



## **Report**

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

**from 5 to 15 December 2011**

The Azerbaijani Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2018) 10.

Strasbourg, 15 March 2018

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

Mr Arif Mammadov  
Ambassador Extraordinary and  
Plenipotentiary  
Permanent Representative of Azerbaijan  
to the Council of Europe  
2, rue Westercamp  
67000 Strasbourg

Strasbourg, 25 July 2012

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Azerbaijani Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Azerbaijan from 5 to 15 December 2011. The report was adopted by the CPT at its 78<sup>th</sup> meeting, held from 2 to 6 July 2012.

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

As regards the recommendation in paragraph 141, the Committee has requested that the results of the investigation concerned be provided **within three months, i.e. by 25 October 2012**. As regards the documents referred to in paragraph 10, the CPT has called upon the Azerbaijani authorities to provide them **without any further delay**.

The CPT would ask, in the event of the responses being forwarded in the Azerbaijani language, that they be accompanied by an English or French translation.

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

Yours sincerely,

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

copy: Mr Faig Gurbanov, Director of Human Rights and Public Relations Department,  
Ministry of Justice of Azerbaijan

## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Azerbaijan from 5 to 15 December 2011. The visit formed part of the Committee’s programme of periodic visits for 2011, and was the third periodic visit to Azerbaijan to be carried out by the CPT.<sup>1</sup>

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

- Haritini DIPLA, Acting 1st Vice-President of the CPT and Head of the delegation
- Jean-Pierre RESTELLINI, Acting 2nd Vice-President of the CPT
- Celso DAS NEVES MANATA
- James McMANUS
- Marc NEVE
- Nadia POLNAREVA

who were supported by the following members of the CPT’s Secretariat:

- Isabelle SERVOZ-GALLUCCI
- Elvin ALIYEV
- Julien ATTUIL.

They were assisted by:

- Clive MEUX, consultant forensic psychiatrist, Oxford (United Kingdom)
- Shahla AGHALAROVA (interpreter)
- Mehriban ALIYEVA (interpreter)
- Mahammad GULUZADE (interpreter)
- Elshad MUSAYEV (interpreter)
- Rashad SHIRINOV (interpreter).

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<sup>1</sup> The CPT carried out two periodic visits (in November/December 2002 and in November 2006) and three ad hoc visits (in January 2004, in May 2005 and in December 2008) to Azerbaijan. Only the reports on the 2002 and 2008 visits, together with the responses of the authorities, have been made public (at the request of the Azerbaijani authorities).

**B. Establishments visited**

3. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of Internal Affairs

- Temporary detention centre of the Main Department for Combating Organised Crime, Baku
- Main Department for the Fight against Drugs, Baku
- Reception and distribution centre for minors of the Main City Police Department, Baku
- Detention centre for persons under administrative arrest, Baku
- Temporary detention centre of Binagadi District Police Department, Baku
- Temporary detention centre of Nasimi District Police Department, Baku
- Temporary detention centre of Sabayil District Police Department, Baku
- Temporary detention centre of Yasamal District Police Department, Baku
- Temporary detention centre of Aghdash District Police Department
- Main City Police Department and temporary detention centre of Ganja/Kapaz
- Temporary detention centre of Göygöl District Police Department
- Temporary detention centre of Shamkir District Police Department
- Temporary detention centre of Tovuz District Police Department

Establishments under the authority of the Ministry of Justice

- Gobustan Prison (follow-up visit)
- Baku Investigative Isolator, Zabrat
- Special-regime penitentiary establishment No. 8, Garadagh District

The delegation also paid a brief visit to the investigative isolator in Ganja, in order to interview recently-arrived remand prisoners.

Establishments under the authority of the Ministry of Health

- Republican Psychiatric Hospital No. 1, Mashtaga (follow-up visit)
- Psychiatric Hospital, Ganja

Establishments under the authority of the Ministry of Labour and Social Protection

- Göygöl District Psychoneurological Boarding Home No. 8, Qırıqlı village.

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

4. At the outset, the CPT wishes to express its appreciation for the assistance provided to its delegation by the liaison officer designated by the national authorities, Faig GURBANOV, Director of Human Rights and Public Relations Department at the Ministry of Justice.

5. In the course of the visit, the CPT's delegation held consultations with Fikrat MAMMADOV, Minister of Justice, Madat GULIYEV, Deputy Minister of Justice and Director of the Penitentiary Service, and Oruj ZALOV, Deputy Minister of Internal Affairs, as well as other officials from the Ministries of Internal Affairs, Justice, Health, and Labour and Social Protection, and from the Prosecutor General's Office. In addition, the delegation met Elmira SULEYMANOVA, Human Rights Commissioner (Ombudsman) and Chairperson of the National Preventive Mechanism. Meetings were also held with representatives of the ICRC and OSCE, as well as with members of non-governmental organisations active in areas of interest to the CPT<sup>2</sup>.

However, despite repeated requests, the CPT's delegation was not able to present its preliminary observations at the end of the visit to officials at the most senior political level in the Ministries of Health, and of Labour and Social Protection. **The CPT trusts that on future visits to Azerbaijan, its delegations will be able to meet the most senior-ranking officials, including from the Ministry of Health and the Ministry of Labour and Social Protection.**

6. With two exceptions, the delegation enjoyed full co-operation and rapid access to the places visited (including ones not notified in advance) and was able to speak in private with persons deprived of their liberty and to consult relevant documentation.

The first exception concerned the *Main Police Department for the Fight against Drugs in Baku*, where the delegation was denied access to the establishment by members of staff. It was only after an intervention by the liaison officer that the delegation received an apology and was granted access to the establishment, which was visited a few days later. In the second case, at *Shamkir District Police Department*, the delegation additionally encountered verbal hostility from some criminal investigators, who also attempted to put pressure on one of the delegation's interpreters. Such behaviour is unacceptable; **the CPT trusts that appropriate action will be taken to avoid similar situations occurring during future visits.**

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<sup>2</sup> A list of the national authorities and organisations consulted during the visit is set out in Appendix II to this report.

7. The CPT was concerned to note that, at the *forensic unit of Republican Psychiatric Hospital No. 1 in Mashtaga*, and at the *Psychiatric Hospital in Ganja*, its delegation received the clear impression that patients had been instructed to speak only positively of the establishments or that staff had warned them not to make any complaints to the delegation. In this respect, the CPT wishes to recall that any kind of intimidating or retaliatory action against a person before or after he/she has spoken to a delegation of the Committee would be entirely incompatible with the obligations of Parties to the Convention establishing the CPT. **The Committee calls upon the Azerbaijani authorities to take all necessary measures to prevent any kind of intimidating or retaliatory action against persons deprived of their liberty, before or after they have spoken to a CPT delegation.**

8. The principle of co-operation between States Parties to the Convention and the CPT is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this respect, certain improvements have been noted, such as material conditions in establishments under the responsibility of the Ministry of Internal Affairs and the Ministry of Justice, as well as the substantial transformation of Republican Psychiatric Hospital No.1 in Mashtaga. However, little action had been taken in respect of a number of important recommendations made in the reports on the CPT's previous visits, concerning the treatment of persons detained by the police, legal safeguards against ill-treatment, the regime of prisoners sentenced to life imprisonment, and programmes of activities for remand prisoners. The CPT wishes to emphasise that persistent failure to improve the situation in the light of the Committee's recommendations raises an issue under Article 10, paragraph 2, of the Convention<sup>3</sup>.

**The CPT calls upon the Azerbaijani authorities to take decisive steps to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.**

9. At the end of the visit, the CPT's delegation met Government officials in order to acquaint them with the main facts found during the visit. On that occasion, the delegation made an *immediate observation, in pursuance of Article 8, paragraph 5, of the Convention*, in respect of the Psychiatric Hospital in Ganja. The conditions in which patients of that hospital were obliged to live – sometimes for years – could be described as amounting to inhuman and degrading treatment. Paradoxically, in a hospital such conditions contribute to morbidity and could result in increased patient mortality. The delegation requested the Azerbaijani authorities to immediately provide the resources required for meeting the basic needs of all patients in terms of sufficient food, heating and hygienic conditions (including full de-infestation and proper bedding). This immediate observation was subsequently confirmed in a letter of 21 December 2011. The Azerbaijani authorities were requested to inform the Committee, within one month, of the action taken in this respect. In the absence of a response by that time, the CPT reiterated its request by a further letter of 22 March 2012.

By letter of 14 May, the Azerbaijani authorities provided some information in this respect, which will be assessed later in the report.

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<sup>3</sup> "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

10. Reference should also be made to letters sent by the CPT to the Azerbaijani authorities in September and October 2011 requesting information about the *circumstances surrounding the death of X<sup>4</sup>*, who was remanded in custody in the Nakhchivan Autonomous Republic of Azerbaijan in August 2011. During the visit, some of the information requested was provided to the delegation. However, several documents requested of a medical nature that were essential for making a proper assessment of this case were not provided, prompting the CPT to reiterate its request in a letter of 25 January 2012 and once again by the above-mentioned letter of 22 March 2012. However, to date, the additional information requested has not been provided. **The CPT calls upon the Azerbaijani authorities to provide, without any further delay, the above-mentioned documents.**

11. In the light of the facts observed during the visit to *Göygöl District Psychoneurological Boarding Home No. 8* in the village of Qırıqlı, the delegation also requested the Azerbaijani authorities to inform the CPT of the results of two investigations (concerning which see paragraphs 130, 131 and 141). This request was confirmed in a letter of 4 January 2012, and reiterated in the above-mentioned letter of 22 March 2012.

By letters of 11 April and 14 May 2012, the Azerbaijani authorities provided some information in this respect, which will be assessed later in the report.

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<sup>4</sup> In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the name has been deleted.

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

### A. Establishments under the authority of the Ministry of Internal Affairs

#### 1. Preliminary remarks

12. The legal framework governing the deprivation of liberty by the police has remained unchanged since the last periodic visit in 2006.

Pursuant to the Code of Criminal Procedure (CCP), a criminal suspect may be held by the police on their own authority for up to 48 hours. Within twelve hours from the time of deprivation of liberty, the supervising prosecutor shall be notified of the fact of detention.<sup>5</sup> Within 24 hours of the start of detention, an inquiry officer or an investigator must initiate a criminal case or release the suspect. By the expiry of the 48-hour period, criminal charges must be brought and, if a submission has been made by the prosecutor for the application of remand in custody, the suspect must be presented to a judge. The latter shall decide without delay whether the person concerned is to be remanded in custody, made subject to another preventive measure (e.g. bail, house arrest, etc.) or released.<sup>6</sup> Persons remanded in custody may not be held in a police detention facility for longer than 24 hours after the judge's decision and should be transferred to an investigative isolator before the expiry of this period (which does not include the time spent transporting the person to the remand facility).<sup>7</sup> Consequently, a criminal suspect may spend up to 72 hours in police custody.

As a general rule, a person suspected of an administrative offence can be detained by the police or other authorities for a maximum period of three hours.<sup>8</sup> Persons who have violated the border regime or residence regulations for foreigners and those suspected of vagrancy can be detained for up to 24 hours. The 24-hour time limit also applies to persons suspected of an offence punishable by administrative arrest. If found guilty by a court, the latter category of persons may be placed under administrative arrest for up to 15 days, a period which is served in temporary detention centres or in centres for administrative detention.

13. The examination of custody records by the delegation in various police establishments revealed that it was not uncommon for criminal suspects to be kept in a temporary detention centre beyond the statutory limit of 24 hours after being remanded in custody (e.g. up to 10 days in the Main Department for combating organised crime; up to 9 days in Binagadi District Police Department). The usual explanation given to the delegation by police officers on the spot was that they were awaiting the outcome of the detained person's appeal against his remand in custody or that there was a decision by the investigator to delay the person's transfer to a remand prison in order to complete certain investigative acts. Such a state of affairs is in clear contradiction with the requirements of the CCP<sup>9</sup>. As the Committee has stressed in the past, continued detention on police premises, even after the person concerned has been brought before a judge, increases the risk of intimidation and physical ill-treatment.

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<sup>5</sup> Section 153.2.3 of the CCP.

<sup>6</sup> Section 148.4, *ibid.*

<sup>7</sup> Section 157.3, *ibid.*

<sup>8</sup> Section 399 of the Code of Administrative Offences.

<sup>9</sup> And of the Rules on internal order in temporary detention centres (Sections 1.2 and 10.1), approved by Order No. 428 of the Minister of Internal Affairs from 6 November 2001.

**The CPT calls upon the Azerbaijani authorities to take urgent steps to ensure that the legal provisions on the duration of police custody are strictly observed in practice and that persons remanded in custody are always promptly transferred to investigative isolators.**

14. In accordance with the Instructions on the protection and escort of persons held in temporary detention centres<sup>10</sup>, remand and sentenced prisoners can, *in exceptional cases*, be returned from prisons to temporary detention centres for periods of up to ten days at a time, if this is considered necessary for the purposes of the investigation or the court proceedings.

The 2011 visit revealed that it was still a frequent practice throughout the country for remand prisoners to be returned to police detention centres for investigation purposes. By way of example, in Aghdash and Tovuz district police departments, some prisoners had been transferred to the temporary detention centres once or even twice a month, every month, during the period of their remand custody (each time for ten days).

The CPT must stress that, from the standpoint of the prevention of ill-treatment, it is far preferable for further questioning of persons committed to a remand prison to be undertaken by investigators in prison rather than on police premises. **The Committee calls upon the Azerbaijani authorities to take resolute action to ensure that the return of prisoners to police detention centres is sought and authorised only very exceptionally (as required by the above-mentioned Instructions), for specific reasons and for the shortest possible time. The objective should be to end completely the practice of returning prisoners to police establishments.**

15. As was the case during previous CPT visits, many allegations were received from detained persons to the effect that police officers had asked for money in order to drop charges against them and/or end their (sometimes informal<sup>11</sup>) detention. **The Committee would like to be informed of steps taken by the Azerbaijani authorities to eradicate the problem of corruption in the police.**

## **2. Ill-treatment**

16. In the course of the visit, the CPT's delegation received numerous allegations of recent physical ill-treatment of detained persons (including juveniles) by law enforcement officials. The allegations consisted essentially of slaps, punches, kicks and blows with truncheons, often while the person concerned was handcuffed, and related mostly to ill-treatment inflicted at the time of questioning with a view to obtaining a confession or information. In certain instances, the severity of the ill-treatment alleged was such that it could be considered as amounting to torture (e.g. extensive beating; truncheon blows to the soles of the feet; infliction of electric shocks to various parts of the body).

Some persons interviewed alleged ill-treatment of a psychological nature, such as threats to use physical or sexual violence or to take into custody other members of the detained person's family.

It should be noted, however, that no allegations of physical ill-treatment were received in respect of police officers performing custodial tasks in temporary detention centres.

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<sup>10</sup> Approved by Order No. 428 of the Minister of Internal Affairs dated 6 November 2001.

<sup>11</sup> See the second subparagraph of paragraph 30.

17. Although little medical evidence consistent with the above-mentioned allegations was gathered by the delegation, this should not be taken as undermining their credibility. In most cases, the time of the alleged ill-treatment pre-dated the delegation's visit by several weeks; consequently, any injuries which might have been caused by the alleged ill-treatment would almost certainly have healed in the meantime. Further, as will be made clear later in this report (see paragraph 26), it is far from guaranteed that injuries resulting from ill-treatment will be duly recorded upon admission to a police temporary detention centre; moreover, the efficiency of prison health-care services in the timely recording of injuries on newly-admitted prisoners is often diminished due to the practice of excessive stays of detained persons in police detention centres (see also paragraph 73).

18. The information gathered during the 2011 visit suggests that the relative improvement observed in 2006 has not been maintained. Determined action is therefore required on the part of the Azerbaijani authorities to combat the phenomenon of ill-treatment by the police, which often appears to be related to an overemphasis on confessions during criminal proceedings. In this connection, careful selection at the recruitment stage as well as appropriate training (both initial and ongoing) of police officers are essential.

In the light of the above, **the CPT once again calls upon the Azerbaijani authorities to deliver to all law enforcement officials a strong message, emanating from the highest political level, that any form of ill-treatment of detained persons is illegal and will be punished accordingly. In addition, greater emphasis should be given to modern, scientific methods of crime investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions.**

19. During the visit, the delegation was informed by representatives of the Ministry of Internal Affairs that, in the period from 1 January 2007 to 30 September 2011, 1,068 police officers had been sanctioned "for various violations of citizens' rights". Of them, 19 were found to be criminally liable, 121 were dismissed from the police service, 93 were removed from office, 8 were demoted and 827 were subjected to other disciplinary sanctions.

The CPT has taken note of this information; however, it does not show the proportion of cases which relate to ill-treatment (as opposed to other forms of misconduct). In order to obtain a clear picture of the current situation at national level concerning ill-treatment by police staff, **the CPT would like to receive the following information, in respect of the period from 1 January 2010 to the present time:**

- **the number of complaints/applications about ill-treatment by police officers and the number of criminal/disciplinary proceedings which have been instituted as a result;**
- **an account of criminal/disciplinary sanctions imposed following complaints/applications about ill-treatment by the police (with an indication of the relevant sections of the Criminal Code).**

20. Judges called upon to decide within 48 hours of apprehension on the application of the preventive measure of remand in custody are well-placed to ensure that any indications of ill-treatment are recorded and investigated at an early stage (i.e. before any traces disappear). The information gathered during the 2011 visit suggests that, although some judges have started to react to allegations of police ill-treatment made by persons brought before them (notably when the latter bear visible injuries), effective action is still not always being taken by judicial authorities at this stage. As was the case during the 2006 visit, a number of detained persons met by the delegation claimed that when they had complained to a judge about instances of ill-treatment by police officers – even when they had displayed injuries on visible parts of the body – the judge had shown little interest and had taken no further action on the matter.

As stressed by the CPT in the past, whenever a detained person brought before a judicial authority alleges ill-treatment by law enforcement officials, those allegations should be recorded in writing, a forensic medical examination should be immediately ordered, and the necessary steps taken to ensure that the allegations are promptly and properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be ordered whenever there are other grounds to believe that the detained person could have been the victim of ill-treatment.

**The CPT calls upon the Azerbaijani authorities to take appropriate steps to ensure that the precepts set out above are systematically applied in practice.**

21. In the report on its 2006 visit, the CPT emphasised the importance of the role to be played by forensic doctors in the investigation of cases possibly involving ill-treatment by law enforcement officials; it also stressed that no barriers should be placed between persons who allege ill-treatment and doctors who can provide forensic reports having legal force.

Regrettably, it remains the case that the carrying out of forensic examinations is impossible without authorisation from an investigating or judicial authority. The inevitable outcome is that persons alleging ill-treatment will frequently be prevented from obtaining any evidence to support their claims. **The CPT reiterates its recommendation that persons who are, or have been, detained, or their lawyers, be formally entitled to directly request an examination by a recognised forensic medical expert and to be issued with a certificate which has legal value in court.**

### 3. Safeguards against ill-treatment

22. The legal provisions concerning the safeguards against ill-treatment offered to persons detained by the police (in particular, the right of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer, and to have access to a doctor) have remained unchanged since the 2006 visit. Regrettably, the information gathered during the 2011 visit indicates that only limited progress has been made as regards ensuring the effective implementation in practice of these safeguards.

23. As far as the exercise of the right of notification of custody is concerned, most detained persons met by the delegation confirmed that they had been placed in a position to exercise it. However, it remained the case that this possibility was generally provided at the time when the protocol of detention was drawn up rather than at the very outset of detention. Further, the delegation received a few complaints that feedback was not always provided and that, as a result, the detained person did not know whether notification had been given. **The CPT recommends that the Azerbaijani authorities make further efforts to render fully effective in practice the right of persons deprived of their liberty by the police to inform a close relative or another third party of their situation, as from the very outset of their deprivation of liberty. The exercise of this right should be recorded in writing. It also recommends that detained persons be provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention.**

24. As regards the right of access to a lawyer, according to the law, it applies from the outset of deprivation of liberty by the police and includes the right to speak with the lawyer in private and to have him/her present during questioning. Detained persons who are indigent are entitled to consult an *ex officio* lawyer immediately after their detention by the police.

The majority of persons interviewed by the delegation indicated that they had been able either to contact their own lawyer or offered an *ex officio* lawyer from a pre-determined list. However, several detained persons indicated that they had not been expressly informed of their right of access to a lawyer. Further, many alleged that the possibility of access to a lawyer was usually only provided after the interrogation had taken place. In fact, as had been the case in 2006, it became apparent that detained persons rarely benefited from the presence of a lawyer while in police custody; even in the cases where a lawyer was contacted, the detained persons concerned often met their *ex officio* lawyers (for the first and last time) at the court hearing. **The CPT reiterates its recommendation that the Azerbaijani authorities recall to all police officers the legal obligation to grant access to the assistance of a lawyer from the very outset of a person's deprivation of liberty. Further, appropriate steps should be taken to ensure that lawyers, including *ex officio* lawyers, who are contacted by persons detained by the police, have an opportunity to meet those persons in conditions of confidentiality while they are in police custody.**

25. The legal framework surrounding access to a doctor has not changed since the visit in 2006. Sections 153.2.12 and 161.0.4 of the CCP, to which the Azerbaijani authorities refer in their response to the CPT's recommendation<sup>12</sup>, fall short of the Committee's standard that persons in police custody be expressly granted the right to have access to a doctor (including to one of their choice), as from the very outset of their deprivation of liberty. Granting detained persons such an express right – as distinct from the duty of prosecutors and officials in charge of remand facilities to ensure that detained persons receive the necessary assistance – is an essential additional safeguard.

26. Pursuant to Section 2(9) of the Rules on internal order in temporary detention centres, approved by the Minister of Internal Affairs' Order No. 428/2001, every person brought to a temporary detention centre should be the subject of a medical examination before their placement in a cell and on the day of transfer. However, the delegation's findings during the 2011 visit revealed that this requirement was being met in only three of the temporary detention centres visited. In addition, this requirement does not cover waiting rooms in police stations. Several persons interviewed by the delegation claimed that they had asked to see a doctor during the period of police custody but that their request had been ignored.

To sum up, persons met by the delegation were often not examined by health-care staff during their stay in police custody. The examination of registers of medical consultations at the facilities visited revealed that there had been very few visits by doctors<sup>13</sup>. Further, the registers contained very limited information concerning such consultations, and traumatic lesions in particular were usually not recorded<sup>14</sup>.

**The CPT urges the Azerbaijani authorities to issue instructions on the subject of the right of persons in police custody to have access to a doctor, stipulating that:**

- **a request by a detained person to see a doctor should always be granted without delay; police officers should not seek to vet such requests;**
- **a person taken into police custody has the right to be examined, if he/she so wishes, by a doctor of his/her own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense);**
- **the results of every examination, including relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and, upon request, to his/her lawyer;**
- **the exercise of the right of access to a doctor should be recorded in writing.**

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<sup>12</sup> See paragraph 28 of document CPT (2007) 31 of 12 July 2007.

<sup>13</sup> For example, eight visits at Sabayil District Police Department in 2011 (for 147 detainees).

<sup>14</sup> For example, a person detained in late December 2011 had been taken to a local police station in Baku where the records made by the duty officer indicated that he had haematomas under both eyes. The following morning the person concerned was taken to the temporary detention centre of the Yasamal District Police Department where the result of his "examination" carried out by a doctor on the same day was described in one line: "in good health".

27. Information on rights was still usually provided only at the moment when the protocol of detention was drawn up, which could happen several hours after the actual apprehension. A number of persons interviewed by the delegation stated that they had not been expressly informed of their rights at any time while in police custody.

In addition, the vast majority of the persons met by the delegation claimed that they had not been given a copy of the form setting out the rights and duties of persons suspected of having committed criminal offences, and the written confirmation of receipt of that form was not always found in their files.

On a more positive note, the delegation noted that information on detained persons' rights, including the number of the Ombudsman, was usually posted in the halls of police stations and the corridors/cells of the temporary detention centres visited. However, this does not exempt police staff from their obligation to explain to detained persons their rights.

**The CPT reiterates its recommendation that steps be taken to ensure that a form explaining the rights of persons deprived of their liberty by the police – including the right of access to a doctor – is systematically given to all detained persons immediately upon their first entry into police premises (and not only when the protocol of detention is drawn up). Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. The form should also be made available in an appropriate range of languages.**

28. The situation of juveniles in police custody remained unsatisfactory, despite the specific recommendations made by the Committee in the report on the 2006 visit. Most of them claimed that they had been questioned and requested to sign statements without the benefit of the presence of either a trusted person or a lawyer. There was no evidence of an information form detailing the specific list of rights for them.

**The CPT urges the Azerbaijani authorities to ensure that:**

- **detained juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer (and, in principle, of a trusted person) being present and assisting the juvenile;**
- **a specific information form, setting out the particular position of detained juveniles, is developed and given to all such persons taken into custody. Special care should be taken to explain the information carefully to ensure comprehension.**

29. Some juveniles met by the delegation indicated that they had been held, in police custody cells, with adults; such a state of affairs would be totally unacceptable. It is generally acknowledged that juveniles in detention should, as a rule, be accommodated separately from adults, and there can never be any justification for juveniles sharing a cell with adults at the stage of police custody. **The CPT recommends that steps be taken to ensure that juveniles placed in police detention facilities are accommodated separately from adult detained persons.**

As stressed in the report on the 2006 visit, the setting-up of separate juvenile police units is one way of addressing the vulnerability of this age group and the need to provide special safeguards. By removing juveniles from the general population of persons in police custody, this approach provides an opportunity to reinforce the special treatment that should be accorded to this age group. In such systems, juvenile police staff can be specially recruited and trained in the specific legal procedures relating to juveniles. **The CPT recommends that the Azerbaijani authorities consider adopting the above-mentioned approach.**

30. Record-keeping varied from one police establishment to another. Outside the Baku region, further improvement was observed in custody records compared with 2006. As regards the Baku region, with the notable exception of Nasimi District Police Department (where registers and files were accurate and exhaustive), record-keeping and detained persons' files left much to be desired. In particular, records were not always accurately kept in respect of the time of admission, release and transfer.

It is particularly disturbing that a number of persons interviewed by the delegation alleged that the initial periods of their detention (sometimes several days) had gone unrecorded.

**The CPT reiterates its recommendation that steps be taken to ensure that the period of police custody is properly recorded. This should include measures to ensure that protocols of detention are drawn up at the time of the actual apprehension, or as soon as possible thereafter, and that custody registers are properly maintained, accurately record the times of deprivation of liberty, release or transfer, and reflect all other aspects of custody (precise location of where a detained person is held; visits by a lawyer, relative, doctor or consular official; taking out for questioning, etc.).**

31. The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain statements.

The CPT understands that such a system is currently not in use in Azerbaijan; **it invites the Azerbaijani authorities to introduce electronic recording of police interviews.**

#### 4. Conditions of detention

32. The large-scale refurbishment programme of detention facilities under the responsibility of the Ministry of Internal Affairs, initiated some time before the 2006 visit of the CPT, had continued and most facilities visited by its delegation during the 2011 visit were either new or had been the subject of substantial renovation work. For the majority, they offered acceptable material conditions for the duration of police custody (72 hours).

33. Cells in most police facilities visited were large enough for their intended occupancy (e.g. two persons in some 11 m<sup>2</sup>, four persons in 16 to 22 m<sup>2</sup>). They were clean, well lit (including access to natural light) and ventilated. They were all heated with the exception of Binagadi District Police Department. Cells were equipped with bunk or single beds (with mattresses, pillows and blankets), a table, stools/chairs and most had a fully or at least partially screened sanitary annexe (with a toilet and a washbasin), and sometimes also contained cupboards for personal belongings. Further, showers were available and some personal hygiene items (e.g. soap, towel) were provided. As regards food, arrangements had been made to provide at least one warm meal a day.

That said, in a few cases, the planned occupancy rate did not meet the national minimum standard of 4 m<sup>2</sup> per detainee (see the Rules on internal order in temporary detention centres referred to in footnote 8), e.g. at the Temporary detention centre of Shamkir District Police Department (double cell measuring 7 m<sup>2</sup>), Yasamal District Police Department (triple cell measuring some 11 m<sup>2</sup>), Sabayil District Police Department (a cell for four measured some 13 m<sup>2</sup>, and a cell for eight persons measured 28 m<sup>2</sup>). Further, in-cell artificial lighting was inadequate at the Temporary detention centre of Aghdash District Police Department, Sabayil District Police Department and Binagadi District Police Department, and cells at the Temporary detention centre of Aghdash District Police Department had unscreened toilets. **The CPT recommends that measures be taken to ensure that the minimum standard of 4 m<sup>2</sup> per detained person is respected in all police cells where persons may be held overnight. In addition, all cells should have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and proper heating, and toilets should be equipped with a partition (preferably to the ceiling).**

34. The delegation found three isolation cells measuring some 5 to 7 m<sup>2</sup> at the Temporary detention centre of Ganja. They had no equipment or furnishings, except for an unscreened toilet, the windows were unglazed and there was no evident means of heating; at the time of the visit, the temperature in the cells was very low. The delegation received conflicting information as to the use of these cells; **the CPT would like to have this point clarified. In the meantime, the Committee recommends that these cells be taken out of service until they are properly equipped and adequately heated.**

35. Police detention facilities had exercise yards, and detainees were in principle entitled to one hour of outdoor exercise a day. However, it appeared that exercise was only granted irregularly at Binagadi and Yasamal District Police Departments. In addition, it is regrettable that no consideration was given, in the ongoing construction/refurbishment programme of police establishments, to a long-standing CPT recommendation regarding the need to equip exercise yards with a means of rest and a shelter against inclement weather. **The CPT reiterates its recommendation that steps be taken to ensure that all persons held at temporary detention centres for 24 hours or more have the possibility to take at least one hour of outdoor exercise every day.**

Further, **exercise yards of police establishments in Azerbaijan should be equipped with a means of rest and a shelter against inclement weather.**

36. As already mentioned, persons remanded in custody and administrative detainees could be held for prolonged periods in temporary detention centres (see paragraphs 12 to 14). The conditions of detention were not suitable for such prolonged stays; in particular, there were no activities (such as access to books, newspapers, radio, TV, board games), except for outdoor exercise. As stressed in paragraph 14, the practice of returning remand prisoners to police detention centres should be discontinued. As regards administrative detainees, they should in principle be held in centres for administrative detention. **For as long as these two categories of detainees continue to be held in police temporary detention centres, the CPT reiterates its recommendation that steps be taken to provide them with some form of activity in addition to outdoor exercise.**

37. The CPT visited for the first time the *Detention centre for persons under administrative arrest in Baku*. Pursuant to the Code of Administrative Offences, a person can be placed under administrative detention by a court decision for up to 15 days. The facility was put in service in 2006 and offered adequate conditions of detention for this category of detainee. It had nine cells for a total capacity of 34. The size and occupancy rate were satisfactory, with cells ranging from some 11 m<sup>2</sup> for two persons to some 29 m<sup>2</sup> for six persons. Further, other aspects related to material conditions do not call for particular comment. Detainees benefited from an open door regime and could read books and newspapers, and play board games. They also had access to an exercise yard for two hours three times a day; however, it had no means of rest, nor shelter against inclement weather. **The recommendation made in paragraph 35 (second sub-paragraph) applies equally to the Detention centre.**

38. Despite the recommendation made by the CPT in 2006, the delegation received allegations that detained persons continued to be held in “waiting rooms” in police stations for prolonged periods of time, including overnight. Conditions in the rooms were not suitable for holding persons for more than a few hours. With the notable exception of the one in Aghdash District Police Department<sup>15</sup>, the rooms were on occasion very small, unfurnished and offered no access to natural light, had poor artificial lighting, and were unventilated. **The CPT again calls upon the Azerbaijani authorities to take effective steps to ensure that the legal provisions in force – according to which persons should not be kept overnight at local police stations – are fully respected in practice. Further, immediate steps should be taken to equip all “waiting rooms” with a means of rest (e.g. a bench).**

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<sup>15</sup> It measured some 15 m<sup>2</sup> and was equipped with a wooden platform, a table and a chair.

## **B. Establishments under the authority of the Ministry of Justice**

### **1. Preliminary remarks**

39. The CPT's delegation carried out first-time visits to Baku Investigative Isolator and Special-regime penitentiary establishment No. 8, as well as a follow-up visit to Gobustan Prison in order to examine the situation of life-sentenced prisoners. In addition, a brief visit was paid to Ganja Investigative Isolator to interview recently-arrived remand prisoners.

40. *Baku Investigative Isolator* has been in operation since May 2009. The establishment occupies an extensive (20 ha) area on the outskirts of the capital Baku and is built to a radial design, with eight three-storey wings. With an official capacity of 2,500 places, it is currently the largest prison in the country. On the first day of the visit, the establishment was accommodating 1,729 adult prisoners (including 65 women).<sup>16</sup> Of them, 1,131 were on remand and 457 were awaiting the outcome of an appeal (having been sentenced by a first-instance court). In addition, 141 sentenced prisoners were employed in maintenance tasks and held in a separate building.

41. *Special-regime penitentiary establishment No. 8* is a closed prison for male adults, mainly holding long-term sentenced prisoners. It is located some 50 km outside Baku, in the settlement of Puta. Comprising a number of old buildings formerly used as the production facility of the neighbouring Penitentiary establishment No. 12, it was transformed into a separate prison in 1994. With an official capacity of 400 places, the establishment was accommodating 150 prisoners at the time of the visit. Of them, 107 were serving their sentences under the "special regime" (*xüsusi rejim*)<sup>17</sup> and the rest under the "prison regime" (*həbsxana rejimi*)<sup>18</sup>.

42. *Gobustan Prison* had been visited by the CPT in 2005, 2006 and 2008. With an official capacity of 700 places, the establishment was accommodating 679 prisoners at the time of the 2011 visit. Of them, 240 were life-sentenced prisoners, 322 (including three women) had been transferred from other establishments for repeated regime violations, 62 (including one woman) were serving long sentences, the initial part of which under the "prison regime", and 55 had been assigned to work at the establishment.

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<sup>16</sup> The delegation was told that the establishment would also accommodate juvenile remand prisoners as of early 2012.

<sup>17</sup> These prisoners were admitted by virtue of their sentence (i.e. the "special regime" being imposed by the court following the conviction).

<sup>18</sup> "Prison regime" is a maximum-security regime under which prisoners are locked up in their cells all the time, except during the outdoor exercise period of one hour. This type of regime is only applied at Penitentiary establishment No. 8 and Gobustan Prison.

43. According to the information provided by the Ministry of Justice, the prison population of Azerbaijan has remained more or less stable since the CPT's last periodic visit in 2006 and stood at around 15,900 at the time of the 2011 visit. During the visit, the authorities informed the delegation of various measures taken or envisaged to reduce the size of the prison population and to address the problem of overcrowding, which continues to affect certain establishments (see, for example, paragraphs 51 and 54). More specifically, it was indicated that, during the period from 2009 to 2011, some 2,700 prisoners had benefited from early conditional release and some 2,000 had been released as a result of a general amnesty. It should also be noted that, in recent years, the Azerbaijani authorities have been making a considerable investment in the construction of new penitentiary institutions. Two new prison establishments had been commissioned since 2008 (a mixed-regime establishment in Nakhchivan and Baku Investigative Isolator), and the construction of another seven is currently underway (mixed-regime establishments in Ganja, Kurdamir, Lankaran and Sheki and a high-security prison in Umbaki, as well as establishments for women and juveniles near Baku).

The delegation was also informed that steps were being taken to establish a probation service and to render the use of alternatives to imprisonment more effective.

**The CPT encourages the Azerbaijani authorities to pursue their efforts to upgrade the prison estate and combat overcrowding. In so doing, they should be guided by, inter alia, Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse and Recommendation Rec(2010)1 on the Council of Europe Probation Rules. The CPT wishes to receive up-to-date information on progress made in this area.**

44. The absence of regime activities for remand prisoners has been the subject of criticism by the CPT since its very first visit to Azerbaijan in 2002. The Committee was led to believe by the Azerbaijani authorities' response to the report on the 2006 visit that, in the context of the prison-building programme undertaken by the Government, the necessary conditions would be created in new establishments to provide remand prisoners with opportunities for purposeful out-of-cell activities. Consequently, the CPT was concerned to note that the design and layout of the new remand facility in Baku perpetuated a system of small-group isolation. A total absence of communal space for recreational purposes and of any facilities for sports or education available to remand prisoners in this establishment has led to the inevitable result that these prisoners remain the whole day in their cells or adjacent small courtyards (see paragraph 58).

The CPT has already made it clear that the starting point when designing regimes for remand prisoners must be the presumption of innocence and the principle that prisoners should be subject to no more restrictions than are strictly necessary to secure their safe confinement and the interests of justice. Any restrictions should be kept to a minimum and be of the shortest possible duration. **The CPT recommends that the Azerbaijani authorities seize the opportunity offered by the bringing into service of new prison establishments in the years to come and start to develop out-of-cell activities for remand prisoners;** the "isolator" philosophy and the cellular confinement regime it implies must be consigned to history.

45. According to the Criminal Code of Azerbaijan<sup>19</sup>, the decision as to the type of regime to be applied to a given prisoner is taken by the sentencing court, on the basis of the seriousness of the crime committed and the person's previous convictions.

The CPT has misgivings about this approach to managing imprisonment. The Committee 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."<sup>20</sup> Moreover, in the CPT's view, although it is for the courts to determine the appropriate length of sentence for a given offence, prison authorities should be responsible for determining security and regime requirements, based on professionally agreed criteria and individual assessments of prisoners. This should not, however, exclude the possibility for prisoners to appeal to an authority that is independent of the penitentiary administration (e.g. a judge) against the decision to be placed under a specific type of regime. **The CPT invites the Azerbaijani authorities to review the relevant legislation, in the light of the preceding remarks.**

## 2. Ill-treatment

46. The delegation received no allegations of physical ill-treatment by staff at *Baku Investigative Isolator* and *Special-regime penitentiary establishment No. 8*. Further, very few allegations of such treatment were received at *Gobustan Prison*, and the delegation formed the view that the newly-appointed director was determined to take decisive action to eradicate the problem of ill-treatment of prisoners that had marked this establishment in the past. The delegation was assured that the staff of the establishment were regularly warned that any abuses that came to light would be dealt with severely. And most of the prisoners with whom the delegation spoke at *Gobustan Prison* indicated that there had been a significant improvement in the situation in recent months.

However, at *Ganja Investigative Isolator*, some allegations were received of recent physical ill-treatment of prisoners by staff. The alleged ill-treatment consisted mainly of punches, kicks and blows with truncheons.

47. The findings of the 2011 visit indicate that ill-treatment by staff is not a widespread phenomenon in the prison system. Nevertheless, there is a need for constant vigilance in this regard. **The CPT recommends that a firm message be delivered to all prison officers and managers at Ganja Investigative Isolator that ill-treatment of prisoners is illegal and will be punished accordingly.**

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<sup>19</sup> Section 56.

<sup>20</sup> See Rule 102.2 of the European Prison Rules.

### 3. Conditions of detention of the general prison population

#### a. material conditions

48. At *Baku Investigative Isolator*, material conditions of detention were generally very good. Nearly all the remand prisoners were accommodated in cells designed for two, four or six persons<sup>21</sup>, which measured some 12, 21 and 29 m<sup>2</sup> respectively (including a fully-partitioned sanitary annexe with a shower, a toilet and a washbasin). Each cell opened onto a small courtyard which was accessible during daylight hours.<sup>22</sup> The cells had good access to natural light and artificial lighting, and were clean, well ventilated and heated. They were also suitably furnished (bunk beds with full bedding, a table, chairs, wardrobes, a radio).

The accommodation for sentenced (working) prisoners was provided in a separate block, in cells with six or eight beds. The cells offered sufficient living space (e.g. some 33 m<sup>2</sup> for eight prisoners) and were similar to those holding remand prisoners in other respects.<sup>23</sup> Further, the block had its own refectory, a recreation room with a TV set, a library and a modestly-equipped gym.

Cells in the establishment were not equipped with a call bell system; nevertheless, prisoners indicated that staff reacted immediately when they knocked on the cell door. The delegation was also told that there were plans to install an ultraviolet communications system in all cells; **the CPT would like to be informed of the implementation of these plans.**

49. However, the delegation observed that only some two and a half years after the prison's entry into service, there were already signs of wear and tear in some parts of the establishment (e.g. cracked plaster, stained walls, etc.). **The CPT trusts that the necessary steps will be taken at Baku Investigative Isolator to maintain the premises in a satisfactory state of repair.**

50. At *Penitentiary establishment No. 8*, all inmates who were on the prison regime and the majority of those on the special regime (in total about two-thirds of the prison's population) were kept in cells with between two and 22 beds, while the remaining 44 prisoners on the special regime were accommodated in a sufficiently large dormitory equipped with double bunk beds.<sup>24</sup>

51. The cellular accommodation was provided in a separate building, which as a whole was in a poor state of repair. Further, although the establishment was operating well below its official capacity, the conditions in most of the cells were cramped<sup>25</sup>, and in several cells the legal requirement of 4 m<sup>2</sup> of space per prisoner was not being met (e.g. 13 prisoners in a cell measuring some 35 m<sup>2</sup>; 15 prisoners in a cell measuring some 48 m<sup>2</sup>). The delegation also observed that the in-cell toilets in some of the larger cells were not fully partitioned.

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<sup>21</sup> There was also a small number of single-occupancy cells which measured some 9.5 m<sup>2</sup>.

<sup>22</sup> For example, the courtyard of a six-person cell measured some 23 m<sup>2</sup>.

<sup>23</sup> The cells for sentenced prisoners were not equipped with a sanitary annexe; however, prisoners had ready access to communal sanitary facilities.

<sup>24</sup> Prisoners on the special regime who have served one-third of their sentence and demonstrated good behaviour can be transferred to ordinary living units, by decision of the establishment's director (Section 105.1.10 of the Code of Enforcement of Punishments).

<sup>25</sup> For example, double-occupancy cells measured less than 9 m<sup>2</sup>, including the in-cell toilet.

The delegation noted ongoing refurbishment in various parts of the prison (e.g. installation of wooden floors, painting of walls), which had resulted in a significant improvement in material conditions in some cells. The delegation was told that the renovation works would cover the entire establishment. This is a welcome development. **The CPT would like to receive a detailed account of the measures taken to improve conditions of detention at Penitentiary establishment No. 8; these measures should include the full partitioning of the toilets in all of the cells.**

**The CPT also recommends that steps be taken to ensure that the legal requirement of 4 m<sup>2</sup> of living space per prisoner is respected throughout the establishment.**

52. Material conditions in the dormitory accommodating some of the prisoners on the special regime were generally acceptable. The dormitory had good access to natural light and was clean, adequately ventilated and heated. Further, it possessed a refectory, a common room with a TV set and a table tennis table, a kitchen (where prisoners could cook for themselves), a small library, a shower facility and communal toilets.

However, the CPT wishes to recall its strong reservations, already expressed in the report on its 2005 visit<sup>26</sup>, vis-à-vis the practice of accommodating prisoners in large-capacity dormitories. **The Committee reiterates that the objective should be to have smaller accommodation units.**

53. In both of the above-mentioned establishments, prisoners were supplied with hygiene products (such as soap, toothpaste, toothbrush, detergent). However, at Penitentiary establishment No. 8, prisoners complained that they were able to take a shower only once a week.<sup>27</sup> **The CPT invites the Azerbaijani authorities to allow prisoners more frequent showers, taking into account the European Prison Rules<sup>28</sup>.**

54. Material conditions of detention at *Ganja Investigative Isolator* were very poor. The premises of this establishment were in an advanced state of dilapidation; some cells had missing or broken window panes and were very cold, and the in-cell half-partitioned toilets were filthy. Further, most of the cells visited were overcrowded (with beds touching and very little space to walk around) and not all the prisoners had their own beds<sup>29</sup>; as a result, many inmates took turns to sleep on the available beds or slept on mattresses placed on the floor. Further, allegations were heard, from both adult and juvenile prisoners, to the effect that the daily outdoor exercise period lasted far less than one hour (usually not more than 30 minutes).

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<sup>26</sup> See CPT (2005) 45, paragraph 38.

<sup>27</sup> At Baku Investigative Isolator, prisoners could take a warm shower at least twice a week.

<sup>28</sup> Rule 19.4: "Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene."

<sup>29</sup> E.g. 16 beds for 30 people; 10 beds for 18 people.

55. At the end-of-visit talks with the Azerbaijani authorities, the delegation requested that immediate action be taken to repair the windows and to ensure that every prisoner has his own bed.

In their letter of 27 January 2012, the Azerbaijani authorities informed the CPT that “immediately after the visit [of the CPT’s delegation] to the Investigative Isolator in Ganja city, the broken windows of some cells have been repaired or replaced with the new ones. [...] At the same time, strict orders have been given for the maintenance of heating in the cells and keeping lavatories clean. Identified shortcomings have been immediately eliminated. Thus, sanitary junctions were substantially repaired and, in addition, were separated by plastic walls. [...] every arrested person was provided with berth and necessary equipment.”

The CPT welcomes the prompt action taken by the authorities. **The Committee recommends that steps also be taken to ensure that prisoners held at Ganja Investigative Isolator are offered at least one hour of outdoor exercise every day.**

56. The authorities also indicated in the above-mentioned letter that “the commissioning of the Sheki mixed-regime penitentiary institution including the investigative isolator will completely eliminate overcrowding in [Ganja] Investigative Isolator [...] Comprehensive measures are being taken so that [the remand block of the new prison in Sheki] could start functioning at the first half of 2012.” **The CPT would like to receive updated information in this regard.**

57. During the visit, the delegation was informed by representatives of the Ministry of Justice that, following the entry into service of the new mixed-regime prison establishment near Ganja in 2015, the existing remand prison in Ganja would be closed. This would be a most welcome development. However, **for as long as the existing premises of Ganja Investigative Isolator remain in use, steps should be taken to ensure that the prisoners’ living conditions are maintained at an acceptable level.**

b. regime

58. As already indicated above (see paragraph 44), the regime for remand prisoners at *Baku Investigative Isolator* was impoverished. They were offered no work and no access to sports activities or communal recreation. Thus, the remand prisoners were obliged to spend the whole day in their cells, playing board games, reading books<sup>30</sup> and newspapers or listening to the radio (television was not allowed), or pacing up and down the adjacent small courtyard. Prisoners were subjected to this tedious mode of life for months, and in some cases for more than a year.

Such a state of affairs is not acceptable; prisoners cannot simply be left to languish for months, locked up in their cells, and this regardless of how good material conditions might be within the cells.

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<sup>30</sup> Visits to the prison library were not allowed; prisoners could order books from a pre-determined list.

59. At *Penitentiary establishment No. 8*, the prisoners accommodated in the dormitory spent most of their time in a large courtyard equipped with a volleyball net (which was accessible from morning until evening) as well as in the common room where they watched television and played table tennis or other board games. Some 25 of them were assigned to work at the establishment (in the prison kitchen, on maintenance, food distribution, etc.). However, no provision was made for education or vocational training.

The rest of the prison's population were locked up in their (often cramped) cells for 23 hours a day. The remaining hour was spent in outdoor areas which were too small to allow prisoners to exert themselves physically (e.g. less than 50 m<sup>2</sup> for some 20 prisoners) and offered no shelter from inclement weather. Moreover, unlike prisoners on the special regime, those on the prison regime did not even have access to television.

60. In their letter of 27 January 2012, the Azerbaijani authorities informed the CPT that “[m]easures have been taken to ensure the rights of prisoners to receive first special vocational education and training. In this regard, we asked the Ministry of Education to provide assistance in the establishment of vocational schools. In order to let prisoners efficiently spend free time, immediately after the [CPT's] visit we purchased new sports equipment and devices of various designations which have already been installed in the establishment.”

**The CPT wishes to receive detailed information regarding the arrangements in place for the provision of vocational training to prisoners at Penitentiary establishment No. 8. The Committee would also like to know whether all prisoners in this establishment, including those held in the cellular accommodation, now have regular access to sports facilities.**

61. **The CPT calls upon the Azerbaijani authorities to take steps at Baku Remand Prison and Penitentiary establishment No. 8 to devise and implement a proper programme of out-of-cell activities (including group association activities) for all sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).**

**The CPT also recommends that the outdoor exercise areas at Penitentiary establishment No. 8 be enlarged, in order to enable prisoners to exert themselves physically, and equipped with a shelter against inclement weather. Further, consideration should be given to providing remand prisoners and sentenced inmates on the prison regime with access to television, especially given the current lack of out-of-cell activities.**

#### 4. Conditions of detention of life-sentenced prisoners

62. Gobustan Prison continues to hold all of the country's life-sentenced prisoners. During its follow-up visit, the CPT's delegation focused its attention on the units for these prisoners (Units Nos. 4, 5 and 6).

63. The delegation noted that certain improvements to the material conditions had been made since the December 2008 visit. Firstly, the windows in many cells had been enlarged, thereby allowing more access to natural light and fresh air. Secondly, wooden floors had been installed in some of the cells<sup>31</sup>, and the delegation was told that it was planned to equip all the cells accommodating lifers with such floors during the first half of 2012. Further, it appeared that prisoners were now regularly provided with appropriate personal hygiene items and there was a functioning prison laundry. It should also be mentioned that the vast majority of prisoners met by the delegation stated that the quality of the food served to them had improved.

64. Due to a certain increase in the total number of life-sentenced prisoners<sup>32</sup>, some cells (measuring between 16 and 17 m<sup>2</sup>) which previously had held three prisoners were now accommodating four persons. Further, conditions in the double-occupancy cells (which measured some 9 m<sup>2</sup> including the toilet facility) were also rather cramped. Strictly speaking, the requirement of 4 m<sup>2</sup> of living area per prisoner was just being respected in all the cells visited; however, living space was far from ideal, given the strict lock-up regime applied to such prisoners (see paragraph 65).

In addition, the in-cell toilets were not fully partitioned. **The CPT recommends that this deficiency be remedied.**

65. The lack of out-of-cell activities for life-sentenced prisoners has been the subject of numerous recommendations by the CPT, most recently in the report on the December 2008 visit<sup>33</sup>. In their response to that report<sup>34</sup>, the Azerbaijani authorities referred to plans to set up workshops and sports facilities ("a playing field and a gym") at Gobustan Prison and to enable lifers to receive education.

Regrettably, the 2011 visit revealed that those plans had not materialised. The CPT was very concerned to note that the regime applied to life-sentenced prisoners remained unchanged; these prisoners continued to be confined to their cells for 23 hours per day, without being offered any employment, educational opportunities or sports activities. Further, prisoners were still not allowed to associate with life-sentenced prisoners from other cells (including during outdoor exercise). Such a state of affairs is unacceptable.

**The CPT calls upon the Azerbaijani authorities to take steps without further delay to devise and implement a comprehensive regime of out-of-cell activities for life-sentenced prisoners. The Committee also recommends that the authorities review the current policy of only allowing outdoor exercise to be taken with prisoners accommodated in the same cell.**

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<sup>31</sup> Cf. CPT/Inf (2009) 28, paragraph 20.

<sup>32</sup> At the time of the 2008 visit, the prison was accommodating 219 life-sentenced prisoners.

<sup>33</sup> See CPT/Inf (2009) 28.

<sup>34</sup> See CPT/Inf (2009) 29.

66. As already mentioned, a new high-security prison is under construction outside Baku (in the settlement of Umbaki), which will also accommodate the life-sentenced prisoners. According to the authorities, the prison is expected to enter into service by the end of 2013. During the visit, the delegation had an opportunity to examine the plan of the new prison and noted that sports grounds, association rooms and working areas for prisoners were not provided for. The delegation raised this issue at the end-of-visit talks with the Azerbaijani authorities.

In their letter of 27 January 2012, the Azerbaijani authorities indicated that “a special working commission on construction was set up within the Penitentiary Service. [...] Taking into account the CPT recommendations as to the construction of the new prison in Umbaki settlement, members of the commission immediately visited the construction site. [They] came up with proposals on arranging sports grounds for prisoners, places for meetings, jobs creation, labour engagement, organization of the production area.” **The CPT would like to receive confirmation that the above-mentioned proposals of the working commission have been taken into account.**

Further, **the Committee would also like to be informed whether the necessary arrangements will be made in the new prison to ensure that life-sentenced prisoners have the possibility to engage in educational/vocational activities.** In this connection, **the CPT must reiterate the recommendation made in the report on its 2008 visit that Section 104.6 of the Code of Enforcement of Punishments (CEP), according to which life-sentenced prisoners are not entitled to general secondary education, be repealed.**

67. The CPT has already expressed its misgivings in previous visit reports about the practice of keeping life-sentenced prisoners apart from other inmates.<sup>35</sup> In this connection, the Committee was concerned to learn that the Azerbaijani authorities intended to continue with this practice in the new prison, due to the provisions of the current legislation<sup>36</sup>.

As the CPT has stressed in the past, it can see no justification for systematically segregating life-sentenced prisoners. Indeed, the experience in various European countries has shown that life-sentenced prisoners are not necessarily more dangerous than other prisoners; many of them have a long-term interest in a stable and conflict-free environment. Therefore, the approach to the management of life-sentenced prisoners should proceed from an individual risk and needs assessment to allow decisions concerning security, including the degree of contact with others, to be made on a case-by-case basis. **The CPT calls upon the Azerbaijani authorities to review the legal provisions and practice as regards life-sentenced prisoners, in the light of the above remarks. In so doing, the authorities should be guided, inter alia, by Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners.**

68. Reference should be made to the four female prisoners held at Gobustan Prison (see paragraph 42). Due to a lack of suitable accommodation for these prisoners, they were being held in a separate room in the establishment’s health-care unit. The prisoners appeared to be satisfied with their situation and the manner in which they were treated by staff. **The CPT would like to receive information on the authorities’ medium- and long-term plans concerning the accommodation of female inmates subject to the prison regime.**

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<sup>35</sup> See, for example, CPT (2007) 31, paragraph 63.

<sup>36</sup> See Section 72.2 of CEP.

## 5. Health-care services

69. Health-care staffing levels at *Gobustan Prison* remained generally satisfactory as regards doctors. In addition to the staff available at the time of the 2008 visit<sup>37</sup>, a psychiatrist and a laboratory specialist (both working full-time) had been recruited.<sup>38</sup> Further, the prison now employed a full-time feldsher; however, this is far from implementing the CPT's long-standing recommendation to substantially increase the number of nursing staff.

The delegation noted that a doctor was now present in the establishment at weekends and on public holidays; however, it was still the case that no health-care staff were present at night.<sup>39</sup> According to information provided by the authorities, it was planned to conduct training courses for prison officers in order to ensure the provision of first aid to inmates during the night. **The CPT would like to receive detailed information on these training courses.**

At *Penitentiary establishment No. 8*, the health-care staff consisted of a head doctor, a psychiatrist/narcologist and a dentist, all full-time. The establishment also employed a psychologist. However, there were no feldshers or nurses (the only feldsher's post being vacant at the time of the visit) and, as at *Gobustan Prison*, no health-care staff were present at night.

At *Baku Investigative Isolator*, the medical team comprised three specialists in internal diseases (including a head doctor), a psychiatrist/narcologist, a TB specialist, two radiologists, a gynaecologist, a dentist and a laboratory specialist (all full-time). They were supported by nine full-time feldshers, of whom three worked on the night shift. Given the number of inmates being held in this establishment at the time of the visit (not to mention its official capacity), the nursing staff resources should be reinforced.

### **The CPT recommends that the Azerbaijani authorities:**

- **substantially increase the number of qualified nursing staff at *Gobustan Prison* and *Baku Investigative Isolator*;**
- **fill without delay the vacant feldsher's post at *Penitentiary establishment No. 8* and reinforce the nursing staff resources by at least one more post.**

Further, **steps should be taken to ensure that someone competent to provide first aid is always present in every prison establishment, including at night; preferably, this person should be a qualified nurse, in particular in establishments which have an in-patient infirmary** (which was the case in each of the three establishments visited).

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<sup>37</sup> A head doctor, a specialist in internal diseases, a surgeon, a pulmonary specialist, a radiologist and a dentist (all working full-time).

<sup>38</sup> The female prisoners at *Gobustan Prison* could also have access to a visiting gynaecologist.

<sup>39</sup> The local emergency service was called in case of need. In this connection, the delegation was told that no authorisation was now required from the prison director to open cell doors at night in cases of emergency (cf. CPT (2007) 31, paragraph 64).

70. The health-care facilities at *Baku Investigative Isolator* were of a very good standard. The establishment's medical unit comprised an infirmary with 16 rooms (each with four beds), a number of examination rooms, facilities for performing X-rays, an adequately stocked pharmacy and a fully-equipped dental surgery. Further, a laboratory was in the process of being set up at the time of the visit.

The level of health-care facilities at *Gobustan Prison* was also generally satisfactory; the infirmary, medical consultation rooms and the dentist's room were adequately equipped. It is also positive that the medical unit has been provided with modern X-ray equipment and that there was a functioning laboratory (where it was also possible to perform sputum tests).

The situation was less favourable at *Penitentiary establishment No. 8* where the health-care unit as a whole, including a ten-bed infirmary, was rudimentarily equipped (with the notable exception of the dentist's room). **The CPT recommends that steps be taken to remedy this shortcoming.**

71. Most of the prisoners interviewed by the delegation in the establishments visited appeared to be generally satisfied with the quality of the health care provided. It also appeared in this regard that prisoners who were in need of specialist treatment were usually transferred to an outside hospital without undue delay.<sup>40</sup>

However, at *Baku Investigative Isolator* and *Gobustan Prison*, the delegation gained the impression that some prisoners were being kept in the infirmary for reasons other than medical necessity. **The CPT would welcome the observations of the Azerbaijani authorities on this matter.**

72. The CPT always pays particular attention to the medical screening of newly-arrived prisoners, especially in establishments which constitute points of entry to the prison system. Such screening is important not only in the context of the timely recording of injuries but also for safeguarding the health of all prisoners and staff in the establishments concerned.

The delegation noted that prompt medical screening was carried out for newly-arrived prisoners at *Baku Investigative Isolator* (as a rule, within 24 hours of admission). At *Gobustan Prison* and *Penitentiary establishment No. 8*, medical screening was also performed soon after arrival. However, it is a matter of concern that the confidentiality of medical examinations was not respected, a prison officer (and also a police officer at *Baku Investigative Isolator*) being systematically present in the room where initial examinations took place.

**The CPT recommends that steps be taken to ensure that all medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers; under no circumstances should police officers be present during such examinations.**

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<sup>40</sup> The delegation was informed that, from January till early December 2011, 128 external consultations had been organised by *Baku Investigative Isolator* with various specialists (dermatologist, surgeon, neuropathologist, endocrinologist, etc.).

73. As regards the recording of injuries observed on prisoners upon admission, the examination of medical records at Baku Investigative Isolator revealed that such injuries were not described in sufficient detail (i.e. brief entries were made without describing the exact location, shape, dimensions and colour of the injuries) and that the records usually contained no information about the statements made by the prisoners concerned regarding the origin of the injuries.

The establishment's director told the delegation that in cases when injuries indicative of ill-treatment were found during initial medical screening, he was under an obligation to transmit such cases to the Penitentiary Service and the competent prosecutor. However, as far as the delegation could ascertain, this was not done in practice; the prison management only replied to requests for information from judicial and prosecutorial authorities concerning the results of certain prisoners' initial medical screening carried out by the establishment's health-care staff<sup>41</sup>. In this connection, it should also be noted that the doctor conducting medical examinations did not take the initiative to inform the director of the names of prisoners with bodily injuries (this appeared to be the duty of the prison officer who was present during such examinations) unless those injuries had been sustained inside the prison.

**The CPT calls upon the Azerbaijani authorities to take immediate steps to ensure that the record drawn up after a medical examination of a prisoner (whether on admission or during imprisonment) contains: (i) a full account of objective medical findings based on a thorough examination, (ii) a full account of statements made by the person concerned which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), and (iii) the doctor's conclusions in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings.**

**Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record should be systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the prisoner and, upon request, to his/her lawyer.**

**The same procedure should be followed whenever a prisoner is brought back to prison by the police, after having participated in investigative activities.**

74. Prisoners' medical files were generally well-kept and detailed at Baku Investigative Isolator and Gobustan Prison. However, the delegation noted that some of the medical files at Penitentiary establishment No. 8 contained very little medical data. **Steps should be taken to remedy this shortcoming; medical files should contain diagnostic information as well as an ongoing record of the prisoner's state of health and of any special examinations he has undergone.**

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<sup>41</sup> The delegation was informed that, during the period from January to early December 2011, Baku Investigative Isolator had submitted such information in respect of 71 remand prisoners (23 of them displayed bodily injuries upon their admission).

75. The delegation learned that about a quarter of all prisoners admitted to Baku Investigative Isolator during the first nine months of 2011 had drug addiction problems (they were mostly heroin users). The delegation gained the impression that such prisoners did not receive proper assessment and adequate care. It appeared that the establishment had no comprehensive policy to combat the problem of substance abuse (including the treatment of drug addiction). **The CPT would like to receive the observations of the Azerbaijani authorities on this issue.**

76. At Baku Investigative Isolator, the health-care unit possessed an unfurnished “padded cell” to hold agitated/violent prisoners. The delegation was informed that placements in this cell had to be authorised by a doctor and that it was infrequently used – usually until the arrival of an ambulance to transfer the person concerned to a hospital. However, the use of the “padded cell” was not recorded in a register and the establishment had no written policy on its use. **The CPT recommends that steps be taken to remedy these deficiencies.**

77. The delegation noted that, in cases of sudden deaths occurring in prisons, the reports drawn up after the autopsies did not always include toxicological analysis, even when the cause of death could not be established with the necessary degree of certainty. Such a practice is not in line with the standards adopted by the Council of Europe.<sup>42</sup> **The CPT recommends that the necessary steps be taken to address this point.**

## 6. Other issues

### a. prison staff

78. The delegation learned that under the existing working hours system, custodial staff were on duty for 24 hours, followed by a 48-hour break. The CPT considers that the pattern of 24-hour shifts will inevitably have a negative effect on professional standards; no one can perform in a satisfactory manner the difficult tasks expected of a prison officer for such a length of time<sup>43</sup>. **The CPT invites the Azerbaijani authorities to review the 24-hour shift system for custodial staff.**

Further, **the staffing level in the female unit of Baku Investigative Isolator should be reviewed**; the number of staff on duty in this unit at the time of the visit was very low.

More generally, **the CPT must stress that the provision of a satisfactory regime of activities for prisoners will require increasing the overall staffing levels in the establishments visited.**

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<sup>42</sup> See paragraph 6.b of the Appendix to Recommendation No. R(99)3 of the Committee of Ministers of the Council of Europe to member states on the harmonisation of medico-legal autopsy rules.

<sup>43</sup> Even with the allowed six-hour break.

79. Efforts have been made by the Azerbaijani authorities in recent years to improve prison staff training. The delegation was informed that every newly-recruited prison officer underwent a one-month initial training course at the Training Centre of the Penitentiary Service. However, from the delegation's interviews with staff in the establishments visited, it transpired that very little training was offered to prison officers already in service. In the CPT's view, it is essential that staff receive not only initial training but also regular in-service training to allow both updated and new skills to be acquired. **The Committee recommends that the Azerbaijani authorities pursue vigorously their efforts towards the advancement of prison staff training, both initial and ongoing.**

80. At Penitentiary establishment No. 8, some prison officers were openly carrying truncheons in detention areas; in the CPT's opinion, this is clearly not conducive to the development of positive relations between staff and prisoners. **The Committee recommends that steps be taken to ensure that staff working in Penitentiary establishment No. 8 do not openly carry truncheons in detention areas; if it is deemed necessary for staff to possess such equipment, it should be hidden from view.**

b. discipline

81. The disciplinary sanctions which may be imposed on sentenced prisoners include placement in a disciplinary cell – for up to 15 days for adult men, up to 10 days for adult women and up to 7 days for juveniles. As for remand prisoners, the maximum period is 10 days for adults and 5 days for juveniles.

It appeared from the relevant registers that the sanction of placement in a disciplinary cell was not frequently resorted to in any of the establishments visited. Nevertheless, the CPT must emphasise that it has very strong reservations as concerns any form of solitary confinement of juveniles. For this age group, the placement in conditions resembling solitary confinement can easily compromise their physical and/or mental integrity; consequently, resort to the sanction of placement in a disciplinary cell vis-à-vis juveniles should be regarded as a highly exceptional measure.

**The CPT recommends that the Azerbaijani authorities reduce the maximum possible period of confinement in a disciplinary cell in respect of juvenile prisoners.** In this connection, the Committee has already had the occasion to state its preference for a period not exceeding three days.<sup>44</sup> Further, **whenever juveniles are subject to such a sanction, they must be guaranteed socio-educational support and appropriate human contact throughout the duration of the measure.**

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<sup>44</sup> See the CPT's 18<sup>th</sup> General Report (CPT/Inf (2008) 25), paragraph 26.

82. The CPT was also concerned to note that, in accordance with the Rules of Internal Discipline in Penitentiary Establishments<sup>45</sup>, the sanction of placement in a disciplinary cell can be applied repeatedly, with no interruption, in respect of an adult sentenced prisoner who has committed a disciplinary offence while being held in a disciplinary cell.<sup>46</sup>

**The Committee recommends that the relevant regulations be amended in order to ensure that no adult prisoner is held continuously in a disciplinary cell for longer than the maximum period of 15 days. If a prisoner has been sanctioned to disciplinary confinement for a total of more than 15 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 15-day stage.**

**The CPT also considers that it would be preferable to lower the maximum possible period of confinement in a disciplinary cell which can be imposed on adult sentenced prisoners for a given disciplinary offence.**

83. The CPT noted that placement in a disciplinary cell was invariably accompanied by certain restrictions on contact with the outside world; adult prisoners subjected to this disciplinary sanction were not allowed to receive visits or to make telephone calls.<sup>47</sup> In this connection, it should be recalled that, according to the Commentary to the European Prison Rules, any restrictions on family contact should be imposed only where the disciplinary offence relates to such contact.<sup>48</sup> **The CPT invites the Azerbaijani authorities to review the relevant regulations accordingly.**

84. As far as the delegation could ascertain, disciplinary procedures were generally carried out in accordance with the legal framework. However, some prisoners claimed that they had not been given a copy of the decision (which contained information on the reasons for the decision as well as on the avenues for lodging an appeal). **The CPT recommends that steps be taken to ensure that prisoners subject to a disciplinary sanction are always given a copy of the decision.**

85. Material conditions in the disciplinary unit at *Baku Investigative Isolator* were on the whole adequate. The unit comprised 15 cells, all of a sufficient size (e.g. cells for up to two persons measured some 11 m<sup>2</sup>). The cells had good lighting (including access to natural light) and ventilation, and were suitably equipped (including with a fully-partitioned sanitary annexe). Further, outdoor exercise was provided in the unit's exercise yard on a daily basis.

*Penitentiary establishment No. 8* possessed five disciplinary cells which offered acceptable conditions in terms of living space, access to natural light and ventilation. Each cell was furnished with one bunk bed, a table and two stools as well as with a screened sanitary annexe. However, artificial lighting was almost invariably poor in all the cells. Moreover, the delegation received allegations from prisoners that those placed in disciplinary cells were not provided with outdoor exercise every day.

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<sup>45</sup> See paragraph 311.

<sup>46</sup> However, the total period spent in a disciplinary cell by an adult prisoner may not exceed 60 days in one calendar year (Section 110.6 of the CEP).

<sup>47</sup> See Section 110.1 of CEP. Juveniles placed in a disciplinary cell are allowed to receive short-term visits (Section 126.1 of CEP). According to Section 84.3 of CEP, only in exceptional cases can such persons be allowed to make a telephone call.

<sup>48</sup> See also the CPT's 21<sup>st</sup> General Report (CPT/Inf (2011) 28), paragraph 61(b).

The disciplinary unit at *Gobustan Prison* was described in the report on the 2008 visit<sup>49</sup>. The delegation was pleased to note that, in compliance with the CPT's recommendation, the cell occupancy rates had been reduced so as to ensure a minimum of 4 m<sup>2</sup> per prisoner. However, it is a matter of concern that artificial lighting in the cells remained poor. Further, allegations were received that outdoor exercise was not granted on a daily basis and that when it was provided, exercise lasted only some 15-20 minutes.

**The CPT recommends that steps be taken in the disciplinary units at Penitentiary establishment No. 8 and Gobustan Prison in order to ensure that:**

- **artificial lighting in the cells is improved;**
- **prisoners placed in a disciplinary cell are offered outdoor exercise of at least one hour every day.**

86. In accordance with the revised Rules of Internal Discipline in Penitentiary Establishments, prison doctors are no longer required to certify, prior to the enforcement of the disciplinary sanction, that the prisoner concerned is fit to undergo disciplinary confinement. Further, the Rules provide for daily visits by health-care staff to those placed in a disciplinary cell.<sup>50</sup>

The CPT welcomes this development.

- c. contact with the outside world

87. In the reports on the visits in 2002 and 2006, the CPT recommended that the relevant regulations be amended so as to ensure that *remand prisoners* are entitled to receive visits as a matter of principle. However, at the time of the 2011 visit, the situation was still unchanged: visits to remand prisoners by their relatives had to be authorised by the competent investigator or court, and, as had been the case during previous visits, such authorisations were rarely given. Further, remand prisoners were still not allowed to make telephone calls.

According to the information provided in the Azerbaijani authorities' letter of 27 January 2012, the draft Law on the rights and freedoms of suspected and accused persons in detention facilities provides for the rights of persons on remand to receive visits, make telephone calls and send/receive an unlimited number of letters. **The CPT would like to receive up-to-date information on this matter.**

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<sup>49</sup> See CPT/Inf (2009) 28, paragraph 50.

<sup>50</sup> Paragraph 298 of the Rules of Internal Discipline in Penitentiary Establishments.

88. As regards *life-sentenced prisoners*, they are still only entitled to six short-term (of up to 4 hours) and two long-term (of up to 3 days) visits per year<sup>51</sup> as well as to two 15-minute phone calls per month. *Prisoners on the special regime* have the same visit entitlement as life-sentenced prisoners. The visit entitlement is even more restrictive for *prisoners on the prison regime*: four short-term and two long-term visits per year – if placed under “general conditions”, or one short-term visit per six months – if placed under “strict conditions”<sup>52</sup>. Prisoners on both the special and prison regimes are entitled to one 15-minute telephone call per week.

The CPT must stress that frequent contacts with the outside world, in particular visits from relatives, are of crucial importance in the context of social rehabilitation of prisoners; a visit on average every six to seven weeks, no matter how long that visit might be, is not adequate. In the Committee’s view, all prisoners, irrespective of their legal status and regime, should be entitled to at least one visit per week. **The CPT recommends that the Azerbaijani authorities significantly revise prisoners’ visit entitlements in the light of these remarks.**

89. The arrangements in the short-term visiting facilities at the establishments visited prevented any physical contact between prisoners and their visitors, who were separated by metal bars (at Gobustan) or a plexiglas screen (Baku Investigative Isolator).<sup>53</sup>

The CPT accepts that, in certain cases, it may be justified, for security-related reasons, to prevent physical contact between prisoners and their visitors. However, open visits (e.g. with prisoners and their visitors sitting around a table) should be the rule and closed visits the exception, for all legal categories of prisoners. **The Committee recommends that conditions in the visiting facilities at the establishments visited (and, as appropriate, in other penitentiary establishments in Azerbaijan) be reviewed so as to ensure that, as a rule, short-term visits take place under open conditions.**

90. On a positive note, the living conditions in the rooms for long-term visits at Baku Investigative Isolator were very good.<sup>54</sup> There were a few such rooms at Gobustan Prison, which also offered accommodation of a reasonably good standard, following recent refurbishment.

91. At Gobustan Prison, complaints were received from prisoners that the procedure for short-term visits obliged their relatives to spend a long time waiting in queues. If the time provided for visits on a given day elapsed and relatives did not manage to obtain a visit, they had to return on another day.

The above-mentioned arrangements clearly impose an additional burden on both prisoners and their families, and are unlikely to promote the maintenance of inmates’ contact with the outside world. **The CPT invites the Azerbaijani authorities to explore ways to remedy this situation.**

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<sup>51</sup> Lifers who have served at least ten years and demonstrated good behaviour can be granted additionally two short-term visits and one long-term visit per year.

<sup>52</sup> “Strict conditions” of the prison regime are applied to those prisoners who have previously served a term under the prison regime, or who have been convicted for crimes committed within a penitentiary establishment, or as a disciplinary measure in respect of prisoners placed under “general conditions”. The maximum period a prisoner can spend under “strict conditions” is six months.

<sup>53</sup> Both the short- and long-term visiting facilities at Penitentiary establishment No. 8 were under renovation at the time of the visit.

<sup>54</sup> These facilities were only available to sentenced (working) prisoners.

d. complaints and inspection procedures

92. Prisoners were, in principle, entitled to submit complaints to the prison director, the Ministry of Justice and the Ombudsman's Office. However, as was the case during previous visits, there was a widespread lack of trust among prisoners in the existing complaints system, especially concerning the confidentiality of the complaints sent to outside bodies. Many inmates, in particular life-sentenced prisoners, claimed that all letters addressed to competent outside bodies were read by prison officers and any letters which contained complaints against staff were not dispatched. Such a practice would be in violation of Section 83.5 of the CEP, which provides that letters addressed by prisoners to, inter alia, bodies in charge of supervising penitentiary establishments, the Ombudsman and the NPM shall not be censored.

**The CPT recommends that the Azerbaijani authorities take the necessary measures to ensure that the aforementioned legal requirement is complied with in practice. Further, it would be desirable for the body in question to acknowledge in writing directly to the prisoner concerned, and without delay, the receipt of a letter sent to it by a prisoner.**

93. From the information gathered during the visit, it transpired that the National Preventive Mechanism and the Public Committee for the control of the penitentiary system<sup>55</sup> carried out regular monitoring visits to prison establishments. In addition, some non-governmental organisations have been granted permission by the Ministry of Justice to carry out such visits. However, the delegation was informed that investigative isolators could not be visited by the above-mentioned bodies. **The CPT would like to receive the observations of the Azerbaijani authorities on this matter.**

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<sup>55</sup> The Committee is inter alia empowered to speak in private with prisoners and make recommendations to remedy the violations found (see paragraph 113 of CPT (2007) 31).

## C. Establishments under the authority of the Ministry of Health

### 1. Preliminary remarks

94. The CPT's delegation carried out a follow-up visit to the Republican Psychiatric Hospital No.1 in Mashtaga ("Mashtaga hospital") and visited, for the first time, the Psychiatric Hospital in Ganja ("Ganja Hospital").

Republican Psychiatric Hospital No.1 in Mashtaga had previously been visited by the CPT in 2008<sup>56</sup>. The establishment's official capacity had remained unchanged<sup>57</sup> and it was accommodating 1,530 patients at the time of the visit (including 194 forensic patients and three patients subject to civil involuntary hospitalisation), which represented a significant increase in comparison with the 2008 visit<sup>58</sup>. This was reportedly due to the substantial improvement of material conditions in Mashtaga Hospital and the closing down of the regional dispensary.

The Psychiatric Hospital in Ganja occupies the premises of a former mansion property built in 1893, transformed into a psychiatric hospital in 1936. It comprises two accommodation blocks, a one-storey building dating back to the origins of the mansion and a newer two-storey building from 1950. With an official capacity of 135 beds, the hospital was, at the time of the visit, accommodating 126 adult patients in four wards (three for men and one for women). Three patients were subject to civil involuntary hospitalisation.

95. In both hospitals, the inmate population consisted of a mixture of patients diagnosed as mentally ill and patients suffering from learning disabilities. Many patients had been in the hospitals for a long time, some for many years.

In addition, despite the fact that nearly all the patients in both hospitals were referred to by the staff as "voluntary", they were in fact kept in locked wards. This issue will be dealt with later in the report (see paragraph 120).

96. Since the CPT's visit in 2008, several provisions of the Law on Psychiatric Assistance (2001) have been amended. Further, the delegation was informed that a National Mental Health Strategy and a related Action Plan had been adopted in 2011. The delegation understood that the strategy envisaged a reduction in the number of beds in psychiatric hospitals and psycho-neurological dispensaries, and the opening of small psychiatric wards in general hospitals. De-institutionalisation was to be pursued including through the setting up of group homes.

**The Committee would like to receive a copy of the National Mental Health Strategy and the Action Plan, as well as up-to-date information on the ongoing reorganisation of psychiatric care in Azerbaijan.**

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<sup>56</sup> A detailed description of this establishment can be found in paragraphs 55 to 81 of CPT/Inf (2009) 28.

<sup>57</sup> Some 1,890 patients, see paragraph 57 of CPT/Inf (2009) 28.

<sup>58</sup> When the hospital accommodated 1,212 patients.

## 2. Ill-treatment

97. Patients on most wards at *Republican Psychiatric Hospital No.1* were generally positive about the manner in which they were treated by ward-based staff, which represented a positive development as compared to the situation observed in 2008. However, in the children's and adolescents' wards, the delegation received some allegations of physical ill-treatment by ward-based staff (slaps and blows with a wooden stick) and, in one of the staff offices, the delegation found a stick matching the description given by patients.

Further, in the forensic unit, the delegation heard allegations from patients of physical ill-treatment (punches and kicks) by ward-based staff as well as by perimeter police guards, who reportedly at times entered the unit (although they were not permitted to do so, according to the hospital's director) and additionally used batons. It was also alleged that a police search team which had entered the establishment some months previously had physically ill-treated patients.

The delegation noted that the director at the Mashtaga Hospital had taken action since his arrival in 2008 to make it clear to staff that patients should be treated with respect, and had dismissed a certain number of staff over the preceding four years. However, the information gathered during the 2011 visit clearly indicates the need for continued vigilance.

98. At the *Psychiatric Hospital in Ganja*, the delegation heard numerous allegations that ward-based staff could be verbally abusive, hostile and threatening towards patients and, at times, also physically ill-treated them (slaps, kicks, punches and blows with a wooden stick). In one of the staff offices, the delegation found a stick which matched the description given by patients.

99. **The CPT recommends that, in both hospitals, staff be regularly reminded that any form of ill-treatment of patients, whether verbal or physical, is totally unacceptable and will be punished accordingly. Further, objects such as the sticks found in staff offices at both establishments should be removed immediately. Appropriate steps should also be taken to ensure that perimeter police guards do not enter the clinical areas of the forensic unit at Republican Hospital No. 1 in Mashtaga, unless this is specifically requested by the hospital's director.**

100. The CPT noted that inter-patient violence did not appear to be a problem in either of the hospitals. However, a small number of allegations of inter-patient aggression were heard at the adolescent ward at the Mashtaga Hospital. The Committee must stress in this regard that the duty of care which is owed by staff in a psychiatric establishment to those in their charge includes the responsibility to protect them from other patients who might cause them harm. This requires not only adequate staff presence and supervision at all times, but also that staff be properly trained in handling challenging situations/behaviour by patients. **The CPT recommends that appropriate steps be taken at Republican Psychiatric Hospital No. 1 in Mashtaga to combat the phenomenon of inter-patient violence, in the light of the above remarks.**

### 3. Patients' living conditions

101. Since the 2008 visit, refurbishment had been completed, or was ongoing, in three-quarters of the wards of *Republican Psychiatric Hospital No.1 in Mashtaga*, resulting in a very substantial improvement of the living conditions in most parts of the hospital. Ward 12 in particular, in which conditions at the time of the 2008 visit were akin to inhuman and degrading treatment<sup>59</sup>, had been entirely renovated. Living conditions and hygiene in the renovated wards were on the whole acceptable. That said, patient rooms generally offered little privacy and lacked visual stimulation and personalisation.

As regards the forensic unit, the CPT regrets that its invitation to the Azerbaijani authorities to consider the possibility of transforming the large-capacity dormitories into smaller patients' rooms<sup>60</sup> had not been taken into account at the time of the ward's refurbishment. Further, the dormitories in this unit were overcrowded<sup>61</sup>, and equipped almost exclusively with beds. The forensic patients also complained of inadequate access to showers (once or twice a month).

102. Conditions in the few as yet non-refurbished wards (TB, narcology, infectious diseases and old age psychiatry) were very poor. Dormitories were severely overcrowded, poorly lit, ventilated and heated as well as dilapidated and dirty. The director informed the delegation that all these wards, except the old age psychiatry ward, were to be fully refurbished in the course of 2012.

The situation in the old-age psychiatry ward, where patients lived in dilapidated, unhygienic and very cramped conditions is of particular concern. The inmates were sleeping on old and sometimes broken beds (with thin foam mattresses), which were often almost touching each other. Seventeen patients were sleeping in beds placed in the corridor. Further, the patients' personal hygiene often left much to be desired.

**103. The CPT recommends that steps continue to be taken as a matter of urgency at Republican Psychiatric Hospital No.1 in Mashtaga to improve patients' living conditions, taking into consideration the remarks in paragraphs 101 and 102 above. Priority should be given to the old age psychiatry ward. The CPT also recommends that, in the context of the ongoing refurbishment, efforts be made to transform the large-capacity dormitories into smaller patients' rooms; in this context, the refurbished female wards should serve as an example.**

104. As regards the *Psychiatric Hospital in Ganja*, despite some recent refurbishment<sup>62</sup> (roofs, windows, sanitary facilities), living conditions in the older building (comprising Ward 1, for male patients, and Ward 4 for female patients) were generally deplorable, with most patients accommodated in dilapidated (broken beds, broken doors, holes in the floors), overcrowded<sup>63</sup> and unhygienic dormitories with dirty bedding and mattresses. Further, the dormitories were dark and some had no direct access to natural light.

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<sup>59</sup> See paragraph 63 of CPT/Inf (2009) 28.

<sup>60</sup> See paragraph 64 of CPT/Inf (2009) 28.

<sup>61</sup> 16 patients in a dormitory measuring some 50 m<sup>2</sup>.

<sup>62</sup> Mainly carried out thanks to the support of foreign NGOs.

<sup>63</sup> E.g. 10 patients in a dormitory measuring 28 m<sup>2</sup> in the female ward.

The newer building (male Wards 2 and 3, accommodating 33 and 29 patients respectively) was in a less dilapidated state. Further, the dormitories were smaller and less crowded<sup>64</sup>, and all of them had access to natural light and were well ventilated. Nevertheless, they were dirty and unhygienic.

Patients complained of the cold (the wards throughout the hospital were unheated at night, with patients sleeping in overcoats and hats), and infestation with lice (in all the wards) and rats (in the older building). It should also be noted that the dormitories were only equipped with beds; they offered no privacy or personal lockable space and lacked visual stimulation and personalisation.

105. On a positive note, the sanitary facilities had been entirely refurbished in the older building and offered acceptable conditions. However, in the newer building, they were in an advanced state of dilapidation, filthy (some toilets were blocked with faeces), malodorous and unheated (some 11°C. measured during the day). Further, access to a shower was inadequate (once or twice a month) for patients in that building.

106. Patients throughout the hospital complained of hunger. The delegation observed for itself that the food was lacking in quantity and variety and was of poor quality (no dairy products apart for some butter, no meat, no fruit). The director confirmed that, apart from occasional charitable donations, patients had not been provided with any meat for over two years and very rarely received fruit.

107. To sum up, the conditions in the Psychiatric Hospital in Ganja did not befit a health-care institution. Paradoxically, in a hospital, such conditions contribute to morbidity and could result in increased patient mortality. As already mentioned (see paragraph 9), the conditions in which patients of that hospital were obliged to live – sometimes for years – could be described as amounting to inhuman and degrading treatment. In this respect, at the end of the visit, the CPT's delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation in respect of the Psychiatric Hospital in Ganja, requesting the Azerbaijani authorities to immediately provide the resources required for meeting the basic needs of all patients in terms of sufficient food, heating and hygienic conditions (including full de-infestation and proper bedding), and to inform the Committee within one month of the action taken in response to this immediate observation.

By letter of 14 May 2012, the Azerbaijani authorities informed the CPT that the food supply had been improved and that 24-hour heating had been installed in the hospital.

The CPT is very concerned by the extreme paucity of the belated response of the Azerbaijani authorities to the immediate observation – despite repeated requests – which does not allow for a proper assessment of the measures taken to improve the serious situation found at Ganja Psychiatric Hospital.

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<sup>64</sup> E.g. six patients in a dormitory measuring some 22 m<sup>2</sup>.

**The CPT calls upon the Azerbaijani authorities to take the following urgent measures, in respect of the Psychiatric Hospital in Ganja:**

- **improve food provision to patients based on appropriate calorific norms, and introduce a system for monitoring their nutritional status, including regularly weighing of patients;**
- **ensure that all patients' rooms are adequately heated;**
- **refurbish the toilets, washing and bathing facilities in the newer building and maintain them in a clean condition;**
- **ensure that patients are provided with proper beds with full bedding (which is cleaned at regular intervals).**

**The Committee wishes to receive a detailed account of the action taken in order to implement this recommendation.**

**Further, the CPT recommends that efforts be made to reduce the occupancy levels in the patients' dormitories and to keep them in an acceptable state of repair and hygiene. In addition, patients accommodated in the newer building should be able to shower at least once a week and more frequently if possible.**

**The CPT also recommends that efforts be made to provide patients with personal lockable space for their belongings, as well as more visual stimulation and personalisation in their dormitories.**

**In their letter of 14 May, the Azerbaijani authorities also informed the CPT that plans for a new hospital to replace the existing one were under consideration; the CPT would like to receive full details of those plans, including the time schedule for their implementation.**

#### **4. Staff and treatment**

108. Significant efforts had been made at *Republican Psychiatric Hospital No.1 in Mashtaga*, to improve the situation as regards staff resources. At the time of the 2011 visit, 73 equivalent full-time doctors' posts<sup>65</sup> were filled as compared with 64 during the 2008 visit. The number of ward-based staff had also been increased from 400 to 454<sup>66</sup>, but still remained insufficient<sup>67</sup> for the number of patients; filling the 285 vacant posts should be seen as a priority. In addition, despite three full-time posts for TB specialists in the staff organisation chart, there was in fact only one half-time TB specialist<sup>68</sup>. Further, there was only one full-time psychologist and two full-time occupational therapists.

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<sup>65</sup> 54 psychiatrists, two neuropathologists, a gynaecologist, two cardiologists, four specialists in internal diseases, two specialists in infectious diseases, a specialist in narcology, two pediatricians, a half-time TB specialist, a half-time dermatologist, two dentists, and two radiologists.

<sup>66</sup> Including 112 nurses and 342 orderlies; 181 posts of nurses and 104 posts of orderlies were vacant.

<sup>67</sup> On some wards, there could be at times only two staff caring for 60 patients.

<sup>68</sup> The three TB wards were accommodating some 60 patients at the time of the visit (including some 20 patients suffering from drug-resistant TB).

**The CPT recommends that the Azerbaijani authorities take measures to fill the vacant nurses and orderlies' posts at Republican Psychiatric Hospital No.1. Further, immediate steps should be taken to ensure the presence of TB specialists to the equivalent of one full-time post, and efforts should be made to fill the two other vacant posts.** As regards staff to provide therapeutic and rehabilitation activities, see paragraph 113 below.

109. By contrast, the staffing situation was on the whole satisfactory at the *Psychiatric Hospital in Ganja*, with 10 psychiatrists filling the equivalent of 12 posts. In addition, there were 33 posts of nurses and 96 of orderlies, all of which were filled. There were vacancies for one radiologist, one laboratory doctor and one specialist in internal diseases. The hospital employed a psychologist, but there was no occupational therapist on the hospital payroll; that said, four occupational therapists employed by an NGO were running art and music clubs.

110. As regards patients' treatment, there appeared to be no shortage of basic psychiatric medication in either of the psychiatric hospitals visited. Further, the medical records and information obtained by the delegation from interviews with patients and staff, did not reveal any evidence of overmedication.

However, resort to non-pharmacotherapeutic treatments and recreational activities was very limited. Some art therapy had been introduced for patients in the chronic wards at the Mashtaga Hospital, and a few patients were reportedly involved in gardening. As for the Ganja Hospital, a mere ten patients had access to an art club and a music club, twice a week. In other words, the vast majority of patients, at both hospitals – including children and adolescents at the Mashtaga Hospital – were locked up for the whole day in their wards with nothing to occupy their time apart from watching TV and playing board games. The situation was of particular concern in the forensic unit of the Mashtaga Hospital, where patients had virtually no access to TV, and were left almost all day locked in their dormitories with nothing to do. It should also be noted that, at the Ganja Hospital, a TV was available and functioning in only two of the four wards.

111. There were no individual treatment plans for patients in either of the hospitals, and there was no evidence of a multi-disciplinary clinical team approach. Patients' files essentially contained information on medication and, unsurprisingly, lacked details of their involvement in psycho-social rehabilitative activities. It should also be noted that mentally ill and learning-disabled patients were accommodated together in the same dormitories.

112. In addition, there was a notable lack of opportunities for outdoor exercise in both hospitals. At the *Mashtaga Hospital*, there was no space reserved for outdoor exercise for patients from the children's and adolescents' wards, and as regards the forensic ward, the delegation received many complaints of lack of access to outdoor exercise for months, and even years in a few cases, reportedly due to the on-going renovation works outside the buildings.

At the *Ganja Hospital*, despite the presence of two large, secured and well-equipped yards, as well as a volleyball court, it transpired from interviews with patients that they had had no access to outdoor exercise for months, and in some cases for years.

113. The CPT calls upon the Azerbaijani authorities to take immediate steps to ensure that all patients at both hospitals are offered, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious and secure setting, which should also offer shelter from inclement weather.

Further, the CPT recommends that the Azerbaijani authorities take measures to:

- develop, at both hospitals, a range of therapeutic options and involve patients in rehabilitative psycho-social activities, in order to prepare them for more independent living and/or return to their families; occupational therapy should be an important part of the long-term treatment programme, providing for motivation, development of learning and relationship skills, acquisition of specific competences and improving self-image. It is axiomatic that this will require the recruitment of specialists qualified to provide therapeutic and rehabilitation activities (psychologists, occupational therapists, and social workers) in the two hospitals;
- draw up an individual treatment plan for each patient (taking into account the special needs of acute, long-term, juvenile and forensic patients), including the goals of the treatment, the therapeutic means used and the staff members responsible. Patients should be involved in the drafting of their individual treatment plans and be informed of their progress;
- ensure a better stratification of patients at both hospitals, so that patients suffering from chronic psychotic illnesses are separated from those suffering from learning disabilities and that both categories benefit from tailored individualised treatment;
- enable all patients at both hospitals to engage in some recreational activities.

114. As regards staff training, efforts had been made at *Republican Psychiatric Hospital No.1 in Mashtaga* to involve all doctors in various training sessions, either on site or at the university, and also in hospitals abroad. It was also reported to the delegation that an annual conference gathered together all the psychiatrists in the country. The director of the hospital had set up weekly staff meetings with all doctors at Mashtaga Hospital and invited local/foreign lecturers.

Some in-service training was also reportedly organised by doctors at the *Psychiatric Hospital in Ganja*.

In this connection, the CPT wishes to stress that it is highly desirable for staff working in psychiatric establishments to be offered training possibilities both inside and outside their establishment. **The CPT invites the Azerbaijani authorities to develop specialised training — both initial and ongoing — for different categories of staff at the Psychiatric Hospital in Ganja (as well as at other psychiatric establishments in the country), and to support the efforts made at Republican Psychiatric Hospital No.1 in Mashtaga in this respect.**

## 5. Seclusion and means of restraint

115. Similar to the situation observed during the 2008 visit, there was no excessive recourse to physical restraint (by means of soft ties and straitjackets) at *Republican Psychiatric Hospital No.1 in Mashtaga*. The director of the hospital had issued instructions to staff concerning the use of physical restraint and seclusion, stressing that they could only be applied by nurses and orderlies with a doctor's authorisation, and that their use should be recorded in a special register (including the doctor's name and signature, the reason and the duration of the restraint measure). It should also be noted that the Law on Psychiatric Assistance, as amended in October 2011, includes these elements, as well as the obligation to report such instances to the director of the psychiatric establishment.

The delegation's findings during the visit confirmed that the above requirements were adhered to at the Mashtaga Hospital.

By contrast, at the *Psychiatric Hospital in Ganja*, there were no written guidelines on the use of means of restraint. Further, in the absence of any recording of instances of restraint it was not possible for the delegation to assess the extent of its use. Some patients complained of restraint (by means of soft cotton ties or sheets) being used frequently, sometimes for up to 24 hours.

116. The renovated wards of the Mashtaga Hospital were equipped with rooms where patients could be restrained/isolated out of the view of other patients. That said, in the unrenovated wards, patients could still be restrained in full view of other patients. As for Ganja Hospital, patients could be subject to fixation in full view of other patients, and without appropriate staff supervision.

117. As regards seclusion, the delegation was pleased to note that the "isolators" in Ward 12 at the Mashtaga Hospital, which had been the subject of an immediate observation during the 2008 visit, had been removed. There was no resort to seclusion at the Ganja Hospital.

118. The CPT has already stressed in the past that the use of physical restraint measures should be the subject of a detailed and clear written policy for staff working in psychiatric establishments (see paragraphs 136 of document CPT (2007) 31, and 74 of CPT/Inf (2009) 28). This policy should define the use of any means of restraint as a matter of last resort in cases of emergency (imminent danger for the patient him/herself or others), after other reasonable alternatives have failed to prevent or stop the dangerous situation. The policy should also make it clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control. Resort to physical restraint must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval. If the application of physical restraints is required, it should be for the shortest time possible and be frequently reviewed; physical restraints should never be applied, or their application prolonged, as a punishment. Further, patients subject to physical restraint should, at all times, have their mental and physical state continuously and directly monitored by a member of the health-care staff and only be in the presence and view of other patients if that is requested by the fixated individual, and deemed safe.

It is axiomatic that the existence of a systematic recording system would allow for a proper monitoring of the restraint and seclusion procedures and would ensure the emergence of a complete picture of resort to such measures in psychiatric establishments. Every instance of the physical restraint of a patient (manual control, mechanical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. Once means of restraint have been removed, a debriefing of the patient should take place. This will provide an opportunity to explain the rationale behind the measure, thus reducing the psychological trauma of the experience as well as restoring the staff-patient relationship. It also gives the patient an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour.

The adoption of the above-described policy should be accompanied by practical training on approved control and restraint techniques, which must involve all staff concerned (doctors, nurses, orderlies, etc.) and be regularly updated.

**The CPT recommends that:**

- **steps be taken at the Psychiatric Hospital in Ganja to adopt a policy for the use of means of restraint, taking into consideration the above-mentioned precepts;**
- **the written instructions at Republican Psychiatric Hospital No. 1 in Mashtaga be further developed and include sections on staff training and debriefing;**
- **all psychiatric establishments in Azerbaijan apply the above-mentioned precepts as regards resort to means of restraint. Patients should also be duly informed (in writing) of the establishment's restraint policy as well as the existing complaints mechanisms.**

In addition, the CPT invites the Azerbaijani authorities to introduce a harmonised recording system of any resort to means of restraint in all psychiatric establishments in the country; such a record should be kept in the medical services concerned, ensuring a proper monitoring and follow-up of patients undergoing restraint measures.

## 6. Safeguards

119. As already mentioned, the 2001 Law on Psychiatric Assistance (LPA) was amended in October 2011. As a result, the legal framework governing civil involuntary placement<sup>69</sup> has changed as regards the review of placement, consent to treatment, and inspection procedures.

120. At the Mashtaga Hospital, all the patients' files examined by the delegation contained admission forms signed by patients, including a consent to treatment. However, at the Ganja Hospital, no consistent use was made of the admission form, and nearly all the patients had reportedly been admitted upon application by their relatives, without seeking the patient's consent. At the same time, patients had not been formally deprived of their legal capacity. The relatives had been asked to sign a form agreeing to hospitalisation, and thus practically all the patients were considered to be "voluntary".

It should be stressed that these "voluntary" patients, in both hospitals, were kept in locked wards and the overwhelming majority of those with whom the delegation spoke declared that they were being kept at the hospital against their will.

121. As regards the formally involuntary patients, the October 2011 amendment to the LPA had increased the frequency of the periodic review of their hospitalisation from six to three months, after the initial six-month period of hospitalisation<sup>70</sup>. However, an examination of patients' files in both hospitals by the delegation revealed that these time-limits were not systematically observed. On a more positive note, the initial placement and its prolongation was in each case decided by a court. Having said that, it appeared that patients at the Mashtaga Hospital were not always assisted by a lawyer during the court hearings. Patients at the Ganja Hospital were never assisted by a lawyer. Instead, it transpired that they could be represented by a relative or even a doctor from the hospital at the court hearings.

122. **The CPT calls upon the Azerbaijani authorities to take steps to ensure that the provisions of the LPA on civil hospitalisation are fully implemented in practice.** This will imply the provision of appropriate information and training to all structures and persons involved (in particular, psychiatrists, hospital management and judges). In this context, it should be explained clearly to all the individuals involved that a written request for hospitalisation by a relative cannot in itself substitute for an informed consent to hospitalisation by the patient himself, unless the person has been deprived of his/her legal capacity by a court decision and the relative in question has been appointed the patient's legal guardian.

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<sup>69</sup> The legal framework for involuntary civil hospitalisation was described in paragraphs 138 and 141 to 145 of the report on the 2006 visit to Azerbaijan, CPT (2007) 31.

<sup>70</sup> During which the establishment's psychiatric commission should see each involuntary patient and review his case at least once, see Section 28 of the LPA.

**More particularly, further steps should be taken to ensure that:**

- **persons admitted to psychiatric establishments are provided with full, clear and accurate information, including on their right to consent or not to consent to hospitalisation, and on the possibility to withdraw their consent subsequently;**
- **patients whose admission to a psychiatric hospital on an involuntary basis is sought are always heard in person by the competent judge before a decision on involuntary placement is adopted and that this safeguard also applies when the placement is reviewed;**
- **patients concerned receive a copy of any court decision on involuntary placement in a psychiatric hospital and are informed in writing about the reasons for the decision and the avenues/deadlines for lodging an appeal;**
- **involuntary psychiatric patients have effective access to legal assistance (independent of the admitting hospital), if necessary free of charge.**

**As regards more specifically the Ganja Hospital, the CPT recommends that the legal status of all patients currently considered as voluntary be reviewed.**

123. Despite the legal requirement of seeking consent to treatment and the existence of admission forms which refer to this requirement, it became clear during the visit that psychiatric patients were still generally not informed upon admission about their diagnosis and the nature of the planned treatment, and that there was no reliable procedure for obtaining their informed consent to treatment<sup>71</sup>. Many patients at both establishments stated that they had not understood what they were agreeing to at the time of admission.

**The CPT calls upon the Azerbaijani authorities to ensure that all patients (and, if they are incompetent, their legal representatives) are provided systematically with information about their condition and the treatment prescribed for them, and that doctors are instructed that they should always seek the patient's consent to treatment prior to its commencement. This could be done by means of a special form for informed consent to treatment, signed by the patient or (if he/she is incompetent) by his/her legal representative. Relevant information should also be provided to patients and their legal representatives during treatment.**

In this respect, the CPT is particularly concerned to note that one of the recently amended provisions of the LPA provides that in the case of involuntary hospitalisation, the treatment of psychiatric patients can be provided without the patient's informed consent. The CPT must stress once again that any derogation from the fundamental principle of informed consent to treatment should not only be based upon law but relate to clearly and strictly defined exceptional circumstances. **The CPT recommends that the law be amended so as to define clearly the exceptional circumstances in which treatment can be provided without the patient's consent.**

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<sup>71</sup> Section 23 (4) of the LPA provides that every patient should be informed upon admission about the nature of his/her disease, the reasons for hospitalisation, the treatment methods chosen and the therapeutic objectives. A note to this effect should be made in the relevant medical documentation. Further, Section 10 provides that a patient has the right to refuse treatment at any moment.

124. The examination of files of patients subjected to compulsory psychiatric treatment in the context of criminal proceedings<sup>72</sup> at the Mashtaga Hospital revealed that up to several months could elapse between the decision of the commission of psychiatrists and the court decision on prolongation of compulsory psychiatric treatment. In addition, a lawyer was not always present at the court hearings. **The CPT recommends that the Azerbaijani authorities ensure that the legal provisions surrounding compulsory psychiatric treatment in the context of criminal proceedings are fully implemented in practice.**

125. The delegation was pleased to note that an information leaflet had been introduced at Republican Psychiatric Hospital No.1 in Mashtaga, explaining, among other things, the rights of patients, including the right of a patient to refuse treatment at any time. However, no such information leaflet existed at the Psychiatric Hospital in Ganja. In addition, despite the presence of complaints boxes in all wards at the Mashtaga Hospital, information for patients on avenues of complaint was non-existent.

**The CPT recommends that a brochure on patients' rights (including information about complaints bodies and procedures, and access to legal assistance) be drawn up and systematically provided to patients and their families on admission to all psychiatric establishments in Azerbaijan. Any patients unable to understand this leaflet should receive appropriate assistance.**

126. As regards contacts with the outside world, visits did not seem to pose problems in the two hospitals visited. However, patients at both hospitals complained that access to a telephone was extremely limited. **The CPT urges the Azerbaijani authorities to facilitate psychiatric patients' access to a telephone during the day and under conditions allowing privacy, unless there is a lawful and reasoned doctor's order to the contrary.**

127. Turning to inspection mechanisms, the delegation was informed that the two establishments were regularly visited by representatives of the Ombudsman's Office. It should be noted that the October 2011 amendment to the LPA formally introduced the possibility for patients to meet with the Ombudsman<sup>73</sup> in private. The CPT understands that further amendments to the LPA are under discussion in the Parliament, with a view to reinforcing the monitoring of psychiatric institutions. **The CPT would like to receive detailed information on this subject.**

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<sup>72</sup> The declaration of criminal irresponsibility, as well as a subsequent decision to send a person to a specialised psychiatric establishment in order to undergo compulsory treatment, must be made by a court on the basis of the conclusion of a commission of psychiatrists. The commission is appointed by the Minister of Health and composed of the Head Psychiatrist of the Ministry, the centre's two psychiatrists and, if required, another expert invited from outside. The participation of a person's lawyer is obligatory during the court hearing, as well as his/her legal representative. The commission of psychiatrists should examine the patient and review his/her case at least once every six months. The first court decision on prolongation of treatment shall intervene after six months of the start of treatment, and subsequent decisions shall be made annually. Moreover, the court can examine the possibility to terminate the compulsory treatment measure at the request of the person's relatives, his/her legal representative or any other interested persons. In addition, all court decisions can be appealed.

<sup>73</sup> In accordance with Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities.

## **D. Establishments under the authority of the Ministry of Labour and Social Protection**

### **1. Preliminary remarks**

128. The delegation visited, for the first time in Azerbaijan, a social care establishment, Psychoneurological Boarding Home No. 8 in Qırıqlı (Göygöl district) for adult women with learning disabilities. The Home, dating back to 1958, is located in a remote area on the outskirts of the village of Qırıqlı, at the end of an unpaved hill track, some 20 kilometres from Ganja. It occupies a large compound, surrounded by a three-meter-high wall topped with a 1.5-meter-high fence. It consists of a four-storey residential building, as well as a number of auxiliary buildings.

On the day of the visit, the establishment was operating at full capacity, accommodating 135 residents aged from 18 to 93 years<sup>74</sup>. Residents were not free to leave the Home and those who absconded were searched for and forcibly returned.

129. The system of protection of learning-disabled persons was in a state of flux at the time of the visit. Upon the accession of Azerbaijan to the UN Convention on the Rights of Persons with Disabilities and its Protocol in 2009, discussions started on reform. The present system lacks rehabilitative and educational components, and there is no strategy of deinstitutionalisation for adults and a shortage of facilities to prepare persons in institutional care for a more independent life. In this context, the Government has adopted a State Programme on De-Institutionalisation and Alternative Care, aimed at the reintegration of children residing in various State institutions with biological or foster families and the creation of alternative care services to support the deinstitutionalisation process. Further, a draft Law on Social Services was being debated before Parliament. The delegation was also informed that renovation and construction of several social care homes was underway, and that a plan to build small group-homes was under consideration. **The CPT would like to receive more information on these plans, as well as, in due course, a copy of the new Law on Social Services.**

### **2. Ill-treatment**

130. The delegation heard a number of credible allegations of physical ill-treatment of residents by staff of Psychoneurological Boarding Home No. 8. The ill-treatment alleged consisted of slaps, pushing and blows with hard objects<sup>75</sup>, and was said to have been inflicted by the staff (including the Home's director) as a punishment. In this context, the delegation came across the case of a resident whose ill-treatment appeared to have been inflicted as a punishment for an attempted escape, a week before the visit. She was seen by the delegation in her dormitory with her wrists fixated to her bed by soft ties and her head shaved<sup>76</sup>. Upon examination by a medical member of the delegation, her hands were found to be cold and discoloured with a yellow tinge, seemingly as a result of prolonged fixation. She also had a fading yellowish bruise on her right temple.

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<sup>74</sup> The delegation was informed that some 25 of the residents had been transferred temporarily from a social care home in Baku which was undergoing refurbishment.

<sup>75</sup> Twig, water hose.

<sup>76</sup> She was the only resident who had had this done.

She alleged that after having been caught, she was beaten with a rubber hose and then taken back to the dormitory where she had been tied for most of the week, and also shaved. Neither interviews with staff nor medical records consulted revealed any clinical reasons for such a prolonged restraint measure or the head shaving. The resident's file contained only very succinct information about the episode of escape and recapture and no mention of fixation.

This issue was the subject of a separate meeting with representatives of the Ministry of Labour and Social Protection at the end of the visit. The CPT's delegation requested the Azerbaijani authorities to carry out an urgent and independent investigation into the circumstances surrounding this episode of escape and recapture, and recalled that account should be taken of the need to ensure the safety of all residents concerned. This request was confirmed in a separate letter dated 4 January 2012 and reiterated in a further letter of 22 March 2012.

131. By letters of 11 April and 14 May 2012, the Azerbaijani authorities informed the CPT that their investigation had confirmed that the resident concerned had been ill-treated. As a result, the head of the Boarding Home, as well as two other staff members, had been given an official reprimand in accordance with Section 186 (2) (a) of the Labour Code, and warned that more serious action could be undertaken in case of such conduct being repeated. Further, the authorities indicated that training and practical assistance were to be provided to the Boarding Home with a view to eliminating such behaviour.

While taking note of the measures taken, **the CPT recommends that the manner in which inmates at Psychoneurological Boarding Home No. 8 are treated be the subject of reinforced supervision by the Ministry of Labour and Social Protection, including by means of frequent and unannounced on-the-spot visits.**

132. The delegation also received numerous allegations of inter-resident violence at the Home, consisting of pushing, pulling hair, kicking and hitting other residents, and witnessed such behaviour on the 4<sup>th</sup> floor ward of the residential building. This was hardly surprising given the totally insufficient numbers of staff (see paragraph 143), the enlisting by staff of more able patients to control others, the chaotic environment and the paucity of therapeutic approaches for the 85 disturbed and vulnerable residents on that floor.

The authorities' obligation to care for residents includes the responsibility to protect them from other residents who might cause them harm. This requires, inter alia, an adequate staff presence at all times, including at night and weekends. Further, staff should be both properly trained and resolved to intervene when necessary. **The CPT calls upon the Azerbaijani authorities to urgently take appropriate steps at Psychoneurological Boarding Home No. 8 to protect residents from other residents who might cause them harm.** Reference should also be made, in this context, to the recommendation in paragraph 145.

### 3. Living conditions

133. The Home's residential building had undergone some refurbishment in 2004 (roof, doors, windows, sanitary facilities), thanks to financial support from foreign NGOs. The first floor had small, clean and neat dormitories, reportedly used to accommodate some 20 mobile residents<sup>77</sup>. The second floor was used for administrative purposes. On the 3<sup>rd</sup> floor, some 50 residents with a moderate level of disability were accommodated. The more severely disabled residents lived on the 4<sup>th</sup> floor, the entrance to which was sealed by a padlocked barred metal gate.

Residents slept in two- to eight-bed dormitories (measuring from 10 m<sup>2</sup> to 32 m<sup>2</sup>), equipped only with beds; they were impersonal, lacked privacy, and offered no visual stimulation. That said, beds and bedding were in an acceptable condition, and the dormitories had good access to natural light and ventilation.

The central heating was out of order at the time of the visit. Small electric heaters were seen in some dormitories, but they were grossly insufficient, and many residents complained of the cold<sup>78</sup>. The delegation was informed that the central heating system would be renovated in the near future.

134. On the whole, the level of hygiene at the Home was tolerable. However, the 85 residents accommodated on the 4<sup>th</sup> floor only had access to an unheated bathroom and two toilets in a poor condition. The situation was slightly better on the 3<sup>rd</sup> floor, where the two toilets had benefited from recent refurbishment and were clean.

There was only one shower and three bathtubs available in the establishment, located in a separate building and it transpired from the delegation's interviews that access to the bathing facilities was inadequate.

135. On a positive note, the kitchen and the dining hall were generally satisfactory. Further, there appeared to be a sufficient quantity of food. The delegation received no complaints from residents about food.

**136. The CPT recommends that the Azerbaijani authorities continue to improve living conditions at Psychoneurological Boarding Home No. 8. Priority should be given to improving the heating throughout the institution, including in the sanitary facilities, and to returning all the sanitary facilities to a satisfactory state of repair. Efforts should also be made to provide residents with personal lockable space for their belongings, as well as more visual stimulation and personalisation in their dormitories.**

**In addition, residents should be able to shower at least once a week and more frequently if possible.**

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<sup>77</sup> However, these dormitories could not be used during winter, as they were then too cold and humid.

<sup>78</sup> The temperature measured in one of the dormitories was 14° C.

#### 4. Care of residents

137. The treatment of residents was based upon containment, with very limited rehabilitative occupational or recreational opportunities. Further, there were no educational activities, no individual care plans and no periodic assessment of residents' needs. Although some residents could participate in drawing classes, and singing and dancing lessons were organised in the dining hall once a week, the overwhelming majority of the residents spent the day in a state of idleness.

In addition, despite the presence of a large area outside the residential building, there were only very few opportunities for outdoor exercise for the less mobile residents and for those accommodated on the 4<sup>th</sup> floor. This was apparently due to the lack of staff, and to the fact that the lifts were not functioning.

In the CPT's view, the care and treatment of learning-disabled persons should involve (in addition to appropriate medication and medical care) a wide range of therapeutic, rehabilitative and recreational activities, occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports relevant to their needs. Residents should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work, the aim being to prepare residents for independent or at least more autonomous living.

By letter of 14 May 2012, the Azerbaijani authorities informed the CPT that the Ministry of Labour and Social Protection had instructed the management of the Boarding Home to draw up an individual and rehabilitation care plan for each resident.

In the context of this positive development, **the CPT recommends that a systematic and regular evaluation of the residents' state of health be organised at Psychoneurological Boarding Home No.8 with a view to offering psycho-social rehabilitative activities adapted to their needs. The individual care and rehabilitation plan, drawn up in respect of each resident, should include the goals of the treatment, the psychological counselling and the social intervention needed. Achieving this goal will require recruiting more qualified staff (see paragraph 145 below). Further, the CPT recommends that steps be taken to offer all residents, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious setting, which should also offer shelter from inclement weather. This will involve repairing or replacing the lifts at the Boarding Home<sup>79</sup>.**

138. It appeared that ward-based staff could administer, and even initiate, medication, including psychotropic medication, with only a subsequent report to the psychiatrist. In addition, the delegation received the clear impression that some residents were at times not consenting to being medicated, including through injections, and were perceiving such injections as punitive or to control them. As regards more specifically the use of open-ended prescriptions made by treating doctors for drugs not administered immediately or on an ongoing basis, but rather whenever nurses believed them to be necessary, this may be appropriate for selected residents, in defined circumstances, over limited periods of time.

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<sup>79</sup> Pursuant to Section 34 of the Law on the Prevention of Disability and Limited Health Capacity, Rehabilitation and Social Security of Disabled Persons and Children with Limited Health, places of residence of such persons should have certain equipment, including lifts if necessary.

However, the generalised use of such prescriptions without systematic control by medical staff would place too much responsibility on nurses, who do not have a broad enough training in diagnosis and clinical treatment, and open the door to potential misuse or even abuse. As with any drug treatment, clinical effects should be carefully monitored at sufficiently frequent intervals. If medication is administered on an involuntary basis, it should be surrounded by appropriate safeguards.

**The CPT recommends that the approach towards the prescription and administration of medication be reviewed in the light of these remarks. In particular, every resort to psychotropic medication must be specifically authorised by a psychiatrist beforehand, and such medication should not be administered by unqualified staff.**

**The Committee also recommends that all residents (and, if they are incompetent, their legal representatives) be provided systematically with information about their condition and the treatment prescribed for them, and that doctors be instructed that they should always seek the patient's consent to treatment prior to its commencement. This could be done by means of a special form for informed consent to treatment, signed by the resident or (if he/she is incompetent) by his/her legal representative. If a resident is competent, and refuses treatment, legal provisions should guarantee the possibility of another, independent, medical assessment to authorise administration of specific medication on an involuntary basis for a specific period. Relevant information should also be provided to residents (and their legal representatives) during and following treatment.**

139. The CPT is concerned by the fact that record keeping at the Boarding Home did not comply with minimum standards. There was one general logbook intended to serve for admission, discharge, leave and deaths. However, there had been no entries of any sort made since 7 October 2011 and the director confirmed that she had not kept the logbook up to date since that date<sup>80</sup>. Although each resident had a personal file, entries were infrequent and not systematic, and major elements, including suicide attempts, or causes of death, were reported scantily or not at all. In the Committee's view, each resident should have a personal file containing diagnostic information, as well as an ongoing record of the resident's mental and somatic state of health and treatment. **The CPT recommends that the necessary steps be taken to ensure that logbooks, registers and residents' files are rigorously maintained.**

140. As regards somatic care, residents underwent a medical examination on admission performed by the psychiatrist. The delegation was informed that in the case of need, external specialists would come to the establishment, or residents would be sent for consultations outside. In the absence of proper recording, it was not possible to assess the situation at this point.

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<sup>80</sup> The delegation visited the Home on 12 December 2011.

141. In this context, the CPT is seriously concerned by the number of deaths at the Boarding Home: at least 15 in 2010 (there was a gap of information from 1 to 28 October 2010), and nine in 2011 until 7 October, following which date the general logbook was devoid of entries. In addition, the Home's records did not mention the causes of death in all cases, nor whether any autopsy had been performed. Taking into consideration the fact that the Boarding Home accommodated only 135 residents, and the inaccurate information provided to the delegation by the director of the Boarding Home<sup>81</sup>, the delegation requested that the high proportion of deaths be carefully investigated and that the result of the findings, as well as details of any action subsequently taken, be forwarded to the CPT by 2 March 2012.

By letter of 11 April 2012, the Azerbaijani authorities merely informed the CPT that all cases of death, including the causes, were properly recorded. **The CPT calls upon the Azerbaijani authorities to carry out an investigation into the high proportion of deaths at Psychoneurological Boarding Home No. 8 and to provide the Committee with the results of this investigation within three months.**

142. As a matter of principle, the CPT is of the opinion that when a resident at a social care institution dies, an autopsy<sup>82</sup> should follow, unless a medical authority independent of the institution indicates that this is unnecessary. **The Committee recommends that this approach be adopted at all social care establishments in Azerbaijan. More generally, the CPT recommends that the Azerbaijani authorities institute a practice of carrying out a thorough inquiry into every unexpected death of a resident, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures.**

## 5. Staff

143. The Home's clinical staff consisted of one half-time psychiatrist<sup>83</sup>, two nurses (and two vacant posts) and 23 orderlies (no vacant posts). There were no other multi-disciplinary staff. It became clear that during a given 24-hour shift, there were sometimes just three unqualified ward-based staff attempting to care for and supervise all the 135 residents in the different parts of the Home. Such low staffing levels resulted in staff enlisting more able residents to help them control the others. The delegation observed for itself that certain residents often manned the padlocked gate to the 4<sup>th</sup> floor, and supervised and controlled, sometimes in an aggressive manner, other more disabled and agitated residents.

144. The number of clinical staff at the Boarding Home was totally insufficient to provide adequate care and treatment for the residents. Further, the low staffing level in general meant that the protection of residents was inadequate, contributing, inter alia, to inter-resident violence (see paragraph 132).

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<sup>81</sup> She had mentioned 7 or 8 cases of death over the preceding two years. Another example concerned the number of suicides: there had reportedly been none over the last 2-3 years, whereas the delegation had found at least one case in 2011.

<sup>82</sup> Taking into consideration Recommendation No. R(99)3 of the Committee of Ministers of the Council of Europe to member states on the harmonisation of medico-legal autopsy rules.

<sup>83</sup> One more half-time post was vacant.

In their letter of 14 May 2012, the Azerbaijani authorities indicated that instructions had been given to ensure the recruitment of appropriate qualified staff to fill the vacancies at the Boarding Home.

145. **The CPT recommends that steps be taken at Psychoneurological Boarding Home No. 8 to:**

- **fill as a matter of priority the vacant half-time post of psychiatrist, and increase significantly the number of nurses;**
- **increase the number of orderlies;**
- **recruit other staff qualified to work with residents such as a psychologist, educators, work therapists and social workers.**

Given the challenging nature of their job, it is essential that orderlies be carefully selected and given suitable training before taking up their duties, as well as ongoing training. While carrying out their duties, such staff should also be closely supervised by – and placed under the authority and responsibility of – qualified health-care staff. **The CPT recommends that steps be taken at Psychoneurological Boarding Home No. 8 in the light of these remarks.**

## **6. Means of restraint / seclusion**

146. The delegation was informed by the Azerbaijani authorities that restraint and seclusion were not applied in social care homes. In cases when such a measure was deemed necessary, residents had to be transferred to a psychiatric facility.

147. Indeed, no residents were kept in seclusion at the Boarding Home.

However, the delegation heard some accounts of residents who had been fixated to their beds with soft ties, and – as already mentioned in paragraph 130 – it saw a resident, whose wrists were tied to her bed frame. It also became apparent that resort to physical restraint at the Home could be decided by the staff present (i.e. a nurse or an orderly) when a resident became agitated, on the basis of a blanket authorisation by the director and the psychiatrist.

The CPT is also concerned by the fact that fixation was applied inside residents' dormitories (in full view of other residents) and that residents were asked by the staff to help them restrain their fellow residents.

**The CPT recommends that the Azerbaijani authorities take all necessary steps to ensure that the rule that restraint of a resident is only allowed in a psychiatric facility is enforced at Psychoneurological Boarding Home No. 8, as well as in other social care homes in the country.**

## 7. Safeguards

148. The CPT is of the opinion that placement by the public authorities in social care institutions should always be surrounded by appropriate safeguards. In particular, the procedure by which placement is decided should offer guarantees of independence and impartiality as well as being based on objective medical, psycho-social and educational expertise. The CPT considers that persons involuntarily placed in an institution must have the right to bring proceedings by which the lawfulness of their placement is speedily decided by a court. It is also crucial that the need for placement be regularly reviewed and that this review afford the same guarantees as those surrounding the placement procedure. It is also axiomatic that involuntary placement in a social care home should cease as soon as it is no longer required by the resident's mental state.

149. According to the information received from the Ministry of Labour and Social Protection at the outset of the visit, the placement of a person in a social care institution for the learning-disabled requires a medical examination by experts of the Ministry of Health and the issuance of a certified diagnosis, following which the relevant medico-social expertise centre makes an assessment of the disability status to be granted. That status is reportedly reviewed on an annual basis. The most severe disability status implies permanent care or assistance, i.e. placement in a corresponding social care home. Such placement is reviewed on an annual basis by the relevant medico-social expertise centre.

**150. The Committee recommends that steps be taken to ensure that persons who are placed in social care institutions in Azerbaijan have the effective right to bring proceedings to have the lawfulness of their placement decided speedily by a court, and enjoy appropriate legal safeguards (i.e. right to a lawyer, possibility of being heard by a judge, etc.).**

**Further, in addition to an annual review of placement by the relevant medico-social expertise centre, residents themselves should be able to request at reasonable intervals that the necessity for continued placement be considered by a judicial authority.**

151. In Azerbaijan, persons accommodated in a social care home with the most severe disability status must be placed under guardianship by a court decision<sup>84</sup>. Pursuant to the Civil Code, an "appropriate educational or treatment institution, social security agency" can be appointed as guardian. The delegation was informed that, in such cases, the director of the establishment was appointed as guardian.

It should be stressed in this context that one aspect of the role of a guardian is to defend, if necessary, the rights of incapacitated persons vis-à-vis the hosting institution. Obviously, granting guardianship to the staff of the very same institution may easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. **The CPT recommends that the Azerbaijan authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.**

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<sup>84</sup> Given the poor quality of the records at the Boarding Home visited (see paragraph 140), it was impossible for the delegation to find out the precise number of residents placed under guardianship.

152. As regards contact with the outside world, there appeared to be no restrictions on visits, but they were extremely rare in practice. Further, access to a telephone was very limited, residents apparently only being allowed to receive phone calls in an office. **The CPT considers that residents at Psychoneurological Boarding Home No. 8 should be provided with access to a telephone under conditions allowing privacy, unless there is a lawful and reasoned doctor's order to the contrary.**

Further, **the CPT invites the Azerbaijani authorities to make efforts to encourage residents' contact with the outside world (e.g. by means of inviting voluntary visitors, NGOs, etc.).**

153. In the CPT's view, an effective complaints procedure is another basic safeguard against ill-treatment in social care establishments. Specific arrangements should exist, enabling residents to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment. In this context, it is regrettable that the Boarding Home had no formal complaints system. **The CPT recommends that such a formal complaints system – meeting the above-mentioned requirements – be set up at the Psychoneurological Boarding Home No. 8 and, as appropriate, in all other social care establishments in Azerbaijan.**

154. The CPT also considers that a brochure setting out the establishment's routine and residents' rights – including information about complaints bodies and procedures – should be issued to each resident, as well as to their families, on admission to the establishment. Any resident unable to understand this brochure should receive appropriate assistance. No such brochure – and indeed no other written information – was provided to the residents at the Qırıqlı Boarding Home. **The CPT recommends that such a brochure be drawn up and systematically provided to residents and their families on admission to all social care establishments in Azerbaijan.**

155. The CPT also attaches great importance to social care homes being visited on a regular basis by an independent outside body which is responsible for the monitoring of residents' care. This body should be authorised, in particular, to talk privately with residents, and make any necessary recommendations to the authorities on ways to improve the care and conditions afforded to residents.

The delegation was informed by the director of the Qırıqlı Boarding Home that external inspections required the prior authorisation of the Ministry of Labour and Social Protection. Representatives of the Ombudsman's Office had reportedly visited the establishment. **The CPT recommends that the Azerbaijani authorities introduce a firm legal basis for regular visits, including on an unannounced basis, to Psychoneurological Boarding Home No. 8 and other social care institutions by bodies which are independent of the social care authorities, as provided for in Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities.**

## **APPENDIX I**

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

#### **Consultations held by the delegation and co-operation encountered**

##### recommendations

- the Azerbaijani authorities to take all necessary measures to prevent any kind of intimidating or retaliatory action against persons deprived of their liberty, before or after they have spoken to a CPT delegation (paragraph 7);
- the Azerbaijani authorities to take decisive steps to improve the situation in the light of the Committee's recommendations, in accordance with the principle of cooperation which lies at the heart of the Convention (paragraph 8);
- the Azerbaijani authorities to provide immediately the documents of a medical nature referred to in paragraph 10 (paragraph 10).

##### comments

- the CPT trusts that on future visits to Azerbaijan, its delegations will be able to meet the most senior-ranking officials, including from the Ministry of Health and the Ministry of Labour and Social Protection (paragraph 5);
- the CPT trusts that appropriate action will be taken to ensure that during future visits, situations of the kind described in the second sub-paragraph of paragraph 6 do not occur (paragraph 6).

#### **Establishments under the authority of the Ministry of Internal Affairs**

##### **Preliminary remarks**

##### recommendations

- the Azerbaijani authorities to take urgent steps to ensure that the legal provisions on the duration of police custody are strictly observed in practice and that persons remanded in custody are always promptly transferred to investigative isolators (paragraph 13);
- the Azerbaijani authorities to take resolute action to ensure that the return of prisoners to police detention centres is sought and authorised only very exceptionally (as required by the Instructions referred to in paragraph 14), for specific reasons and for the shortest possible time. The objective should be to end completely the practice of returning prisoners to police establishments (paragraph 14).

requests for information

- the steps taken by the Azerbaijani authorities to eradicate the problem of corruption in the police (paragraph 15).

**Ill-treatment**

recommendations

- the Azerbaijani authorities to deliver to all law enforcement officials a strong message, emanating from the highest political level, that any form of ill-treatment of detained persons is illegal and will be punished accordingly. In addition, greater emphasis should be given to modern, scientific methods of crime investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions (paragraph 18);
- the Azerbaijani authorities to ensure that whenever a detained person brought before a judicial authority alleges ill-treatment by law enforcement officials, those allegations are recorded in writing, a forensic medical examination is immediately ordered, and the necessary steps are taken to ensure that the allegations are promptly and properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be ordered whenever there are other grounds to believe that the detained person could have been the victim of ill-treatment (paragraph 20);
- persons who are, or have been, detained, or their lawyers, to be formally entitled to directly request an examination by a recognised forensic medical expert and to be issued with a certificate which has legal value in court (paragraph 21).

requests for information

- in respect of the period from 1 January 2010 to the present time:
  - the number of complaints/applications about ill-treatment by police officers and the number of criminal/disciplinary proceedings which have been instituted as a result;
  - an account of criminal/disciplinary sanctions imposed following complaints/applications about ill-treatment by the police (with an indication of the relevant sections of the Criminal Code) (paragraph 19).

**Safeguards against ill-treatment**

recommendations

- the Azerbaijani authorities to make further efforts to render fully effective in practice the right of persons deprived of their liberty by the police to inform a close relative or another third party of their situation, as from the very outset of their deprivation of liberty. The exercise of this right should be recorded in writing (paragraph 23);

- detained persons to be provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention (paragraph 23);
- the Azerbaijani authorities to recall to all police officers the legal obligation to grant access to the assistance of a lawyer from the very outset of a person's deprivation of liberty (paragraph 24);
- appropriate steps to be taken to ensure that lawyers, including *ex officio* lawyers, who are contacted by persons detained by the police, have an opportunity to meet those persons in conditions of confidentiality while they are in police custody (paragraph 24);
- the Azerbaijani authorities to issue instructions on the subject of the right of persons in police custody to have access to a doctor, stipulating that:
  - a request by a detained person to see a doctor should always be granted without delay; police officers should not seek to vet such requests;
  - a person taken into police custody has the right to be examined, if he/she so wishes, by a doctor of his/her own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense);
  - the results of every examination, including relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and, upon request, to his/her lawyer;
  - the exercise of the right of access to a doctor should be recorded in writing.(paragraph 26);
- steps to be taken to ensure that a form explaining the rights of persons deprived of their liberty by the police – including the right of access to a doctor – is systematically given to all detained persons immediately upon their first entry into police premises (and not only when the protocol of detention is drawn up). Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. The form should also be made available in an appropriate range of languages (paragraph 27);
- the Azerbaijani authorities to ensure that:
  - detained juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer (and, in principle, of a trusted person) being present and assisting the juvenile;
  - a specific information form, setting out the particular position of detained juveniles, is developed and given to all such persons taken into custody. Special care should be taken to explain the information carefully to ensure comprehension.(paragraph 28);
- steps to be taken to ensure that juveniles placed in police detention facilities are accommodated separately from adult detained persons (paragraph 29);
- the Azerbaijani authorities to consider the setting-up of separate juvenile police units, taking into account Recommendation Rec (2003) 20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (paragraph 29);

- steps to be taken to ensure that the period of police custody is properly recorded. This should include measures to ensure that protocols of detention are drawn up at the time of the actual apprehension, or as soon as possible thereafter, and that custody registers are properly maintained, accurately record the times of deprivation of liberty, release or transfer, and reflect all other aspects of custody (precise location of where a detained person is held; visits by a lawyer, relative, doctor or consular official; taking out for questioning, etc.) (paragraph 30).

#### comments

- the Azerbaijani authorities are invited to introduce electronic recording of police interviews (paragraph 31).

### **Conditions of detention**

#### recommendations

- measures to be taken to ensure that the minimum standard of 4 m<sup>2</sup> per detained person is respected in all police cells where persons may be held overnight. In addition, all cells should have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and proper heating, and toilets should be equipped with a partition (preferably to the ceiling) (paragraph 33);
- the three isolation cells at the Temporary detention centre of Ganja to be taken out of service until they are properly equipped and adequately heated (paragraph 34);
- steps to be taken to ensure that all persons held at temporary detention centres for 24 hours or more have the possibility to take at least one hour of outdoor exercise every day (paragraph 35);
- the exercise yards of police establishments in Azerbaijan to be equipped with a means of rest and a shelter against inclement weather (paragraph 35);
- for as long as persons remanded in custody and administrative detainees continue to be held in police temporary detention centres, steps to be taken to provide them with some form of activity in addition to outdoor exercise (paragraph 36);
- the exercise yard at the Detention centre for persons under administrative arrest in Baku to be equipped with a means of rest and a shelter against inclement weather (paragraph 37);
- the Azerbaijani authorities to take effective steps to ensure that the legal provisions in force – according to which persons should not be kept overnight at local police stations – are fully respected in practice. Further, immediate steps should be taken to equip all “waiting rooms” with a means of rest (e.g. a bench) (paragraph 38).

#### requests for information

- clarification of the use made of the three isolation cells at the Temporary detention centre of Ganja (paragraph 34).

## **Establishment under the authority of the Ministry of Justice**

### **Preliminary remarks**

#### recommendations

- the Azerbaijani authorities to seize the opportunity offered by the bringing into service of new prison establishments in the years to come and to start to develop out-of-cell activities for remand prisoners (paragraph 44).

#### comments

- the CPT encourages the Azerbaijani authorities to pursue their efforts to upgrade the prison estate and combat overcrowding. In so doing, they should be guided by, inter alia, Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules (paragraph 43);
- the Azerbaijani authorities are invited to review the provisions of the Criminal Code of Azerbaijan concerning the type of regime to be applied to a given prisoner, in the light of the remarks in paragraph 45 (paragraph 45).

#### requests for information

- up-to-date information on progress made to upgrade the prison estate and combat overcrowding (paragraph 43).

### **Ill-treatment**

#### recommendations

- a firm message to be delivered to all prison officers and managers at Ganja Investigative Isolator that ill-treatment of prisoners is illegal and will be punished accordingly (paragraph 47).

### **Conditions of detention of the general prison population**

#### recommendations

- steps be taken to ensure that the legal requirement of 4 m<sup>2</sup> of living space per prisoner is respected at Penitentiary establishment No. 8 (paragraph 51);

- steps to be taken to ensure that prisoners held at Ganja Investigative Isolator are offered at least one hour of outdoor exercise every day (paragraph 55);
- for as long as the existing premises of Ganja Investigative Isolator remain in use, steps to be taken to ensure that the prisoners' living conditions are maintained at an acceptable level (paragraph 57);
- the Azerbaijani authorities to take steps at Baku Remand Prison and Penitentiary establishment No. 8 to devise and implement a proper programme of out-of-cell activities (including group association activities) for all sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association) (paragraph 61);
- the outdoor exercise areas at Penitentiary establishment No. 8 to be enlarged, in order to enable prisoners to exert themselves physically, and equipped with a shelter against inclement weather (paragraph 61).

#### comments

- the CPT trusts that the necessary steps will be taken at Baku Investigative Isolator to maintain the premises in a satisfactory state of repair (paragraph 49);
- the objective should be to have smaller accommodation units at Penitentiary establishment No. 8 (paragraph 52);
- the Azerbaijani authorities are invited to allow prisoners more frequent showers, taking into account the European Prison Rules (paragraph 53);
- consideration should be given to providing remand prisoners and sentenced inmates on the prison regime with access to television, especially given the current lack of out-of-cell activities (paragraph 61).

#### requests for information

- state of play as regards the plans to install an ultraviolet communications system in all cells at Baku Investigative Isolator (paragraph 48);
- a detailed account of the measures taken to improve conditions of detention at Penitentiary establishment No. 8; these measures should include the full partitioning of the toilets in all of the cells (paragraph 51);
- information on the bringing into service of the remand block of the new prison in Sheki (paragraph 56);
- detailed information regarding the arrangements in place for the provision of vocational training to prisoners at Penitentiary establishment No. 8. and whether all prisoners in this establishment, including those held in the cellular accommodation, now have regular access to sports facilities (paragraph 60).

## **Conditions of detention of life-sentenced prisoners**

### recommendations

- in-cell toilets at Gobustan Prison to be fully partitioned (paragraph 64);
- the Azerbaijani authorities to take steps without further delay to devise and implement a comprehensive regime of out-of-cell activities for life-sentenced prisoners (paragraph 65);
- the current policy of only allowing outdoor exercise to be taken with prisoners accommodated in the same cell to be reviewed (paragraph 65);
- Section 104.6 of the Code of Enforcement of Punishments, according to which life-sentenced prisoners are not entitled to general secondary education, to be repealed (paragraph 66);
- the Azerbaijani authorities to review the legal provisions and practice as regards the segregation of life-sentenced prisoners, in the light of the remarks in paragraph 68. In so doing, the authorities should be guided, inter alia, by Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners (paragraph 67).

### requests for information

- confirmation that the working commission's proposals on the construction of the new prison in Umbaki settlement referred to in paragraph 66 have been taken into account (paragraph 66);
- whether the necessary arrangements will be made in the new prison at Umbaki to ensure that life-sentenced prisoners have the possibility to engage in educational/vocational activities (paragraph 66);
- the authorities' medium- and long-term plans concerning the accommodation of female inmates subject to the prison regime (paragraph 68).

## **Health-care services**

### recommendations

- the Azerbaijani authorities:
  - to substantially increase the number of qualified nursing staff at Gobustan Prison and Baku Investigative Isolator;
  - to fill without delay the vacant feldsher's post at Penitentiary establishment No. 8 and reinforce the nursing staff resources by at least one more post (paragraph 69);

- someone competent to provide first aid to be always present in every prison establishment, including at night; preferably, this person should be a qualified nurse, in particular in establishments which have an in-patient infirmary (paragraph 69);
- steps to be taken to adequately equip the health-care unit at Penitentiary establishment No. 8 (paragraph 70);
- steps to be taken to ensure that all medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers; under no circumstances should police officers be present during such examinations (paragraph 72);
- the Azerbaijani authorities to take immediate steps to ensure that the record drawn up after a medical examination of a prisoner (whether on admission or during imprisonment) contains: (i) a full account of objective medical findings based on a thorough examination, (ii) a full account of statements made by the person concerned which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), and (iii) the doctor's conclusions in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings (paragraph 73);
- 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 record to be systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the prisoner and, upon request, to his/her lawyer. The same procedure should be followed whenever a prisoner is brought back to prison by the police, after having participated in investigative activities (paragraph 73);
- the use of the “padded cell” at Baku Investigative Isolator to be properly recorded in a register and a written policy on its use to be put in place (paragraph 76);
- a toxicological analysis to be systematically performed during an autopsy in the case of a sudden death occurring in prison (paragraph 77).

#### comments

- steps should be taken to ensure that all medical files at Penitentiary establishment No. 8 contain diagnostic information as well as an ongoing record of the prisoner's state of health and of any special examinations he has undergone (paragraph 74).

#### requests for information

- detailed information on the first-aid training courses for prison officers at Gobustan Prison(paragraph 69);

- whether some prisoners are kept in the infirmaries at Baku Investigative Isolator and Gobustan Prison for reasons other than medical necessity (paragraph 71);
- observations on the assessment and care provided at the Baku Investigative Isolator to prisoners with drug addiction problems (paragraph 75).

### **Other issues**

#### recommendations

- the Azerbaijani authorities to pursue vigorously their efforts towards the advancement of prison staff training, both initial and ongoing (paragraph 79);
- steps to be taken to ensure that staff working in Penitentiary establishment No. 8 do not openly carry truncheons in detention areas; if it is deemed necessary for staff to possess such equipment, it should be hidden from view (paragraph 79);
- the Azerbaijani authorities to reduce the maximum possible period of confinement in a disciplinary cell in respect of juvenile prisoners (paragraph 81);
- whenever juveniles are subject to a period of confinement in a disciplinary cell, they must be guaranteed socio-educational support and appropriate human contact throughout the duration of the measure (paragraph 81);
- the relevant regulations to be amended in order to ensure that no adult prisoner is held continuously in a disciplinary cell for longer than the maximum period of 15 days. If a prisoner has been sanctioned to disciplinary confinement for a total of more than 15 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 15-day stage (paragraph 82);
- steps to be taken to ensure that prisoners subject to a disciplinary sanction are always given a copy of the decision (paragraph 84);
- steps to be taken in the disciplinary units at Penitentiary establishment No. 8 and Gobustan Prison in order to ensure that:
  - artificial lighting in the cells is improved;
  - prisoners placed in a disciplinary cell are offered outdoor exercise of at least one hour every day.(paragraph 85);
- the Azerbaijani authorities to significantly revise prisoners' visit entitlements in the light of the remarks in paragraph 88 (paragraph 88);
- conditions in the visiting facilities at the establishments visited (and, as appropriate, in other penitentiary establishments in Azerbaijan) to be reviewed so as to ensure that, as a rule, short-term visits take place under open conditions (paragraph 89);
- the Azerbaijani authorities to take the necessary measures to ensure that Section 83.5 of the CEP, concerning complaints, is complied with in practice (paragraph 92).

comments

- the Azerbaijani authorities are invited to review the 24-hour shift system for custodial staff (paragraph 78);
- the staffing level in the female unit of Baku Investigative Isolator should be reviewed (paragraph 78);
- the provision of a satisfactory regime of activities for prisoners will require increasing the overall staffing levels in the establishments visited (paragraph 78);
- it would be preferable to lower the maximum possible period of confinement in a disciplinary cell which can be imposed on adult sentenced prisoners for a given disciplinary offence (paragraph 82);
- the Azerbaijani authorities are invited to review the regulations concerning contact with the outside world for adult prisoners subject to the sanction of placement in a disciplinary cell, in the light of the remarks in paragraph 83 (paragraph 83);
- the Azerbaijani authorities are invited to explore ways to improve the procedure for short-term visits, in the light of the remarks in paragraph 91 (paragraph 91).
- it would be desirable for the body in question to acknowledge in writing directly to the prisoner concerned, and without delay, the receipt of a letter sent to it by a prisoner (paragraph 92).

requests for information

- up-to-date information on the possibility for persons on remand to receive visits, make telephone calls and send/receive letters (paragraph 87);
- the observations of the Azerbaijani authorities on the possibilities for monitoring bodies to visit investigative isolators (paragraph 93).

**Establishments under the authority of the Ministry of Health**

**Preliminary remarks**

requests for information

- a copy of the National Mental Health Strategy and the Action Plan, as well as up-to-date information on the ongoing reorganisation of psychiatric care in Azerbaijan (paragraph 96).

### **Ill-treatment**

#### recommendations

- staff at Republican Hospital No. 1 in Mashtaga and the Psychiatric Hospital in Ganja to be regularly reminded that any form of ill-treatment of patients, whether verbal or physical, is totally unacceptable and will be punished accordingly (paragraph 99);
- objects such as the sticks found in staff offices at both establishments to be removed immediately (paragraph 99);
- appropriate steps to be taken to ensure that perimeter police guards do not enter the clinical areas of the forensic unit at Republican Hospital No. 1 in Mashtaga, unless this is specifically requested by the hospital's director (paragraph 99);
- appropriate steps to be taken at Republican Psychiatric Hospital No. 1 in Mashtaga to combat the phenomenon of inter-patient violence, in the light of the remarks in paragraph 100 (paragraph 100).

### **Patients' living conditions**

#### recommendations

- steps to continue to be taken as a matter of urgency at Republican Psychiatric Hospital No.1 in Mashtaga to improve patients' living conditions, taking into consideration the remarks in paragraphs 101 and 102. Priority should be given to the old age psychiatry ward (paragraph 103);
- in the context of the ongoing refurbishment, efforts to be made to transform the large-capacity dormitories into smaller patients' rooms (paragraph 103).
- the Azerbaijani authorities to take the following urgent measures, in respect of the Psychiatric Hospital in Ganja:
  - improve food provision to patients based on appropriate calorific norms, and introduce a system for monitoring their nutritional status, including regularly weighing of patients;
  - ensure that all patients' rooms are adequately heated;
  - refurbish the toilets, washing and bathing facilities in the newer building and maintain them in a clean condition;
  - ensure that patients are provided with proper beds with full bedding (which is cleaned at regular intervals)(paragraph 107);
- efforts to be made to reduce the occupancy levels in the patients' dormitories at the Psychiatric Hospital in Ganja and to keep them in an acceptable state of repair and hygiene. In addition, patients accommodated in the newer building should be able to shower at least once a week and more frequently if possible (paragraph 107);
- efforts to be made to provide patients at the Psychiatric Hospital in Ganja with personal lockable space for their belongings, as well as more visual stimulation and personalisation in their dormitories (paragraph 107).

requests for information

- a detailed account of the action taken in order to implement the urgent measures recommended in respect of the Psychiatric Hospital in Ganja (paragraph 107);
- full details of the plans for a new psychiatric hospital in Ganja, including the time schedule for their implementation (paragraph 107).

**Staff and treatment**

recommendations

- the Azerbaijani authorities to take measures to fill the vacant nurses and orderlies' posts at Republican Psychiatric Hospital No.1. Further, immediate steps should be taken to ensure the presence of TB specialists to the equivalent of one full-time post, and efforts should be made to fill the two other vacant posts (paragraph 108);
- the Azerbaijani authorities to take immediate steps to ensure that all patients at the Mashtaga and Ganja hospitals are offered, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious and secure setting, which should also offer shelter from inclement weather (paragraph 113);
- the Azerbaijani authorities to take measures to:
  - develop, at the Mashtaga and Ganja hospitals, a range of therapeutic options and involve patients in rehabilitative psycho-social activities, in order to prepare them for more independent living and/or return to their families; occupational therapy should be an important part of the long-term treatment programme, providing for motivation, development of learning and relationship skills, acquisition of specific competences and improving self-image. It is axiomatic that this will require the recruitment of specialists qualified to provide therapeutic and rehabilitation activities (psychologists, occupational therapists, and social workers) in the two hospitals;
  - draw up an individual treatment plan for each patient (taking into account the special needs of acute, long-term, juvenile and forensic patients), including the goals of the treatment, the therapeutic means used and the staff members responsible. Patients should be involved in the drafting of their individual treatment plans and be informed of their progress;
  - ensure a better stratification of patients at both hospitals, so that patients suffering from chronic psychotic illnesses are separated from those suffering from learning disabilities and that both categories benefit from tailored individualised treatment;
  - enable all patients at both hospitals to engage in some recreational activities (paragraph 113).

comments

- the Azerbaijani authorities are invited to develop specialised training — both initial and ongoing — for different categories of staff at the Psychiatric Hospital in Ganja (as well as at other psychiatric establishments in the country), and to support the efforts made at Republican Psychiatric Hospital No.1 in Mashtaga in this respect (paragraph 114).

## **Seclusion and means of restraint**

### recommendations

- the CPT recommends that:
  - steps be taken at the Psychiatric Hospital in Ganja to adopt a policy for the use of means of restraint, taking into consideration the precepts set out in paragraph 118;
  - the written instructions at Republican Psychiatric Hospital No. 1 in Mashtaga as regards the use of physical restraint and seclusion be further developed and include sections on staff training and debriefing;
  - all psychiatric establishments in Azerbaijan apply the above-mentioned precepts as regards resort to means of restraint. Patients should also be duly informed (in writing) of the establishment's restraint policy as well as the existing complaints mechanisms (paragraph 118).

### comments

- the Azerbaijani authorities are invited to introduce a harmonised recording system of any resort to means of restraint in all psychiatric establishments in the country; such a record should be kept in the medical services concerned, ensuring a proper monitoring and follow-up of patients undergoing restraint measures (paragraph 118).

## **Safeguards**

### recommendations

- the Azerbaijani authorities to take steps to ensure that the provisions of the Law on Psychiatric Assistance (LPA) on civil hospitalisation are fully implemented in practice (paragraph 122);
- steps to be taken to ensure that:
  - persons admitted to psychiatric establishments are provided with full, clear and accurate information, including on their right to consent or not to consent to hospitalisation, and on the possibility to withdraw their consent subsequently;
  - patients, whose admission to a psychiatric hospital on an involuntary basis is sought, are always heard in person by the competent judge before a decision on involuntary placement is adopted and that this safeguard also applies when the placement is reviewed;
  - patients concerned receive a copy of any court decision on involuntary placement in a psychiatric hospital and are informed in writing about the reasons for the decision and the avenues/deadlines for lodging an appeal;
  - involuntary psychiatric patients have effective access to legal assistance (independent of the admitting hospital), if necessary free of charge.(paragraph 122);
- the legal status of all patients at the Ganja Hospital currently considered as voluntary to be reviewed (paragraph 122);

- the Azerbaijani authorities to ensure that all patients (and, if they are incompetent, their legal representatives) are provided systematically with information about their condition and the treatment prescribed for them, and that doctors are instructed that they should always seek the patient's consent to treatment prior to its commencement. This could be done by means of a special form for informed consent to treatment, signed by the patient or (if he is incompetent) by his legal representative. Relevant information should also be provided to patients and their legal representatives during treatment (paragraph 123);
- the Law on Psychiatric Assistance to be amended so as to define clearly the exceptional circumstances in which treatment can be provided without the patient's consent (paragraph 123);
- the Azerbaijani authorities to ensure that the legal provisions surrounding compulsory psychiatric treatment in the context of criminal proceedings are fully implemented in practice (paragraph 124);
- a brochure on patients' rights (including information about complaints bodies and procedures, and access to legal assistance) to be drawn up and systematically provided to patients and their families on admission to all psychiatric establishments in Azerbaijan. Any patients unable to understand this leaflet should receive appropriate assistance (paragraph 125);
- the Azerbaijani authorities to facilitate psychiatric patients' access to a telephone during the day and under conditions allowing privacy, unless there is a lawful and reasoned doctor's order to the contrary (paragraph 126).

#### requests for information

- detailed information on the further amendments to the Law on Psychiatric Assistance (LPA) which are under discussion in the Parliament, with a view to reinforcing the monitoring of psychiatric institutions (paragraph 127).

### **Establishments under the authority of the Ministry of Labour and Social Protection**

#### **Preliminary remarks**

#### requests for information

- more information concerning the implementation in practice of the deinstitutionalisation process as well as, in due course, a copy of the new Law on Social Services (paragraph 129).

#### **Ill-treatment**

#### recommendations

- the manner in which inmates at Psychoneurological Boarding Home No. 8 are treated to be the subject of reinforced supervision by the Ministry of Labour and Social Protection, including by means of frequent and unannounced on-the-spot visits (paragraph 131);

- the Azerbaijani authorities to urgently take appropriate steps at Psychoneurological Boarding Home No. 8 to protect residents from other residents who might cause them harm (paragraph 132).

### **Living conditions**

#### recommendations

- the Azerbaijani authorities to continue to improve living conditions at Psychoneurological Boarding Home No. 8. Priority should be given to improving the heating throughout the institution, including in the sanitary facilities, and to returning all the sanitary facilities to a satisfactory state of repair. Efforts should also be made to provide residents with personal lockable space for their belongings, as well as more visual stimulation and personalisation in their dormitories (paragraph 136);
- residents to be able to shower at least once a week and more frequently if possible (paragraph 136).

### **Care of residents**

#### recommendations

- a systematic and regular evaluation of the residents' state of health to be organised at Psychoneurological Boarding Home No.8 with a view to offering psycho-social rehabilitative activities adapted to their needs. The individual care and rehabilitation plan, drawn up in respect of each resident, should include the goals of the treatment, the psychological counselling and the social intervention needed. Achieving this goal will require recruiting more qualified staff (paragraph 137);
- steps be taken to offer all residents at Psychoneurological Boarding Home No.8, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious setting, which should also offer shelter from inclement weather. This will involve repairing or replacing the lifts at the Home (paragraph 137);
- the approach towards the prescription and administration of medication to be reviewed, in the light of the remarks in paragraph 139. In particular, every resort to psychotropic medication must be specifically authorised by a psychiatrist beforehand, and such medication should not be administered by unqualified staff (paragraph 138);
- all residents (and, if they are incompetent, their legal representatives) to be provided systematically with information about their condition and the treatment prescribed for them, and doctors to be instructed that they should always seek the patient's consent to treatment prior to its commencement. This could be done by means of a special form for informed consent to treatment, signed by the resident or (if he is incompetent) by his legal representative. If a resident is competent, and refuses treatment, legal provisions should guarantee the possibility of another, independent, medical assessment to authorise administration of specific medication on an involuntary basis for a specific period. Relevant information should also be provided to residents (and their legal representatives) during and following treatment (paragraph 138);

- steps to be taken to ensure that logbooks, registers and patients' files at Psychoneurological Boarding Home No.8 are rigorously maintained (paragraph 139);
- the Azerbaijani authorities to carry out an investigation into the high proportion of deaths at Psychoneurological Boarding Home No. 8 and to provide the Committee with the results of this investigation within three months (paragraph 141);
- at all social care establishments in Azerbaijan, an autopsy to be carried out when a resident dies unless a medical authority independent of the institution indicates that this is not necessary (paragraph 142);
- the Azerbaijani authorities to institute a practice of carrying out a thorough inquiry into every unexpected death of a resident, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures (paragraph 142).

## **Staff**

### recommendations

- steps to be taken at Psychoneurological Boarding Home No. 8 to:
  - fill as a matter of priority the vacant half-time post of psychiatrist, and increase significantly the number of nurses;
  - increase the number of orderlies;
  - recruit other staff qualified to work with residents such as a psychologist, educators, work therapists and social workers(paragraph 145);
- steps to be taken at Psychoneurological Boarding Home No. 8 to ensure that orderlies are carefully selected and given suitable training before taking up their duties, as well as ongoing training. While carrying out their duties, such staff should also be closely supervised by – and placed under the authority and responsibility of – qualified health-care staff (paragraph 145).

## **Means of restraint**

### recommendations

- the Azerbaijani authorities to take all necessary steps to ensure that the rule that restraint of a resident is only allowed in a psychiatric facility is enforced at Psychoneurological Boarding Home No. 8, as well as in other social care homes in the country (paragraph 147).

## **Safeguards**

### recommendations

- steps to be taken to ensure that persons who are placed in social care institutions in Azerbaijan have the effective right to bring proceedings to have the lawfulness of their placement decided speedily by a court, and enjoy appropriate legal safeguards (i.e. right to a lawyer, possibility of being heard by a judge, etc.) (paragraph 150);

- in addition to an annual review of placement by the relevant medico-social expertise centre, residents themselves to be able to request at reasonable intervals that the necessity for continued placement be considered by a judicial authority (paragraph 150);
- the Azerbaijan authorities to strive to find alternative solutions which would better guarantee the independence and impartiality of guardians (paragraph 151);
- a formal complaints system – meeting the requirements outlined in paragraph 153 – to be set up at Psychoneurological Boarding Home No. 8 and, as appropriate, in all other social care establishments in Azerbaijan (paragraph 153);
- a brochure setting out the establishment's routine and residents' rights – including information about complaints bodies and procedures - to be drawn up and systematically provided to residents and their families on admission to all social care establishments in Azerbaijan (paragraph 154);
- the Azerbaijani authorities to introduce a firm legal basis for regular visits, including on an unannounced basis, to Psychoneurological Boarding Home No. 8 and other social care institutions by bodies which are independent of the social care authorities, as provided for in Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities (paragraph 155).

#### comments

- the CPT considers that residents at Psychoneurological Boarding Home No. 8 should be provided with access to a telephone under conditions allowing privacy, unless there is a lawful and reasoned doctor's order to the contrary (paragraph 152);
- the CPT invites the Azerbaijani authorities to make efforts to encourage residents' contact with the outside world (e.g. by means of inviting voluntary visitors, NGOs, etc.) (paragraph 152).

**APPENDIX II**

**LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS  
MET BY THE CPT'S DELEGATION**

**A. National authorities**

Ministry of Justice

Fikrat MAMMADOV  
Madat GULIYEV

Minister  
Deputy Minister of Justice and Head of the  
Penitentiary Service

Faig GURBANOV

Head of the Human Rights and Public Relations  
Department

Malik ALAKBAROV  
Rafail MEHDIYEV

Head of the Prison Inspectorate  
Head of the General Medical Department

Ministry of Internal Affairs

Oruj ZALOV  
Abdul ZARGARLI

Deputy Minister  
Head of the International Relations Department

Ministry of Health

Samir ABDULLAYEV  
Geray GERAYBEYLI

Head of the International Relations Department  
Chief Psychiatrist

Ministry of Labour and Social Protection

Elnur SULTANOV  
Nigar ALIBAYLI  
Tural HÜSEYNOV

Head of the Social Protection Policy Department  
Senior Advisor, Social Protection Policy Department  
Senior Advisor, Social Protection Policy Department

Prosecutor General's Office

Nazim ABBASOV

Head of the Department of Control over  
Investigations

Office of the Human Rights Commissioner

Elmira SULEYMANOVA

Human Rights Commissioner / Chairperson of the  
NPM

Vugar MAHARRAMOV

Head of the NPM group

**B. Non-governmental organisations**

Human Rights Centre of Azerbaijan  
Committee against Torture  
Public Union "For Human Rights"  
Public Committee for Control of the Penitentiary System

**C. International organisations**

Delegation of the ICRC in Baku  
OSCE Office in Baku