to rest (a bench or plinth). None of the cells, save for one, had in-cell sanitation, however, persons detained there could request to be accompanied to the nearby toilets, which were in a good condition. All cells and the surrounding area were covered by video-surveillance. Such conditions are only acceptable for short periods of time.

61. The Royal Gibraltar Police was in practice responsible for the detained person during his/her stay on the Court premises. There was, however, no central log or register of the persons who entered or exited the cells and no way to track the length of time that a person had been detained in the holding cells. The Court officials emphasised that the periods of detention were only very short, usually on arrival from the prison or police station when waiting for a trial to begin. Without the existence of a Court custody record, the times of detention in practice were only able to be verified by the delegation upon watching a selection of the CCTV footage.

The CPT considers that the maintenance of a custody record in all circumstances when a person is deprived of his/her liberty acts as a useful safeguard to preventing ill-treatment. Further, once a person detained has been placed in a cell, all instances when he is subsequently removed from the cell should be recorded and that record should state the date and time the detained person is removed from the cell, the location to which he is taken and the officers responsible for taking him, the purpose for which he has been taken, and the date and time of his return.

By communication of 2 February 2015 the Gibraltarian authorities informed the CPT that the Gibraltar Courts Service had liaised with the Royal Gibraltar Police and Windmill Hill Prison with a view to implementing a register of persons detained in Court holding cells whilst waiting for Court appearances. The register will include information recommended by the CPT. Details will be recorded by the escorting police or prison officers on arrival and departure from the Court premises' restricted area on a daily basis.

The CPT welcomes this development and requests information as to when precisely the custody register will come into effect.

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[26] Section 511(1), CPEA.

D. King George V Mental Health Hospital

1. Preliminary remarks

62. The King George V Mental Health Hospital (KGV) was originally built as a sanatorium type tuberculosis hospital in 1939. After transitioning through various medical functions, mentally ill patients were moved into the facility in 1972. KGV is the only mental health care institution in Gibraltar where patients subject to an involuntary placement order may be accommodated.

KGV consisted of two floors, with a long-stay unit on the ground floor and an acute unit on the upper floor. At the time of the visit, the long-stay unit was accommodating 27 patients, 15 male and 12 female, and the acute unit had 21 beds and was accommodating 13 patients, seven male and six female.

Eleven patients were being held on an involuntary basis, two in the long-stay unit under Section 6 of the Mental Health Act and nine in the Acute unit – five under Section 6, three under Section 5 and one under Section 9.

At the time of the visit, none of the patients were juveniles and the delegation was told that every effort was made to avoid admitting juvenile patients to KGV. Apparently, minors could be kept on the Children's Ward at St. Barnard's Hospital or transferred to the United Kingdom for treatment. However, KGV had admitted, as a last resort, a juvenile in the past due to the absence of other appropriate facilities in Gibraltar. **The CPT would like to be informed about the current policy regarding juveniles who require in-patient psychiatric treatment.**

63. The CPT should state at the outset that its delegation received no allegations of ill-treatment of patients by staff. On the contrary, the delegation observed staff providing care and treatment to patients in a dedicated and professional manner, in a challenging environment.

2. Living conditions and treatment

64. The living conditions were not good. The building was dilapidated and worn, the ceilings and walls were damp, the dormitories did not provide an individualised environment and the premises were constantly invaded by vermin, and conditions generally for patients and staff were cramped. The situation was well known to the authorities and steps had been taken to transfer the hospital to new premises, the former naval hospital, with the renovations in their final phase at the time of the visit. It was hoped that the move to the new building would take place in early 2015.

The delegation had an opportunity to visit the new premises and to see for itself how the design of the wards had been tailored to the needs of the patients and the staff, with single and double occupancy rooms for patients, lots of common areas with vistas over the sea and two large outdoor garden areas. A purpose-built four storey occupational therapy centre was also attached to the new facility and was intended to cater to both in-patients and out-patients. It is positive that the staff were involved in the design of the new facility.

The CPT would like to receive confirmation that all patients have been transferred to the new mental health facility and that the King George V Mental Health Hospital is now closed.

65. As for treatment, each patient was assigned a key worker and an individual care plan was drawn up and reviewed on a weekly basis for patients in the Acute unit and monthly for patients in the long-stay unit, which served to facilitate communication among nursing staff. The files were detailed and, in addition to the care plan, recorded that each patient underwent a risk assessment, a suicide risk assessment and a complete physical examination upon admission to the hospital. A range of treatment was offered, including monitored pharmacotherapy, one-to-one supportive discussions, occupational therapy (art, music), group sessions and a range of activities (walks, gardening, dancing). However, patients could not access the adjacent outside garden area every day as it was not secured. It was expected that the new facilities would enable patients to be offered a greater range of activities and occupational therapy.

The CPT would like to be informed about the range of treatment now offered to patients at the new facility, and the amount of time they are allowed in the garden areas every day.

66. At the time of the visit, the majority of patients on the long-stay ward appeared to be more in need of social care support than psychiatric in-patient treatment. A number of them had been accommodated in the hospital for many years, the longest having been admitted as long ago as 1964 and 1968, and 16 patients were born in the 1920s and 1930s. The CPT's delegation understood that many of these patients had nowhere else to live. The move to the new hospital premises was considered an opportunity to re-evaluate which patients required in-patient care and which patients could be accommodated in sheltered housing. This matter was made more urgent as apparently there was a waiting list for persons to access the long-stay ward.

The CPT recommends that a review of patients on the long-stay ward should be carried out with a view to determining whether they are in need of in-patient psychiatric treatment. Further, the Committee would like to be informed about the existing possibilities for the provision of sheltered housing.

67. The CPT's delegation noted that Electro-convulsive Therapy ("ECT") was available, though it was infrequently administered. When ECT was applied, it was done in a modified form (i.e. with anaesthetic and muscle relaxants) with electroencephalogram ("EEG") monitoring and carried out at St. Bernard's General Hospital, out of sight of other patients. Further, the delegation was informed that the consent of the patient was always sought before ECT was administered. However, although the policy paper on the application of ECT referred to a central ECT database, no central ECT register was kept of its use.

The administration of ECT is a recognised form of treatment for psychiatric patients suffering from some particular disorders, in particular severe depression or catatonic stupor. However, it must be accompanied by appropriate safeguards. In particular, recourse to ECT should be recorded in detail in a specific register, as well as in the individual patient's file. It is only in this way that any undesirable practices can be clearly identified by hospital management and discussed with staff.

The CPT recommends that a central register be introduced for the administration of ECT.

68. An examination of the files and discussion with medical staff indicated that any injuries noted on patients upon their admission or during their stay would be noted down. However, there did not seem to be a clear policy on the reporting of injuries. Staff did not know of any reporting procedures in place; they stated that only if the injuries related to a patient under guardianship might they be reported, but to whom was not clear. The CPT considers that there needs to be a clear written policy and that all injuries should be recorded in a specific trauma register. Moreover, as in other places of deprivation of liberty, any injuries observed upon admission or while in hospital should be fully recorded, together with any relevant statements by the patient and the doctor's conclusions. Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a patient, or indicative of ill-treatment, the report should be brought to the attention of the competent authorities (see paragraph 44).

The CPT recommends that steps be taken to ensure that there is a clear policy for documenting, recording and reporting injuries to patients, and that staff are fully aware of its existence.

3. Staffing

69. In general, staffing levels at KGV Hospital were adequate. There was input from the equivalent of 3.5 full time psychiatrists who generally visited the premises of the hospital once a week or following a new admission. Two general practitioners from St. Bernard's General Hospital provided somatic care and specialised care could be provided at that hospital, as required. A clinical psychologist worked part-time and inpatient services were supported by two mental welfare officers. The nursing complement was headed by a clinical nurse manager and four charge nurses and consisted of 26.5 registered mental health nurses, six fully qualified nurses and 17.5 assistant nurses. Staffing levels during the day varied according to the shifts; on the Acute ward there was always a charge nurse on duty and at least three qualified mental health nurses and three health care assistants, while the night shift (8 p.m. to 8 a.m.) was staffed by two qualified mental health nurses and two health care assistants.

The delegation was informed that with the transfer to the new premises, additional nursing staff would be recruited. **The CPT would like to be informed about the staffing complement and shift numbers in the new facility.**

Further, at the time of the visit, the CPT's delegation considered that the patients and nursing staff would have benefited from the consultant psychiatrists being based on the premises, and by communication of 2 February 2015, the Gibraltarian authorities informed the Committee that access to a psychiatrist should be increased in the new facility and that each psychiatrist would have his or her own office. **The CPT wishes to receive confirmation that the psychiatrists are now based permanently in the new hospital, and that a psychiatrist is present whenever there is an admission of a new patient or special measures have to be applied, such as the placement of a patient in a seclusion room.**

4. Means of restraint

70. At the KGV Mental Hospital there was no use of mechanical means of restraint. If nurses were unable to calm an agitated patient through de-escalation techniques, resort to manual restraint or seclusion was possible. Further, medication for rapid tranquillisation was used. In all cases the resort to means of restraint and seclusion was reported to a doctor. In the case of seclusion in one of two special rooms,[27] there was a specific policy with predefined interventions and a care plan for managing the seclusion measure and a graduated return to the ward. The measure could be ordered by a nurse and would be assessed every two hours by a different nurse to the one who had ordered the measure. The patient would be under constant one-on-one supervision by a nurse. At the end of the period of seclusion, a debriefing would take place. While it appeared from files examined and discussions with staff and patients that resort to manual restraint and seclusion was infrequent, no special register existed for recording these incidents. In the CPT's experience, detailed and accurate recording of instances of restraint can provide hospital management with an oversight of the extent of their occurrence and enable measures to be taken, where appropriate, to reduce their incidence. Further, the CPT considers it important that once a measure of seclusion has been initiated and the doctor informed, the doctor should see the patient in person.

The CPT recommends that a specific register be established to record all instances of recourse to means of restraint (including rapid tranquillisation) and seclusion. This would be in addition to the records contained within the patient's personal medical file. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry. In addition, a doctor should see every patient placed in a seclusion room.

Further, the CPT would like to receive a copy of the policy on restraint in the new mental health hospital, including on issues associated with restraint such as staff training, complaints policy, reporting mechanisms and debriefing.

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[27] The rooms did not offer an appropriate environment for seclusion. However, the design in the new hospital premises provided good conditions and included a quiet area outside the rooms.

5. Safeguards in the context of involuntary placement

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

a. the initial placement decision

72. The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise. Leaving aside emergency cases, the formal decision to place a person in a psychiatric hospital should always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two, and the actual placement decision should be taken by a different body from the one that recommended it.

At the time of the visit, the Mental Health Act of 1968 was in force, which provides for the involuntary placement of a patient: upon the recommendation of two registered medical practitioners, a patient may be admitted for observation for a period not exceeding 28 days (Section 5) or for treatment of up to one year, renewable for one year and thereafter for two years (Sections 6 and 19). The Act also provides for the emergency placement of a patient for 72 hours, based upon the opinion of a registered medical practitioner (preferably one with a previous acquaintance of the patient, which in most cases involved a referral from the police or the General Hospital (Section 9).[28] In the first ten months of 2014, the corresponding figures for admission under the three above-mentioned provisions were 24, 12 and nine, respectively.

The CPT is pleased to note that the new Mental Health Bill, which should be enacted in early 2015, reduces the time limits for involuntary placement to six months, with a six month extension followed by further renewals of one year (see Section 25 of the Mental Health Bill 2014).

The CPT recommends that long-term involuntary treatment orders always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two. Further, any extension of an involuntary treatment order should require a second independent external opinion prior to the decision on prolongation.

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[28] Section 9 allows a doctor to detain a patient already in a hospital for up to 3 days based upon a report to the "Superintendent".

73. According to Section 11(4) of the Mental Health Act 1968, a patient who is involuntarily admitted to hospital for treatment (Section 6) may apply to the Mental Health Review Tribunal to appeal his placement within six months of being admitted, or within 14 days in relation to a placement for observation and assessment (Section 5)[29].

The CPT would also like to receive information on the number of applications made to the Mental Health Review Tribunal in 2013 and 2014 in relation to patients challenging their involuntary placement and the outcome of such applications.

b. safeguards during placement

74. Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

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

In practice, the approach at KGV Mental Hospital was not to medicate a voluntary patient against his or her will whereas for those involuntary patients (Sections 5 and 6) a team decision would be taken whether to forcefully medicate a patient based upon a PRN[30] scripted by the psychiatrist, usually upon the patient's admission to hospital.

The Mental Health Act 1968 is silent on the need for consent to treatment while the Mental Health Bill 2014 contains a specific chapter on "consent to treatment" (Part II). However, Section 53 of the Bill states that the "consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, …, if the treatment is given by or under the direction of the approved clinician in charge of the treatment." Such a provision is too broad and does not provide the patient the opportunity to refuse treatment and does not place an obligation on the treating clinician and staff to provide full, accurate and comprehensive information to the patient about the treatment proposed.

The CPT recommends that the Mental Health Bill 2014 be amended to reflect the right to free and informed consent according to the above-mentioned precepts.

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29 Similar provisions exist in the Mental Health Bill 2014 in Section 82(2) and as the periods for involuntary placement are reduced to six months from one year, the right to apply to the Mental Health Review Tribunal is enhanced.

30 *Pro re nata* used in medical prescriptions meaning for an occasion that has arisen (i.e. as needed).

75. The CPT's delegation observed that all patients were informed of their rights (for example, to quality treatment and care, to be treated with dignity, respect, confidentiality) through a booklet on patients' rights and information on the house rules. The information existed in English and Spanish. **The CPT would like to receive a copy of the information booklet prepared for patients placed at the new mental health facility.**

76. The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee) which is responsible for the inspection of patients' care. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations.

At the time of the visit, the delegation was not aware of any such visits other than the Mental Health Review Tribunal visiting the hospital to interview patients (for the sole purpose of placement review) and visits from the Chief Executive of the Health Authority.

The CPT recommends that a regular system of independent inspections be put in place; this may require inviting a health-care oversight body from the United Kingdom on a periodic basis.

E. Military detention

77. The delegation visited the Royal Gibraltar Regiment barracks located at Devil's Tower Camp, which was under the jurisdiction of the British Ministry of Defence.

The Regiment had a military custody suite comprising four custody cells. Detention in these cells, however, was not authorised under current legislation. However, the delegation was informed that amendments were pending to the British Armed Forces Act 2006 and once the relevant legislation had been passed, detention in the custody cells at the Royal Gibraltar Regiment premises would become authorised. The delegation was informed that such military detention would be regulated by Service Custody and Service of Relevant Sentences Rules 2009/1096 and JSP 837 (Service code of practice for the management of personnel in Service custody).

The CPT would like to receive more information about any pending amendments to the legislation and the envisaged timeframe that would authorise the use of the military custody suite of the Royal Gibraltar Regiment. Further, **the CPT would like to receive information on the permissible duration and grounds of detention for use of the military custody cells**.

78. As for the material conditions of the military custody cells, these were generally adequate and fit for purpose. There were four single-occupancy custody cells measuring approximately 7.5m². The cells were clean and all included a bed, mattress, in-cell sanitation, had access to some limited natural light (through opaque glass) and a call-bell system. The military personnel designated to act as custody sergeants once the place of detention had been officially approved, had undergone relevant custody training.