



## **Report**

**to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo\* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

**from 6 to 16 October 2020**

UNMIK has requested the publication of this report and of its response. The response of UNMIK is set out in document CPT/Inf (2021) 24.

Strasbourg, 23 September 2021

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\* All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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## EXECUTIVE SUMMARY

During the 2020 visit to Kosovo\*, the CPT's delegation examined the treatment and safeguards afforded to persons deprived of their liberty by the police, as well as the situation in several prisons. Further, it visited an immigration detention facility, two psychiatric establishments and a social welfare institution. The co-operation received by the delegation throughout the visit, from both the relevant authorities and staff at all the establishments visited, was generally excellent.

### *Police custody*

The majority of persons interviewed by the delegation made no allegations of ill-treatment by police officers. That said, the delegation received a number of allegations of physical ill-treatment at the time of apprehension and during police questioning, as well as of threats of physical ill-treatment during police interviews, verbal abuse by police officers and excessively tight handcuffing. The CPT considers that further action is required to combat ill-treatment by the police and encourages the relevant authorities to pursue their efforts in this respect, *inter alia*, by delivering a clear message to all police officers that any form of ill-treatment of detained persons, including verbal abuse, is unlawful and will be punished accordingly.

While fundamental safeguards against ill-treatment are in principle guaranteed by the relevant legislation, further steps are required to ensure that they are effectively implemented in practice as from the outset of deprivation of liberty by the police. In particular, the CPT received a number of allegations that requests by detained persons to notify a third person had not been granted by police officers during the initial stage of police custody and that requests to consult a lawyer were only granted after their first questioning by the investigating police officers or when they first appeared before a judge to be remanded in custody. Although the practical implementation of the right of access to a doctor did not seem to pose a major difficulty, it remained the case that police officers were still systematically present during medical examinations of detained persons. Further, persons deprived of their liberty by the police were apparently not systematically and comprehensively informed of their rights during the initial stage of police custody.

On a positive note, custody registers examined by the delegation in various police establishments were generally well maintained and the time-limits for deprivation of liberty by the police were respected in practice.

Conditions of detention were generally acceptable in the police establishments visited. That said, the CPT has made a number of recommendations to remedy certain shortcomings observed by the delegation.

### *Vranidoll Detention Centre for Foreigners*

The Committee welcomes the fact that no unaccompanied minors have been detained in the Vranidoll Detention Centre and that only a few families with children have been held there in recent years and usually only for short periods.

Detention rooms and communal spaces were generally in an acceptable state of repair, and they were clean, spacious, well lit and ventilated. However, the CPT encourages the relevant authorities to render the material environment less oppressive and carceral as far as possible. Further, whilst acknowledging that most foreign nationals were held in the Centre for only a short period, the Committee recommends that all foreign nationals be granted access to communal rooms throughout the day and that they be provided with a range of recreational activities, in particular, when being held in the Centre for longer periods. Foreign nationals should in principle also have access to outdoor exercise throughout the day (i.e. for more than two hours per day).

As regards health care, it is positive that arrangements have been made for visits by a psychologist. However, newly-arrived foreign nationals were not systematically subjected to a comprehensive medical examination upon admission. The CPT stresses that such screening is crucial to avoid the spread of diseases among detainees and staff, as well as for the detection of persons who have had traumatic experiences and are in need of psychological support. Further, it recommends that the relevant authorities develop a specific and comprehensive Covid-19 strategy for immigration detention.

Given that security staff had apparently received hardly any specific training for working with immigration detainees, the Committee recommends that they be trained in particular on de-escalation techniques, interpersonal communication and cultural sensitivity.

Whilst acknowledging that a register on disciplinary sanctions has recently been set up, the CPT recommends that formal disciplinary procedures be established for Vranidoll Detention Centre and that immigration detainees be granted a number of safeguards specified in the report.

#### *Prison establishments*

The CPT acknowledges the positive developments that have taken place since the 2015 visit, such as the refurbishment of certain establishments and the opening of new ones, and the fact that the prison estate was operating well below its official capacity (although crowded conditions were observed by the delegation in some establishments). Further, a Prisoner Assessment and Classification Unit was opened at Prishtinë/Priština Detention Centre, and the Committee encourages the relevant authorities to further develop this concept throughout the prison system to ensure that individual sentence planning can be effectively implemented in practice.

Despite the steps that had reportedly been taken by the relevant authorities to fight against corruption at Dubrava Prison, a number of prisoners interviewed by the delegation claimed that corruption involving custodial staff persisted in the establishment and that there appeared to be a widespread belief that many things could be bought, such as illicit drugs, mobile phones and preferential treatment. The CPT calls upon the relevant authorities to pursue their efforts to combat corruption at Dubrava Prison (and in other prison establishments), including by delivering a clear message to prison staff that obtaining or demanding money or other advantages from prisoners is unacceptable and will be punished accordingly.

The majority of prisoners interviewed by the delegation made no complaints about the manner in which they were treated by staff. However, at Dubrava Prison and the High Security Prison, the delegation received a number of credible allegations of physical ill-treatment of sentenced prisoners by custodial staff. Further, a few isolated allegations of prisoners having received punches and kicks from custodial staff were also heard at Mitrovica/Mitrovicë Detention Centre and of excessive use of force at Prishtinë/Priština Detention Centre. The CPT recommends that the management of the establishments visited remain constantly vigilant and deliver a clear message to all custodial staff that all forms of ill-treatment, including verbal abuse, are unlawful and will be punished accordingly.

Material conditions varied significantly among the establishments visited. They remained good in the High Security Prison and were in many respects adequate in the newly-opened Prishtinë/Priština Detention Centre, although the latter establishment suffered from a number of deficiencies which were reportedly attributable to the poor quality of materials used and construction works. At Dubrava Prison, accommodation blocks 4, 6 and 8 have been refurbished and in principle provided acceptable conditions. However, material conditions in other parts of the establishment were very poor and some cells appeared to be unfit for human accommodation. Further, despite the significant decrease in the prison population since the CPT's last visit, conditions in a significant number of cells in various blocks were crowded. Similarly, at Mitrovica/Mitrovicë Detention Centre conditions in most cells were cramped.

As regards the regime, sentenced prisoners in the standard and advanced regimes in the establishments visited were in principle free to move within their units during the day and associate with other inmates. Efforts were also made to provide them with work and, at Dubrava Prison, with vocational training and education. However, the regime offered to remand prisoners and sentenced prisoners held in the basic regime, as well as to those sentenced prisoners at Mitrovica/Mitrovicë Detention Centre who did not work, remained very poor. These inmates were locked up in their cells for 21 or 22 hours a day, and the only activity offered to them was daily outdoor exercise. The CPT recommends once again that all prisoners be provided with a comprehensive regime of out-of-cell activities. The aim should be to ensure that all prisoners (including those on remand) are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

The CPT acknowledges several positive improvements regarding the provision of health care in prison since the 2015 visit. For instance, the staffing levels of general practitioners and nurses remained on the whole adequate, and each of the establishments visited now had a full-time clinical psychologist, the disruptions to the supply of medication have been resolved, opioid agonist therapy was now available in the prisons visited and medical consultation rooms generally continued to provide good material conditions and were adequately equipped. That said, the Committee reiterates specific recommendations with a view to significantly improving the psychiatric care provided to prisoners in the psychiatric ward of the hospital unit at Dubrava Prison. Recommendations have also been made to ensure that, in all prison establishments, newly-arrived prisoners are systematically screened for transmissible diseases, that the recording and reporting of injuries is improved and that medical confidentiality is fully respected in practice.

The report also describes findings and contains specific recommendations concerning various other issues, such as disciplinary procedures and prisoners' contact with the outside world, as well as measures taken by the relevant authorities in response to the Covid-19 pandemic.

#### *Psychiatric establishments*

The delegation carried out follow-up visits to the Psychiatric Clinic and the Forensic Psychiatric Institute in Prishtinë/Priština. In both establishments, the delegation received hardly any allegations of deliberate physical ill-treatment of patients, and many of the patients interviewed by the delegation spoke positively about the manner in which they were treated by staff. However, a few allegations were received of excessive use of force vis-à-vis agitated patients. The CPT recommends that the management of both establishments exercise continuous vigilance in this regard and remind staff, *inter alia*, that no more force than is strictly necessary and proportionate should be used to bring a violent patient under control.

Living conditions remained of a good standard at the Forensic Institute in terms of state of repair and hygiene. That said, conditions were rather poor at the Psychiatric Clinic (in the old building) and, in both establishments, patients' rooms and communal areas were austere and lacked personalisation. Moreover, the CPT notes with concern that the Forensic Institute still had no separate ward dedicated to female patients, and that, at the Psychiatric Clinic, there were no separate showers/bathrooms for female and male patients in some of the wards. The CPT recommends that these shortcomings be remedied. Further, the Committee recommends that all patients be effectively able to benefit from access to outdoor areas every day (with appropriate supervision and/or security if required).

Staffing levels appeared to be generally adequate in both establishments. That said, it remained the case that private security staff and (at the Forensic Institute) prison officers had received no training in dealing with patients with a mental disorder and that they were on occasion called upon by nursing staff to assist in dealing with violent patients, including when forcibly administering medication. The CPT emphasises that staff assigned to security-related tasks in psychiatric establishments should be appropriately trained and closely supervised by health-care staff.

In both establishments, there was an evident lack of structured therapeutic and rehabilitative activities for patients, and the treatment consisted essentially of pharmacotherapy. Further, individual treatment plans were not systematically drawn up and there was no proper recording of assessment and progress in patients' medical files. The CPT recommends that immediate steps be taken to put an end to the practice of routinely prescribing psychotropic medication for newly-admitted patients and that staff be trained concerning the potentially lethal side effects of clozapine treatment and the importance of carrying out regular blood tests. Further, the Committee stresses that every patient should be offered the opportunity to participate in at least one organised psycho-social activity every day.

Mechanical restraint was not used in either establishment. That said, seclusion of patients was a frequent practice (even when patients were apparently not agitated), usually combined with the forcible administration of medication (chemical restraint). The CPT recalls that the use of means of restraint should be the subject of a comprehensive policy, and it formulates a number of specific recommendations in this regard.

As regards safeguards, the CPT notes that, following the adoption of a new Law on Mental Health, there was a lack of clarity regarding the legal provisions governing the involuntary placement and involuntary treatment of patients in psychiatric establishments. It is of particular concern that, in practice, courts were still not involved in involuntary placement procedures. The CPT urges the relevant authorities to put in place a clear and comprehensive legal framework and to ensure that it is duly implemented in practice in all psychiatric establishments.

The report also contains remarks and recommendations regarding a number of other issues, such as complaints procedures, patients' contact with the outside world and measures taken in response to the Covid-19 pandemic.

#### *Shtime/Štimlje Special Institute (SSI) for persons with learning disabilities*

The CPT is pleased to note that its delegation received no allegations of ill-treatment of residents by staff in the SSI. On the contrary, the overall atmosphere appeared to be relaxed, and the delegation could observe for itself the commitment and caring attitude of staff. Further, it remained the case that inter-resident violence did not pose a major problem in the SSI.

Material conditions remained generally satisfactory in the SSI in terms of state of repair and hygiene. That said, in particular in Ward B for residents with the most severe impairments, residents' rooms and communal areas were still poorly decorated and there was a total lack of any personalisation and visual stimulation. Whilst acknowledging that most residents could go freely into the garden and yards around the wards, the CPT encourages the management of the SSI to facilitate residents' daily access to the open air by providing residents with severe impairments with adequate staff assistance.

As regards staff, the CPT recommends that the vacant posts of two nurses, one occupational therapist and one orderly be filled and that a physiotherapist be recruited as soon as possible, given that a significant number of residents had severely reduced mobility.

The level of somatic health care provided to residents appeared to be very good. However, the CPT is concerned by the lack of psychiatric care since the consultant psychiatrist had stopped visiting the SSI in May 2020. The Committee wishes to stress that every resort to psychotropic medication should be specifically authorised by a doctor beforehand which was not the case at the time of the visit, and that its administration should be properly recorded. Therefore, it recommends that the relevant authorities take the necessary steps to ensure that a psychiatrist is present at the SSI on a regular basis.

The CPT acknowledges the efforts made by the management of the SSI to provide residents with occupational therapy and other psycho-social activities. However, for many residents, in particular in Ward B, the possibilities were insufficient or non-existent. The Committee recommends that a care plan be set up for each resident and that the offer of psycho-social rehabilitative activities be significantly increased; as a minimum, every resident should, health permitting, be offered the opportunity to participate in one organised activity every day.

Mechanical restraint and seclusion rooms did not appear to be used at the SSI. While chemical restraint did not seem to be a frequent practice in the SSI, it cannot be excluded that such instances can happen given the profile of some residents. Therefore, the CPT recommends that written instructions on the use of means of restraint be elaborated in line with the recommendations made in respect of psychiatric establishments (see above) and that a dedicated register for the use of restraints (including chemical restraint) be established.

As regards safeguards, the Committee welcomes the fact that, contrary to the situation observed in 2010, almost all residents had been admitted with a court decision and placements had been reviewed by the court, as required by the above-mentioned legislation. However, residents had not been heard in person by the judge. Further, it is regrettable that an information brochure for residents and their family/guardians containing, *inter alia*, a section on residents' rights, was still not available. The Committee recommends that these shortcomings be remedied.



## **I. INTRODUCTION**

### **A. The visit, the report and follow-up**

1. In pursuance of Article 3 of the Agreement signed on 23 August 2004 between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Agreement”), a delegation of the CPT carried out a visit to Kosovo\* from 6 to 16 October 2020.

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

- Mykola Gnatovskyy, President of the CPT (Head of Delegation)
- Nico Hirsch
- Marie Lukasová
- Aleksandar Tomčuk
- Hans Wolff.

They were supported by Natacha De Roeck and Petr Hnátík of the CPT’s Secretariat, and assisted by an expert, Veronica Pimenoff, psychiatrist, former Head of Department at Helsinki University Psychiatric Hospital (Finland).

3. A list of the establishments visited by the delegation is set out in the Appendix to this report.

4. The report on the visit was adopted by the CPT at its 104<sup>th</sup> meeting, held from 1 to 5 March 2021 and, in accordance with Article 6, paragraph 1, of the Agreement, transmitted to UNMIK on 6 April 2021. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the relevant authorities to provide within six months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

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

5. In the course of the visit, the CPT’s delegation had consultations with Mr Christopher Coleman, Deputy Special Representative of the Secretary-General of the United Nations in Kosovo, Mr Jan Braathu, Head of the OSCE Mission and Mr Lars-Gunnar Wigemark, Head of the European Union Rule of Law Mission (EULEX), as well as with Mr Agim Veliu, Minister of Internal Affairs, Mr Selim Selimi, Minister of Justice, Mr Armend Zemaj, Minister of Health, Mr Skender Reçica, Minister of Labour and Social Welfare, Mr Nehat Thaqi, Director General of the Kosovo\* Correctional Service (KCS), and other senior officials of the relevant ministries.

Further, the delegation met Mr Tomáš Szunyog, Head of the European Union Office/ European Union Special Representative, Mr Naim Qelaj, Ombudsperson, and representatives of non-governmental organisations active in areas of concern to the CPT.

6. The co-operation received by the delegation throughout the visit, from both the relevant authorities and staff at all the establishments visited, was excellent. With two exceptions (see below), the delegation enjoyed rapid access to all the establishments it wished to visit (including those which had not been notified in advance), was able to interview in private persons deprived of their liberty and was provided with the information it needed to accomplish its task.

The two aforementioned exceptions concerned Drenas and Prishtinë/Priština Police Stations where the delegation's access to the premises was delayed as the police officers in charge had apparently neither been informed of the possibility of receiving a CPT visit, nor of the mandate of the Committee.

The CPT trusts that the necessary steps will be taken by the relevant authorities prior to future visits of the CPT to ensure that staff in all police establishments are duly informed of the Committee's mandate and working methods.

### **C. Monitoring of places of deprivation of liberty**

7. As already briefly noted in the report on the 2015 visit, a new Law on the Ombudsperson<sup>1</sup> which was adopted in 2015, designated the Ombudsperson as the "National Preventive Mechanism" (NPM) against torture and other cruel, inhuman or degrading treatment or punishment (see Section 17).<sup>2</sup>

The NPM was officially established by the decision of the Ombudsperson on 16 January 2016 as a specialised branch of the Ombudsperson Institution, as foreseen by the relevant legal provisions. The mandate of the NPM covers all places where persons are deprived of their liberty, the NPM is specifically required to make regular and unannounced visits to such places and its staff are entitled to interview detained persons in private. At the time of the 2020 visit, the NPM staff comprised the head of the NPM department, two legal advisors and a medical doctor, a psychologist and a social worker.

In 2019, the NPM conducted 86 visits to various places of deprivation of liberty. According to the information provided to the CPT's delegation, throughout the year 2020, the NPM had focused on visits to police establishments.

The CPT welcomes the establishment of the NPM and the monitoring activities carried out so far.

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<sup>1</sup> Law No. 05/L-019 which entered into force on 26 June 2015.

<sup>2</sup> It is recalled that Kosovo\* is not a party to the UN Convention against Torture or the Optional Protocol to this Convention.

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

### A. Police establishments

#### 1. Preliminary remarks

8. The basic legal framework for the deprivation of liberty by the police is laid down in the 2012 Law on the Police<sup>3</sup> and the 2012 Criminal Procedure Code (CPC).<sup>4</sup> In so far as it is relevant for the CPT, it has remained unchanged since the last visit carried out in 2015.

9. It should be recalled that, in the *criminal context*, persons who are suspected of having committed a criminal offence may be detained by the police for up to 48 hours before being brought before a judge.<sup>5</sup>

Further, under Section 72 of the CPC, the police may detain, for a maximum period of six hours, and gather information from persons found at the scene of a criminal offence who may provide relevant information.

10. Under Section 20 of the *Law on the Police*, persons may be held in “temporary police custody” when it is necessary to either (i) protect them from posing a risk for themselves or others (for an initial period of up to six hours which may be extended to a maximum of twelve hours) or (ii) for identification purposes or to restrict their movement “if they are not cooperative” (for an initial period of up to six hours which may be extended to a maximum of 24 hours).

A person may also be taken into custody, for up to six hours, for the reasons provided for in Section 16 of the Law on the Police (if the identity of the person needs to be established because he/she is in an area where a criminal act has been committed, in a prohibited location, at the border, or if he/she is causing a disturbance).

11. The specific situation of *juveniles* is now regulated by a new Code of Juvenile Justice (CJJ) adopted in 2018.<sup>6</sup> However, it remains the case that juveniles may not be held in police custody for more than 24 hours.<sup>7</sup> Following the expiry of this period, they must be released unless they have been remanded in custody by a judge in the meantime.

12. The examination of the relevant registers and the information gathered through interviews with persons who were – or who recently had been – in police custody indicates that the time-limits for deprivation of liberty by the police were respected in practice.

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<sup>3</sup> Law No. 04/L-076.

<sup>4</sup> Code No. 04/L-123.

<sup>5</sup> Sections 13, paragraph 2, and 162 to 164 of the CPC.

<sup>6</sup> Code No. 06/L-006.

<sup>7</sup> Section 60 (4) of the CJJ.

13. To provide further details on the relevant legal framework and to facilitate its practical implementation, a new Standard Operating Procedure (SOP) on the Functioning of Detention Centres in the Kosovo Police was approved on 1 October 2020. The CPT notes positively that the SOP contains a number of provisions concerning, for example, the treatment of detained persons, material conditions in police detention facilities and safeguards against ill-treatment to be afforded to detained persons. Reference is made to several of these provisions in the relevant parts of this report (see, for instance, paragraphs 22, 25, 27 and 38).

## 2. Ill-treatment

14. The majority of persons interviewed by the CPT's delegation who were – or who recently had been – in police custody made no allegations of ill-treatment by police officers. On the contrary, some of them stated explicitly that they had been treated correctly and professionally by police officers. Further, no allegations of recent ill-treatment were received from juveniles or concerning the time detained persons spent in police detention facilities.

However, the delegation still received a number of allegations of physical ill-treatment at the time of apprehension, in particular kicks and punches after the person concerned had been brought under control, was lying prone on the ground and was handcuffed behind his back. Several allegations were also heard of ill-treatment during police questioning, such as slaps and punches to various parts of the body, inflicted with the aim of extracting a confession.

Further, a few persons interviewed by the delegation complained of threats of physical ill-treatment during interviews, of verbal abuse by police officers and of excessively tight handcuffing.

15. Official interlocutors met in the course of the visit informed the delegation about the action taken following the Committee's previous visit to tackle ill-treatment by the police.<sup>8</sup> The CPT acknowledges these efforts.

However, in the light of the findings of the visit, the CPT considers that further action is required by the relevant authorities to prevent instances of police ill-treatment.

**The CPT encourages the relevant authorities to pursue their efforts to combat ill-treatment by the police. A clear message should again be delivered to all police officers that any form of ill-treatment of detained persons, including verbal abuse, is unlawful and will be punished accordingly. Further, it should be reiterated to police officers that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

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<sup>8</sup> In particular, between January 2018 and May 2019, a project "Enhancing Human Rights Policing in Kosovo\*" was implemented to combat ill-treatment and impunity within the police by improving the legal and institutional framework, strengthening the capacity of police to apply European human rights standards in their daily work and further supporting the system of police oversight and control. The project was implemented by the Council of Europe and co-financed by the Council of Europe and the European Union. In the context of the project, almost 1,000 police officers were trained with a focus on human rights, police ethics and the prevention of ill-treatment and a "Guide on Human Rights for the Kosovo Police" was published.

**Steps should also be taken to ensure that when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight<sup>9</sup> and should be applied only for as long as is strictly necessary.**

**In addition, it should be made clear to all police officers that the aim of police questioning is to obtain accurate and reliable information in order to discover the truth about the matter under investigation, not to obtain a confession from somebody already presumed, in the eyes of the interviewing officers, to be guilty.<sup>10</sup>**

16. According to the information provided to the delegation, the Police Inspectorate of Kosovo\* (PIK)<sup>11</sup> registered a slight increase between 2018 and 2020 in the number of cases in which it investigated complaints of police ill-treatment and in which reports were subsequently submitted to the public prosecutor's office (or which were still pending at the time of the visit): 15 cases in 2018, 17 cases in 2019 and 19 cases between January and October 2020. Although, according to the representative of the PIK met by the delegation during the visit, these figures may be attributed, at least to a certain extent, to the public outreach activities which had been carried out by the PIK and to improved public awareness of its role and functioning, in the CPT's view, these statistics support the conclusion that police ill-treatment remains a challenge.

The delegation was also informed that the outcome of criminal cases based on criminal reports submitted by the PIK to the prosecutor's office was not communicated to the PIK once the criminal proceedings were terminated. **In the CPT's view, the systematic provision of such information to the PIK would serve as an important indicator of the effectiveness of its work and would enable the PIK to adjust and, if necessary, improve its working methods.**

17. Further, in order to obtain a more comprehensive and up-to-date picture, **the CPT would like to be informed of the outcome of the criminal cases concerning ill-treatment by police officers which were initiated in 2018, 2019 and 2020 on the basis of reports submitted by the PIK and an account of the criminal/disciplinary sanctions imposed on the police officers concerned.**

18. One of the challenges identified by the PIK for its work were close ties between police officers, "the feeling of fellowship among them" and of a "fraternity of keeping silent" when it came to violence committed by their colleagues.

Moreover, the information gathered through interviews with police officers in the various police establishments visited indicate that not all of them were aware of a reporting procedure if detained persons made allegations of ill-treatment by police officers or if injuries indicative of ill-treatment were detected upon admission to a police detention facility.

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

<sup>10</sup> See also paragraphs 61 to 85 of the CPT's 28<sup>th</sup> General Report (CPT/Inf (2019) 9).

<sup>11</sup> The task of the PIK is to carry out criminal and high-profile disciplinary investigations (e.g. when high-ranking police officers are concerned) into cases of potential misconduct by police officers. Criminal investigations are carried out under the auspices of the competent public prosecutor. The PIK is independent of the Kosovo\* Police and operates under the direct supervision of the Minister of the Interior whose authority does not include the operational management of the PIK.

In the CPT's view, it is essential to promote a police culture where it is regarded as unprofessional to resort to ill-treatment. There must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring/has occurred and fails to act to prevent or report it.

**The CPT recommends that all police officers be encouraged to prevent colleagues from ill-treating detained persons and to report, through the appropriate channels, all cases of violence by colleagues. This implies the existence of a clear reporting line as well as the adoption of whistle-blower protective measures (i.e. a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice).**

### 3. Safeguards against ill-treatment

19. As stressed by the CPT in previous reports, three rights (namely, the right to have one's detention notified to a relative or another third party and the rights of access to a lawyer and to a doctor) constitute fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police). These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons deprived of their liberty by the police (e.g. for identification purposes or to provide the necessary information requested by the police). Persons detained by the police should be expressly informed, without delay and in a language they understand, of these rights.

It remains the case that the aforementioned fundamental rights are in principle guaranteed by the relevant legislation. However, the findings of the 2020 visit indicate that further steps are required to ensure that they are effectively implemented in practice as from the outset of deprivation of liberty by the police.

20. As regards the right of notification of custody, by virtue of Sections 13 and 168 of the CPC, a person deprived of his or her liberty has the right to notify or to have notified a family member or another appropriate person of his/her choice about the arrest and place of detention immediately after the arrest. The notification may be delayed for up to 24 hours where a public prosecutor determines that the delay is required by the exceptional needs of the investigation of the case.

According to Section 20 of the Law on the Police, the right of notification of custody also applies to persons who are held in temporary police custody.

21. Many persons interviewed during the visit confirmed that they had been able to notify, either personally or through police officers, a third person of the fact of their detention shortly after their apprehension.

However, a number of allegations were heard that requests to notify a third person had not been granted by police officers during the initial stage of police custody and that the notification had only been allowed once the person concerned had arrived at a police detention facility, which had been several hours after the apprehension by the police and in some cases after the initial questioning by police officers.<sup>12</sup>

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<sup>12</sup> It should be noted that none of these persons had been informed by police officers that the delay in the notification

**The CPT recommends that the relevant authorities take the necessary steps to ensure that all persons deprived of their liberty by the police are granted the right to notify a family member or a third person of their choice from the outset of their deprivation of liberty, in line with the relevant legal provisions. Any delay in notification of custody should be approved by the public prosecutor (in compliance with the relevant legislation), should be recorded in writing with the specific reasons therefor and should be applied for the shortest time necessary.**

22. Persons who are suspected of having committed a criminal offence have the right of access to a lawyer (including the right to consult a lawyer in private and to have a lawyer present during police questioning). Persons who are not able to pay for a lawyer are entitled to free legal aid from a lawyer appointed by the Bar Association.<sup>13</sup>

Further, the new SOP on the Functioning of Detention Centres reiterates, with reference to Section 166 of the CPC, that a person arrested or detained in a detention centre has the right to confidential communication with his/her lawyer.

As was the case during the previous visit, most persons interviewed by the delegation confirmed that they had been able to consult a lawyer (including one appointed *ex officio*) from an early stage of police custody.

However, some detained persons claimed that their requests to consult a lawyer were initially not granted by police officers and that they were allowed to meet a lawyer only after the first questioning by the investigating police officers or when they first appeared before a judge to be remanded in custody. Moreover, the findings of the visit indicate that detained persons were not systematically given the opportunity to talk to their lawyer in private prior to the questioning by the police and/or court hearing.

23. The CPT must underline that in its experience, it is during the period immediately following the deprivation of liberty – and, *a fortiori*, when the individual is subjected to police questioning – that the risk of intimidation and ill-treatment is at its greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect on those minded to ill-treat detained persons; moreover, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. On the other hand, the presence of a lawyer will facilitate the countering of unfounded allegations of ill-treatment or intimidation. In addition, to be an effective safeguard against ill-treatment, the right of access to a lawyer must include the right of the detained person to talk to him/her in private.

**The CPT reiterates its recommendation that the relevant authorities take steps to ensure that all persons detained by the police are granted in practice the right of access to a lawyer (including the right to consult the lawyer in private) as from the very outset of their deprivation of liberty. To this end, all police officers should be reminded of the relevant legal provisions, including the new Standard Operating Procedure on the Functioning of Detention Centres.**

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of custody had been required by the exceptional needs of the case and had been sanctioned by the public prosecutor.

<sup>13</sup> See, most notably, Sections 11, 53, 61, 152, 166, 167 and 171 of the CPC, as well as Sections 1 and 10 of the 2012 Law on Free Legal Aid (Law No. 04/L-017).

24. According to the information provided by official interlocutors met by the delegation during the 2020 visit, the existing legal provisions were interpreted in such a way that access to a lawyer was also possible in practice for all persons taken to a police station, i.e. including outside the criminal law context.

However, it remains the case that the Law on the Police does not explicitly provide for the right of access to a lawyer in respect of persons who are held in temporary police custody.

**The CPT reiterates its recommendation that the relevant authorities take steps to ensure that the right of access to a lawyer is guaranteed by the legislation to all persons deprived of their liberty by the police (irrespective of their precise legal status), as from the outset of the deprivation of liberty.**

25. Pursuant to Section 169 of the CPC, a detained person has the right, upon request, to be examined by a doctor of his/her own choice as promptly as possible after his/her arrest and at any time during detention. Further, the police may appoint a doctor to conduct a medical examination or to provide medical treatment at any time in the case of physical injury or other apparent medical necessity.

The new SOP on the Functioning of Detention Centres further clarifies that if the doctor requested by the detained person cannot be present, the police must appoint another doctor and that a detained person has the right to be examined by a doctor of his/her own choice (at the expense of the detained person) in addition to any medical examination performed by a medical doctor appointed by the police. Further, all medical examinations of a detained person must be conducted without being heard and observed by police officers, unless the doctor requests otherwise in certain cases.<sup>14</sup>

26. As was the case during previous visits, the practical implementation of the right of access to a doctor did not seem to pose a major difficulty. At the request of the person concerned or at the initiative of police officers, for example when the detained person displayed injuries, detained persons were promptly examined by a medical doctor who was called to the police detention facility or the person was transferred to a health-care facility.

Moreover, the delegation was informed in some police detention facilities visited that all detained persons (e.g. at Klinë/Klinavac Police Station) or all detained juveniles (at Prishtinë/Priština Regional Police Station) were systematically examined by a medical doctor before their placement in a police custody cell.

27. However, despite the recommendation repeatedly made by the CPT in previous visit reports and in contradiction with the new provisions of the SOP, it became clear during the visit that police officers were still systematically present during medical examinations of detained persons.

The CPT considers that the presence of police staff during medical examinations of detained persons could discourage a detained person who has been ill-treated from saying so and, more generally, is detrimental to the establishment of a proper doctor-patient relationship.

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<sup>14</sup> See Chapter D, sections 1.18 to 1.23 of the SOP.



**The CPT once again calls upon the relevant authorities to ensure that all medical examinations of persons deprived of their liberty by the police are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of police officers. To this end, all police officers should be reminded of the relevant provisions of the new Standard Operating Procedure on the Functioning of Detention Centres.**

28. Although official interlocutors met by the delegation during the 2020 visit considered that, in practice, the right of access to a doctor applied to all persons taken to a police station, the Law on the Police still does not explicitly provide for this right in respect of persons who are held in temporary police custody.

**The CPT recommends that the relevant authorities take steps to ensure that the right of access to a doctor is guaranteed by the legislation to all persons deprived of their liberty by the police (irrespective of their precise legal status), as from the outset of the deprivation of liberty.**

29. As regards the provision of information on rights, Section 13 of the CPC provides that any person deprived of his/her liberty shall be informed promptly, in a language which he/she understands, of the right to legal assistance of his/her own choice and the right to notify or to have notified a family member or another appropriate person of his/her choice about the arrest.

In the police establishments visited by the delegation, information sheet containing the rights of detained persons (including the right of access to a doctor) were available in several languages.

However, the findings of the visit indicate that persons deprived of their liberty by the police were not systematically and comprehensively informed of their rights during the initial stage of police custody. Several persons interviewed during the visit claimed that initially, they had either received no information about their rights or the information provided had been limited to the right to consult a lawyer. More comprehensive information, including in writing, had been provided only after the first questioning by the police or upon the arrival of the person concerned in a police detention facility (i.e. several hours after their apprehension by the police) where they were asked to sign the aforementioned information sheet and received a copy thereof.<sup>15</sup>

**The CPT calls upon the relevant authorities to take appropriate steps to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear oral information at the very outset, and supplemented at the earliest opportunity (that is, immediately upon the arrival of the persons concerned on police premises) by the provision of an information sheet (to be available in appropriate languages) on the rights of detained persons. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights and be allowed to keep a copy of the information sheet.**

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<sup>15</sup> As was the case during previous visits, in most of the police stations visited, the delegation saw notices on the walls in several languages setting out the rights of detained persons. This in itself, however, cannot be regarded as a substitute for the provision of an information sheet to every detained person.

30. Moreover, the sheet only provided information on the right to be checked and treated by a medical doctor – no mention was made of the right of access to a doctor of one’s own choice. **The CPT recommends that this deficiency be remedied.**

31. As regards juveniles deprived of their liberty by the police, the findings of the visit indicate that, in line with the relevant legislation,<sup>16</sup> parents or the Centre for Social Work were informed promptly following the apprehension of juveniles. Further, the vast majority of juveniles interviewed during the visit confirmed that they had been questioned by police officers in the presence of a parent and/or a lawyer (in most cases appointed *ex officio*).<sup>17</sup>

32. It is a positive development that the possibility for a juvenile to refuse the appointment of an *ex officio* lawyer<sup>18</sup> was not retained in the new (2018) CJJ, in line with the recommendation made by the CPT in the report on the 2015 visit.<sup>19</sup>

However, Section 53, paragraph 5, of the CPC continues to provide that juveniles may waive the right of access to a lawyer with the consent of a parent or a representative of the Centre for Social Work.

As stressed in the previous report, the purpose of special provisions for juveniles is to protect this age group and to provide them with adult support so that they do not have to make decisions with important legal implications on their own. Consequently, the Committee considers that, given their particular vulnerability, the appointment of a defence lawyer should be mandatory for juveniles held in police custody.

In the light of the findings of the visit, **the CPT reiterates its recommendation that steps be taken to ensure that juveniles are never subjected to police questioning or requested to make any statement or to sign any document concerning the offence(s) they are suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person. The relevant legal provisions should be amended accordingly.**

33. The custody registers examined by the delegation during the visit were generally well maintained in the police establishments visited. Moreover, the CPT welcomes the fact that the new SOP on the Functioning of Detention Centres introduced a unified form for the recording of persons placed in police custody.<sup>20</sup> This form was being used in several of the police establishments at the time of the visit.

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<sup>16</sup> Section 168 of the CPC.

<sup>17</sup> Section 41 of the new CJJ provides that a juvenile must have a lawyer when questioned for the first time and during the entire proceedings. If he/she does not choose a lawyer, an *ex officio* lawyer must be appointed.

<sup>18</sup> Section 43, paragraph 4, of the earlier (2010) CJJ (Code No. 03/L-193) provided that the appointment of an *ex officio* lawyer must not be against the will of the juvenile concerned.

<sup>19</sup> See doc. CPT/Inf (2016) 23, paragraph 23.

<sup>20</sup> The SOP also introduced several other unified forms, including for recording of persons who visited a police detention facility and a form for recording the provision of food to detained persons.

#### 4. Conditions of detention

34. As regards material conditions, police custody cells in the establishments visited were generally in an acceptable state of repair and cleanliness and were sufficient in size for the intended occupancy.<sup>21</sup>

However, a number of deficiencies were identified by the delegation. In particular, in most establishments visited, detained persons were provided with no other hygiene items than toilet paper, some of the cells were not sufficiently ventilated (Pejë/Peć Police Station), were not sufficiently lit (Mitrovicë/Mitrovica South and Pejë/Peć Police Stations, as well as Prishtinë/Priština Regional Police Station) or heated (Pejë/Peć Police Station). Further, at Pejë/Peć Police Station, bedlinen and/or pillows and blankets were apparently not systematically cleaned after every use.

Particular mention must be made of Drenas Police Station which displayed all the above-mentioned deficiencies. Moreover, reportedly due to technical reasons, the detention area was filled with either a strong smell emanating from the sewage system, or an intolerable noise produced by the ventilation system. In the CPT's view, the combination of all these factors makes this facility in its current state unfit for accommodation of detained persons.

Further, many cells seen by the delegation were not equipped with a call bell and in most multiple-occupancy cells, sanitary facilities were only partially partitioned from the rest of the cell.

35. During the visit, the delegation was informed that in the context of an Action Plan for 2020, the relevant authorities were gathering detailed information concerning material conditions from all police establishments. It was expected that once the information had been gathered and processed, a decision would be taken as to which police facilities needed to be refurbished and which would be closed down.

36. In the light of the findings of the visit, **the CPT recommends that the relevant authorities pursue their efforts to improve conditions of detention in police establishments. In particular, steps should be taken to ensure that:**

- **cells are adequately heated and ventilated and have sufficient lighting (i.e. sufficient to read by, sleeping periods excluded); preferably, cells should enjoy access to natural light;**
- **cells are equipped with a call bell;**
- **all detained persons have access to soap and toilet paper, as well as sanitary towels for female detainees; those held for longer than 24 hours should also be provided with a basic sanitary kit (including a towel, toothpaste and a toothbrush);**
- **persons obliged to stay overnight in police custody are provided with clean bedding;**
- **in-cell toilets in multiple-occupancy cells are partitioned (preferably to the ceiling).**

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<sup>21</sup> Single-occupancy cells measured as a minimum some 7 m<sup>2</sup> and double-occupancy cells measured between 11 and 20 m<sup>2</sup>. It is noteworthy that the SOP stipulates that a single-occupancy cell must measure at least 7 m<sup>2</sup> and multiple-occupancy cells must provide at least 4 m<sup>2</sup> per person.

Further, the CPT wishes to receive, in due course, detailed information on the outcome of the above-mentioned review of material conditions in police detention facilities carried out in the context of the Action Plan for 2020, including which police establishments will be refurbished and which will be closed down. In particular, the Committee would like to be informed of the plans concerning Drenas Police Station.

37. In none of the police establishments visited were detained persons offered the possibility to take outdoor exercise. The CPT notes in this respect that the new SOP on the Functioning of Detention Centres envisages the possibility of outdoor exercise for persons detained for more than 24 hours if the infrastructure enables it.

**The CPT recommends that steps be taken to ensure that all persons held in a police establishment for 24 hours or more are, as far as possible, offered outdoor exercise on a daily basis.**

In this connection, the Committee wishes to emphasise that the need for outdoor exercise areas for detained persons should be taken into account in the design of any new (or newly-refurbished) police detention facilities.

## **5. Other issues**

38. The information gathered during the visit indicates that resort to strip-searches in police establishments was not frequent and detained persons were only subjected to this measure on the basis of an individual risk assessment. Moreover, the CPT notes positively that the new SOP on the Functioning of Detention Centres provides a number of important safeguards accompanying resort to a strip-search, in line with the recommendation made by the CPT in the 2010 visit.<sup>22</sup> For example, detained persons may only be searched by police officers of the same sex, should not be required to remove all their clothes at the same time, each person should be checked individually and more than one officer should be present during the search.<sup>23</sup>

However, in Drenas Police Station, the police officers met by the delegation stated that if a strip-search of a detained person was considered necessary, the person concerned would be obliged to remove all his/her clothes at once and perform a squat.

**The CPT recommends that the necessary steps be taken to ensure that the relevant provisions of the new SOP on the Functioning of Detention Centres concerning strip-searches of detained persons are effectively implemented in practice in all police establishments. In particular, detained persons who are subjected to a strip-search should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.**

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<sup>22</sup> See doc. CPT/Inf (2011) 26, paragraph 29.

<sup>23</sup> See Chapter D, section 1.2, of the SOP.

## **B. Vranidoll Detention Centre for Foreigners**

### **1. Preliminary remarks**

39. For the first time, the CPT's delegation visited Vranidoll Detention Centre for Foreigners, which is the only establishment of this type in Kosovo\*. The Centre was opened in 2015 and it is managed by the Department of Citizenship, Asylum and Migration (DCAM) of the Ministry of the Interior. With an official capacity of 75 places, it comprised two accommodation units, one for single men and one for single women and families. In recent years, the actual number of foreign nationals has usually been very low.<sup>24</sup> At the time of the visit, it was accommodating one Albanian family (parents with their eight-year-old child) that had arrived at the Centre three weeks earlier.

40. According to the Law on Foreigners,<sup>25</sup> foreign nationals may be detained by order of the DCAM for up to six months. Under certain circumstances, the detention period may be extended to a maximum period of twelve months. According to the Law on Asylum,<sup>26</sup> asylum-seekers may be detained if the DCAM, on the basis of an individual assessment, considers it is necessary and other less coercive alternatives cannot be applied effectively.

The delegation was informed that foreign nationals were usually detained in the Centre for very short periods (on average, three to five days). That said, there had been some cases in which foreign nationals had been held in the Centre for more than six months and, exceptionally, for up to one year.

41. The CPT wishes to stress that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child. In this regard, the Committee notes that unaccompanied minors may in principle be detained in the Centre, although the Law on Foreigners stipulates that unaccompanied minors subject to a detention order may exceptionally be held in a social welfare centre.<sup>27</sup> According to the information provided to the delegation, no unaccompanied minors have thus far been held in the Centre. **The Committee welcomes this state of affairs and encourages the relevant authorities to take the necessary steps to ensure that, in the future, unaccompanied minors will not be detained in the Centre but rather be accommodated in a social welfare institution.**

42. The CPT understands that, in recent years, only a few families with children have been held in the Centre and usually only for short periods. **It trusts that the relevant authorities will continue to avoid placing parents with children in the Centre and ensure that when, in an exceptional case, minors are held there with their parents, their stay is limited to the shortest possible period of time.**

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<sup>24</sup> There had been 14 admissions in 2020 (until October), 11 in 2019, 17 in 2018, 25 in 2017 and 17 in 2016, while, in 2015, a total of 150 foreign nationals had been admitted to the Centre.

<sup>25</sup> Section 110 of Law No. 04/L- 219.

<sup>26</sup> Section 18 of Law No. 06/L-026.

<sup>27</sup> See Section 112 of the Law on Foreigners and Section 14 of Regulation No. 03/2014 on the Operation of the Detention Centre for Foreigners ("Detention Regulation"). It is also noteworthy that, according to Section 97/A of the Law on Foreigners, unaccompanied minors shall not be deported if reunification with their family or adequate health care cannot be guaranteed in the country of origin or another country.

## 2. Ill-treatment

43. The delegation received no allegations of ill-treatment by staff. On the contrary, the family interviewed by the delegation spoke positively about the attitude of staff and their interaction with them.

## 3. Conditions of detention

44. As regards material conditions, it is positive that detention rooms and communal spaces were generally in an acceptable state of repair, and they were clean, spacious, well lit and ventilated. In each accommodation unit there were twelve rooms with two or three beds each, equipped with a non-lockable cupboard and a plastic table and chairs, as well as a communal room in the area for women and families with a kitchenette (including a fridge), tables, chairs and a television set. In the area for families with children, there were separate bedrooms with a private bathroom. The outside yard had a concrete space with a few benches, as well as a large sports yard.

The CPT acknowledges that furnishings and equipment had been damaged to some extent by foreign nationals during the period when the Centre was used as a quarantine facility for all foreign nationals entering the territory of Kosovo\* (see paragraph 59). Further, after the visit, the Committee received reports that, due to a fire incident, the Centre had suffered major material damage and had been temporarily closed down.

**The CPT would like to receive updated information on the renovation work carried out as well as on the re-opening of the Centre.**

45. The CPT has misgivings about the rather oppressive and carceral material environment in the entire Centre, with barred windows in rooms and communal areas (including in the unit for families and children) and barred gate partitions at the entrance of each unit, in addition to the high fence surrounded with barbed wire on the outside perimeter.

Bearing in mind that immigration detention is a form of administrative detention of persons who are neither suspected nor have been convicted of a criminal offence, **the CPT encourages the relevant authorities to review the existing security arrangements at Vranidoll Detention Centre with a view to rendering the environment less oppressive and carceral as far as possible.**

46. As far as the delegation could ascertain, foreign nationals were usually offered two hours of outdoor exercise per day, in accordance with the Detention Regulation.

Whilst acknowledging that most foreign nationals stayed in the Centre for only a short period, the CPT is concerned that hardly any recreational activities were offered to foreign nationals, apart from watching TV and playing board games in the communal room. In this regard, the Committee is puzzled by the fact that foreign nationals – including the family that was present at the time of the visit – were apparently allowed to access that room and watch TV for only two hours per day.

**The CPT recommends that the relevant authorities take steps to ensure that all foreign nationals at Vranidoll Detention Centre are granted access to the unit's communal room throughout the day and that they are provided with a range of recreational activities (including sports), in particular when being held in the Centre for longer periods. To this end, the involvement of external service providers such as charity organisations and/or NGOs should be explored.**

**Further, the Committee wishes to stress that foreign nationals should in principle have free access to outdoor exercise throughout the day (i.e. more than two hours per day) and that outdoor exercise areas should be appropriately equipped (such as shelters with protection against inclement weather, etc.).**

47. According to Section 14 of the Detention Regulation, children should be provided with access to recreational activities and games according to their age and, depending on the duration of their stay in the Centre, access to education should be provided.

In the area for families, there was a small room with a few toys and a colourful carpet. As mentioned above, the family held in the Centre at the time of the visit could only watch TV from 6 p.m. to 8 p.m. and stay outside the building for two hours a day. Even if children did not usually spend much time there, the activities and (often incomplete) games provided for them were too limited. **The CPT recommends that the relevant authorities take steps to further develop the range of activities for children (for instance, by creating a playground in the outdoor area) and to offer educational activities in the case of longer stays (taking into account the comments made in paragraph 42).**

#### **4. Health care**

48. At the time of the visit, there were no health-care staff at the Centre. The delegation was informed that an agreement had been concluded with a local medical centre in order to arrange visits by a general practitioner or emergency doctor whenever needed. **The Committee would like to receive detailed information on the agreement between the DCAM and the local medical centre, including on the medical screening upon admission (see also paragraph 49).**

49. The CPT wishes to stress that systematic and prompt medical screening of newly-admitted foreign nationals for transmissible diseases is crucial to avoid the spread of diseases among detainees and staff (as regards the ongoing Covid-19 pandemic, see paragraph 59), as well as for the detection of persons who have had traumatic experiences and are in need of psychological support. In addition, the systematic carrying out of a proper physical examination is also important for the prevention of police ill-treatment by recording injuries and reporting allegations of ill-treatment to the relevant prosecutor.

Article 10 of the Detention Regulation provides that a medical examination shall be carried out upon admission to the Centre and that, with the exception of pregnant women, all foreign nationals placed in the Centre shall undergo a tuberculosis test, involving an X-ray. Further, all medical findings shall be recorded in a confidential medical card.

That said, newly-arrived foreign nationals were not systematically subjected to a comprehensive medical examination upon admission. From the examination of medical records, it transpired that, leaving aside those foreign nationals who had been held in the Centre only overnight, several foreign nationals had not undergone any medical checks upon arrival (in a few cases, for several weeks).

Moreover, there were no instructions regarding the recording of injuries by health-care professionals, nor were there procedures in place for reporting allegations of ill-treatment and related injuries to the management and relevant authorities.

**The Committee recommends that the relevant authorities take the necessary steps to ensure that at Vranidoll Detention Centre:**

- **all newly-arrived foreign nationals benefit from a comprehensive medical examination (including screening for transmissible diseases) by a doctor or a fully-qualified nurse reporting to a doctor as soon as possible after their admission. In this connection, particular attention should also be paid to the possible existence of mental disorders and other vulnerabilities (such as traumatic experiences);**
- **the record drawn up after a medical examination of a detainee contains: (i) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries and, preferably, photographs of injuries); (ii) an account of statements made by the person concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her; (iii) the doctor's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings. In addition, the results of every examination, including the above-mentioned statements and the doctor's observations, should be made available to the detainee and his/her lawyer;**
- **an individual medical file is opened without delay – and properly kept – for every newly-arrived foreign national;**
- **whenever injuries are recorded which are consistent with allegations of ill-treatment by the foreign national (or which, even in the absence of allegations, are indicative of ill-treatment), the information is systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned. The health-care staff should advise detainees 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.**

50. As regards the provision of mental health care, the CPT welcomes the fact that arrangements had been made for visits by a psychologist. It is noteworthy that the child held in the Centre at the time of the visit had been seen by the psychologist twice in three weeks.



## 5. Safeguards

51. The relevant legislation contains a number of important legal safeguards for foreign nationals who are deprived of their liberty under aliens legislation. In particular, the Law on Foreigners provides for a legal remedy to challenge an administrative detention order before the Basic Court and, subsequently, before the Court of Appeal, and foreign nationals are entitled to free legal aid. Further, every foreign national admitted to Vranidoll Detention Centre shall receive a written notification, in one of the official languages and in English, of his/her detention at the Centre, which shall contain the reasons for the detention, the detention period, the right to provide him/her with legal protection and the right to contact his/her relatives, the right to an interpreter and the right to communicate with relevant local authorities and international and non-governmental organisations.

52. Further, it is praiseworthy that the DCAM had signed a contract with an interpretation company which provided interpreters in relevant languages whenever needed and that the Centre benefited from the support of the Free Legal Aid Agency (FLAA) with whom a memorandum of understanding was being concluded. **The Committee would like to receive updated information on this matter.**

53. At the time of the visit, an information brochure was available at the Centre for newly-admitted foreign nationals. Regrettably, this brochure did not contain relevant information on many of the immigration detainees' rights provided for by law. The CPT welcomes the fact that a new brochure was being prepared in six or seven languages.

**The Committee trusts that the relevant authorities will ensure that the new brochure at Vranidoll Detention Centre will be amended in the light of the above remarks, and it would like to receive a copy of the final version.**

54. Foreign nationals could in principle lodge complaints to the Director of the Centre and the DCAM as well as to the Ombudsperson. However, the foreign nationals interviewed by the delegation appeared not to be aware of the existence of any such possibilities.

**The CPT recommends that the complaints procedures be specified in the information sheet/brochure referred to in paragraph 53.**

## 6. Other issues

### a. staff

55. Vranidoll Detention Centre had a total of ten security staff provided by a private company. From consultations with the management and security staff present at the time of the visit it became apparent that the latter had received hardly any specific training for working with immigration detainees and that none of them spoke foreign languages.<sup>28</sup>

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<sup>28</sup> According to Section 5.5 of the Detention Regulation, staff of the Centre shall be offered specific training

**The CPT recommends that the relevant authorities take the necessary steps to ensure that all security staff at Vranidoll Detention Centre are provided with appropriate training (including in de-escalation techniques, interpersonal communication and cultural sensitivity). It would also be desirable for some security staff to have relevant language skills.**

56. Further, the CPT has misgivings about the routine practice of custodial staff carrying batons inside the detention areas. In the CPT's view, such a practice is unnecessary from a security standpoint and is not conducive to developing positive relations with detained persons.

**The Committee recommends that security staff at Vranidoll Detention Centre no longer carry batons in detention areas.**

b. contact with the outside world

57. In accordance with the relevant legal provisions,<sup>29</sup> foreign nationals could send and receive letters without any restrictions, receive visits for two hours per week and make phone calls free of charge for five minutes per day. Detainees were not allowed to keep their mobile phones.

Given that foreign nationals usually received no visits, **the CPT invites the relevant authorities to consider extending the possibilities for foreign nationals to have contact with the outside world by allowing them to keep their mobile phones, as is increasingly the practice in various European countries and/or by developing low-cost internet-based communication channels (such as Voice-over-Internet-Protocol).**

c. discipline

58. According to the relevant legislation,<sup>30</sup> foreign nationals who have violated the house rules may be subjected to one of the following disciplinary measures: warning; obligation to maintain and clean the premises; deprivation of recreational activities, television, internet, sports or cultural activities for up to five days; solitary confinement for up to 48 hours (in one of the two disciplinary cells). Decisions on the imposition of a disciplinary sanction shall be taken by the Director in writing.

In this regard, the CPT notes with concern that the relevant legislation does not provide for a formal procedure and that sanctions imposed had not been recorded in a specific register. On the other hand, the Committee welcomes the fact that, following a recommendation by the Ombudsperson, such a register had recently been created. It was empty at the time of the visit.

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with the purpose of enhancing their capacities in this field.

<sup>29</sup> Section 27 of the Detention Regulation.

<sup>30</sup> Section 47 of the Detention Regulation.

**The CPT recommends that the relevant authorities take the necessary steps, including at the legislative level, to ensure that formal disciplinary procedures for Vranidoll Detention Centre are established and implemented in practice. In this connection, the foreign nationals concerned should be entitled to be informed in writing of the charges against them, to be heard in person by the decision-making authority, to call witnesses on their own behalf, to receive a copy of the decision and to appeal to an independent authority against any sanctions imposed. Whenever necessary, use should be made of professional interpretation services. In addition, all disciplinary sanctions should be recorded in the recently established register. Further, health-care staff should be highly attentive to the needs of all detainees placed in solitary confinement and should therefore not only be informed of any placement but also visit the person concerned immediately after the measure has started (and, if the confinement exceeds 24 hours, at least once per day), providing prompt medical assistance, as required.**

d. specific issues related to the Covid-19 pandemic

59. The CPT is concerned about the lack of a protocol related to the ongoing Covid-19 pandemic at Vranidoll Detention Centre. Personal protective equipment (PPE) was made available but there were no other procedures in place in terms of prevention. Only a few posters were displayed on the walls. The detection of symptoms was limited to one body temperature check by the nurse upon arrival at the DCF.

The delegation was informed that, in the period between 26 March 2020 and 7 May 2020, in the context of the Covid-19 pandemic, Vranidoll Detention Centre had been used as an emergency quarantine facility for all foreign nationals who had entered the territory of Kosovo\*, and a total of 64 foreign nationals (including two women and two children) had been held there in quarantine for two weeks. According to the management and security staff, there had been a number of instances of self-harming by detainees and violent incidents such as damage to the premises, the latter requiring an intervention by the police. This may have been caused by the lack of information about the purpose of their (sanitary) detention. However as far as the delegation could ascertain, such incidents were not recorded in a dedicated register. There were two police officers and two nurses present around the clock. The delegation was informed that all staff present in the premises were wearing PPE (masks, medical goggles). In terms of access to outdoor exercise, foreign nationals could go outside in pairs (together with their room-mates) but there was no clear rule. There did not seem to be a sanitary protocol in place.

Given that Covid-19 remains a serious risk for immigration detainees and staff alike, **the CPT recommends that the relevant authorities develop a specific and comprehensive strategy for immigration detention. Such a strategy should, inter alia, include awareness-raising on Covid-19 infection prevention at Vranidoll Detention Centre and the methods that will be used to guarantee that the Centre is provided with sufficient quantities of appropriate PPE. Further, steps should be taken to ensure that rapid, easily accessible and free PCR testing is available for every foreign national or staff member, should they develop symptoms suggestive of Covid-19 or be exposed to others suspected of having Covid- 19.**

## **C. Prison establishments**

### **1. Preliminary remarks**

60. The CPT's delegation examined the situation in four prisons for adults, namely Dubrava Prison, High Security Prison at Gërdoc-Podujeva/Grdovac-Podujevo, Mitrovica/Mitrovicë Detention Centre and the newly opened Prishtinë/Priština Detention Centre. It also carried out a targeted visit to Lipjan/Lipljan Correctional Centre for Juveniles and Lipjan/Lipljan Correctional Centre for Women to interview newly-admitted juvenile remand prisoners, juveniles held under an educational measure and female remand prisoners.

61. The basic legal framework of the execution of prison sentences is laid down by the 2013 Law on the Execution of Penal Sanctions (LEPS),<sup>31</sup> with more details being provided in uniform House Rules in Correctional Institutions, issued by the Minister of Justice in 2015.<sup>32</sup> Relevant provisions concerning detention on remand are contained in the 2012 Criminal Procedure Code (CPC).<sup>33</sup> The execution of juvenile prison sentences is now regulated in the new Code of Juvenile Justice (CJJ), adopted in 2018.<sup>34</sup>

The delegation was informed that further amendments to the LEPS were in the public consultation process at the time of the 2020 visit. It was envisaged, *inter alia*, that the role of the prison service in the conditional release of prisoners would be strengthened and the opportunity for prison leave would be increased from one to two weeks per year.

Further, according to the information provided to the delegation, a new Law on the Kosovo\* Correctional Service (KCS) was being drafted; this will comprehensively regulate the functioning of the prison system, including the situation of prison staff and the operation of a Prisoner Assessment and Classification Unit (see paragraph 64).

**The CPT would like to receive updated information on this matter.**

62. Since the last visit, several positive developments have taken place: two new detention centres, in Prishtinë/Priština and Gjiilan/Gnjilane, have been brought into service and have replaced the old facilities which provided poor material conditions. Further, Lipjan/Lipljan Correctional Centre for Juveniles and Lipjan/Lipljan Correctional Centre for Women have been refurbished and it was planned that the Pejë/Peć Detention Centre would be replaced by a new facility.<sup>35</sup>

**The CPT would like to receive more details about the plans to replace Pejë/Peć Detention Centre.**

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<sup>31</sup> Law No. 04/L-149. Certain provisions of the LEPS were amended in 2017 (Law No. 05/L-129). Where relevant, these amendments are described later in the report.

<sup>32</sup> Administrative Instruction MoJ-NO.07/2015 dated 14 July 2015.

<sup>33</sup> Code No. 04/L-123; see Sections 194 to 203.

<sup>34</sup> Code No. 06/L-006.

<sup>35</sup> In 2015, the CPT considered that material conditions in this establishment were generally poor (see doc. CPT/Inf (2016) 23, paragraph 41).

63. The CPT also notes positively that, as was the case during previous visits, overcrowding was generally not a problem and the prison estate was operating well below its official capacity. According to the information provided to the delegation by official interlocutors, the prison estate had a capacity of 2,804 and was holding 1,556 prisoners (including some 500 on remand). It is also noteworthy that following the 2017 amendments, Section 36, paragraph 2, of the LEPS now provides that prisoners must be provided with at least 8 m<sup>2</sup> in single-occupancy cells and at least 4 m<sup>2</sup> per person in multiple-occupancy cells.

Despite these positive facts, crowded conditions in some cells were observed by the delegation at Mitrovica/Mitrovicë Detention Centre and Dubrava Prison (see paragraphs 71 and 72, respectively).

64. Further, in May 2019, a Prisoner Assessment and Classification Unit started to operate at Prishtinë/Priština Detention Centre, under the authority of the KCS. The aim of the project, which was still at its pilot stage at the time of the visit, was to carry out an assessment of the needs and risks presented by sentenced prisoners entering the prison system and, on this basis, draw up individual sentence plans and identify tailor-made interventions and programmes to reduce re-offending. The assessment was made by a multi-disciplinary team which included lawyers, psychologists, criminologists and sociologists.<sup>36</sup> This is a laudable development.

Nevertheless, it became clear during the visit that the choice of programmes and interventions which could in reality be offered to inmates in the establishments visited was rather limited and that staff were not sufficient in number to systematically give a meaningful follow-up to the initial assessment and individual sentence planning.

**The CPT encourages the relevant authorities to further develop the initial assessment and classification of sentenced prisoners in the entire prison system and to ensure that the individual sentence planning can be effectively implemented in practice throughout the execution of the prison sentence. Indeed, this will require ensuring the availability of adequately trained staff.**

65. In several previous visit reports, the CPT expressed serious concerns about the phenomenon of corruption at Dubrava Prison (and, albeit to a lesser extent, in other prison establishments). During the 2020 visit, official interlocutors informed the delegation that efforts had been made since the last visit to tackle this issue. In this context, some 400 prison officers were rotated among various prison establishments in 2019 to fight corruption and to avoid the creation of inappropriate relations between staff and inmates.

However, at Dubrava Prison, according to a number of prisoners interviewed by the delegation, corruption involving custodial staff persisted. There was still a widespread belief that many things could be bought, including preferential treatment, such as accommodation in a single-occupancy cell, work opportunity, weekend leave outside the establishment and parole, as well as illicit drugs and mobile phones.

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<sup>36</sup> It was planned to open another classification centre for juvenile prisoners.

The findings of the visit thus once again indicate that further action is required to tackle the phenomenon of corruption and to gain the trust of prisoners in the proper functioning and fairness of the prison system and, more generally, the criminal justice system. The Committee emphasises in this respect that the existence of a widespread belief among prisoners that anything can be bought inevitably undermines attempts to create order within a prison and to develop positive staff-prisoner relations. Moreover, corruption brings in its wake discrimination, violence, insecurity and, ultimately, a loss of respect for authority.

**The CPT calls upon the relevant authorities to pursue their efforts to combat the phenomenon of corruption at Dubrava Prison, as well as in other prison establishments. An effective anti-corruption strategy must include preventive measures, education and the application of appropriate sanctions. In this context, prison staff and officials working within the penitentiary system should receive the clear message that extorting money or other favours from prisoners is unacceptable and will be punished accordingly; this message should be reiterated in an appropriate form, at suitable intervals.**

66. *Dubrava Prison*, repeatedly visited by the CPT in the past, remains the largest KCS establishment in Kosovo\* with an official capacity of 1,031 places, divided into eight separate residential blocks and a prison hospital block. At the time of the visit, it was holding 586 adult male sentenced prisoners; this represents a significant decrease since the 2015 visit when the establishment had been accommodating 857 inmates.

The *High Security Prison at Gërdoc-Podujeva/Grdovac-Podujevo*, opened in May 2014, was briefly visited by the CPT in 2015. At the time of the 2020 visit, it had an official capacity of 390 places and was holding 162 adult male prisoners (including 35 held on remand<sup>37</sup>). Prisoners were accommodated in three separate blocks.

*Mitrovica/Mitrovicë Detention Centre*, repeatedly visited by the CPT in the past, remained the only KCS establishment in the northern part of Kosovo\*. With an official capacity of 81 places, it was accommodating 51 adult male prisoners (of which 20 were on remand and 31 sentenced).

As already noted in paragraph 62, since the last visit, the old premises of the *Prishtinë/Priština Detention Centre* have been taken out of service and the detention centre has moved to a new compound located on the southern outskirts of Prishtinë/Priština. The new detention centre was inaugurated in November 2018 and received its first prisoners in January 2019. Prisoners were accommodated in two three-storey buildings (block A and block B) which were interconnected on each floor with corridors and together formed an H-shaped structure. At the time of the visit, the establishment had a capacity of 254 places and was holding 215 adult male prisoners (152 held on remand and 63 sentenced).<sup>38</sup>

The prison management regretted the fact that the establishment had been constructed in the immediate vicinity of residential buildings and was surrounded by hills, both of which provided an unobstructed view of the whole facility. Indeed, this constitutes a security risk and makes it difficult to control prohibited items, including drugs and mobile phones, being thrown over the prison walls into the prison compound.

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<sup>37</sup> Remand prisoners placed in the High Security Prison would usually be involved in high-profile crimes.

<sup>38</sup> Once fully operational, the overall capacity of the establishment will be 320 places.

## 2. Ill-treatment

67. As was the case in 2015, the majority of prisoners interviewed by the delegation made no complaints about the manner in which they were treated by staff. On the contrary, some of them stated explicitly that they were treated correctly and professionally.

However, at Dubrava Prison and at the High Security Prison, the delegation received a number of credible allegations of physical ill-treatment of sentenced prisoners by custodial staff. The alleged ill-treatment consisted of slaps, punches and kicks to various parts of the body. In some cases, the ill-treatment was allegedly inflicted following instances of inter-prisoner violence, even after the prisoners involved had been brought under control, they had been handcuffed behind their back and were lying prone on the floor.

A few isolated allegations of prisoners having received punches and kicks from custodial staff were also heard at Mitrovica/Mitrovicë Detention Centre and of excessive use of force at Prishtinë/Priština Detention Centre.

Moreover, a few prisoners at Dubrava Prison and at the High Security Prison complained of verbal abuse by staff.

**In the light of these findings, the CPT recommends that the management of Dubrava Prison and the High Security Prison, as well as that of Mitrovica/Mitrovicë and Prishtinë/Priština Detention Centres, remain constantly vigilant and deliver a clear message to all custodial staff that all forms of ill-treatment, including verbal abuse, are unlawful and will be punished accordingly. Further, it should be reiterated to custodial staff that no more force than is strictly necessary and proportionate should be used to bring an agitated and/or violent prisoner under control and that, once under control, there can be no justification for striking them.**

68. The examination of various registers, as well as the information gathered through interviews with staff and inmates, suggest that, as was the case during the previous visit, inter-prisoner violence was not a major problem in the establishments visited. When confronted with the rare instances of fights between inmates, staff generally appeared to react promptly and adequately. See, however, the remarks made in the preceding paragraph as regards allegations of ill-treatment by staff following episodes of inter-prisoner violence.

### 3. Conditions of detention

#### a. material conditions

69. Material conditions in the *High Security Prison* remained good. Prisoners were accommodated in single-occupancy cells of identical design, which were sufficient in size (approximately 10 m<sup>2</sup>), were in principle suitably equipped (see, however, paragraph 76) and provided sufficient access to natural light, artificial lighting and ventilation. A few deficiencies which had appeared since the opening of the establishment, such as floors damaged by moist fresh concrete, were being progressively addressed.

Further, the outdoor exercise yards attached to the detention blocks, criticised by the CPT following the previous visit,<sup>39</sup> had been repainted in a red matt colour and, in three of them, the quality of the floor had been improved.<sup>40</sup> However, none of the yards seen by the delegation had yet been equipped with shelter against inclement weather. **This deficiency should be remedied.**

70. In many respects, the material conditions in the newly-open *Prishtinë/Priština Detention Centre* were adequate. Prisoners were accommodated in single- or double-occupancy cells which, in both cases, measured between some 10 and 14 m<sup>2</sup>,<sup>41</sup> had access to natural light and were reasonably clean. Artificial lighting and ventilation were also adequate. The cells were equipped with a bed or a bunk-bed, an in-cell sanitary annexe (consisting of a toilet and a washbasin) and a call bell.<sup>42</sup>

However, a number of deficiencies were observed by the delegation. First and foremost, reportedly due to the poor quality of the materials used and of construction works, it was necessary to start a rolling programme of refurbishment shortly after the opening of the establishment. For instance, toilets and piping were leaking and, as the delegation could observe for itself in some cells, there were damaged bare electrical wires close to the washbasins.

Moreover, in some cells used for double-occupancy at the time of the visit, the sanitary annexes were not fully partitioned and not all the cells were equipped with chairs/stools and tables. A number of complaints were heard of the poor quality of blankets and mattresses and a few prisoners stated that they preferred to sleep on a mattress placed on the floor as there was no ladder to climb up to the upper bunk-bed and no protection from falling out of it.

Further, prisoners had to use their own bedlinen and were not systematically provided with a full hygiene kit (e.g. toilet paper was allegedly sometimes missing).

Finally, the delegation noted that the outdoor exercise yards were equipped with benches but there were no shelters against inclement weather.

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<sup>39</sup> At the time of the previous visit, the blinding reflection of the sun off the white concrete ground and walls in the summer months and the hard slippery surface had made any genuine outdoor exercise virtually impossible.

<sup>40</sup> It was planned to improve the floors in the other three yards in 2021.

<sup>41</sup> Excluding the fully-partitioned sanitary annexe (measuring some 2 m<sup>2</sup>) in some of the cells.

<sup>42</sup> See, however, paragraph 0.



In the light of these findings, **the CPT recommends that the relevant authorities take steps to ensure that at Prishtinë/Priština Detention Centre:**

- **the necessary refurbishment is continued so that the establishment is maintained in a good state of repair and is fully operational and safe;**
- **sanitary annexes in double-occupancy cells are fully partitioned (i.e. from floor to ceiling);**
- **each cell is equipped with a table and chairs commensurate with the number of prisoners accommodated in the cell;**
- **the upper bunk-beds can be safely used;**
- **the quality of mattresses and blankets provided to prisoners is reviewed;**
- **all prisoners are provided free of charge with essential personal hygiene items and clean bedlinen;**
- **outdoor exercise yards are equipped with shelter against inclement weather.**

71. Material conditions at *Mitrovica/Mitrovicë Detention Centre* remained generally acceptable in terms of equipment, state of repair (even if the delegation noted some shortcomings such as walls damaged by moisture), cleanliness, lighting and ventilation.

However, conditions in most cells seen by the delegation were crowded. Certain single-occupancy cells measured less than 5 m<sup>2</sup>, some double-occupancy cells only measured 7 m<sup>2</sup>, triple-occupancy cells measured less than 10 m<sup>2</sup> and the biggest cells (11 to 13 m<sup>2</sup>) were accommodating four prisoners.<sup>43</sup>

In the CPT's view, prisoners should be provided with a minimum of 4 m<sup>2</sup> of living space per person in multiple-occupancy cells (not counting the area taken up by any in-cell toilet facility). Further, cells measuring less than 6 m<sup>2</sup> do not constitute suitable prison accommodation and should be taken out of service or enlarged.

**The CPT recommends that the relevant authorities take the necessary steps to ensure that these principles are effectively implemented in practice at Mitrovica/Mitrovicë Detention Centre. The capacity of the establishment and of the cells should be revised accordingly and any extra beds should be removed from the cells.**

72. As already noted in paragraph 66, the prison population at *Dubrava Prison* has decreased significantly since the last visit which has alleviated the pressure on the establishment. Moreover, accommodation blocks 4, 6 and 8 have been refurbished and in principle provided acceptable conditions.

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<sup>43</sup> The aforementioned cell sizes exclude the fully-partitioned sanitary annexes.

However, material conditions in other parts of the establishment were very poor and some cells appeared to be unfit for human accommodation. In particular, cells were severely dilapidated and filthy (broken windows, dirty damaged walls and floors, moist ceilings with peeling plaster, damaged electrical sockets), had very poor (or non-existent) artificial lighting, did not possess sufficient furniture (e.g. chairs were missing), had no call bells and the in-cell sanitary annexes (a toilet and a washbasin) in multiple-occupancy cells were not always fully partitioned. Once again, the delegation observed dangerous improvised electric wiring in a number of cells.

Moreover, communal showers were in a very poor state of repair and hygiene and, in blocks 1 and 5, out of order at the time of the visit. It is a matter of particular concern that, as a result, prisoners could not take a shower and had to wash in a washbasin in their cells.

73. Conditions in a significant number of cells in various blocks were crowded (e.g. cells measuring between 12 and 13 m<sup>2</sup> – excluding the in-cell sanitary annexes – were holding four inmates) and the situation would become even more problematic if all the beds in some of the larger cells were used (e.g. a cell with six beds measured a mere 17.5 m<sup>2</sup>).<sup>44</sup>

Further, in practically all the blocks, the delegation received complaints from prisoners about the dirty and worn out thin mattresses and blankets which they were provided with. It also became clear that prisoners had to use their own bedlinen and had to rely on families to launder them or had to wash them themselves in an improvised manner.

74. In addition, most of the outdoor exercise yards adjacent to the accommodation blocks were not equipped with either a shelter or a bench, and the modest sports equipment (usually limited to basketball hoops) was often damaged.

75. In the light of these findings, **the CPT recommends that the relevant authorities continue the programme of refurbishment at Dubrava Prison. In particular, steps should be taken as a matter of priority to ensure that:**

- **all premises are maintained in a good state of repair and hygiene, as well as being kept safe;**
- **prisoners are provided with at least 4 m<sup>2</sup> of living space per person in multiple-occupancy cells;**
- **all prisoners are able to take a hot shower at least twice a week in decent conditions;**
- **sanitary annexes in double-occupancy cells are fully partitioned (i.e. from floor to ceiling);**
- **each cell is equipped with a table and chairs commensurate with the number of prisoners accommodated in the cell;**
- **the quality of mattresses and blankets provided to prisoners is reviewed and prisoners are systematically provided with clean bedlinen;**

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<sup>44</sup> To a certain extent, the crowded conditions were attributable to the fact that several cells were out of service at the time of the visit due to their extremely poor state of repair.

- **outdoor exercise yards are equipped with shelter against inclement weather and benches.**

76. As observed already during the previous visit, there was insufficient storage space for personal belongings in the cells in all the establishments visited. Inmates either had to purchase additional furniture themselves (usually plastic drawers) or keep their possessions in cardboard boxes or plastic bags under their beds. **Steps should be taken to remedy this shortcoming.**

b. regime<sup>45</sup>

77. At *Dubrava Prison*, sentenced prisoners held in the standard and advanced regimes (as regards prisoners in the basic regime, see paragraph 81)<sup>46</sup> could move freely within their unit during the day and were granted, in line with Section 37 of the LEPS, at least two hours of daily outdoor exercise. Approximately half of the prisoners worked, in particular those in the advanced regime (agriculture, maintenance work and cleaning, work in the laundry/kitchen, etc.) and the delegation was informed that some 10 to 15 inmates participated in each of the three quarterly modules of vocational training (carpentry, metal work and plumbing). There were also technical education classes (welding, car maintenance and heating and ventilation engineering). Some sports and leisure activities were also organised and prisoners had access to a library once a week.

However, the delegation was informed that a large sports hall (which was reserved as a potential quarantine centre at the time of the visit) had in fact not been operational for several years due to refurbishment.

Whilst noting the regime activities currently offered to prisoners, **the CPT encourages the relevant authorities to step up their efforts to engage more prisoners at Dubrava Prison in work, vocational training, education and sports activities, with a view to ensuring that the potential of the workshops, school, sports hall and the vast grounds inside the secure perimeter of the establishment are fully exploited.**

78. At the *High Security Prison*, the delegation observed some positive developments in comparison with the situation during the previous visit. Some 70 % of sentenced prisoners held in the standard and advanced regimes (i.e. the vast majority of prisoners at the time of the visit) worked (e.g. cleaning duties, maintenance work, kitchen/distribution of food, haircutting), albeit some of these tasks only took up to two hours per working day. There were now three operational workshops (carpentry, production of toilet paper and of plastic bags) which together employed approximately 10 prisoners.

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<sup>45</sup> The arrangements described in this section disregard any possible restrictions imposed in the context of the Covid-19 pandemic. For these specific measures, see paragraph 0.

<sup>46</sup> Sentenced prisoners were held in the *basic regimes* for up to 28 days upon their admission or could be downgraded to this regime, for the same (renewable) period, after having served a disciplinary punishment of solitary confinement. After having spent between three and six months in the *standard regime*, they could progress to the *advanced regime*. The decisions were taken by a multidisciplinary panel, chaired by the Deputy Director of the Prison. In principle, only sentenced prisoners in the standard and advanced regimes were eligible for work.

Further, it remained the case that sentenced prisoners held in the standard and advanced regimes were free to move within their accommodation unit for six hours (standard regime) and eight hours (advanced regime) a day and could associate, play table tennis or watch TV together in a communal room. They were also offered two hours of daily outdoor exercise and had access to a gym (usually for three one-hour sessions a week).

However, there was still no possibility for inmates to participate in educational or vocational training courses and for a number of them, the time which they spent daily in an organised activity remained fairly limited (in particular for those who did not work).

79. Sentenced prisoners held at *Prishtinë/Priština Detention Centre* could associate freely within their units during the day and were offered two hours of daily outdoor exercise. However, less than one-third of them had work (e.g. kitchen duties, maintenance, laundry). There were virtually no other structured activities and the regime offered to the majority of them was very impoverished.

80. Efforts had been made at *Mitrovica/Mitrovicë Detention Centre* to provide sentenced prisoners with work and the facility now had several workshops (carpentry, tailoring, metal work and a printing workshop).

However, less than half of the sentenced prisoners worked; for the rest of them, the regime was very poor; they were provided with no activities (apart from three hours of daily outdoor exercise) and remained locked up in their cells for 21 hours a day. At best, they could borrow books from a library, play board games or watch TV.<sup>47</sup>

81. The regime offered to remand prisoners at the High Security Prison and at *Mitrovica/Mitrovicë* and *Prishtinë/Priština Detention Centres*, as well as to sentenced prisoners held in the basic regime,<sup>48</sup> remained very poor. These inmates were locked up in their cells for 21 or 22 hours a day, with nothing to occupy their time, except for watching TV, playing board games and talking to their cell-mates. The only activity offered to them was daily outdoor exercise (for up to three hours).

82. The Committee recognises that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates, poses particular challenges. However, it is not acceptable to leave prisoners to their own devices for months at a time.

As stressed by the CPT in the past, a satisfactory programme of activities is of crucial importance for the well-being of prisoners, contributes to the establishment of a more secure environment within prisons and is an essential part of their rehabilitation. The longer the period for which prisoners are detained, the more developed should be the regime offered to them.

**The CPT reiterates its recommendation that all prisoners be provided with a comprehensive regime of out-of-cell activities, in the light of the above principles. In the CPT's view, the aim should be to ensure that all prisoners (including those on remand) are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.**

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<sup>47</sup> The only fitness room was out of service at the time of the visit due to refurbishment.

<sup>48</sup> During the visit, the CPT's delegation met this latter category of inmate at *Dubrava Prison* and at the High Security Prison.

#### 4. Health care

##### a. introduction

83. As noted in the CPT's previous report, in 2013, the responsibility for health-care services in KCS establishments had been transferred from the Ministry of Justice to the Ministry of Health. Further, in 2017, new Standard Operating Procedures (SOP) on the Prison Health Care Service had been issued;<sup>49</sup> these regulate a number of matters of direct relevance to the CPT's mandate, such as requirements for medical examination upon admission to prison, the recording and reporting of injuries and the role of health-care staff in the context of disciplinary procedures.

The Committee notes these positive developments and wishes to stress from the outset that its delegation observed further improvements regarding the provision of health care in prison since the 2015 visit. However, additional steps are needed to remedy the existing shortcomings and to implement several of the CPT's recommendations made following previous visits.

##### b. staff, treatment and facilities

84. The staffing levels of general practitioners<sup>50</sup> and nurses<sup>51</sup> remained on the whole adequate in all the establishments visited. Further, it is positive that in all the establishments visited, at least one nurse was present at all times.

85. The health-care teams in all the establishments visited included a psychiatrist, either working full-time (Dubrava Prison) or part-time (0.8 full-time equivalent (FTE) at the High Security Prison, 0.5 FTE at Mitrovica/Mitrovicë and 0.2 FTE at Prishtinë/Priština). Moreover, it is a positive development that each of the establishments now had a full-time clinical psychologist.

These staffing levels were in principle adequate at the High Security Prison and at Mitrovica/Mitrovicë. However, it appeared that more resources were required in order to appropriately address the needs presented by the prisoner population at Prishtinë/Priština where some 60 inmates held in the establishment at the time of the visit were suffering from a mental disorder. **The CPT recommends that the psychiatric input at Prishtinë/Priština Detention Centre be increased.**

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<sup>49</sup> The SOP was issued in accordance with Administrative Instruction No. 05/2014, on the functioning of prison health services, approved on 22.10.2014.

<sup>50</sup> It is recalled that the establishments visited had the following capacities: Dubrava – 1,031 places, the High Security Prison – 390 places, Mitrovica/Mitrovicë Detention Centre – 81 places, Prishtinë/Priština Detention Centre – 254 places.

At Dubrava Prison, there were six full-time doctors ensuring a 24-hour presence; at the High Security Prison, there were three full-time doctors ensuring a presence between 8 a.m. and 8 p.m. on working days and one doctor was on call outside these working hours. At Mitrovica/Mitrovicë, a doctor was present for four to five hours every working day and was on call for the rest of the time. At Prishtinë/Priština, three full-time doctors were present in the establishment between 8 a.m. and 4 p.m. on working days and one doctor was on call outside these working hours.

<sup>51</sup> There were 26 nurses at Dubrava Prison, six nurses at the High Security Prison and at Mitrovica/Mitrovicë Detention Centre and seven nurses at Prishtinë/Priština Detention Centre.

86. Despite the recommendation made following the previous visit, the psychiatric care provided to prisoners on the psychiatric ward of the hospital unit at Dubrava Prison<sup>52</sup> remained unsatisfactory. At the time of the visit, the ward was accommodating seven patients with mental disorders, including four with severe mental disorders. The psychiatric care provided to them was still limited to pharmacotherapy and individual consultations with a psychiatrist.

The CPT must stress once again that prisoners with severe mental disorders should be cared for in a suitable therapeutic environment. As for any other psychiatric patient, their treatment should involve, in addition to appropriate medication and medical care, a wide range of therapeutic, rehabilitative and recreational activities, and should be based on individual treatment plans drawn up for each patient by a multidisciplinary team.

In the event that the transfer of the patients concerned to the Forensic Psychiatric Institute in Prishtinë/Priština is not immediately feasible,<sup>53</sup> **the CPT reiterates its recommendation that the relevant authorities take steps to review the situation of prisoners suffering from severe mental disorders at Dubrava Prison, with a view to significantly improving the psychiatric treatment provided to them, in the light of the above remarks.** This may require the recruitment of staff to provide psycho-social rehabilitative activities and the allocation of suitable premises in which these activities could take place.

Further, **in the longer term, the Committee encourages the relevant authorities to increase the capacity of the Forensic Psychiatric Institute in Prishtinë/Priština to ensure that prisoners suffering from severe mental disorders can be transferred there.**

87. The CPT welcomes the fact that the disruptions to the supply of medication, including essential medicines, had been resolved since the last visit and that all the establishments visited now had the necessary medication.

88. As regards the treatment of drug addiction, opioid agonist therapy (OAT) with methadone was now available in all the establishments visited, with the exception of Mitrovica/Mitrovicë Detention Centre,<sup>54</sup> and the continuity of OAT for newly-admitted prisoners was ensured.

However, as in the past, in none of the establishments visited were there any harm-reduction measures (such as needle-exchange programmes), although such measures are apparently available to the community at large.

**The CPT encourages the relevant authorities to further develop the programme for the management of prisoners with drug dependence, in the light of the above remarks.**

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<sup>52</sup> The capacity of the hospital unit was 35 beds.

<sup>53</sup> As noted in paragraph 0, the capacity of the Institute was being exceeded at the time of the 2020 visit.

<sup>54</sup> Opioid dependant prisoners were immediately transferred to another KCS establishment where OAT was available.

89. Moreover, it is a matter of concern that at Dubrava Prison and Prishtinë/Priština Detention Centre, the administration of psychotropic medication was often discontinued upon admission of a prisoner and was continued only once the person concerned had been examined by a psychiatrist, which could be up to one week later.

**The CPT recommends that the relevant authorities take urgent steps to ensure continuity of care for newly-admitted prisoners at Dubrava Prison and Prishtinë/Priština Detention Centre and, where appropriate, in other KCS establishments.**

90. As regards the health-care facilities of the establishments visited, it remained the case that the medical consultation rooms generally provided good material conditions and were adequately equipped.

91. However, the premises of the hospital unit at Dubrava Prison were still not adapted to the needs of physically disabled inmates (e.g. a raised threshold at the entrance to the common sanitary facilities prevented access by wheelchair)<sup>55</sup> and the common toilets and showers continued to be cleaned by the patients themselves. As stressed in the previous report, such work is highly inappropriate for inmates who are ill. **The CPT reiterates its recommendation that these deficiencies be remedied.**

92. The new SOP on the Prison Health Care Service requires that an autopsy must be carried out in every case of death of a prisoner<sup>56</sup> and this requirement appeared to be respected in practice. However, the delegation was informed that neither the KCS, nor the management of the prison, nor the prison health-care services were informed of the outcome of the autopsy.

**The CPT recommends that the relevant authorities take steps to ensure that the contents of any autopsy reports are shared with the relevant prison management and with the health-care staff, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures in respect of future similar episodes.**

93. At Dubrava Prison, the delegation wished to examine in more detail the deaths of two prisoners which had occurred in January and April 2020. However, given the issue described above, the health-care staff were unaware of the exact cause of death established by the autopsies. **The CPT would like to receive a copy of the autopsy reports concerning the death of two prisoners who died at Dubrava Prison in January and April 2020.**

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<sup>55</sup> Moreover, it should be pointed out that the poor material conditions described in paragraphs 0 to 0 also prevailed in the hospital unit, including on the psychiatric ward; indeed, the recommendations made in paragraph 0 should be read as equally applying to this unit.

<sup>56</sup> Chapter II, section D, paragraph 7, of the SOP.

c. medical screening

94. In all the establishments visited, newly-arrived prisoners were usually seen by a doctor (or a nurse reporting to a doctor) within 24 hours of admission; it is a positive development that this procedure now included a physical examination of the prisoner concerned, in line with the recommendations made by the CPT following previous visits.

However, it remained the case that newly-admitted prisoners were not systematically screened for transmissible diseases.<sup>57</sup>

**The CPT once again recommends that the relevant authorities take the necessary steps to ensure that, in all KCS establishments, all newly-arrived prisoners are subject to systematic TB screening and voluntary testing for HIV and hepatitis B and C.**

95. Improvements were also noted by the delegation as regards the recording of injuries. As far as the delegation could ascertain, all injuries detected by medical services, whether upon admission or during imprisonment, were now recorded in all the establishments visited. Moreover, at Dubrava Prison and at the High Security Prison, photographs of injuries were taken and included in the medical file and, at Mitrovica/Mitrovicë Detention Centre, detected injuries were systematically marked on a body chart.

**The CPT recommends that the practice of taking photographs of injuries and the use of body charts be introduced in all KCS establishments**, in line with the remarks set out by the Committee in its previous visit reports and the requirements laid down in the SOP.<sup>58</sup>

96. Further, in several of the injury records seen by the delegation in the establishments visited, the statement made by the prisoner concerned as to the origin of the injuries and the description of injuries were not detailed enough and a conclusion as to the consistency between the allegations made and the objective medical findings was missing.

**The CPT recommends that these shortcomings be remedied. In this context, reference is also made to the detailed recommendation made in paragraph 49 concerning the contents of the record drawn up after a medical examination.**

97. In the previous visit report, the CPT considered that there was no clear reporting procedure in respect of detected injuries. It is an interesting development that the new SOP now provides that every detected injury should be reported to the prison administration, to the Ministry of Health and the Ombudsperson.<sup>59</sup>

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<sup>57</sup> In accordance with Chapter I, section 10, paragraph d., of the SOP, the purpose of the initial medical examination upon admission to a prison is to address “infectious diseases, with particular emphasis on those that are spread through blood [...], TBC, HCV, HBV and HIV/AIDS [...]”.

<sup>58</sup> Chapter II, section B, paragraph 2, of the SOP provide that injuries identified by a prison doctor should be described, photographed and recorded in three documents (the medical file, sheets with body drawings and a special protocol).

<sup>59</sup> See Chapter II, section B, paragraph 5, of the SOP.



The delegation was informed that, in practice, injury reports were submitted to the Ombudsperson via the Ministry of Health and it was left to the discretion of the former as to whether the report should be transmitted to the prosecutorial authorities.

**The CPT recommends once again that steps be taken to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is always brought directly to the attention of the competent prosecutor (regardless of the wishes of the person concerned) who will be in a position to swiftly take the necessary action (including the ordering of an examination by a doctor with recognised forensic training). The health-care staff should advise prisoners of the existence of the reporting obligation and inform them that the forwarding of the report to the relevant authorities is not a substitute for the lodging of a formal complaint.**

d. medical confidentiality

98. Certain positive developments were observed by the delegation as regards respect for medical confidentiality. In particular, the new SOP explicitly provides that medical examinations should be performed in a confidential manner, without the presence of security staff.<sup>60</sup> The information gathered during the visit in this respect suggests that in most establishments visited, custodial officers were no longer systematically present during medical examinations of prisoners. Further, at the High Security Prison, medical consultations were now carried out in the health-care unit (rather than in accommodation units as had been the case in the past).

However, at Dubrava Prison, the doors of the medical consultation room apparently often remained open and the medical examinations of prisoners could be heard and seen by prison officers standing nearby. Moreover, medication (most notably methadone) was systematically dispensed to inmates in the medical unit in the presence of custodial staff.

**The CPT recommends that further steps be taken at Dubrava Prison to ensure that medical confidentiality is fully respected in practice, in compliance with the relevant provisions of the new SOP and the recommendations made by the Committee in previous visit reports.<sup>61</sup>**

99. In principle, prisoners could make a request for a medical consultation directly to the nurses who visited the detention areas on a daily basis in all the establishments visited (e.g. to distribute medication).

However, in particular at Prishtinë/Priština Detention Centre, remand prisoners who were locked up in their cells for most of the day usually had to make requests to see a doctor via the custodial staff (albeit without indicating the reason). As noted in the previous report, **in the CPT's view, the introduction of dedicated locked letterboxes for requests for medical consultations to which only members of the health-care team have access would further enhance the confidentiality of such requests.**

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<sup>60</sup> See Chapter I, section 1, paragraph 21, and section 11, paragraph 20, of the SOP.

<sup>61</sup> In particular, medical consultations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.

## 5. Other issues

### a. prison staff

100. The staff complement of prison officers remained on the whole sufficient in all the establishments visited.<sup>62</sup> There were 480 prison officers at Dubrava Prison, 167 at the High Security Prison, 57 at Mitrovica/Mitrovicë Detention Centre and 131 at Prishtinë/Priština Detention Centre.

However, at Prishtinë/Priština, the delegation was informed that at night and on the weekend it was sometimes the case that only one prison officer was responsible for the whole floor (consisting of two wings) on which up to 80 prisoners were accommodated (while the planned number of staff on duty was two prison officers). Indeed, this issue will potentially become more problematic once the establishment operates at full capacity (see paragraph 66 and footnote 38). **The CPT encourages the relevant authorities to review the staffing levels of custodial staff at Prishtinë/Priština Detention Centre and to increase them as necessary, duly taking into account any increase in the number of prisoners accommodated in the establishment.**

101. At Dubrava Prison and the High Security Prison, the delegation once again noted that custodial officers openly carried pepper spray within the detention areas. Given the potentially harmful effects of this substance, **the Committee reiterates its recommendation that steps be taken in all KCS establishments to ensure that pepper spray does not form part of the standard equipment of custodial staff.**

### b. discipline

102. The most severe disciplinary sanction that may be imposed on *sentenced prisoners* is solitary confinement for up to 15 days. However, Section 104, paragraph 2, of the LEPS still provides that in the case of several disciplinary violations, solitary confinement may be imposed for an uninterrupted period of up to 30 days.

As stressed in the previous report, bearing in mind the potentially extremely damaging effect of solitary confinement on the mental, somatic and social health of inmates, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period for a single punishment. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system. If a prisoner has been sanctioned to disciplinary confinement for a total of more than 15 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement.<sup>63</sup>

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<sup>62</sup> It is recalled that the establishments visited had the following capacity: Dubrava – 1,031 places, the High Security Prison – 390 places, Mitrovica/Mitrovicë Detention Centre – 81 places, Prishtinë/Priština Detention Centre – 254 places.

<sup>63</sup> See also the CPT's 21<sup>st</sup> General Report (CPT/Inf (2011) 28, paragraph 56), in which the Committee expressed the view that the maximum period of solitary confinement as a punishment should be no higher than 14 days for a given offence, and preferably lower.

The CPT acknowledges that, generally, resort to disciplinary sanctions did not appear to be excessive in the establishments visited and that the instances of imposing solitary confinement for several concurrent disciplinary offences for longer than 15 days were very rare. However, **the CPT recommends that the relevant legislation be amended, in the light of the above considerations.**

103. Despite the recommendation made following the previous visit, Section 201, paragraph 1, of the CPC remained unchanged and still provides that a prohibition or restriction on visits and correspondence may be imposed as a disciplinary punishment by a judge on a *remand prisoner*, even if there is no link between the offence and such contacts.

**The CPT reiterates its recommendation that the relevant legal provisions be revised so as to ensure that disciplinary punishment of remand prisoners does not include a total prohibition of family contacts and that any restrictions on family contacts as a form of punishment are applied only when the offence relates to such contacts.**

104. It is a matter of concern that at Mitrovica/Mitrovicë Detention Centre, self-harm continued to be formally regarded as a disciplinary offence and, if committed repeatedly, was punished by solitary confinement (of up to 14 days).

The CPT must once again emphasise that acts of self-harm frequently reflect problems and conditions of a psychological or psychiatric nature and should be approached from a therapeutic rather than a punitive standpoint. Further, placing such prisoners in solitary confinement is likely to exacerbate their psychological or psychiatric problems.

Moreover, the practice followed at Mitrovica/Mitrovicë is apparently not in line with the approach adopted by the new SOP on the Prison Health Care Service which provides that all self-harm should be treated as a health issue and that psychological, psychiatric and health measures should be taken to eliminate its causes.<sup>64</sup>

**The CPT reiterates its recommendation that steps be taken at Mitrovica/Mitrovicë Detention Centre and, where appropriate, in other KCS establishments, to ensure that the above-mentioned precepts are effectively implemented in practice.**

105. Disciplinary procedures continued to be carried out in a satisfactory manner in all the establishments visited. In particular, prisoners were heard in person, were allowed to call witnesses on their own behalf and to cross-examine evidence given against them and received a copy of the reasoned decision.

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<sup>64</sup> See Chapter II, section A, paragraphs 9 and 13, of the SOP. Further, Section 47, paragraph 4, of the LEPS provides as follows: "If a convicted person attempts to harm him or herself or to commit suicide, a professional multidisciplinary team shall initiate the action necessary to assist him or her to address whatever is causing him or her to be inclined to attempt such action."

However, at Mitrovica/Mitrovicë Detention Centre, the copy of the disciplinary decision given to the prisoner concerned (unlike the copy placed in the administrative file) did not contain information on the modalities and deadlines for lodging an appeal. Moreover, at the High Security Prison, the delegation heard a few complaints that the prisoners concerned had received a written copy of the disciplinary decision (which included the relevant information on the possibility to lodge an appeal) only several days after the execution of the disciplinary punishment had started. **The CPT recommends that these shortcomings be remedied.**

106. As regards the role of the health-care staff in disciplinary solitary confinement, it is a praiseworthy development that the new SOP on the Prison Health Care Service provides,<sup>65</sup> in line with the recommendation made by the CPT after several previous visits, that health-care staff should not participate in taking the disciplinary decision but should visit the prisoner concerned immediately after his/her placement in solitary confinement and at least once a day thereafter. As far as the delegation could ascertain, these provisions were respected in practice in all the KCS establishments visited.

c. contact with the outside world

107. In the establishments visited,<sup>66</sup> both remand and sentenced prisoners could usually receive two one-hour visits per month and make one to three phone calls of up to 15 minutes a week. Further, sentenced prisoners in the standard and advanced regime were entitled to receive, under certain conditions, a family visit by their spouse and children at least once every three months for a minimum of three hours.<sup>67</sup>

However, as regards those held on remand, their contact with the outside world still had to be approved by a judge<sup>68</sup> and at Prishtinë/Priština Detention Centre, they could only receive visits under closed conditions (i.e. with partitioning separating them from visitors).

Moreover, the relevant legislation still did not provide for a minimum visit and phone call entitlement for remand prisoners and a minimum entitlement for making phone calls for sentenced prisoners; the visit entitlement for sentenced prisoners (at least one one-hour visit per month) remained insufficient in the CPT's view (and was in fact below what was allowed in practice).<sup>69</sup>

108. The CPT reiterates that contacts with the outside world, in particular visits from families and other relatives, are of crucial importance in the context of the social rehabilitation of prisoners. The Committee is therefore of the view that all prisoners (whether sentenced or on remand and irrespective of the regime) should be entitled to a visit of at least one hour every week.

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<sup>65</sup> See Chapter I, section 6, paragraphs 3, 4 and 8, of the SOP.

<sup>66</sup> The arrangements described in this section disregard any possible restrictions imposed in the context of the Covid-19 pandemic. For these specific measures, see paragraph 0.

<sup>67</sup> See Section 65 of the LEPS and Article 47 of the uniform House Rules in Correctional Institutions.

<sup>68</sup> See Section 200, paragraphs 1 and 4 of the CPC.

<sup>69</sup> As regards sentenced prisoners, see Sections 60 and 62 of the LEPS.

As regards more particularly remand prisoners, they should be entitled to receive visits and make telephone calls, as well as send and receive correspondence, as a matter of principle, rather than subject to authorisation by a judge. Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation and be applied for a specified period of time.<sup>70</sup> Further, “open” visiting arrangements should be the rule and “closed” ones the exception, for all legal categories of prisoners. Any decision to impose closed visits must always be well-founded, reasoned and based on an individual assessment of the potential risk posed by the prisoner.

**The CPT reiterates its recommendation that the relevant authorities take the necessary steps, including at legislative level, to ensure that the aforementioned principles are effectively implemented in practice in all KCS establishments.**

109. Visiting facilities seen by the delegation remained generally satisfactory. Moreover, it is a positive development that a room for family visits had been created at Mitrovica/Mitrovicë Detention Centre since the last visit.

d. information provided to prisoners

110. According to Section 31, paragraph 2, of the LEPS and Article 20 of the uniform House Rules in Correctional Institutions, immediately after their admission to a prison, inmates should be informed in writing of their rights and obligations. Further, the delegation was informed that, in addition to the House Rules, a specific information leaflet existed (in Albanian, Serbian and English) which summarised basic information for remand prisoners entering the prison system.

However, the findings of the visit indicate that these provisions were not always followed in practice and newly-admitted prisoners were not systematically provided basic information about their rights and obligations, or the prison routine.

**The CPT recommends that an information brochure be supplied to all prisoners upon their arrival in a prison, describing in a straightforward manner the main features of the prison’s regime, prisoners’ rights and duties, complaints procedures, basic legal information, etc. This brochure should be translated into an appropriate range of languages.**

e. complaints and inspection procedures

111. In all the establishments visited, several confidential complaints boxes (e.g. for internal complaints and requests, for the Ombudsperson, for NGOs) were available to prisoners.

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<sup>70</sup> Reference is made in this context to Rule 99 of the European Prison Rules which provides that remand prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

However, it remains the case that, with the exception of the High Security Prison, there were no dedicated registers for internal complaints, despite the requirement to this end laid down by Section 91 of the LEPS. **The CPT reiterates its recommendation that this deficiency be remedied.**

112. As regards inspection procedures, in addition to the regular visits carried out by the Ombudsperson as the NPM (see paragraph 7), KCS establishments continued to be monitored by non-governmental organisations, on the basis of a Memorandum of Understanding with the relevant authorities.

f. Covid-19 pandemic and the measures taken

113. In the context of the Covid-19 pandemic, various measures were taken by the relevant authorities within the prison system. The restrictions imposed varied over time as the pandemic evolved.

Overall, the incidence of Covid-positive cases in KCS establishments appeared to be relatively low. According to the information provided to the CPT's delegation by the relevant authorities, as of October 2020, 520 PCR tests had been carried out (380 staff members and 140 prisoners had been tested) and there had been 64 positive results (58 staff members and 6 prisoners). During the same period, there had been no deaths related to Covid-19 among the prisoners.

At the High Security Prison, the delegation was informed that prisoners whose PCR tests had come back positive had been isolated for some 20 days. **The CPT notes in this context that the usual recommended length of medical isolation, depending on the circumstances of the particular case, is between 10 and 14 days.**

114. To prevent the spread of the infection into and within penitentiary establishments, newly-admitted prisoners and those returning to prison, e.g. after weekend leave or from a court hearing, were placed in quarantine which lasted between seven and 14 days and was terminated at the advice of a prison doctor. During that time, the prisoners concerned were visited daily by health-care staff. Protective masks were made available to prisoners and staff alike and the frequency of disinfection of the facilities was increased.

However, the CPT's delegation noted that a significant number of members of staff did not wear the face mask properly; for example, the mask did not cover their nose or was pushed under their chin and rested on the neck. **The CPT recommends that all KCS staff be reminded of the proper use of protective face masks.**

115. Those prisoners for whom work was available in the establishments visited in principle continued to work during the pandemic; this was particularly the case at Dubrava Prison for inmates who worked in agriculture. However, to limit contact among prisoners, school classes and vocational training, including practical classes in workshops, were suspended in this establishment between March and June 2020 (as was the case in public schools).

116. At various points of time, visits were restricted or suspended, partitioning was introduced in the visiting facilities and the number of visitors was regulated. When conjugal visits were once again allowed in the autumn of 2020, visitors were obliged to present a recent negative PCR test. To compensate for these restrictions, prisoners were granted additional possibilities to make phone calls and arrangements were made to allow prisoners to use Skype to communicate with the outside world in all the establishments visited.

**The CPT encourages the relevant authorities to maintain and further develop the possibility of making Voice-over-Internet-Protocol (VoIP) calls for prisoners.**

## D. Psychiatric establishments

### 1. Preliminary remarks

117. The CPT's delegation carried out follow-up visits to the Psychiatric Clinic and the Forensic Psychiatric Institute in Prishtinë/Priština.<sup>71</sup> Both establishments are located within the compound of the University Clinical Centre (UCC).

118. The Psychiatric Clinic is under the responsibility of the Ministry of Health and comprises four wards for in-patients: Ward A for patients with acute and chronic psychoses (capacity of 21 beds), Ward B for non-psychotic disorders (capacity of 27 beds), Ward C for patients with addictions (capacity of 6 beds) and Ward D for intensive psychiatric care (capacity of 14 beds). The overall capacity was 68 beds, with an average occupancy of 60-70% per year. At the time of the visit, the Clinic was accommodating 23 adult patients, including 16 male and seven female patients. Five patients were listed as involuntary.

119. The Forensic Psychiatric Institute ("Forensic Institute"), which was opened in 2014, is under the responsibility of the Ministry of Health and the Ministry of Justice. The Ministry of Health is responsible for the management, treatment and internal security regarding Ward A (admissions/outpatient services), Ward B (mandatory psychiatric treatment) and Ward D (mandatory rehabilitation and resocialisation), while the Kosovo\* Correctional Service (KCS) is responsible for the management and security of Ward C (psychiatric assessment).

The Forensic Institute accommodates criminally irresponsible offenders who are subjected to a court-ordered measure of mandatory psychiatric treatment in custody,<sup>72</sup> as well as persons who are subjected to a court order for psychiatric evaluation in custody.<sup>73</sup> In addition, prisoners who have developed a mental disorder during imprisonment may be placed in the Institute. The overall capacity is 36 beds, with 12 beds in each in-patient ward. At the time of the visit, the Institute was accommodating 41 adult patients (including three women in Ward C). The actual number of patients on the day of the visit was 31 (six were on leave in Ward D, four in ward B). Only one patient was a prisoner (accommodated in Ward C).

The CPT welcomes the fact that a memorandum of understanding has been concluded between the Forensic Institute and the KCS since the last visit. That said, the delegation was informed by the management of the Forensic Institute that there was still a lack of clarity regarding the Institute's legal status which significantly impeded its proper functioning. **The Committee would like to receive the comments of the relevant authorities on this matter.**

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<sup>71</sup> The Psychiatric Clinic had previously been visited in 2010 and 2015 and the Forensic Institute in 2007, 2010 and 2015.

<sup>72</sup> Section 89 of the Criminal Code.

<sup>73</sup> Section 508, paragraph 4, of the CPC.



120. The relevant legal framework governing the involuntary placement of a civil nature comprises the Law on Mental Health (LMH),<sup>74</sup> which was adopted in 2015, and the 2008 Law on Non-Contentious Procedures<sup>75</sup> (Sections 75 to 96). Relevant legal provisions regarding forensic psychiatry are contained in the Criminal Code (Sections 18 and 87 to 90), the Criminal Procedure Code (CPC) (Sections 506 to 518), and the Law on the Execution of Penal Sanctions (LEPS) (Sections 174 to 180).

## 2. Ill-treatment

121. At both establishments visited, the delegation received hardly any allegations of deliberate physical ill-treatment of patients, and many of the patients interviewed by the delegation spoke positively about the manner in which they were treated by staff.

However, in particular at the Forensic Institute and in Ward D of the Psychiatric Clinic, the delegation received a few allegations of excessive use of force vis-à-vis agitated patients. For instance, one patient alleged that, in the context of his placement in a seclusion room and after he had been brought under control and had been held on the floor by staff, he had been kicked in the stomach (and had been verbally abused).

Further, at the Forensic Institute, the delegation was shown a CCTV recording of a violent episode during which a patient attempted to strangle a nurse. Once the patient had been brought under control following the intervention by security staff and had been lying prone on the floor, he was hit with a baton several times.<sup>76</sup>

**The CPT recommends that the management of the Psychiatric Clinic and the Forensic Institute exercise continuous vigilance and remind staff at regular intervals that any form of ill-treatment of patients, whether physical or verbal, is unlawful and will be sanctioned accordingly. Staff should also be reminded that no more force than is strictly necessary and proportionate should be used to bring an agitated and/or violent patient under control and that, once the patient concerned has been brought under control, there can be no justification for striking him/her.**

122. In both establishments, instances of inter-patient violence did occur occasionally, but staff appeared to intervene promptly and adequately in such cases.

123. The findings of the visit indicate that violent incidents (including those involving the use of force by security staff) were not recorded in a dedicated register.

**The CPT recommends that an incident register be established and maintained at the Psychiatric Clinic and the Forensic Institute, as well as in other psychiatric establishments (see also the recommendation in paragraph 140 concerning the recording of the use of means of restraint).**

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<sup>74</sup> Law No. 05/L-025.

<sup>75</sup> Law No. 03/L-007.

<sup>76</sup> According to the medical records examined by the delegation, the patient concerned sustained minor injuries as a result of the incident.

### 3. Patients' living conditions

124. At the Forensic Institute, material conditions remained of a good standard in terms of state of repair and hygiene.

That said, at the Psychiatric Clinic, conditions were rather poor in the old building, due to the lack of renovation and maintenance (e.g. stained walls, damaged furniture, etc.). **Steps should be taken to remedy these deficiencies.**

125. It is regrettable that, in both establishments, living conditions were austere and lacked personalisation. No attention was given to the decoration of patients' rooms and recreation areas, which were clearly not conducive to promoting any sense of privacy. Bedside tables and wardrobes were not provided in every room, and, in particular in the Psychiatric Clinic, a number of patients were apparently not allowed to keep their personal belongings (photographs, books, etc.). Further, on Wards A, C, and D, there were hardly any facilities for recreational activities, and thus patients had to spend most of the day in their rooms and in the corridors (see also paragraph 128). Finally, patients of the addiction ward had to wear pyjamas throughout the day. This practice is not conducive to an individualised approach to patients (see also the recommendation in paragraph 131).

**The CPT recommends that the relevant authorities take steps to ensure that patients in the Psychiatric Clinic and the Forensic Institute benefit from a more therapeutic environment. To this end, especially in the case of longer stays, patients should be encouraged and supported by staff to personalise their living space and they should be provided with lockable space for their personal belongings.**

126. The CPT notes with concern that, at the Forensic Institute, as in 2015 and in spite of the CPT's concerns expressed after its previous visit, there was still no separate ward dedicated to female patients. Two rooms had been set aside for receiving female forensic patients in Wards B and C. Due to lack of space, women were sometimes even accommodated in seclusion rooms, which is not acceptable. Moreover, there was still no dedicated space for juvenile patients (no juveniles were being held in the Institute at the time of the visit).

**The CPT recommends that steps be taken at the Forensic Institute to create a dedicated accommodation area for female patients, separated from the one for male patients. Further, in view of their vulnerability and special needs, juveniles requiring psychiatric inpatient care should be accommodated separately from adult patients.**

127. Further, in contrast to the Forensic Institute, there were no separate showers/bathrooms for female and male patients in the Psychiatric Clinic, where female and male patients (in Wards A and C) had to share the same showers/bathrooms. Further, in Wards A and B, bathrooms were dilapidated and consisted of three sinks, one bathtub and two showers which, according to staff present on the wards, were not used (some of them were used as storage for sanitary equipment).

**The CPT recommends that immediate steps be taken to ensure that female and male patients in the Psychiatric Clinic have access to separate showers/bathrooms. Further, steps should be taken to improve the state of repair of the showers/bathrooms in the Clinic.**

128. As regards access to outdoor areas, patients in the Psychiatric Clinic reportedly had access to inner yards/gardens every day. That said, from interviews with patients it transpired that some patients were not aware of this possibility and some even believed that it was not allowed. Moreover, the poor state of maintenance of the inner yards and gardens made them uninviting. Further, patients from the addiction ward were apparently not allowed to go outside during the first four days after their admission.

At the Forensic Institute, access to outdoor yards was available to patients of Wards B and C during the whole day. Patients from Ward D, who did not have a direct access to the yard, had two slots of outdoor exercise, one hour in the morning and one hour in the afternoon. The CPT notes with concern that women placed in Ward C had limited access to outdoor exercise as they could go to the yard only when male patients were inside.

**The CPT recommends that the relevant authorities take steps to ensure that all patients at the Psychiatric Clinic and the Forensic Institute, as well as in other psychiatric establishments, are effectively able to benefit from access to outdoor areas every day (with appropriate supervision and/or security if required). This also implies that patients should be informed of this possibility. The aim should be to ensure that all patients benefit from unrestricted access to outdoor areas during the day unless treatment activities require them to be present on the ward.**

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

129. Staffing levels appeared to be generally adequate in both establishments visited. At the Psychiatric Clinic, there were 17 full-time psychiatrists, six consultant child psychiatrists, six psychologists, 45 nurses, involved both in outpatient and inpatient services. The psychiatrists worked from Monday to Friday, and two psychiatrists were present during weekends. Nurses worked in twelve-hour shifts, and at least four nurses were present around the clock. The Forensic Institute employed seven psychiatrists (including the Director who is a neuropsychiatrist), two clinical psychologists and 20 nurses.

Despite adequate numbers of staff, the delegation observed that nursing staff at the Psychiatric Clinic did not interact much with patients. It appeared that nurses considered that their role was limited to administering medication. **Nurses of the Psychiatric Clinic and the Forensic Institute should be encouraged to interact with patients and establish a therapeutic relationship.**

130. Further, as was the case at the time of the CPT's 2015 visit, private security staff and (at the Forensic Institute) KCS officers were on occasion called upon by nursing staff to assist in dealing with patients, including when patients became violent and/or when patients were forcibly administered medication. From discussions with both health-care staff and KCS officers, it transpired that neither the private security staff nor KCS officers had received any training in dealing with patients suffering from mental disorders.

**The CPT considers it to be of crucial importance that staff assigned to security-related tasks in psychiatric establishments be carefully selected and that they receive appropriate training before taking up their duties (including on de-escalation techniques), as well as in-service courses. Further, during the performance of their tasks, they should be closely supervised by – and subject to the authority of – qualified health-care staff. In addition, the Committee has misgivings concerning the involvement of security staff in health-care-related tasks. If such involvement is necessary as a measure of last resort, it should be carefully supervised by a qualified member of the health-care staff.**

131. Further, in both establishments, there was an evident lack of structured therapeutic and rehabilitative activities for patients, and the treatment consisted essentially of pharmacotherapy, even though some rudimentary psycho-social activities had been provided before the Covid-19 pandemic. Further, individual treatment plans were not systematically drawn up and there was no proper recording of assessment and progress in patients' medical files. The patients' files seen by the delegation were rudimentary, with no information about the medical history (development of the symptoms, previous treatment and results, particular traits of the person or the illness) and the description of the social situation of the patient was lacking. Moreover, patients' diagnoses and treatment were not properly reasoned.

**The CPT recommends that the relevant authorities take the necessary steps to ensure that, at the Psychiatric Clinic and the Forensic Institute, as well as in all other psychiatric establishments:**

- **patients' medical history is properly documented in their medical files, in the light of the above remarks, on the basis of the information obtained during a medical examination carried out on admission;**
- **individual treatment plans are drawn up for all patients (taking into account the special needs of acute, long-term and forensic patients, including, with respect to the latter, the need to reduce the risk of re-offending), comprising the goals of the treatment, the therapeutic means used and the staff members responsible. The treatment plans should also contain the outcome of a regular review of the patients' mental health condition and a review of their medication. Patients should be involved in the drafting and review of these plans and informed of their therapeutic progress;**
- **a multi-disciplinary approach to the treatment of patients is adopted and that various categories of clinical staff meet regularly in order to share information and discuss patients' needs and therapeutic progress;**
- **a range of therapeutic and psychosocial rehabilitative activities is provided to patients; as a minimum, every patient should be offered the opportunity to participate in one organised activity every day and should be motivated by staff to participate.**

132. It is a matter of serious concern that, in both establishments visited, a number of patients were prescribed clozapine (which can have as a side-effect a potentially lethal reduction in white blood cells (*granulocytopenia*)), without regular blood tests being taken. **The CPT recommends that the relevant authorities take urgent steps to ensure that reputable clozapine initiation and maintenance protocols are available in all psychiatric establishments. Further, health-care staff should be trained concerning the potentially lethal side effects of such treatment and the importance of carrying out regular blood tests.**

133. When analysing individual medical files, the delegation noted that, in both establishments, almost every patient had been prescribed (sometimes for prolonged periods) benzodiazepines in combination with other psychotropic drugs.<sup>77</sup> Given the addictive potential of benzodiazepines, the use of this group of drugs as maintenance therapy should be avoided.

**The CPT recommends that an immediate end be put to the practice of routinely prescribing psychotropic medication for newly-admitted patients at the Psychiatric Clinic and the Forensic Institute; upon admission, every patient should be thoroughly examined and any medication should be individualised according to the particular situation of the patient and his/her needs. Further, medical prescriptions should be regularly reviewed.**

134. In both establishments, no systematic and comprehensive physical examination upon admission was performed of newly-arrived patients. In the CPT's view, such medical screening is indispensable, in particular in the interests of preventing the spread of transmissible diseases, and the timely recording of any injuries which patients may display upon admission. **The Committee recommends that the relevant authorities take steps to ensure that, in all psychiatric establishments, newly-arrived patients benefit from a comprehensive physical examination (see also the recommendations in paragraph 49).**

135. The ongoing Covid-19 pandemic certainly remains a serious risk to vulnerable patients in psychiatric hospitals. The delegation was informed that there had been no confirmed cases amongst patients at the Psychiatric Clinic and the Forensic Institute, but five doctors, ten nurses and one laboratory assistant at the Psychiatric Clinic, as well as a member of the management, four nurses and two other staff members of the Forensic Institute, had contracted Covid-19.

The CPT acknowledges that, in both establishments, protective measures had been put in place, such as restricting visits, disinfection, supply of personal protective equipment (PPE), some ad hoc PCR testing and temperature testing of staff and patients, reducing contact between patients from different wards and the creation of quarantine areas in case of need.

That said, it is a matter of concern that there did not appear to be a comprehensive Covid-19 strategy in either establishment, and the delegation observed that most patients did not wear masks and staff wore masks but very often in an inappropriate manner (below the nose) and sometimes not at all. Further, there were no prevention posters or brochures with relevant information on how to avoid the spread of Covid-19.

**The CPT recommends that the relevant authorities develop a specific and comprehensive strategy which addresses their obligations in response to the Covid-19 pandemic in all psychiatric establishments. Such a strategy should, inter alia, include awareness-raising on Covid-19 infection prevention in such establishments and the methods that will be used by the authorities to guarantee that every establishment is provided with sufficient quantities of appropriate PPE. Further, it should describe how it will be ensured that rapid, easily accessible and free PCR testing is available for every psychiatric patient or staff member of such establishments, should they develop symptoms suggestive of Covid-19 or be exposed to others suspected of having Covid-19. Moreover, staff in all psychiatric hospitals should be instructed to use PPE properly.**

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<sup>77</sup> Available first-generation antipsychotics: Haloperidol and Fluphenazine. Second-generation antipsychotics: Risperidone, Olanzapine and Clozapine. Antipsychotics in depot form: Haloperidol and Fluphenazine. Of the anxiolytics, Diazepam was the most used; Alprazolam was also available.

## 5. Means of restraint

136. Pursuant to Section 27 of the LMH, the following means of restraint may be used in psychiatric establishments: physical restraint (manual control), immobilisation (mechanical restraint), chemical restraint (forcible administration of medication) and seclusion. Restraint measures shall be applied in accordance with protocols approved by the Ministry of Health. All procedures and the reasoning of decisions to apply means of restraint shall be described in detail in the patient's file. Means of restraint must always be ordered in writing by a psychiatrist, they must be applied in the least restrictive way possible, and the use of force shall be proportionate to the perceived danger. Further, in the case of mechanical restraint, a member of the health-care staff must be in 'active and ongoing contact with the patient that goes beyond routine monitoring'. Restraints shall not be applied as punishment or for the convenience of staff. Further, psychiatric establishments shall have the necessary infrastructure to apply restraints in line with the standards approved by the Ministry of Health.

Regrettably, at the time of the visit, none of the above-mentioned protocols had been issued by the relevant authorities.

137. Mechanical restraint was not used at either the Psychiatric Clinic or the Forensic Institute. That said, in both establishments, seclusion of patients was a frequent practice, usually combined with the forcible administration of medication (chemical restraint).

138. At the Psychiatric Clinic, the delegation found some guidelines on restraint in an office<sup>78</sup> but health-care staff appeared to be unaware of their existence. The delegation observed that patients in seclusion were frequently and routinely forcibly administered injections of Haloperidol and Diazepam. There was a form on which staff noted down their observations every 30 minutes. However, entries did not mention anything about escorting the patient to the toilet or bringing in water or food, and whether the patient had been spoken to. There was no register on restraint. Moreover, in the addiction ward, the delegation received several allegations that patients had been placed in seclusion, for three or four days, following instances of inter-patient violence. This was perceived by the patients concerned as a punishment.

In the Forensic Institute, a protocol on the management of agitated patients had recently been developed, including on the use of seclusion rooms (together with the forcible administration of medication). Regrettably, there was still no register on restraint and the protocol on seclusion did not meet the requirements set out in the LMH. For instance, the decision of the doctor was not recorded in the patient's file and the supervision of the patients by health-care staff was clearly insufficient.

Further, it is a matter of serious concern that, in both establishments, patients' files revealed that seclusion was routinely used, even in situations when a patient was apparently far from being agitated.

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<sup>78</sup> Where for instance, it was written that that "staff should explain to the patient that checks will be done at least every two hours".

139. The Forensic Institute had two seclusion rooms in Wards B and C which were well lit and ventilated and which were equipped with a thick rubber mattress, a floor-level toilet, a call system and video-surveillance (CCTV).

In the Psychiatric Clinic, there were two relatively spacious seclusion rooms located in the intensive care ward. Regrettably, they were in a rather poor state of repair (with the glass window being damaged in one room) and they were not equipped with a toilet. **Steps should be taken to remedy these shortcomings.**

140. The CPT wishes to stress once again that the use of means of restraint (including seclusion and chemical restraint) should be the subject of a comprehensive, carefully developed, policy (guidelines) on restraint.<sup>79</sup> The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should specify which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. Such comprehensive guidelines are not only a major support for staff but are also helpful in ensuring that patients and their legal representatives understand the rationale behind a measure of restraint that may be imposed.

**The CPT reiterates its recommendation that the relevant authorities take steps – including by providing training to all staff concerned (doctors, nurses, orderlies) – to ensure that at the Psychiatric Clinic and the Forensic Institute, as well as in other psychiatric establishments:**

- **specific protocols on the use of means of restraint are issued for psychiatric hospitals (as required under Section 27 of the LMH);**
- **patients are only subjected to means of restraint (including seclusion) as a measure of last resort to prevent imminent harm to themselves or others and never as a punishment. Restraints should always be used for the shortest possible time. When the emergency situation resulting in the application of restraints ceases to exist, the patient should be released immediately;**
- **every resort to means of restraint should always be expressly ordered by a doctor after an individual assessment, or immediately brought to the attention of a doctor with a view to seeking his/her approval;**
- **if, exceptionally, a patient is subjected to mechanical restraint or seclusion for more than a period of hours, the measure is reviewed by a doctor at frequent intervals;**

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<sup>79</sup> See also “Means of restraint in psychiatric establishments for adults (Revised CPT standards)”, document CPT/Inf (2017) 6, <https://rm.coe.int/16807001c3>

- every patient who is subjected to seclusion benefits from continuous supervision by a qualified member of the health-care staff. If patients are held in seclusion, the staff member may be outside the patient's room (or in an adjacent room with a connecting window), provided that the patient can fully see the staff member and the latter can continuously observe and hear the patient. Video surveillance cannot replace continuous staff presence. A written running record (log or journal) should be kept by the supervising staff member, in which the condition of the patient is noted down at regular intervals (e.g. every 30 minutes); this record should be included in the patient's medical file;
- once seclusion (or mechanical restraint) has been terminated, a debriefing with the patient takes place. For the patient, such a debriefing is an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour and express wishes on alternative interventions in the future. For the health-care staff, this will provide an opportunity to explain the rationale behind the measure, and thus reduce the psychological stress of the experience as well as restore the therapeutic relationship;
- all instances of restraint –including physical holding, seclusion and chemical restraint – are recorded in a dedicated restraint register (in addition to the record made in the patient's individual medical file). The entries in the register should include the time at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, the time at which the patient had a debriefing, and an account of any injuries sustained by patients or staff. The keeping of such a register will allow hospital management to monitor the extent of recourse to means of restraint and enable measures to be taken, where appropriate, to reduce their use.

141. The CPT notes with concern that it was not uncommon at the Psychiatric Clinic for police officers to be called upon to assist staff in physically restraining agitated/violent patients in order to apply chemical restraint. According to the management, such interventions were rather rare. Nevertheless, staff members reported that security guards or police officers could be called upon to place an agitated patient into seclusion (see also paragraph 130).

**The CPT acknowledges that, in highly exceptional situations, the assistance of the police may be unavoidable. However, in the CPT's view, hospital staff should generally be sufficient in number and able to handle violent situations without recourse to the police, including at night. The Committee recommends that the relevant authorities take the necessary steps to ensure that the presence of ward-based staff is sufficient during all shifts and that they provide training on de-escalation and restraint techniques to all members of staff concerned in order to avoid interventions by police officers in the hospital.**

## **6. Safeguards**

142. The information gathered during the visit from various official interlocutors indicates that there is a lack of clarity when it comes to the legal framework surrounding civil involuntary placement and involuntary treatment in psychiatric establishments, including safeguards for patients.



At the time of the previous visit, the relevant legal provisions were contained in the Law on Non-Contentious Procedures (Sections 75 to 96) and the CPT considered that they included a number of important safeguards, such as the obligation of the hospital to notify an involuntary admission within 24 hours to the competent court, mandatory appointment of a lawyer, hearing of the patient before the court, involvement of an expert who is independent of the hospital, the obligation of the court to take a decision within a maximum of three days, a legal remedy against a court decision, a maximum time limit of one year for an involuntary placement and the possibility for the patient to request a judicial review of placement at any time.

However, according to several interlocutors met during the visit, these legal provisions were no longer applicable since the more recent LMH had put in place new procedures (Sections 20 to 24).

In particular, Section 22 of the LMH lays down a procedure for admission to mental health establishments of persons who require involuntary treatment. The medical doctor who has decided about the “involuntary treatment” of the person concerned shall notify, within 24 hours, the head of the mental health establishment who is obliged to order a re-assessment of the state of health of the “involuntarily admitted” person by a Commission of specialist doctors who had not taken part “in the initial hospitalisation procedure of admission and involuntary treatment”. If holding the person concerned “under conditions of involuntary treatment” is required, the head of the establishment shall notify, within 48 hours, the competent court who has 48 hours to review the case. In the context of the procedure, the patient concerned has the right to be informed in writing of the reasons for “involuntary treatment” and to represent his/her interests in person or, if his/her condition does not allow this, through a legal representative.

143. The CPT notes in this respect that several important safeguards (which are contained in the Law on Non-Contentious Procedures) do not appear in the LMH, such as the obligation that a lawyer be appointed for the patient in the context of the court procedure on involuntary placement, the maximum time-limit for the involuntary placement, the obligation to notify the court when a voluntarily admitted patient withdraws his/her consent and the possibility of the involuntary patient to lodge an application with the court to request discharge from the establishment.<sup>80</sup>

Further, the relevant provisions of the LMH do not clearly distinguish between *involuntary placement* in a psychiatric establishment and *involuntary treatment* of psychiatric patients.

144. Moreover, most importantly, from the delegation’s consultations with medical staff and the examination of patient files at the Psychiatric Clinic, it became clear that neither of the above-mentioned legal frameworks surrounding involuntary placement of a civil nature was being implemented in practice. In particular, courts had not been informed of involuntary admissions in the case of the five involuntary patients who were in the establishment at the time of the visit. The relevant authorities informed the delegation that one of the challenges in the implementation of the LMH was that the by-laws foreseen therein had not yet been adopted. The delegation was also told that because of the lack of reactivity from the side of the courts, the Clinic no longer notified the Court about the involuntary placement.

145. The CPT wishes to stress that consent to hospitalisation and consent to treatment are two distinct issues.

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<sup>80</sup> It is also noteworthy that the deadlines for various steps in the involuntary placement procedure differ in the Law on Non-Contentious Procedures and the LMH.

As a general principle, all categories of psychiatric patient, i.e. voluntary or involuntary, civil or forensic, with legal capacity or legally incapacitated, should be placed in a position to give their free and informed consent to treatment.<sup>81</sup> It is axiomatic that consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition, the treatment which is proposed and its possible side effects, as well as about the possibility to withdraw the consent. Further, it is essential that all patients who have given their consent to treatment are continuously informed about their condition and the treatment applied to them and that they are placed in a position to withdraw their consent at any time. In addition, every patient capable of discernment should be entitled to refuse a particular treatment or any other medical intervention.

Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances and should be accompanied by appropriate safeguards.

The relevant legislation should require a second psychiatric opinion (i.e. from a psychiatrist not involved in the treatment of the patient concerned) in any case where a patient does not agree with the treatment proposed by the treating doctor (even if his/her guardian consents to the treatment); further, patients should be able to challenge a compulsory treatment decision before an independent authority external to the hospital and should be informed in writing of this right.

**146. The CPT urges the relevant authorities to put in place a clear and comprehensive legal framework governing the involuntary placement of a civil nature and involuntary treatment of patients in psychiatric establishments, in the light of the preceding remarks, and to ensure that it is duly implemented in practice in all psychiatric establishments.**

147. As regards forensic psychiatry, Section 28 of the LMH contains provisions on the situation of persons who have been placed in mental health establishments for the execution of criminal decisions, for persons who have committed a criminal act for whom the competent court has ordered a compulsory treatment or for inmates who develop mental disorders while serving a sentence. According to the LMH,<sup>82</sup> the Government shall adopt a regulation on the procedures and functioning of mental health services in institutions for the execution of penal measures. That said, at the time of the visit such a regulation did not yet exist. **The Committee recommends the relevant authorities take the necessary steps to remedy this lacuna.**

148. As already mentioned in the report on the 2015 visit, the LEPS contains a number of important safeguards. Section 176 of the LEPS stipulates that at least once every six months every placement must be reviewed by the court on the basis of a report drawn up by the management of the health-care institution and the opinion of an independent expert who is not employed at the health-care institution. In considering whether to discontinue the measure, the court must hear the public prosecutor, the defence lawyer and the patient, if his/her health condition so permits. Further, patients must have a lawyer (appointed *ex officio* if necessary). Section 177 of the LEPS stipulates that, when the court discontinues the measure of mandatory psychiatric treatment, it shall inform the health-care establishment which has to immediately release the patient concerned.

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<sup>81</sup> I.e. the admission of a person to a psychiatric establishment on an involuntary basis, be it in the context of civil or criminal proceedings, should not preclude seeking informed consent to treatment.

<sup>82</sup> Section 28.4 of the LMH.

149. The delegation analysed the individual files of forensic patients and noted that it remained the practice of the courts to review placements every six months. However, it is regrettable that shortcomings highlighted in previous reports persisted. While reports were sent by the Forensic Institute to the courts every six months as prescribed by the LEPS, they usually contained a similar standard text. The opinion of an independent expert (complementary to the medical assessment of the establishment) was not systematically ordered by the court. Moreover, forensic patients were not aware of their procedural rights and did not take part in court hearings, the court considering it to be necessary only in the case of a termination of the measure (i.e. for discharge or transformation of the measure into mandatory outpatient psychiatric treatment).

The CPT wishes to stress again that every mandatory review of the measure (i.e. at least every six months) should involve not only a written report by the health-care institution and the opinion of an independent expert (as required by the national legislation), but also a court hearing where the defence lawyer and the patient are heard. **The Committee reiterates its recommendation that the relevant practice be modified in the light of the above remarks.**

150. Concerning complaints mechanisms, patients may address complaints to the management of the establishment or the Office of the Ombudsperson. However, in both establishments visited, the dedicated complaints boxes seen by the delegation were not properly labelled and not all patients were aware of their purpose and the existing complaints procedures. Moreover, internal complaints were not properly recorded in a dedicated register. **These deficiencies should be remedied.**

151. The CPT welcomes the fact that, in both establishments, general information on the rights of patients was displayed on several walls in Albanian, Serbian and English. However, there were still no written rules/brochures for patients about their rights when they were admitted to the establishment. **The Committee recommends that steps be taken in all psychiatric hospitals to ensure that a brochure or information sheet is systematically provided and explained verbally to newly-admitted patients (and their families), and that patients unable to understand the brochure/ information sheets receive appropriate assistance.**

152. In both establishments, the arrangements for allowing patients to maintain contact with the outside world were generally satisfactory. That said, in Ward C of the Forensic Clinic, patients were only allowed to receive visits or make telephone calls with the authorisation of the competent (pre-trial) judge. **In this regard, reference is made to the recommendation in paragraph 108 which applies *mutatis mutandis* to patients held in the Forensic Institute.**

153. Visits were stopped as of March 2020 until October 2020 due to the pandemic. **In this regard, the Committee recommends that the relevant authorities review the total ban on visits to patients in psychiatric hospitals, imposed in response to the Covid-19 pandemic, and take steps to ensure that patients can receive such visits in safe conditions, respectful of requirements for physical distancing and with the use of appropriate PPE.**

## **7. Concluding remarks**

154. At the end of the visit, the delegation had the opportunity to meet with the Director of the UCC to discuss key issues which emerged from the visits to the Psychiatric Clinic and the Forensic Institute, in particular, the need to further develop the admission procedure, the lack of protocols on the use of psychotropic medication (in particular clozapine), the lack of individual treatment plans, the need to properly train staff and the lack of some of the key legal safeguards (or inconsistencies between applicable legal provisions). The Director indicated that he would initiate the setting-up of a national Task Force to review the whole approach to civil and forensic psychiatry.

**The Committee welcomes this initiative and would like to receive updated information on the action taken in this regard.**

## **E. Social welfare establishments**

### **1. Preliminary remarks**

155. The delegation carried out a follow-up visit to the “Shtime/Štimlje Special Institute” (SSI)<sup>83</sup> for persons with learning disabilities. The SSI is administered by the Ministry of Labour and Social Welfare and it remains the only institution of this type in Kosovo\*. With an official capacity of 63 beds,<sup>84</sup> the SSI was accommodating 63 adult residents (41 men and 22 women), all with learning disabilities of different degrees and some also with physical disabilities.<sup>85</sup> A non-admission policy had been in place since 2000. However, exceptionally, residents continued to be admitted to the SSI.

156. Since the CPT’s last visit to the SSI in 2010, the provision of care for persons with learning disabilities has been decentralised with the transfer of the responsibility for seven community-based homes (with 10 to 15 residents each) in the Shtime/Štimlje area from the SSI to the relevant local municipal directorates of health and social welfare.<sup>86</sup> Further, two community-based homes have recently been created in other parts of Kosovo\*. The delegation was informed that, in the context of the ongoing process of de-institutionalisation, the authorities had planned to reduce the official capacity of the SSI to 50 beds. **The CPT welcomes this development and it would like to receive updated information on the measures taken in this regard.**

157. The functioning of the SSI and its services are governed by the Law on Social and Family Services (LSFS)<sup>87</sup> and an Administrative Instruction issued by the Ministry of Labour and Social Welfare in 2014.<sup>88</sup> According to the authorities, a new draft law on the admission and treatment of residents in residential care establishments was being prepared. **The Committee wishes to receive updated information on this legislative process.**

158. According to Section 18 of the LMH, the organisation and provision of mental health care in residential social care institutions shall be determined by a Government regulation, based on a proposal prepared by the Ministry of Health in co-operation with the Ministry of Labour and Social Welfare. However, since the adoption of the law in 2015, no such regulation has been issued. **The CPT would like to receive the comments of the relevant authorities on this lacuna.**

159. The SSI operated as a closed institution and virtually all residents had been (fully or partially) deprived of their legal capacity and placed there on the basis of a court order. They were normally not allowed to leave the premises without being accompanied by a member of staff (or a family member/guardian). For further details, see paragraphs 174 and 175.

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<sup>83</sup> The SSI had previously been visited by the CPT in 2007 and 2010.

<sup>84</sup> In recent years, the official capacity had been decreased from 67 to 63 beds.

<sup>85</sup> Reportedly, only 13 of them were able to communicate verbally. The average age of the residents was 45 years and most of them had been staying in the SSI for many years, some of them since their early childhood.

<sup>86</sup> See Administrative Instruction No. 13/2010 of the Ministry of Labour and Social Welfare.

<sup>87</sup> Law No. 02/L-17.

<sup>88</sup> Administrative Instruction No. 11/2014 regulating the functioning and placement of residents with learning disabilities in the SSI.

## 2. Ill-treatment

160. The CPT is pleased to note that, as in 2010, its delegation received no allegations of ill-treatment of residents by staff in the SSI. On the contrary, the overall atmosphere appeared to be relaxed, and the delegation could observe for itself the commitment and caring attitude of staff.

Further, it remained the case that inter-resident violence did not pose a major problem in the SSI.

## 3. Residents' living conditions

161. Material conditions remained generally satisfactory in the SSI in terms of state of repair and hygiene, and, since the 2010 visit, they have further improved in Ward A1 which had been fully renovated thanks to donations from various donors. That said, the delegation was informed of existing plans to renovate other parts of the SSI which were in need of some refurbishment.

**The CPT trusts that these renovation works will be carried out as soon as possible.**

162. There were two main wards (A and B) at the time of the visit. Ward A had a capacity of 38 beds and comprised a two-floor building divided into sub-wards "A1" (24 beds), where there were residents who could take care of basic personal needs (dress independently, maintain personal hygiene and eat independently), while sub-ward "A2" (14 beds) had three accommodation rooms which were converted into isolation and quarantine space in the context of the Covid-19 pandemic. This had an impact on the number of beds in some rooms of Ward A where four and sometimes five beds were touching each other, leading to cramped conditions. Prior to the Covid-19 pandemic, the maximum number of beds in the wards' rooms had been three. Ward B had a capacity of 25 beds and was located in a barrier-free building on the ground floor divided into sub-wards "B1" and "B2". The latter sub-wards accommodated residents with the most severe disabilities, who needed support for their basic everyday needs.

163. Regrettably, in particular in Ward B, residents' rooms and communal areas were still poorly decorated, devoid of any personal belongings and there was a total lack of any personalisation, visual stimulation or elements facilitating orientation in space.

Further, the Committee is concerned about the lack of curtains in Ward B which led to a lack of privacy and permanent natural light in the rooms, in particular taking into account the time spent by some of the residents in their bed.

The CPT understands that, for the residents concerned, the equipment must be simple, safe and resistant because it might be broken by residents. However, much can be done to improve the situation, such as introducing solid decorative items.

**The Committee therefore reiterates its recommendation that efforts be made at the Shtime/Štimlje Special Institute to offer a more personalised environment and living conditions which are conducive to the well-being of residents.**

164. In terms of access to outdoor areas, most residents could go freely into the garden and yards around the wards. That said, the CPT is concerned by the infrastructure of Ward B which had a long balcony with entrances from the communal area and some bedrooms. This balcony could not be used due to lack of safety (residents could easily climb over the barrier and fall). Although residents of this ward were in principle free to go outside, the delegation observed that, for at least two days at the time of the visit, some 13 residents stayed in the ward all day because their physical or mental impairments prevented them from managing without staff assistance.

Whilst acknowledging that not every resident might wish to go outside every day, **the CPT encourages the management of the Shtime/Štimlje Special Institute to facilitate residents' daily access to the open air by providing adequate staff assistance for those residents with severe impairments.**

#### **4. Staff and care provided to residents**

165. At the time of the visit, the SSI employed some 70 staff, including one psychologist (the Director), one full-time general practitioner (working on weekdays from 7 am to 3 pm), one head nurse, nine nurses, one pharmacy nurse, one social worker and 24 orderlies.<sup>89</sup> There had once been a consultant psychiatrist, but he had left in May 2020. It is regrettable, despite the fact that a significant number of residents had severely reduced mobility, that there was no physiotherapist. Further, the posts of two nurses, one occupational therapist and one orderly were vacant at the time of the visit. Given the profile of the residents, there was clearly a need for a physiotherapist who would be engaged in rehabilitation work. **The CPT recommends that the aforementioned vacancies be filled, and that a physiotherapist be recruited as soon as possible.**

166. According to the Director, some staff members who had been working there for a long time had lost the sensitivity and motivation to work with residents. Given the challenging nature of their job, it is essential that ward-based staff (i.e. nurses and orderlies) in social care establishments be carefully selected and provided with incentives. While carrying out their duties, such staff should be subject to regular supervision. It is important that staff be provided with the necessary support and counselling to avoid burn-out and to maintain high standards of care. **The CPT recommends that the relevant authorities provide staff with suitable professional support and ongoing training, in the light of the preceding remarks.**

167. The level of somatic care provided to residents appeared to be very good. The Committee welcomes the fact that a new regular and comprehensive medical and skills' assessment was introduced by the GP who had recently joined the SSI (see also paragraph 171). All diagnostic procedures and specialist examinations/treatment (including dental care) were available whenever needed outside the SSI. Further, individual medical files were diligently kept (with information about diagnosis, vaccination, insurance, skills, physiological needs and general medical findings).

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<sup>89</sup> Nurses worked in 12-hour shifts. Three nurses were working in the morning shift and two were in charge of afternoon and night shifts. Moreover, three orderlies worked in each ward around the clock.

168. Psychotropic medication appeared to be prescribed in appropriate dosages, in line with general clinical guidelines, including as regards the group of benzodiazepines. However, the CPT is concerned by the lack of psychiatric care since the consultant psychiatrist had stopped visiting the SSI in May 2020. The Committee wishes to stress that every resort to psychotropic medication should be specifically authorised by a doctor beforehand which was not the case at the time of the visit, and that its administration should be properly recorded. **Therefore, it recommends that the relevant authorities take the necessary steps to ensure that a psychiatrist is present at the Shtime/Štimlje Special Institute on a regular basis, according to the residents' needs.**

169. A few residents were treated with clozapine, without regular blood tests being taken. **In this regard, reference is made to the recommendation in paragraph 132.**

170. The CPT acknowledges the efforts made by the management of the SSI to provide residents with occupational therapy and other psycho-social activities. Since the last visit of the CPT, a large cafeteria has been opened, allowing residents to associate and watch TV while drinking tea. Workshops for occupational therapy were located in a separate ground floor building with three separate rooms intended for carpentry, sewing and drawing workshop activities. At the time of the visit, the workshops were attended by five residents, two staff members and one orderly. The delegation was informed that a carpenter and a seamstress were permanently employed in the institution and that an occupational therapist had been employed until recently. All three workshops were available to residents on weekdays from 9 a.m. to 4 p.m., but only some five to six residents were usually engaged in each of the three types of activities.

However, for many residents, in particular on Ward B, the possibilities were insufficient or non-existent. The residents concerned were not offered any individualisation, physiotherapy or any other stimulation than listening together to the radio. Several of them were left to languish all day in their beds. Further, rehabilitation plans were of a very general nature and residents were not involved in the drawing up of their plans.

171. The CPT wishes to emphasise that the care of residents should include occupational, rehabilitative and recreational activities. Particular attention should be given to developing programmes of activities with a view to maintaining personal and social skills including mobility and thus improving the quality of life and well-being of residents,<sup>90</sup> as well as resocialisation programmes preparing residents for more independent living.

The Committee welcomes the new form which was introduced by the GP and included a detailed medical assessment including an overview of the residents' skills. That said, due to the ongoing Covid-19 pandemic, systematic assessments were no longer performed.

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<sup>90</sup> For residents of Ward B, such programmes could consist of individualised support in their everyday activities, including physiotherapy and sensory stimulation to increase their comfort and development of their basic abilities.



In the CPT's view, a care plan should be set up for each resident, indicating the goals of treatment, the therapeutic means used and the staff member responsible. To this end, the above-mentioned assessment forms may clearly serve as a good basis. Care plans should be regularly reviewed and adapted based on an in-depth assessment of each resident's physical and mental state and abilities. Health-care staff should be involved in the drawing up and review of the care plans, to ensure a multi-disciplinary approach. Further, residents should as far as possible be involved in the drawing-up of their individual plans and be informed of their progress.

**The CPT recommends that the relevant authorities take steps to ensure that the above-mentioned precepts are effectively implemented at the Shtime/Štimlje Special Institute. In particular, the offer of psycho-social rehabilitative activities should be significantly increased; as a minimum, every resident should, health permitting, be offered the opportunity to participate in one organised activity every day.**

172. As regards the Covid-19 pandemic, protective measures had been taken by the management of the SSI, such as restrictions on visits, frequent hand disinfection, use of PPE by staff, body temperature checks, Covid-19 testing (in the case of symptoms) of residents and staff, and quarantine areas were used in the case of need. Due to the severe learning disabilities of many residents, it was obviously difficult to apply protective measures such as hand disinfection, use of PPE or maintaining physical distance between residents. Since the beginning of the pandemic, several staff members (including health-care staff) had been infected.

Among 41 residents who had been tested for Covid-19, four turned out to be positive. Three of them had fully recovered at the time of the visit, one remained in quarantine for 14 days (in Ward A2). The delegation could observe (through a glass door) the resident in quarantine. She seemed calm and her needs appeared to be adequately met. The nurse who went and checked the resident every two hours used PPE which consisted of an overall, a head cover, a visor, a mask, gloves and shoe covers. However, no instructions were in place regarding the donning and doffing of PPE and not all members of staff were apparently aware of its correct use.

**The CPT recommends that staff at the Shtime/Štimlje Special Institute be trained on the proper use of PPE.**

## **5. Means of restraint**

173. Mechanical restraint and seclusion rooms did not appear to be used at the SSI. While chemical restraint did not seem to be a frequent practice in the SSI, it cannot be excluded that such instances can happen, given the profile of some residents. It is therefore important to have a policy and protocols in place.

**The Committee reiterates its recommendation that the relevant authorities take steps to ensure that at the Shtime/Štimlje Special Institute, written instructions on the use of means of restraint are elaborated in line with the recommendations made in paragraph 140 and that a dedicated register for the use of restraints (including chemical restraint) is established.**

## 6. Safeguards

174. According to the LSFS,<sup>91</sup> residents may be placed in the SSI on the basis of a court order. If there are reasonable grounds to suspect that a vulnerable person lacks the capacity to act on his/her own behalf and that it is necessary to protect the person concerned from serious harm, the Director of the relevant Centre for Social Work shall file an application to the court for a Guardianship Order.<sup>92</sup> Before granting a Guardianship Order,<sup>93</sup> the judge shall confirm that there are sufficient grounds to justify such a measure and that, due to a learning disability, the person could not reasonably be expected to act on his/her own behalf. Once the court decision has been made on (partial or full) deprivation of legal capacity, the Court is empowered to instruct the Department of Social Welfare to place an adult who is lacking the mental capacity to care for him/herself in a suitable residential facility. Placement decisions can be appealed by the resident or his/her guardian within three days after the court has delivered its judgment. The Guardianship Order shall be reviewed every year by the Regional Centre of Social Welfare and every three years by the court unless there is a request by the resident/guardian to do so earlier. The court decision shall be made on the basis of the opinion of a committee of three psychiatrists.

175. The Committee welcomes the fact that, contrary to the situation observed in 2010, at the time of the visit, almost all the residents had been admitted with a court decision and placements had been reviewed by the court, as required by the above-mentioned legislation. Copies of the relevant court decisions were available in residents' files. It was now the practice that all residents who were unable to consent to their placement were notified to the court with a view to appointing a guardian and then be placed in the SSI on the basis of the court's decision. However, residents had not been heard in person by the judge, reportedly because of problems of communication. **The CPT wishes to stress that in this context, residents should be given the opportunity to be heard in person by the judge.**

176. Residents could file a complaint about the services provided in the SSI to the Complaints Commission of the Regional Centre of Social Welfare, as well as to the Ombudsperson. That said, it remained somewhat unclear whether residents and their families had been informed about the existing complaints procedures.

Further, it is regrettable that, despite the specific recommendation made after the previous visits to the SSI, an information brochure for residents and their family/guardians containing, *inter alia*, a section on residents' rights, was still not available.

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<sup>91</sup> Section 13.2 of the LSFS. Deprivation of legal capacity is also regulated in Section 223 of the Law on Non-contentious Procedures.

<sup>92</sup> The majority of guardians were professional guardians appointed by the Centre for Social Work.

<sup>93</sup> Which includes the decision on deprivation of legal capacity and placement in the SSI.

**In the Committee's view, although many residents have comprehension and communication difficulties, whenever possible, they should be informed of their rights, if necessary, using repeated, simplified, individualised, verbal formats. Similarly, accessible and comprehensible complaints systems should be in place. To this effect, an information brochure, setting out the establishment's routine and residents' rights – including information on legal assistance, review of placement (and the resident's right to challenge this), and complaints procedures – should be drawn up at the SSI and issued to all residents on admission, as well as to their families. Residents unable to understand this brochure should receive appropriate assistance.**

177. The existing arrangements in the SSI for contact with the outside world were generally satisfactory. Notwithstanding the Covid-19 pandemic, there were no major obstacles to receiving visits or telephone calls, although, in practice, only a small number of residents had regular contact with their families.

## APPENDIX

### List of the establishments visited by the CPT's delegation

#### Police stations

- Drenas Police Station
- Istog/Istok Police Station
- Klinë/Klinavac Police Station
- Mitrovicë/Mitrovica South Police Station
- Pejë/Peć Police Station
- Prishtinë/Priština Regional Police Station

#### Immigration detention facilities

- Vranidoll Detention Centre for Foreigners

#### Prison establishments

- Dubrava Prison
- High Security Prison at Gërdoc-Podujeva/Grdovac-Podujevo
- Mitrovica/Mitrovicë Detention Centre
- Prishtinë/Priština Detention Centre

The delegation also carried out a targeted visit to Lipjan/Lipljan Correctional Centre for Juveniles and Lipjan/Lipljan Correctional Centre for Women to interview newly-admitted juvenile remand prisoners, juveniles held under an educational measure and female remand prisoners.

#### Psychiatric establishments

- Psychiatric Clinic of Prishtinë/Priština University Clinical Centre
- Forensic Psychiatric Institute at Prishtinë/Priština University Clinical Centre

#### Social welfare establishments

- Shtime/Štimlje Special Institute for persons with learning disabilities.