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Response

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

from 20 to 29 November 2018

The Hungarian Government has requested the publication of this response. The CPT's report on the November 2018 visit to Hungary is set out in document CPT/Inf (2020) 8.

Strasbourg, 17 March 2020

Response of the Hungarian Government
to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
on its visit to Hungary from 20-29 November 2018

Italic font indicates the CPT's recommendations.
The Hungarian Government's response is marked in blue.
Only those points are indicated in the response that contain comments or recommendations.

10. *In the course of the 2018 visit, the delegation also had follow-up talks with relevant public officials on immigration issues, with the inadequacy of the Government's response to the report on the 2017 ad hoc visit as the main background for such talks. It must be recalled in this regard that a significant number of foreign nationals interviewed by the delegation who had been apprehended in Hungary and escorted by the Hungarian police through the border fence towards Serbia alleged that they had been physically ill-treated by Hungarian police officers in the context of their apprehension and return through the border fence. A number of them displayed traumatic injuries medically consistent with their allegations of ill-treatment.*

Regrettably, it emerged during the 2018 visit to Csongrád County Border Police Division in Szeged that no change had taken place in respect of the lack of appropriate safeguards since the previous visit in 2017. The CPT can only reiterate its conclusion that the system in place cannot be regarded as an effective tool to prevent instances of ill-treatment or to protect police officers against any unfounded allegations of ill-treatment in the context of apprehension and subsequent escort of foreign nationals through the border fence towards Serbia.

More importantly, it also became clear from the information provided by the Hungarian authorities that there were still no legal remedies capable of offering effective protection against forced removal and/or refoulement, including chain refoulement.

The CPT urges the Hungarian authorities to take appropriate follow-up action in the light of the Committee's findings and recommendations set out in this report as well as of paragraphs 16-31 of the report on the 2017 ad hoc visit.

In general, the prohibition of ill-treatment of detainees is a fundamental requirement both appearing in the Fundamental Law and in Act XXXIV of 1994 on the Police (hereafter: Rtv.). Provisions of the Rtv. in force since 1 October 1994 and unaltered ever since, unambiguously stipulate that the police officer shall not use torture, extortion of testimonies, cruel, inhuman or degrading treatment and shall refuse instructions to this effect given by their superiors. In addition, police officers shall take measures against persons exhibiting such behaviour for the sake of prevention without regard to position, rank or person.

The legislative environment, the range of conducts criminalized and of related sanctions provide an appropriate legal framework to tackle ill-treatment by the police. Preventing and sanctioning

ill-treatment by the police require the highest level criminal justice; therefore all such conducts constitute a crime to be sanctioned under the law by imprisonment, i.e. the most severe sanction.

All possible means of ill-treatment by the police are sanctioned by three acts – "ill-treatment in official proceedings" under Article 301, "extortion of testimonies" under Article 303 and "unlawful detention" under Article 304 of Act C of 2012 on Penal Code – all of which are to be sanctioned by imprisonment ranging from one to five years. By imposing such severe sanctions, the legislator intended to emphasise the extreme danger that the above unlawful actions pose to society.

In addition to the means of substantive criminal law, procedural rules are also put in place to promote the efficient tackling of these phenomena.

According to the provisions of Hungarian National Police Headquarters (HNP HQ) Decree No. 22 of 2010 (OT 10.) on carrying out recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) police units shall file an annual report on the number of complaints against police measures and the outcome of the related investigations. Based on these reports, it can be stated that the number of complaints against police officers for "ill-treatment in official proceedings" has been decreasing year by year. According to the reports and progress reports, in 2018 persons subject to police measures suffered– alleged – ill-treatment during apprehension, arrest and while being subjected to coercive measures. Experiences of the investigations conducted by the police commanders and criminal proceedings show that altough the use of police and coercive measures was lawful, professional and justified, yet the persons subject to them perceived these as ill-treatment by the police. Nevertheless, in all cases of complaints on ill-treatment, commanders lodge a criminal complaint at the competent Prosecutor's Office. In the previous years, the complaints were generally rejected or the criminal proceedings were terminated in the absence of a criminal offence.

The decrease in the number of complaints seen in the previous years proves that the education of the officers, the example set by the commanders and the carrying out of internal checks altogether positively influence the culture of police measures, ab ovo preventing – in the majority of cases – all circumstances that could provide ground for lodging a complaint.

Based on the available information regarding complaints, no actual cases or tendencies have been revealed that would indicate inhumane treatment or torture of detainees concerning the crime-related activities of the Police. This is also proven by the extremely low number of complaints, andby the outcome of the investigations based on the complaints.

Supervising the legality of the treatment of detainees falls within the competence of the Division for Supervision of Legality of the Enforcement of Punishments and Protection of Human Rights of the Office of the Prosecutor General. Prosecutors regularly check the practical materialization of human rights at places of detention of the police. The report on the checks carried out in 2018 states that the number of proceedings initiated for crimes of unlawful treatment of inmates in police detention facilities decreased and – taking into account the 9 proceedings pending in 2018 – no criminal procedure resulted in a criminal charge between 2015 and 2017.

As regards to migration and asylum, it has been a general experience for years, that despite the fact that during the CPT and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT, hereinafter together: Committees) visits the Police elaborates its standpoint concerning the alleged physical abuses, ill-treatment, medical examination and information provided to the foreigners apprehended within 8 km of the border about the police measures, reports of the Committees only refer to the claims made by the foreigners and to the conclusions drawn by their own doctors, consider as a fact that abuses are caused by Hungarian police officers and that information was not provided by the authorities, while they do not take into account the information and data provided by the Police.

Aliens stopped within the 8 km zone of the border have been, in all cases, informed on the police measures and their objective, the possibility to lodge a complaint and the means of lodging it, and the possibility to lodge an asylum application in their mother tongue or a language they understand by using a standard information leaflet (available in several languages). During the visit of the Directorate General for Home Affairs of the European Commission on 18-19 October 2016, members of the visiting delegation acknowledged the fact that information on the right to lodge a complaint is being provided but pointed out that there is no contact information for loging a complaint on the information leaflet. Immediate measures were taken to supplement the information leaflets with contact information, and now the information leaflets available in several languages all include these contact information. With regard to the above, the statement that no legal remedy is available to the persons concerned is not correct.

Regarding the report on the preliminary remarks of the ad-hoc CPT visit to Hungary carried out between 20 and 26 October 2017, it was explained that no aliens policing or public administration procedure is initiated against persons escorted. We can only reaffirm the above. Hungary informedthe European Commission on 27 July 2017 that it wish to use to possibility granted by Article 2 (2) a) of Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (hereafter: Return Directive) and will not to apply the Return Directive in case of third country nationals illegally residing in Hungary whose entry was denied under Article 13 of the Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) or who were apprehended or intercepted by the competent authorities in the course of having crossed an external land, sea or air border of a Member State illegally, and subsequently were denied the permission or right to reside in the given Member State.

Hungary respects Article 4 (4) of the Return Directive, i. e. we do not send anyone back to the territory of a country that cannot be considered safe; additionally the treatment of third country nationals, the level of protection, the use of coercive measures, the providing of the possibility of healthcare and the circumstances of custody are all in line with the provisions of the Return Directive.

When it is assume that third country nationals who illegally entered Hungary are genuine refugees, the Convention of 28 July 1951 relating to the status of refugees (hereafter: Refugee Convention) applies. Article 2 of the Refugee Convention stipulates, under the title “General obligations” that “Every refugee has duties to the country in which he finds himself, which require

in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." Under Article 31 of the Refugee Convention, "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay".

We can establish that interception and escorting cannot be considered a penalty prohibited by the Refugee Convention. We can also establish, as a matter of fact, that the conduct of persons who illegally crossed the border and were subsequently intercepted by the Hungarian Police and were escorted through the gate of the temporary border barrier to a territory still belonging to Hungary does not correspond to the conduct prescribed in the above Article of the Refugee Convention as they did not come directly from a territory where their life or freedom was threatened and following their entry, they did not present themselves to justify their illegal entry and
they did not indicate their will to initiate their refugee status determination procedure.

The fact that interception and escorting are not equal to expulsion and cannot be considered as such must be emphasised.

Third country nationals who illegally entered Hungary, are residing here illegally and missed to comply with their obligation laid down in Article 31 of the Refugee Convention to present themselves have the real possibility, under the Hungarian law in force, to lodge an asylum application in any of the transit zones. This legislation is in line with the Refugee Convention, which is also reiterated in the Preamble (23) of the Return Directive.

With respect to the utilization of transit zones, information is provided below:

Number of persons accommodated in reception centres on 9 January 2020:
- Röszke transit zone: 209 persons (capacity: 450),
- Tompai transit zone: 158 (capacity: 250),
- Vámossabad Reception Centre: 4 persons (capacity: 206),
- Balassagyarmat Community Centre: 2 persons (138 places available),
- Nyírbátor Detention Centre: 12 persons (93 places available).

For the full year 2019, the average number of staff per applicant was 109 in the Röszke transit zone and 114 in the Tompa transit zone. As regards the other reception centres, the average number of persons accommodated was 6 at the Vámosszabad Reception Center, 9 at the Balassagyarmat Community Accommodation and 8 at the Nyírbátor Detention Centre. As a 2019 trend, the number of people in transit zones has increased, but capacity challenges can still be addressed.

It is important to note that in the case of Ilias and Ahmed v. Hungary the Grand Chamber of the European Court of Human Rights in its 21 November 2019 judgement did not qualify the transit zones at the Serban-Hungarian border as detention.

The Grand Chamber of the European Court of Human Rights ruled that the accommmodation of asylum applicants in the transit zones at the Serbian-Hungarian border pending determination of

their right to enter the rest of the territory of Hungary did not qualify as deprivation of liberty. The relevant findings were summarised by the Court's press release as follows:

The key issue was whether there had been de facto deprivation of liberty, even if the Hungarian authorities did not consider that the applicants had been detained in the transit zone.

The Court also observed that this was apparently the first time that it had had to deal with a case of a land border transit zone between two States who were members of the Council of Europe and where asylum-seekers had to stay during the examination of their asylum claims.
The Court took account of the following factors: the applicants' individual situation and choices; the applicable legal regime and its purpose; the duration of the measure and procedural protection; and the nature and degree of the actual restrictions involved.

On the first point, the Court noted that the applicants had entered the transit zone on their own initiative in order to seek asylum in Hungary and had not faced an immediate threat to their life or health in Serbia which had forced them to leave that country.

Considering the legal regime, the Court observed that the transit zone's express purpose was to serve as a waiting area while asylum applications were processed and that the applicants had had to wait there pending the completion of their appeal. Having to wait for a short time during such a process could not be considered deprivation of liberty. The domestic law also had procedural guarantees on waiting times, which had been applied in the applicants' case.

It had taken 23 days to examine their claims, at a time of a mass influx of asylum-seekers and migrants, and the Court found that the applicants' situation had not been influenced by any official inaction or by actions that had not been linked to their asylum claims. As to the actual restrictions which the applicants had faced in the transit zone, the Court concluded that their freedom of movement had been restricted to a very significant degree given the small area of the zone and the fact that it was heavily guarded. However, it had not been restricted unnecessarily or for reasons unconnected with their asylum applications.

The remaining question was whether the applicants had been able to leave the zone for any other country than Hungary.

The Court first noted that other people in similar situations had returned to Serbia from the transit zone.

A further significant consideration was that, in contrast to people confined to an airport transit zone, people in a land border zone, like the applicants, did not have to board an aeroplane to return to the country whence they had come. Serbia was adjacent to the Röszke zone and the possibility for the applicants to leave for that country had thus not only been theoretical but realistic. The Court reiterated its findings in Amuur v. France that asylum-seekers being able voluntarily to leave a country where they had wished to take refuge did not exclude a restriction on liberty.

However, it distinguished that case from Mr Ilias's and Mr Ahmed's as the applicants in Amuur had been confined to an airport transit zone which they had not been able to leave of their own

volition and would have had to return to Syria, which was not bound by the Geneva Convention Relating to the Status of Refugees. Serbia was bound by that Convention and Mr Ilias and Mr Ahmed had had the real possibility of being able to return there of their own will.

The Court noted the applicants' fears, as set down under Article 3, of a lack of access to asylum procedures in Serbia and of further removal to other countries. However, it found that such fears could not make Article 5 applicable to their case, where all the other circumstances pointed to it not being applicable and with the circumstances being different from airport transit zone cases. Such an interpretation of the applicability of Article 5 would stretch the concept of deprivation of liberty beyond its meaning intended by the Convention.

The Court found that where all other relevant factors did not point to de facto deprivation of liberty, and where asylum-seekers could return to a third country without danger to their life or health, then a lack of compliance with a State's duties under Article 3 could not be called on to make Article 5 applicable to a situation in a land border zone where people were waiting for an asylum decision.
The Convention could not be read as linking in such a manner the applicability of Article 5 to a separate issue concerning the authorities' compliance with Article 3. That was the case even if the applicants had risked losing the right to have their asylum claims considered in Hungary if they returned to Serbia.

That factor, along with their other fears, had not made the possibility of leaving the transit zone in the direction of Serbia merely theoretical. It therefore had not had the effect of making their stay in the transit zone involuntary from the standpoint of Article 5 and could not by itself trigger the applicability of that provision. The Court concluded that the applicants had not been deprived of their liberty within the meaning of Article 5.

D. Immediate observations pursuant to Article 8, paragraph 5, of the Convention

12. *At the end of the visit, the CPT's delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, and requested that the so-called raging cell seen at Szeged Strict and Medium Security Regime Prison and all other cells with similar deficiencies5 be withdrawn from service in Hungarian prisons. The cell seen at Szeged (cell No. 039) was completely dark, in a poor state of repair, measured only a little more than 3 m² and was fitted with a ceiling-mounted water sprinkler that enabled the cell to be doused with water. The delegation underlined that more suitable facilities should be set up for holding aggressive or agitated prisoners.*

13. *In their letter of 12 March 2019, the Hungarian authorities reiterated their general position according to which special cells may be necessary to deal with aggressive or agitated behaviour. Such cells are typically located in segregation and disciplinary units to allow enhanced supervision and cannot be used for periods exceeding six hours. The Hungarian authorities also indicated that such cells are being used throughout the country.*

The CPT does not dispute the fact that "crisis" situations resulting from particular prisoners' aggressive or agitated behaviour require suitable facilities in prisons. However, the facilities seen at Szeged or in other prisons during previous visits clearly provided unacceptable conditions.

The CPT calls upon the Hungarian authorities to reconsider their position on this issue as a matter of urgency. If necessary, Council of Europe advice can be sought on the provision of facilities that respect human dignity.

A room for the detention of prisoners exhibiting behaviour dangerous to themselves or to others is needed to dampen or contain the aggressive, harassing, raging behaviour of the prisoners. The mandatory establishment of a detention facility for prisoners exhibiting conduct dangerour to themselves or to others is prescribed in Section 123 (1) of the Decree of the Minister of Justice 16/2014 (XII.19.) IM on the detailed rules of the implementation of imprisonment, custodial arrest, pre-trial detention and custodial arrest in lieu of a disciplinary penalty (hereinafter referred to as IM Decree).

The size of the cell for the security isolation of prisoners who are a danger to themselves or to others in penal institutes is appropriate. The complaints about the condition of the cell in Szeged Strict and Medium Regime Prison were investigated and the necessary repairs were carried out. Repairs were completed by 12 June 2019. The penal institute has provided the information that since the visit of the CPT, there has been no need to use the room for security isolation of prisoners who are a danger to themselves or to others.

E. Interaction with the bodies set up under the Optional Protocol to the United Nations Convention against Torture (OPCAT)

16. *In order to avoid any duplication, ensure coherence and enhance the effectiveness of the CPT and OPCAT mechanisms in Hungary,* ***the CPT strongly encourages the Hungarian authorities to make arrangements to ensure that the SPT, the CPT and the NPM are able to consult each other's visit reports, including reports to the State, even before their publication.***

In doing so, the Hungarian authorities should also ensure that the present and all future CPT reports on visits to Hungary following their transmission to the authorities, and the corresponding government responses, following their transmission to the CPT, are made available to the Subcommittee and to the NPM, on the condition that these reports and responses are treated as confidential until publication.

Based on the experience of visits in previous years, despite that following the end of the monitoring visits, the Committees (either SPT or CPT) usually do not indicate any problematic procedures or activities of the Hungarian law enforcement authorities, the reports include several negative opinions in the end.

In the light of the above, ensuring that the SPT, the CPT and the NPM are able to consult each other's visit reports before their publication, cannot be supported as it could influence the other monitoring body.

It should also be taken into account (therefore shall not be supported)that publishing these reports with their original content (i.e. without clearing up the differing opinions or potential misunderstandings with the Hungarian Government) might ground for illfounded allegations of police abuse made by international organisations or NGOs which could have a detrimental effect on public trust in the Police possibly with serious doubts concerning the veracity of their allegiations.

F. Publication of CPT reports on future visits and Government responses

18. *In recent years, both the Committee of Ministers and the Parliamentary Assembly of the Council of Europe have been encouraging the Organisation's members states which have not done so to request the automatic publication of future CPT visit reports and related government responses.8* ***The Hungarian authorities are invited to consider authorising in advance the publication of all future CPT visit reports concerning Hungary and related government responses, subject to the possibility of delaying publication in a given case.***

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Persons in police custody

1. Preliminary remarks

20. *The CPT recalls that, in the interests of the prevention of ill-treatment, the sooner persons remanded in custody pass into the hands of a custodial authority which is functionally and institutionally separate from the police, the better. Moreover, conditions of detention in police establishments are usually not suitable for long periods of detention (see, in this connection, paragraph 35).*

The Committee notes that, by virtue of Section 299 (2) of the Law on Criminal Procedure, a person remanded in custody may be held in a police holding facility for up to 60 days. The information gathered during the 2018 visit showed that the Hungarian authorities, including the prosecuting authorities, have continued to make efforts to ensure that persons remanded in custody are promptly transferred to a prison and that the return of remand prisoners to police establishments is sought only when this is considered absolutely necessary and for the shortest time possible. On the first day of the 2018 visit, the delegation's official interlocutors indicated that nobody was remanded in custody and kept in police holding facilities in application of Section 299. In the course of the visit, the delegation came across only one such case, in Budapest.

The CPT encourages the Hungarian authorities to pursue their efforts to ensure that persons remanded in custody are promptly transferred to a prison and that the return of remand prisoners to police establishments is sought only when there is absolutely no other alternative and for the shortest time possible. The objective should be to end the practice of holding remand prisoners overnight in police holding facilities.

Under Article 299 of Act XC of 2017 on Criminal Proceedings (hereafter: Be.), detention can only be carried out in police facilities under the provision of a prosecutor and only in duly justified cases. Thisprovision ensures maximal legal guarantee and control.

Should the investigative authority initiate, prior to ordering the detention or while carrying it out, the detention to take place in a police detention facility, it should also include the planned duration of the admission, the procedural steps to carry out and all circumstances that justify detention in a police facility for the sake of carrying out these procedural steps.

A total of 18,338 persons were detained in police detention centers in 2018 and 17,704 in 2019, with an average duration of 42.5 hours and 41.6 hours, respectively. These figures represent a decrease of 3.4% in intake and 2.1% in terms of duration compared to the previous year.

2. Ill-treatment

21. *The CPT notes with satisfaction that most of the persons interviewed by the delegation who were or had recently been in police custody did not make any allegations of ill-treatment. A number of them considered that the attitude and behaviour of the police officers who apprehended them or had them subsequently in their charge were respectful and professional.*

However, the delegation did hear some accounts of resort to unnecessary or excessive force upon apprehension (e.g. punches or kicks whilst the apprehended person was brought under control) and of unduly tight handcuffing. A few claimed that they had been physically ill-treated shortly after arrival to a police station; the alleged ill-treatment consisted of punches to the face, kicks to the shin or stamping on someone's feet with the aim of inflicting pain, generally in the absence of eyewitnesses and/or outside the scope of the establishment's video surveillance cameras.

Further, the delegation received one allegation by a juvenile of a threat of beatings. It also heard several accounts of verbal abuse of a racist nature, including from persons of Roma origin.

22. *The above allegations, gathered in the course of private interviews were detailed, plausible and consistent. Moreover, a few of them were supported by medical evidence, in the form of both injuries directly observed by the delegation's doctors or entries in the medical documentation examined in the establishments visited. By way of illustration, several police officers allegedly punched a detained person in the face in a corridor of a police station which was apparently outside the scope of video surveillance cameras. On examination by a medical member of the delegation, the person concerned displayed four abrasions in a fan-like pattern on the lateral side of the left eye, each measuring around 3-4 mm in length. Beneath the left eye was a diffuse area of purplish bruising measuring around 3 cm by 1.5 cm in its widest diameter. Additionally, there was a diffuse area of swelling/erythema measuring around 4 cm by 3 cm in its widest diameter in respect of the right forehead.*

These allegations had a sufficient degree of credibility to be brought to the attention of the Hungarian authorities. At the same time, the persons concerned agreed to speak to the delegation about their experiences with the police on condition that their names were not disclosed. Most of

them said that they had decided not to lodge an official complaint as they were convinced that the procedure would not yield any results or could even be damaging to their criminal cases.

In the course of the visit, the delegation also came across cases of neglectful care by police staff, including police health-care professionals, which could amount to degrading treatment. Reference is made in this respect to paragraph 36.

The opinion on this case has already been stated in connection with statements in Point 10 of the report. Point 23 of the report also references the letter of the Hungarian authorities, which states that any form of police brutality – including brutality under order from a superior – is prohibited and punishable by law. In accordance with the regulations, if officers are informed of any form of police brutality or abuse, they are obliged to take action against it.

The cases suggesting abuse quoted in Points 21-22 of the report do not contain specific and substantiated information (the name of those interviewed by the delegation, the date and place of the alleged abuse), hence it is not possible to start an investigation based on them.

It is worth noting that those claiming police abuse, usually do not file a complaint when meeting with representatives of various organizations, they do not specify the exact place and time of the abuse or the use of coercive measures. The human rights organizations defending the rights of those who file a complaint for police measures – for reasons unknown to us – did not use the opportunity to file a complaint for police measures in their cases either.

Altogether it could be said that police service units, as well as the Police as a whole, pay particular attention to respecting human rights and the rights of detainees, and the training and briefing of the staff is continuous on the subject. Potential complaints reach the responsible authorities without delay, and the offenses described in them are investigated thoroughly.

23. *In their letter of 12 March 2019, the Hungarian authorities recalled that any police abuse, including when ordered by a superior, is formally prohibited and punishable by law. They also underlined that each and every police officer is under a legal obligation to act against any police misconduct of which they become aware.*

With this in mind, ***the CPT recommends that the Hungarian authorities continue to take action to prevent any forms of police ill-treatment, in particular by:***

> ***i) delivering the firm message, through instructions and regular briefings from the police leadership and management, as well as through appropriate in-service training, that police officers will be held accountable for having inflicted, instigated or tolerated any act of ill-treatment, irrespective of the circumstances and including when the ill-treatment is ordered by a superior. Every police officer should have a clear understanding that deliberate ill-treatment of detained persons is a criminal offence and that treating persons in custody in a correct manner and reporting any information indicative of ill-treatment by colleagues to the competent authorities is their duty (and will be duly recognised). It is essential to continue to promote a police culture where it is***

regarded as unprofessional to tolerate the conduct of colleagues who resort to ill-treatment (including racially-motivated abuse);

ii) taking further steps to eradicate racially-motivated abuse and discriminatory behaviour by members of the police force, including by strengthening efforts to ensure that the composition of the police force reflects the diversity of the population;

iii) providing police officers with further practical training relating to the use of force in the context of an apprehension in compliance with the principles of lawfulness, necessity and proportionality;

iv) reminding police officers that where it is deemed essential to handcuff a person at the time of apprehension or at any time during subsequent detention, the handcuffs should under no circumstances be excessively tight and should be applied only for as long as is strictly necessary.

The CPT also wishes to stress that the reluctance demonstrated by alleged victims of police ill-treatment met by the delegation to lodge official complaints with the competent authorities raises questions as to the effectiveness of police complaints mechanisms in Hungary and of the effective protection of possible victims against potential intimidation and retaliatory action. ***The Committee would like to receive the comments of the Hungarian authorities on this matter.***

i)

It is of great importance to the Police that measures taken by its staff during police measures and detention be consistent with international and domestic standards, be carried out in a lawful and professional manner, respecting human rights and refraining from derogatory remarks being in contrast with the Convention for the Protection of Human Rights and Fundamental Freedoms and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. National regulations clearly state that any form of abuse is an infringement and police officers are aware of this fact. In addition, should the crime of ill-treatment in official proceedings occur, the staff would be informed of its circumstances.

ii)

The Police pays particular attention to developing a non-confrontational and non-discriminatory relationship between the parties in a multicultural environment, and to improve the dialogue. Since 2012, thanks to tenders of the Hanns Seidel Foundation, the European Roma Law Enforcement Association, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the police were briefed on the options available to deal with conflict situations and the use of mediation techniques in relation to members of minority social groups, as well as the expected behavior during on-site police measures. During the trainings, officers were informed on ways of managing conflicts with members of minority communities of the society, and on the conduct expected from them during police measures on the spot. Due to these trainings both the police and the Roma community can now take action against incidents of hate crime more effectively, and the cooperation capabilities of Roma representatives with the authorities also improved. These efforts

are complemented by the national and international conference called “Equal opportunities in policing”, as well as the “Initiative to handle and enhance the prevention of hate crimes from a police perspective” project. An important element of this Initiative is the publication of the "Police measures related to incidents of hate or prejudice" booklet in 2016, which significantly contributes to the work of colleagues in defining the right procedures for similar types of violations. Initiated by ODIHR, sensitization training was held for police officers who come in contact with persons of Roma origin in October 2017, while in 2019 the ORFK organized similar training for service commanders. Additionally, conflict and aggression management courses are continuously organized for police officers.

The Roma program of the Police seeks to preserve and improve the system of minority relations and to expand cooperation. For many years, it has been a priority to deepen the relationships that have been built up over the past few years to make work more efficient and effective, and to develop new ones, the details of which are set out in a cooperation agreement. However, an aggravating circumstance is that due to the lack of interest, passivity and conflicts within the organization, it is not possible to reach an agreement with all local governments. Nonetheless, the number of co-operation agreements in force has been increasing for years, with a 79% increase compared to 2013. It should be noted that there is a significant number of settlements and metropolitan districts where no written agreement has been reached, but the working relationship is continuous and satisfactory.

There are several projects with general crime prevention tasks aimed at establishing conflict and prejudice-free relationships between people from different social backgrounds, and aimed at preventing victimization and preventing to become perpetrator, as well as disseminating information. D.A.D.A. the Police is a primary school, the ELLEN-SZER is a high school student program, while the OVI-ZSARU is a youth crime prevention program.

In line with the CPT recommendation to ensure that the composition of the police force reflects the diversity of the population, through special recruitment events, a dedicated recruitment website and social advertisements, the Police targets Roma youths who are interested in police work. The website (http://www.sokszinurendvedelem.hu/) contains all the important information to become a young Roma police officer (legal requirements, recruitment package, police scholarships for Roma youth).

iii)

According to Article 3 (1) of the Decree 2 of 2013 (I. 30) on the system of in-service training and management training for the career active duty staff of authorities under the direction of the Minister of Interior, and on police reserves and leadership databanks, the in-service training of police officers shall be done through central training programmes, law enforcement training programmes and leadership training programmes organized and conducted by the service responsible for training at the Ministry, internal training programmes organized by the home affairs authorities for their own staff, and training programmes organized by registered training institutions.

The Police strive to ensure that career active duty police officers working in contact with detainees receive training in order to be able to perform to a high standard and fully comply with their service duties. Those working in this field are provided with opportunities to develop and train themselves by applying to training programmes.

In addition to the education and trainings organized – using the experience of the prosecutors responsible for the supervision of detention, the commanders of the public order branch and the staff of the Internal Control Services of county police headquarters –, the officer briefing the staff always emphasizes that their duties should be carried out lawfully and professionally. Thanks to this we can state today that the prosecutorial inspections carried out in the previous years did not reveal any offence or deficiency which could have severely infringed upon the basic rights of those subject to police measures or the limitation of personal liberty, violated the prohibition of abusive practices, or did not comply with the legal provision on the proportional use of coercive measures set in Articles 15-16 of the Rtv.

iv)

We fully agree that, just like in the case of using other coercive measures, regulations on proportional use of police measures shall be applied when handcuffing, taking into special consideration the issues related to the age of the person subject to the measure and the obligations of the State (and by extension of the Police) described in the Fundamental Law.

As regards the recommendations specified in Point 23, the leadership of the Police is not aware of any instances where the victims of alleged ill-treatment by the police were influenced in any way by police officers – be it physical abuse, or intimidation – to not use their right to file a complaint. This is supported by the fact that persons subject to a police measure often harm themselves to be able to accuse the officers of abuse. In such cases – aside from a few exceptions – the complainant usually withdraws the charges, or – as laid out previously in relation to the recommendation in Point 10 – the Prosecutor's Office terminates the criminal proceedings or rejects the criminal complaint.

3. Procedural safeguards against police ill-treatment and police interviewing

25. *In the report on its 2013 periodic visit, the CPT recommended that the relevant legal provisions on the right of notification of custody be amended with a view to guaranteeing the right of persons detained by the police to inform a third person of their choice of their situation as from the outset of deprivation of liberty. The time period during which a third party of the detained person's choice should be informed was reduced to a maximum of eight hours (instead of 24 hours previously). This is clearly a step into the right direction.*

It appeared from the delegation's findings during the 2018 visit that notification of custody was done within a relatively short time after arrival in a police station. When this was done by police officers in the absence of the detained persons concerned, feedback was subsequently provided on whether or not it was possible to contact the third party designated by the person in police custody. The application of this right also appeared to be well documented in the files consulted by the delegation.

That said, in a few instances, police officers reportedly delayed notification of custody for reasons which were not communicated to the detained person and which could not be established by the delegation. ***The CPT recommends that further action be taken to ensure that any exceptions aimed at limiting or deferring the exercise of the right to inform of a specific third party of the detained person's choice as from the outset of police custody are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notifying a particular person of the detained person's choice to be recorded in writing with the specific reasons therefor, to require the approval of a senior police officer unconnected with the case at hand or a prosecutor, and to be applied for the shortest time necessary). When it is envisaged to limit or defer the exercise of this right, notification of custody to another third party designated by the detained person concerned should be first considered.***

29. *As regards the provision of information on rights, most detained persons with whom the delegation spoke during the visit stated that they received verbal information on rights shortly after actual apprehension and were subsequently provided with written information. Nevertheless, several persons interviewed allegedly had to wait for up to eight hours before being told about their rights (e.g. until after a home search was carried out or until police officers considered it appropriate to inform them about their rights). Further, some claimed that they had not been provided with any information on rights in writing.*

The CPT recommends that further action be taken to ensure that all persons who have to remain with the police (including when they have the status of an "apprehended" person and during home searches conducted during the apprehension period) are fully informed of their rights. This should involve the provision of clear verbal information at the very outset of deprivation of liberty, to be supplemented at the earliest opportunity (that is, immediately upon first entry into the police premises) by provision of a written form setting out their rights in a straightforward manner.

The Goverment's reply for recommendations 25. and 29. see below.

Concerning the CPT recommendation on the obligation to notify the person requested by the detainee, being a procedural guarantee against ill-treatment by the police and concerning interrogation, Article 39 of the Be. contains relevant provisions. The investigative authority responsible for detaining the suspect shall inform the detainee in writing of his/her rights and obligations according to Article 39 (1) and (3), and his/her rights according to Article 39 (2), (4), (5) and (7), as well as the rights described in Article 386 (1) and Article 387 (1).

The Be. contains detailed provisions on the rights of the accused in Article 39. During criminal proceedings, those in police detention (including arraignment and search procedures) are fully informed of their rights. The forms – to be used in connection with the given procedural steps – uploaded in the integrated case management system used by the Police contain these warnings in detail. The fact of having informed the person and of acknowledgement of these warnings must be recorded.

According to Article 42 of Government Decree No. 100 of 2018 (VI. 8.) on the detailed regulation of investigation and preparatory procedure (hereafter: Nyer.), the detainee must be informed of his/her rights and warned of his obligations comprehensibly at first contact if the circumstances allow it, or by the initiation of the first procedural step relating to him/her at the latest. In the course of the procedure, information on the rights and obligations of the person concerned may be provided upon the request of the person taking part in the criminal proceeding or whenever the investigative authority deems it necessary.

The information can be given in the form of a written information leaflet, too. Passing on the information in form of an information leaflet does not concern the obligation stated in Article 74 (3) c) of the Be. If the Be. stipulates to provide such a warning the providing and recording of which is compulsory in the course of the procedural step, the oral communication of the warning cannot be omitted even if the information is given in form of a leaflet as well. The information – in line with the rights of the person taking part in the criminal proceeding – shall cover the availability of legal assistance, and that, if the legislation allows for it, (s)he may ask for information and pose questions during the procedure.

The essence of the information and the fact that the information has been passed on must be recorded, or a report must be written thereof. If the information was passed on in form of an information leaflet, it is sufficient to refer to this fact in the record. The investigative authority shall, upon the request of the participant of the criminal proceeding not bound to use electronic communication, provide information on the possibility and consequences of electronic communication.

According to Nyer., the investigative authority shall, upon ordering detention, immediately call upon the suspect to specify who should be informed about the fact of the detention and its location. The investigative authority may allow for the suspect to directly inform the designated person at short notice, or the investigative authority may inform him/her in such manner, but the suspect may also resort to the detention facility to inform the designated person.

If the investigative authority refuses to inform the person designated by the suspect, it records it in a written report. If, within 8 hours of ordering the detention, no persondesignated to be contacted can be reached, the investigative authority shall issue a written decision on the refusal of informing the person chosen by the suspect. Following this, if the suspect designates a person whose notification raises no problems, the investigative authority shall inform the person designated. The investigative authority shall prepare a report on informing the designated person.

If the suspect states that (s)he does not wish to contact anyone about the ordering of his detention and the location of his/her detainment, this statement of him/her can also be recorded in the written resolution about the detention.

26. *According to the new criminal procedure legislation, a person suspected of having committed a criminal offence is entitled to have access to a lawyer as from the outset of police custody, including when he or she has the status of an "apprehended" person.17 It appeared during the 2018 visit that the lawyers nominated by the detained persons were promptly contacted on their behalf and that, as a matter of principle, no statement was taken without the lawyer's arrival.*

However, detained persons were allegedly not always put in a position to speak to their lawyer in private before the first police interview, despite their requests to this effect. The CPT recalls that the right of access to a lawyer includes the right for any detained person to talk to his or her lawyer in private. ***The Committee recommends that this be made clear to police officers.***

27. *The CPT welcomes the changes in the legislation aiming at securing more independence in the selection of ex officio lawyers – an issue that had been raised by the CPT in the past – and, in this context, a criminal legal aid scheme was developed in order to enable persons who cannot pay for the services of a lawyer to be represented by an ex officio lawyer appointed by the relevant bar association. By virtue of the criminal procedure legislation, if the bar association is unable to select an ex officio lawyer within one hour, the lawyer is chosen by the investigating or prosecuting authority.18*

Although there are legitimate questions about the one-hour time-limit, it transpired from the interviews carried out by the delegation and the documentation consulted during the 2018 visit that ex officio lawyers were generally appointed without undue delay following contact made with the bar association, in particular in Budapest. That being said, the delegation was told in a number of cases that ex officio lawyers did not come to the police establishment and were seen only after a first police interview or even not until the time of the first court hearing, thereby depriving the detained persons concerned of an important safeguard against police ill-treatment.

The CPT trusts that the Hungarian authorities will raise the CPT's misgivings on this matter, through appropriate channels, with the national and regional bar associations.

The Goverment's reply for recommendations 26. and 27. see below.

The legal defence of persons reasonably suspected of having committed a crime and taken into custody is obligatory. The suspect has the right to contact his defence attorney prior to the first interrogation, and consult with him/her beforehand (Article 39 (2) c); Article 46 (1) and (4) a)–b) and Article 386 (1) b)–c) of the Be.). During the interrogation, the suspect may consult with his/her defence attorney without disturbing the procedure (Article 387 (5) of the Be.). The interrogation of the suspect shall take place within 24 hours following the detention (Article 385 (2) of the Be.) even if the suspect was previously at large and had already been interrogated as a suspect.

According to Article 387 (3) of the Be., the interrogation of persons reasonably suspected of having committed a crime who present themselves, were arraigned or apprehended shall be carried out immediately and a delay cannot be justified by a "reason pertaining to office work", namely that the deadline for the arrival of the defence attorney would expire after working hours.

According to Article 46 of the Be., if the defence attorney is appointed by the investigative authority or the prosecutor's office prior to the first interrogation, based on Article 4 of the Decree 12 of 2018 (VI. 12.) of the Ministry of Justice (hereinafter: IM Decree) on the rules relating to certain procedural steps and persons taking part in criminal proceedings, the defence attorney must be informed of the date and location of the interrogation of the suspect along with the notification on the decision on appointment. If the suspect does not have an authorized defence attorney, defence must be ensured for the detainee without delay. If the taking into custody is to follow

arraignment immediately, defence shall be provided from the time of arraignment. According to Article 387 (1) and (2) of the Be., it is prohibited to detain a person without ensuring legal defence.

The defence attorney is appointed by way of a national IT system operated by the Hungarian Bar Association. The detailed rules on the appointment of the defence attorney – for instance the formal content of the electronic decision on appointment – are included in the IM Decree. Automatic appointment results in the defence being completely independent from the Police.

The legal instrument of deputy defence attorneys is a solution to specific problems stemming from the appointment of defence attorneys – in case of obligatory defence – by the regional bar associations. Would deputy defence attorney be appointed for a reason appearing in Article 47 (1) of the Be., the procedural step requiring the presence of the defence attorney cannot be carried out in the absence of a deputy defence attorney.

In case the defence attorney did not appear despite being duly summoned, it is obligatory to appoint a deputy defence attorney. According to Article 112 (1) of the Be., the authority summons that person whose attendance is obligatory at the procedural activity, and notify that person whose attendance, is not obligatory but allowed by the law. Thus, if the attendance of the defence attorney is not obligatory at the procedural activity in the course of investigation, and he/she will be notified by the authority but does not appear despite being notified, there are no grounds for appointing a deputy defence attorney as its legal requirement is lacking.

The participation of the deputy defence attorney concerns only the relevant procedural steps, the person of appointed defence attorney remains unchanged. According to Article 17 (2) of Act LXXVIII of 2017 on the professional activities of attorneys-at-law, the deputy attorney proceeds with full authority on behalf of the deputised attorney in the field of legal protection.

The investigative authority may postpone the opening or the carrying out of the procedural steps by at least one hour if the person subject to criminal proceedings did not have the opportunity – for reasons outside his/her or the defence attorney's control – to prepare for the defence or consult with the defence attorney before the opening of the procedural steps.

The investigative authority shall ensure that the person reasonably suspected of having committed a crime can exercise his/her rights laid down in Article 386 of the Be. If the arraignment or bringing to police was ordered by the investigative authority, it shall ensure in cooperation with the agency executing the decision that in the course of carrying out of the above acts, the executing agency provides the opportunity of contacting the defence attorney.

28. With respect to the right of access to a doctor, it emerged from the delegation's findings that the persons interviewed who were or had recently been in police custody were promptly seen by a police or hospital doctor when they so requested. However, the right of access to a doctor, as distinct from systematic medical screening of detained persons upon admission to a police holding facility (see paragraph 36) and the police officers' obligation to provide access to medical aid for injured or sick detainees, is still not formally guaranteed. **The CPT recommends that the Hungarian authorities take the necessary measures in this regard. Reference is also made to paragraph 36 as regards the presence of police officers during medical examinations.**

Upon admission to a police holding facility, the detainee shall be interviewed about his/her injuries, and possible complaints. The Police takes care of the detainee's placement and arranges for the care necessary for the prevention of any health-related harm that could be deriving from the detention.

Section 17 (2) and 18 (2) of Act XXXIV of 1994 on the Police (hereinafter: Rtv.) clearly stipulate that medical care shall be provided for persons injured in the course of a Police action for those who are ill or persons in need of emergency medical care as soon as possible. If necessary, the Police always arranges for the detainee's medical care, with the assistance of the ambulance service (which is independent from the Police) which, if needed, transfers the person concerned to a health care facility for further treatment, where in-patient care is available. Furthermore, if the injured person is taken to hospital the Police Officer shall see that a relative or another person in contact with the injured person is notified. It must be noted that in the past years, no complaints have been received about inappropriate medical care or the lack of medical care.

The above-mentioned facts therefore, substatiate that the right to medical care, moreover, the obligatory medical care for injured or ill detainees are provided as determined by law; thus contradicts the referring findings in the CPT report.

30. *During the 2018 visit, the delegation also met a number of foreign nationals who were or had recently been held by the police in the context of criminal proceedings. Several of them indicated that they had effectively benefited from the services of an interpreter, that they had been informed of their rights in a language they understood (orally and in writing) and put in a position to exercise them, including the right to consular assistance, shortly after arrival to a police station. However, some complained that they were not provided with any information on rights, that they received little or no assistance from the interpreter assigned to them and that they were made to sign documents without having their content explained to them.* ***The CPT recommends that further action be taken to ensure that foreign nationals apprehended by the police are informed promptly about their rights, provided with the services of a qualified interpreter whenever required and are not made to sign any document concerning the offence(s) he or she is suspected of having committed which he or she is not able to understand.***

The language of the criminal proceedings is Hungarian. Members of nationalities living in Hungary and recognised by the law may use their own mother tongue in the course of the criminal proceedings. No one shall suffer prejudice due to the fact that he/she does not speak Hungarian, and in the course of the criminal proceedings, everyone is entitled to use his/her own mother tongue.

If the person subject to criminal proceeding does not wish to use his/her mother tongue may it be Hungarian, the language of a nationality or any other mother tongue defined by an international treaty and promulgated into a law, preferably such an interpreter shall be involved who has proper knowledge of legal terminology. According to Article 78 (1) and (2) of the Be., if the use of the mother tongue gave rise to disproportionate difficulties, the use of another language shall be ensured with the assistance of an interpreter which has been marked as spoken by the person not speaking Hungarian.

According to Article 47 of the Nyer., if the mother tongue of the person subject to criminal proceeding is not Hungarian, an interpreter shall also be appointed upon his/her request even if (s)he speaks Hungarian.

According to Article 48 of the Nyer., it shall be made possible in the course of the procedural steps concerning a non-Hungarian citizen for the consular official of his/her state to be present.

The authorised head of the investigative authority will notify that diplomatic mission about the procedural steps concerning the non-Hungarian citizen which is in accordance with his/her citizenship – or if the person has multiple citizenship, according to the citizenship marked by him/her – via the ministry led by the minister responsible for foreign policy if it was requested by this person before the procedural steps. The diplomatic mission shall also be informed about the procedural steps without delay if the non-Hungarian citizen has presented his/her previously mentioned request at such a time that the appearance of the consular official of his/her state at the procedural steps cannot be ensured.

According to Article 160 of the Nyer., the investigative authority issues the decision on the detention to the suspect and the defence attorney, and hands it over to them. The investigative authority ensures that the suspect can exercise his/her linguistic rights through the appointment of the interpreter and through taking measures which are necessary to have the translation of the decision.

31. *The CPT notes with satisfaction that the juveniles with whom the delegation spoke and who were or had recently been in police custody said that they had promptly received information about their rights and were put in a position to exercise them. The juveniles reportedly benefited from the mandatory presence of an ex officio lawyer (and, where possible, another trusted adult) during police interviews and were not made to make statements or sign documents without the presence of a lawyer.*

However, a number of juveniles claimed that they were able to meet in private with the lawyers assigned to them only at the first court hearing or shortly before. ***The Committee recommends that action be taken to ensure that juveniles are entitled to meet in private with the lawyers assisting them at any stage during police custody, including before any interviews are conducted by the police.***

Regulations with regard to the defence attorney apply uniformly to juveniles as well. The difference is that according to Article 682 of the Be., the attendance of a defence attorney is obligatory in a juvenile proceeding and (s)he is obliged to be present at those events too which are held with the participation of the juvenile before presenting any charges: at the suspect's interrogation, confrontation, presentation for identification, inspection or reconstruction, moreover, at the session held in the procedure on coercive measures which concern personal liberty and require a judicial warrant.

Beside the above mentioned cases, the legal representative shall be informed subsequently of procedural steps taken with the participation of the juvenile if the legal representative was not

present and was not informed thereof. This obligation to provide information means to provide substantial information.

The juvenile shall be informed of his/her rights and obligations at the first contact – especially along with summoning or by arraigning – by handing over a written information leaflet. Handing over such a leaflet may only be omitted in duly justified cases. In such a case, the investigative authority shall, as soon as possible, remedy the deficiency by handing over the leaflet. The investigative authority shall also provide oral information on the essence of the information in the leaflet and shall make sure that the juvenile understood it, is also obliged to provide further information upon the request of the juvenile.

Article 82 of the Be. lists the cases of obligatory application of special treatment, therefore it shall be applied – when filing a criminal accusation, or in the course of the procedural step taken – in case of a person under 18 years of age too.

32. *It emerged from the delegation's exchanges with police officers met during the 2018 visit and persons who were or had recently been in police custody that the aim of police interviews, especially those conducted during the first hours of police custody and in the absence of a lawyer, was often to obtain a confession or other self-incriminating evidence.*

In this context, the CPT notes that the Hungarian authorities previously agreed that the electronic recording of police interviews (with audio/video-recording equipment) is an effective means of preventing ill-treatment during police interviews. Nevertheless, they underlined that the introduction of electronic recording equipment required significant financial resources.

The CPT recommends that the Hungarian authorities develop further guidance, procedures and training on how police interviews should be carried out, drawing on an investigative interviewing approach and on the introduction of electronic recording of police interviews. In this context, it should be made clear to police officers that the aim of police interviews must be to obtain accurate and reliable information in order to seek the truth about matters under investigation and not to obtain a confession from a person already presumed, in the eyes of the interviewing officers, to be guilty. Reference should be had in this regard to paragraphs 73-81 of the CPT's 28th General Report.

Article 165 of the Be. considers the confession of the accused a mean of proof. As concerns "extorted" confession of the accused, Article 167 (5) of the Be. states that no fact arising from a mean of proof can be taken into consideration that was obtained by the authority by way of a crime, by other prohibited means or by substantially violating the rights of participants of the criminal proceeding. The prohibition to consider evidence obtained in an illegal way is connected to violating the rules of criminal proceedings on the one hand and to obtaining them by way of a crime on the other hand.

When conducting the criminal proceeding, staff of the Police strives to fully comply with the relating legal provisions, supervised and directed by the Prosecutor's Office responsible for the legal supervision of investigation and by the commanders of the Police.

4. Centralised police holding facilities

33. *The fact that the Hungarian authorities have developed a system of centralised police holding facilities is a positive feature. As was the case during previous visits, material conditions of detention in the police holding facilities visited were generally satisfactory. The cells were in a reasonable state of repair and clean, were sufficient in size for their intended occupancy, were equipped with sleeping platforms, shelves, and bedding, were adequately heated and ventilated, and had suitable artificial lighting. The delegation received no complaints about access to the sanitary facilities. As regards food arrangements, three meals were served daily.*

The CPT also appreciates that efforts were being made to remedy shortcomings identified in the past, subject to the availability of financial resources. At the time of the 2018 visit, the Budapest central police holding facility was closed for renovation. ***The Committee would like to receive detailed information on progress made on its refurbishment.***

The electrical and technical building systems have been refurbished on the 2nd and 3rd floor of the central holding facility, a new CCTV and alarm system have been installed on the corridors of the holding unit, and all rooms have been equipped with new flooring, paint, covering and windows.

On each floor, holding cells for two persons have been constructed. The floor area of holding cells exceeds 17 m2, thus the free floor space amounts to 5,3 m2 per person. Each holding cell is equipped with a vandal-resistant hot and cold-water sink and a vandal-resistant toilet separated by a wall. Natural lighting is ensured by new windows and the connected barring.

In the bath facilities for inmates, the refurbishment took place by installing vandal-resistant fixtures and replacing the coverings and fittings.
Exercise yards have been fitted with a new concrete pavement, their masonry with a new cement footing and façade plaster, and their roofing have been renovated.
Admission units underwent covering replacement and painting.
The refurbished holding facility started its operation following the closure of the works and after the technical handover, on 1 March 2019.

36. *The CPT noted some positive developments in the past as regards the systematic medical examination of detained persons upon admission to police holding facilities. Such an examination was carried out by a police health-care professional and/or by a hospital doctor. However, it emerged during the 2018 visit that the examinations carried out by police health-care professionals were not always as thorough as they should be, a further examination in hospital was not always organised when necessary and the level of the medical care provided during and after examination in police holding facilities could be fairly inadequate. The delegation also observed that injuries were poorly recorded, if at all, in Budapest in particular. By way of example, the delegation found injuries on a person detained at the holding facility of the National Bureau Investigation in Budapest which had not been noted by the police health-care professional who had only very recently examined him. The person concerned had trouble bearing weight on his right foot. A medical examination of his foot by the delegation's doctor revealed that it was swollen and red over its dorsum; it required appropriate care and further investigation in hospital. Upon*

the delegation's request, the detainee in question was transferred to a local hospital for further examination by an independent doctor.

Moreover, medical consultations were routinely carried out in the presence of police officers or within their earshot; this continues to raise concerns in relation to medical confidentiality and the prevention of police ill-treatment. Several persons who were or had been in police custody told the delegation that, because of this, they refrained from making any statements or felt that they had to lie about the origins of their injuries in order to avoid potential reprisals from police officers.

37. *In the light of the above findings,* ***the CPT recommends that the Hungarian authorities ensure that medical examinations (whether they are carried out in police holding facilities or in hospitals) are always carried out thoroughly and that, where necessary, appropriate care is provided without undue delay.***

Further, ***the CPT repeats its longstanding recommendation that arrangements be made to ensure that medical consultations are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff with no health-care duties.*** *In order to facilitate the preservation of the confidentiality of medical examinations and care, it should be ensured that police holding facilities and the hospital structures concerned have a room available which provides appropriate security safeguards.*

The relevant health-care professionals should also be reminded that the record drawn up after medical examinations should contain i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any statements as to the origins of any injuries), ii) a full account of objective medical findings upon examination and iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed. For more details on the documentation of injuries, reference is also made to paragraph 63.

The Goverment's reply for recommendations 36. and 37. see below.

With regard to providing a comprehensive medical examination after the detainees taken into police custody, the following shall be mentioned.

At the time of the admission of each person, a medical report is drawn up which contains the data of the examined person, the name of the organisation requesting the examination, the date and time of the examination, the medical history, the results of the physical examination, furthermore, the medicines which are regularly taken by the concerned person and the recommended therapy. The medical opinion devotes special attention to injuries and possible separation. The admitted person will separately be interviewed in the course of the examination about ill-treatment by the police. This medical opinion containing personal and special data will exclusively be kept by the health staff. The extract of the medical opinion which does not contain special data will be handed over to the guards.

In addition, it must be noted that the chief physician of each police unit carries out inspections at the police holding facilities on a regular basis. The subjects of the inspections are the professionalism of the health care staff and the documentation of the health care provided.

Concerning the incomplete medical examination detailed in the report, the report did not go into details regarding the exact date and time of the event and the relevant person, therefore, it is not possible to carry out an investigation and assign responsibility in the mentioned case.

The respect for the confidentiality of the medical consultations is based on complying with the applicable legal provisions. Police presence at medical examinations is allowed. According to Article 14 (1) b) of Act XLVII of 1997 on Processing and Protection of Medical and Other Related Personal Data, only those persons can attend the treatment beside the treating physician and other health care staff to whose presence the person concerned consents. However, police officers can be present without the consent of the person concerned with full respect for the concerned person's human rights and dignity if the treatment is provided for a detainee. It is to guarantee for the legality and professionalism of the detainee's medical examination, and at the same time, it ensures the protection of the physician or health care staff conducting the examination or the consultation.

The recommendation made in Point 37 of the report aims to ensure the respect for the confidentiality of consultations –and recommends that the detainees' medical care shall not be provided in the presence of policemen, –unless it is expressly requested by the examined person. This recommendation is not feasible in the majority of the cases as the protection from bodily injuries of thehealth care staff must be ensured. In the course of the medical examination, a significant part of the detainees is still irritated, aggressive, and they are often under the influence of drugs or psychiatric treatment, therefore, their behaviour is unpredictable. In many cases, police presence is requested by the health care staff. Stationing police officers further away would only allow stopping an already developed exceptional incident in detention and would jeopardise the security of the health care staff or imply the risk of absconding.

Concerning the case mentioned as an example in the report with regard to the National Bureau of Investigation of the Rapid Response and Special Police Services (hereafter: RRSPS) – according to which the examining physician of the Police did not diagnosed the visible injuries of a person at the detention facility of the RRSPS – the following may be established.

In connection with the case, the paramedic on duty in the detention facility had informed the members of the CPT being present about having examined the detainee's injuries earlier and considered from a professional point of view that the injuries do not require hospital treatment. Taking into account the CPT's medical member's opinion, the head of unit being present during the visit arranged for the detainee's transfer to the hospital as a matter of priority. As the result of the examinations conducted at the hospital, it was clearly established that no recent, traumatic changes in the bone structure were visible on the detainee's leg. Following the transfer back to the detention facility, the detainee stated that he had got the injury from the police officer who had been taking actions against him at the time of the apprehension. He was refusing any further, necessary medical examinations (medical findings) concerning his injury, and was unwilling to cooperate.

Concerning the case it can be established that the official members of staff on duty at the facility did not fail to act.

38. *Beyond their security duties, custodial staff assigned to police holding facilities looked after the well-being and the safety of the persons held there. The delegation nevertheless observed that they continued to carry openly batons and CS gas canisters in the detention areas. The CPT does not dispute the fact that equipment such as batons may be needed in police holding facilities in very exceptional circumstances. That said,* ***the CPT recommends that action be taken to ensure that custodial staff do not carry batons routinely in the detention areas of police holding facilities. Further, CS gas canisters should not be part of the standard equipment carried by custodial staff and, given the potentially dangerous effects of this substance, CS gas should not be used in confined spaces.***

The recommendation, according to which police officers serving in police detention facilities should not wear a baton and chemical means of coercion, is not supported by the Police. Serving unarmed would significantly jeopardise the security of guarding as a guard without any means of coercion could only be relying on his own physical force in case of a possible attack. In parallel, in the absence of the mentioned means of coercion, the requirement of proportionality set out in Article 15 of the Rtv. would be infringed.

39. *More generally, the CPT has noted that, in certain Council of Europe member states, every apprehended person has to be presented immediately to a designated, experienced, custody officer, before any other procedural steps can be taken. This custody officer is responsible for checking the psychological and physical integrity of the apprehended person before any medical examination and for offering them the possibility to inform a third party of their choice of their situation and to make contact with a lawyer. They may also provide the first opportunity for a detained person to make a formal complaint against apprehending officers, for example, regarding use of unnecessary or excessive force upon apprehension. Custody officers carrying out such a screening task are properly trained to pose the appropriate questions and to recognise and record indicative signs of a person in need of particular support and care.* ***The CPT recommends that the Hungarian authorities consider introducing such a system in their centralised police holding facilities, starting with Budapest.***

In the course of the 2018 visit, the delegation received concurring accounts from persons, including one juvenile, who were or had been placed in police holding facilities and taken to court or other premises whilst being exposed to public view (including photographers and TV journalists), with their hands cuffed and attached to a lead which was held by the escorting police officers. In the CPT's view, exposing a person deprived of his or her liberty to public view in such a way is clearly demeaning and could be considered as degrading. ***The CPT recommends that the relevant police instructions be reviewed in order to avoid any unnecessary exposure of detained persons under restraint to public view.***

The current human resources do not allow for employing a 'custody officer' in the police detention centres. Those custodial tasks listed in the report are currently carried out by the staff of the Police. It is true, however, that the task is not assigned to one person only.

According to Section 48 of Rtv., police officers may use handcuffs to

a) prevent self-harm;
b) prevent attack;
c) prevent escape;
d) or break the resistance of the person whose personal freedom shall be or was restricted.

According to Section 41 of Decree 30 of 2011 (IX. 22.) of the Ministry of Interior on the Service Regulations of the Police, the use of handcuff is particularly justified against that person whose escort has been ordered during his/her detention, furthermore, against persons, for the duration of the detention, who are detained outside the custodial unit or the detention centre.

To comply with the recommendation– that the unnecessary exposure of detainded persons under restraint should be avoided – is not possible as there is no legal ground for the Police to restrict the fundamental right to freedom of movement and residence of law-abiding citizens legally residing in public places in a situation the report referred to.

B. Juvenile prisoners

1. Preliminary remarks

2. Ill-treatment

44. *However, in the juvenile unit in Kecskemét, the delegation heard a few allegations of physical ill-treatment of male juveniles by staff, such as punches to the face and stomach, as well as some allegations of verbal abuse.*
At the end of the visit to this establishment, the management assured the delegation of their commitment not to tolerate any ill-treatment of juveniles by staff. The management referred in this context to a case which had taken place approximately one year prior to the CPT's visit and in which a prison officer had repeatedly punched a juvenile while escorting him from an outdoor exercise yard. As a result, the juvenile had suffered an injury considered to be "light"27. The case had immediately been brought to the attention of the competent prosecutor and the prison officer concerned and another officer (who had witnessed the incident but had failed to report it) had been dismissed and, following a criminal investigation, had been sentenced by a court.

The CPT welcomes the commitment demonstrated by the Kecskemét prison management. With this in mind, ***the Committee encourages the Hungarian authorities to support the management's efforts to prevent any possible ill-treatment of the juveniles by staff. In this context, it should be reiterated to staff that all forms of ill-treatment of juveniles, including verbal abuse, are unacceptable and unprofessional and that anyone committing, instigating or tolerating such acts will be punished accordingly.***

The management should also instruct all staff working in the juvenile unit in Kecskemét to actively prevent their colleagues from ill-treating prisoners and to report, through appropriate channels, all cases of ill-treatment involving colleagues. The instruction should be accompanied by firm assurances that "whistle blowers" will be protected from any reprisals.

In our view, the Hungarian authorities continue to support the law enforcement organisation's efforts to prevent physical ill-treatment of prisoners of minor age. This assistance is reflected in Hungary's Fundamental Law and in particular also in the text of Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Misdemeanour Custody (hereinafter Prison Code). The Prison Code protects the inviolable and inalienable fundamental rights of man and, in particularthe respect ofhuman dignity of convicts and other prisoners, and regulates the enforcement of punishment in order to enforce the prohibition of torture, cruel, inhuman or degrading treatment and the requirement of equal treatment. A dedicated chapter of the Prison Code deals with the fundamental rights of minors, their protection and treatment, and aftercare following their release.

Both the Hungarian authorities and all staff members of the law enforcement organisation are aware that any form of ill-treatment of prisoners, including verbal abuse, is contrary to their profession and that committing, inducing, tolerating physical ill-treatment is punishable by law. All staff members are informed of this during further training, case reports and briefings.

Physical ill-treatment in official proceedings is a criminal offence. In the case of such an offence or a suspicion thereof, and in cases where a prisoner inflicts bodily injury taking more that eitht days to heal on another prisoner, the manager of the prison service organisation is obliged to act ex officio towards the investigating authority. In the case of a bodily injury healing within eight days, the injured prisoner may initiate a private litigation procedure. Information on the above shall be provided to the prisoner concerned by the acting prison service staff member.

In 2018, there was no case suspected in the juvenile unit of the Bács-Kiskun County Penal Institute of assault by a member of staff. In 2019, there were two such cases, and the commander of the penal institute filed charges against the staff members concerned. Neither in 2018 nor in 2019 was the staff of the Tököl Juvenile Prison suspected of perpetrating such a criminal offence.

Following the CPT's visit, its findings were shared with the management of the Bács-Kiskun County Penal Institute both at an in-person meeting and in a written report. TIn turn, the management of the penal institutes affirmed that the management of the prison service has been and will continue to consistently fight any breach of the law commited by the staff against prisoners. Should they become aware of such a breach of law, they will initiate criminal proceedings at the competent Szeged Regional Investigative Prosecution and will takeall necessary measures.

Furthermore, the management is regularly informed about the mood and complaints of the prisoners during management and other types of inspections. They observe the treatment, verbal and non-verbal communication of personnel with prisoners. The penal institutes ensure that prisoners can make complaints both in writing and at hearings, or forward them to authorities, civil right protection organisations in the form of uncontrolled correspondence. It should be noted that any prisoner can claim the right granted by the law to request a personal interview with the prosecutor responsible for the legal supervision of law enforcement.

As regards protection against retaliation, prisoners may lodge their complaints and reports with the authorities anonymously. The prison service organisations are not aware of any complainant who suffereddetriment following a complaint and for having exercised his rights. In such a case, the offender would be punished more severely than in a standard case of ill treatment.

In addition, the selection procedure of the penal service only allows the hiring of persons who have a certificate of good conduct and have been vetted by the National Protective Service's lifestyle monitoring to meet the criteria for a decent way of life. All of this ensures that the applicant has not committed a criminal offence in the past and his life is sound both in practice and morally. The penal service builds on this impeccable personnel during the establishment and maintenance of the order of law and the enforcement of legal guarantees.

In our view, and in line with the CPT's recommendation, all of these circumstances adequately protect prisoners from ill-treatment and the complainant from retaliation.

In 2018 and 2019, there was no need to prosecute any prisoner on the suspicion of infliting bodily injury on another inmate in the minors' department of the Bács-Kiskun County Penal Institute. No such criminal offence has been committed at the Penal Institute of Minors (Tököl) in 2018. In 2019, the commander of the penal institute filed charges against a prisoner on the suspicion of inflicting bodily injury in two cases.

48. *The CPT notes the efforts by the management of Tököl Juvenile Prison to tackle the phenomenon of inter-prisoner violence. However, in the light of the findings during the visit,* ***the Committee recommends that the management and staff at Tököl Juvenile Prison remain constantly vigilant to any signs of inter-prisoner violence and intimidation. Addressing the phenomenon of inter-prisoner violence will require a multi-faceted approach which will include enhanced ongoing monitoring of the prisoners' behaviour (including the identification of potential perpetrators and victims), with a particular focus on the situation in the cells in the evening/at night (for example, by more frequent and irregular visits by staff), the proper reporting of suspected and confirmed cases of inter-prisoner intimidation/violence, the thorough investigation of all incidents and, where appropriate, the adoption of suitable sanctions or other measures, as well as the development of effective violence reduction interventions. The management and staff should pay increased attention to the risk and needs assessment, classification and allocation of individual prisoners with a view to ensuring that prisoners are not exposed to other inmates who may cause them harm.***

At the Tököl National Penal Institute, the ward inspectors at the time of service delivery-acceptance check the prisoners for signs of external injury and, if detected, take the necessary measures immediately. The existing practice of night inspections has been reviewed and revised and, for the sake of unpredictability, an inspection system containing 10 different inspection versions has been developed. The inspection regime applicable to a given service is determined irregularly after taking up duties. Reintegration officers provide aggression handling and assertiveness training for prisoners who have a demand for it. From the participants in the aggressive act, the psychology department organises groups of 4-6 people, who are dealt with by psychologists on the basis of the Methodology Guide published in the subject. Measures to accommodate small numbers of detainees have also led to a reduction in violent actions against

each other, and reintegration officers immediately take action to relocate prisoners if they find tension or conflict within the particular cell community.

According to information from the Tököl National Penal Institute, regarding the treatment of prisoners - on the execution of penalties, measures, coercive measures, imprisonment replacing a disciplinary penalty and custodial arrest for misdemeanour - the prosecutor exercising jurisprudence carries out close and regular checks on minors; the prosecutor's office did not make any appeal in 2018-2019.

On this basis, it can be stated the CPT recommendation is fully implemented as regards prisoners' offending behaviour.

3. Conditions of detention

a. material conditions

49. *In the juvenile unit in Kecskemét, cells measured approximately 8.5 m² (excluding the fully-partitioned sanitary annexe) and usually accommodated one (or exceptionally two) juvenile(s).29 At Tököl Juvenile Prison, cells measured some 33 m² (excluding the fully-partitioned sanitary annexe) and were holding up to six juveniles at the time of the visit.*

The cells in both establishments provided adequate living space for the number of juveniles they were accommodating at the time of the visit (and were of a sufficient size for their intended occupancy). That said, in the CPT's opinion, juveniles should normally be accommodated in individual bedrooms. Their view should be sought before they are required to share sleeping accommodation.

The information gathered during this visit with regard to inter-prisoner violence at Tököl Juvenile Prison also confirms that placing juveniles in large dormitories puts them at a significantly higher risk of violence and exploitation (see paragraph 46). The Committee takes note in this respect that in the newly-refurbished building due to open in 2019, cells would accommodate up to four juveniles. In the CPT's opinion, this is a step in the right direction. Nevertheless, ***the Committee invites the Hungarian authorities to actively pursue their efforts to decrease the intended occupancies of the cells accommodating juveniles at Tököl Juvenile Prison, and, where appropriate, in other juvenile prison structures in the country, in the light of the remarks set out above.***

Hungary and the prison service organization are doing their utmost to reduce the occupancy rate of penal institutes. Elements of this include the establishment of new penal institutes, the expansion of capacity in existing penal institutes and the introduction and extension of reintegration custody. In October 2019 the penal institutes' occupancy rate was 112%. In 2014, the occupancy was 146.6%.

If, despite the efforts of the prison service organization, it is unable to provide adequate accommodation for prisoners, the Prison Code provides legal guarantee for the compensation for grievances of convicts. Under the Prison Code, compensation is paid to the convict or prisoner detained under other legal ground for the harm caused by the lack of provision of the living space

required by the Penal Code or the IM Decree during detention and any other related issues, placement conditions that violate the prohibition of torture, cruel, inhuman or degrading treatment, in particular lack of toilet separation, inadequate ventilation, lighting, heating or insect control (collectively, placement conditions that violate fundamental rights). Compensation is payable after each day spent in placement conditions that violate fundamental rights. The state is obliged to pay compensation.

It should be noted that during the placement of juvenile prisoners, the CPT found that the required living space complied with international recommendations in all respects and that a separate sleeping room was provided in the juvenile's department of the Bács-Kiskun County Penal Institute. The requirement for a separate sleeping room may be a feasible aim, but most states in the European Union do not provide this to the convicts. In this respect, the Bács-Kiskun County Penal Institute is an example to follow for other Member States.

At Tököl Juvenile Prison (Tököl), all housing cells can accommodate up to 7 people, but a maximum of 4 prisoners of minor age are accommodated in each cell. The penal institute complied with the recommendation in the report in this way. As a result, the move into a separate building for juveniles in 2019 mentioned in the report did not take place. The number of prisoners in the penal institute has continued to decline over the past period, resulting in 122 persons being held in 231 places compared to the data a year earlier (175 persons held in 231 places, 76% occupancy rate), which means an occupancy rate of 53%.

50. *All the premises seen by the delegation in both establishments visited were clean and efforts were being made to keep them in a good state of repair. Cells accommodating juveniles had sufficient access to natural light and artificial lighting and were adequately ventilated.*

However, the cells were extremely austere and impersonal and the overall atmosphere in the establishments was bleak. There was hardly any decoration in the cells and the predominant colours were grey and white. Although the equipment of the cells was quite suitable (fully partitioned sanitary annexes, beds, stools, metal lockers/shelves and a table, as well as a TV set in some cells), the fact that the furniture was made of metal, had visible signs of wear and tear and, at Kecskemét, was fixed to the floor, accentuated the overall austerity of the juvenile accommodation areas.

In the CPT's opinion, a well-designed juvenile detention centre should provide positive and personalised conditions of detention for young persons, respecting their dignity and privacy. All the accommodation and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli (pictures, posters, plants, etc.). Unless there are compelling security reasons to the contrary, juveniles should be allowed to keep a reasonable quantity of personal items.

The CPT recommends that the Hungarian authorities ensure that the material conditions in the juvenile unit in Kecskemét are improved in the light of the aforementioned precepts. In particular, juveniles should be encouraged to decorate their cells and other premises of the juvenile unit. *Further,* ***the Committee trusts that the material conditions in the newly-refurbished building of Tököl Juvenile Prison will comply with the above-mentioned principles.***

It would also like to receive confirmation when juvenile prisoners at Tököl have been moved to the new premises.

In the juvenile unit in Kecskemét, all the cells, its floors have been renovated and the equipment (bed, table, seat) were painted. The management of the penal institute permitted the decoration of the cells in accordance with the regime rules, so family photographs, objects made at handicraftsand classes can be placed here. Prisoners have the opportunity to decorate their living space (photographs, small arts made at handicrafts, drawings). To increase their sense of responsibility and support their mental balance, they can carry a pet (typically parrots) inside the cell. Each living unit has its own kitchen and bathrooman automatic washing machine with agitator and spin-dryer for convicts to wash their civil clothing and for prisoners to clean their underwear. The penal institute, with the help of the prison service organization, acquired 56 television sets, 10 of which were placed in the juvenile's living cells.

The cells in the Tököl Juvenile Prison have been painted, placement took place according to regime rules so that they can be used as a motivation. In the milder regimes, amongst the co-operating prisoners, the moderate decoration of the cell was allowed. In the case of non-co-operative convicts sentenced under more stringent regimes, where the aim is to keep juvenile prisoners in cells for as short a time as possible, from there to come out for leisure activities, education, sports and outdoor activities, allowing the decoration of the cell is contrary to the principle of gradualness. If there is a positive change in the personality of the non-co-operative juvenile, if they change their oppositional behaviour, they may be placed in a place where the decoration of the cell is allowed.

51. *In both establishments visited, sentenced juveniles were obliged to wear green prison uniforms.31 The CPT considers that juvenile prisoners, irrespective of whether they are on remand or serving prison sentences, should be allowed to wear their own clothing whenever it is suitable. Those who do not have appropriate clothing of their own should be provided with non-uniform clothing by the establishment.* ***The CPT recommends that these precepts be implemented in practice at Tököl Juvenile Prison and in the juvenile unit in Kecskemét, as well as in other juvenile prison structures in the country.***

The clothes of the convicts are uniforms made of high quality material provided by the prison service organization. The patterned, green colour of the uniform indicates that the prisoneris juvenile; they are subject to other rules, rights and obligations, and cannot be placed among adult convicts. All of this was done in the interests of juvenile prisoners.

The value of uniforms is that it eliminates the social gap between people, which also gives rise to negative discrimination, cliques and opposition in civil life as well. Therefore, allowing the wearing of civilian clothes would increase the risk of criminal offences against each other.

52. *The cells seen by the delegation in the juvenile unit in Kecskemét were equipped with a call bell. However, this was not the case at Tököl Juvenile Prison.* ***The CPT recommends that all cells in the new premises of Tököl Juvenile Prison be equipped with a call bell*** *(see also paragraph 46 concerning inter-prisoner violence in this establishment).*

When drafting the investment proposal for 2020 of the Tököl Juvenile Prison, the cost of supplying cells with a status display will be integrated, and bells may be installed that year.

53. *In both establishments, juveniles were usually offered one hour of outdoor exercise every day in spacious sports grounds (football/handball pitches) which were equipped with some basic sports equipment (goals, a basketball hoop). However, not all the sports grounds were equipped with benches and/or shelters against inclement weather. Moreover, at Tököl Juvenile Prison, the delegation heard some allegations that outdoor exercise was not granted in the case of bad weather.*

The CPT recommends that the Hungarian authorities take the necessary steps to ensure that all juveniles at Tököl Juvenile Prison and in the juvenile unit in Kecskemét, as well as, where appropriate, in other juvenile prisons in the country, are offered the possibility of daily outdoor exercise of at least two hours, irrespective of the weather. *Further,* ***all outdoor exercise areas should be equipped with a means of rest and a shelter against inclement weather.***

Juvenile prisoners are continuously provided with at least one hour of outdoor exercises as required by the Prison Code, which is a minimum requirement. There is no provision that will maximise the amount of time a juvenile prisoner can spend in the open air, playing sports, other outdoor activities, and working. Both penal institutes strive to allow juveniles to spend as much time as possible outside the cell, where possible, in the open air. It is not in the interest of the staff that juveniles spend most of their day in a cell; they organize activities that can be performed while in the open air, e.g., gardening.

Based on the information provided by the Tököl National Penal Institute, it can be stated that prisoners have access to sports in the large sports hall even in bad weather. For motivational purposes, a total of 4 outdoor conditioning units were placed on the sports ground, thus ensuring the fitness of juvenile prisoners.

It should be noted that outdoor activities, sports activities and gardening are all voluntary activities, and the aim of the penal institute is to attract as many juvenile prisoners as possible to outdoor exercises.

54. *At Tököl Juvenile Prison, several juveniles interviewed by the delegation complained that the portions of food provided by the prison were insufficient and that they often felt hungry in the evening. It would appear that this was partly due to the fact that the last dish of the day was served at 5 p.m. and the next only the following morning.* ***The CPT would like to receive information on the nutritional content of the food provided to inmates at Tököl Juvenile Prison.***

The Tököl Juvenile Prison provides food to prisoners in accordance with effective legislation and HPSH professional guidelines. The prisoners' menu is developed with the approval of professionals and managers (nutritionist, dietitian, cook, financial manager, senior doctor, commander). The penal institute organizes a prisoner forum every six months, where the prisoners have the opportunity to talk about any food related problems and make comments. On June 12 2019, a new menu was issued under the direction of the penal institute's commander, and the

complaints and needs of the prisoners were taken into consideration. It can be stated that feedback is positive both in terms of quality and quantity.

Specialists of the law enforcement organisation have a particular control over the nutrition of prisoners in the penal institutes, including juveniles who are characterised by higher energy requirements due to their age-specific characteristics. During the inspections, the juvenile prisoners in the penal institute reported unanimously that the food served to them was varied, tasty, of appropriate temperature and quantity. Three meals a day can also be complemented with foodstuffs bought in a grocery - vegetables, fruits, sweets - and they can ask their relatives for a foodstuff package that can be compiled from a varied list. There was no complaint about the amount of food prisoners received.

The daily nutrition standard for convicts is set out in the IM Decree. For non-working juvenile prisoners, the daily norm is 13,400-15,000 kJ, and for the working juvenile prisoners it is 14,700-16,300 kJ, provided by the penal institute.

b. regime

57. *However, in addition to one hour of daily outdoor exercise (see paragraph 53), organised sports activities were in principle limited to one hour of sports on weekends; in fact, this was the only organised activity offered to juveniles on weekends.*

The CPT recommends that the Hungarian authorities further develop sports activities and the programme of activities provided on weekends to inmates held at Tököl Juvenile Prison.

As recommended by the CPT, the penal institute organised events, sports activities and other leisure activities on weekends and holidays. The number ofthese programmes expanded as recommended. The programme plan, submitted by the field managers, is approved by the institute's commander, and includes a large number of different activities, both outdoor and indoor. As a result of all this, it is worth mentioning that the theatrical group of the penal institute won at the 3rd Prison Theatre Meeting. The play presents such incidence and events (diversity, togetherness, rejection, otherness, values, tradition, innovation) that interest young people through animal characters.

58. *In the juvenile unit in Kecskemét, the programme of activities appeared to be less developed.*

The CPT notes positively that of the 24 juveniles held in the establishment at the time of the visit, ten attended "catch-up" school courses, four participated in vocational training (flooring) and one was a secondary school student. Eight inmates worked (four to six hours every working day). This was supplemented by some other educational/leisure activities (e.g. information sessions on health-care issues, smoking cessation, quizzes and talent shows).

However, the "catch-up" courses usually took place only twice a week, each session for six hours, vocational training three times a week for five hours and a teacher came once every two to three weeks for consultations with the secondary school student. Moreover, as was the case at Tököl, regular sports sessions (in addition to the daily outdoor exercise) only took place on weekends for one or two hours and were the only organised activity on offer on Saturdays and Sundays.

The lack of a full programme of activities throughout the day was particularly problematic for remand prisoners who were locked up in their cells unless they were participating in an organised activity.

The CPT recommends that the Hungarian authorities take the necessary steps to further develop the programme of activities in the juvenile unit in Kecskemét, with a view to ensuring that juveniles benefit from a full programme of activities, in line with the principles set out in paragraph 55. Particular attention should be paid to the situation of remand prisoners and the activities offered to juveniles on weekends.

The Bács-Kiskun County Penal Institute pays special attention to promoting the mental and physical development of juvenile prisoners, taking into account age-specific characteristics. Leisure, cultural and sports programmes are organised daily by the reintegration officer and are implemented and managed by the ward chief inspector.

The penal institute provides the following recreational, cultural and sporting programmes for minors:

- Library activity - held by the reintegration officer;
- Church activity – held by the representatives of the churches;
- Table tennis sports activity - held by the reintegration officer;
- Music group - held by the reintegration officer;
- Gardening group - held by the reintegration officer;
- Cooking group - held by the ward inspector and the reintegration officer;
- Film screening - held by the reintegration officer and the ward inspector;
- Chess, board games, playing cards - held by the reintegration officer;
- Festive commemorations - held by the reintegration officer;
- Anti-smoking training – held by the psychologist;
- Other psychological activities – held by the psychologist;
- Creative speciality group- held by the reintegration officer and the ward inspector;
- Who Knows What? Talent shows - held by the reintegration officer;
- Self-knowledge training – held by the psychologist;
- Darts – held by the ward inspector;
- Activities with pets, continuously - held by the reintegration officer and the ward chief inspector;
- Gymnastics - held by the reintegration officer and the ward inspector;
- Use of the fitness room – held by the ward chief inspector;
- EFOP (Human Resources Development Operational Programme) Study Hall improvement training – held by the psychologist and teacher of the Study Hall.

The detainees can participate in the programmes listed above, subject to the separation of crime companions, and spend two hours a day outside the cell where they can interact with other detainees, watch television, and play leisure games. Leisure programmes are regularly organised on weekends for juvenile prisoners, as well as participation in the practice of freely chosen religion. Significant religious activities are also organized on weekends and holidays.

For community sports activities, the penal institute also provides prisoners with various sports equipment (table tennis, darts, fitness room). These activities are set out in a separate programme, including weekend days.

4. Health-care services

60. *At Tököl, the health-care team was responsible for the provision of care in the Juvenile Prison and the National Prison for adults.*

The medical team consisted of two part-time general practitioners (GPs) (who, taken together, worked five hours every working day), one full-time dentist and a psychiatrist who attended the establishment once a month for eight hours. It was expected that a full-time GP would be recruited as from January 2019 to replace one half-time GP. The nursing complement comprised 13 nurses (including a dental nurse and three pharmacological nurses) and a nurse was present in the establishment at all times, including nights and weekends.

Arrangements concerning the provision of specialist care, ensured by the prison hospital located within the same penitentiary compound, did not appear to pose a major difficulty. In the case of psychiatric emergencies, inmates could be transferred to the Judicial and Observation Psychiatric Institute (IMEI) in Budapest.

The CPT would like to receive confirmation that an additional full-time general practitioner has now been recruited to reinforce the medical team providing health care at Tököl Juvenile Prison and Tököl National Prison.

Following the CPT's visit, health care at the Tököl Juvenile Prison is provided by doctors employed as contractors or under the title of contributors. Outside of medical consultations, duty care is provided by the Law Enforcement Central Hospital, which is located in the same area as the penal institute, so that medical service for juvenile prisoners is fully provided, as recommended by the CPT.

62. *In both establishments, newly-arrived prisoners were systematically examined by a nurse within a few hours of admission and then by a medical doctor within 72 hours at the latest. The medical screening included a chest X-ray and voluntary testing for HIV and hepatitis C.*

63. *However, the procedure for the recording and the reporting of injuries displayed by inmates on admission seemed to vary from one establishment to the other.*

According to health-care staff at Tököl Juvenile Prison, the inmate would be immediately referred by the nurse to the duty doctor who would prepare a report which would then be submitted to the management of the prison. At Kecskemét Prison, the inmate would be examined in the emergency unit of a civil hospital and a medical report would be produced.

That said, in both establishments visited, the health-care staff were unaware of any further procedure which would follow or which should be followed (albeit it should be noted that, according to the health-care staff, there have recently been no such cases).

The CPT must stress that health-care services can make a significant contribution to the prevention of ill-treatment of persons deprived of their liberty, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities.

The record drawn up by a doctor after a thorough medical examination of a prisoner – whether newly-arrived or following a violent incident in the prison – should contain:

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

Moreover, the results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, upon request, to his/her lawyer.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

Whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by the prisoner (or which, even in the absence of the allegations, are indicative of ill-treatment), the record should be immediately and systematically brought to the attention of the relevant authorities, regardless of the wishes of the prisoner concerned and regardless of the (suspected) severity of any injuries displayed by him or her. The health-care staff should advise prisoners of the existence of the reporting obligation and that the forwarding of the report to the relevant authorities is not a substitute for the lodging of a formal complaint.

The CPT recommends that the Hungarian authorities adopt detailed instructions on the procedure to be followed by health-care staff if injuries are detected upon admission of an inmate in a prison or following a violent incident in the prison, duly taking into account the above-mentioned principles.

A form specified by the ministry responsible for health care is available for the preparation of the medical report, completing the data content of which is mandatory. This is also implemented by health care IT systems, which is in fact in line with the CPT recommendations: point (i) an account of statements made by the prisoner concerned which are relevant to the medical examination (ii) a full account of objective medical findings based on a thorough examination. According to the view of the prison service organization, the correct completion of the document is the responsibility and

duty of the primary care physician, but the examination of the concordance or discrepancy between the injured party's claim and the findings of the physical examination is the competence of a higher level forensic medical expert.

Upon detection of physical ill-treatment, injury, violence or psychological distress implying physical ill-treatment, and also if the detainee claims to have been abused but the examination result is negative, the medical service shall immediately arrange for a medical examination of the prisoner, draw up a medical report, take a photo of the injury, preserve the documents.

The penal institute *ex officio* provides the medical report to the injured person for the official procedure, and to the lawyer who has a regular statement authorising the management of their medical data.

Physical ill-treatment is a criminal offence in official proceedings. In the case of an offence or a suspicion thereof, and in the case of the physical ill-treatment between prisoners, where the injuries that take longer than eight days to heal, the manager of the prison service organization is obliged to report ex officio towards the investigating authority. In the case of an injury healing within eight days, the injured person may initiate a private litigation procedure. Information on the above shall be provided to the prisoner concerned by the acting penal enforcement staff member.

In July 2017, the Department of Health of the Hungarian Prison Service Headquarters (hereinafter HPSH) issued a methodology guide to the preparation of medical reports, which is in line with the recommendations of the CPT. The medical treatment of injuries resulting from accidents and physical ill-treatment are identical. In the case of physical ill-treatment, this is complemented by a medical report and by taking a photo.

On this basis, it can be concluded that the practice followed in the case of injuries observed is fully in line with the CPT recommendations.

64. *Concerning psychological care, at Tököl Juvenile Prison, there were three full-time psychologists who devoted approximately 50 % of their time to providing care to juveniles and the rest to adult inmates. In the juvenile unit in Kecskemét, there were two psychologists who divided their time equally between juvenile and adult inmates.*

In both establishments, psychologists were primarily involved in the assessment of juveniles upon admission to the prison. The delegation was informed that, to this end, they were using a "predictive tool" which was applied nationwide and assessed six areas of risk (suicide risk, substance abuse, mental health, aggression, potential hierarchy and vulnerability to violence). Other professionals (health-care staff, reintegration officers, etc.) also contributed to this initial assessment. ***The CPT would like to receive more information on the predictive tool used by psychologists, in particular whether it has been scientifically recognised and validated and, if so, how.***

As per the Prison Code, the prison service organisation operates a risk analysis and management system. Risk analysis is a process in which the primary task is to identify the risk and to make the relevant risk assessment; i.e.to estimate the likelihood of a future event based on the characteristics

currently known. The purpose of the risk analysis is to identify, as far as possible, dangerous behaviours or detention patterns that represent recidivism, and occupational risks, or to categorise them as risk based on expected occurrence.

According to domestic regulations, in addition to the risk of recidivism, the risk analysis focuses on the actions of the convict that the domestic prison system considers to be risky during the period of detention. These risky behaviours are identified by the IM Decree as follows:
- prisoner escape and its attempt,
- suicidal behaviour,
- self-harm,
- violent action or attempted violent action against any person,
- leadership, organiser, executive role, activity in the criminal and prisoner subculture,
- abuse of psychoactive substances.

Identification and assessment of risks begins at the time of admission, during the admission process, and is based on a statistically based system accessible through a separate internal IT system called the predictive measurement tool (hereinafter PME according to Hungarian abbreviation). PME is a tool for risk analysis and decision support, which is under continuous development due to its rapid response capability. In fact, it is a standard, cognitive questionnaire, which registers and stores information currently available and generated during admission in four areas of law enforcement (registration, reintegration, health care, psychology). Within each topic, indicators recorded on the basis of the prisoner's answers and on the professional impression of the interviewer are included.

The decision support function provided by the system operates in two ways:

1. The questions in the system are asked during the admission of convicts, so the methods used by psychologists are accompanied by a standard cognitive process, which is independent of the methods used.
2. Depending on the individual response of the convicted person, the PME will provide a signal (a prediction signal) within the risk categories (low, medium, high risk), thus, it makes a proposal to the specialised fields and to the Admission and Detention Committee (hereinafter Hungarian abbreviation BFB), which operates in penal institutes. The proposal provided by the system can be altered or ‘diverted’ based on professional impressions.

The system is under continuous development, but its structure is modelled on internationally applied risk analysis systems (e.g. LSI-R). Data is processed at central level by the HPSH's (Hungarian Prison Service Headquarters) competition specialised area, the Central Investigation and Methodology Institute (hereinafter with the Hungarian abbreviation: KKMI).

The questionnaire was compiled with the participation of experts in the fields, while the prediction signal is based on expert scoring and statistical processing of the data.

The PME system can thus be considered as a forward-looking development that can be applied scientifically and can be applied in other EU countries.

65. *Further, psychologists organised group sessions on various issues, such as assertiveness, communication, smoking cessation and substance abuse at Kecskemét; at Tököl, sessions on substance abuse and anger management were provided by an external partner (Etop). However, as far as the delegation could ascertain, there were no interventions on violence reduction.*

Moreover, staff were not qualified to offer individual therapeutic sessions and, if individual interventions took place at all, they were made on an ad hoc basis and crisis driven, rather than part of a structured, longer-term plan with a clear concept.

The CPT recommends that the Hungarian authorities take the necessary steps to ensure that, as needed, juvenile prisoners at Tököl Juvenile Prison and in the juvenile unit in Kecskemét are offered a range of structured and longer-term individual psychotherapeutic interventions. Further, in the provision of group therapeutic interventions, particular attention should be paid to violence reduction, substance abuse and anger management, i.e. issues which are typically of concern among juvenile offenders. *This may require increasing psychological input and ensuring presence of psychologists qualified to provide individual therapeutic sessions.*

Thorough and professional assessment, proper differentiation are essential for effective treatment programmes. One of the main functions of the PME is to assist in the selection of treatment and treatment programmes tailored to individual needs by determining the risk level of detention.

The risk management programmes developed by the KKMI – in the areas of prevention of drug use, promotion of self-assertion, reduction of aggressiveness - have the possibility to treat the convict earlier problems would deepen. In addition to developing programmes to reduce the risk of detention, the KKMI also prepares staff in penal institutes to maintain it, and psychologists may conduct risk-reduction sessions without specific training.

Empasis was put on providing appropriate information and education of vulnerable prisoner populations, such as juveniles, drug users, drug addicts, people of low socio-economic status, and those with a suicidal history, by penal institutes when planning and conducting prisoner programmes.

67. *As regards measures to prevent the transmission of sexually transmitted diseases, the delegation was informed that condoms were not provided to juveniles in either of the establishments visited.* ***The CPT encourages the Hungarian authorities to ensure that condoms are available at Tököl Juvenile Prison and in the juvenile unit in Kecskemét, as well as, where appropriate, in other juvenile prison structures in the country.***

The prison service organization believes that providing access to or ensuring the use of condoms for convicts in penal institutes for juveniles does not serve the prevention of sexually transmitted diseases. Pursuant to the Prison Code, female and male prisoners must be separated, as is the case in all EU countries. The possibility of access to condoms would create the perception in society and convicts that the Hungarian authorities and the prison service organization support the prisoners' homosexuality rather than self-restraint as recommended during imprisonment. We believe that the prevention of sexually transmitted diseases can be effectively achieved through sexual education activities, mediation, and education for family life.

Furthermore, the perceptionof the CPT's proposal, as focusing on the immediate fulfilment of desires, causes a fracture in the juveniles' physical and mental development, which later cannot be processed and is difficult to handle. As a result of responsible awareness raising work in penal institutes, the incidence of sexually transmitted diseases during imprisonment is negligible.

68. *As regards the role of health-care staff in disciplinary proceedings, reference is made to paragraph 77.*

5. Other issues

a. prison staff

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

The CPT welcomes the fact that in both establishments visited, prison officers deployed in the juvenile units were specifically selected on the basis of their skills and competencies. In Tököl Juvenile Prison, officers who volunteered to work with juveniles were assigned duties in the juvenile establishment when the former prison was split into a prison for juveniles and a separate institution for adults (see paragraph 41). According to the management of the juvenile prison, this arrangement had also contributed to the decrease in instances of inter-prisoner violence in recent years (see paragraph 46).

However, according to the information provided to the CPT's delegation, there was no specific training for staff working with juvenile prisoners in either of the establishments visited. ***The CPT recommends that staff working with juveniles benefit from professional training, both initial and ongoing, on specific issues related to the custodial care of juveniles.***

In our view, the information provided to the CPT delegation on this issue is based on misunderstanding or errors.

With respect to both of the penal institutes for juveniles, psychologists at the penal institute are qualified to hold individual therapy sessions. Many of the reintegration officers graduated as teachers, others graduated from the National University of Public Service, where they studied law enforcement pedagogy and law enforcement psychology, and took a state exam in these subjects.

During each year of education in the penal institute, the institute's psychologist lectures on a variety of topics, including the current issue of the supervision of juvenile prisoners.

During daily briefings and during meetings, trainings the current situation of the prisoners is regularly included in the agenda. In penal institutes, local educational plan, including central

education topics, is designed to support the work of the executive staff, responding to current regulations and protocols. The management provides regular briefings; case studies, case analyses, and prosecution investigation records of the prisoner population are documented on an ongoing basis.

Furthermore, it can be stated that both reintegration officers and workers dealing with juveniles are dedicated professionals, whoeducate themselves on relevant issues related to reintegration through the available journals on education, pedagogy, the Prison Review published by the prison service organisation and foreign scientificliterature.

71. *In both establishments visited, custodial officers were carrying batons and CS gas canisters in the detention areas. As noted in the previous report concerning establishments holding adult prisoners, such an approach is not conducive to developing positive relations between staff and inmates. Indeed, this principle applies even more so in respect of juvenile institutions.*

The CPT recommends that custodial staff at Tököl Juvenile Prison and in the juvenile unit in Kecskemét, as well as, where appropriate, in other juvenile prison structures in the country, no longer routinely carry batons in detention areas. *Further,* ***CS gas canisters should not form part of the standard equipment of custodial staff and, given the potentially dangerous effects of this substance, CS gas should not be used in confined spaces.***

The use of coercive means by professional service personnel shall in any event be determined in the service or guard instruction of the place of service. Coercive means may only be issued to a member of staff member trained to use it. The purpose of equipping the staff with coercive means is to prevent and eliminate the occurrence of extraordinary events, which is necessary in many cases in order to protect the life and physical integrity of prisoners. As a professional service member of a prison service organisation, it is not only the right, but also the duty, to wear and, where appropriate, lawfully use the coercive means. The lawfulness of the use of coercive means is always investigated, and after careful consideration of all circumstances, the commander of the penal institute decides whether the use of the coercive instrument complied with legal requirements.

Nevertheless, we take steps to ensure that the use of coercive means in the mother-child department, the "first crime" department and some special departments shall not be applied 'routinely'.

b. discipline and security segregation

72. *The most severe disciplinary sanction that may be imposed on juveniles is ten days of solitary confinement for inmates placed in a medium security regime prison and five days for those placed in a low security regime prison.*

At Tököl Juvenile Prison, disciplinary sanctions were imposed very sparingly and no juvenile had been placed in solitary confinement as a disciplinary measure between January and October 2018.

By contrast, according to the disciplinary register maintained in the juvenile unit in Kecskemét, a disciplinary sanction had been imposed in almost 50 cases during the same period; in some 30

cases, the sanction imposed was a solitary confinement, usually for a period of three, five or even 10 days.

The CPT notes that those juveniles who had been attending school were, as a general rule, allowed to continue while being in disciplinary solitary confinement for the rest of the day. However, those not attending school were isolated from other inmates for 24 hours a day.

The CPT wishes to stress that any form of isolation may have a detrimental effect on the physical and/or mental well-being of prisoners, which applies even more to juveniles. In this regard, the Committee has observed an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of this age group. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) which have been revised by a unanimous resolution of the General Assembly in 2015 and which explicitly stipulate in Rule 45 (2) that solitary confinement shall not be imposed on juveniles. The CPT fully endorses this approach.

The CPT recommends that the Hungarian authorities take the necessary steps, including at legislative level, to ensure that the disciplinary sanction of solitary confinement to the extent that it entails segregation from all other inmates and a lack of daily meaningful human contact is abolished for juvenile prisoners.

According to the position of the prison service organisation, the legal abolition of disciplinary sanction of solitary confinement for juveniles would limit the ability of the penal institute to raise awareness that committing a serious disciplinary offence or another crime is unacceptable by the society, and it has detrimental or irreversible consequences for the community and other individuals.

Nevertheless, it can be stated that no disciplinary separation, or sanction of solitary confinement was imposed or enforced in the Tököl Juvenile Prison in 2018-2019. Security isolation was carried out in 40 cases in 2018 and 2 times in 2019. At the Bács-Kiskun County Penal Institute, 12 solitary confinements were imposed on juvenile prisoners in 2019, with a maximum term of 5 days. Juvenile prisoners who undergo educational and vocational training were obliged to attend classes and reintegration programmes during the time they were in solitary confinement.

Disciplinary punishments of prisoners are imposed in penal institutes on a gradual basis, and in the case of sanction of solitary confinement, the Prison Code provides opportunity for the prisoner to appeal against the decision. Until the decision on the application for review is taken, the sanction of solitary confinement cannot be enforced. The application for review is no longer decided by the prison service organisation but by the law enforcement judge. The execution of a lawfully imposed disciplinary sanction of solitary confinement shall not be commenced and shall be terminated when it has a detrimental effect on the juvenile prisoner.

All these rules guarantee primary and secondary prevention; exclude the possibility of a solitary confinement to be executed solely on the basis of the decision of the penal institute’s disciplinary authority, and shall take into account the minor's personality for enforceability.

74. *At Tököl Juvenile Prison, there were six cells in the segregation unit which were operational at the time of the visit. Material conditions in these cells were on the whole acceptable; the cells were sufficient in size for single occupancy (some 6 m² excluding the toilet area), were adequately equipped (a bed, a table and a stool fixed to the floor and a locker, as well as a toilet and a washbasin) and the artificial lighting was sufficient. However, access to natural light was somewhat limited and there were no call bells.* ***The CPT recommends that these deficiencies be remedied.***

Juveniles undergoing the disciplinary sanction of solitary confinement were granted one hour of daily outdoor exercise (albeit the outdoor exercise yards seen by the delegation at Tököl Juvenile Prison were very austere and had no shelter, no means of rest and no sports equipment; see also paragraph 76).

It is important to note that at the Tököl Juvenile Prison, the disciplinary department was disused after the visit of the Commissioner for Fundamental Rights and did not operate when the CPT visit took place. The CPT acknowledged this fact, however, indicated that its left side was dark and that the living space of the cells did not meet the requirements for individual placement. The disciplinary department may be used again after its renovation or reconstruction.

75. *In addition to the disciplinary sanction of solitary confinement, juveniles may be placed in so-called "security segregation".*

In practice, this measure was imposed on juveniles as an immediate reaction to violent episodes, if juveniles refused to obey an order or if they attacked staff. The measure could be served either in a disciplinary cell or in the juveniles' own cell (which was usually the case). It may initially be imposed for a period of 10 days which may be renewed once. However, it should only last as long as necessary and must be reviewed every three days.

Juveniles subjected to security segregation were allowed to attend school and were granted one hour of daily outdoor exercise. However, unlike in the case of disciplinary punishment, there was no possibility to lodge an appeal against the decision imposing such a measure.

As for the practical implementation of the measure, there appeared to be very little difference between disciplinary solitary confinement and security segregation. When asked, staff admitted that the borderline between the two measures was rather flexible and that, in practice, it was often up to them to choose between the disciplinary punishment and security segregation routes.

The CPT recognises that it may be necessary to segregate juvenile prisoners for security or safety reasons (for instance, to deal with juveniles who pose a threat to others). However, there should be a clear distinction between security segregation and the disciplinary sanction of solitary confinement. Security segregation should not be used to replace or completely circumvent the formal disciplinary procedures. In addition, the placement of a violent and/or agitated juvenile in a calming-down room should be a highly exceptional measure and any such measure should not last for more than a few hours.

The CPT would like to receive the comments of the Hungarian authorities on this issue, in particular as regards the use of security segregation in juvenile prison structures.

The Prison Code clearly distinguishes between security isolation and the sanction of solitary confinement according to the nature, purpose and content of ordering it.

Security isolation is a security measure designed to maintain the order of law enforcement and the security of detention. Security isolation can only take place in cases defined by the Prison Code, if the convicted person seriously violates or jeopardises the order and security of the penal institute, engages in collective retaliation, refuses to execute the instruction or to work, or engages in a behaviour that poses danger to themselves or to others. During security isolation, the convict is under constant supervision, can move around the facility with permission and supervision, shall keep their cell locked, may send and receive letters, parcels, may communicate with their visitor in prison booth or with the help of a security device, and may conduct self-training.

The sanction of solitary confinement may be imposed in accordance with the principle of gradualness in the event of a proven, serious misconduct or criminal offence. When imposing the sanction of solitary confinement, the Prison Code provides the possibility for the prisoner to lodge an appeal against the decision, which will be decided by the law enforcement judge.

76. *Several allegations were received in the juvenile unit in Kecskemét that inmates undergoing disciplinary solitary confinement or the measure of security segregation were handcuffed while taking daily outdoor exercise. In the CPT's opinion, there can be no justification for handcuffing a prisoner exercising alone in a secure yard provided there is proper staff supervision.*

The CPT recommends that the practice of handcuffing juveniles undergoing disciplinary solitary confinement or the measure of security segregation while they are taking daily outdoor exercise be discontinued immediately in the juvenile unit in Kecskemét and, where appropriate, in other juvenile prison structures in the country.

At the Bács-Kiskun County Penal Institute, the hands of the prisoners are not handcuffed during their outdoor exercises. Based on an individual risk assessment, the use of any mobility limiting instrument may be required during going to or returning from outdoor exercises.

77. *Before disciplinary solitary confinement or security segregation started, medical doctors were required to examine the juvenile concerned in order to assess whether they were fit to sustain the measure.*

The Committee wishes to stress that medical practitioners in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo disciplinary confinement (or security segregation) is scarcely likely to promote that relationship. As a matter of principle, the Committee considers that medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement in a prison environment (except where the measure is applied for medical reasons).

On the other hand, health-care staff should be very attentive to the situation of prisoners placed under solitary confinement and should visit such prisoners immediately after placement and thereafter at least once per day, and provide them with prompt medical assistance and treatment as required.

The CPT recommends that the role of health-care staff in relation to disciplinary matters and security segregation be reviewed, in the light of the above remarks. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 21st General Report (see paragraphs 62 and 63 of CPT/Inf (2011) 28).

The prisoner must be examined by a doctor before the execution of the sanction of solitary confinement; security isolation may be carried out on the basis of a professional employee's examination. The purpose of the examination is precisely to serve the interests of the prisoner and to protect their health. The staff of the prison service organisation involved does not exert pressure on the doctors and health care professionals of the prison institute that is contrary to their professional knowledge, profession, their principles, moral and ethical position. The prisoners are under constant control during the isolation as well as when they are being charged with a punishment in solitary confinement, whereas the prisoners are regularly monitored by health care professionals, psychologists, reintegration officers and senior staff members, and they deal with the current problems. The execution of the lawfully imposed disciplinary sanction of solitary confinement shall not be commenced and, once it has begun, shall be terminated if its 'detrimental effects' are to be discovered by an authorised member of staff.

c. contact with the outside world

79. *As regards visits, the CPT considers that the minimum entitlement of two 60-minute visits per month, as applied in both establishments, is insufficient. Moreover, visits to remand and sentenced juveniles at Tököl Juvenile Prison46 and to juveniles on remand in the juvenile unit in Kecskemét took place with partitioning.*

The CPT recommends that the Hungarian authorities take the necessary steps, including at a legislative level, to ensure that juvenile prisoners benefit from a visiting entitlement of more than one hour every week. As a rule, visits should take place under open conditions.

Pursuant to the Prison Code, contact with the minor must be allowed once every two weeks for a minimum of thirty minutes and a maximum of two hours. It can be stated, however, that while the penal institutes are trying for strengthening the contacts of the persons concerned, even the bi-weekly visitor reception opportunity is not fully utilised. The prison service organisation proposes – in the form of amendment of the law – to raise the current minimum to one and a half hours.

Facilities for visitors with physical barriers are designed for security reasons to prevent prohibited objects from entering. Subject to regime rules, visit of family groups may be permitted in penal institutes for juveniles.

In addition, in the case of the co-operation of the prisoner, receiving visitors outside the penal institute may be allowed, as well as short leave, reward leave, and staying out, which are open to juveniles with the aim of successful reintegration.

In the opinion of the prison service organisation, all of these forms serve to strengthen family relationships, taking into account the principles of gradualness and individualisation.

80. *Juveniles were usually allowed to make phone calls for 50 minutes a week at Tököl Juvenile Prison and for 70 minutes a week in the juvenile unit in Kecskemét. Against the payment of a deposit,47 they could receive a mobile phone from which they could make phone calls (albeit several juveniles stated that they could not afford to pay the required deposit).*

At Tököl, there were two phones fixed to the wall of the juvenile unit and four so-called "joker phones" could be requested from staff and used by juveniles; inmates seemed to be aware of these options.
While "joker phones" could also be requested by juveniles from staff at Kecskemét, inmates were not aware of this possibility and several of them claimed that it was difficult for them to make phone calls.

The CPT recommends that steps be taken to ensure that inmates held in the juvenile unit in Kecskemét are duly informed of the various existing possibilities to make phone calls.

Following the CPT's visit, the Bács-Kiskun County Penal Institute took steps to provide juvenile prisoners with adequate information on the notice board in the community area on the various phoning options available.

C. Adult male prisoners, including inmates serving (whole) life sentences or very long terms

1. Preliminary remarks

2. Ill-treatment

83. *Most HSR and other prisoners with whom the delegation spoke at Budapest and Szeged considered that they were treated respectfully by prison staff.*

84. *That said, at Budapest Strict and Medium Security Regime Prison "Right Star" building, the delegation received a few isolated allegations of disproportionate reaction by staff – involving the use of force – to breaches of discipline by certain inmates. For instance, one prisoner met by the delegation had been forcibly removed from an exercise yard by a special intervention squad after he had removed his shirt to sunbathe in the exercise yard and refused to put it back on when staff asked him. Official records confirmed that this incident, during which the prisoner concerned was hand and ankle cuffed, had indeed taken place.*

85. *In spite of the preventive measures that had been taken following the death of an inmate (see paragraph 82), the information gathered by the delegation indicates that there are still grounds for concern as regards the treatment of prisoners held in Block B at Budapest Strict and Medium Security Regime Prison, including in the Block's segregation and disciplinary unit. Indeed, the*

delegation came across a few recent incidents involving the use of force by staff working in that block (e.g. punches, kicks and blows with hard objects), which could be unlawful, unnecessary or excessive.

Further, in one case, a prison officer allegedly set a muzzled dog on an inmate when he was going to the segregation and disciplinary unit's exercise yard. The prisoner claimed that the officer wished to see if he was afraid of the dog.

86. *In the light of the above findings**, the CPT recommends that**:*

- ***a clear message be delivered to all custodial staff working at Budapest Strict and Medium Security Regime Prison that force should only be applied in accordance with the relevant legal requirements and the principles of necessity and proportionality in order to maintain security and order, and never as a form of punishment;***

- ***the attitude and behaviour of custodial staff in direct contact with prisoners at Budapest Strict and Medium Security Regime Prison's Block B, including the segregation and disciplinary unit, be subject to closer and more effective supervision.***

- ***prison staff be reminded that guard dogs should not be used for routine prison duties involving direct contact with inmates***.

The staff of the prison service organisation may apply security measures only in cases specified by law, in accordance with the principles of necessity and proportionality, and shall not be used as a form of punishment. If such a case is discovered, the commander of the penal institute shall initiate disciplinary proceedings against the perpetrator; in the case of suspicion of a criminal offense, commences criminal proceedings ex officio.

In briefings, control questions and case processing are continuous, and there is no serious deficiency when the staff's knowledge is controlled. This was not revealed by the CPT's investigation either.

Not only Unit 'B', but also the entire penal institute staff is monitored continuously. Regular inspections are also carried out by the staff of the prosecutor's office, which is responsible for monitoring legality.

The use of service dogs is constantly monitored by the penal institute and the competent department of HPSH, their application is compliant with the rules, no complaints were lodged to the penal institute.

87. *In addition, it appeared during the 2018 visit that safe and confidential access to both internal and external complaints mechanisms, including the prison management, was an issue at Budapest for HSR prisoners and other inmates serving (whole) life sentences in the "Right Star" building, as well as prisoners held in the Block B's segregation and disciplinary unit. The inmates could not have access to the complaints boxes without staff knowing. Unsurprisingly, some prisoners told the delegation that they refrained from making complaints and using the complaints boxes out of fear of retaliation (loss of privileges or transfer to lower standard prisoner accommodation).* ***The***

CPT recommends that complaints arrangements be reviewed at Budapest Prison's "Right Star" building (including for HSR prisoners) and Block B's segregation and disciplinary unit in order to secure direct and confidential access to the prison management and the relevant complaints bodies, and ensure that complainants remain free from intimidation and reprisals. This would help not only to identify and resolve problems in these detention areas as soon as they arise, but could also assist the management in preventing abuses.

Concerning the Budapest Strict and Medium Regime Prison, there is no retaliation for complaints made by prisoners in the penal institute. The penal institute monitors all prisoners' complaints and its administration process, and records the decisions made in the cases. This is also supported by external inspections in this matter (the Office of the Prosecutor General for legal supervision). The complainants are not intimidated at the penal institute and no revenge is taken for the complaint. It should be emphasised that the staff of the penal institute has no interest in such conduct as expressed by the CPT.

3. Reducibility of sentences of (whole) life imprisonment

88. *At the time of the 2018 visit, there were more than 50 prisoners serving whole life sentences in Hungary (compared to 24 during the previous periodic visit). Most of them, i.e. 40 prisoners, were being accommodated in Budapest and Szeged Strict and Medium Security Regime Prisons.*

At Budapest, there were also 38 other inmates serving life sentences, many of them being accommodated in the "Right Star" building.

89. *The management and staff of both prisons made no secret of the fact that dealing with prisoners serving whole life sentences continued to pose significant challenges (despite legislative changes which led to the establishment of an automatic review after they have served 40 years of imprisonment, as in the case of other prisoners serving life sentences). The delegation was told that the inmates in question often had serious difficulties in coming to terms with their sentence.*

Since the previous periodic visit, three more "whole lifers" had committed suicide at Szeged (one in 2015 and two in 2016). All three prisoners had been serving their prison sentence for some time already and appeared to be settled. Further, a number of "whole lifers" interviewed by the delegation during the 2018 visit clearly had suicidal thoughts. Many of them considered that, despite the introduction of an automatic review mechanism, they would be "institutionalised" after a minimum of 40 years of imprisonment. They referred to their sentence as a "living death sentence" or a "slow death sentence" and gained the impression that they were living in a "big coffin", as one prisoner put it. Their main hope was a radical change in the legislation which would encourage them to work towards rehabilitation and possibly, at a certain stage, when this is not too late, periods of prison leave and conditional release.

Since 2007, the CPT has drawn the attention of the Hungarian authorities to the dehumanising effect of depriving a prisoner of any realistic hope of release and to the need to develop an appropriate review mechanism.55 In this regard, the CPT notes that the Hungarian authorities introduced a mechanism of automatic review of whole life sentences after the European Court of Human Rights delivered its judgment of 20 May 2014 (final on 13 October 2014) in the case of László Magyar, in which the Court indicated that it was not convinced that the whole life sentence

could be regarded as reducible and found as a result that Hungary was in violation of Article 3 of the European Convention on Human Rights. In its judgment of 4 October 2016 (final on 6 March 2017) in the case of T.P. and A.T., the Court found that, in view of the lengthy period the prisoners were required to wait before the commencement of the "mandatory clemency procedure" (i.e. 40 years), coupled with the lack of sufficient procedural safeguards, the prisoners' life sentences could not be regarded as de facto reducible as required under Article 3 of the Convention.56

The CPT recommends that the Hungarian authorities ensure that (whole) life sentences are subject to a meaningful review procedure accompanied by appropriate safeguards and within a reasonable time in the course of their execution. Such reviews should be based on individualised sentence-planning objectives defined at the outset of the sentence, and re-examined regularly thereafter.57 The aim should not only be to provide the inmates concerned with the possibility of having their sentences effectively reduced, but also to have a target to aim for which should motivate positive behaviour in prison.

According to the Prison Code, the purpose of imprisonment is to enforce the legal disadvantage specified in the judgment and, as a result of reintegration activities during enforcement, to facilitate the successful reintegration of the convicted person into society and to become a law-abiding member of the community. With regard to convicted persons who are excluded from parole, the aim is to enforce the legal disadvantage set out in the judgment in order to protect society. The prison service organisation enforces final court judgments by enforcing the law.

In the view of the prison service organisation, the institution of compulsory act of clemency for persons sentenced to life imprisonment ensures that convicts remain motivated; therefore in connection to this reintegration activities are provided also for them.

4. Budapest and Szeged special regime units for prisoners serving lengthy sentences (HSR Units)

90. *Located in the "Right Star" prison building, which also entered into operation in 2015, the HSR Unit in Budapest had an official capacity of eight places and was holding seven inmates at the time of the visit, including six prisoners serving whole life sentences. Some of them were previously accommodated for a few years at Szeged HSR Unit. The longest stay was about three and a half years.*

The HSR Unit in Szeged had previously been visited by the CPT on several occasions, before it entered in operation in 2005 and after it opened, in 2007 and in 2013.58 With an official capacity of 12 places, the unit was accommodating 11 prisoners at the time of the visit, nine of whom were serving whole life sentences. The longest stay was close to ten years.

a. admission and review procedures

91. *During the 2018 visit, placement in an HSR Unit was decided by an admissions and review committee on criteria similar to the ones which were being used during the previous periodic visit.59 The CPT notes with satisfaction that the review of placement was carried out every three months (instead of six months previously), taking into account the Committee's previous comments on this matter.*

92. *At Szeged, the CPT notes that the special security regime unit (BSR Unit), which was visited in 2013, was no longer in operation. The delegation was informed that prisoners who were considered to be difficult or dangerous (and could have been placed in the BSR Unit if it still existed) were now managed on the basis of an individual handling order and placed in ordinary prisoner accommodation areas of the "Star" prison building.*

However, at Budapest, one particular prisoner was placed in the HSR Unit in relation to his behaviour (which was deemed by staff to be particularly challenging and required constant supervision). In the CPT's view, the HSR Unit should not be used to accommodate prisoners considered to be challenging or dangerous in prison. If these inmates are placed in the HSR Unit, there may be a tendency to increase the level of security for all to the degree required by this category of prisoner. ***The CPT trusts that this will be carefully considered in the context of future allocation of prisoners to this unit.***

In the prison service organisation's view, every effort should be made to prevent such a case as described by the CPT from happening in the future. Only those prisoners who meet the conditions set out in the Prison Code may be placed in the long-term specialised department (hereinafter Hungarian abbreviation HSR). Only convicts sentenced to life imprisonment or to at least fifteen years imprisonment whose specific treatment, disposition of their co-operation, their attitude to the order and safety of the institute, their individual security risk analysis justify may be placed in the HSR, for the purpose of gaining preparation for or reintegration into the community. The BFB decides on placement in the department. The prisoner shall be informed of the decision of placement orally and in writing, in the form of a resolution. In any event, the BFB's decision must be preceded by prior consultation.

b. staff-inmate relations

93. *At both HSR Units visited, prison staff, including reintegration officers and custodial staff, with whom the delegation spoke had an excellent understanding of each individual prisoner's needs and vulnerabilities.*

There was nevertheless scope for more staff engagement with them. For instance, the existing physical security arrangements obliging psychologists and other professionals to interview prisoners through cell bars and plexiglas partition undermined their ability to do their work effectively.60 The CPT is of the view that the systematic imposition of such arrangements for each and every professional interview in the cell is unnecessary, counterproductive and infringes upon the dignity of the prisoners concerned. The information gathered during the 2018 visit also suggests that measures aimed at attracting and retaining experienced staff and prison officers with strong interpersonal communication skills were lacking. Moreover, given that these inmates require special attention in relation to the type or the length of their sentence, a shortage of staff resulting in significant overtime was consistently highlighted as a major challenge to the proper management of the HSR prisoners and other prisoners serving (whole) life sentences or very long terms.

94. *In the light of the above,* ***the CPT recommends that:***

- ***action be taken to ensure that professional interviews are not routinely carried out through the cell bars / plexiglas walls in the HSR Units in order to enable the professionals concerned to have meaningful, private, consultations with the prisoners concerned. In case of need, interview rooms could be designed in such a way as to limit security risks;***

- ***further efforts be made to develop a dynamic approach to security and order in relation to HSR and other prisoners serving (whole) life sentences or very long terms. Such an approach will depend to a great extent on the allocation of sufficient resources in staff possessing and making use of interpersonal communication skills, the development of specific training and the adoption of appropriate retention measures that generate greater staff stability.***

Security rules for prisoners placed in the HSR unit are set not only to protect the lives and physical integrity of the prisoners but also of the staff. Plexiglas dividers and safety grids are intended to protect the safety of personnel, but staff members serving on HSR are provided with the necessary conditions for a confidential meeting, not through cell bars and plexiglas.

The behaviour and conduct of prisoners in HSR is constantly monitored, given their long sentences and the sometimes unbalanced state of mind as a result of their circumstances. If their behaviour and mental state is stabilised in the long term, they can be relocated from the special department to milder circumstances. The security and regime rules are lighter when placed according to their grade.

Following the CPT's visit, a professional protocol was drawn up with the involvement of the penal institutes to carry out the tasks related to the prisoners at the HSR, which was compiled with consideration of the CPT's recommendations.

In addition, it was decided to set up a detention department for high security risk prisoners in newly built penal institutes.

Based on all these, it can be concluded that Hungarian practice is in line with the CPT recommendation.

c. material conditions

95. *The material conditions seen in the cells of both HSR Units were, in general, satisfactory. At Budapest, the layout and equipment of the eight single cells were based on the same model as in the cells in the Szeged HSR Unit. They were also of a similar size (leaving prisoners some 14 m² of living space without counting the toilet area and the barred area at the entrance).*

96. *However, the in-cell toilet was still not partitioned at Szeged, including when HSR prisoners were sharing a cell.* ***The CPT recommends that additional measures be taken at Szeged to provide adequate privacy when HSR prisoners are using a toilet in double-occupancy cells.***

Further, indigent prisoners claimed that they had difficulties to obtain toilet paper and other basic hygiene items. In their letter of 12 March 2019, the Hungarian authorities indicated that a

sanitary kit was regularly provided to inmates and that the delivery of such kits was recorded with the prisoners' signatures. ***The CPT trusts that all the basic hygiene necessities (including toilet paper) will always be made available to HSR prisoners, irrespective of their financial means.***

The Szeged Strict and Medium Regime Prison, in accordance with the CPT's recommendation, have changed the purpose of the cell in order to ensure privacy. Accordingly one person is placed in the cell.

The penal institute continues to provide basic cleansing equipment to convicts without deposit money, salary or regular money, of which the penal institute keeps records.

97. *The delegation observed that the cell windows of the Budapest HSR Unit had been fitted with opaque shields limiting access to natural light and leaving little possibility for prisoners to see outside the building. This created a degree of sensory deprivation and generated an oppressive effect. Given the pre-existing physical security of the windows (bars and mesh), it is difficult for the Committee to discern any appreciable security gain from fitting such screens.* ***The CPT recommends that the window shields be removed at Budapest HSR Unit and in any other prisoner accommodation areas in Budapest Strict and Medium Security Regime Prison, as well as in any other prison establishment in the country.***

Windows in cells, living facilities and other places used by prisoners where justified by security reasons, may be equipped with view barriers. The window shields are designed and made of a material that provides adequate ventilation and natural illumination of the cell. There is a security risk if some prisoners are able to observe activities in the yards, bastion walls, and other areas. They can calculate the movement, habits of the surveillance, the routes of the incoming and outgoing vehicles and their time. They can observe the order of patrols, the number and composition of those involved in patrol activities. Aware of the above, prisoners can trigger an extraordinary event.

In the view of the prison service organisation, the installation of such shield was carried out by the penal institute on the basis of a security risk assessment taking into account extraordinary events of the previous period.

98. *The barred areas of the HSR cells in Budapest and Szeged Prisons were fitted with plexiglas walls in order to prevent inmates from hanging themselves and in addition, at Budapest in particular, were equipped with videosurveillance cameras. This gave the impression to some inmates who did not consider themselves at particular risks of suicide of "living in a fish bowl" and being constantly "spied on", as they put it.*

The CPT appreciates that videosurveillance cameras in cells can be a useful safeguard when a person is considered to be at risk of self-harm or suicide. However, videosurveillance is also an intrusion upon the privacy of prisoners and the decision to impose videosurveillance on a particular prisoner should always be based on an individual risk assessment and should be reviewed on a regular basis. Equally, videosurveillance does not produce great savings in staff time, given that monitoring the screens is a demanding and tiring task which can only properly be

carried out over short periods with frequent breaks. Accordingly, the Committee is opposed to the routine installation/operation of videosurveillance cameras in cells and considers that the resources can more usefully be deployed in having staff further interact with prisoners.

The Committee recommends that the Hungarian authorities reconsider the routine installation/operation of the in-cell videosurveillance cameras in the ordinary cells designed to hold HSR prisoners, in the light of these remarks. Alternatives to barred areas (with plexiglas partition) should also be sought in HSR Units, at least in a number of cells.

In order to secure order in prisons, and to prevent crimes, violations and disciplinary offences or other violations, electronic monitoring devices may be installed in the security cells and departments, the security isolator, at HSR, the disciplinary isolation cell and the penitentiary cell for solitary confinement as well as in vehicles used to transport prisoners. In the position of the prison service organisation, continuous surveillance by means of a camera in the cells of the prisoners held in the HSR ward may be justified in order to maintain the safety of penal institutes. The safety grids and plexiglas serve the safety of the staff. Their application is not routine.

We note that the use of electronic surveillance tools is increasing in almost all areas of civilian life and must be tolerated by law-abiding citizens, including children, young people, elderly people, and women, precisely to prevent, interrupt, and detect crimes. In this approach, with reference to the CPT's opinion, electronic surveillance tools also protect prisoners against unlawful treatment and unlawful violence by staff members or other prisoners, as well as physical ill-treatment applied among prisoners. In addition, electronic surveillance tools can prevent self-harm and attempted suicide.

d. outdoor exercise

99. *The exercise yards designed for HSR prisoners seen by the delegation in both prisons were manifestly deficient. Unsurprisingly, few inmates wished to use them on a frequent basis.*

At Budapest, the yard was narrow, of an oppressive design and did not offer any sense of outside space (it was sometimes referred to as "the corridor", the "cage" or the "internal yard" by inmates). The prison management was aware of the problem and had realistic plans to significantly enlarge the yard in question.

At Szeged, the rooftop exercise area remained unchanged since the previous visit and did not provide enough space to exercise properly. As a direct result of these deficiencies, a number of HSR prisoners had not taken exercise in this yard for many months and, in one case, for years. After the 2013 visit, arrangements had been made to provide more frequent access to an outdoor sports area at ground level twice a week (instead of once a week). Nevertheless, at the time of the 2018 visit, due to a shortage of staff, access to this area could again only be organised once per week.

The CPT recommends that the Hungarian authorities support:

- ***the Budapest prison management in its plans to enlarge the HSR outdoor exercise yard;***

- ***the Szeged prison management in making appropriate arrangements to provide HSR prisoners with more frequent access to the larger yard at ground level.***

According to the information of the Budapest Strict and Medium Regime Prison, the exercise yard of the "Right Star" is architecturally given. Its size is sufficient for general, single-person outdoor exercises and sports activities. HPSH agrees with the plans of the penal institute to expand the space for multi-person outdoor exercises.

The rooftop exercise area in the Szeged Strict and Medium Regime Prison has a space protecting against rain. For convicts placed here, the management of the institute also provides access to sports equipment on the large exercise yard on a weekly basis. Every opportunity is given for more frequent use - after they have been organised in advance.

We note that the CPT's recommendation is taken into account when designing new penal institutes.

100. *In both HSR Units visited, genuine efforts were being made to draw up tailor-made activity programmes. HSR prisoners, often in pairs, had out-of-cell activities during daily periods ranging from two to six hours. This included access to a kitchen, a computer, video games, an indoor sports room and table tennis. In each HSR Unit visited, one prisoner was in charge of taking care of the unit's aquariums. At Szeged, the delegation could see for itself that the so-called pet therapy, consisting of asking certain prisoners to have a guinea pig in their cell, continued to be successful. Most HSR prisoners also had access to paid work. It generally consisted of assembling match boxes, making paper folders or cleaning, although it was described by prisoners as "occupational therapy" rather than work. Some inmates also participated in educational programmes.*

However, restrictions imposed at national level, as part of a centralisation process in 2017 and which included a ban on parcels and severe restrictions on products that can be bought in prison shops, were having negative repercussions on the quality of life in the HSR Units visited and on the management of the prisoners concerned. By way of illustration, regular access to cooking facilities was a good example of a humanising activity offered to inmates. At the same time, stringent restrictions on the availability of ingredients for cooking had undermined efforts made at local level to provide this meaningful activity to those prisoners.

The CPT recommends that the application to HSR prisoners of the restrictions imposed on the general prison population be reviewed, with the aim of restoring the more humanising aspects of their regime. The Budapest and Szeged prison management and staff should be given more discretion in authorising or restricting HSR prisoners' access to items and products, on the basis of an individual needs and risks assessment. They should also be strongly supported in their action to enable the prisoners concerned to spend as many hours as possible each day outside their cells, together with other HSR inmates of their choice as appropriate, and to participate in regular, purposeful and varied activities tailored to their individual needs (including work with a vocational value, education, association, sport, etc.), with the objective of (re)integrating them into the mainstream prison population. Consideration should also be given to developing a "pet therapy" programme in Budapest and other HSR Units in the country following the example of what has been done at Szeged HSR Unit.

In order to set up the operation of HSR, HPSH has issued a professional protocol, which has expanded the range of products available for use compared to the practice in 2018. According to the protocol, prisoners in the HSR shall have a cooking group on demand. The penal institute procures the basic materials necessary for the operation of the group, which covers a broader range of products than can be purchased by prisoners in the normal department. The cooking group is organised by the department's reintegration officer. The wider product range is tailored to HSR's specific purpose as a benefit. This department provides long-term convicts with special security features, along with some additional opportunities for co-operating convicts, as well as preparation for the deployment of the prisoners in the reintegration department operating according to general rules.

The managers of penal institutes operating HPSH and the HSR support actions to allow the prisoners concerned to spend as many hours as possible outside their cells, with other prisoners, and to engage in regular, meaningful and varied activities tailored to their needs (education, vocational training, self-education, sports.). The purpose of the HSR is precisely to prepare them for serving their sentence in the normal departments corresponding to their grade.

5. Conditions of detention of prisoners serving (whole) life sentences or very long terms in ordinary prisoner accommodation areas at Budapest Prison's "Right Star" building

101. *As concerns material conditions, prisoners serving (whole) life sentences or very long terms in the "Right Star" building were accommodated in single or double cells. The cells were of a suitable size for single occupancy (namely they provided slightly more than 7 m² of living space, excluding the floor space taken up by the toilet). However, cells of this size would be too small for double occupancy.*

Apart from the opaque screens fitted to cell windows (as in the HSR Unit), the cells were well equipped and furnished, in an excellent state of repair and clean.

The CPT recommends that the Hungarian authorities ensure that the cells providing 7 m² of living space are only ever used for single occupancy or, as appropriate, are enlarged to allow double occupancy. In addition, reference is made to the recommendation made in paragraph 97 as regards opaque screens fitted to cell windows.

Penal institutes in the HSR provide living space specified in the Prison Code for both single and multi-person placement.

In the view of the prison service organisation, the installation of the window shield was carried out by the penal institute on the basis of a security risk assessment taking into account extraordinary events of the previous period.

102. *Prisoners serving (whole) life sentences or very long terms used to have access to a large and well equipped outdoor exercise yard adjacent to the "Right Star" building (also referred to as the "external yard"). This changed following an incident involving one particular inmate that occurred a few months before the 2018 visit; all prisoners accommodated in the "Right Star" building only had access to the narrow and unattractive yard designed to be used by HSR prisoners*

(see paragraph 99). The delegation was told that prisoners accommodated in this building were previously given access to the "external yard" as a privilege by the management. However, many inmates with whom the delegation spoke perceived the withdrawal of this "privilege" as collective punishment. The delegation was pleased to learn that access to the "external yard" would be granted again shortly after the 2018 visit. ***The CPT would like to receive confirmation that this has indeed been the case.***

The exercise yard of the "Right Star" is architecturally given. Its size is sufficient for general, single-person outdoor exercises and sports activities. The penal institute holds the view that its expansion is justified so that by easing the supervisory work, several prisoners can use the yard at the same time. During construction, consideration will be given to separate the larger exercise yard, which will facilitate the separation of prisoners when necessary. The larger exercise yard available to prisoners in the "Left Star" is not a 'privilege' for the prisoners placed in the "Right Star", but an integral part of the dynamic guard system, so it is used to the extent necessary.

103. *Programmes of activities designed for prisoners held in the "Right Star" building involved paid work, educational activities (including English courses), sports (including access to an indoor sports facility) or leisure activities. Nevertheless, some inmates stated that they had limited human contacts, which made them fear that they would eventually lose their verbal skills.* ***The CPT recommends that further measures be taken to develop suitable programmes of activities, in consultation with the inmates concerned, to enable them to spend as many hours as possible each day outside their cells and to participate in purposeful activities, geared towards increased human contacts.***

Leisure programmes for those placed in the HSR are compiled variably by the penal institute. The staff consults with the prisoners on a regular basis and the penal institute extends the leisure programmes as needed, taking into account the suggestions of the prisoners.

6. Health care

104. *The delegation's findings during the 2018 visit suggest that the health-care facilities in Budapest and Szeged Strict and Medium Security Regime Prisons, as well as in Unit 1 of the Budapest Remand Prison, were equipped adequately63 and included a well-stocked dispensary, which had an appropriate range of drugs therein (all of which were in date).*

That said, the manner in which prisoners with physical disabilities were cared for in the infirmaries visited was not always adequate. In particular, the delegation saw an inmate who was dependent on a wheelchair as his right leg had been amputated and was accommodated on health grounds in the infirmary of Budapest Remand Prison's Unit 1. While he could transfer from his wheelchair to the toilet, he was unable to transfer from his toilet to the shower. Regrettably, he did not benefit from any assistance by staff. Further, he had not been afforded any time in the open air for several weeks. At the end of the visit to Budapest Remand Prison, the delegation received assurances from the prison management that immediate steps would be taken to provide him with the opportunity of a regular shower with the assistance of staff and to make arrangements for him to benefit from regular time outdoors. In this context, ***the CPT invites the Hungarian authorities to provide staff with appropriate training to ensure that the health and social care needs of prisoners with physical disabilities are met.***

In 2018, at the recommendation of the Commissioner for Fundamental Rights, all prison staff in each penal institute received training on the UN Convention against Torture, the relevant provisions of the Protocol and the CRPD (Convention on the Rights of Persons with Disabilities) and the related practical knowledge.

The prison service organisation provides placement for prisoners in need of long-term care at the chronic and rehabilitation care unitof the prison service organisation. Prisoners who are able to take care of themselves or those who have limited ability to do so but not in need of health care staff are mainly placed in institutions where there is a disabled-accessible environment however, depending on the degree and nature of the disability, other protective environment (e.g., a infirmary, a psycho-social department) also comes to mind.

The specific case described by the CPT is about assistance not requiring qualified health care staff that any member of staff could have done. The prison service organisation agrees with the recommendation that staff to be more attentive and empathetic towards people with disabilities.

105. *As regards health-care staff resources, they do not call for particular comments, except for the nursing staffing levels and the presence of nurses in Budapest Strict and Medium Security Regime Prison. The presence of one nurse in each of Blocks A and B on a 24/7 basis, apart from the head nurse who worked office hours during weekdays, was clearly insufficient.64* ***The CPT recommends that the nursing staffing levels and presence be reviewed at Budapest Strict and Medium Security Regime Prison, in the light of these remarks.***

In the penal institute, the health care service is fully staffed and the recommendation can be met by a contract concluded with a contractor.

106. *The CPT is pleased to note that the provision of healthcare to HSR prisoners and other prisoners serving (whole) life sentences or very long terms at Budapest Prison's "Right Star" building was generally satisfactory. The inmates concerned had access to a general practitioner, a psychiatrist and other specialists when required and the relevant medical records examined during the visit were well-kept and comprehensive. It also transpires from the delegation's findings that prison health-care professionals monitored and promptly reacted to any health problems encountered by HSR prisoners and other inmates serving (whole) life sentences or very long terms in the "Right Star" building.*

At Budapest, mention should be made of the case of an HSR inmate who had a heart attack in October 2018, had been immediately admitted to a local hospital and discharged a couple of days later after having had a coronary artery stent inserted. Not only was the prisoner concerned extremely satisfied with the intervention of the prison health-care and hospital staff, but he also praised the caring attitude and the efficiency of other prison staff, in particular the head of unit who was on duty when the incident occurred.

At Szeged, the delegation met a terminally ill "whole lifer" who refused treatment and was transferred back from Tököl Central Prison Hospital upon his request. He was being accommodated in the HSR Unit in accordance with his wishes and his condition was closely

monitored by Szeged Prison's health-care professionals and other staff. In this connection, ***the CPT encourages the Hungarian authorities to ensure that prisoners serving (whole) life sentences or very long terms who are the subject of a short-term fatal prognosis are provided with dignified end-of-life care either within or outside the prison system. In this connection, the Committee would like to receive detailed information about procedures for release on medical grounds in respect of prisoners serving (whole) life sentences.***

Pursuant to the Prison Code, the penal institute may ex officio initiate an act of clemency procedure for the convict, furthermore, the prisoner, their relative, legal representative, or lawyer may also do so. The holder of the power of clemency shall decide on the application in all circumstances. In the event of an application or referral for the remission or reduction of a sentence or measure, the Minister for Justice may order that the execution of the sentence or reformatory education be postponed or suspended until a decision is made by the President.

During the application process for an act of clemency or in the event of refusal, the prison service organisation shall ensure the humane and dignified care of the incurable prisoner in the hospital or social institutions (Szeged Strict and Medium Regime Prison, facility III).

At the moment, the treatment and care of such patients is provided by the Central Hospital of Law Enforcement, and it will be provided by the Law Enforcement Health Care Centre, which is scheduled to be established in 2020.

107. *In contrast, it appeared that the involvement of health-care professionals in the care of prisoners placed on segregation or undergoing a disciplinary solitary confinement measure in Budapest Strict and Medium Security Regime Prison's Block B left much to be desired. Conversations with the prisoners concerned suggested that there was little meaningful engagement on the part of health-care staff; the visiting nurse only spoke to them, if at all, through the hatch in the cell door.*

By way of illustration, the delegation interviewed a prisoner who was serving 20 days in solitary confinement for disciplinary reasons and had been assessed as there being no contraindication to solitary confinement by healthcare staff a few days before the visit. However, during the interview with the delegation, the inmate appeared to be particularly distressed and presented with pressure of speech and incoherence of thought. Upon the delegation's request, the prison governor arranged his transfer to the IMEI for assessment.

In one other case, the delegation met an inmate who was placed on segregation on security grounds (for refusing to attend work).[65] *He told the delegation that he had a recurring dislocation of the left knee which caused him great problems in walking. A few months earlier, he was seen by the rheumatologist who considered that he had recurrent dislocation on the left knee and associated chronic instability of the knee joint. When the delegation saw him, he was unable to bend his knee, this being in a fixed extended position. He was unable to weight bear and, on examination, the knee was red and hot. Given that his mattress had been taken away during the day, he had to prop himself against the wall of his cell in order to be able to rest. After the delegation's concerns about this inmate's physical health were raised with the prison governor, the inmate was immediately transferred to the infirmary.*

According to the HPSH regulation nr. 16/2017. on the healthcare service of the prisoners and detainees: "*the health condition of a detained person in a disciplinary cell, or in security detention or in solitary confinement, shall be monitored by the prison nurse daily, and by the prison doctor and psychologist independently (separately from each other) at least once a week, and their observations should be documented*".

The healthcare service of the prisoner in isolation or in solitary confinement – as stated in the report – is carried out by the nurses daily and by the doctors weekly with documentation. Existing methods for detecting physical or mental health problems that may arise during confinement or isolation – which take into account the previous recommendation according to which the nurse gets into personal contact with the detainee entering the cell – are adequate. According to the rules of the healthcare profession, a nurse entering a cell is placed in a so-called "patient examination situation" with the prisoner. During a patient examination situation, the health care professional assesses the patient's current condition in accordance with the rules of the health care profession, and is oriented with guided questions, carries out physical examination according to his/her competence if needed, and action is taken based on the observations. It is important to note that detainees who are in isolation or in solitary confinement, medical treatment is available on request for the duration of the measure.

To sum up the above mentioned, in relation to the problem raised by the CPT, no further action is needed on the part of the penitentiary system beyond carrying out the patient examination situation. Proactivity is ensured by the nurse entering the cell and developing a patient examination situation in accordance with the rules of the health care profession.

108. *In their letter of 12 March 2019, the Hungarian authorities explained that health-care professionals carrying out daily visits to the segregation and disciplinary unit only entered the cells when the prisoners concerned had complaints of a medical nature. The Committee considers it positive that health-care staff visited the unit on a daily basis. However, for this important safeguard to be effective, health-care staff should be very attentive to the physical and mental health of the prisoners placed on segregation or undergoing solitary confinement, including the inmates placed on segregation for security purposes or in so-called designated normal cells. This requires them to engage regularly with the prisoners concerned, in private and under appropriate conditions, and to provide them with prompt medical assistance and treatment whenever necessary. Healthcare staff should also immediately report to the prison governor whenever a prisoner's health is being put at risk by being held on segregation or in disciplinary solitary confinement.*

The CPT recommends that healthcare staff be more proactive during their daily checks of the state of health of prisoners placed on segregation or undergoing a disciplinary confinement measure in Budapest Prison's Block B. In particular, they should enter the cells and engage with the prisoners concerned, in the light of the above remarks.

The health condition of a prisoner in isolation, security isolation or solitary detention shall be reviewed daily by the nurse, and at least once a week by the doctor of the penal institute and the psychologist individually (independently of each other) and the examination shall be documented.

The prison service organisation agrees with the recommendation that health and psychological control can be correctly achieved by entering a cell, by a closer contact than described. The practice of the penal institutes is in compliance with the CPT recommendations.

109. *Medical screening for injuries upon admission or after a violent episode in prison displayed some shortcomings. In particular, whereas all prisoners were seen by healthcare staff shortly after admission at Budapest, they were not systematically examined by a healthcare professional after force had been used by prison staff or following an episode of inter-prisoner violence known to staff. At Szeged, newly admitted prisoners who had previously been in the prison were not necessarily examined by healthcare staff upon admission.*

The medical records examined by the delegation contained a detailed description of any lesions observed and related statements made by the inmates upon their examination. One of the challenges faced by prison doctors was their duty to conclude whether the injuries observed were either light or severe66 as these injuries may be classified differently when prisoners are seen very soon after any alleged assault/altercation or later. It may also have some repercussions on the reporting of injuries as there was apparently an obligation placed on doctors to report severe injuries only.67 In the CPT's view, prison doctors should limit themselves to drawing a conclusion as to the consistency of the injuries with the account given by the prisoners.

The recommendations made in paragraph 63 equally apply to the prisons visited in Budapest and Szeged. *Further,* ***the Committee considers that the establishment of a specific register of injuries observed on admission or during detention would be highly beneficial to health-care services in these prisons, as well as in any other prisons in Hungary.***

Injuries detected upon admission or during detention shall be treated in accordance with the rules of professional health care, including drawing up a medical report and photography in the event of physical ill-treatment or suspicion thereof. Required information on the medical report form is the expected duration of treatment, which may be within or beyond 8 days. The correct completion of the document is the responsibility and duty of the primary care physician, but the examination of the concordance or discrepancy between the injured party's claim and the findings of the physical examination is the competence of a higher level forensic medical expert. (For further details see paragraph 63).

Injuries and physical ill-treatment are usually detected primarily by the personnel performing supervision, control and guarding at the prisoner's site of placement or their actual location.

The individual records of injuries are contained in the medical records of the prisoners and data can be gathered from the IT system if necessary.

110. *As regards respect for medical confidentiality, the CPT made specific recommendations in its previous visit reports aimed at ensuring that medical examinations are not carried out within the earshot of staff with no health-care duties. In response to the report on the 2013 periodic visit, the Hungarian authorities informed the Committee that they issued new instructions requiring staff with security duties to be present in the examination room only when it is truly justified. During the 2018 visit, it appeared that prison health-care staff entered the cells properly to examine the*

HSR prisoners, with custodial staff standing outside the main door. However, the medical examinations of HSR prisoners and other inmates serving very long terms were often carried out in the presence of custodial staff when such examinations took place in the examination room and/or when the prisoners concerned were asked to undress. The CPT must stress once again that respect for confidentiality is essential to the creation of the atmosphere of trust which is a necessary part of the relationship between health-care professionals and their patients; it should be the healthcare professional's duty to preserve that relationship and to decide on the manner in which the rules of confidentiality are observed in a given case.

The Committee urges the Hungarian authorities to ensure that, in all prison establishments, medical examinations of prisoners, including inmates serving (whole) life sentences or very long terms and prisoners placed on segregation or undergoing disciplinary confinement, are always conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff having no healthcare duties (e.g. prison staff with security duties or police escorting officers). If necessary, the relevant legal provisions or regulations should be amended.

Apart from the medical practitioner and other health care providers, a member of the prison service organisation shall only be present during health care, medical examinations if it is strictly necessary for the safety of the individual providing the treatment or to prevent escape.

In order to ensure that the 'intimacy' of the doctor-patient relationship is not impaired despite the presence of the supervisor, supervisors in penal institutes are located within sight but out of hearing, if their presence is necessary for safety reasons. Unless their presence is justified by security reasons, the 'intimacy' of the examination is not impaired. The safety of health care personnel and the risk of escape require increased security measures during medical examinations at a 'civilian' health care facility.

It is important to note that all staff members are bound by the obligation of professional and medical confidentiality should they have access to personal and medical data in the course of their activities.

111. *As regards psychological support, a psychologist had weekly consultations with HSR prisoners at Budapest and Szeged and other inmates accommodated at Budapest Prison's "Right Star" building. Reference is made to paragraphs 93 and 113 as regards the conditions under which such consultations took place, which raised questions as to their ability to provide adequate support and detect potential suicidal risks.*

It is also positive that a psychologist regularly visited Block B's segregation and disciplinary unit at Budapest. However, as in the case of healthcare staff, there was no proper engagement with the inmates. ***The recommendation made in paragraph 107 concerning the need for a proactive approach also applies to psychologists.***

For the isolated detainees and those in solitary confinement, psychological care is available in the same way.

In all cases before using the method of a single-occupancy accommodation (disciplinary, security, solitary confinement) a medical and psychological check-up are always performed in clinical conditions, in order to assess the psychological tolerance and suicide risk of the detainee.

As stated in the report, the psychologist visits the disciplinary department at least once a week. In agreement with the CPT's standpoints – if there is no security problems – the psychologist supervises the mental health of detainees through direct communication inside the cell, follows their complaints and needs, and offers them further professional consultation. Upon request of further professional consultation, or at the request of the psychologist, examination or psychological counseling shall be conducted – in clinical conditions – without the use of any physical restraining device.

Our medical professionals have traditionally been extremely effective in preventing suicide.

The report does not elaborate on the "proper treatment" of detainees. The choice of performing psychological treatment is a professional decision that depends on the detainees' (patients') assessed motivation and their current professional goal, that falls within the professional competence and responsibility of the psychologist.

7. Other issues

a. means of restraint

112. *The CPT recognises that efforts have been made over the years to move away from a security approach which relied heavily on the application of means of restraint (handcuffs, anklecuffs, bodybelts, etc.). The examination of individual handling orders during the 2018 visit demonstrated that, when it was considered necessary to apply means of restraint, it was based on a thorough individual risk assessment and reviewed at frequent intervals. In addition, in most cases, the application of such means did not appear to be excessive.*

113. *However, the delegation heard a few accounts of prisoners on segregation or undergoing disciplinary confinement having been handcuffed during outdoor exercise at Budapest. In addition, some HSR prisoners and other inmates serving (whole) life sentences claimed that they were kept in handcuffs during medical examinations and when dental care was provided. Further, some HSR prisoners indicated that they preferred not to have consultations with the psychologist in an office because they would remain in handcuffs. In the CPT's view, such practices infringe upon the dignity of the prisoners concerned and widen the breach in the therapeutic relationship between the health-care professionals/psychologists and the prisoners concerned and may be detrimental to the establishment of objective medical findings or the provision of appropriate psychological support.* ***The CPT urges the Hungarian authorities to stamp out these practices immediately.***

Handcuffs as mobility limiting instrument are not on prisoners during outdoor and sports activities, or in dental, medical examinations, psychological or other hearings. Handcuffs as mobility limiting instruments are used in such situations solely on the basis of individual instruction on convicts whose attacks should be constantly feared.

114. *The delegation also observed that custodial staff assigned to the HSR Units visited, the "Right Star" building and the Block B's segregation and disciplinary unit at Budapest Prison continued to carry batons and CS gas canisters as a matter of routine.* ***The recommendations made in paragraph 71 equally apply to HSR and other adult prisoners. Reference is also made to the recommendations in paragraph 94 as regards the need to rely further on dynamic security.***

The use of coercive instrument by professional service personnel shall in any event be determined in the service or guard instruction relative to the place of the service. The purpose of equipping the staff with coercive instruments is to prevent and eliminate the occurrence of extraordinary events, which is necessary in many cases in order to protect the life and physical integrity of prisoners. As a professional service member of a prison service organisation, it is not only the right, but also the duty, to wear and use the coercive instruments.

Nevertheless, we take steps to ensure that the use of coercive means in the mother-child department, the "first crime" department and some special departments shall not be applied 'routinely'.

b. solitary confinement and segregation

115. *In previous visit reports, the CPT made critical remarks about the maximum disciplinary sanctions of solitary confinement of 20 and 30 days. Following the 2013 visit, the maximum length of disciplinary confinement for prisoners under strict security regime was reduced to 25 days.68 It emerged from the delegation's findings during the 2018 visit that stays in disciplinary confinement could go well beyond two weeks in practice, up to and including the maximum of 25 days. Given the potentially very damaging effects of solitary confinement, the Committee considers that the maximum period of its use for disciplinary purposes should be no more than 14 days for a given offence, and preferably lower, irrespective of the security regime to which a prisoner is subjected.* ***The CPT recommends that the relevant legislation be amended accordingly.***

Further, placement on disciplinary segregation pending the outcome of the proceedings was not included in the calculation of disciplinary confinement, even though the inmates concerned generally had little or no meaningful human contact during that period. ***The Committee recommends that segregation pending the outcome of disciplinary proceedings be included in an overall time in disciplinary confinement of no more than 14 days or that any subsequent sanction of disciplinary solitary confinement be implemented only after an interruption of several days in ordinary conditions of detention.***

In the opinion of the prison service organisation, with the entering into force of the Prison Code that determines the reduction of the maximum duration of the solitary confinement as described by the CPT serves as evidence for the co-operation of the Hungarian authorities.

However, from the point of view of the principle of gradualness, it is essential that the holder of disciplinary power, as well as the law enforcement judge who establishes the final sentence, be afforded greater discretion by the Prison Code than the CPT suggests.

Disciplinary separation and security isolation are not punishments. The purpose of disciplinary separation is to separate the offender from the victim and witnesses until the incident is

investigated. During the disciplinary separation, the rights of the convicted perpetrator remain unchanged, only their placement is changed.

Security isolation is a security measure designed to maintain the order of law enforcement and the security of detention. Security isolation can only take place in cases defined by the Prison Code, if the convicted perpetrator seriously violates or jeopardises the order and security of the penal institute, engages in collective retaliation, refuses to execute the instruction or to work, or engages in a behaviour that poses danger to themselves or to others. During security isolation, the convict is under constant supervision, can move around the facility with permission and supervision, shall keep his cell locked, may send and receive letters, parcels, may communicate with their visitor in a prison booth or with the help of a security device, and may conduct self-training.

The punishment of a prisoner in solitary confinement may be imposed in accordance with the principle of gradualness in the event of a proven, serious misconduct or criminal offence. When imposing the punishment in solitary confinement, the Prison Code provides the possibility for the prisoner to lodge an appeal against the decision, which will be decided by the law enforcement judge.

Based on all these, it can be concluded that disciplinary separation and security isolation are not sanctions for disciplinary misconduct, and therefore cannot be taken into account.

116. *Prisoners may also be subjected to solitary confinement for security purposes for up to 20 days (10 days, renewable for another period of up to 10 days). Security grounds justifying the imposition of such a measure include risk of escape and the protection of/from other inmates. Refusal to work (considered as a refusal to comply with an order) could also justify placement in solitary confinement for security purposes. In one such case, the delegation was informed that the measure was being implemented as long as the inmate would not agree to go to work or would stop when the maximum time-limit of 20 days expired. In the CPT's view, the refusal of a prisoner to work can hardly be seen as a security concern justifying detention in conditions akin to solitary confinement.* ***The Committee recommends that action be taken to ensure that the grounds for taking such a measure are strictly limited to security concerns.***

The convict is obliged to carry out the work assigned. Regular out-of-cell activity contributes to socially desirable retention and, ultimately, reintegration. Employment also implements part of the CPT's recommendation that the convict should spend as little time in their cell as possible.

In view of the above, denial of work as one of the obligations under the Prison Code is a serious misconduct in the penal institute, furthermore, it also poses a security risk as it may appear as a pattern of resistance in the prisoner population. In this context, contrary to the CPT's opinion, the prison service organisation considers the denial of work to be a unilateral termination of co-operation, a circumvention of reintegration activities, and a disciplinary offence endangering the security of detention.

117. *At Budapest Prison's Block B, several prisoners were held on segregation for protection purposes in a separate area providing ordinary prisoner accommodation within the segregation and disciplinary unit (referred to as "designated normal cells"). Such a placement could be made*

upon the request of the inmates concerned or with their consent. However, in a few cases, there was no trace of such agreement in the records and the delegation was not able to ascertain that each of the inmates concerned wished to be placed, or to remain, in such cells. The lack of systematic recording of the grounds for placement in "designated normal cells" is open to abuse. ***The CPT recommends that steps be taken to ensure that the grounds for placement in "designated normal cells" are always appropriately recorded.***

The basement of facility B of the Budapest Strict and Medium Regime Prison is clearly divided. There are standard cells and solitary cells behind dividing bars. The cells concerned by the recommendation of the CPT do not belong to the disciplinary department. Protection is usually requested by the prisoner and is therefore registered in the proceedings. If the protection is initiated by the penal institute, it shall make a note thereof.

118. *As regards material conditions, HSR prisoners on segregation or undergoing disciplinary confinement were generally kept in their own cells (or could be placed in one of the two "crisis" cells at Szeged).*

At Budapest, other prisoners accommodated in the "Right Star" building could be confined to their own cells or in segregation or disciplinary cells in the "Left Star" building70.

The segregation and disciplinary cells in Budapest Prison's Block B were of a sufficient size for their intended occupancy (e.g. single cells of 12 m² excluding the sanitary annex), had the necessary basic equipment and were sufficiently ventilated. However, they had poor access to natural light and were generally in a deplorable state of repair. ***The CPT recommends that these shortcomings be remedied forthwith.***

The basement cell in Block B of the Budapest Strict and Medium Regime Prison has been partially renovated and the renovation works are continuing.

119. *As regards the regime, all the prisoners concerned had access to one hour of outdoor exercise every day. However, access to reading material for prisoners undergoing disciplinary confinement was limited to religious books at Budapest Prison's Block B.* ***The CPT reiterates its recommendation that the range of permitted reading material be broadened for prisoners undergoing disciplinary solitary confinement. Reference is also made to paragraph 113 as regards handcuffing during outdoor exercise.***

Prisoners in the Budapest Strict and Medium Regime Prison were able to carry a prayer book in both facilities A and B. The prison service organisation, considering the CPT's recommendation, will initiate at the Ministry of Justice that different kinds of books shall also be permitted to be with the prisoners.

120. *As was the case in the past, prisoners undergoing disciplinary solitary confinement were denied visits and access to a telephone during the implementation of the measure.* ***The CPT reiterates its position that the measure of disciplinary confinement should not include a prohibition on family contacts during the enforcement of the measure and that any restrictions on family contact should be used only where the offence relates to such contacts.***

The prohibition of telephone and visits for persons in solitary confinement is based on the Prison Code, the essence of which is the enforcement of basic pedagogical and reintegration goals. Sanctioning offenders is the basis for the functioning of society, which can be accomplished by serving specific disadvantages of convicts in the particular situation while being sentenced. It should be noted that missed visits can be replaced after completing the sanction of solitary confinement, and during a solitary confinement, the prisoner can keep in touch with their lawyer by telephone and correspondence.

121. *The CPT remains concerned by the role of prison health-care professionals in Block B's segregation and disciplinary unit at Budapest Strict and Medium Security Regime Prison. Health-care staff were required to draw up certificates on whether inmates were fit to be placed on security or disciplinary segregation or to undergo disciplinary solitary confinement. In the opinion of the Committee, such involvement in the security and disciplinary proceedings is not conducive to the development of a positive relationship between health-care staff and patients.* ***The CPT calls upon the Hungarian authorities to ensure that health-care staff working in prisons are never required to certify that a prisoner is fit to be placed on segregation or undergo disciplinary solitary confinement. At the same time, reference is made to the recommendations made in paragraph 107 as regards the level of engagement of healthcare staff in Block B's segregation and disciplinary unit.***

The prisoner must be examined by a doctor before the execution of the sanction of solitary confinement; security isolation may be carried out on the basis of a professional employee's examination. The purpose of the examination is precisely to serve the interests of the prisoner and to protect their health. The staff of the penal institute involved does not exert pressure on the doctors and health care professionals of the prison institute that is contrary to their professional knowledge, profession, their principles, moral and ethical position. For all these reasons, the CPT's concerns are unfounded.

The prison service organisation agrees with the recommendation that health and psychological control can be correctly achieved by entering a cell, by a closer contact than described. The practice of the penal institutes is in compliance with the CPT recommendations.

122. *At Budapest and Szeged Strict and Medium Security Regime Prisons, action was being taken to offer better opportunities for contact with the outside world to HSR prisoners and other inmates serving (whole) life sentences or very long terms. The inmates concerned were entitled to make video and voice calls and receive weekly visits. However, visits were as a rule organised under closed conditions. Prisoners with young children were allowed only one open monthly visit.* ***The CPT recommends that further efforts be made to ensure that video and voice calls and visits are allowed with the maximum possible frequency and privacy. The imposition of visits through a plexiglas partition (as well as any other restrictions) should be the exception and should always be based on an individual evidence-based risk assessment.***

The prison service organisation is exploring the possibility of extending Skype-based video calls, currently available at 7 penal institutes.

Because of the special rules for dealing with prisoners in the HSR department, which do not allow the ease of security regulations, it is not possible to change the procedures for visits.

123. *During the 2018 visit, the delegation observed that prison mobile phones could be issued to HSR and other prisoners serving (whole) life sentences or very long terms, as well as any other adult prisoners in Hungary. This is a major innovation and an example of good practice. However, the new deposit system (see also paragraph 80) and the level of prices for calls caused serious problems for inmates without external financial support. For instance, one prisoner told the delegation that he had to give his prison mobile phone back to the administration because it became too expensive.*

The CPT recommends that prisoners serving (whole) life sentences or very long terms benefit from special arrangements as regards access to and the use of a prison mobile phone.

The prison service organisation requires the co-existence and application of a number of conditions in connection with the prisoners' telephone calls, in particular the Prison Code and the IM Decree, mainly as regards the authorisation and control of telephone calls. Compliance with the rules requires a well-designed IT system, and the cost to establish and maintain such system is significant for the service provider. As a result, there is no way to reduce per-minute rates.

For prisoners who do not have a cell phone because of their financial situation have the opportunity to use the institute's replacement device.

D. Social care home residents

It is appreciated that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment acknowledges that the Home for Psychiatric Patients in Szentgotthárd is an example of the unfavourable institutional heritage of Hungary and the process of deinstitutionalization is the indispensable mechanism towards a person-centred approach to social policy making.

The primary purpose of deinstitutionalization is to diminish institutional care and eliminate all large capacity nursing and care institutions by 2036 in Hungary. Such institutions will be deinstitutionalized at different point in the time line and all institutions fitting the criteria are part of the deinstitutionalization process with no exception. Government measures aim to ensure the full enjoyment of human rights and to increase the quality of life of persons with disabilities.

Government Resolution 1295/2019 on the Long-Term Concept of Deinstitutionalization for 2019–2036 regulates the next phase of the mechanism. At the same time it evaluates the structure and provision of social services and aims at adequate development and modernisation. It is of paramount importance to provide living conditions supporting the transition process towards independent living for persons with disabilities and the Home for Psychiatric Patients in Szentgotthárd is on the list of the high capacity institutions to be transformed in the provision of the Long-term Concept by the end of 2036.

It is confirmed that the *approval process of the deinstitutionalization plan* of the "Home for Psychiatric Patients in Szentgotthárd", which was under revision at the time of the European Committee's visit (pp. 54.), was approved the year it was submitted December, 2018.

As to the Committee's request for *an outline of the plans* to deinstitutionalize residents from the home for psychiatric patients in Szentgotthárd it is confirmed that in line with the recently approved Long-Term Concept of Deinstitutionalization for 2019–2036 additional amendments to plans and processes are under revision too. Once technicalities are finalized an outline of the plans will be available to the Committee.

As to *material conditions* numerous facility improvement projects were carried out such as floor tiling in communal areas and assembly areas, also household pipeline renovation. The purchase of power-driven labour saving appliances such as water boilers, refrigerators, high-performance irons, kitchen equipment serve to provide higher comfort level and better living conditions for the residents. Interior house painting is in process, the first phase was completed this year. Additionally, different type of furniture was purchase following recommendations.

As to *staffing level recommendations r*ecruitment and selection has been being in process and vacancies are gradually being filled. We believe that the availability of a sufficient number of highly qualified staff is an absolute necessity to provide the appropriate treatment. The minimum staffing level is defined by law in Hungary and the proportion of sufficiently qualified staff at present is 83% at the Home for Psychiatric Patients in Szentgotthárd.

As to the *transition to independent living* various supervised employment options are available for the residents organized both in-house and through partner organizations. It is recognized that cooperation with organizations in the public and the private sector and communication between economic actors at local, regional and international level is essential to support the process of entry and reintegration to the open labour market for persons with disability and persons with changed working capacity. Furthermore, a so called *"Life Skills Development Team"* organizes regular activities such as training courses where residents can learn practical skills. Small group training courses and workshops appear to be most adequate to prepare residents for independent living at any level and training courses have been organized since 2012. The latest training course commenced November 5, 2019.
As to *appropriate clothing and footwear* the general rule is that the residents' autonomy is respected, they can decide what to wear, and their personal preference is taken into consideration. Personal hygiene routine is supported and clean clothing is provided. In case the resident does not possess the necessary clothing, management takes urgent steps to find solution. Residents in employment receive uniforms and other form of protective clothing for work. In general, clothing requirements of residential health facilities are regulated by law.

As to permit to *leave the establishment and to spend time outside in all seasons* the general custom is that residents are allowed to leave the premises or go outside, their mobility rights is respected. Family members and relatives are allowed to visit the residents, their right to family life is respected.

As to *24/7 care* for residents with multiply somatic symptoms such as dementia it is confirmed that designated carers undergo compulsory training, attend workshops to gain the skills necessary and to promote a more modern care for people with psychiatric illnesses. Trainings were organized in the last Quarter of 2018 in the area of "*crisis prevention and crisis management of mental health residential facilities".* Further training is provided in the area of "*medication safety, rules, responsibility and precautions"*.

As to the *use of means of restrain* all incidents must be documented. It is part of the protocol, that statements and information sheets record the procedure, and both the resident or to his/her guardian receive a copy of all relevant documents. Grievance policy regulates the complaint procedure and the

use of means of restraint in regulated too. The independent residents' rights representatives have a protocol that they can follow in the case of use of means of restraint. There is no uniform data collection system at national level. The Ministry of Human Capacities will consider the possibility of introduction for a nationwide data collect system.

As to *appropriate care plan for residents* it is crucial to establish that all care plans are drawn as a teamwork with the participation of the resident, his/or her guardian, if applicable, and the medical professionals. All care plans are individualized with consideration of the resident's health status, they outline important milestones and annual revision and progress report is carried out with no exception.

As to *preventing the spread of transmittable diseases* all measures are regulated by law and all preventative actions to eliminate risk factors are met. In case of detected contagious condition, all necessary tools are available for treatment, isolation and quarantine.

As to *independent resident rights' representation,* the service provided is to support the residents in exercising their human rights, to request mediation if needed. The resident rights' representative assists the residents in fulfilling administrative duties such as filling in forms, or other official documents. They visit the establishment on a regular basis, and engage in informative conversations with the residents indifferent from an existing issue. Contact information to the independent rights' representative is available in communal areas and all staff is ready to provide the residents with the contact information, if need be.

The Ministry of Human Capacities, State Secretariat for Social Affairs takes the Committee's recommendations very seriously and took immediate actions to support the transition process towards community-based care and independent living. Additionally the State Secretariat has instructed the General Directorate of Social Affairs and Child Protection to determine appropriate priority in line with the Committee's recommendations, to monitor operations and to follow up on implementations and improvements.