

Report

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

from 23 November to 3 December 2021

The Government of Austria has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2023) 04.

Strasbourg, 27 June 2023

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EXECUTIVE SUMMARY

During the 2021 periodic visit to Austria, the CPT's delegation examined the treatment and conditions of detention of persons held in several police establishments and prisons, as well as of persons in detention pending deportation (*Schubhaft*). It also paid particular attention to the situation of persons subjected to the court-ordered measure of involuntary forensic placement (*Massnahmenvollzug*). The co-operation received by the delegation during the visit was very good. The CPT welcomes the fact that the issue of access for its delegation to medical files in prisons, which was initially conditioned by the express consent of the prisoners concerned, was resolved during the visit.

Police custody

While the vast majority of persons interviewed by the delegation during the visit made no allegations of ill-treatment by police officers, the delegation did receive a few complaints of excessively tight handcuffing and of verbal abuse by police officers. Further, the Committee once again expresses doubts as to whether investigations into allegations of police ill-treatment carried out by officers of the regional office of criminal investigation can be seen to be fully independent and impartial and it requests information on the setting up of an independent complaints authority.

The delegation gained a generally positive impression of the practical implementation of the fundamental safeguards against ill-treatment (i.e. the right of notification of custody and the rights of access to a lawyer and doctor), and notes the improvements achieved since the last visit. However, a few allegations were heard that the provision of written information to detained persons on their rights had been delayed by police officers for several hours or that they had been informed of their rights only verbally. Further, while detained persons continued to be systematically informed of the possibility of having a telephone conversation with a lawyer free of charge, the presence of a lawyer during police questioning free of charge is still not available to all adult detained persons who cannot afford to pay for a lawyer themselves. Some deficiencies were also observed during the visit with respect to custody registers.

Conditions of detention in the police establishments visited generally remained adequate but the CPT recommends that all persons held in police custody for 24 hours or more are, as far as possible, offered outdoor exercise on a daily basis.

Detention pending deportation (Schubhaft)

The delegation carried out a follow-up visit to the police detention centre (*Polizeianhaltezentrum - PAZ*) at Vienna-Hernalser Gürtel. With one exception, it received no allegations of ill-treatment by staff at the PAZ Vienna-Hernalser Gürtel.

That said, the CPT expresses its concern that, compared to 2014, the overall material conditions at the PAZ have significantly deteriorated. Whilst acknowledging that the communal showers had been refurbished and were thus in an acceptable state of repair and cleanliness, most parts of the accommodation and communal areas were in an appalling state of repair with corridors, cells and their sanitary annexes dilapidated and dirty. More generally, the material environment at the PAZ was very carceral and oppressive, with heavy iron doors, barred windows and barred gate partitions between the units. In the CPT's view, such conditions are not suitable for holding foreign nationals in *Schubhaft* for prolonged periods.

The CPT welcomes the fact that, according to a new Ministry of the Interior Instruction (*Erlass*), the open regime (*offene Station*) shall be the default regime for immigration detention, with cell doors being unlocked during the day. However, following the emergence of a number of Covid-19 cases at the PAZ Hernalser Gürtel, the open regime had been temporarily suspended shortly before the visit. Thus, cell doors were usually opened only for a maximum of one hour and 45 minutes per day. For the rest of the time, detainees were locked in their cells, in groups of up to eight persons, their only occupation being to watch television or reading. Many foreign nationals interviewed by the delegation were clearly very distressed by this situation. The CPT recommends that the Austrian authorities fully implement as soon as possible the open regime at the PAZ Hernalser Gürtel.

As regards health care, it remained the case that several uniformed police officers with basic first-aid training were assigned to the medical unit as orderlies (*Sanitätsbeamte*) to carry out the work which would normally be performed by a nurse. The CPT recommends once again that this practice be discontinued and that regular visits by a qualified nurse be arranged.

Further, the CPT expresses concern about the fact that the PAZ Hernalser Gürtel was chronically understaffed and that police officers assigned to the PAZ had not benefited from specific training for working with immigration detainees. As a result, communication between staff and detainees was generally reduced to the absolute minimum and the overall atmosphere was characterised by a high level of mutual distrust.

Detailed remarks and recommendations are also made in the report regarding the use of security cells (including padded cells), contact with the outside world and the provision of information provided to foreign nationals. In particular, the CPT recommends that, whenever foreign nationals are held in a security cell, they be regularly provided with meaningful human contact and offered daily access to an outdoor area for at least one hour.

Prisons

The delegation visited for the first time Leoben Prison and carried out a follow-up visit to Innsbruck Prison. It also carried out a targeted visit to Vienna-Josefstadt Prison, where it focused on the situation of remand prisoners (including juveniles).

Although the delegation received no allegations of physical ill-treatment of prisoners by staff, a few allegations of verbal abuse, including of a racist and/or xenophobic nature, were heard at Innsbruck and Vienna-Josefstadt Prisons. Inter-prisoner violence did not appear to be a major problem in the three establishments visited.

The CPT is positive about material conditions at Innsbruck and Leoben Prisons. At Vienna-Josefstadt Prison, efforts were being made to keep the premises clean and in a good state of repair and cells were in principle sufficient in size for their occupancy. However, signs of wear and tear were visible in virtually all cells seen by the delegation and the CPT requests up-to-date information on the implementation of the plans to refurbish the establishment.

At Innsbruck and Leoben Prisons, the regime activities offered to adult sentenced prisoners who worked were reasonably good in general, and the delegation also gained a very good impression of the regime activities provided to juveniles in all three establishments visited. In contrast, the regime offered to the vast majority of remand prisoners in the three establishments visited (as well as to sentenced men held at Leoben and Innsbruck Prisons who did not work) was very poor. The inmates concerned were locked up in their cells for up to 23 hours per day, which is not acceptable.

An issue closely related to the impoverished regime for a number of inmates are staffing levels and shift patterns for prison officers – it remained the case that the “night-shift” of prison officers usually started at 3 p.m., the result being that there was a limited offer of regime activities in the afternoon and during weekends and that most prisoners were locked up in their cells until the following morning. The CPT recommends once again that the authorities improve the programme of activities offered to prisoners in the three establishments visited. Further, the Committee calls upon the Austrian authorities to carry out a complete overhaul of the staffing situation and staff shift pattern.

In many respects, the arrangements concerning the provision of health care to prisoners were satisfactory. However, the staffing levels of medical doctors and nurses were insufficient in all three establishments visited and the situation was further exacerbated by the existing vacancies. This also concerned the psychiatric input which was insufficient to adequately meet the needs of a high number of prisoners with mental health disorders. Moreover, access to hospitalisation in psychiatric settings of prisoners with severe mental health problems appeared to be very difficult.

At Leoben and Vienna Prisons, various health-related tasks which are normally reserved for qualified nurses were performed by prison officers with basic health-care training. While these practices are understandable given the low numbers of health-care staff described above, they clearly constitute a breach of medical confidentiality and compromise the perception of the professional independence of prison health-care staff; the CPT recommends that the authorities initiate a process of abolishing this practice.

In all the establishments visited, newly-arrived prisoners were systematically medically screened on admission. However, at Leoben Prison, given that no health-care staff was present between Friday afternoon and Monday morning, the medical screening of prisoners admitted to the establishment during that period was delayed until Monday. The CPT recommends that all newly-arrived prisoners systematically undergo a comprehensive medical examination by a health-care professional within 24 hours of their admission.

In the report, remarks and recommendations are also made concerning various other issues, notably admission and complaints procedures, prisoners’ contact with the outside world, security-related issues, and discipline.

Forensic and civil psychiatric establishments

The delegation visited Göllersdorf Prison and the Forensic Department of the Regional Hospital Mauer, and paid a follow-up visit to the forensic units of Stein Prison, in order to examine the situation of persons who were subjected to the court-ordered measure of forensic placement (*Maßnahmenvollzug*). At Mauer Regional Hospital, the delegation further paid a targeted visit to the Adult Psychiatry Department and to the Department for Child and Adolescent Psychiatry and Psychotherapy, in order to review the situation of adult and minor patients subjected to means of restraint, as well as recourse to involuntary medical treatment in respect of adult patients.

The delegation heard no allegations of deliberate ill-treatment by staff in any of the three establishments visited. On the contrary, many patients spoke favourably of staff, in particular at Mauer Regional Hospital. Further, inter-patient violence did not appear to be a major problem in any of the establishments visited.

Material conditions at Mauer Forensic Hospital Department were excellent and clearly non-carceral and could serve as a model for other secure psychiatric establishments. In contrast, the overall atmosphere at Stein Prison, and (to a lesser extent) also at Göllersdorf Prison, was austere and carceral with prison-like iron cell doors in the accommodation corridors at Stein Prison and at the acute unit of Göllersdorf Prison. Such conditions are clearly not conducive to the creation of a therapeutic environment for patients with a mental disorder.

As regards staff, it is positive, that, at Göllersdorf Prison, doctors were present around the clock, but the number of psychiatrists, nurses and special educators at Göllersdorf Prison was not sufficient to meet the patients' needs. The delegation noted positively that, at the Department for *Maßnahmenvollzug* at Stein Prison, the presence of psychologists, social workers and occupational therapists had recently improved. That said, the CPT is particularly concerned about the dramatic lack of psychiatrists and the fact that no nursing staff was working at the forensic units at Stein Prison, which were solely managed by prison officers. In this regard, the Committee recalls that in all forensic psychiatric facilities, including forensic prison establishments/units, the majority of staff working in direct contact with patients should be health-care professionals.

The CPT acknowledges the improvements at Stein Prison regarding the offer of psycho-social activities. Nevertheless, the shortcomings observed - above all the carceral material conditions, the difficulties to recruit psychiatrists in the prison system and the presence of prison officers wearing weapons in accommodation areas - demonstrate once again that 'ordinary' prisons are not appropriate for the meaningful implementation of *Maßnahmenvollzug*.

The CPT recommends that the Austrian authorities step up their efforts to overhaul the current system of *Maßnahmenvollzug* in order to ensure that patients in *Maßnahmenvollzug* are accommodated in establishments suitable for providing the treatment and care they need. In this connection, the implementation of *Maßnahmenvollzug* at Stein Prison should cease as soon as possible.

In the report, detailed remarks and recommendations are also made regarding the use of means of restraint (including seclusion and chemical restraint) as well as safeguards in the context of discharge procedures and the procedures for involuntary medical treatment.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a periodic visit to Austria from 23 November to 3 December 2021. It was the Committee’s seventh visit to Austria.¹

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

- Hans Wolff, 1st Vice-President of the CPT (Head of Delegation)
- Vânia Costa Ramos
- Gergely Fliegau
- Nico Hirsch
- Gordan Kalajdjiev
- Gunda Wössner.

They were supported by Petr Hnátík and Almut Schröder of the CPT Secretariat and assisted by:

- Birgit Völm, Professor in Forensic Psychiatry, Medical Director of the Forensic Hospital at the University of Rostock, Germany (expert)
- Georg Gaidoschik (interpreter)
- Alexander Žigo (interpreter).

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 108th meeting, held from 4 to 8 July 2022, and transmitted to the Austrian authorities on 29 July 2022. 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 Austrian 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. As regards the recommendations in paragraphs 46 and 78 and the request for information in paragraph 143, the Committee wishes to receive a response within three months.

¹ The CPT previously carried out periodic visits to Austria in 1990, 1994, 1999, 2004, 2009 and 2014. The reports on these visits and related Government responses have all been made public and are available on the Committee’s website: <https://www.coe.int/en/web/cpt/austria>.

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

5. In the course of the visit, the delegation held consultations with Alma Zadić, Federal Minister of Justice, Friedrich König, Director General of the Prison Service, General Reinhard Schnakl, Head of Department at the Federal Ministry of the Interior and Ambassador Helmut Tichy, Director General, Head of the Office of International Law (*Völkerrechtsbüro*) of the Federal Ministry for European and International Affairs, as well as other senior officials from the aforementioned ministries and the Federal Ministry for Social Affairs, Health, Care and Consumer Protection.

The delegation also met Walter Rosenkranz, Ombudsman, and other representatives of the Austrian Ombudsman Board (*Volksanwaltschaft*), in their capacity as National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture (OPCAT), as well as Renate Kicker, Chairperson of the Human Rights Advisory Board. In the context of the visit, the delegation also consulted several non-governmental organisations active in areas of concern to the CPT.

6. The co-operation received by the delegation during the visit from both the national authorities and staff at all the establishments visited was very good. The delegation enjoyed rapid access to all the places it wished to visit, was able to speak in private with persons deprived of their liberty and, with one exception, was rapidly provided with the information necessary for carrying out its task.

The CPT also wishes to express its appreciation for the assistance provided before, during and after the visit by the CPT liaison officer, Klaus Famira, from the Federal Ministry of European and International Affairs.

7. As regards the above-mentioned exception, according to the position initially taken by the Federal Ministry of Justice, access for delegation members to medical files in prisons was conditioned by the express consent of the prisoners concerned. Indeed, such a restrictive interpretation of the Convention and the relevant national legal framework, in particular the Data Protection Act, seriously impeded the work of the delegation and, if a solution had not been found, this situation may have compelled the delegation to interrupt its visit to Austria.

The CPT welcomes the fact that this issue was resolved during the visit in consultation with the liaison officer and senior officials of the Federal Ministry of Justice and the Federal Chancellery and that the delegation eventually enjoyed unconditional access to medical records. More specifically, the Austrian authorities adopted the position that Article 8 of the Convention² laid down a legal basis, which was sufficiently precise for the purposes of the Austrian Data Protection Act, to enable delegation members to have access to confidential data.

The CPT trusts that the Austrian authorities will take the necessary steps to ensure that, during future visits, its delegations will enjoy ready and unrestricted access to medical records in every establishment under the CPT mandate.

² The relevant part of Article 8, paragraph 2, of the Convention reads as follows: “A Party shall provide the Committee with the following facilities to carry out its task: [...] d. other information available to the Party which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.”

C. Immediate observations under Article 8, paragraph 5, of the Convention

8. During the end-of-visit talks with the Austrian authorities on 3 December 2021, the CPT's delegation (further referred to as "the delegation") outlined the main facts found during the visit. On that occasion, it made three immediate observations under Article 8, paragraph 5, of the Convention.

The first immediate observation concerned the very restrictive regime applied to foreign nationals held at the police detention centre (*Polizeianhaltezentrum* – PAZ) at Vienna-Hernalser Gürtel. The delegation urged the Austrian authorities to take immediate steps to ensure that the out-of-cell time for the foreign nationals concerned is considerably increased.

The second immediate observation concerned the lack of human contact provided to suicidal or agitated detainees placed in a security cell for up to several days at the PAZ at Vienna-Hernalser Gürtel. The delegation urged the Austrian authorities to take immediate steps to ensure that the foreign nationals concerned are provided with human contact at frequent intervals and daily access to an outdoor yard.

The third immediate observation concerned newly-arrived prisoners at Vienna-Josefstadt Prison, including juveniles, who were placed in a Covid-19 quarantine for a minimum of five days during which they were not allowed any outdoor exercise. The delegation urged the Austrian authorities to take immediate steps to ensure that the aforementioned prisoners are offered daily access to outdoor exercise for at least one hour.

The Austrian authorities were requested to provide, within one month, an account of the measures taken to implement the immediate observations.

9. The immediate observations were subsequently confirmed in a letter of 12 January 2022 from the Executive Secretary of the CPT.

By letter of 4 February 2022, the Austrian authorities informed the CPT of the measures taken in respect of the immediate observations. These measures will be assessed in the relevant parts of this report (see paragraphs 46, 56, 56 and 78).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police custody

1. Preliminary remarks

10. In so far as relevant for the CPT, the statutory time-limits for the deprivation of liberty by the police have remained unchanged since the last visit.

It should be recalled that criminal suspects may be held in police custody before being transferred to a remand prison for a maximum period of 48 hours.³

Persons suspected of having committed an administrative offence may be held in police custody for up to 24 hours.⁴ If subsequently found guilty by the competent authority, the persons concerned may be subjected to an administrative custodial sanction of up to six weeks,⁵ which is served in a PAZ.

Persons may also be deprived of their liberty under police legislation for their own protection (for instance, persons suffering from a mental disorder, or unaccompanied children).⁶ In such cases, the persons concerned have to be released “without delay” (after relevant facts have been established) or handed over “without delay” to an appropriate person or institution.⁷

11. The information gathered during the visit, in particular through interviews with persons who were – or who recently had been – in police custody and through the examination of the relevant registers in the police establishments visited, indicates that the statutory time-limits for deprivation of liberty by the police were strictly observed in practice.

³ See Section 4, paragraph 2, of the Constitutional Law on the Protection of Personal Liberty, Section 172, paragraph 3, of the Criminal Procedure Code (*Strafprozessordnung* - StPO) and Section 85, paragraph 4, of the Fiscal Criminal Law. Upon admission to a remand prison, the person concerned has to be heard without delay by a judge, and the latter has to decide within the next 48 hours on whether to impose remand detention (Section 174 of the StPO).

⁴ Section 4, paragraph 5, of the Constitutional Law on the Protection of Personal Liberty and Section 36, paragraph 1, of the Administrative Criminal Code.

⁵ Sections 12, paragraph 1, and 16, paragraph 2, of the Administrative Criminal Code.

⁶ Section 45 of the Law on the Police (*Sicherheitspolizeigesetz*) and Section 9 of the Law on Involuntary Placement (*Unterbringungsgesetz*).

⁷ As regards the deprivation of liberty under aliens legislation, reference is made to paragraph 40.

2. Ill-treatment

12. As was the case during several previous visits, the vast majority of persons interviewed by the delegation during the visit who were – or recently had been – in police custody made no allegations of ill-treatment by police officers. On the contrary, several persons stated that they had been treated respectfully and professionally.

That said, a few persons interviewed during the visit complained of excessive use of force (unduly tight handcuffing) in the context of their apprehension. They also alleged that they had had red marks on their wrists which, however, had not been recorded when they had later been seen by a medical doctor whilst still in police custody. The CPT notes in this respect that, according to Section 3.1 of the Internal instruction governing the handling of allegations of ill-treatment by the police (*Erläss über den Umgang mit Misshandlungsvorwürfen*) (for more details, see paragraph 14), injuries (including reddening of the skin) are to be determined, assessed and comprehensively documented by a doctor. Skin reddening must be documented even if it does not constitute bodily harm within the meaning of the instruction.

In addition, the delegation heard a few allegations of verbal abuse of persons deprived of their liberty by the police.

The CPT recommends that the Austrian authorities reiterate to police officers that when it is deemed necessary to handcuff a person, the handcuffs should under no circumstances be excessively tight.⁸ Further, the necessary steps should be taken to ensure that medical professionals examining persons in police custody are reminded, through the appropriate channels, of the requirements for recording injuries laid down by the Internal instruction governing the handling of allegations of ill-treatment by the police.

In addition, police officers should be reminded that verbal abuse of persons deprived of their liberty is unprofessional and unacceptable and will be sanctioned accordingly.

13. The CPT has repeatedly underlined that an essential component of any strategy to prevent ill-treatment lies in the diligent examination by the competent authorities of all complaints of ill-treatment brought before them and, where appropriate, the imposition of a suitable penalty. In this regard, the Committee has also repeatedly stressed that, in order for the investigation of complaints about police ill-treatment to be fully effective, the procedures involved must be – *and be seen to be* – independent and impartial.

In the report on the 2014 visit,⁹ the Committee described in detail the legal framework governing investigations into allegations of police ill-treatment. It expressed certain doubts as to whether such investigations can be seen to be fully independent and impartial when carried out by investigators of the Federal Bureau for the Prevention and Fight against Corruption (more commonly referred to as the Bureau of Anti-Corruption – BAK)¹⁰ – and even more so those carried out by criminal police officers of the regional police headquarters – against other police officers.

⁸ 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)).

⁹ See doc. CPT/Inf (2015) 34, paragraphs 17 to 22.

¹⁰ The BAK is a special criminal investigative body which is located within the Federal Ministry of the Interior, albeit outside the Directorate General for Public Security; at the time of the 2021 visit, it was located in *Sektion III* (Law) of the Ministry.

14. Since the 2014 visit, several developments concerning the institutional framework of the handling of complaints about police ill-treatment have taken place.

In particular, since September 2018, the central Coercive Measures and Ill-treatment Reporting Office (*Zwangsmittel- und Misshandlungs- Meldestelle – ZMM*), has been assigned the competence to record, categorise and assess allegations of ill-treatment in order to guarantee their comprehensive, independent and rapid clarification, under the direction of the Public Prosecutor's Office, including those against special police units (ECO COBRA) and Austrian police officers who participate in return operations of the European Border and Coast Guard Agency (FRONTEX).

Further, the relevant Internal instruction governing the handling of allegations of ill-treatment by the police (*Erlass über den Umgang mit Misshandlungsvorwürfen*) has been revised several times, including with the involvement of external experts belonging to the Civil Society Dialogue Committee (*Zivilgesellschaftliches Dialogforum - ZDG*) of the Federal Ministry of the Interior, in order to discuss human rights aspects taking into account best practice models from other countries. The most recent version of the Instruction was issued by the Head of the Austrian Police Service on 20 March 2020.¹¹

15. However, insofar as relevant for the CPT, the findings of the visit indicate that the basic principles governing the investigation into complaints about police ill-treatment have remained largely unchanged since 2014.

Most notably, any complaints of ill-treatment by the police must be reported immediately to the relevant superior and to the permanent service of the regional police directorate (and in Vienna, also to the Bureau for Special Investigations (*Referat für besondere Ermittlungen (RBE)*)) and then, within 48 hours,¹² in writing to the public prosecutor's office (in line with Section 100, paragraph 2, of the StPO). In addition, any allegations of ill-treatment involving bodily harm must immediately be notified to the BAK.

Subsequently, criminal investigations into the allegations are carried out, in most cases,¹³ by officers of the regional office of criminal investigation under the supervision of a prosecutor who has the power to instruct police investigators and, if deemed appropriate, to carry out certain investigative actions or the entire investigation themselves.

In addition, it remains the case that complaints of police ill-treatment must be reported to the Ombudsman Board.

16. According to the statistics provided by the Austrian authorities, between 1 January 2017 and 30 November 2021, 1,587 allegations of ill-treatment were made against police officers (all of which were reported to the public prosecutor's office). Only eight of these cases reached the stage of a court trial and resulted in the issuing of a judgment by the court. It is unclear from the data provided, however, whether the accused were acquitted or convicted and, in the latter case, whether a sanction was imposed. In all the other cases, the proceedings were either discontinued by the prosecutor or no proceedings were initiated. **The CPT would like to receive information on the outcome of the eight above-mentioned court cases, including possible criminal and/or disciplinary sanctions imposed on the police officers concerned.**

¹¹ Ref. 2020-0.011.317.

¹² In 2014, the time-limit for reporting to the public prosecutor's office was 24 hours.

¹³ In exceptional cases, the investigation may be carried out by the BAK when the police officer concerned is also suspected of offences for which the BAK has primary competence.

17. The CPT acknowledges the existence of the above-described reporting procedures when allegations of ill-treatment by the police are made and the aforementioned steps taken by the Austrian authorities to centralise data collection on such cases.

However, given that criminal investigations into allegations of ill-treatment by the police continue to be carried out in most cases by officers of the regional office of criminal investigation, albeit under the supervision of a public prosecutor, and in light of the low number of cases which reached the courts and in which a judgment has been issued, the Committee once again wishes to express its doubts as to whether such investigations can be seen to be fully independent and impartial.

18. Against this background, the Committee notes with interest the information provided by the authorities that the official work programme of the Austrian government for 2020 to 2024 includes the goal of setting up an independent complaints authority (*Unabhängige Polizeiuntersuchungsstelle – UPUS*) to investigate allegations of ill-treatment against police officers. Although these plans were at their initial stage at the time of the CPT's visit and many aspects of the functioning of the UPUS remained to be clarified, it was for the time being envisaged that the new body would be a part of the Federal Ministry of the Interior and, as with the BAK, would be organisationally located outside the Directorate General for Public Security. The new body should have criminal police powers and should co-operate closely with the public prosecutor's office.

The CPT would like to receive updated information on the progress achieved in establishing the independent complaints authority to investigate allegations of ill-treatment against police officers and the modalities of its functioning.

19. The CPT further considers that appropriate safeguards must be in place in order to ensure that police officers may be identified and can be held accountable for their actions (e.g. by way of a clearly visible means of *individual* identification on the uniform, such as a name or a number). This concerns in particular those police officers wearing masks/balaclavas or other equipment that may hamper their identification. Such a requirement is also likely to have a preventive effect and significantly reduce the risk of excessive use of force and other forms of ill-treatment.

In this respect, the Austrian authorities informed the delegation that while police officers were under a general obligation to present, on request, their individual identification number, they did not wear the number on their uniform. However, discussions were underway concerning the possible introduction of such an obligation. **The CPT would like to be informed by the Austrian authorities of any developments concerning the obligation of police officers wearing masks or other equipment that may hamper their identification to wear a clearly visible, individual identification number on their uniform.**

20. According to the information provided to the delegation by the Austrian authorities, the Law on the Police (*Sicherheitspolizeigesetz – SPG*) provides a legal basis for the use of body-worn video cameras¹⁴ and some 380 cameras were already in use on a trial basis (the procurement process for the purchase of additional cameras was underway); their use was at the discretion of individual police officers. The overall experience with the use of the cameras was perceived as positive by the authorities and the police officers – it had a de-escalating effect and enabled accurate documentation of events.

The CPT considers that the systematic use during any intervention of body-worn video cameras represents an additional safeguard against abuse by police officers, as well as a protection against unfounded allegations of ill-treatment. **The Committee would like to be informed by the Austrian authorities of any developments concerning the use of body-worn video cameras by police officers. Further, it would like to be informed of the instructions issued to officers regarding the issue and use of these cameras and in relation to the retention of any video footage.**

3. Safeguards against ill-treatment

21. The delegation gained a generally positive impression of the practical implementation of the fundamental safeguards against ill-treatment (namely the rights of detained persons to notify a close relative or another person of their detention and to have access to a lawyer and a doctor). Moreover, since the last CPT visit, certain improvements have been achieved, most notably as regards the right of access to a lawyer for juveniles (see paragraph 31).

22. The majority of persons interviewed by the delegation during the visit stated that they had been informed of the aforementioned rights in writing shortly after their arrival at a police station.

However, a few allegations were heard that the provision of written information had been delayed for several hours (in a few cases until after the first questioning by the police) or that they had been informed of their rights only verbally. Moreover, despite the availability of information sheets in a broad range of languages in all police establishments, several foreign nationals claimed that they had not received the information sheet in a language they could understand (see also paragraphs 33 and 34).

The CPT recommends that the Austrian authorities take steps to ensure that all persons deprived of their liberty by police officers – for whatever reason – are fully informed of their fundamental rights 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 verbal information at the moment of apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first arrival at a police establishment) by the provision of the relevant information sheet, in a language which the detained persons understand.

¹⁴ See Section 13a, paragraph 3, of the SPG.

23. Moreover, it remains the case that the standard information sheet on the rights of detained persons was very long and contained convoluted and legalistic language that was difficult to understand. As noted already in the previous visit reports, this is particularly problematic in respect of juveniles in police custody.

The CPT considers that practical steps must be taken to ensure that detained persons are actually able to understand their rights. Reference is made in this context to the EU Directive on the right to information in criminal proceedings¹⁵ which makes it clear that written information to be provided to persons in police custody should be drafted in simple and non-technical language so as to be easily understood by a lay person without any knowledge of criminal procedural law. It further stipulates that the information should be provided in a simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.¹⁶

As regards more particularly juveniles, the CPT wishes to stress once again that they should be provided with an information sheet which is short, drafted in a straightforward manner and easy to understand (possibly in addition to the more detailed and comprehensive standard information sheet if the provision of such an information sheet to juveniles is considered necessary). Reference is made in this regard to the Recommendation Rec(2003)20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.¹⁷

The CPT recommends that the Austrian authorities review the existing information sheets for persons in police custody, in the light of the above remarks. Further, the Committee recommends once again that a specific version of the information sheet, setting out the particular position of detained juveniles, be developed in light of the above remarks and given to them without delay upon arrival at a police establishment. The information sheet should be available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension.

24. The right to notify a third person of the fact of one's detention did not generally appear to pose a major difficulty; the vast majority of persons interviewed during the visit confirmed that they had been put in a position to contact a third person (or that the police contacted a person of their choice on their behalf) shortly after arrival at a police station.

However, some foreign nationals interviewed by the delegation alleged that they had not been allowed to contact a third person if the person lived abroad.

The CPT recommends that the Austrian authorities take the necessary steps to ensure that the right of notification of custody also applies to detained persons whose family members reside outside Austria.

¹⁵ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

¹⁶ See Article 38 of the Preamble, as well as Articles 3 and 4 of the Directive.

¹⁷ See in particular Section 15: "Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. [...]" Reference is also made to Article 4, paragraph 2, of the EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

25. As regards the right of access to a lawyer, detained persons interviewed by the delegation confirmed that their requests to consult their own lawyer and to have the lawyer present during police questioning had been granted by police officers.

However, a few isolated allegations were received that police officers attempted to discourage detained persons from contacting a lawyer, e.g. by suggesting that this would prolong their detention. **The CPT recommends that police officers be reminded that they should not seek to dissuade detained persons from exercising their right of access to a lawyer.**

26. With regard to free legal aid, detained persons continued to be systematically informed of the possibility of having a telephone conversation with a lawyer free of charge through the hotline of the Bar Association (*Rechtsanwaltlicher Bereitschaftsdienst*), and were allowed by police officers to avail of this facility, upon request.

That being said, the presence of a lawyer during police questioning free of charge is still not available to all adult detained persons who cannot afford to pay for a lawyer themselves and the recommendations made by the CPT following its previous visits concerning a fully-fledged system of free legal aid have not yet been fully implemented.

According to Section 2 of the revised Internal instruction of the Federal Ministry of the Interior on executive and operational matters, criminal investigation service and on-call legal services of 22 March 2021 (*Exekutiv- und Einsatzangelegenheiten; Kriminaldienst; rechtsanwaltlicher Bereitschaftsdienst; Neuverlautbarung – further referred to as the “revised Internal instruction on on-call legal services”*),¹⁸ it remains the case that the action of the hotline lawyer in principle includes a free of charge telephone consultation while (any other) use of the defence in the context of the legal hotline is generally subject to a fee payable by the detained person.

Section 4 of the revised Internal instruction on on-call legal services further clarifies that a person in police custody may benefit from the presence of a lawyer free of charge during police questioning (only) if they declare that they are unable to pay for the presence themselves (for the reasons set out in Section 61, paragraph 2, of the StPO) and if they are “in need of protection” because they are blind, deaf, mute or disabled in a comparable manner or suffer from a mental disorder and are therefore unable to defend themselves.¹⁹

The CPT wishes to emphasise once again that allowing detained persons to benefit from the assistance of a lawyer throughout their police custody, including during any police questioning, is an important safeguard against ill-treatment; this safeguard should be available to all detained persons, irrespective of their financial situation (or disability). If there is no effective system of free legal aid for indigent persons at the stage of police custody, any right of access to a lawyer will remain, in many cases, purely theoretical.

¹⁸ Ref. 2021-0.103.246; some additional details are provided in the Internal Instruction of the Federal Ministry of Justice on on-call legal services – Extension of the on-call legal services by the 2020 Criminal Law Amendment Act – overall presentation, of 18 May 2020 (*Erlass vom 18. Mai 2020 über den rechtsanwaltlichen Bereitschaftsdienst - Erweiterung des rechtsanwaltlichen Bereitschaftsdienstes durch das Strafrechtliche EU-Anpassungsgesetz 2020*), ref. 2020-0.308.727.

¹⁹ The specific information sheet on on-call (free) legal services through the hotline of the Bar Association contained virtually the same information.

The CPT reiterates its recommendation that the Austrian authorities take the necessary steps – in consultation with the Bar Association – to ensure that indigent persons can effectively benefit from the assistance of a lawyer free of charge throughout their police custody, including during police questioning.

27. In the previous visit reports, the CPT repeatedly expressed concerns regarding certain practical modalities of the right of access to a lawyer. While some of these concerns have been addressed by the Austrian authorities since the last visit and the relevant legal framework and/or internal instructions have been amended, certain additional steps are required to remedy the existing shortcomings and to ensure that the amendments are effectively implemented in practice.

28. First of all, during previous visits, the relevant instructions did not oblige police officers to make arrangements to ensure that telephone conversations between detained persons and lawyers from the legal hotline are held in private.

It is a positive development that Sections 3.4 and 5 of the revised Internal instruction on on-call legal services now provide that the telephone consultation between the detained person and the hotline lawyer may not be monitored.

However, the findings of the visit indicate that these new provisions were not systematically implemented in practice. As confirmed by police officers met by the delegation as well as persons who were – or had recently been – in police custody, police officers sometimes remained present when detained persons consulted the legal hotline.

The CPT recommends that the Austrian authorities take further steps to ensure that the confidentiality of conversations between detained persons and lawyers from the legal hotline of the Bar Association (as any other contacts between lawyers and their clients) is assured in practice, in line with the relevant instructions.

29. Secondly, at the time of the 2014 visit,²⁰ the relevant instructions provided that if a detained person requested the presence of a lawyer during police questioning, this did not constitute an obligation on the part of the criminal police to delay questioning until the arrival of the lawyer.

Sections 3.1 and 5 of the aforementioned revised Internal instruction now provide that if a detained person requests the presence of a lawyer during police questioning, the questioning must be postponed until the arrival of the lawyer unless this would entail an unreasonable prolongation of the detention.²¹

Further, by virtue of Section 59, paragraphs 1 and 2, of the StPO, during police custody, police officers could decide to monitor contacts and conversations between a detained person and their lawyer. This possibility has now been removed and the new paragraph 3 added to Section 59 of the StPO explicitly provides that persons in police custody may communicate with their lawyer without being monitored.²²

The CPT welcomes these developments.

²⁰ See paragraph 28 of the report on the CPT's 2014 visit (doc. CPT/Inf (2015) 34).

²¹ See also Section 164, paragraph 2, of the StPO, which now lays down the same requirement.

²² Section 3.4 of the revised Internal instruction on on-call legal services has been amended accordingly.

30. Finally, the CPT acknowledges that the wording of Section 164, paragraph 2, of the StPO has been strengthened and denying the presence of a lawyer during questioning is now possible only in so far as it is considered *absolutely necessary due to the special circumstances* in order to avert a *considerable* danger to the investigation or the gathering of evidence *by means of an immediate questioning or other prompt investigative action*. Further, an additional safeguard has been introduced in that the detained person must be served immediately or within 24 hours with an order by the public prosecutor or a written statement of reasons by the criminal police.²³

However, the Committee must once again stress that there can be no reasonable justification for the presence of a lawyer during questioning being totally denied. The Committee acknowledges that the legitimate interests of the police investigation may, exceptionally, justify a delay, for a certain period, in a detained person's access to a lawyer of their choice. However, in such cases, access to another, independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

The CPT recommends once again that the Austrian authorities take the necessary steps to ensure that the right to have a lawyer present during questioning is never denied to persons deprived of their liberty by the police.

31. In several previous visit reports, the CPT also expressed serious concerns that according to the relevant legislation,²⁴ the presence of a lawyer and/or a trusted adult person during police questioning had to be requested by juveniles. Consequently, many juveniles were subjected to police questioning and requested to sign statements without the benefit of the presence of either a lawyer or a trusted person. The Committee considered that in order to effectively protect this particular age group, the onus should not be placed on the juvenile to request the presence of a trusted person or a lawyer. Such a presence should be obligatory.

It is commendable that Section 37, paragraph 1, of the JGG has been amended²⁵ and now makes the presence of a lawyer obligatory during the questioning of a juvenile who has been arrested,²⁶ as well as during certain other investigative actions (such as the reconstruction of the offence).^{27 28}

²³ It remains the case that if the exception is applied, if possible, an audio or video recording of the questioning should be made.

²⁴ Sections 35, paragraph 4, and Section 37, paragraph 1, of the Law on Juvenile Justice (*Jugendgerichtsgesetz – JGG*) (as in force at the material time).

²⁵ Further details regarding this provision (and, more generally, the treatment of juveniles in police custody) are provided in the revised Internal instruction of the Federal Ministry of the Interior on executive and operational matters; criminal investigation service; dealing with juvenile offenders; juvenile and underage suspects, victims and witnesses as well as investigations in schools where there is suspicion of criminal acts, of 13 April 2021 (*Exekutiv- und Einsatzangelegenheiten; Kriminaldienst; Umgang mit minderjährigen Straftätern; jugendlichen und unmündigen Verdächtigen, Opfern und Zeugen sowie Ermittlung in Schulen beim Verdacht gerichtlich strafbarer Handlungen. Neuverlautbarung.*); Ref. 2021-0.064.132.

²⁶ Or brought into a police station for immediate questioning under Section 153, paragraph 3, of the StPO.

²⁷ During other questionings, if the lawyer is not present, a person of trust must be present as a general rule. Further, the possibility to deny the presence of a lawyer during questioning pursuant to Section 164, paragraph 2, of the StPO (see paragraph 30) does not apply in the case of juveniles. Pursuant to Section 39, paragraph 3, of the JGG, a juvenile who has been arrested or brought in a police station cannot waive their right to be represented by a lawyer.

²⁸ In addition, according to Section 35, paragraph 4, of the JGG, a legal representative (e.g. a parent), as well as the juvenile court assistance services (*Jugendgerichtshilfe*), a probation officer who has already been appointed to the juvenile and the child and youth welfare services (*Kinder- und Jugendhelfeträger*) must be informed of the apprehension of the juvenile without undue delay.

In line with the amended legal provisions, all juveniles interviewed during the visit who were – or had recently been – in police custody confirmed that a lawyer (including one appointed *ex officio*) had been present during their questioning by the police. The CPT welcomes this state of affairs.

However, a few allegations were heard that police officers had attempted to informally question juveniles prior to the arrival of their lawyer. **The CPT recommends that the Austrian authorities take steps to ensure that police officers do not seek to informally question juveniles prior to the arrival of their lawyer.**

32. Requests by detained persons to be examined by a doctor whilst in police custody were promptly granted by police officers and the delegation received no complaints from detained persons in this regard. Moreover, the delegation was informed in several police establishments that detained persons were medically examined by a police doctor to establish their fitness for placement in a police custody cell, either systematically or if the placement was expected to last for several hours.

That said, several persons interviewed by the delegation alleged that they had been receiving opioid agonist treatment (OAT) prior to their apprehension by the police. Although they were examined by a medical doctor at the outset of their police custody and the doctor identified their participation in the OAT programme, the doctor did not prescribe OAT for the time of police custody (i.e. in some cases allegedly up to two days), which caused the persons concerned to suffer from withdrawal symptoms. This was confirmed by the examination of the available records in some of the police stations visited.

The CPT recommends that the Austrian authorities take the necessary steps to ensure that persons deprived of their liberty by the police are able to continue the opioid agonist treatment which they had started prior to their apprehension.

33. As regards custody registers, a standardised individual detention protocol (*Anhalteprotokoll*) was made for every person deprived of their liberty by the police.

However, a few deficiencies were observed by the delegation. First, as was already the case during the previous visit, the time of apprehension or release was sometimes omitted. Further, in several cases, the relevant fields indicating whether or not the detained person wished to avail themselves of their rights were not filled out or the signature of the detained person attesting that they had received an information sheet on their rights was missing. Police officers met during the visit stated that this may have been due to the fact that the detained person in question had been uncooperative and refused to indicate their choice and/or to sign the protocol.

The CPT recommends that the Austrian authorities take steps to ensure that police custody records are diligently maintained in all police stations. Whenever a detained person refuses to indicate whether they wish to avail themselves of their rights, or refuses to sign the detention protocol, this fact should be duly noted in the protocol.

34. It is commendable that the standardised individual detention protocol was available in several language versions. However, the delegation noted that language versions other than German were less comprehensive and did not contain the relevant sections indicating whether the detained person wished to call and/or to be visited by a lawyer of the legal hotline or a lawyer of their own choice.²⁹ **The CPT recommends that these deficiencies be remedied.**

²⁹ Sections 2a, 2b, 3a and 3b of the *Anhalteprotokoll II*.

4. Conditions of detention

35. Overall, material conditions in the police establishments visited remained adequate, bearing in mind that detained persons were usually held in police custody for short periods only.

That being said, the information gathered during the visit indicates that sanitary towels were not readily available in a number of police stations visited (e.g. Innsbruck Regional Police Headquarters and Leoben Police Station). **The CPT recommends that this shortcoming be remedied.**

36. With the exception of Leoben Police Station which had earlier served as a PAZ, there were no arrangements in place in the police establishments visited to offer to detained persons the possibility of daily access to fresh air. At best, *ad hoc* arrangements were made to allow detained persons to smoke, e.g. in a small yard adjacent to the establishment.

Whilst acknowledging that persons were usually detained only for short periods of time, **the CPT recommends that steps be taken by the Austrian authorities to ensure that all persons held in police custody for 24 hours or more are, as far as possible, offered outdoor exercise on a daily basis. The need for outdoor exercise areas for detained persons should be taken into account in the design of any new (or newly-reconstructed) police establishments.**

B. Foreign nationals held under aliens legislation

1. Preliminary remarks

37. The delegation carried out a follow-up visit to the police detention centre (*Polizeianhaltezentrum* - PAZ) at Vienna-Hernalser Gürtel in order to review the measures taken by the Austrian authorities to implement the recommendations made by the CPT after the previous visit to the establishment.³⁰

38. Although its official capacity has been reduced since 2014 from 299 to 200 places, the PAZ Vienna-Hernalser Gürtel remains the largest PAZ in Austria, accommodating male foreign nationals subject to detention pending deportation (*Schubhaft*)³¹ and male asylum-seekers in police custody (for up to 48 hours, before being transferred to an open reception centre).³²

At the time of the 2021 visit, the PAZ was accommodating a total of 101 male adult foreign nationals in *Schubhaft* and 32 male adult asylum-seekers in police custody.

As in 2014, the turnover was very high, since the PAZ continued to serve as a ‘hub’ for immigration detainees from all over Austria who were held at Hernalser Gürtel usually for short periods, prior to their deportation by air from Vienna International Airport. According to staff, the PAZ accommodated in total about 13,000 persons per year. The great majority of foreign nationals present at the time of the visit had been held in the PAZ for a period lasting between several days and a few weeks. Nonetheless, around 20% had been detained for one month or longer, the longest stay being seven months, reportedly due to pending court proceedings.

39. At the time of the visit, foreign nationals were being accommodated in four units of the PAZ. The units on the ground, first and second floors were regular accommodation units with 48, 56 and 60 places respectively. Most cells had a capacity of eight beds, others six or four. The so-called “tower unit” consisted of single cells for asylum-seekers and newly-arrived foreign nationals held in quarantine (Covid-19). This unit also comprised the establishment’s security cells (see paragraphs 53 *et seq.*). In addition, a detention unit on the fourth floor was not in use and was kept as a reserve capacity at the time of the visit.³³

³⁰ The PAZ Vienna-Hernalser Gürtel has previously been visited by the CPT several times, most recently in 2014 (see paragraphs 33 to 52 of CPT/Inf (2015) 34).

³¹ According to Sections 76 and 80 of the Aliens Police Law, foreign nationals may be held in *Schubhaft* for up to six months and, under certain circumstances, up to 18 months.

³² See Section 40 of the Law on the Proceedings before the Federal Office for Immigration and Asylum (*BFA-Verfahrensgesetz*). Under certain circumstances, asylum-seekers may also be held in *Schubhaft* (for up to ten months). The delegation did not examine the situation of asylum-seekers.

³³ Another unit on the third floor was under reconstruction as a future accommodation area for foreign nationals testing positive for Covid-19.

40. The general legal framework governing the detention of foreign nationals under aliens legislation set out in the Law on the Aliens Police (*Fremdenpolizeigesetz*)³⁴ and the Ministry of the Interior Detention Regulation (*Anhalteordnung*) remained unchanged since the 2014 visit. That said, in 2019, previously existing internal instructions were replaced by a new Ministry of the Interior instruction (*Erlass*) on detention standards in PAZ (hereinafter: “PAZ Instruction”).³⁵ This instruction largely reflects recommendations made by the joint working group of the Ministry of the Interior and the Ombudsman Board (NPM), which was established in 2014 in order to enhance relevant detention standards (for instance, as regards the open-door regime, safeguards surrounding placement in security cells and the arrangements for visits).

2. Ill-treatment

41. With one exception, the delegation received no allegations of ill-treatment by staff at the PAZ Vienna-Hernalser Gürtel. The exception concerns a foreign national who claimed to have been slapped by a police officer.

The CPT trusts that the management of the PAZ Hernalser Gürtel will remind police officers deployed to the establishment that such behaviour is unacceptable.

3. Conditions of detention

a. material conditions

42. It is a matter of concern that, compared to 2014, the overall material conditions at the PAZ had significantly deteriorated. Whilst acknowledging that the communal showers had been refurbished and were thus in an acceptable state of repair and cleanliness, most parts of the accommodation and communal areas were in an appalling state of repair with corridors, cells and their sanitary annexes dilapidated and dirty. Further, most cell walls were scratched and/or smeared, covered with graffiti and had crumbling paintwork, and some pieces of furniture were broken.

43. By letter of 17 December 2021, the Austrian authorities informed the CPT that the Ministry of the Interior had allocated 100,000 Euros for “painting and renovation works in the detention areas” (including cells, activity rooms, corridors, surgery and visitor area). This is a positive development. **The CPT wishes to receive updated information on the renovation works carried out at the PAZ Vienna-Hernalser Gürtel.**

Further, the CPT recommends that the Austrian authorities take steps at the PAZ Hernalser Gürtel to ensure that all accommodation and communal areas are henceforth kept in an acceptable state of repair and cleanliness.

³⁴ Sections 76 to 81.

³⁵ Reference BMI-OA1320/0007-II/1/b/2019; 15 May 2019.

44. More generally, the material environment at the PAZ (which had originally been built as a prison in 1910) was very carceral and oppressive, with heavy iron doors, barred windows and barred gate partitions between the units. In the CPT's view, such conditions are not suitable for holding foreign nationals in *Schubhaft* for prolonged periods.

The CPT recommends that the Austrian authorities take measures to ensure that foreign nationals are not detained at the PAZ Vienna-Hernalser Gürtel for more than short periods (up to two weeks). In case of longer-lasting detention, the foreign nationals concerned should be accommodated in a centre specifically designed for *Schubhaft* (such as Vordernberg Immigration Detention Centre).

b. regime

45. The CPT welcomes the fact that the new PAZ Instruction expressly stipulates that, save for clearly-defined circumstances, the open regime (*offene Station*) shall be the default regime (*Normalvollzug*) for immigration detention and that newly-admitted foreign nationals shall be placed in the open regime within 48 hours at the latest.³⁶ It is also stipulated that, under the open regime, cell doors shall be continuously unlocked from 8 a.m. until 9 p.m. The detention areas on the ground and first floors were in principle designated as open units and cells on the other floors as closed units.

However, in the context of the visit, the delegation had received reports that the open regime had in the past not always been implemented, apparently due to staff shortages.

Moreover, following the emergence of a number of Covid-19 cases, the open regime had been temporarily fully suspended at the PAZ as of 8 November 2021. This suspension was still in force at the time of the visit. Under the new closed regime, cell doors were usually opened only for a maximum of one hour and 45 minutes per day.³⁷ During cell opening times, foreign nationals could access an outdoor yard, take a shower or make phone calls. For the rest of the time (i.e. more than 22 hours per day), they were left to their own devices, locked in their cells, in groups of up to eight persons, their only occupation being to watch television (if their cell had a functioning TV-set)³⁸ or reading.

Many foreign nationals interviewed by the delegation were clearly very distressed by this regime. The overall situation, with up to eight foreign nationals usually of different cultural and linguistic backgrounds - most of them in a situation of personal anguish/hardship and uncertainty - locked together in dilapidated cells for 22 hours a day in enforced idleness, was perceived by many foreign nationals as particularly oppressive. The situation was even more of a strain for those who had been staying at the PAZ for several weeks (see also paragraphs 63 and 64).

The Committee acknowledges the difficulties caused by the Covid-19 pandemic, and it understands that, at the time of the visit, newly-arrived foreign nationals had to be placed in quarantine and contacts between detainees reduced. However, the measures imposed appeared to be disproportionate, also bearing in mind that the unused detention unit could have been used to reduce the number of foreign nationals per room and to allow for more out-of-cell time on a rotation basis.

³⁶ See also Section 5a of the Detention Regulation.

³⁷ Only one or two detainees per unit/floor benefited from open cell doors throughout the day, as they had been offered unpaid work as orderlies (*Hausarbeiter*).

³⁸ The delegation was informed that the installation of a satellite system was planned for 2022 which would allow detainees to access foreign channels.

46. During the end-of-visit talks, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention, urging the Austrian authorities to take immediate steps to ensure that the out-of-cell time for foreign nationals held at the PAZ Hernalser Gürtel is increased considerably.

By letters dated 17 December 2021 and 4 February 2022, the Austrian authorities informed the CPT that the above-mentioned strict suspension of the open regime had been lifted on 7 December 2021 and that accordingly, “detainees awaiting deportation are held in open wards between 8 a.m. and 5.30 p.m.”. However, they also stated that the simultaneous opening of only two or three cells per ward or residential group was permitted, due to the ongoing epidemic.

The CPT recommends that the Austrian authorities fully implement as soon as possible the open regime at the PAZ Vienna-Hernalser Gürtel, in line with the requirements set out in the PAZ Instruction (i.e. with the cell doors being unlocked from 8 a.m. to 9 p.m.).

The Committee would like to be informed, within three months, about the steps taken to implement this recommendation.

47. The information gathered during the visits suggests that, prior to the above-mentioned Covid-19 related restriction imposed on 8 November 2021, foreign nationals accommodated on the ground floor had, in principle, unrestricted access to an outdoor yard during daytime and those held on the first floor could access a yard upon request, while others were usually offered one hour of outdoor access per day. In addition, detainees had access to a communal room on each floor equipped with table football and/or table tennis as well as with a table. Apart from that there were apparently no sports facilities or other activities on offer.

Moreover, several communal rooms were lacking any chairs and the PAZ library was only rudimentarily equipped with a few books in German, English and Arabic and no other reading material (such as newspapers and magazines). It is also regrettable that, despite the specific recommendation made after the 2014 visit, the outdoor exercise yards were still not equipped with any shelter against inclement weather.

The CPT recommends that these shortcomings be remedied at the PAZ Vienna-Hernalser Gürtel without delay.

4. Health care

48. Given the targeted nature of the visit, the delegation did not conduct a comprehensive assessment of the health-care services at the PAZ Vienna-Hernalser Gürtel.

49. The CPT welcomes the fact that, whenever foreign nationals arrived with visible injuries, the latter were recorded, photographed and reported, together with the statements made by the person concerned, to the Unit for Special Investigations (*Referat für besondere Ermittlungen*) at the Vienna Regional Police Headquarters (*Landespolizeidirektion*), which is responsible for investigating and submitting cases of alleged police ill-treatment to the relevant prosecutor.

Further, it is positive that a video-interpretation service for health-care purposes has been introduced.

50. As regards health-care staff, a police doctor continued to be present every workday from 7 a.m. until 1 p.m. and on call during the weekend. Further, psychiatric, psychological and addiction-related treatment was provided by the association “Dialog” which arranged the regular presence of a psychiatrist (from Monday to Friday for three hours per day), a psychologist and a general practitioner responsible for substitution treatment (both present twice a week for three or four hours each time).

That said, it is a matter of concern that, despite the intention expressed by the Austrian authorities in their response to the report on the 2014 visit “to fully delegate [nursing] services to nurses”, no nurse was employed at the PAZ.³⁹ Thus, it remained the case that several uniformed police officers with basic first-aid training (and some of them with additional training as nursing assistants) were assigned to the medical unit as orderlies (*Sanitätsbeamte*) to carry out the work which would normally be performed by a nurse (e.g. handing out and collecting a standardised questionnaire (*Anamnesebogen*) in the context of initial medical screening, preparation and distribution of prescribed medicines including opioid agonist treatment, measuring blood pressure, etc.). Such a practice totally undermines the principle of medical confidentiality.

The CPT wishes to recall that the arrangements observed by its delegation during the 2014 visit at the immigration detention centre in Vordernberg were exemplary and may serve as a model for the re-organisation of the health-care services in PAZ.

The Committee reiterates its recommendation that the Austrian authorities take steps without further delay at the PAZ Vienna-Hernalser Gürtel and, where appropriate, in other PAZ in Austria to ensure that:

- **the system of delegating nursing functions to police officers (*Sanitätsbeamte*) is discontinued and that regular visits by a qualified nurse are arranged, the length of time depending on the needs;**
- **all medical examinations are conducted out of the hearing and – unless the health-care professional concerned exceptionally requests otherwise in a particular case – out of sight of police officers and that medical files/records are no longer accessible to non-medical staff.**

51. Further, already in the reports on the 2009 and 2014 visits, the CPT expressed its misgivings about the dual role of police doctors (who are formally police officers) in PAZ as treating doctor and public health doctor. The CPT wishes to recall that the potential risk of conflict of interest is evident if it is also the duty of a treating doctor to determine whether a foreign national is fit for detention (for instance, in the context of hunger strikes) or deportation, and to record and assess injuries which may have been the result of ill-treatment inflicted by (fellow) police officers.

In their response to the report on the latter visit, the Austrian authorities indicated that “Austria has taken up and implemented the CPT recommendation to separate the dual role of police doctors as treating doctors and public health doctors. Efforts are presently under way to roll-out this successful system.”

³⁹ See doc. CPT/Inf (2015)35, page 10. It is noteworthy that a nurse had been present in the PAZ every day at the time of the 2009 visit.

That said, the findings of the 2021 visit clearly indicate that the aforementioned efforts have not materialised at the PAZ Vienna-Hernalser Gürtel, in contrast to the situation observed by the Committee in 2014 at Vordernberg Immigration Detention Centre. Therefore, **the Committee reiterates its recommendation that the roles of treating doctor and public health doctor be separated in all PAZ in Austria.**

52. Finally, as was the case in 2014, all newly-arrived foreign nationals at the PAZ Vienna-Hernalser Gürtel were subjected to medical screening by a doctor within 24 hours, on the basis of the above-mentioned questionnaire, as well as to a screening (X-rays) for tuberculosis.

5. Security measures

53. Detained foreign nationals considered to pose a risk of violent behaviour (to themselves, others or property) may be placed in one of the establishment's five security cells.⁴⁰ Three of the cells were tiled security cells (*Sicherheitszellen*), mainly used for persons considered to pose a risk to others. The other two cells were padded cells (*besonders gesicherte Zellen*), mainly used for persons considered to pose a risk to themselves.

According to the information received, foreign nationals had been placed in a tiled security cell 155 times in the first eleven months of 2021 for up to 38 days.⁴¹ Foreign nationals had been placed in a padded cell 30 times in the first eleven months of 2021. The CPT has serious misgivings that eleven persons had been held in these cells for days on end, the longest stays lasting four days (three times), six days and nine days and 16 hours.

54. According to the Detention Regulation⁴² and the PAZ Instruction, a person placed in a padded cell must be seen by a doctor immediately and thereafter at least every twelve hours. In addition, a psychiatrist, psychotherapist or psychologist should be involved as far as possible.

The PAZ Instruction stipulates that, as a general rule, detainees placed in any type of security cell shall be personally checked by a member of staff at least once per hour during daytime (*stündlicher Kontrollgang*), regardless of whether the cell is equipped with video-surveillance. Further, whenever a detainee is placed in a tiled security cell without video surveillance (which was the case at the PAZ Hernalser Gürtel), the person concerned must be checked by a member of staff at least every 15 minutes, and in the event that the video surveillance in a padded cell is out of order, a member of staff must be permanently present in front of the cell.⁴³

⁴⁰ See Sections 5 and 5b of the Detention Regulation.

⁴¹ For a median duration of 7.4 days.

⁴² Section 5b (3).

⁴³ It is noteworthy that the relevant detention standards developed by the joint working group referred to in paragraph 40 recommend a permanent personal supervision of persons placed in a padded cell under all circumstances.

55. The delegation was informed that, in practice, the foreign nationals placed in either type of security cell were systematically seen by a police doctor, and in case of placement in a padded cell or when the person was considered suicidal or at risk of self-harm, a psychiatrist was also called in. The doctor would further assess whether the conditions for placement in a psychiatric hospital under the Law on Involuntary Placement (*Unterbringungsgesetz*) were met and, in the affirmative, the person concerned would be transferred to a hospital. In both types of security cells, the foreign nationals concerned usually received daily visits from the doctor and the shift supervisor (reviewing the placement decision).

However, the supervision and human contact provided, in particular to foreign nationals placed in padded cells, were clearly insufficient and also did not comply with the above-mentioned legal requirements. Foreign nationals held in tiled security cells were reportedly “checked” only every 30 minutes by an officer, normally through the door hatch, and it appeared that no meaningful human contact was usually provided. Moreover, persons placed in padded cells were mainly supervised through video surveillance and, apart from brief contacts when receiving food (three times a day) or water and in case of particular needs such as access to the toilet or shower outside the cell, were often completely isolated in the bare cells, sometimes for days on end.

Further, it is a matter of concern that persons placed in either type of security cell had no access to an outdoor yard during the entire placement. In the CPT’s view, persons placed in a security cell should be offered daily access to an outdoor area of at least one hour unless there are clear medical counterindications.

56. During the end-of-visit talks, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention urging the Austrian authorities to take immediate steps to ensure that the foreign nationals placed in a security cell at the PAZ Hernalser Gürtel are provided with human contact at frequent intervals and daily access to an outdoor yard.

By letter of 4 February 2022, the Austrian authorities provided the following information:

“Confinement in specially secured cells is [...] applied as restrictively as possible and only as “ultima ratio” aimed at averting danger. When the risk can be met by another measure, the confinement in secured cells is stopped immediately. During this special confinement the inmates have the opportunity of daily yard exercises and personal care. Mentally ill detainees who are a danger to themselves and/or others are released from police custody in accordance with the Law on Involuntary Placement (*Unterbringungsgesetz*) and transferred to psychiatric institutions designated for this purpose. If detainees show behaviour that is dangerous to themselves and/or others without an objectifiable mental illness (in the sense of the nosological classification system ICD-11), confinement in specially secured cells cannot be imposed.”

This describes a positive practice. However, the CPT has difficulty in comprehending why persons were nevertheless held in padded security cells for days on end. **It would like to receive the comments of the Austrian authorities on this matter.**

57. Given the potentially harmful effect of solitary confinement to a person's mental health, **the Committee recommends that the Austrian authorities take the necessary steps to ensure that, whenever foreign nationals are held in a padded cell (*besonders gesicherte Zelle*) at the PAZ Vienna-Hernalser Gürtel and, where appropriate, in other immigration detention facilities in Austria, they be regularly offered human contact, and directly personally supervised in line with the requirements of the PAZ Instruction (as described in paragraph 54). Clearly, video surveillance cannot replace regular human contact.** Furthermore, foreign nationals held in a tiled security cell (*Sicherheitszelle*) should also be provided with meaningful face-to-face human contact at frequent intervals. In addition, persons placed in either type of security cell should be offered daily access to an outdoor area for at least one hour unless there are clear medical counterindications.

Further, the Committee would further like to be informed of the number and length of placements of foreign nationals in padded cells at the PAZ Hernalser Gürtel since 1 January 2022 (including with the number of persons concerned).

58. All security cells were about 7m² in size, had adequate access to natural light and artificial lighting and were in an acceptable state of repair. The tiled security cells were fully surfaced with white tiles and equipped with a bare mattress on a concrete platform, a floor-level toilet and an interphone. The padded security cells were fully padded (including the floor) and equipped with a call bell as well as with an infrared CCTV camera.

That said, apparently neither blankets nor pillows were provided to any of the persons concerned. Access to fresh air in the well-heated cells was limited and thus they were stuffy. Moreover, in the tiled security cells, artificial lighting in the cells was kept switched on at night, reportedly to allow regular supervision through the door hatch. In this connection, the CPT must stress that exposure to artificial light at night may affect the natural sleep patterns and cause health problems. The delegation further received allegations that persons placed in a tiled security cell were not always provided with ready access to drinking water and were at times not allowed to take a shower⁴⁴ for several days.

It is another matter of concern that not only foreign nationals placed in padded security cells, but also those placed in tiled cells were systematically obliged to undress and wear thin suicide-proof clothing, contrary to the relevant legal provisions. According to the Detention Regulation⁴⁵ and the PAZ Instruction, a person "may" be deprived of his/her clothing "in case there is a risk of misuse or self-harm". The obligation to undress should thus not be the rule, but rather be based on an individual risk assessment.

The CPT recommends that the Austrian authorities take the necessary steps at the PAZ Vienna-Hernalser Gürtel and, where appropriate, in other PAZ in Austria, to ensure that:

- **all security cells are sufficiently ventilated and that the artificial light in these cells is always appropriately dimmed at night;**
- **all persons placed in a security cell are provided with a blanket and a pillow (if necessary suicide-proof), ready access to drinking water and regular access to a shower;**

⁴⁴ There was a shower room adjacent to the security cells.

⁴⁵ Section 5b (2) 3.

- **foreign nationals placed in a tiled security cell are obliged to remove their clothes and wear suicide-proof clothing only on the basis of an individual risk assessment when there is an evident risk of self-harm or suicide.**

59. Furthermore, when foreign nationals were subjected to strip-searches, they were usually required to fully undress at once. The CPT must stress that a strip search is a very invasive and potentially degrading measure. Every reasonable effort should be made to minimise embarrassment; persons who are searched therefore should not normally be required to remove all their clothes at the same time. They should rather be allowed to remove clothing above the waist and then get dressed again before removing further clothing. In this regard, **the recommendation made in paragraph 106 equally applies to the PAZ Vienna-Hernalser Gürtel, as well as to all other PAZ in Austria.**

60. As already criticised by the CPT in 2014, police officers working at the PAZ Hernalser Gürtel continued to carry pepper spray canisters inside the detention areas. In this regard, **the recommendation made in paragraph 105 of this report equally applies to the PAZ Hernalser Gürtel, as well as to all other PAZ in Austria.**

6. Contact with the outside world

61. According to the Detention Regulation⁴⁶ and the PAZ Instruction, detained foreign nationals shall have the possibility to make phone calls of appropriate duration several times a week on their own expense. Further, indigent persons shall as soon as possible be allowed to make telephone calls free of charge, in order to establish contact with relatives, legal representatives, authorities and diplomatic/consular representations. It is also stipulated that the foreign nationals' own mobile phones *may be* handed out for the duration of the call and that indigent detainees *are entitled to* use their own mobile phone.⁴⁷

In practice, detained foreign nationals who had money to purchase a phone card, could use a telephone in a dedicated room on their corridor every day. However, in contrast to the situation found in 2014 when foreign nationals at the PAZ had been offered one phone call free of charge per week, several persons told the delegation this time that they could not make any phone calls as they had no money to buy a phone card. Indigent persons were only very exceptionally permitted free phone calls. Further, foreign nationals were generally not allowed to use their mobile phones.

The Committee recommends that the Austrian authorities take the necessary measures at the PAZ Vienna-Hernalser Gürtel, as well as in all other PAZ in Austria, to ensure that:

- **indigent foreign nationals are offered regular phone calls free of charge;**
- **foreign nationals are given the possibility to use their mobile phones to make phone calls (for instance in a designated room).**

⁴⁶ Section 19 (1a) and (2).

⁴⁷ It is further specified that detainees should use their own mobile phones only in a "safe environment" (preventing image and/or sound recordings of other persons).

62. The CPT notes positively that, despite the Covid-19 lockdown in Austria at the time of the CPT's visit, foreign nationals held in the PAZ Hernalser Gürtel could receive two visits of half an hour per week.

It is also positive that, according to the PAZ Instruction, visits without separation (*Tischbesuche*) are supposed to be the standard visiting mode and specific reasons are enumerated which exceptionally allow a visit to be carried out under "closed" conditions (i.e. with a glass separation).⁴⁸ However, it is regrettable that, in practice, visits at the PAZ Hernalser Gürtel still generally took place with a glass partition.⁴⁹ While closed visits can be justified in a serious pandemic situation such as at the time of the visit, the CPT must stress once again that foreign nationals should generally be allowed to receive visits under open conditions and visits behind a screen should be limited to exceptional cases.

The CPT recommends once again that the Austrian authorities allow foreign nationals detained at the PAZ Vienna-Hernalser Gürtel, as well as in all other immigration detention facilities in Austria, to receive visits, as a rule, without physical separation. "Closed" visits behind a screen should be limited to exceptional cases based on an individual risk assessment.

7. Staff

63. The Ombudsman Board has repeatedly criticised the problem of understaffing at the PAZ Vienna-Hernalser Gürtel.⁵⁰ At the time of the visit, 120 posts of police officer were allocated to the PAZ. In the opinion of the management of the PAZ, this was a highly unsatisfactory situation, as the actual workload required much more staff. Reportedly, officers working at the PAZ had on average to work overtime for a total of 5,000 to 6,000 hours per month. In this context, the delegation heard several complaints that staff had no time and did not respond to the foreign nationals' requests for support and assistance in a timely manner.

Further, it appeared that communication between staff and detainees was generally reduced to the absolute minimum and the overall atmosphere was characterised by a high level of mutual distrust. Many foreign nationals interviewed by the delegation also expressed frustration about the lack of information about the rules and routines at the PAZ as well as about their legal situation (see paragraph 40). The delegation received complaints that some foreign nationals could not communicate with staff for several days, as none of the staff they were in contact with seemed to understand or speak a language they knew, including English. Apparently, video interpretation services were only used by the medical service. This was an additional source of frustration for a number of foreign nationals.

In this connection, the delegation was informed that police officers assigned to the PAZ had not benefited from specific training for working with immigration detainees (including e.g. interpersonal communication and cultural sensitivity), neither before nor after taking up their duties. They had only undergone a short introductory seminar concerning procedures and managerial issues and were otherwise required to learn "on the job".

⁴⁸ For instance, in case of a justified suspicion that the detainee poses a concrete risk for the health of other persons, grossly disruptive behaviour or in case of specific individual security considerations based on concrete facts.

⁴⁹ The PAZ Instruction conditions these visits to the availability of staffing resources and room availability.

⁵⁰ See, for instance, the 2020 Annual Report on the activities of the Austrian Ombudsman Board (NPM), page 146.

The CPT acknowledges that police officers working in PAZ have a particularly onerous task. Consequently, they must be carefully selected and receive appropriate training, including in intercultural awareness. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the foreign nationals, and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (e.g. post-traumatic, induced by socio-cultural changes, etc.) and to take appropriate action.

The CPT recommends that the Austrian authorities reinforce the staffing levels at the PAZ Vienna-Hernalser Gürtel in order to provide detained foreign nationals with the necessary assistance.

Further, all staff working at the PAZ Hernalser Gürtel, as well as in all other immigration detention facilities, should receive specialised training in light of the above-mentioned remarks.

8. Information provided to foreign nationals

64. At the PAZ Vienna-Hernalser Gürtel, several information sheets existed in a large number of languages about the internal rules and procedures, daily routines and the medical service, including one in pictograms. However, these sheets seemed not to be made available to the foreign nationals. Many foreign nationals told the delegation that they had not received information about the rules of the PAZ, neither orally nor in writing. In this context, the management of the PAZ confirmed that information sheets were no longer handed out, because in the past they were “flying around everywhere, producing a large amount of waste-paper”. At the time of the visit, some information in German on the internal rules of the PAZ were posted on information boards in only one or two of the four accommodation units in use,⁵¹ but due to the closed-door regime at the time of the visit, even foreign nationals from these wards had very little opportunities to take note of the information posted in the corridor.

In addition, despite the free-of-charge legal counselling offered by the Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen - BBU*),⁵² a number of foreign nationals did not even appear to be aware of the type of establishment in which they were being detained. Moreover, many of them claimed that they had not been informed about the next stages in their (deportation) procedure and/or about the expected length of their stay, which left them in a state of desperation.

By letter of 17 February 2022, the Austrian authorities informed the CPT that “the rules concerning the inmates (house rules) are posted in full in several places in the PAZ in the most widely used languages”. This is positive.

⁵¹ Otherwise, the information boards contained information mostly in German, and sometimes in other languages, mainly about Covid-19 measures, tuberculosis screening and disciplinary measures, as well as a copy of the Detention Regulation.

⁵² The BBU offers free-of-charge legal counselling to every detained person and must also provide free-of-charge legal representation (including in any appeal hearing) at the detainee’s request and irrespective of the chance of success of an appeal against the detention order.

Notwithstanding the above, the CPT recommends that foreign nationals detained at the PAZ Vienna-Hernalser Gürtel, as well as in other immigration detention facilities in Austria, are expressly informed, without delay upon their admission and in a language they understand, of their rights and the procedure applicable to them. In addition to verbal information, all detained foreign nationals should be systematically provided with a document setting out this information and should be asked to confirm in writing that they have been informed of their rights, in a language they can understand. This should include information on the existing internal and external complaints procedures, together with the relevant contact details.⁵³ If necessary, the services of an interpreter should be made available.

Further, all foreign nationals should be informed upon their arrival at an immigration detention facility – orally and in writing and in a language they understand - of the facility's house rules.

⁵³ Reference is made in this context to the section on complaints mechanisms contained in the CPT's 27th General Report (2017) (doc. CPT/Inf (2018) 4).

C. Prison establishments

1. Preliminary remarks

65. The delegation visited for the first time Leoben Prison and carried out a follow-up visit to Innsbruck Prison.⁵⁴ It also carried out a targeted visit to Vienna-Josefstadt Prison,⁵⁵ where it focused on the situation of remand prisoners (including juveniles).⁵⁶

Innsbruck Prison, located in the south-western suburb of the city, was opened in 1967 and then progressively extended. The main four-storey building underwent major renovation in 2000 and a new separate building for the accommodation of female prisoners was added in 2020.⁵⁷ The establishment accommodates remand prisoners and sentenced prisoners with a prison sentence of up to 18 months (as a general rule). With an official capacity of 475 places, at the time of the visit the establishment was accommodating 361 prisoners: 78 adults on remand (including 5 women) and 278 sentenced adults (including 10 women), as well as four remand and one sentenced male juvenile.

Leoben Prison belongs to a modern purpose-built complex which includes, in addition to the prison, several courts and prosecutor's offices. The prison was taken into operation in 2005. The establishment has a capacity of 205 places and, at the time of the visit, was accommodating 178 prisoners of which 30 (including one woman) were adult remand prisoners and 145 (including two women) were adult sentenced prisoners; there was also one female juvenile held on remand and two male juveniles (one sentenced and one held on remand).

Vienna-Josefstadt Prison remains the largest prison establishment in Austria. With an official capacity of 990 places, it was holding 1 055 prisoners of which approximately two thirds were on remand (including 36 women) and one third were sentenced (including 24 women).⁵⁸ There were also three female juveniles (one sentenced and two held on remand) and 15 male juveniles (including four sentenced prisoners).⁵⁹

66. According to the information provided by the Austrian authorities, the prison estate was accommodating 7 677 prisoners for an official capacity of 8 569 places and was thus overall operating below its official capacity (occupancy rate approximately 90%).⁶⁰

⁵⁴ The establishment was previously visited by the CPT in 2009.

⁵⁵ The establishment was repeatedly visited in the past by the CPT, most recently in 2014.

⁵⁶ In addition, the delegation visited Göllersdorf and Stein Prisons, where it focused on the situation of patients under forensic placement. For more details, see section D. of this report.

⁵⁷ The former female accommodation block was being used as a police detention centre at the time of the 2021 visit.

⁵⁸ One ward of the establishment was now serving as an external unit of Göllersdorf Prison and was accommodating some 70 inmates serving the court-ordered measure of forensic placement (*Massnahmenvollzug*).

⁵⁹ Sentenced juveniles held at Vienna-Josefstadt Prison were either serving a sentence of up to six months in the establishment or had been transferred to the establishment from a juvenile prison to serve the last eight weeks of their sentence before their release.

⁶⁰ According to the most recent SPACE I statistics (SPACE I – 2021 – Council of Europe Annual Penal Statistics: Prison Populations, available at <https://wp.unil.ch/space/space-i/annual-reports/>), in January 2021, the prison population rate per 100,000 inhabitants was approximately 95, i.e. below the European median value of approximately 102.

However, it must be taken into account that the prison population decreased by some 1,000 inmates between March 2020 and November 2021 as a result of the measures taken in the context of the Covid-19 pandemic (in particular due to deferred prison sentences). Moreover, despite this decrease, several establishments operated above (or close to) their official capacity (including Vienna-Josefstadt Prison, which was visited by the delegation).

Further, the CPT notes that the number of sentenced prisoners under electronic monitoring has increased since the last visit carried out by the CPT in 2014 (371 inmates in 2021 as compared to 249 in 2014). However, it remains the case that this measure is only rarely used for remand prisoners; in fact, according to the figures provided by the authorities, only one remand prisoner was being subjected to electronic monitoring at the time of the 2021 visit.

The CPT trusts that the Austrian authorities take due account of the risk of increased influx of new inmates into the prison system once the restrictions introduced in the context of the Covid-19 pandemic have been removed. Further, the Committee encourages the authorities to make further efforts to also use non-custodial measures during the period preceding the imposition of a sentence. For example, electronic monitoring may be a viable alternative to remand detention when this measure is strictly necessary.⁶¹

67. The CPT notes positively that the juvenile prison population steadily decreased from some 140 in 2016 to approximately 80 to 90 in 2021. Regrettably, the plan to no longer accommodate juveniles at Vienna-Josefstadt Prison for more than two weeks, which existed during the previous visit, had been abandoned.⁶² Reference is made in this context to paragraph 72.

2. Ill-treatment

68. In the course of the visit, the delegation received no allegations of physical ill-treatment of prisoners by staff in any of three establishments visited. On the contrary, in particular at Innsbruck and Leoben Prisons, several prisoners stated explicitly that they were treated respectfully by staff and praised their attitude towards inmates. The delegation observed that staff regularly interacted with inmates.

That said, a few allegations of verbal abuse, including of a racist and/or xenophobic nature, were received at Innsbruck and Vienna-Josefstadt Prisons. **The CPT recommends that staff at Innsbruck and Vienna-Josefstadt Prisons be reminded that verbal abuse of prisoners is unprofessional and unacceptable and will be sanctioned accordingly.**

69. Inter-prisoner violence did not appear to be a major problem in the three establishments visited. The information gathered through interviews with inmates and staff and through the examination of the relevant registers indicates that these instances were rare and usually took the form of minor physical fights and verbal disputes. Staff intervened promptly and adequately, and more serious cases were systematically reported to the prosecutor's office.

⁶¹ See also paragraph 106 of the CPT's 31st General Report (doc. CPT/Inf (2021) 5) which outlines also other alternatives to imprisonment.

⁶² In 2014, it was envisaged that all newly-arrived juvenile remand prisoners at Vienna-Josefstadt Prison would undergo an assessment within two weeks as to whether they were suitable to be placed in a "supervised home" or whether they should be transferred to Gerasdorf Juvenile Prison.

3. Conditions of detention

a. material conditions

70. Material conditions at *Leoben Prison* were in all respects of a very high standard. All the premises seen by the delegation were clean and in a very good state of repair. Cells in which prisoners were accommodated were sufficient in size (i.e. 10m² for single-occupancy cells, 14m² for double-occupancy cells and some 26m² for cells intended to hold five persons),⁶³ were bright, adequately heated and ventilated and were suitably equipped (including with a call bell, refrigerator, TV-set and electric kettle). The in-cell sanitary annexes (a toilet and shower) were fully-partitioned from the rest of the cell.

Material conditions in the juvenile unit did not differ from those provided to the adult prison population and were in all respects very good. It is particularly positive that all cells (10m²) were in principle used for single-occupancy.

71. Efforts were being made at *Vienna-Josefstadt Prison* to keep the premises clean and in a good state of repair and the material conditions in the establishment were on the whole adequate. Despite the fact that the prison operated above its official capacity (see paragraph 65), cells were in principle sufficient in size for their occupancy (e.g. a double-occupancy cell measured 11m², a cell for six persons measured approximately 38m² and a cell measuring 50m² was intended for ten prisoners) and were adequately equipped, lit and ventilated.⁶⁴

However, signs of wear and tear, such as peeling, dirty and/or scratched walls, graffiti on the walls, scratched doors and worn furniture, were visible in virtually all cells seen by the delegation. The CPT was informed of plans to completely refurbish the establishment which should include, *inter alia* decreasing the size and capacity of the bigger cells and improvements to the heating system, water supply and electric wiring.

The CPT welcomes these plans and would like to receive up-to-date information on their implementation, including the timeframe.

72. The juvenile unit at *Vienna-Josefstadt Prison* consisted of 12 cells which were used for single- or double-occupancy at the time of the visit.⁶⁵ While the cells were in principle adequately equipped and provided sufficient living space (18m² and 25m²), signs of wear and tear were also visible in this unit. More generally, in particular in comparison with the juvenile units visited at *Leoben* and *Innsbruck Prisons*, the juvenile unit at *Vienna-Josefstadt Prison* provided a carceral environment which was not adapted to the specific needs of juvenile inmates.

In the CPT's view, all detained juveniles who are suspected or convicted of a criminal offence should be held in detention centres specifically designed for persons of this age, offering a non-prison-like environment. Bearing in mind this precept, **the Committee considers that remand and sentenced juveniles should be held at Vienna-Josefstadt Prison for as short a time as possible.**

⁶³ All the cell sizes referred to in this section of the report are counted without the in-cell sanitary annexe.

⁶⁴ However, the high occupancy rate had a negative impact on several other aspects of the functioning of the establishment, in particular the lack of space to provide organised activities, including access to the outdoor exercise yards.

⁶⁵ Theoretically, some of the cells had a maximum capacity of three juveniles.

73. Material conditions at *Innsbruck Prison* were already described in the report on the 2009 visit⁶⁶ and remained good in the main building and of a high standard in the three separate newer blocks which accommodated women, juveniles and newly-admitted prisoners subjected to Covid-19 quarantine.⁶⁷

In particular, cells in the main building varied in size and held up to six prisoners; they offered sufficient living space (e.g. double-occupancy cells measured some 14m² and the biggest cells for six measured approximately 40m²) and in other respects also offered adequate conditions in principle. Some signs of wear and tear were nevertheless noted by the delegation in some of the cells.

Cells in the new block accommodating female prisoners and in the juvenile unit were used for single- or double-occupancy and measured some 14m² (excluding the fully-partitioned in-cell sanitary annex, which included a toilet and a shower). They were also in other respects of a high standard.

b. regime and staff

i. *situation of adult prisoners*

74. At Innsbruck and Leoben Prisons, the regime activities offered to adult *sentenced prisoners* who worked were reasonably good.⁶⁸

The majority (i.e. some 230 of 280) of adult sentenced prisoners at Innsbruck Prison were offered work, either in several workshops (car repair, locksmith, carpentry, bookbinding and in agriculture) or as house workers. They were also offered various types of sport (usually twice a week) in indoor and outdoor sports facilities and other leisure activities (e.g. woodcarving, cooking and music groups).

The CPT also notes positively that virtually all adult female prisoners held in the establishment, whether on remand or sentenced, were offered work and five sentenced women benefitted from an open door regime within their unit during the day.

At Leoben Prison, some 50 to 60% of sentenced adults worked (e.g. in woodwork and metalwork workshops, production of electric cables) and were accommodated in living units ("*Wohngruppen*") in which they benefitted from an open door regime within their respective unit during the day and at night. In addition, they were offered access to a fitness room every working day and up to two hours twice a week of other sports in indoor or outdoor sports facilities (e.g. volleyball).

As a general rule, cell doors in the unit for female prisoners were open 24/7 and all three women held in the establishment at the time of the visit worked.

However, it remains the case that, due to the existing shift pattern for prison officers (see paragraph 79), the offer of activities in the afternoon was very limited and virtually the only activity offered during weekends was outdoor exercise.

⁶⁶ See doc. CPT/Inf (2010) 05, paragraph 75.

⁶⁷ This third block usually accommodates prisoners held under the court-ordered measure of forensic placement (*Massnahmenvollzug*).

⁶⁸ The situation of sentenced prisoners was not assessed by the delegation at Vienna-Josefstadt Prison.

75. The regime offered to the vast majority of *remand prisoners* in the three establishments visited as well as to sentenced men held at Leoben and Innsbruck Prisons who did not work remained very poor. The only out-of-cell activities offered to these inmates were one hour of daily outdoor exercise (which, at Vienna-Josefstadt Prison was not offered systematically – see paragraph 77) and one or two 60- to 90-minute sessions of sports per week. Consequently, the inmates concerned were locked up in their cells for up to 23 hours per day. Such a state of affairs is not acceptable.

76. In light of these findings, **the CPT recommends once again that the Austrian authorities improve the programme of activities offered to prisoners at Innsbruck, Leoben and Vienna-Josefstadt Prisons. Particular attention should be paid to the situation of remand prisoners. As stressed by the Committee in the past, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).**

77. As a general rule, prisoners in the establishments visited benefitted from at least one hour of daily outdoor exercise.

However, it remained the case that most outdoor exercise yards in the three establishments visited were not fitted with a means of rest, nor with shelter against inclement weather. Moreover, prisoners at Vienna-Josefstadt Prison were still not offered this possibility on rainy days or when it snowed.

The CPT recommends that outdoor exercise yards at Innsbruck, Leoben and Vienna-Josefstadt Prison and, where appropriate, in other prisons in Austria, be fitted with a means of rest and shelter against inclement weather. Further, steps should be taken to ensure that inmates held at Vienna-Josefstadt Prison are offered outdoor exercise every day, including in inclement weather.

78. Furthermore, it was a matter of serious concern to the delegation that newly-arrived prisoners at Vienna-Josefstadt Prison, including juveniles, were placed in a Covid-19 quarantine for a minimum of five days during which they were not allowed any outdoor exercise.

At the end of the visit, the delegation made an immediate observation pursuant to Article 8, paragraph 5, of the Convention and urged the Austrian authorities to take immediate steps to ensure that newly-arrived prisoners who were placed in quarantine in the establishment were offered daily access to outdoor exercise for at least one hour.

By letter of 4 February 2022, the Austrian authorities provided information on the steps taken in respect of the immediate observation. In particular, the management of the establishment had drawn up a concept to ensure that quarantined inmates have the possibility to spend time outdoors every day. However, this would require extended duty of staff; in accordance with the Staff Representation Act (*Personalvertretungsgesetz*), the staff committee must be consulted when changes are made to the duty roster. Moreover, the infection rate among the staff and thus the loss of work capacity had worsened considerably as a result of the emergence of the Omicron variant of Covid-19. While the establishment was discussing this issue with the staff committee, no approval had yet been given.

The CPT recommends that the Austrian authorities step up their efforts to ensure that newly-arrived prisoners at Vienna-Josefstadt Prison who are placed in quarantine in the establishment are offered, without further delay, daily access to outdoor exercise for at least one hour. The Committee would like to be informed, within three months, about the steps taken to implement this recommendation.

79. An issue closely related to the above-mentioned impoverished regime for a number of inmates and the lack of outdoor exercise are staffing levels and shift patterns for prison officers and their insufficient attendance in the establishments.

In the reports on the 2009 and 2014 visits, the CPT criticised staff shortages in the prisons visited and the staff shift system. Despite the recommendations made by the CPT on this issue, it remained the case in 2021 that the “night-shift” of prison officers usually started at 3 p.m. (and at Innsbruck and Leoben Prisons even at 12 o’clock noon on Fridays and weekends), the result being that there was a limited offer of regime activities in the afternoon and during weekends and that most prisoners remained locked up in their cells until the following morning. It is noteworthy that the “night shift” only consisted of 13 prison officers at Innsbruck Prison, six officers at Leoben Prison and 35 officers at Vienna-Josefstadt Prison.⁶⁹

At Vienna-Josefstadt Prison, the situation was further exacerbated by staff absenteeism: of the 448 posts of prison officers (of which 2% were vacant),⁷⁰ 42 staff members (i.e. some 10%) were not available at the time of the visit due to various reasons, such as long-term sick leave, maternity leave and in-service training.⁷¹

The CPT must once again emphasise that a real improvement in the regime on offer to prisoners requires a basic change of approach to prison staffing, so as to provide the main shifts throughout the day (i.e. from breakfast until the evening), with the nightshift starting no earlier than 7 p.m. and preferably later.

The CPT calls upon the Austrian authorities to carry out a complete overhaul of the staffing situation and staff shift pattern at Innsbruck, Leoben and Vienna-Josefstadt Prisons and, where appropriate, in other prisons in Austria, in light of the above remarks. This may require increasing the overall staffing levels in these prisons.

80. The restrictions imposed in the context of the Covid-19 pandemic had only a limited impact on the regime activities generally offered to prisoners (see, however, paragraph 78). Most notably, it is positive that throughout the pandemic, prisoners continued to be offered activities, including work, with only short interruptions during periods of national lockdowns. Prisoners who could not participate in paid work because of Covid-19 related restrictions received compensation.

⁶⁹ It is recalled that the capacity of the establishments was 475, 205 and 990 places, respectively.

⁷⁰ It was planned that 24 new staff members would join the team once they have finished their initial training.

⁷¹ The staff complement of prison officers consisted of 167 posts (of which 5 were vacant) at Innsbruck Prison and 77 posts (no vacancies) at Leoben Prison. More generally, according to the information provided by the Austrian authorities at the beginning of the 2014 visit, the prison service had some 4,000 posts of prison officers of which approximately 4% were vacant.

ii. *situation of juveniles*

81. Overall, the delegation gained a very good impression of the regime activities provided to juveniles. In all three establishments visited, they were able to spend most of the day outside their cells and were offered a range of purposeful activities.

It is also positive that the juvenile units were staffed with dedicated prison officers who were specially selected to work with juveniles and received special training. At least one prison officer was present in these units at all times. At Innsbruck and Vienna-Josefstadt Prisons, educators regularly attended juvenile units to provide activities.

82. At *Innsbruck Prison*, juveniles benefitted from an open door regime within their unit between 7 a.m. and at least 6 p.m. and could associate freely with other juveniles. They were offered a broad range of activities, including school classes, work, educational courses and various leisure activities with social educators (e.g. a cooking class, discussion groups and board games) and sport sessions in indoor and outdoor sports facilities. In addition, they enjoyed generous access to outdoor exercise yards.

Juveniles held at *Vienna-Josefstadt Prison* spent most part of the day engaged in organised activities and were locked up in their cells in principle only between 5.30 p.m. and 6 a.m. (and during three short periods during the day, e.g. to eat their lunch). They were offered school classes and basic educational courses, including IT courses, work, some basic vocational training and leisure activities (e.g. various creative workshops, life skills courses), as well as sports in indoor and outdoor sports facilities. They were also allowed daily access to outdoor exercise yards for up to two hours.

At *Leoben Prison*, cell doors in the juvenile unit remained unlocked between 7 a.m. and 6.30 p.m. and juveniles could associate within their unit, cook together, play table tennis and had free access to the gym. In addition, they were offered sports sessions (indoors and outdoors), on-line courses in a computer room and at least one hour of daily outdoor exercise.

However, no work was available for the juveniles held in the establishment at the time of the visit and there was no specialised staff to provide juveniles with school classes and/or educational activities.⁷² The delegation was informed that the allocation of one post of a social educator had been requested but not yet granted.

The CPT recommends that the Austrian authorities pursue their efforts to provide a full programme of activities, including schooling and/or educational activities, to juveniles held at Leoben Prison. This may imply employing specialised staff, at least on a part-time basis.

⁷² As regards more specifically school classes, by letter of 17 February 2022, the Austrian authorities informed the CPT that, in recent years, there had been no juvenile inmates at Leoben Prison who would have needed to complete compulsory schooling. If such a situation occurs, a practical solution can be found.

4. Health care

83. In many respects, the arrangements concerning the provision of health care to prisoners were satisfactory in all the establishments visited. In particular, the necessary quantity and range of medication was available, the establishments were visited by a range of specialist doctors and other health-care professionals and the health-care facilities were adequately equipped (see, however, paragraph 87). It is also positive that videoconferencing interpretation services were now available for medical consultations in all three establishments. The CPT also wishes to praise the efforts made by the current staff to provide good quality health care to inmates.

84. However, several shortcomings already identified during previous visits persist. This concerns in particular insufficient staffing levels of health-care staff.⁷³

At *Innsbruck Prison*, a general practitioner (GP) was present between Monday and Thursday for some 30 hours (0.8 full-time equivalent post (FTE)), a psychiatrist visited the establishment for a total of 17 hours per week (the equivalent of an additional 16 hours were not covered) and nurses (of which there were four, while one additional nursing post was vacant) were present between Monday and Thursday until 3 p.m., until 12.30 p.m. on Friday and until 12 o'clock noon at the weekend.

The health-care team at *Leoben Prison* comprised a GP who visited the establishment between Monday and Friday and covered 0.6 FTE, a psychiatrist who visited once a week for three hours and two nurses covering together 1.2 FTE. The nurses were present until 4.15 p.m. between Monday and Thursday and until 12.15 noon on Friday; after that, no nurse was present until Monday morning.

At *Vienna-Josefstadt Prison*, the health-care team was responsible for the provision of out-patient care to the general prison population, for the on-site prison hospital which had a capacity of 55 beds, and a unit for inmates held under the court-ordered measure of forensic placement – the capacity of this unit (some 15 places) had been increased by 60 places after a group of inmates had been moved to Vienna-Josefstadt Prison from another establishment.

The medical team consisted of a pool of GPs who together covered 10 FTEs (two additional posts were vacant) and three FTEs of a psychiatrist (of which 2.5 FTE had been added after the aforementioned transfer of inmates under the forensic placement). The complement of nurses (21 nurses and four additional vacant posts) had been reinforced by ten theoretical posts after the transfer. However, only one of these posts had been filled at the time of the visit and the other nine remained vacant. One GP and two nurses were present in the establishment during the night shift.

Each of the prisons visited also employed clinical psychologists: Innsbruck Prison had 3.5 FTEs of a psychologist (an additional 37 hours per week for a psychologist were vacant), Leoben Prison employed two full-time psychologists, and at Vienna-Josefstadt Prison, there were nine FTEs of a psychologist.

⁷³ It is recalled that the capacity of the establishments was 475 places (Innsbruck Prison), 205 places (Leoben) and 990 places (Vienna-Josefstadt Prison).

In the CPT's view, given the size of the prison population, the staffing levels of medical doctors and nurses are insufficient in all three establishments visited and the situation is further exacerbated by the existing vacancies.⁷⁴ This also concerns the psychiatric input which is insufficient to adequately meet the needs of a high number of prisoners with mental health disorders. Indeed, during the visit, the delegation received several complaints from the inmates interviewed about delayed access to health care, in particular psychiatric care. Moreover, several official interlocutors agreed with the delegation that the psychiatric input was insufficient in the prisons visited and acknowledged that access to hospitalisation in psychiatric settings of prisoners with severe mental health problems was very difficult – these prisoners were often rapidly and prematurely returned to prison.

The CPT recommends that Austrian authorities take the necessary steps to:

- **fill the vacant posts of health-care professional in all three establishments visited as a matter of urgency. Particular attention should be paid to the vacant posts of nurses at Vienna-Josefstadt Prison;**
- **thoroughly review and increase the staffing levels of general practitioners, psychiatrists and nurses, in particular at Innsbruck and Leoben Prisons. Further, a member of health-care staff should be present (at least on a part-time basis) in these establishments daily, including at weekends.**

The implementation of this recommendation may require increasing the budget for the provision of health care in prison.⁷⁵

85. As regards medical confidentiality, at Leoben and Vienna Prisons, various health-related tasks which are normally reserved for qualified nurses were performed by medical orderlies (*Sanitätsbeamte*, i.e. prison officers with basic health-care training). These orderlies were usually present during medical examinations of prisoners and some of them had access to prisoners' individual medical files (including the electronic database). Moreover, medication (including, at Leoben Prison, opioid agonist treatment (OAT) and psychotropic medication) was distributed to prisoners by orderlies or even "regular" prison officers (the latter option in particular at Innsbruck Prison). While these practices are understandable given the low numbers of health-care staff described above, they clearly constitute a breach of medical confidentiality and compromise the perception of the professional independence of prison health-care staff, as pointed out already in previous visit reports.

⁷⁴ According to the information provided by the Austrian authorities, in the whole prison system, the following posts were vacant: 4.7 of 26 posts of a GP, 12.22 of 20.67 posts of a psychiatrist and 45.38 of 276.88 posts of a nurse.

⁷⁵ During the visit, the CPT was informed of the difficulties of attracting health-care professionals to work in the prison system. Reportedly, this was linked, at least to a certain extent, with the fact that salaries were estimated to be approximately 10 to 15 % lower for health-care staff working in prison in comparison with the situation of their counterparts working in other settings.

In a letter sent to the CPT on 17 February 2022, the Austrian authorities presented several arguments justifying the current practice. In particular, the authorities stated that the number of assaults on prison staff had increased in recent years and prison officers who were responsible for “medical support activities” had to be able to intervene immediately to ensure security and order during medical examinations and treatment and to avoid possible escalation of the situation. In the authorities’ view, the presence of prison officers could not be replaced by technical equipment (e.g. alarm buttons). Further, particularly at large prisons, such as Vienna-Josefstadt Prison, the frequency of medical consultations was so high that medical doctors were not in a position to obtain the necessary information to assess whether an inmate posed a particular danger. The authorities added that, leaving aside security requirements, the current practice could be abandoned only if additional posts of nursing staff were made available.

The authorities further argued that prison officers only distributed medication which had been previously dispensed by a certified specialist or a blister centre, i.e. prison officers distributed medication prepared by health-care staff without checking the contents of the packages.

The CPT takes due note of these arguments. However, it considers that respect for confidentiality is essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship. Reference should be made in this context to the Recommendation R (98) 7 of the Council of Europe’s Committee of Ministers to member States concerning the ethical and organisational aspects of health-care in prison, according to which medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.⁷⁶

Consequently, medical examinations of prisoners should be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff. In the CPT’s experience, the systematic presence of non-health-care staff during medical examinations is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. Unlike the Austrian authorities, the Committee considers that the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination, can indeed be a part of a solution.

Further, the Committee considers that medication should preferably be distributed by health-care staff. In any case, the authorities should draw up a list of medication that should in every case be distributed by health-care staff (such as anti-psychotics, OAT and antiretroviral drugs).

In light of the findings of the 2021 visit and the aforementioned principles, **the CPT reiterates its recommendation that the Austrian authorities initiate a process of abolishing the practice of involving prison officers in the performance of health-care duties in all prisons in Austria.** Indeed, this will require an increase in nursing staff resources, as pointed out by the authorities (see also the recommendation made in paragraph 84).

⁷⁶ See paragraph 13 of the Appendix to Recommendation No. R (98) 7.

86. Furthermore, requests for routine medical appointments were usually made in writing (so-called “*11-er Zettel*”) and were given to prison officers (or were made verbally to prison officers).⁷⁷

In the CPT’s view, in order to enhance the confidentiality of such requests, it would be desirable to introduce more appropriate procedures, for instance by arranging daily rounds of nursing staff in all detention areas to collect requests for medical consultations or by introducing dedicated locked letterboxes for requests for routine medical consultations to which only members of the health-care team have access.

87. Material conditions in the health-care facilities at Leoben and Vienna-Josefstadt Prison were very good.

However, this was not the case at Innsbruck Prison where the health-care unit lacked space and was equipped with old, worn furniture. The CPT’s delegation was informed of the existing plans to build new premises for the infirmary. **The CPT encourages the Austrian authorities to facilitate the rapid implementation of these plans and would like to receive updated information on this issue.**

88. In all establishments visited, newly-arrived prisoners were systematically medically screened on admission by a doctor (or a nurse reporting to a doctor) and the procedures included screening for mental-health needs, including risks of self-harm and suicide,⁷⁸ as well as screening for women’s health issues.⁷⁹

However, at Leoben Prison, given that no health-care staff was present between Friday afternoon and Monday morning (see paragraph 84), the medical screening of prisoners admitted to the establishment during that period was delayed until Monday.

The CPT recommends that the Austrian authorities take the necessary steps to ensure that at Leoben Prison and, where appropriate, in other prisons in Austria, all newly-arrived prisoners systematically undergo a comprehensive medical examination by a health-care professional within 24 hours of their admission. The implementation of the recommendation set out in paragraph 84 concerning the daily presence of a member of health-care staff will facilitate these efforts.

89. At Leoben Prison, newly-arrived inmates were systematically offered a blood test for infectious diseases, including hepatitis C and HIV. However, this was not a systematic practice at Innsbruck and Vienna-Josefstadt Prisons. **The CPT recommends that the Austrian authorities take steps to ensure that newly-arrived prisoners at Innsbruck and Vienna-Josefstadt Prisons, as well as, where appropriate, in all other prisons in Austria, are systematically offered voluntary testing for HIV and hepatitis B and C.**

⁷⁷ The requests could also be made directly to a nurse when they visited some of the units.

⁷⁸ According to the official statistics provided by the Austrian authorities (2017 – 2021), the overall number of suicide attempts and suicides remained relatively low. In the referenced period, there were between 13 and 21 suicide attempts per year in the whole prison estate and the number of suicides fluctuated between eight and 13.

⁷⁹ See paragraph 97 as regards gender-specific screening.

90. Injuries observed on prisoners were systematically recorded, including the objective medical findings and a statement of the prisoner concerned as to their origin, and pictures of the injuries were taken where appropriate and included in the medical file. As far as the delegation could ascertain, recorded injuries and allegations of ill-treatment were reported to the relevant prosecutor.⁸⁰

91. Each of the prisons visited was accommodating a number of inmates with a drug addiction. Where appropriate, OAT was available for these inmates and they were also offered counselling and psychological support.

That said, at Innsbruck Prison, the GP did not have the possibility to prescribe OAT; the prescription needed to be done by the psychiatrist who, however, was not present in the establishment on a daily basis (see paragraph 84). This constitutes a risk of delayed access to OAT and of interruptions of a treatment which had been started prior to the admission to prison.

The CPT recommends that arrangements be made at Innsbruck Prison to ensure that, where appropriate, opioid agonist treatment is readily available to newly-arrived inmates.

92. Further, none of the prisons visited had in place a needle-exchange programme (whereas, as acknowledged by staff, used syringes and needles were regularly found within the establishments). Given the existence of needle-exchange programmes in the outside community, **the CPT recommends that the Austrian authorities introduce such programmes in the prison system.**

93. More generally, the CPT wishes to point out that the recent policy trend in Europe has favoured prison health-care services being placed either to a great extent, or entirely, under the responsibility of the Ministry of Health.⁸¹ In principle, the CPT supports this trend. In particular, the CPT is convinced that a greater participation of Health Ministries in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) will help to ensure optimum health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that of the wider community. Indeed, such change of responsibility must be accompanied by the allocation of adequate financial means and by the establishing of good communication channels between health-care and custodial staff. **The CPT would like to receive the comments of the Austrian authorities on this issue.**

94. As regards the measures taken in the context of the Covid-19 pandemic, at the time of the visit, newly-admitted prisoners were quarantined and were given an antigenic test upon admission and a PCR test five days later at Vienna-Josefstadt and Innsbruck Prisons, and an antigenic test after five days following their admission at Leoben Prison. If the test results were negative, they were released from quarantine and placed in the mainstream prison population.⁸²

⁸⁰ In the prison context, the procedure concerning the recording and reporting of injuries is regulated in detail by the Internal instruction on handling allegations of ill-treatment against law enforcement officers and prison officers (*Erlass über das Vorgehen bei Misshandlungsvorwürfen gegen Organe der Sicherheitsbehörden und Strafvollzugsbediensteten*), issued by the Federal Ministry of Justice on 25 June 2018. In principle, the procedure is the same as that laid down by the Internal instruction governing the handling of allegations of ill-treatment by the police (see paragraph 14).

⁸¹ See, for example, Recommendation No R (98) 7 of the Committee of Ministers of the Council of Europe to member States concerning the ethical and organisational aspects of health care in prison.

⁸² Prior to the availability of tests, newly-admitted prisoners had been quarantined for 14 days.

Personal protective equipment (PPE) was available in the establishments visited for staff and prisoners alike (in particular face masks and disinfectant gel).

The vaccination strategy in the prisons visited was the same as that in the wider community. Prisoners considered vulnerable on medical grounds were prioritised and, as from approximately May 2021, vaccination was available to all interested prisoners. The authorities estimated that approximately 50 to 70% had been fully vaccinated at the time of the visit.⁸³

The number of Covid-positive cases among inmates varied in the establishments visited: there had been some 50 cases at Vienna-Josefstadt Prison, one single case at Leoben Prison and 83 cases at Innsbruck Prison.⁸⁴

5. Other issues

a. admission and complaints procedures

95. Upon admission, newly-arrived prisoners received a copy of an information sheet setting out the prisoner's basic rights and a copy of the house rules; these documents were available in a range of languages.

However, while these documents contained general information on the right to complain, they still lacked information about concrete avenues of complaint available to prisoners within and outside the prison system.⁸⁵

The CPT reiterates its recommendation that all prisoners be provided upon admission with precise written information on the avenues of complaint available to them, both within and outside the prison system.⁸⁶

96. In their response to the report on the CPT's 2014 visit,⁸⁷ the Austrian authorities indicated that one of the foremost tasks of a newly-established Directorate General for the Administration of Custodial Sentences and Measures involving Deprivation of Liberty (*Generaldirektion für den Strafvollzug und den Vollzug freiheitsentziehender Maßnahmen*) would be the establishing of a unified complaints registration system in Austrian prisons.

During the 2021 visit, the delegation was informed that at Leoben Prison, a new electronic complaints system in which all complaints were registered had been in place since November 2021, and that at Innsbruck Prison, a new electronic complaints system was being developed.

The CPT would like to receive up-to-date information on the developing of a uniform complaints system in Austrian prisons.

⁸³ To motivate prisoners, vaccinated inmates were granted certain privileges (e.g. additional out-of-cell time, no obligation to wear masks when working).

⁸⁴ According to the authorities, there had been a total of 409 positive cases among inmates in the Austrian prison system since the beginning of the pandemic.

⁸⁵ The information was in principle limited to the facts that prisoners have the right, by filing requests and complaints, to request prison authorities to act in their supervisory capacity, and that they may submit written and oral requests to the competent prison department staff.

⁸⁶ Reference is made in this context to the section on complaints mechanisms contained in the CPT's 27th General Report (2017) (doc. CPT/Inf (2018) 4).

⁸⁷ See doc. CPT/Inf (2015) 35, page 19.

97. All three establishments visited accommodated a number of female prisoners. As far as the delegation could ascertain, upon admission, social workers contacted the families of the women concerned, in particular with a view to verifying whether their children were being taken care of. However, it appeared that the admissions procedure did not include gender-specific screening for specific needs, in particular for a history of any sexual abuse and other gender-based violence.

The CPT considers that a gender-specific screening on admission for women should be in place in all prisons accommodating women prisoners. Such screening should allow, in addition to identification of the responsibilities of newly-admitted women towards their families/children, for the detection of specific needs, including a history of any sexual abuse and other gender-based violence. This information should be duly considered when drawing-up an individual sentence plan for the woman to ensure appropriate care and avoid re-traumatisation.⁸⁸

The CPT recommends that the Austrian authorities take steps to ensure that gender-specific screening on admission for women by specifically trained staff (and, preferably, health-care staff) is introduced in all prisons in Austria which accommodate female prisoners, in light of the above-mentioned remarks.

b. contact with the outside world

98. The minimum visit entitlements have remained unchanged since the last visit. It should be recalled that adult remand prisoners are entitled to two 30-minute visits per week,⁸⁹ adult sentenced prisoners to one 30-minute visit per week and one 1-hour visit every six weeks⁹⁰ and juvenile inmates (regardless of their legal status) to a weekly visit of one hour (or two 30-minute visits).⁹¹

While the CPT considers that the visit entitlement for adult remand prisoners is adequate, it wishes to emphasise once again that, in its view, all adult prisoners should be entitled to a visit of at least one hour every week.

As regards juveniles, given that many of them may have behavioural problems related to emotional deprivation or a lack of social skills, they should benefit, in the Committee's opinion, from a visiting entitlement of more than one hour per week.⁹²

The CPT recommends that the Austrian authorities take the necessary steps to ensure that these precepts are effectively implemented in respect of all adult sentenced prisoners and all juvenile prisoners, including by amending the relevant legislation.

99. In all three establishments visited, both remand and sentenced prisoners (including juveniles) were as a general rule only entitled to receive closed visits (i.e. through a glass partition).⁹³

⁸⁸ See also Rule 6 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*Bangkok Rules*).

⁸⁹ See Section 188 of the StPO.

⁹⁰ See Section 93 of the Law on the Execution of Sentences (*Strafvollzugsgesetz – StVG*).

⁹¹ See Section 58, paragraph 7, of the JGG.

⁹² It is noteworthy in this context that, in practice, juveniles held on remand at Innsbruck Prison benefited from two one-hour visits a week.

⁹³ An open visit (i.e. without a glass partition) may be authorised upon request by the inmate concerned.

As pointed out in the previous visit report, the CPT accepts that, in exceptional cases, it may be justified, for security-related reasons, to prevent physical contact between prisoners and their visitors. However, open visits should be the rule and closed visits the exception. **The Committee reiterates its recommendation that all prisoners be, as a rule, able to receive visits from their family members without physical separation; visits with a partition should be the exception and applied in individual cases where there is a clear security concern.**

100. Further, it remains the case that visits to remand prisoners, as well as their telephone contacts, are subject to authorisation by the relevant prosecutor or judge. Allegedly, receiving the authorisation took up to three weeks in some case, including for juveniles.

The CPT considers that remand prisoners should be entitled to receive visits and make telephone calls as a matter of principle, rather than subject to authorisation by a prosecutor or judge. This precept is also set out in the European Prison Rules.⁹⁴ 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. If it is considered that there is an ongoing risk of collusion, particular visits or phone calls can always be supervised/monitored. **The CPT reiterates its recommendation that the rules governing remand prisoners' access to the outside world be revised, in light of these remarks.**

101. In practice, sentenced prisoners could make telephone calls every day (for some ten to 15 minutes) at Innsbruck and Leoben Prisons and twice a week at Vienna-Josefstadt Prison.⁹⁵ However, the relevant legislation⁹⁶ still entitles sentenced prisoners to make phone calls only "for justified reasons".

The CPT invites the Austrian authorities to amend the relevant legislation to reflect the established practice of sentenced prisoners being entitled to make phone calls.

102. At Vienna-Josefstadt Prison, the delegation was informed that arrangements were in place to allow indigent prisoners to make a free-of-charge phone call and to receive stamps to send letters.

However, several indigent prisoners interviewed during the visit claimed that they were not aware of the aforementioned arrangements. **The CPT trusts that the necessary steps will be taken at Vienna-Josefstadt Prison to ensure that indigent prisoners are duly informed of these arrangements.** More generally, **the CPT would like to receive more detailed information concerning the possibilities which exist in the Austrian prison system for indigent prisoners to make phone calls and receive stamps free-of-charge.**

103. As regards the measures taken in the context of the Covid-19 pandemic, prisoners were authorised to receive visits most of the time during the pandemic, with the exception of the periods of national lockdown (e.g. March 2020 or December 2021). To compensate for these restrictions, the possibility to make video-calls free-of-charge was introduced at Leoben and Vienna-Josefstadt Prisons (this possibility had already existed at Innsbruck Prison prior to the pandemic).

⁹⁴ See Rules 24.1 and 99 of the European Prison Rules as well as the commentaries to these Rules.

⁹⁵ Similar entitlements applied to remand prisoners once phone calls had been authorised by the relevant prosecutor or judge.

⁹⁶ See Section 96a of the StVG.

According to the Austrian authorities, it was planned to maintain the possibility of making video-calls beyond the pandemic. The CPT welcomes these plans, which will further help prisoners to maintain contacts with the outside world.⁹⁷ **The Committee would like to be informed whether these plans have been implemented**

c. security-related issues

104. Despite the specific recommendation repeatedly made by the CPT, it remained the case at Vienna-Josefstadt Prison that at least one prison officer carried a firearm inside the detention area during night shifts. Whenever a cell door was opened (as a rule by two officers), an armed officer was present within eyesight. The delegation was informed that no such practice existed at Innsbruck and Leoben Prisons.⁹⁸

The Committee must stress once again that the carrying of firearms by staff who are in direct contact with prisoners is an undesirable and dangerous practice, which could lead to high-risk situations for both prisoners and staff. Indeed, in most Council of Europe states, the carrying of firearms within accommodation areas of prisons is generally prohibited. **The CPT calls upon the Austrian authorities to review the current policy on the carrying of firearms by prison staff inside detention areas at Vienna-Josefstadt Prison and, where appropriate, in other prisons in Austria.**

105. In all three establishments visited, prison officers carried pepper spray canisters, handcuffs and telescopic batons (or even a tonfa at Vienna-Josefstadt Prison) as standard equipment in detention areas. This also concerned medical orderlies when distributing medication at Vienna-Josefstadt Prison.

The CPT considers that the routine carrying of pepper spray, handcuffs and batons in detention areas is not conducive to developing positive relations between staff and inmates; prison officers should thus not routinely carry such equipment in detention areas.

The CPT recommends that the Austrian authorities take steps to ensure that these precepts are effectively implemented in practice in all prisons in Austria.

106. In all three prisons visited, prisoners were strip-searched upon admission and were systematically asked to remove all their clothes and sometimes to make a squat.

The CPT must point out that a strip-search is a very invasive and potentially degrading measure, which can be particularly (re-)traumatising for persons with a history of sexual violence. In order to minimise embarrassment, prisoners who are searched 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.

The Committee recommends that the Austrian authorities take steps to ensure that these precepts are effectively implemented in practice in all prisons in Austria.

⁹⁷ See also paragraph 81 of the CPT's 30th General Report (doc. CPT/Inf (2021)5).

⁹⁸ See, however, paragraph 134 as regards Göllersdorf Prison.

107. The placement of inmates in specialty secured cells (*besonders gesicherte Zellen – BGZ*), in particular when they posed a risk of harm to themselves or others,⁹⁹ was used for relatively short periods of time at Innsbruck and Leoben Prisons.¹⁰⁰

Material conditions in these cells were on the whole adequate. However, at Innsbruck Prison, the cell had no water tap; a few complaints were received from prisoners who had recently been placed therein about delayed access to drinking water (e.g. for several hours). Allegedly, prisoners repeatedly had to drink water from the in-cell floor-level toilet. This would be unacceptable. Further, a few allegations were heard that the cells were not properly heated.

The CPT recommends that the Austrian authorities take the necessary steps to ensure that prisoners placed in specialty secured cells at Innsbruck Prison have ready access to drinking water at all times. Further, these cells should be properly heated whenever a prisoner is placed therein.

d. discipline

108. At Innsbruck and Leoben Prisons, the delegation examined the practical implementation of legal provisions concerning disciplinary sanctions.

The most severe disciplinary sanction that may be imposed on prisoners is solitary confinement (in an ordinary or disciplinary cell) for up to four weeks for adults and for up to one week for juveniles.¹⁰¹

The findings of the visit indicate that recourse to formal disciplinary procedures was not excessive and the sanction of solitary confinement was rarely imposed¹⁰² on adult prisoners and significantly below the maximum time provided for by law.

The CPT welcomes that fact that disciplinary solitary confinement has not recently been imposed on juvenile inmates in the establishments visited.¹⁰³

However, the Committee wishes to stress once again that, given the potentially very damaging effects of solitary confinement on the mental and/or physical well-being of the prisoners concerned, the maximum period for solitary confinement as a punishment for *adult prisoners* should be no more than 14 days for a given offence, and preferably less.¹⁰⁴

Further, given their particular vulnerability, solitary confinement should never be imposed on *juveniles* as a disciplinary punishment, as set out in Rule 60.6.a of the revised European Prison Rules.¹⁰⁵

⁹⁹ See Section 103 of the StVG.

¹⁰⁰ Usually for a few days.

¹⁰¹ See Section 114 of the StVG and Section 58, paragraph 9, of the JGG. The other disciplinary sanctions that may be imposed on prisoners include reprimand, withdrawal of privileges, loss of certain rights and a fine (see Section 109 of the StVG).

¹⁰² By way of illustration, at Leoben Prison, disciplinary solitary confinement was not imposed at all in 2021 and 2020; in 2019, there were four cases.

¹⁰³ This also applies to Vienna-Josefstadt Prison.

¹⁰⁴ See paragraph 56(b) of the CPT's 21st General Report (doc. CPT/Inf (011) 28).

¹⁰⁵ Rule 60.6.a of the European Prison Rules reads as follows: "Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison." See also Rule 45 (2) of the (revised) United Nations Standard Minimum Rules for the Treatment of Prisoners (*Nelson Mandela Rules*).

The Committee recommends that the relevant legislation be revised in light of the above-mentioned remarks (and in line with the practice already observed in the establishments visited).

109. Despite the specific recommendation made by the CPT in the reports on the 2009 and 2014 visits, the relevant legislation continues to provide that the sanction of solitary confinement entails a total prohibition on visits, phone calls and correspondence.¹⁰⁶ **The CPT recommends once again that the relevant legal provisions be revised so as to ensure that disciplinary punishment of 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.**¹⁰⁷

110. The examination of the relevant registers revealed that disciplinary proceedings were well documented and the procedure laid down by law was followed.¹⁰⁸ Unlike in the establishments visited during the 2014 visit, prisoners facing disciplinary charges in the regular procedure were heard by the person who was taking the decision as to whether or not to impose a disciplinary sanction. Further, interviewed prisoners who had recently received a disciplinary sanction confirmed that they had received a written decision which contained information about legal remedies.

That being said, it remains the case that the relevant legislation¹⁰⁹ provides that, in the regular procedure, a written decision must be given to the prisoner concerned only upon their request.¹¹⁰

The CPT recommends that the relevant legislation be amended to ensure that the prisoners concerned are systematically provided with a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal (in line with the practice observed by the CPT's delegation during the visit).

¹⁰⁶ See Section 114, paragraph 2, of the StVG.

¹⁰⁷ See also Rule 60.4 of the European Prison Rules and Rule 95.6 of the European Rules for juvenile offenders subject to sanctions or measures, as well as the commentaries to these Rules.

¹⁰⁸ The StVG distinguishes between a "regular" procedure for dealing with administrative offences (Section 116) and an abbreviated procedure (Section 116a). According to Section 108, paragraph 4, of the StVG, the abbreviated procedure may be applied in certain less complicated cases, in particular where the prisoner has confessed; only reprimand and a fine of up to €70 may be imposed as a disciplinary sanction in the abbreviated procedure.

¹⁰⁹ See Section 116, paragraph 4, of the StVG.

¹¹⁰ Pursuant to Section 116a, paragraph 3, of the StVG, orders imposing a sanction in the abbreviated procedure must be handed over to the prisoner concerned.

D. Forensic and civil psychiatric establishments

1. Preliminary remarks

111. The delegation visited Göllersdorf Prison and the Forensic Department of the Regional Hospital (*Landeskrankenhaus*) Mauer, and paid a follow-up visit to the forensic units of Stein Prison, in order to examine the situation of persons who were subjected to the court-ordered measure of forensic placement (*Maßnahmenvollzug*).

At Mauer Regional Hospital, the delegation further paid a targeted visit to the Adult Psychiatry Department and to the Department for Child and Adolescent Psychiatry and Psychotherapy, in order to review the situation of adult and minor patients subjected to means of restraint, as well as recourse to involuntary medical treatment in respect of adult patients.

112. According to Section 21, paragraph 1, of the Criminal Code (*Strafgesetzbuch*, hereinafter StGB), persons can be subject to the measure of “placement in an institution for mentally abnormal offenders” (*Anstalt für geistig abnorme Rechtsbrecher*) when considered criminally irresponsible.¹¹¹ Under paragraph 2 of the same provision, persons who are not considered criminally irresponsible can also be subject to such placement if they have committed a serious offence under the influence of a serious psychiatric or psychological disorder and when there is in addition the risk that they would commit an offence with serious consequences under the influence of their mental disorder.¹¹² Further, according to Section 22 of the StGB, persons with a substance-use disorder who have committed a criminal offence under the influence of such disorder, “may be subjected to placement in an institution for drug-addicted offenders” (*Anstalt für entwöhnungsbedürftige Rechtsbrecher*) for a maximum duration of two years.

113. *Göllersdorf Prison* is located in the village Göllersdorf, some 40 km north of Vienna, in Lower Austria. It was built in the 16th century as a castle and has been serving as penitentiary institution and re-education facility for most of the 20th century. In the 1980s it had been completely renovated and was re-opened as an establishment for patients under forensic placement. With a capacity of 162 places, the prison was holding at the time of the visit 149 male adult patients subject to forensic placement under Section 21 of the StGB. Of these, 140 were being held under Section 21, paragraph 1, of the StGB and nine patients under Section 21, paragraph 2, of the StGB. Seven of the patients had been staying at the prison already for more than 20 years. 15 % of the patients were over 60 years old, the oldest being 83 years old. The vast majority had been diagnosed with schizophrenia and many patients were, in addition to their mental disorder, also suffering from somatic illnesses and some had learning disabilities.

¹¹¹ This provision authorises the placement of persons who were, at the time of committing a serious offence, under the influence of a severe psychiatric or psychological disorder and are therefore considered criminally irresponsible, when there is the risk that they would commit an offence with serious consequences (*Tat mit schweren Folgen*) under the influence of their mental disorder. Such placement is of indefinite duration (subject to an annual judicial review, see paragraph 158).

¹¹² Such placement can be ordered together with a regular prison sentence. It is also of indefinite duration (subject to an annual judicial review, see paragraph 158).

The management of the prison further informed the delegation that concrete plans for constructing an annex with an additional 100 places were underway and that a first payment of €15 million for the construction works was expected in 2022. It was planned that the annex would introduce separate units for admission on one hand and for patients in an acute psychotic state on the other, and that all patient rooms would be designed for single or double occupancy and equipped with sanitary annexes. The management further said that transferring patients from the current building to the new annex would enable a larger renovation of the existing structure. These plans are highly commendable. **The CPT would like to be informed about further progress on this matter.**

114. *Stein Prison* is located in a historic building complex in the centre of the town of Krems in Lower Austria. It was originally designed in the 19th century as a monastery but has been serving as a prison for over 150 years. With an overall capacity of 840 places, at the time of the visit it was holding 770 persons, including 111 male adult patients under forensic placement. The vast majority of patients were subject to a placement under Section 21, paragraph 2, of the StGB,¹¹³ and ten patients under Section 22 of the StGB. Ten persons had been staying at the prison for more than ten years, the longest stay having lasted 17 years at the time of the visit. 11% of the patients were over 60 years old, the oldest being 85 years of age.

115. *Mauer Regional Hospital* is a large public hospital located near the town of Amstetten in Lower Austria. It opened in 1904 and comprises numerous historical and modern purpose-built buildings within a large park. It has a Department for Neurology, a Child and Adolescent Psychiatry and Psychotherapy Department as well as different departments for adult psychiatry, including a Forensic Department.

The Forensic Department (hereinafter “Mauer Forensic Hospital Department”) comprises the 2018-built House 50 and the historic House 6 which was entirely refurbished in 2004. It has a total capacity of 85 beds and at the time of the visit was holding 24 male and 49 female adult patients mainly under Section 21, paragraph 1, of the StGB.¹¹⁴ The vast majority of patients had been admitted within the last two years, and a few of them earlier, up to seven years ago. 12% of the patients were older than 60, the oldest being 80 years of age.

The Adult Psychiatry Department (hereinafter “Mauer Adult Psychiatry Department”) is located in a new functional building opened in 2018 with a capacity of 44 places. On the day of the visit, it was accommodating 32 patients (13 men and 19 women) of which 23 were involuntary patients. The department generally offers care for persons with mental illnesses, usually in an acute state of their disease. The large majority of patients had been admitted up to two weeks before the visit and patients stayed on average ten days at the department. 20% of the patients were older than 65. In the first eleven months of 2021, the department had accommodated 672 involuntary patients and 182 voluntary patients.

¹¹³ Out of the patients placed under Section 21, paragraph 2, of the StGB, 44 had completed their sentence and remained in detention solely on the basis of the court-ordered measure, the other patients were still simultaneously serving their sentence.

¹¹⁴ Three patients were held under Section 429 of the StPO (remand prisoners for whom there is reason to assume that they will be considered criminally irresponsible under Section 21, paragraph 1, of the StGB).

The Department for Child and Adolescent Psychiatry and Psychotherapy (hereinafter “Mauer Child and Adolescent Department”) was also located in a very recent, thoughtfully designed building. At the time of the visit, the department was accommodating 28 children and juveniles between 9 and 17 years of age, for a capacity of 30 places. The majority of patients had been admitted up to four weeks prior and one patient had been at the department for two and a half months. Only one of the patients was staying at the department involuntarily.

116. The number of forensic placements has been continuously rising in Austria for many years. They are accommodated either in one of the specialised prisons (Göllersdorf or Asten), in a forensic department of a regular prison (e.g. Stein Prison or Wien-Mittersteig), or in general psychiatric hospitals (e.g. Mauer Regional Hospital or Kepler University Hospital Linz).

117. According to the relevant provisions of the Law on the Execution of Sentences (*Strafvollzugsgesetz* - hereinafter StVG),¹¹⁵ the aim of *Maßnahmenvollzug* under Section 21 is to prevent the persons concerned from committing further criminal offences under the influence of their mental disorder. The involuntary placement should improve the patients’ mental condition to the degree that reoffending would no longer be expected and that they would be able to lead a law-abiding life in society. For this purpose, they shall be provided, according to their needs, with medical, psychiatric, psychotherapeutic, psycho-social and educational care.

118. Plans for a comprehensive reform and structural modernisation of *Maßnahmenvollzug* have been under discussion in Austria for many years. At the end of the 2014 CPT visit, the then-Minister of Justice stated that he was fully aware of the structural deficiencies and that his Ministry was determined to embark on a complete overhaul of the *Maßnahmenvollzug* throughout Austria¹¹⁶. One of the plans under discussion was to progressively close down units for *Maßnahmenvollzug* in “ordinary” prisons and to create new specialised establishments within or outside the prison system.

Concrete legislative steps in this regard had finally been initiated in Parliament in May 2021 with proposed amendments to several laws (draft *Maßnahmenvollzugsanpassungsgesetz*). This law would, as a very first step, raise the threshold for forensic placements, with the aim of reducing the overall number of placements. The Austrian authorities informed the CPT in a letter of 17 February 2022 that after completion of an ongoing revision, the next step was the finalisation of the draft government bill.

According to the information received during and after the visit, further legislative initiatives aimed at creating a specific regulatory framework for *Maßnahmenvollzug* were still under discussion. In the above-mentioned letter, the authorities stated that a respective ministerial draft was being finalised and was to be circulated for public consultation.

¹¹⁵ Sections 164, paragraph 1, and 166, paragraph 1.

¹¹⁶ To this end, the then-Minister of Justice had established an interdisciplinary working group in June 2014. In January 2015, the working group finalised a report with detailed recommendations which were subsequently used as a basis for the ongoing reform of the *Maßnahmenvollzug*.

119. Regarding civil psychiatry, legal amendments to the Law on Involuntary Placement (Unterbringungsgesetz) are currently pending in Parliament. They contain, amongst others, new provisions on involuntary medical treatment and the introduction of a "person of trust" to support the patient (*Vertrauensperson*). **The CPT would like to receive updated information on this matter.**

2. Ill-treatment

120. The delegation heard no allegations of deliberate ill-treatment by staff in any of the three establishments visited. On the contrary, many patients spoke favourably of staff, in particular at Mauer Regional Hospital.

121. Inter-patient violence did not appear to be a major problem in any of the establishments visited. When confronted with occasional incidents, staff appeared to react promptly and adequately.

3. Living conditions

122. Göllersdorf Prison comprised eight units, of which seven were for patients and one for ordinary prisoners, who were employed as houseworkers in the prison. Most patients were accommodated in so-called "residential units" (*Wohngruppen*) in double- or triple-occupancy rooms and had access to communal bathrooms, while two rooms (with a makeshift internal separation) accommodated four inmates. In addition, there were 16 single-occupancy rooms with sanitary annexes on the acute unit 1E and on unit 1A. Each unit had communal living spaces with small kitchen areas, tables, chairs and TV-sets.

123. At Stein Prison, the vast majority of patients in *Maßnahmenvollzug* were accommodated in single and double cells in three "residential units" and one "similar to residential unit" (*wohngruppenähnlicher Vollzug*). Those patients who were considered highly dangerous (*permanent sicherheitsgefährlich*), were held in single cells of the prison's high-security unit (West E).¹¹⁷ The cells had sanitary annexes, and there were communal rooms with tables, chairs and sofas on the unit corridors.

124. Mauer Forensic Hospital Department comprised three wards in House 50 and one in House 6. The ward in House 6 was exclusively for female (long-stay) patients, while in House 50 Ward 2 was only for male patients and Wards 1 and 3 for male and female patients together. Patients were accommodated in single and double rooms with sanitary annexes. The rooms were located around spacious, bright and homely communal areas with sofas, armchairs, TV-sets, kitchen corners and large windows to the staff offices. In addition, each ward had access to a spacious terrace or garden.

¹¹⁷ At the time of the visit, four patients in *Maßnahmenvollzug* were accommodated at this unit.

Mauer Adult Psychiatry Department was of similar design and comprised two mixed-gender wards. Mauer Child and Adolescent Department consisted of two mixed-gender sections, one for children (aged 4 to 15) and one for juveniles (aged 14 to 17), all with direct garden access. Each of the sections comprised three separate groups, each with three patient rooms (accommodating one or two patients) and communal bathrooms.

125. At all three establishments visited, the rooms were sufficient in size for the number of patients they held. Communal spaces and accommodation rooms were adequately equipped (rooms with beds, tables, chairs, shelves, wardrobes) and had sufficient access to light and ventilation. They were generally also in a reasonable (Göllersdorf and Stein Prisons) or even excellent (Mauer Regional Hospital) state of repair and were clean. At Mauer Regional Hospital, it is further praiseworthy that bathrooms were designed to be free of ligature points, and the armatures were built to break under heavy weight.

That said, the delegation received complaints and observed for itself that some accommodation cells at Stein Prison were rather cold in winter. **Steps should be taken at Stein Prison to remedy this shortcoming.**

126. The delegation gained a particularly positive impression of the design of the mixed-gender wards at Mauer Forensic Hospital Department. The bedrooms of male and female patients were located at different ends of the U-shaped wards, but during the day all patients could freely socialise in the ward's living areas, an arrangement which was fostering a sense of normality. There were nevertheless also separate, small communal areas for female patients at their end of the corridors.

On an equally positive note, the delegation was told that in particular the new building structure at House 50 at Mauer Forensic Hospital Department presented an immense improvement for the patients' well-being as compared to the previous building. The spacious and homely living areas and the reduced number of patients per room provided better retreat possibilities and more space for indoor and outdoor activities than the previous building. Staff reported that the change had clearly helped alleviate patients' illnesses, leading to a reduction in medicine doses and restraint measures. Also, incidents of inter-patient violence, suicide and self-harm had reportedly been declining. The patients themselves, including those who had stayed at the previous building, praised the material conditions and the positive effect it had on their mental well-being. In sum, the material conditions at Mauer Forensic Hospital Department (as well as at the hospital's other departments visited) were excellent and clearly non-carceral and could serve as a model for other secure psychiatric establishments.

In contrast, the overall atmosphere at Stein Prison, and (to a somewhat lesser extent) also at Göllersdorf Prison, was austere and carceral with prison-like iron cell doors in the accommodation corridors at Stein Prison and at the acute unit (1EA) of Göllersdorf Prison. Such conditions are clearly not conducive to the creation of a therapeutic environment for patients with a mental disorder. This is of all the more relevance in respect of patients who spend many years at these establishments. **The CPT recommends that in the context of the planned extension and renovation of Göllersdorf Prison, these shortcomings be remedied. As regards Stein Prison, reference is made to the remarks and recommendation made in paragraph 139.**

127. Cell doors in the “residential units” at Göllersdorf Prison were always open, as was also the case for the majority of patients at the wards of Mauer Forensic Hospital Department.¹¹⁸

As regards Stein Prison, the Committee acknowledges that the extremely long daily lock-up times found in 2014 had been somewhat reduced. However, it remains a matter of serious concern that the patients in one of the four forensic units (unit North E) were still systematically locked up alone in their cells on two days per week from 3 p.m. until the following morning, and that in two of the units the “night lock-up” on Fridays, Saturdays, Sundays and holidays even started as early as noon. **The CPT recommends that the cell-opening times at Stein Prison be considerably increased, in light of these remarks.**

128. Patients at all three forensic establishments generally had daily access to the outdoor yard. Some patients from unit 1A at Göllersdorf Prison and many patients at Mauer Forensic Hospital Department¹¹⁹ could go outdoors at any time during the day. However, many patients at Göllersdorf and Stein prisons could access outdoor areas for only about one hour per day.

The CPT considers that the aim should be that patients in psychiatric establishments generally benefit from unrestricted access to outdoor areas during the day, unless treatment activities require them to be present on the ward. **The Committee encourages the Austrian authorities to review the existing arrangements for outdoor exercise in psychiatric establishments (including forensic prison facilities) accordingly.**

129. It is another matter of concern that the outdoor yard at Göllersdorf Prison had no shelter against inclement weather. **Steps should be taken to remedy this shortcoming.**

4. Staff and treatment

130. As regards staffing levels, it is positive, that at Göllersdorf Prison (capacity: 162 places), doctors were present 24/7. This was due to a fruitful co-operation with the Vienna Medical University engaging up to twelve doctors (eight trainee doctors and in principle four qualified psychiatrists) to divide their working time between Vienna University and the prison.¹²⁰ This co-operation is particularly commendable and could also serve as a model for other forensic establishments.

Nevertheless, there was still an overall lack of psychiatrists at the prison, as two of the four psychiatrist posts from Vienna Medical University were vacant and the prison itself only employed two additional full-time psychiatrists, one of them being the Medical Director. A third psychiatrist’s post was vacant at the prison.

¹¹⁸ Individual patients at all three forensic establishments visited could also be temporarily placed under a more restrictive regime, see paragraphs 142 and 174.

¹¹⁹ Possibilities to access outdoor areas at Mauer Forensic Hospital depended on the patient’s regime relaxation classification (*Lockerungsstufe*). According to the hospital’s regime relaxation and transfer concept (*Lockerungs- und Verlegungskonzept*), patients were gradually granted increased autonomy when moving (first accompanied and later unaccompanied) within and outside the hospital’s grounds, depending on their therapeutic progress.

¹²⁰ Trainee doctors spent 50% of their working time at the prison, qualified psychiatrists 75%.

Göllersdorf Prison further employed 6.5 full-time equivalent (FTE) psychologists, three full-time social workers, four full-time occupational therapists, 1.6 FTE music therapists and 1.9 FTE special educators (*Heilpädagogen*). That said, one of the full-time psychologists was absent due to a long-term secondment to the General Prison Directorate and additional posts of one social worker and one occupational therapist were vacant.

The units were managed jointly by nursing staff and prison officers. There were in total 70 prison officers and 41 FTE nursing staff, most of the latter with a psychiatric nursing diploma. Eight nursing staff posts were vacant at the time of the visit.

In view of the very high number of elderly and seriously ill patients who needed a lot of support in activities of daily living, the nursing staffing levels and the number of special educators at Göllersdorf Prison were not sufficient to meet the patients' needs. This view was also shared by the prison's management.

131. As regards the Department for *Maßnahmenvollzug* at Stein Prison (capacity: 140 places), the Committee remains very concerned about the dramatic lack of psychiatrists, which was totally insufficient, despite the prison's considerable efforts to recruit psychiatrists. At the time of the visit, three psychiatrists had been present at the prison for a total of only 22 hours per week, to cover around 800 inmates including more than 100 in *Maßnahmenvollzug*. Moreover, it is extremely worrying that as two of them were resigning, from the beginning of 2022 only one psychiatrist, present for eight hours per week, was in charge of the whole prison. This is even worse than the already very unsatisfactory situation found in 2014.¹²¹

In this connection, the Austrian authorities informed the CPT in a letter of 17 February 2022 that an additional psychiatric specialist had been employed at Stein Prison for ten hours per week. This is clearly a step in the right direction. Nevertheless, given the number of persons with mental disorder held at Stein Prison, much more needs to be done to ensure appropriate care for the patients in *Maßnahmenvollzug*, as required by law.¹²²

The delegation noted positively that the presence of psychologists, social workers and occupational therapists at the prison had recently improved and that each patient had their own case manager. There were now about 3.75 FTE psychologists, 0.5 FTE psychotherapists, 3.5 FTE social workers and 1.5 FTE occupational therapists. In addition, external psychologists were engaged for individual and group therapies.

The CPT is seriously concerned that usually no nursing staff¹²³ was working at the forensic units, which were solely managed by prison officers. In this connection, the management of Stein Prison informed the delegation of serious staff shortages amongst the prison officers, which at least partly explained the very early night lockups at some of the forensic units as well as the patients' considerably reduced access to their workplaces within the prison (see paragraph 136). With a total of 18 full-time prison officers assigned to the four forensic units of the Department for *Maßnahmenvollzug*, the overall staff presence at these units was insufficient.

¹²¹ In 2014, a psychiatrist was present for only nine hours, in charge of about 700 inmates. See doc. CPT/Inf (2015) 34, paragraph 108.

¹²² See paragraph 117.

¹²³ Stein Prison had its own infirmary with 49 beds for prisoners, which employed 20 nurses.

132. The Mauer Forensic Hospital Department (capacity: 85 places) employed six psychiatrists and two trainee doctors. According to the information received, there were also 4.4 FTE psychologists, 1.2 FTE psychotherapists, 2.2 FTE social workers, 5.3 FTE occupational therapists, 0,7 FTE physiotherapists, one full-time special educator and one full-time sport therapist. In addition, the Forensic Department employed 65 FTE nursing staff.

133. The CPT is aware of the country-wide lack of psychiatrists and acknowledges the prisons' efforts to fill the vacant posts. Nevertheless, it strongly **recommends that the Austrian authorities continue their efforts to considerably increase the presence of psychiatrists at Stein Prison and to fill the vacant posts of psychiatrists at Göllersdorf Prison.**

Further, the necessary steps should be taken to ensure that at Göllersdorf Prison:

- **the seconded psychologist is adequately substituted;**
- **the nursing staffing levels are increased (including by filling existing vacancies);**
- **the number of special educators (*Heilpädagogen*) is increased.**

At Stein Prison, nurses should be employed to work at the forensic units and the overall presence of unit-based staff should be increased.

At all forensic psychiatric facilities, including forensic prison establishments/units, the majority of staff working in direct contact with the patients should be health-care professionals.

134. It is a commendable practice that most prison officers at Göllersdorf Prison wore plain clothes rather than a uniform, which was contributing to create a therapeutic environment. However, the carceral living conditions at Göllersdorf and Stein Prisons (as described in paragraph 126) were further exacerbated by several prison officers¹²⁴ at the forensic units carrying weapons in the accommodation areas. At daytime, their standard equipment included batons and pepper-spray, while during night shifts, one or more officers even wore firearms. In contrast, at Mauer Forensic Hospital Department, neither the presence of security staff was deemed necessary nor were any weapons worn in the establishment. **Reference is made in this respect to the remarks and recommendations made in paragraph 104.**

135. On a positive note, it is commendable that care staff at Göllersdorf Prison and Mauer Forensic Hospital Department were generally specialised in psychiatric care, despite the increasing difficulties to recruit staff with this specialisation.

136. Patients at all three forensic establishments were generally offered a good (at Stein and Göllersdorf Prisons) or even very good (at Mauer Forensic Hospital Department) range of therapeutic and psychosocial activities, including individual and group psychotherapy and occupational therapy. At Stein Prison in particular, the offer of psycho-social activities had clearly improved as compared to the situation found in 2014.

¹²⁴ Including some of those in plain clothes.

It is also positive that, at Stein Prison, some 80% of the persons held in *Maßnahmenvollzug* were in principle engaged in work (e.g. woodwork, kitchen, cleaning, printing, laundry). However, this high occupation rate was rather theoretical, as for several months preceding the CPT's visit, many persons had been allowed access to their workplaces only for a few days per month. The CPT was informed that this situation was largely due to a shortage of penitentiary staff to accompany the patients. **Reference is made in this respect to the recommendation in paragraph 131.**

137. Motivational work was done by staff especially on the wards at Mauer Forensic Hospital Department, in order to ensure that every patient was engaged in some activity or at least in a small daily chore in their living unit.

That said, at Stein and Göllersdorf Prisons, it appeared that a number of patients, in particular those who had been held at the prison for several years already, were engaged in very few or even no activities. The Committee acknowledges the challenges the management of all three establishments are faced with when dealing with patients who are not able or not willing to engage themselves in therapeutic or other organised activities, and it appreciates the efforts to engage the patients concerned. Nevertheless, further motivational work would be needed at both prisons to activate patients as far as possible. **The CPT encourages the management of Göllersdorf and Stein Prisons to enhance their efforts to motivate patients, including those who have been deprived of their liberty for many years, to engage in purposeful activities.**

138. Further, at Göllersdorf Prison, a number of patients, in particular those in advanced age, would need more assistance in practicing general life-skills such as personal hygiene or keeping a structured day. Such measures require additional staff (see paragraph 130). **The CPT recommends that this shortcoming be remedied.**

139. In this connection, the delegation was also informed at Göllersdorf Prison, that several patients held at the establishment were considered in need of nursing care ("*Pflegefall*"). While the prison made efforts to enable the transfer of these patients to social care facilities, this was apparently not always possible due to a lack of suitable places. It appeared to be particularly difficult to find accommodation for patients who were foreign nationals (whose return to their country of origin was not possible for medical or other reasons),¹²⁵ and for patients who were still considered dangerous.

In the CPT's view, all patients in need of special care, including foreign nationals, should be accommodated in appropriate social welfare institutions which can cater for their specific needs. For patients who are nevertheless considered to be dangerous, appropriate places in forensic-psychiatric care homes should be made available. **The CPT would like to receive the Austrian authorities' comments on this matter.**

¹²⁵ Reportedly, an ongoing asylum procedure was usually terminated when the persons concerned were admitted to the prison, which left patients with neither asylum status nor residence permit and with no claim to social benefits to bear the costs of a nursing home. However, the persons' return to their home countries was often also not possible for different reasons, for instance if the required psychiatric after-care was not ensured in their countries of origin.

140. More generally, the CPT acknowledges the improvements at Stein Prison regarding the offer of psycho-social activities and, to a lesser extent, also regarding the cell-opening times. Nevertheless, the shortcomings described in particular in respect of Stein Prison - above all the carceral material conditions, the difficulties to recruit psychiatrists in the prison system and the presence of prison officers wearing weapons in accommodation areas - demonstrate once again that 'ordinary' prisons are not appropriate for a meaningful implementation of *Maßnahmenvollzug*. As outlined above, patients in *Maßnahmenvollzug* are suffering from mental disorders and should, according to the Austrian legislation, be afforded medical, psychiatric, psychotherapeutic, psycho-social and educational care corresponding to their needs. The CPT must reiterate that such treatment cannot be provided in ordinary prisons. This view was also shared by various of the delegation's interlocutors during the visit, including the management of Stein Prison.

Indeed, the Minister of Justice herself, when meeting the delegation at the end of the visit, was fully aware of the deficiencies described and concurred with the delegation. She emphasised that modernising *Maßnahmenvollzug* in Austria and improving the living conditions of the patients concerned were a clear priority for her and that, in the context of the ongoing reform process (see paragraph 118), her Ministry was also ready to make the necessary considerable financial commitments.

The CPT recommends that the Austrian authorities step up their efforts to overhaul the current system of *Maßnahmenvollzug* in order to ensure that patients in *Maßnahmenvollzug* are accommodated in establishments suitable for providing the treatment and care they need. In this connection, the implementation of *Maßnahmenvollzug* at Stein Prison should cease as soon as possible. The Committee would like to receive updated information on the progress made on these matters, including the pending legislative initiatives.

141. At Göllersdorf and Stein Prisons, individual treatment plans had been prepared for all patients. It is particularly noteworthy that patients at Stein Prison had weekly meetings with their case managers to review their therapeutic progress.

However, the delegation was informed that no individual treatment plans existed for patients at Mauer Forensic Hospital Department, in addition to the patients' regime relaxation classification.¹²⁶ The relaxation requirements were well known to the patients and their classification was subject to regular individual review. Nevertheless, in the CPT's view, psychiatric treatment requires the drawing up of an individual treatment plan for each patient (taking into account their individual needs including the need to reduce any risk they may pose), indicating the goals of treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of a regular review of the patient's mental health condition and a review of the patient's medication. Patients should be involved in the drafting of their individual treatment plans and their subsequent modifications and be informed of their therapeutic progress. **The CPT recommends that the necessary steps be taken, including at legislative level, to ensure that these precepts are implemented at the Forensic Department of Mauer Regional Hospital and all other psychiatric establishments, including forensic prison establishments, in Austria.**

¹²⁶ According to the hospital's general regime relaxation and transfer concept.

142. At Mauer Forensic Hospital Department, patients considered to pose an acute risk to themselves and/or others and newly admitted patients considered “instable”¹²⁷ could also be subjected to a “time-out” measure in their own accommodation rooms.

While a statistical overview on the length of the measures was not available, the information provided implied that the measure was usually applied for minutes or several hours and rarely for longer than a day. That said, the delegation was astonished about the high frequency of recourse to separation with reportedly 5,056 instances in the first eleven months of 2021 (thus an average of 15 instances per day in a department with 85 places).

Recourse to the measure was usually decided upon individual assessment by a doctor and, if lasting 24 hours or more, reviewed by a doctor on a daily basis. Depending on the stabilisation of their mental state, the patients concerned were gradually permitted to leave their room (first accompanied by staff, then alone). While separated, patients were under video-surveillance¹²⁸ and according to the documentation examined, staff usually “checked” the patients every one or two hours, including at night.

However, the delegation was told that these “checks” sometimes only meant that the patient had been observed via CCTV and the delegation gained the overall impression that patients were at times separated for several hours, without being offered regular meaningful direct human contact.

The CPT recommends that the Austrian authorities review the practice at the Forensic Department of Mauer Regional Hospital regarding the frequency of patients’ segregation in their own rooms. Further, patients held in separation should be offered regular meaningful human contact.

In addition, a register should be kept on the use of this measure, in order to allow for effective management and staff monitoring and to facilitate the oversight into the extent of its occurrence with a view to possibly reducing the resort to such measures in the future.

143. All newly-admitted patients were seen by a general practitioner and the provision of somatic care generally did not appear to pose a major difficulty.

However, the Committee is surprised and concerned about patients’ difficulties to receive hepatitis C treatment at Mauer Forensic Hospital Department. While access to such treatment was regularly provided at Stein Prison, the delegation was informed that at Mauer Forensic Hospital Department at least five patients had been diagnosed with hepatitis C, but could not be treated, as the Ministry of Justice had not agreed to cover the costs.

Treatment for hepatitis C is readily available and given the risks of the serious and irreversible long-term consequences of this disease, each patient with hepatitis C should be assessed with a view to receiving direct-acting antiviral (DAA) treatment. If, as a result of the assessment, treatment is indicated, the necessary costs should be borne by the authority in charge. **The CPT recommends that these precepts are implemented in practice in all psychiatric and penitentiary establishments in Austria.**

¹²⁷ According to the hospital’s regime relaxation and transfer concept.

¹²⁸ All rooms at the acute wards were equipped with CCTV cameras, which were visibly covered with blinds/small curtains when not activated.

Further, as regards the five above-mentioned patients at Mauer Regional Hospital, the Committee would like to receive, within three months, confirmation that assessments for direct-acting antiviral (DAA) treatment have been carried out as well as information on the treatment subsequently provided.

5. Means of restraint

144. In all three forensic establishments and at both civil psychiatric wards of Mauer Regional Hospital, patients in a state of agitation and/or acting violently were on occasion placed in seclusion in a special security cell at Göllersdorf and Stein Prisons, or in a seclusion room or a “destruction safe room” at Mauer Regional Hospital. They could further be subject to mechanical restraint (*Fixierung*) on a restraint bed at Mauer Regional Hospital and/or to the forcible administration of rapid tranquillisers (chemical restraint).

145. As regards the CPT’s long-standing recommendation to keep dedicated restraint registers, the Committee further acknowledges that by amendments made to the Federal Law on Hospitals and Sanatoria (*Bundesgesetz über Krankenanstalten und Kuranstalten*) and to the Hospital Act of Lower Austria (*Niederösterreichisches Krankenhausgesetz*), psychiatric hospitals are henceforth required to keep registers on movement restrictions (*Beschränkungen der Bewegungsfreiheit*), which should expressly also allow for statistical analysis.¹²⁹

146. The CPT also notes positively that recourse to means of restraint was in all visited establishments documented in detail in the patients’ individual files. However, the delegation could not get a clear overview of the length and partly also of the frequency of the restraint measures, in particular at Göllersdorf Prison and at Mauer Regional Hospital, as the establishments’ databases could apparently not provide such overview. Further, despite the recommendation made in the CPT’s previous report,¹³⁰ the administration of rapid tranquillisers to agitated/violent patients (chemical restraint) was only documented in the patients’ files, but not statistically recorded as a restraint measure.

The Committee wishes to emphasise that a specific register – providing an overview of the frequency and length of recourse to any kind of restraint (including chemical restraint) – is an indispensable tool for effective management and staff monitoring of these measures and will greatly facilitate oversight into the extent of their occurrence with a view to possibly reducing the resort to such measures in the future.

The Austrian authorities announced in a letter to the CPT of 17 February 2022 in respect of hospitals in Lower Austria that “further statistics (e.g. annual overview of the frequency and duration of various restraint measures) will be compiled for all psychiatric departments with the implementation of the “NÖKIS” (standardised hospital information system at all Lower Austrian and university hospitals) and integrated into the existing psychiatric evaluation and monitoring system.” This is a step in the right direction. However, such statistics are also needed in respect of patients in psychiatric hospitals/wards in all other Austrian regions and in respect of forensic patients held in prisons.

¹²⁹ Section 38d of the Federal Law on Hospitals and Sanatoria and Section 76, paragraph 5, of the Hospital Act of Lower Austria.

¹³⁰ Doc. CPT/Inf (2015)34, paragraph 124.

The CPT recommends that the necessary steps be taken to ensure that all psychiatric hospitals/wards in Austria and all establishments holding patients in *Maßnahmenvollzug* keep comprehensive restraint registers which also provide statistics on the frequency and the length of the restraint measures applied. These registers should also include all instances of chemical restraint.

147. Despite the lack of specific registers, the following information regarding frequency and duration of recourse to means of restraint was received (or gathered from different files) in the establishments visited.

At Göllersdorf Prison, patients had been held in seclusion in a special security cell 69 times in 2019, 73 times in 2020 and 44 times in the first ten months of 2021. At Stein Prison, patients in *Maßnahmenvollzug* had been held in seclusion in a special security cell 20 times in the first eleven months of 2021, the longest instance having lasted five days. At Mauer Forensic Hospital Department, nine patients had been subject to *Fixierung* in the first eleven months of 2021, in a total of 54 instances. However, 45 of the instances concerned two patients in a particularly challenging condition. The longest instance had lasted one day and four hours.

At Mauer Adult Psychiatry Department, recourse to seclusion had been made in the first eleven months of 2021 in 290 cases and in 2020 in 240 cases. Two thirds of the instances in 2021 had lasted for a few minutes or several hours up to one day. In 40 cases, seclusion had lasted between one and two days, in 41 cases between two and seven days and in three cases 12, 14 and 16 days.

The statistical table received indicated that in the first eleven months of 2021, recourse to five-point *Fixierung* had been made in 457 cases and in 2020 in 615 cases. According to the records, the individual instances of *Fixierung* usually lasted for a few minutes or a few hours and in a total of ten cases for one day or longer. The longest instance had lasted two days, one hour and 50 minutes. However, these numbers are somewhat misleading as, whenever a patient was released from the restraint for longer than 15 minutes but restraint was thereafter applied again, this was recorded as a new instance of restraint.

In any case, the length and in particular the frequency of *Fixierung* at the Mauer Adult Psychiatry Department appeared to be high. However, it should be born in mind that the department holds patients in an acute state of their mental disease, many/most of them with highly challenging behaviour. From the records on the individual restraint instances, the delegation gained the impression that staff made frequent attempts to release patients from *Fixierung*, but often did not succeed when the patients – whose concrete violent behaviour was recorded in each instance – were still not stable enough to be released.

The CPT trusts that every effort is made to ensure that recourse to *Fixierung* at Mauer Adult Psychiatry Department is only made as a measure of very last resort and for the shortest possible time (minutes rather than hours).

148. At the Mauer Child and Adolescent Department, three juveniles had been subjected to *Fixierung* in 2020 in a total of seven instances. In the first eleven months of 2021, only one patient had been subjected to that measure, but in 17 different instances due, according to the records, to his particularly challenging self-aggressive behaviour.¹³¹ In 2020, *Fixierung* had usually lasted about one hour and in one case eight hours and 47 minutes. The *Fixierung* of the above-mentioned patient in the first eleven months of 2021 often lasted several hours and up to 17 hours and 30 minutes. According to the information received, recourse to seclusion or chemical restraint was practically never made.

As regards recourse to *Fixierung* of minors at Mauer Regional Hospital, the delegation noted the attentive and professional attitude of care staff and in particular their overall focus on de-escalation and efforts to resort to means of restraint as little as possible. Nevertheless, the CPT would like to emphasise that, in light of the particular vulnerability of young persons, it has general misgivings about the application of mechanical restraint in respect of minors. Every effort should be made to avoid recourse to *Fixierung* of minors, which should only be used as a measure of absolute last resort and terminated as soon as possible. If, exceptionally, recourse to *Fixierung* is made, at least the same safeguards should apply as in the case of adults (see paragraphs 152 and 156).

149. It is positive, that the hospital operator of Mauer Regional Hospital had issued comprehensive guidelines (Standard Operating Procedures – SOP) on the use of *Fixierung*. These guidelines placed strong emphasis on prevention of and non-coercive alternatives to *Fixierung*, as well as on continuous support and frequent interaction with the patients concerned, including consulting them regarding the choice of alternative measures. This is commendable. However, the guidelines were apparently not fully implemented in all aspects (see paragraph 152) and similar guidelines did not exist for other forms of restraint, namely seclusion and chemical restraint. Moreover, neither Göllersdorf nor Stein Prison had any written policies or guidelines in place concerning the use of the different means of restraint which would specify the conditions, measures and safeguards surrounding their application.

In the CPT's view, every psychiatric hospital should have a carefully developed comprehensive general policy on *all* means of restraint which may be applied. Patients should be provided with all relevant information about this restraint policy. **Reference is made in this respect to the recommendation in paragraph 156.**

150. At Mauer Forensic Hospital Department, the decision to apply a means of restraint was taken by a doctor.¹³² At Göllersdorf and Stein Prisons, recourse to chemical restraint was also ordered by a doctor while seclusion in a security cell was ordered by the officer in charge (and thereafter approved by the director of the establishment) according to the StVG. The persons concerned were seen by a doctor within 24 hours, in particular in order to assess if the person's transfer to a more suitable facility was required.¹³³

¹³¹ The patient would repeatedly punch his own face.

¹³² In line with Section 33 of the Law on Involuntary Placement, and Section 167a of the StVG for patients in *Maßnahmenvollzug*.

¹³³ See Sections 71 and 103 of the StVG.

151. As an additional safeguard, court approval had to be sought at Göllersdorf and Stein Prisons in case of seclusion lasting longer than one week, in line with the provisions of the StVG. When deciding about the measure, the court must also rule on the maximum length of the measure in the individual case (which nevertheless must be terminated as soon as possible).¹³⁴ In the case of recourse to chemical restraint, both prisons sought the approval of the Federal Ministry of Justice – usually in advance by telephone, and later justified in writing – according to the procedure followed in case of involuntary treatment (see paragraph 166).

For patients at psychiatric hospitals, the Law on Involuntary Placement provides that movement restrictions (including *Fixierung* and seclusion) require an immediate court review upon the patient's (or his/her representative's) request.¹³⁵ Furthermore, every instance of *Fixierung* or seclusion must be immediately reported on a special form to the patients' advocates (*Patientenadvokatschaft*)¹³⁶ who had an office on the hospital's grounds. These provisions appeared to be implemented at both civil psychiatric wards of Mauer Regional Hospital, however, instances of restraint were not reported to the patients' advocates at Mauer Forensic Hospital Department.

In this connection, the CPT welcomes that in their response¹³⁷ to the Committee's last report, the Austrian authorities state that also patients in *Maßnahmenvollzug* should benefit from the assistance of patients' advocates and that respective legal amendments were planned, taking into account the comment made in the Committee's previous report.¹³⁸ **The CPT would like to be informed of progress on this matter.**

152. It is another matter of serious concern for the CPT that agitated patients placed in seclusion in all establishments visited as well as patients subject to mechanical restraint (*Fixierung*) at Mauer Regional Hospital, were not under appropriate personal supervision by staff.

In addition to CCTV-monitoring, staff at the three forensic establishments visited often only came to see the patients a few times per day, sometimes only to bring meals and for the daily doctor's visit. Permanent direct personal supervision was generally not provided and meaningful human contact seemed to be offered rarely to the patients.

¹³⁴ Section 103, paragraphs 5 and 6, of the StVG.

¹³⁵ Section 33.

¹³⁶ In the report on the 2009 visit, the CPT described the work of the nationwide system of patients' advocates who are deployed in every psychiatric hospital in Austria and who provide patients with legal counselling free of charge and support/represent them during their stay at the hospital. It is recalled that, according to Sections 13 to 16 of the Law on Involuntary Placement, patients' advocates become *ex lege* legal representatives of all patients involuntarily held in general psychiatric hospitals during the placement procedure, as well as – with the consent of the patient concerned – in the context of the use of means of restraint (including *Fixierung* and seclusion, but not chemical restraint) and involuntary treatment measures. In particular, patients' advocates are entitled to consult the patients' medical files and have the right to challenge the admissibility of instances of means of restraint and/or involuntary treatment before a court. For this purpose, they must be informed immediately of every such case.

¹³⁷ Doc. CPT/Inf (2015) 35, page 26.

¹³⁸ Doc. CPT/Inf (2015) 34, paragraph 139.

At both civil psychiatry departments of Mauer Regional Hospital, patients subject to *Fixierung* or seclusion were usually under CCTV supervision and the patient's vital signs (heart and respiratory rates) could also be supervised through a sensor under the mattress. Whenever a patient was subjected to *Fixierung* or seclusion, one staff member was specifically appointed to supervise him/her. However, at least at the Adult Psychiatry Department, this person also had other tasks on the ward. According to the files examined, staff usually came to see the patients at regular intervals of every one to two hours, including at night-time, but sometimes much less frequent, in particular in cases of seclusion. On a positive note, it is commendable that staff at both departments made frequent efforts to engage the restrained patients, especially those under *Fixierung*, in conversations as to whether he/she could be released, and regularly attempted to release the patients "on trial/probation".

Nevertheless, the described staff supervision was in many cases not sufficient, in particular as regards patients subjected to *Fixierung*. It is noteworthy in this context that the hospital's above-mentioned SOP on the use of *Fixierung* stipulated that patients under *Fixierung* should be continuously and personally cared for by qualified medical, nursing or therapeutical staff who thereby helped them to overcome their crisis. The CPT fully concurs with this position, which, however, did not reflect the hospital's usual practice.

The delegation had raised the lack of appropriate supervision of patients subject to *Fixierung* and seclusion with the Austrian authorities during the end-of-visit talks. In reply, the Austrian authorities informed the CPT by letter of 17 February 2022 in respect of Mauer Regional Hospital, that the current staffing levels would not allow for staff to be permanently present to supervise patients under restraint and refer to the supervision by CCTV and the above-mentioned vital signs monitoring system.

The Committee acknowledges that the supervision of patients under restraint, and in particular of those in *Fixierung*, requires considerable staff resources. Nevertheless, it should be born in mind that patients under restraint are usually in a highly distressed mental state, suffering and in need of reassurance and human support for their condition to stabilise as quickly as possible. Therefore, staff resources must be made available in order to ensure that patients subject to *Fixierung* or seclusion are provided with appropriate personal supervision and are regularly offered meaningful human contact. In particular patients subjected to *Fixierung* should be under the permanent supervision of health-care staff (*Sitzwache*) who maintain a therapeutic alliance with the patients and provide them with assistance.

153. Further, the StVG provides that persons held in seclusion – including patients in *Maßnahmenvollzug* – were excluded from the right to receive visits or to make phone calls,¹³⁹ while the Law on Involuntary Placement does not contain a similar provision for patients outside the prison system. The CPT has doubts if such a general approach is appropriate. As outlined above, patients under restraint are usually in a highly distressed mental state and therefore in need of any support which could stabilise their condition. This may also include contact with their next-of-kin and with their lawyers. **The CPT would like to receive the Austrian authorities' comments on this matter.**

154. At Göllersdorf Prison, the delegation also received complaints from patients that they had been freezing in the seclusion room at night as they were only provided with a thin blanket, and that staff often reacted very slowly when they activated the call bell in need of assistance. **Appropriate steps should be taken to remedy these deficiencies.**

¹³⁹ Section 103, paragraph 3, of the StVG.

155. Lastly, the CPT is concerned that at Göllersdorf Prison, depot injections were sometimes administered as a form of chemical restraint in order to calm down patients in a state of agitation. Due to their long-term effect, depot injections should only be administered as a measure to treat the patient's illness, while the administration of rapid acting tranquillisers can be justified in exceptional cases in order to calm down an agitated patient in an acute situation. **The Committee recommends that these precepts be respected in practice.**

156. To sum up, every psychiatric hospital and every establishment holding patients in *Maßnahmenvollzug* should have a carefully developed comprehensive general policy on the use of restraints, including chemical restraint. The involvement and support of both staff and management in elaborating such a policy is essential. Such a policy should aim, as far as possible, to prevent the use of restraints and 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. The policy should also include sections on other important topics, such as: staff training, record keeping, internal and external reporting mechanisms, debriefing both amongst staff and with the patient, and complaints procedures. In addition, patients should be provided with all relevant information about the restraint policy in the facility.

In particular, the guidelines for the use of seclusion and other means of restraint should include the following points:

- patients may only be restrained as a measure of last resort to prevent imminent harm to themselves or others and only when all other reasonable options fail to adequately control such risks;
- means of restraint should never be used as punishment or to compensate for shortages of trained staff;
- every resort to seclusion or mechanical restraint must 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. To this end, the doctor should examine the patient concerned as soon as possible. Chemical restraint should never be used without prior authorisation by a doctor;
- the duration of the use of mechanical restraint and seclusion should be for the shortest possible time (usually a few minutes to a few hours) and must always be terminated when the underlying reasons for their use have ceased. The application of mechanical restraint for days on end cannot be justified and could, in the CPT's view, amount to ill-treatment;
- patients subject to restraint measures must be under appropriate direct personal supervision in line with the precepts described in paragraph 152; patients subjected to mechanical restraint in particular must be under the permanent direct personal supervision of health-care staff (*Sitzwache*) who maintain a therapeutic alliance with the patients and provides them with assistance; this assistance may also include accompanying the patient to the toilet or helping them to drink/eat. Clearly, video surveillance cannot replace continuous direct staff presence and human contact.

- patients subjected to seclusion or mechanical restraint should always be provided with ready access to drinking water, and with bedding at night, adapted to the room temperature (blanket and pillow), if necessary rip-proof/suicide-proof;
- once the means of restraint have been removed, it is essential that a debriefing of the patient take place, to explain the reasons for the restraint, reduce the psychological trauma of the experience and restore the doctor-patient relationship. This also provides an opportunity for the patient, together with staff, to find alternative means to maintain control over him/herself, thereby possibly preventing future eruptions of violence and subsequent restraint;
- a specific register must be established to record and to provide an overview of all instances of recourse to seclusion or other means of restraint – including chemical restraint (as well as in the patient's medical file). The entries in the register should include the time at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it and, where appropriate, an account of any injuries sustained by patients or staff;
- the frequency and duration of the use of means of restraint should be reported on a regular basis to the relevant supervisory authority in order to provide a national overview of existing restraint practices.

In light of the observations in the preceding paragraphs, **the CPT recommends that the Austrian authorities take the necessary steps to ensure that the above principles relating to the use of seclusion and other means of restraint are included in the guidelines of every psychiatric hospital and every establishment holding patients in *Maßnahmenvollzug*, and that they are effectively implemented in practice.**

The CPT further recommends that the Austrian authorities take the necessary steps to ensure that patients subject to restraint are not generally barred from contacting their next-of-kin.

157. At Göllersdorf Prison, the special security cell HR9 was a plexiglas cubicle of some 7 m², in the middle of a larger cell on the acute unit, equipped with a mattress, a floor-level toilet with showerhead, a CCTV camera¹⁴⁰ and a call bell. Patients could also be secluded in cells HR14 and HR15 of the acute unit. These were bare prison cells with an additional iron bar partition in addition to the iron cell door, equipped only with a mattress on a concrete platform and tear-proof sheets, a table (and depending on the patient's state sometimes also a chair), a sink, CCTV camera, a call bell and a sanitary annex.

At Stein Prison, there were five special security cells located near and in the high-security unit West E. Three of the cells had additional iron bar partitions, one in front of the iron cell door and another one at the back of the cell preventing access to the window. They were equipped with a floor-level toilet, a sink, a stool block fixed in the floor, a mattress on the floor, a CCTV camera and a call button. The other two cells were less carceral, without bars and with a bed with a thicker mattress.

¹⁴⁰

The toilet areas were generally pixelated when CCTV cameras were in use at the establishments visited.

The two seclusion rooms (*Krisenzimmer*) at the acute wards of Mauer Forensic Hospital Department were spacious bright rooms with large windows to the surrounding park, a hospital bed, a toilet, a sink, a shower, CCTV camera and noise detection system/interphone. Both acute wards further had two “destruction safe room” (*vandalensicheres Zimmer*) each. These rooms were equipped with vandalism-proof furniture and looked homely and barely any different from the patients’ usual accommodation rooms. They were equipped with a hospital bed, bedside-table, table, chair, wardrobe, TV-set (protected by plexiglass), CCTV camera and interphone and had a separate sanitary annex.

Mauer Adult Psychiatry Department had two “destruction safe rooms” (similar to those at the Forensic Department), and patients could also be secluded in a dedicated single room.¹⁴¹ The “crisis intervention room” at Mauer Child and Adolescent Department was a spacious, calming and bright room equipped with a large thick mattress, bean bags and a CCTV camera. The room had direct access to a nice garden area and could also be voluntarily used by young patients as a “time-out room”. The fixation bed on wheels was stored in a separate room when not in use.

While the different seclusion rooms at the departments of Mauer Regional Hospital were exemplary, the CPT has misgivings about the very carceral conditions in the seclusion cells at Göllersdorf and Stein Prisons, which were austere and oppressive in design, mostly secured with grills and bars and as such not conducive to provide a therapeutic/calming environment for an agitated patient. **Reference is made in this respect to the remarks and recommendation made in paragraph 126.**

6. Safeguards

a. discharge procedures in the context of forensic placements

158. It is recalled that, according to the relevant legal provisions, the necessity for involuntary placement under Section 21 StGB must be reviewed by the competent court *ex officio* at least once a year and the person concerned must be heard by the judge at least once every two years. Patients are also entitled to submit a request for discharge outside the mandatory review procedures.

159. From the consultation of a number of individual files it transpired that the above-mentioned requirements were generally respected in practice. It is positive in this context that - as compared to the situation found in 2014 - many patients appeared before a judge in the context of the annual judicial review of their placement. However, despite the specific recommendation made by the Committee in the previous report, this was still not done systematically.

¹⁴¹ This was a bright room with windows to the surrounding park and to an adjacent supervision room (which could be screened off by blinds), equipped with CCTV camera, noise detector/interphone and sanitary annex.

160. From the examination of a number of individual files examined at Stein and Göllersdorf Prisons, it transpired that external experts (*Sachverständige*) were in some cases involved in the review procedures every two years however, in several other cases, less frequently.¹⁴² The situation was particularly serious for patients at Mauer Forensic Department, where the delegation was told by staff that usually external experts were not involved in the review procedures at all.

The CPT considers that commissioning, in the context of the placement review, at reasonable intervals, a psychiatric expert opinion independent of the establishment in which the patient is held, offers an additional, important safeguard. This is of all the more relevance in respect of patients who have already spent lengthy periods of time in detention.

161. Moreover, despite the specific recommendation made in the CPT's previous report,¹⁴³ the right to be assisted by a lawyer during the review procedures remained in many cases purely theoretical, since requests of indigent patients to have an *ex officio* lawyer had reportedly often been rejected by the judge.

162. **The CPT recommends that the Austrian authorities take the necessary measures – including at legislative level – to ensure that in the context of court reviews of the necessity for continued *Maßnahmenvollzug*:**

- **patients are systematically heard in person by a judge during review procedures;**
- **a psychiatric expert opinion, which is independent of the establishment in which the patient is held, is sought for all patients at reasonable intervals;**
- **all patients, including those who are indigent, can effectively benefit from the assistance of a lawyer.**

163. Further, the delegation was informed that the discharge of foreign nationals was sometimes prevented by the legal and practical deadlock described above (concerning transfers to a social care homes, see paragraph 139). This compelled the patients concerned to remain in *Maßnahmenvollzug* while such placement was no longer required by their mental state. **The CPT would like to receive the Austrian authorities' comments concerning these cases.**

¹⁴² The respective court decisions frequently reasoned that “based on the statement made by the prison, there are no indications of a sufficiently positive change in the person’s state of health” or that “the state of health and the nature (*Wesensart*) of the person concerned seem to be sufficiently clarified”.

¹⁴³ See CPT/Inf (2015) 34, paragraph 118.

b. consent to treatment and involuntary treatment

164. The CPT considers that, 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.¹⁴⁴ 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 consent, and if the patient concerned has the capacity to give valid consent at the moment when it is sought. 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. 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. In particular, 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 establishment's doctors (even if their guardian consents to the treatment); further, patients should be able to challenge a compulsory treatment decision before an independent outside authority and must be informed in writing of this right.

165. As regards the legal framework of involuntary treatment, which is applicable to patients at Mauer Regional Hospital, the Law on Involuntary Placement¹⁴⁵ provides that, as a general rule, if the patient is capable of making decisions (*entscheidungsfähig*), "he may not be treated against his will".¹⁴⁶

However, the patient's consent to the treatment is not required if there is a danger to the life of the patient, or if there is a risk of serious damage to his/her health or a risk of severe pain. The necessity and urgency of such a treatment decision must be decided by the head of the department who must also inform the legal representative or, if the patient does not have one, the patients' advocate about the treatment.¹⁴⁷ At the request of the patients or their representatives, the court shall decide retrospectively on the admissibility of medical treatment.

166. The aforementioned provisions of the Law on Involuntary Placement are not applicable to persons held in prison (including patients in *Maßnahmenvollzug*). The legal situation of these persons is governed by Section 69 of the StVG which merely provides that if prisoners refuse to participate in a medical examination or treatment which is absolutely necessary under the circumstances of the case, they shall be subjected to these measures by force, provided this does not involve a risk to life and is otherwise reasonable for them. Unless there is imminent danger, the approval of the Ministry of Justice must be obtained before any compulsory examination or treatment is ordered.

¹⁴⁴ 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.

¹⁴⁵ Sections 36 to 38a; see also Section 167a of the StVG.

¹⁴⁶ If the patients are not capable of making decisions, they may not be treated against the will of their legal representatives. If patients are treated on the basis of consent given by their legal representative, they may challenge the admissibility of the treatment before the court. Prior to the decision on the admissibility of the medical treatment, the court shall hold a hearing on site to get a personal impression of the patients and their situation. The court must invite the patient's representative and the head of department to the hearing; it can also call in an external expert.

¹⁴⁷ Section 37 of the Law on Involuntary Placement.

In the CPT's view, this provision does not define in sufficient detail the exceptional circumstances justifying involuntary treatment and would appear to set a different threshold for the admissibility of involuntary treatment of patients in *Maßnahmenvollzug* held in prison in comparison with the threshold applicable to patients in *Maßnahmenvollzug* held in psychiatric hospitals. **The Committee would like to receive the comments of the Austrian authorities on this issue. Further, in the context of the ongoing reform of *Maßnahmenvollzug*, it would like to be informed of the Austrian authorities' plans concerning the legal regulation of involuntary medical treatment of persons in *Maßnahmenvollzug* held in prison.**

The CPT would also like to receive clarification as to what extent and at which stage patients in *Maßnahmenvollzug* held in prison may legally challenge an involuntary treatment decision.

167. In line with the above-described legal procedures, at both prisons, a written request for approval of involuntary treatment was made in each case to the Ministry of Justice and was accompanied by a detailed explanation of the need for treatment. At Mauer Adult Psychiatric Department, instances of involuntary treatment were reported on a specific form to the patients' advocate.¹⁴⁸ However, this was not the case at the hospital's Forensic Department. Reference is made in this respect to the remark and request for information in paragraph 151.

Moreover, it appeared that at all the establishments visited when a decision on involuntary medical treatment was taken (by the treating doctor), usually no second medical opinion from a psychiatrist not involved in the treatment of the patient concerned was sought. **The CPT recommends that the Austrian authorities take the necessary steps, including at legislative level, to remedy this shortcoming.**

168. In all the establishments visited, resort was sometimes had to involuntary treatment of patients but, generally, the frequency did not appear excessive.¹⁴⁹ Regrettably, the delegation could not get a full and accurate overview of the frequency of involuntary treatment at Göllersdorf Prison and Mauer Regional Hospital as precise data were not available.¹⁵⁰ **The CPT recommends that the Austrian authorities take steps to ensure that all cases of involuntary treatment are duly recorded and the information is subsequently retrievable so that the frequency of resort to the measure of involuntary treatment can be established.**

169. As regards free and informed consent to treatment, the CPT has misgivings that a number of patients in *Maßnahmenvollzug*, in particular at Göllersdorf Prison, appeared not to be fully informed about the treatment they were receiving.

¹⁴⁸ In line with Sections 37 and 13 to 16 of the Law on Involuntary Placement.

¹⁴⁹ For example, at Stein Prison, six persons had been subjected to involuntary treatment in a total of six instances in the first eleven months of 2021. At the Adult Psychiatry Department at Mauer, according to the information provided by staff, the measure had been applied only once in the first eleven months of 2021. Apparently, this was due to the efforts made by staff to motivate patients to take prescribed medication, but nevertheless to accept, whenever possible, patients' will not to take medication. In the latter cases, the issue was discussed with the doctor and the patient at the next ward round.

¹⁵⁰ For example, the lists provided at Göllersdorf Prison appeared to include also instances of chemical restraint (administration of rapid tranquilisers in a situation of acute agitation. According to the lists, 23 patients had been subjected to involuntary treatment and/or chemical restraint in 72 instances in the first eleven months of 2021.

Further, in all three forensic facilities, a number of patients appeared not to have expressly consented to their treatment.¹⁵¹ Many patients at Göllersdorf Prison and Mauer Forensic Hospital Department and some at Stein Prison told the delegation that they felt under pressure to take the prescribed medication and considered that if they refused to take it, they would face negative consequences, such as transfer to the acute unit under a much more restrictive regime at Göllersdorf Prison. They also stated that without such pressure they would not agree to take the medication.

At Mauer Forensic Hospital Department, staff confirmed to the delegation that if a patient refused to take the prescribed medication, “appropriate measures” would be taken, such as withdrawal of regime relaxations or reduced access to the creative workshop, in order to prevent other patients from also questioning their treatment. It is of particular concern to the CPT that some patients treated with anti-androgen treatment at Göllersdorf and Stein prisons¹⁵² said they felt under pressure to accept the treatment, in particular in view of their regime relaxation classification, which had a direct bearing on their prospects for release.

Finally, according to the files examined, assessments of the patient’s capacity to give valid consent to their treatment were usually not carried out in any of the three forensic facilities.

The CPT recommends that the Austrian authorities take the necessary steps to ensure that:

- **all patients in *Maßnahmenvollzug* are systematically provided with full, accurate and comprehensive information about their condition and the treatment prescribed for them and are placed in a position to give their free and informed consent;**
- **an assessment of the patient’s capacity to give valid consent to their treatment is systematically carried out;**
- **no patient is put under pressure to accept a particular treatment.**

The Committee would further like to be informed if the Austrian authorities’ plans to draft rules on the administration of anti-androgen treatment have materialised and if so, to receive a copy of the relevant document.¹⁵³

- c. access to patients’ advocates and complaint avenues

170. The CPT notes positively that at Mauer Adult Psychiatry Department, patients were well aware of the role of patients’ advocates (*Patientenanwaltschaft*), who had an office on the hospital grounds and systematically came to see each patient upon admission. The delegation was further informed that also the patients in *Maßnahmenvollzug* (at the hospital’s Forensic Department) could benefit from legal counselling from the patients’ advocates. However, the delegation was puzzled that the rules for two of the forensic wards (Wards 1 and 2) mentioned the possibility of contacting the patients’ advocate only for patients placed under the Law on Involuntary Placement, which was not the case for any of the patients in the forensic department. Moreover, the rules for one ward (Ward 4) did not mention this possibility at all. With reference to the remark made in paragraph 151, **the CPT would like to receive clarification on this matter.**

¹⁵¹ Patients’ written consent was only sought for depot injections.

¹⁵² Three patients at Göllersdorf Prison and six at Stein Prison received anti-androgen treatment at the time of the visit. No such treatment was administered at Mauer Regional Hospital.

¹⁵³ See the Austrian authorities’ response to the CPT’s 2014 report (CPT/Inf (2015) 35, page 21).

171. Patients at all three forensic establishments could, in addition to internal complaints, also file complaints to the supervising authority or to the Austrian Ombudsman Board. That said, at least at Göllersdorf and Stein Prisons, a number of patients seemed not to be aware of any avenue of complaint. Further, only at Göllersdorf Prison did patients have access to confidential complaint boxes in communal areas.

The CPT recommends that the Austrian authorities take the necessary steps to ensure that all patients in *Maßnahmenvollzug* at Göllersdorf and Stein Prisons and, where appropriate, in other forensic establishments in Austria, are systematically informed – orally and in writing – of their right to lodge complaints and be provided with the contact details of all relevant complaint bodies.

In addition, confidential complaint boxes should be available on every accommodation ward/unit in psychiatric establishments, including forensic wards in prisons (to be opened only by specially designated persons, and in confidence).

7. Contact with the outside world

172. As regards patients' possibilities to maintain contact with persons outside the establishments, it is commendable that patients at Mauer Forensic Hospital Department could make daily phone calls free of charge and that all three forensic establishments had recently introduced the possibility of private, free of charge voice-over-internet calls.

That said, patients at Göllersdorf and Stein Prisons complained to the delegation about the fact that they could not make phone calls in privacy, as the telephones were located in the unit corridors. **Steps should be taken remedy this shortcoming.**

Further, the Committee encourages the Austrian authorities to retain the practice of free of charge voice-over-internet calls also beyond the Covid-19 pandemic to facilitate patients' contact with their next-of-kin.

173. The CPT has misgivings that, while patients at Mauer Forensic Hospital Department could receive visits despite the Covid-19 lockdown, this was not the case for the same category of patients held in prisons. That said, the Austrian authorities informed the CPT by letter of 17 February 2022 that as of 13 December 2021, private visitors were generally again allowed in prisons under certain Covid-19 restrictions.¹⁵⁴

At Mauer Forensic Hospital Department, the delegation was informed that patients who were accommodated in one of the hospital's acute wards (accommodation which often lasted several months, and in some cases even several years) were usually only allowed to receive visits through a glass partition. After the visit, the Austrian authorities informed the CPT by letter of 17 February 2022 that the mentioned visit arrangements were based on individual risk assessments. This is positive.

¹⁵⁴ Adult visitors if vaccinated against or recovered from Covid-19 and PCR-tested and children up to twelve years if vaccinated, recovered or PCR-tested.

The CPT trusts that the Austrian authorities will take the necessary steps to ensure that, at Mauer Regional Hospital as well as in all other civil and forensic psychiatric establishments in Austria, including those in prisons, open visits (*Tischbesuche*) are the rule and are only denied upon individual risk assessment in a given case.

8. Security-related issues

174. Patients considered to pose a risk to themselves and/or others or prone to escape at Göllersdorf and Stein Prisons¹⁵⁵ could be subjected to the special security measure of segregation in a single accommodation cell (*Einzelhaftraum*) in line with Section 103 (2) 1a of the StVG.

It is a matter of concern for the delegation that at Stein Prison, patients were in some cases held in segregation for months on end. In the first eleven months of 2021, seven patients had been held in such segregation for two months or more, the longest instances lasting twelve and 19 months.¹⁵⁶ At Göllersdorf Prison, the delegation could not get a clear impression of the frequency or length of the measure, as a precise statistical overview was apparently not available at the time of the visit.¹⁵⁷

Some of the patients held in segregation, at least in Göllersdorf Prison, had very limited out-of-cell time. In addition to a daily hour of outdoor access, some of them could leave their cell only for one or two hours per day, depending on the doctor's daily assessment of their mental state. While being held in segregation, patients were supervised by CCTV and staff came to their cells to deliver food and distribute medication. Regrettably, they were usually offered barely any meaningful human contact except from the daily doctor's visit.

Given the potentially detrimental effects of segregation on a patient's mental health, **the CPT recommends that the Austrian authorities take the necessary measures to ensure that patients held in *Maßnahmenvollzug* at Stein Prison and, where applicable, in other forensic departments in Austria, are subjected to the measure of segregation (*Einzelhaftraumbeschränkung*) only to the absolute minimum necessary and always for the shortest possible time. Moreover, all segregated patients held in *Maßnahmenvollzug* should be offered frequent meaningful human contact every day.**

In addition, a register should be kept on the use of segregation in all establishments concerned, in order to allow for effective management and staff monitoring of the measure and to facilitate oversight into the extent of its occurrence.

175. It further appeared that patients who were subject to a strip-search upon admission at Stein Prison or in connection with their placement in the seclusion cell at Göllersdorf Prison were obliged to remove all of their clothes at the same time.

¹⁵⁵ At Göllersdorf Prison at the acute unit 1E and at unit 1A (which also held patients in an acute state). At Stein Prison, usually at the high security unit (West E).

¹⁵⁶ Out of 13 instances in total in 2021.

¹⁵⁷ The delegation received a table indicating 133 segregation measures under Section 103 (2) 1a of the StVG in the first eleven months of 2021, however, it was indicated that this number was not accurate, as it also included instances of CCTV surveillance of a patient's room, without the patient being segregated.

The CPT recalls that a strip-search is a very intrusive and potentially degrading measure and therefore every reasonable effort should be made to minimise embarrassment; patients who are searched should therefore not be required to remove all of their clothes at the same time, e.g. the patient should be allowed to remove clothing above the waist and then put the clothing back on before removing further clothing. **Reference is made in this respect to the remarks and recommendation made in paragraph 106.**

APPENDIX

List of the establishments visited by the CPT's delegation

Police establishments

- Amstetten District Police Headquarters (Mozartstrasse 31)
- Innsbruck Regional Police Headquarters (Innrain 34)
- Kematen/Ybbs Police Station (1. Strasse 41b)
- Leoben Police Station (Josef-Heissel-Strasse 14)
- Vienna-Leopoldsgasse Police Station
- Vienna-Hernalser Gürtel Police Detention Centre (*Polizeianhaltezentrum* - PAZ)

Prison establishments

- Göllersdorf Prison (specialised prison for *Massnahmenvollzug*)
- Innsbruck Prison
- Leoben Prison
- Stein Prison (Units for *Massnahmenvollzug*)
- Vienna-Josefstadt Prison

Psychiatric establishments

- Regional Hospital Mauer (targeted visit focusing on forensic psychiatry, involuntary treatment and the use of means of restraint).