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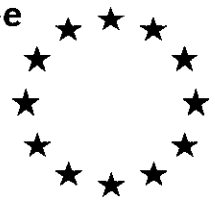

CPT/Inf (96) 29

Comments of the Republic of Austria on the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Austria from 26 September to 7 October 1994

The Austrian Government has agreed to the publication of the CPT's report on its visit to Austria (CPT/Inf (96) 28), together with the comments of the Republic of Austria. These comments, translated into English by the Austrian authorities, are set out in this document.

The German text of the comments can be obtained from the Secretariat of the CPT (Council of Europe, F-67075 Strasbourg Cedex, tel: +33 (0)3 88 41 23 88; fax: +33 (0)3 88 41 27 72; e-mail: CPTDOC@DHDIR.COE.FR).

Strasbourg, 31 October 1996

Or. German

Vienna, 28 June 1996

COMMENTS
of the Republic of Austria

on the Report
of the European Committee for
the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment (CPT)
on its second visit to Austria
from 26 September to 7 October 1994

I. Introductory notes

1. Since the CPT's first report and the Austrian Federal Government's reactions to it, considerable amendments leading to an improvement of legal protection have been enacted in the sphere of the statutory provisions governing the detention of persons on suspicion of criminal offences:

1.1. The Fundamental Rights Complaints Act (Federal Law Gazette No. 864/1992) entered into force on 1 January 1993. Under the Act, anyone who considers that his fundamental right to personal freedom (cf. Article 5 of the European Convention on Human Rights and the Federal Constitutional Law on the Protection of Personal Freedom, Federal Law Gazette No. 684/1988) has been violated by a decision or order issued by a criminal court - other than the imposition of a prison sentence or an order for preventive detention - has the right to lodge a fundamental rights complaint (Grundrechtsbeschwerde) to the Austrian Supreme Court.

1.2. As an important stage on the way towards the comprehensive reform of pre-trial criminal proceedings, an aim which the Austrian government has

been pursuing for some time, the Criminal Procedure (Amending) Act 1993, Federal Law Gazette No. 526, has brought a fundamental review of the provisions governing detention on remand.

The most important new features introduced by this reform include the following:

- mandatory appointment of a legal helper (Rechtsbeistand, defence counsel) for any person remanded in custody pending investigation (i.e. any person who does not engage his or own legal helper or does not have the necessary financial resources to do so) for the whole duration of the person's detention;

- creation of a new system of legal aid lawyers paid in each case ex officio, in order to ensure quick legal assistance directly after the prisoner is remanded in custody; these lawyers represent the prisoner at the first detention review hearing which has to take place no later than 14 days after the prisoner has been arrested;

- strict time limits for all judicial decisions concerning the prisoner's detention (first 14 days, then 1 month, then 2 months); within each deadline the investigating judge has to hold an inter partes review hearing in the presence of the prosecutor, the prisoner and his defence counsel: the judge must decide whether the prisoner remains in custody or is released;

- more emphasis on the principle of proportionality in all decisions to arrest persons and remand and keep them in custody.

1.3. Although the reform of custody regulations described in para. 1.2 has concentrated on remand detention ordered by a court, new provisions have also been introduced in the area of arrest and detention by the police. In particular,

- any person arrested has to be informed, at or immediately after arrest, not only of the suspicions harboured against him and of the reasons for his arrest but also that he has the right to notify a relative or some other person whom he trusts and a defence counsel, and that he has the right not to make a

statement; his attention must also be drawn to the fact that his statements may serve to support his defence but may also be used as evidence against him (Section 178 of the Code of Criminal Procedure, StPO). In its substance this new provision of the StPO essentially corresponds to the situation created by the "notification" decree (Verständigungserlaß) of the Federal Ministry of the Interior of 9 May 1989, No. 192, 362/45-GD/89, and the introductory decree to the Information Leaflet for detained adults of 19 July 1991, No. 92.326/41-GD/91. In this context we also recall Section 8 of the Directives Order concerning the authorities' responsibility to provide information.

- In any case where the security authorities intend to deliver the prisoner up to the court (a step which is mandatory within 48 hours at the latest), the public prosecutor must be informed in advance and must be asked whether he intends to file a motion for the prisoner's custody on remand; if the public prosecutor's answer is negative, the prisoner must be released at once (Section 177 para.2 of the StPO); custody on remand always requires an appropriate prosecution motion.

- If the public prosecutor agrees, the security authorities, too, now have powers to seize the defendant's travel and car documents in lieu of keeping him in custody (Section 177 para.3 of the StPO).

1.4. An important result of the changes described in paras. 1.2 and 1.3 above was a drop in the number of remand prisoners by 23.5 % in 1994 from 1993. About half of this decrease was due to fewer detention cases - especially a reduction in the number of persons detained and delivered over to courts by the security authorities - and the other half to speedier proceedings in custody matters. The downward trend in the number of detainees continued in 1995.

2. In July 1995 the Federal Ministry of Justice set out its ideas on further steps towards the reform of criminal procedure, in particular modernised legal foundations for criminal investigations by the police, in summary form, publishing them as a booklet. (One copy of this booklet entitled "The New Pre-trial Proceedings under the Code of Criminal Procedure: a Number of Points on Police Investigations with Special Reference to Police Powers in the Fight against Organised Crime" is enclosed with the present observations.) A working party active under the auspices of the Federal Minstry of the Interior has also

elaborated numerous ideas and proposals, which were published in September 1995 by the Österreich publishing firm under the title "Criminal Investigations by the Police and the Reform of Criminal Procedure". (A copy of the book is also enclosed.) The ideas on reforms developed in the two Federal Ministries are concurrent in their essentials, especially as far as the principles of legal protection are concerned.

In the last few months, the departments responsible have not been able to continue their work on the reform of criminal procedural law at the desired accelerated pace. As a result of an increase in new forms of transnational and organised crime and after the first occurrences of certain forms of political terrorism in Austria, an intense public debate has started on certain ways of extending the machinery available to the police for criminal investigations. The Federal Ministry of Justice has incorporated some first ideas on this problem into its booklet on the reform of pre-trial proceedings mentioned above. The original intention to combine the extension of the machinery of investigation with a thoroughgoing review of the whole preliminary proceedings has proved impossible to maintain because of the sense of urgency generated by these public debates and the resulting political pressure calling for decisions. The intended regulations on additional investigative instruments (optical and acoustic surveillance of persons, automated data exchange and correlation, new provisions to encourage defendants to cooperate with the prosecution, undercover investigations) had to be moved forward on the time scale to enable the Federal Government to lay a Bill on these matters before Parliament in February 1996.

It is intended to return to the comprehensive ideas on reforms leading to new legislation on pre-trial criminal procedure right after the completion of the parliamentary deliberations on the above-mentioned Bill and to develop these concepts into a draft law.

In the context of this draft law, the recommendations and queries in the CPT's report concerning fundamental guarantees to prevent ill-treatment of arrested persons will be carefully considered and a regime will be instituted with due attention to the CPT's views: this refers in particular to the definition of the grounds for delaying the notification of a person's detention to his family, a third party or lawyer (paras. 42 and 43), access to and contact with a lawyer or other legal helper (para. 46), the introduction of a system of legal assistance to

persons arrested by the police (para. 47) and possibilies for the electronic recording of interviews (para. 51).

3. In the report prepared in 1990 on the CPT's first visit, the Committee made certain recommendations concerning the detention centres administered by the Federal Ministry of the Interior. These recommendations concerned notably hygiene, social problems and medical services in these centres.

The Austrian Federal Government is conscious of the fact that the improvements indicated as necessary by members of the CPT at their last visit have not yet been entirely implemented on the desired scale, although strong efforts have been made in this area which have led to some improvements especially as regards the condition of the buildings.

4. The Austrian authorities are working on the creation of an independent body to examine the methods applied by the security organs when suspects are arrested and interviewed. This body is to be formed by respected personalities from the universities and justice and will have powers to carry out surprise inspections in the institutions operated by the security services.

5. It is desirable that security officers should give increasing thought to what it means to be a professional police or gendarmerie officer, and in this context more will be done to foster a problem awareness concerning the root causes of all forms of violence in police work. Against this background, the Federal Ministry of the Interior is thinking of organising a "Day against Violence" on an experimental basis. The Ministry intends to develop a concept for this project as soon as possible conjointly with the heads of its field agencies.

6. Translation work on the Information Leaflet for persons apprehended is now for enough advanced to make it soon available in a large number of languages. The aims pursued by the leaflet will therefore be put into practice in the near future.

7. Of especial importance is the unforeseeable situation which Austria has had to face a result of what is referred to as the "collapse of the Iron Curtain". In the years 1989 to 1993 this led all over Austria to an enormous increase in the number of people detained under Aliens legislation. The dramatic rise in the numbers of prisoners in this category is made clear by the following statistics:

Total number of detainees under Aliens legislation

	1989	**1993**
Austria	5,912	10,216
Vienna	1,743	4,094

Some of the measures known to be necessary had to be put off for that reason; they can only be launched when detention spaces of the necessary number and size are available.

II. Reactions to specific recommendations, findings and requests

The structure of this intermediate report follows the second chapter of the CPT's report; recommendations, findings and requests of the CPT are in italics, while the observations of the Republic of Austria are in normal typeface.

1. Torture and other forms of ill-treatment

1.1. The Committee recommends

- to set up, without delay, a body composed of independent persons with terms of reference to carry out a general investigation of a thorough nature into the methods used by members of the Security Bureau when holding and questioning persons (paragraph 19).

Work is still continuing on this recommendation of the CPT to set up an independent body to investigate charges of ill-treatment against detectives of the Vienna Security Bureau. Meanwhile, upon instructions from the Police President, the Detectives Inspectorate (Kriminalbeamteninspektorat) in its capacity as the office superordinate to the Security Bureau has been entrusted with investigating such allegations. An appropriate amendment to the service regulations is being elaborated.

- to take the necessary steps to ensure that the provisions of paragraph 2.2.1 of the Ministry of the Interior circulars of 6 February 1990 to the gendarmerie and 15 February 1990 to police forces are applied in practice (paragraph 20).

As to this recommendation, it may be noted that the Security Directorates and Federal Police Directorates have again been reminded by a circular of this point in the service regulations and that the number of corresponding checks has been fixed at not fewer than 12 per year.

- that senior law enforcement officers deliver to their subordinates the clear message that ill-treatment of persons deprived of their liberty is unacceptable and will be the subject of severe sanctions (paragraph 20).

- that law enforcement officers are reminded that no more force than is reasonably necessary should be used when effecting an arrest and that, once arrested persons have been brought under control, there can never be any justification for ill-treatment (paragraph 21).

- that law enforcement officers are reminded of the provisions of Article 29 of the Police Act ("Sicherheitspolizeigesetz - SPG") concerning the observance of the principle of proportionality in carrying out their duties (paragraph 21).

- that a very high priority should continue to be given to enhanced human rights education and to training in modern investigation techniques (paragraph 23).

Already in their basic training, an understanding for fundamental rights is instilled in law enforcement officers in their classes on constitutional law, so as to educate them towards acting in a way respectful of human dignity. The training course for commanders includes specific classes on "Human Rights" where the importance of these fundamental rights is emphasised. Continuous training which active officers are required to take and internal training programmes highlight the significance of human rights and the relevant provisions of various laws (including the provisions of the Police Act). In addition, Sections 5 and 6 of the Directives order (RLV) contain essential provisions concerning "Human Rights" and "Ways of Handling People Involved". Detectives who are frequently detailed to question detainees receive special training in interrogation techniques.

- that an aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement officers and that, during training, considerable emphasis should be placed on acquiring and developing interpersonal communication skills (paragraph 23).

As from January 1996, the MMPI Test (Minnesota Multiphasic Personality Inventory) has been introduced to determine personal aptitude in the course of screening of candidates for employment and tenure. It is hoped that this test will enable the authorities to spot in a reliable way any latent mental illnesses or pathological personality disorders. If the results of these tests are indicative of such problems, the diagnosis is verified by a psychiatrist. This is to ensure that

any persons with significant personality disorders are excluded from employment as law enforcement officers.

The Federal Ministry of the Interior has developed a comprehensive training programme for officers of the department (including line personnel) thus defining new key objectives in initial and advanced training. An information brochure on the programme is enclosed for the Committee's information with this interim report. Communication techniques are given appropriate priority.

- that the records of medical examinations of detained persons should include:

i. any statements made by the person concerned which are relevant to the medical examination (including thedescription by the person concerned of his state of health and any allegations of ill-treatment);

ii. a description of the objective medical findings based on a thorough medical examination;

iii. the doctor's conclusions in the light of (i) and (ii) (paragraph 27).

New standing orders for Medical Officers are being drafted in which special attention will be paid to these points, insofar as they are not already incorporated in the existing standing orders.

1.2. The Committee asks for

- the forwarding as soon as possible of the results of the investigation referred to in paragraph 19 (paragraph 19).

As has been mentioned above, work is in progress on the setting up of an independent body to investigate the methods used by security officers in arresting and interrogating suspects. It is intended not to limit that body's powers to the Security Bureau but to include the whole national territory. The body is to be composed of respected persons from the universities and the

justice department who will have the possibility to make appropriate unannounced surprise checks and inspections.

- comments on the allegations of a woman that on her arrest her clothes were removed in the Schwechat Airport Security Centre and she was searched by male police officers as well as detailed information about the cases in which exception may be made to the principle that a person should be searched by a police officer of the same sex and about the safeguards available to persons undergoing a search (paragraph 22).

As a result of the vagueness of the information provided on the case, the Federal Ministry of the Interior, which has investigated the matter conjointly with the Schwechat Federal Police Directorate, was not in a position to verify the occurrence in a reliable way and to find the woman concerned or the officer who allegedly searched her after her clothes were removed. Hence the Federal Ministry of the Interior cannot comment on this specific case. If the Committee wants a reaction to this case, the Federal Ministry of the Interior requests specific information thereon.

As to the CPT's request for detailed information about cases where exceptions may be made to the principle that the search of a person should be carried out by a police officer of the same sex, reference is made to the relevant provisions of the Code of Criminal Procedure (StPO) and of the Police Act (SPG), to wit:

Section 142 para. 1 of the StPO provides that searches of a person shall always be made in such a manner as to avoid all unnecessary public notice, to avoid any not absolutely necessary annoyance or disturbance of the persons involved, to spare as far as possible their reputation and any private confidential matters not connected with the investigations, and to carefully maintain propriety and decency.

According to Section 31 of the SPG, the Directives order (RLV) must stipulate that the search of a person shall be made by a person of the same sex except in emergencies. Accordingly the (RLV), Federal Law Gazette No. 266/1993, provides (Section 5 para. 3): "The organs of the public security service shall ensure that the search of a person (search of clothing and inspection of the body) shall only be carried out by someone of the same sex or a physician; this

shall not apply where a postponement of the search necessary to ensure this would risk to frustrate the purpose of the search. Excepted therefrom is the search of pieces of clothing which, in the circumstances, may be taken off without a violation of decency and without a violation of other protected interests of the person concerned."

- comments on the desirability of having complaints of ill-treatment by police officers investigated by persons with appropriate qualifications and skills from outside the police service (paragraph 25).

It should be noted that the Disciplinary Commissions are not subject to the departmental chain of command. Hence the Federal Minister of the Interior is not permitted to exert any form of influence on the decisions of a Disciplinary Commission (or Disciplinary Appeals Commission) or even attempt to do so.

- clarification on the procedure to be followed when it cannot be excluded that injuries were inflicted by a third party (paragraph 27).

According to Section 5 of the Standing Orders for the Police Medical Service, the medical report shall include: an exact description of the injuries, what traces, visible marks and consequences of a physical injury are perceptible at the time of the medical examination, and what is claimed as to the occurrence and consequences of the injuries as well as its consequences. When new Standing Orders for Medical Officers are issued, these points will have to especially recalled to these officers. Generally there is an obligation for the security services to investigate any criminal offence, in particular possible physical injuries, in accordance with the applicable legal provisions. This obligation is especially incumbent on organs of the public security service who are entrusted with supervisory powers over subordinate officers.

- information as to whether the random inspections by police doctors of places used for detention or questioning provided for in the decree of 15 February 1990 are still being carried out, and if so, in what manner (paragraph 28).

The inspections ordered by the decree have been carried out by the various Federal Police Directorates - although at different frequencies - between 10 and 40 times per year. As has already been stated above, they will continue at a rate of at least 12 times a year. In order to ensure a minimum standard in this respect, police authorities have been reminded of the decree.

- comments on the alleged ill-treatment of foreign nationals by police officers (paragraph 29).

These allegations refer to the following facts. A group of ten Iranian nationals who, coming from Rome, had landed at Vienna-Schwechat and who did not meet the requirements for being allowed to enter Austria had repeatedly refused to travel back to Rome. The authorities therefore tried to compel them to leave, using moderate force in accordance with Section 40 of the Aliens Act. This led inevitably to physical contacts but not to any ill-treatment.

The refusal of entry itself as well as the steps taken by the officers when trying to compel the Iranians to leave, as they were required by Austrian law to do, were the subject of complaints lodged with the Independent Administrative Tribunal of Lower Austria, all of which have by now been dismissed as ill-founded.

- a copy of any instructions or directives on the means of physical restraint authorised in expulsion/removal proceedings (paragraph 29).

The legal basis for using force or restraint in the sphere of regulations concerning foreign nationals is in Section 40 of the Aliens Act:

"The rejection, ensuring of transit, return, expulsion and passage through the country of aliens shall be enforced by direct command and compulsion by organs of the public security service if this cannot be accomplished, or not accomplished in due time, in other ways."

There are no specific instructions or directives concerning authorised means of compulsion in expulsion or deportation proceedings: these come under the general rules on detention or compulsion. Under Section 2 (2) of the Use of

Arms Act 1969, Federal Law Gazette No. 149, officers of the federal police, the federal gendarmerie or local authority police forces may use service weapons in accordance with the Act in the exercise of their duties, in order to overcome resistance aimed at frustrating a lawful official act. Service weapons are rubber truncheons, tear gas and other irritants which only cause a brief impairment of a person's health, water cannon and firearms with which security officers have been issued by their superiors in order to enable them to discharge their duties. Under Section 4 of the Act, weapons may only be used where steps which pose no danger or less danger are considered unsuitable or have proved ineffective, such as a warning to stop infringing the law, the threat of the use of weapons, the pursuit of a fleeing person, the use of physical force or less severe means available, such as, in particular, handcuffs or technical barriers. Although Section 29 of the Police Act, which enjoins the principle of proportionality, is not directly applicable in this context, it must be regarded as a general directive for interpreting the specific provisions.

2. Conditions of detention in police and gendarmerie establishments

2.1. The CPT

- found that in Schmelz police station (Vienna 15th district) the state of cleanliness of the four cells left a lot to be desired (paragraph 33).

The cells in that police building are cleaned every day by the station's cleaners. Graffiti scrawled on the walls by detainees may lead to a visual impression of a certain lack of hygiene. The removal of these graffiti will be ordered as soon as the budget allows.

- invites the Austrian authorities either to enlarge the room measuring a little under 2 m² in the Schmelz police station or to withdraw it from service (paragraph 33).

That room is only used for temporary detention when persons have to be kept available for questioning; no one is detained longer than two to three hours in that room.

- considers that the two cells (BWO46A and B) currently being renovated at Schwechat Airport are not, by virtue of their size (3 to 4 m²), suitable for overnight detention (paragraph 34).

These two so-called "keep at close hand cells" are only used occasionally to detain persons for short periods (up to about two hours, e.g. when an accomplice is being questioned). They certainly have never been or ever will be used for overnight detention.

2.2. The Committee asks for

- comments of the Austrian authorities on the subject of the baseball bat, two non-regulation truncheons and a CS gas canister discovered in a desk placed in the corridor leading to the cells of Schmelz police station (paragraph 33).

So far as we have been able to reconstruct the matter, the baseball bat seen by the CPT delegation was the property of a detainee. In future, steps will be taken to ensure that "dangerous" objects are kept away from the cell area.

Rubber truncheons are used as a service weapon by the police officers detailed to the police station.

The CS gas cartridges had been issued on a trial basis as a service weapon.

- confirmation that persons detained overnight in the Schwechat Airport police stations are supplied with a mattress and blankets (paragraph 34).

The Federal Ministry of the Interior has always considered it a matter of course that persons detained overnight get a mattress and blankets. A note confirming this from the Schwechat Federal Police Directorate is enclosed with this report.

- information on any new developments in the implementation of the 1991 proposals of the Vienna Federal Police Directorate's "model custody" working

group concerning a list of minimum requirements for the layout and fittings of district police station cells (paragraph 37).

For the purpose of implementing the proposals of the Vienna Federal Police Directorate's "model custody" working group, the necessary adaptation work has been completed or will be completed in the near future.

The cell blocks in the Leopoldstadt, Landstraße, Wieden, Alsergrund, Döbling and Brigittenau police stations have been renovated.

The cells in the Margareten, Ottakring, Floridsdorf and Donaustadt police stations are located in new buildings and meet the requirements. There are plans to erect new buildings for the Josefstadt and Hietzing police stations and cell blocks meeting the requirements will be provided in the new stations.

In the Neubau, Simmering, Meidling and Hernals police stations, a general renovation of the cell blocks has been started and most of the work will be finished by the end of 1996 or the beginning of 1997.

3. Fundamental safeguards against ill-treatment

3.1. the CPT recommends

- that the grounds for delaying the notification of a person's detention to his family/third party/lawyer should be more clearly circumscribed (paragraph 43).

- that immediate steps be taken to ensure that:

- *persons detained by the police should have the right of access to a lawyer as from the outset of detention;*

- *that the right of access to a lawyer should include the right to contact and to be visited by the lawyer (in both cases, under conditions guaranteeing the confidentiality of the discussions) as well as, in principle, the right of the person concerned to have the lawyer present during interrogations (paragraph 46).*

The rights of detainees will be defined more precisely than hitherto by the reform of preliminary criminal procedures which is in preparation. On this point the Committee is referred to para. 2 of the Introductory Notes above and to the proposals of the working party operating within the framework of the Federal Ministry of the Interior (cf. in particular chapters 2.8, 3.4, 8 and 9 of the book of which a copy is enclosed with this report). An essential element to be noted is the intention to assimilate the provisions of the Code of Criminal Procedure and the relevant police regulations.

- that the recommendations in paragraph 64 of the CPT's report on its first visit concerning the right of persons detained by the police to have access to a doctor of their choice should be re-examined (paragraph 48).

In this context the Committee is referred to Section 8 para. 3 of the Directives order (RLV). Under this provision, the officers of the public security service must inform a detainee who is to be examined by a doctor appointed by the authorities that he may request the presence of a doctor of his choice, at his own expense, at such a medical examination so long as this does not seriously hold up the investigation. In this connection we also refer to Point 6 of the Information Leaflet.

- that all medical examinations (whether carried out by a police doctor or a doctor chosen by the detained person) should be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of police officers (paragraph 48).

This problem will be the subject of a conference of Medical Officers. What is already clear is that politeness and decency should be preserved as far as the circumstances allow.

3.2. The CPT notes

- that it would be desirable for the necessary clarification to be made in the framework of relevant police legislation concerning the right of a person

detained by the police to inform a relative/third person and a lawyer (paragraph 42).

This clarification has already been made in Section 47 para. 1 of the Police Act (SPG). Under this provision, any person detained or brought before an authority has the right to demand that a relative of his choice, or in specifically defined cases a lawyer, be informed of his detention (or of the fact that he has been brought before the authority). For those cases to which the Code of Criminal Procedure (StPO) is applicable, Section 178 of the Act provides that any person detained shall be informed upon his detention or immediately afterwards of the suspicions existing against him and of the grounds for his arrest, and shall also be informed that he can notify a relative or some other person who enjoys his confidence and a defence lawyer and that he has the right not to make statements. His attention must be drawn to the fact that any statements he makes may be used in his defence but may also be used as evidence against him.

- that the Austrian authorities are invited to supplement the Directives order (RLV) with detailed guidance on the authorised length of interrogations and the questioning of specific categories of individuals (such as persons who are under the influence of drugs, alcohol, medicine, who are in a state of shock or who are mentally disabled or mentally ill) (paragraph 50).

According to Section 5 of the Directives order (RLV), the organs of the public security service acting in the exercise of their duties shall avoid any action likely to create the impression of bias or likely to be perceived as discrimination on the ground of gender or as discrimination on grounds of gender, race or colour, national or ethnic origin, political views or sexual orientation. According to Section 6 para. 1 (3) of the Directives order, victims of crime as well as persons who, for physical or mental reasons, are unable to understand the context of the steps taken by the authorities shall be treated with special consideration. Against this background, special protection is ensured in particular to persons who are under the influence of drugs, alcohol or medicine and persons who are in a state of shock or who are mentally disabled or mentally ill. Under Section 6 para. 3 (2) of the Directives order, long interrogations should be interrupted for breaks at appropriate intervals. What breaks are reasonable depends on the individual case and in particular on the place of interrogation, the strain to which the interrogee is exposed and his or

her physical and mental condition. During the interrogation, the principles of proportionality as stipulated by the Section 29 of the Police Act should normally be observed. Against this background, the Republic of Austria considers that the above suggestions do not require immediate action. Nevertheless, a more specific implementation of the CPT's valuable proposals will be considered at an opportune time.

- that the CPT hopes that the translations of the Information Leaflet for detainees will be available on schedule (paragraph 49).

The translations of the Information Leaflet have been completed and will be dispatched to the interested authorities towards the end of July 1996. Copies of the custody record and of the translations of the Information Leaflet are enclosed for the CPT's information.

- that the Austrian authorities are invited to review the use of the two special cells (Handzellen) by detectives of the Security Bureau for interrogating suspects in the light of the Committee's comments in paragraph 52 (paragraph 52).

Generally, it may be noted that most of the interrogations of detainees in the Security Bureau are conducted in the detectives' offices in order to establish a certain relationship of trust between the interrogators and the suspects. The so-called "Handzellen" are only used for suspects who are considered apt to try to abscond. The security installations in these cells are absolutely necessary. In particular in view of an incident in January 1995 when a detainee leaped through the closed window of a room on the first floor and was critically injured, it appears essential to interrogate persons liable to such behaviour in specially equipped rooms of this sort.

- that the Austrian authorities are invited to ensure that the custody record is used systematically and filled in correctly (paragraph 53).

The correct and complete filling in of custody records has been and will be on the curriculum of periodic training sessions and internal seminars.

3.3. The CPT requests

- information on developments in the question of a system of legal assistance for persons detained by the police (paragraph 47).

Section 36 para. 3 of the Law concerning administrative offences (VStG) provides that persons arrested shall be permitted without unnecessary delay to notify a relative or some other person they trust and a lawyer; and persons arrested have to be informed that they have this right. Where it is considered inopportune to let the detainee make the notification himself, the authorities must notify these persons.

Under Section 178 of the Code of Criminal Procedure (StPO), any person detained shall be informed upon his detention or immediately afterwards of the suspicions existing against him and of the reason for his arrest, and shall also be informed that he can notify a relative or some other person who enjoys his confidence and a defence lawyer and that he has the right not to make statements. His attention must be drawn to the fact that any statements he makes may be used in his defence but may also be used as evidence against him.

Under Section 37 of the Juvenile Courts Act, where a detained young person is questioned by a public security officer or where he is formally interrogated by the security authorities or a court, a person in whom the prisoner has confidence shall be asked to attend, provided this does not unreasonably prolong the prisoner's detention. A young person must be informed of this right immediately after an arrest. The person of trust may be the prisoner's legal representative, a person who has custody over the juvenile, a relative, a teacher, a supervisor from an educational establishment or a youth worker, a juvenile court assistant or a probation officer.

Explanations on this matter are also to be found on page 22 of the brochure "Nimm's in die Hand" edited by the Federal Minister of the Interior jointly with the Federal Ministry of Justice and the Association for Probation Assistance and Social Work which is enclosed with this report for the CPT's information.

The legal assistance system will assume some new features in the course of the reform of the Code of Criminal Procedure which has already been mentioned here repeatedly.

- to receive copies of the translations of the Information Leaflet (paragraph 49).

The translation is enclosed.

- comments on why police and gendarmerie officers practically make no use of the possibility of the electronic recording of interviews (paragraph 51).

The problems surrounding the recording of interviews have been addressed by the Federal Ministry of the Interior when elaborating its proposals for the reform of the Code of Criminal Procedure. It is pointed out in these proposals that not only should the person concerned have a right to the handling of his case being documented, but the authorities and their officials as well should be interested in having their steps documented as completely as possible. For more details see p. 244 f. of the enclosed book on police investigators and the question of the reform of criminal procedure ("Kriminalpolizei und Strafprozeßreform"). The practical application of these principles could be undertaken in the framework of the reform of pre-trial proceedings (Vorverfahren).

- to be informed whether the right of a person held under the Aliens Act to be visited by a lawyer also entitles the latter to be present during questioning of the detained person (Paragraph 54).

Under Section 53 c para. 4 of the Law concerning administrative offences (VStG), prisoners are allowed to receive visitors during office hours to the extent that this is feasible, bearing in mind the necessary monitoring, without endangering security and order and without disturbing the authorities' normal operations. Under Section 53 para. 2 of the same Act, the correspondence of detainees with and visits from Austrian authorities and lawyers or organs established by international Conventions for the protection of human rights binding on Austria may neither be restricted nor their contents censored. The

same is true of contacts between foreign prisoners and diplomatic and consular representatives.

It follows from these statutory provisions that any detainee under Aliens legislation may see a lawyer, like any other visitor, even if he has not, or not yet, hired the lawyer. As soon as a lawyer has been formally retained as counsel, the legal rules stated in Section 53 c para. 5 of the VStG apply to the detainee's correspondence with the lawyer and to the latter's visits.

Where a detainee under Aliens legislation is held in the detention centre of a court of justice. Under Section 53 d para. 1, first sentence, of the VStG, where administrative sentences of imprisonment are served in court detention centres or in penitentiaries, the provisions of the Execution of Criminal Sentences Act (StVG) referring to prison terms not exceeding one year should in principle be applied mutatis mutandis. Under Section 86 of the StVG, prisoners serving a criminal sentence my correspond with individuals and organisations, make and receive telephone calls and see visitors in accordance with the Act's provisions, except where Sections 103 para. 3, 112 para. 2 and 114 para. 2 of the Act apply. Further detailed rules on visits are to be found in Sections 93 to 95 of the StVG. Under Section 96 of the StVG, visits by representatives of public agencies or of organisations caring for prisoners as well as visits by lawyers (see Section 90 paras. 4 to 6) must be permitted during office hours also outside the intervals mentioned in Section 93 para. 1. Under para. 2 of this provision, the contents of the conversations between prisoners and the visitors mentioned in para. 1 may not be monitored.

Thus with regard to detainees under Aliens legislation held in detention centres administered by a court, a similar picture emerges as for aliens who are kept in custody in detention facilities of district administrative authorities or federal police authorities. Such prisoners, too, are allowed, under certain conditions, to receive visits of lawyers even if they have not, or not yet, retained them. Again, lawyers who have been briefed to represent the prisoner enjoy privileges in many respects in this context.

Generally it may be noted that a lawyer - whether he is a detainee's counsel or not - has no legal right to be allowed to visit the prisoner; but a prisoner under Aliens legislation has far-reaching rights to receive visitors (including lawyers). Where a lawyer has been hired by a prisoner to provide legal assistance - let it

be added here as an incidental footnote that not every person providing legal assistance ("legal helper") has to be a lawyer - the detainee's rights to receive him as a visitor become considerably more extensive.

Official interviews under the Aliens Act are governed by general legislation on administrative procedure. Under Section 10 para. 5 of the General Administrative Procedure Act, the parties involved may use legal helpers (Rechtsbeistände) and may appear before the authority accompanied by such a helper. In the exercise of this right, the helper may be present at interrogations of the parties, and the authority must facilitate rather than hinder the representation of a party by legal helper. Hence a person taken into custody under Aliens legislation does have the right to have his counsel present at his interrogation.

- a detailed statement of the steps taken in practice to ensure that a person is not returned to a country where he or she runs the risk of torture of inhuman or degrading treatment of punishment (paragraph 55).

Under Section 37 of the Aliens Act (FrG), a person is not refused entry or returned or deported to any country if there are valid reasons to assume that he or she would run the risk of inhuman treatment or punishment or the death penalty in that country. Similarly, the steps mentioned above are not taken where there are valid reasons to assume that his or her life or freedom would be threatened there on account of his or her race, religion, nationality, membership of a specific social group or political views.

Moreover, where the person concerned pleads any of the dangers mentioned above, he or she is not refused entry, deported or returned before he or she has been given an opportunity to explain his or her reasons exhaustively.

Further, a person is not deported so long as this would be contrary to the recommendation of a temporary measure by the European Commission of Human Rights or a provisional measure by the European Court of Human Rights.

The above criteria of Section 37 of the FrG must be applied ex officio. In addition, if requested by an alien, the authorities have to issue an administrative

decision (Bescheid) stating whether there are valid reasons to assume that the alien is threatened in terms of Section 37 of the FrG in the country he or she has named.

In the framework of the planned amendment of Aliens legislation, it is intended to involve the asylum authorities, which have particular qualifications in this field, as closely as possible in establishing prohibitions of deportation in the wider sense.

4. Police jails

i. general questions

4.1. The CPT recommends

- that the provisions of Section 1 of the internal regulations for police jails under which an abridged version of these rules, setting out the rights and duties of detainees, must be displayed in all cells be applied in practice (paragraph 64).

An abridged version currently in use no longer reflects the present legal situation, which is why a new text is being drafted.

In police jails, the warders on each floor have translations into nine languages (English, French, Italian, Polish, Rumanian, Serbo-Croat, Turkish, Hungarian and Czech) as well as the abridged version in German and these texts can be seen at any time. There are notices in each cell in these languages referring to these texts, including a note that help may be sought from the Contact Officer. As it is common experience that any papers displayed by the authorities in the cells are soon written over or removed, it does not seem useful to display large numbers of the abridged version. Even when the updated abridgment of the internal rules becomes available, the Vienna Federal Police Directorate intends to continue the practice of only displaying notices in the cells in the languages referred to above to the effect that translations are available from the floor warders. More languages will be added in due course. The notices referring to

the texts of the regulations are short enough to be written on one information sheet, which can be quickly replaced if necessary.

It would appear that this practice is sufficient to meet the requirement of Section 1 of the internal rules for police prisons.

- that medical examinations in the police jails visited be reviewed in the light of the statements of paragraph 86 (paragraph 87).

- that immediate steps be taken to ensure that:

- all newly arrived prisoners are medically examined within the prescribed 24 hours;

- medical examinations on admission as well as all subsequent examinations are conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of police officers;

- prisoners are examined individually and in an appropriate setting;

- efforts are made to improve communication between health personnel and foreign prisoners (if necessary, consideration should be given to providing interpreters for medical examinations or consultations);

- an adequate psychological and psychiatric service is created to meet the needs of the prisoners concerned (paragraph 87)

- a non-segregation policy for HIV positive prisoners be actively pursued (paragraph 89).

- the training of police officers responsible for supervising foreign nationals be reviewed in the light of the comments in paragraph 90 (paragraph 91).

In accordance with Section 7 para. 3 of the internal regulations for police jails, every person admitted to a police jail undergoes a medical examination without unnecessary delay and in any case no later than within 24 hours.

Considerations of security argue against conducting medical examinations out of the hearing of police officers as an absolutely hard and fast rule. Detainees are examined by the Medical Officer individually in an appropriate room; the establishment of sick quarters meeting higher hygienic requirements is in the planning stage.

A general practice of asking interpreters to be present at medical examinations is hardly feasible for budgetary reasons. Internal statistics have shown that over a period of about 2 months interpreters would be required for roughly 58 languages. It may be mentioned, however, that under the "Contact Officers for Detainees" project which is being tried out in the Roßauer Lände police jail, better communication with persons detained under Aliens legislation who do not speak German has been achieved with the help of their compatriots.

Precisely these Contact Officers are also expected to fulfil psychological functions in the framework of personal care for depressive detainees. The participation of staff members of the police jail in "supervision sessions" (where graduate psychologists try to strengthen the ability of the officers to cope with conflicts as well as their general psychological competence) - as has already happened and will become regular practice in future - should increasingly help to meet the needs of detainees. To establish a special counselling service in addition to these programmes would very likely overstrain the available budget.

Generally speaking, non-segregation of HIV positive prisoners is a practice well worth considering. Experience has, however, shown that this practice brings an extremely high unrest potential to multi-occupancy cells, hence segregation is considered necessary on security grounds.

Sick prisoners in police jails should normally be treated by Medical Officers. The Medical Officers should be supported by trained personnel. It is intended to train qualified paramedical personnel. Training programmes will be similar to those of the Austrian Army Medical Corps. Training to become a medical orderly will take one month or two months. The medical NCO course will take nine months. So far 57 officers have attended the first stage of training, medical orderly, which makes them suitable candidates for training as ward assistants. Ward assistant training will comprise, in addition to theoretical classes, a period of practical training in a public hospital.

- that the Austrian authorities reconsider the possibility of creating an independent body to carry out regular inspections of the conditions of detention in police jails (paragraph 94).

In principle, creating such a body appears worth considering, but the idea requires closer examination. It is safe to say from the outset that any such institution must be possessed of the necessary legal and practical instruments if it is to be able to work efficiently. Such a project will require some long-term planning before it can be launched.

4.2. The CPT finds

- that it would be desirable for all cells used for disciplinary purposes to be fitted with a table and chair, if necessary fixed to the floor. It also goes without saying that the prisoners concerned should be issued with a mattress, at least for the night (paragraph 70).

It is worth mentioning in connection with this observation that steps have been taken in the area of the Police Directorate to which this criticism specifically referred to ensure that the cells in question are no longer used for disciplinary purposes.

- that when a person in custody is - or becomes - highly agitated, the police should immediately contact a doctor and act in accordance with his opinion (paragraph 79).

Apart from the detainee's examination after admission to jail, there is a rule (in Section 10 of the internal regulations for police jails) that prisoners shall be immediately made to undergo another medical examination if their fitness to remain in custody is in doubt. When a person is unusually agitated, his or her fitness to be kept in prison is automatically doubtful and a Medical Officer has to be called. Where a detainee is a danger to himself, there is a mandatory rule that a doctor has to be called (Section 4 para. 5 of the internal regulations).

- *that the Committee wishes to stress the importance of a general policy for combatting communicable diseases in prisons, based on the provision of detailed information on the modes of transmission and means of protection and the introduction of appropriate preventive measures (paragraph 89).*

Where a detainee constitutes a danger of contagion, the doctor must take the statutory and medically required measures and must see that they are maintained. This includes a duty for the doctor to ask, if necessary, for the prisoner to be kept in solitary confinement or be released, and at all events a duty to provide information on how the infection of other persons can be prevented.

4.3. The CPT requests

- *detailed information from the Austrian authorities on the approach adopted in police jails to the treatment of persons on hunger or thirst strike (paragraph 87).*

Refusal to eat or drink is tolerated so long as no serious damage to the person's health is to be feared. Where the appropriate warning signs are found (drop in blood pressure or heart and circulatory disturbances), the doctor in charge diagnoses the person unfit to be kept in custody and the prisoner is released.

- *the comments of the Austrian authorities on the possibility of creating special centres for persons detained under Aliens legislation in which they would enjoy material conditions and a detention regime appropriate to their legal status (paragraph 91).*

The advantages of such a step are also perceived by the Federal Ministry of the Interior but this goal will only be attainable in the framework of long-term planning, whereas the priority task now is to find a satisfactory solution to the basic situation prevailing in respect of the accommodation of detainees. Only after such a solution has been achieved will it be possible to envisage further improvements.

ii. concrete questions regarding Roßauer Lände police jail in Vienna

4.4.a The CPT recommends

- that completion of the scheduled renovation work be expedited (paragraph 58).

Since the building is very old, it requires extensive and time-consuming renovation. A list of priorities has been drawn up and the projects on the list are undertaken as budgetary funds become available.

- that greater attention be paid to providing clean bedding, personal hygiene products (towels, soap and shaving cream, etc) and cutlery (paragraph 61).

After admission, every detainee in a police jail is issued with fresh personal bedding and towels are also available. Cutlery is cleaned before each meal in the interests of hygiene. To leave cutlery in the cells is not feasible on security grounds.

- that steps taken be urgently to ensure that the rule providing for at least one hour of outdoor exercise every day is respected (paragraph 62).

- that the regime be reviewed with a view to organising more activities for prisoners; at the least, the regime to be implemented should provide for greatly increased out-of-cell time and for access to recreational and sporting activities (paragraph 63).

The commander of the Police Jail has been instructed to see that Section 17 of the internal regulations is complied with. Both at the PGH Roßau jail and at PGH Ost jail one of the officers acts as "walker". He offers the detainees, floor by floor, the possibility to get exercise in the prison's walking yard and oversees them. The commander says, however, that many detainees show no interest in exercise in the yard. A longer period for physical exercise outside the cells

and/or the possibility to pursue some kind of activities outside the cell area is under consideration.

- that something should be done about the communication problems between prisoners and staff as well as about the fact that most prisoners in the Vienna Police Jail did not know that the regulations, together with translations, could be consulted on request (paragraph 64).

We refer the CPT to the project "Contact Officer for Detainees under Aliens Legislation" mentioned above.

- that at least one full-time qualified nursing post be added to the health care team at the Vienna Police Jail (paragraph 81).

Any step going beyond the activities mentioned in para. 4.4.a is currently precluded by the fact that all funds are tied up in other particularly urgent programmes - especially improvements to the buildings.

4.4.b The CPT requests

- to be informed of the implementation of the qualified nursing training programme (paragraph 81).

- more details on the planned creation of a care unit (paragraph 87).

Medical training for police officers serving in the Police Jail is divided into three stages:

1. Paramedical service. This training programme takes 1 month, and 20 officers are now attending the course.

2. Medical orderly. The programme takes 1 month, and 10 officers are currently attending it. 7 officers have already completed the course.

3. Medical course for NCOs. This takes 9 months to complete. 10 officers will attend the programme.

Additional nursing activities and facilities are currently inhibited by lack of funds.

iii. Specific questions concerning Klagenfurt Police Jail

4.5. The CPT recommends

- that the Austrian authorities seek to ensure a better allocation of prisoners between the available cells.

This Police Jail is full nearly all year, hence there is little scope for relocation. In principle, however, the prison authorities see to it that the prisoners are accommodated in company. Men are separated from women and young prisoners from adults, and so far as possible the detainees' wishes (to be with others or alone) are met.

- that the regime be reviewed with a view to organising more activities for prisoners; at the least, the regime should provide for greatly increased out-of-cell time and for access to recreational and sporting activities (paragraph 69).

Detainees under administrative law are employed as so-called "house workers", depending on the jobs available; but it seems problematical to provide employment to persons detained under Aliens legislation because the dangers this would involve are very hard to assess. To modify the present regime by allowing more out-of-cell time is not feasible in view of the nature of the premises available.

- that a specific register for recording disciplinary sanctions be kept at Klagenfurt police jail (paragraph 70).

Keeping a special register for disciplinary sanctions is being considered.

- that a half-time nursing post be created (paragraph 81).

As soon as enough qualified medical personnel are available, it will be possible, depending on the size of each police jail, to create a full-time or half-time post, or in smaller jails to have a daily visit by a qualified nurse.

4.6. The CPT finds

- that the maximum capacities of certain cells were excessive; for example, a cell measuring 25 m² should accommodate an absolute maximum of six prisoners (paragraph 66).

It would be quickly possible to reduce the maximum capacity of certain cells to the stipulated level by taking out the double-deck beds. But this would considerably reduce the overall capacity of the jail. Since this would have negative repercussions on the capacity of other security authorities to accommodate detainees under Alien legislation, there are currently considerable difficulties to put these measures into effect. Nevertheless the authorities intend to work towards the recommended maximum.

- that prisoners should be allowed more frequent access to the shower room (paragraph 67).

As Section 12 of the internal regulations provides, prisoners are allowed to take one shower a week; more showers are allowed when ordered by the Medical Officer.

4.7. The CPT requests

- comments on complaints about the meagre breakfasts, the infrequency with which sheets were changed, the failure to supply individual hygiene products

such as soap and toothpaste and the refusal to allow access to personal belongings (paragraph 68).

The breakfast supplied by the police kitchen consists of coffee and bread, on Sundays of coffee and rolls. No complaints have so far been received by the prison management or Medical Officers about the breakfast being meagre.

Bedclothes are changed every two weeks, towels weekly. Individual hygiene products (e.g. toothbrushes, toothpaste, razors, shaving cream, hair shampoo, soap, feminine hygiene etc.) are issued to all prisoners.

- comments on a prisoner's complaint that he did not receive the medication he needed for his condition (diabetes) and he was unable to follow the diet which his condition normally necessitated (paragraph 83).

The authorities responsible have not heard about any complaint from a prisoner that he did not get the necessary drugs for his diabetic condition and that he was unable to follow the appropriate diet. Drugs and diet food are normally issued exactly as the Medical Officer prescribes. If the CPT is interested in a specific case, we would ask to be given more detailed information.

iv. Specific questions on Schwechat Police Jail

4.8. The CPT recommends

- that the Austrian authorities take immediate steps to ensure that, whilst it remains in its present state, no one is detained in Schwechat Police Jail for more than 48 hours (paragraph 73).

The sanitary annexe has been considerably improved: the WCs have been renovated, the shower room has been newly tiled and plumbed, and the interior of the whole jail wing has been repainted. The authorities are quite aware of the fact that the condition of the building with the rather restricted space available makes it problematical to keep prisoners there for longer periods.

v. Specific questions relating to Villach Police Jail

4.9. The CPT recommends

- that the Austrian authorities ensure that circular No. P-1151/94 of the Villach Federal Police Directorate, dated 13 September 1994, is strictly applied in practice (paragraph 77).

The commanding officer in charge has promised that accurate observance of the circular which forbids keeping prisoners in the jail for longer than six days because of the building operations and the connected negative effects will be strictly ensured.

- that priority be given to placing persons in ground floor cells and that if it becomes necessary to use cells in the basement, those with very poor access to natural light should only be used as a last resort and for as short a time as possible (paragraph 77).

Until the new police jail is completed, detainees are accommodated so far as possible in the cells on the ground floor; only if it is absolutely necessary are the poorly lit basement cells used, and if so, for as short a time as possible.

- that use of the two special cells (Tobzellen) in the basement should be discontinued forthwith (paragraph 79).

Until the new building is finished, the basement high security cells cannot be entirely dispensed with in order to prevent prisoners from endangering themselves and others. But prisoners will be placed in these cells only in really exceptional cases and only for as long as absolutely necessary, i.e. until the Medical Officer arrives.

- that measures be taken to ensure that a nurse should visit Villach Police Jail on a daily basis (paragraph 81).

In view of the daily visit paid by the Medical Officer to Villach Jail a visit by a nurse is probably unnecessary.

4.10. The CPT states

- that the Austrian authorities are invited to offer prisoners required to spend several days in the establishment a minimum of activities (reading, card and board games) and to explore the possibility of providing daily outdoor exercise (paragraph 77).

Because of the rebuilding of the jail, the original exercise yard is a building site. For that reason and because there is no substitute exercise space, it is impossible until the building work is finished to allow detainees to take exercise outdoors. Providing reading materials and games is being considered.

III. Comments on paras. 100-151 of the CPT's Report

Para. 100 (Number of complaints of ill-treatment lodged against prison staff and number of criminal/disciplinary proceedings instituted; number of sanctions imposed in the years 1993 and 1994)

The Federal Ministry of Justice has no records from which the desired statistical information can be reliably gleaned. This is because complaints and proceedings of this sort are handled from different perspectives and at different levels (complaints lodged by prisoners, supervisory complaints against officials, criminal proceedings against unknown perpetrators, criminal proceedings against specific suspects, or disciplinary proceedings). Moreover, such proceedings may be instituted by superior officers in the exercise of their duties of control over their subordinates, and the concept of "ill-treatment" does not appear to be capable of precise demarcation from other complaints. Therefore, although each individual case is carefully investigated, the Federal Ministry of Justice is not at this point in possession of the general data about the overall situation in Austria requested by the CPT, because the individual cases have not been analysed on uniform and consistent criteria. To do so retrospectively in respect of a two-year period would create a disproportionate administrative workload.

The CPT's request will, however, be treated as an incentive to examine the question of how to improve the synopsis of complaints of ill-treatment and of the resulting criminal and disciplinary measures (including the outcome of each case) and to establish a system of records in this area.

Para. 101 (Results of the investigation into alleged ill-treatment of prisoners in Wien-Josefstadt Prison on 28 June 1994)

Despite very thorough enquiries it proved impossible, on the basis of the information contained in the CPT's report, to determine which criminal case was involved.

If there is continuing interest in the outcome of the case, the CPT is requested to provide more details.

Para. 103 (Dimensions of the cells in Stein Prison)

Placing two persons in a cell of about 10 m^2 is contrary to the general rules of occupancy and is only tolerated in exceptional case for limited periods, if unavoidable (for example, when rebuilding work is going on in the interior of the prison or in case of other factors necessitating higher than normal occupancy).

Para. 106 (Employment of foreign prisoners in Stein Prison)

The allocation of jobs is made in the first place on the basis of any professional qualifications which the prisoner may already have and secondly on the basis of skills and abilities. The ability to communicate in German is only one of the criteria, and linguistic skills are something that can be acquired, especially in the case of prisoners serving relatively long prison terms. When required, language classes are offered; individual language learning materials (such as textbooks or cassettes) are also available. Similar criteria apply to vocational training programmes. In practice, however, it has been found that foreign prisoners show less interest in these possibilities.

Training programmes sponsored by the Austrian Employment Service are sometimes subject to the requirement that the qualifications acquired should be put to use in the Austrian labour market after the prisoner is released. In the case of prisoners facing a residence ban in or expulsion from Austria after their release from detention, it is conceivable that they may not be admitted to these programmes specifically geared to the Austrian labour market (for example, intensive training in specialist manual skills). But the general programmes are equally accessible to foreigners as well as Austrians.

Other general constraints (i.e. constraints equally applicable to Austrians and foreigners) on the allocation of jobs may result for some prisoners from the length of their prison term, the kind of offence they committed, and their personality.

The Federal Ministry of Justice knows that some prisoners who do not speak German occasionally feel discriminated by the allocation of jobs. By having more frequent personal talks with them, the prison authorities try to make these prisoners understand their decisions and in some cases to find a job despite the problems involved.

Para. 111 (Speeding up renovation work in Schwarzau Prison)

From the beginning of this project, the Federal Ministry of Justice has been greatly interested, for economic as well as operational reasons, in seeing the general renovation of Schwarzau finished as quickly as possible. But narrow limits have been imposed on these good intentions by the fact that the prison has had to remain fully operational while the work goes on, a situation made still more difficult by continuous high occupancy. Nevertheless we shall probably succeed in completing the building work somethat earlier than originally expected.

Para. 112, last paragraph (Sports hall in Schwarzau Prison)

Improving the infrastructure is one of the main objectives of the general renovation now in progress at Schwarzau. This includes an enlargement of the present gymnastics hall to turn it into a sufficiently big modern sports hall, which should become available in 1997 according to the schedule.

Para. 113 (Education and training for foreign prisoners and German classes in Schwarzau Prison)

As we have stated in our reply to para. 106, for certain types of training sponsored by the Austrian Employment Service which require considerable funding and resources, the rules of the Employment Service may provide that these programmes should be made available only to persons who will be able to use their training in the Austrian labour market.

As regards educational and training activities for foreign prisoners at Schwarzau, it must be noted that the training programmes have had to be curtailed on the whole because of the ongoing renovation work. After this extensive work is finished in 1997, educational activities will be resumed on the previous scale.

German classes are offered as required (by a certain number of prisoners), and the considerable fluctuation of foreign prisoners as well as the widely differing levels of their previous knowledge of German are factors to be taken into account in this area. For economic reasons, the prison administration was unable to offer a German course in 1994.

Paras. 115 and 116 (Medical services in Stein Prison)

There are plans to employ fully qualified nurses at Stein and these plans will be put into practice as soon as staffing schedules and budgets permit. The Federal Ministry of Justice will also try to improve the availability of doctors. But both the prison management and the doctors practising there as well as the prisoners already consider this aspect of care to be generally sufficient as it is. Recently the Ministry has been able to improve psychiatric services considerably by hiring three part-time staff members.

Para. 117 (Dental treatmen in Stein Prison)

The dentist's attendance has been increased. He puts in additional hours for treatment when needed. There is also another dentist who provides dental treatment.

Paras. 118 and 119 (Medical care in Schwarzau Prison)

The Federal Ministry of Justice will review the medical services at Schwarzau and expand them if possible.

Employing a full-time nurse and providing an emergency service at night and at weekends as recommended is not feasible with the limited resources available, but is not absolutely necessary in the Federal Ministry of Justice's view because

- during the day two officers who have completed training as medical orderlies are available,

- the present prison doctor, who lives near the prison, can normally be reached outside surgery hours, at night and at weekends and is thus available in emergencies, and

- the hospital in the town of Neunkirchen (where a small ward is reserved for Schwarzau prison) is only a 15 minutes' drive from the prison.

Para. 120 (Psychological services in Schwarzau Prison)

At present Schwarzau Prison employs one full-time psychologist and another psychologist as well as a psychiatrist on a half-time basis. In this area, too, there are plans to enlarge the services available to prisoners.

Paras. 123 and 124 (Medical records)

The new regulations on the execution of criminal sentences, effective from 1 April 1996 (of which a copy is enclosed), now make it a general rule that medical records must follow prisoners when they are transferred to another establishment. Moreover, at the suggestion of the Federal Ministry of Justice a working party of prison doctors is preparing uniform rules on how to keep medical records, with special emphasis on completeness and sufficient information for doctors treating the patient subsequently. A new information leaflet for prisoners is also being drafted.

Para. 126 (Medical examination of new prisoners, information leaflets)

Steps are being taken to ensure earlier initial examinations in the penitentiaries. However, neither at Stein nor at Schwarzau do prisoners start their sentence directly after living in freedom but are transferred from a court's detention centre (or another penitentiary); hence both prisons normally have the medical reports from the transferring establishments.

Prison governors have been instructed to see that the available information leaflets, including in particular those on drug abuse and HIV infections, are reliably distributed among the prisoners. The information leaflets issued by the Federal Ministry of Justice have been routinely translated into a large number of languages for many years.

Para. 127 (Doctor's visits and medical examinations at Schwarzau Prison)

The Federal Ministry of Justice has been concerned with the deficiencies and problems of medical care in Schwarzau Prison for some time. But attempts to find a different prison doctor have so far been fruitless. The CPT's report has been taken as an incentive to speed up the Ministry's efforts to review the medical services in that establishment.

Para. 128 (Psychiatric care)

As a result of legislative amendments over the last years, the government has succeeded in ensuring that psychiatric hospitals in Austria are largely run on the "open system". This means that there are hardly any hospitals left which would be able to admit and securely detain even the relatively small number of mentally ill or mentally defective persons who are now held in establishments administered by the Federal Ministry of Justice because they are dangerous. One of these establishments is Göllersdorf Prison, where the treatment philosophy centres on the care of patients suitable for therapy. Persons not suitable - or not suitable now - to undergo therapy cannot be accommodated at Göllersdorf in the medium or long term and therefore have to be housed in specially equipped sections of other prisons. In addition, a small special ward for mentally ill women was recently created at the Wilhelmshöhe special hospital (a branch of the Vienna-Josefstadt Prison), and a similar institution for men at Wien-Josefstadt is nearing completion. It is also intended to set up an institution for mentally ill prisoners at Graz-Karlau Prison (to be run conjointly with the Graz University Psychiatric Clinic). The Federal Ministry of Justice is also continually pursuing plans - conjointly with the regional governments, since public health is a regional responsibility in Austria - to establish special secure wards in psychiatric hospitals to accommodate mentally ill prisoners. Such wards already exist in regional psychiatric hospitals in Innsbruck

Salzburg, Linz, Klagenfurt and Vienna; negotiations with the other suitable hospitals are in progress.

Para. 129 (HIV tests)

Prison doctors are expected to give counselling on HIV tests to all prisoners, so that all of them are offered the opportunity of being tested. Testing is recommended to prisoners who come from high-risk groups. But any such test is only administered if the prisoner consents.

The fact that a person is HIV positive is covered by medical confidentiality. But it has been found that many patients tell other prisoners as well as prison staff about their condition. Sometimes one of the ideas behind this may be to obtain easier terms in prison. Nor can it be ruled out, although these matters are always treated with the greatest discretion, that third persons draw their conclusions from various circumstances surrounding carriers of the virus (the fact that they are taken to see certain types of medical specialists etc.). In any case, however, this kind of information certainly does not reach the "public" in the prison via the prison's medical services.

Para. 131 (Information and counselling on HIV infection and AIDS in Schwarzau Prison)

On admittance, every new prisoner at Schwarzau gets a booklet on HIV and AIDS and how to prevent them. The booklet also tell her that the prison doctor and the prison's social service are available for further information. If the prisoner wishes, the social service puts her in touch with "AIDS-Hilfe". This may lead to visits from representatives of that organisation or the prisoner may be taken to the organisation's offices.

Para. 134 (Contact with the outside world, especially visits)

The Ministry's prison service has made great efforts, especially over the last decade, to ensure a very considerable extension of visiting opportunities - efforts which have been reflected not only in an increase in the statutory

minimum visiting time but also in allowing extensions to visits in individual cases. Additional facilities of the kind the CPT seems to have in mind (visits by partners for several hours or over the weekend) come up against constraints in organisational, staffing and financial terms. There are no rooms which would permit prison administrations to allow prisoners such visits on an appreciable scale, and neither is there enough staff. However, with the prison leaves granted to prisoners on an increased scale over the last few years, a practicable way to solve the problem in a different manner has been found at least for some groups of the inmates of penitentiaries.

The Federal Ministry of Justice is following closely the debates going on in many countries about letting prisoners have sexual contacts with visitors. What the Ministry does not like about a number of systems introduced in other countries is the acceptance of the implication that the sexual life of prisoners and their visitors should be determined not by themselves but by outside forces. In other systems, the Ministry finds, there is too little respect for the dignity of women. The Ministry knows that the method it has chosen is only an intermediate solution. Efforts to find a humane way to tackle this question will be kept up.

Para. 135 (Use of the telephone by prisoners)

The provisions of Section 96a of the StVG concerning the use of phones by prisoners, in effect since 1 January 1994, were at first applied very generously after their introduction. Calls were rarely monitored. Certain abuses, such as attempts to arrange drug deals over the phone or calls made to pester victims and their families, have shown that it is essential to exercise some control over whether a prisoner meets the conditions under which the right to telephone may be exercised, as well to listen in from time to time to what is being said. For a long time there was no satisfactory solution to the technical aspect of monitoring, but now there seems to be equipment on the market which largely meets the requirements of prison authorities. Hence they can now continue with their efforts to improve telephone facilities for prisoners.

Paras. 137 to 140 (Improvements for foreign prisoners)

With the political developments in Europe since 1989, the foreign prison population in Austrian penitentiaries at first changed dramatically. Since the mid-nineties, however, the proportion of foreign prisoners in Austrian penitentiaries has remained more or less stationary at 25 %. Only about half of them have an adequate command of German. This is why the quantities of foreign books in the now most common languages have been stocked up considerably in the libraries of all penitentiaries. To the extent that foreign newspapers and periodicals can be ordered, they are also available to prisoners. For the Eastern part of Austria, a Foreign Prisoners Desk concentrating on the Arab world has been established at the Wien-Josefstadt Prison. Internal prison regulations and other essential by-laws of penitentiaries are made available in the most common languages.

For foreigners who are members of one of the religious communities officially recognised in Austria (such as Muslims or Hindus) there is the possibility in every penitentiary to be served food which meets their religious codes.

Cultural and other communal activities are held in several languages where this is possible. (Christmas and New Year celebrations at the establishment for juvenile prisoners in Wien-Erdberg are an example. The languages in which they are held regularly include Turkish and Serbo-Croat, and musical groups from these cultures are invited to perform.)

Language courses offered to prisoners to enable them to learn German are a special focus of activities. Moreover, the administration has offered some warders and wardresses opportunities to attend language courses in order to improve communication with foreigners.

Since 1 April 1996, matters concerning foreign prisoners have been concentrated in one division in the Justice Ministry, which makes it easier to solve problems in this area more effectively and quickly.

Moreover, the administrative regulations concerning the execution of criminal sentences (Vollzugsordnung), which took effect at the same time and which determine the organisational structure of penitentiaries, define the execution of prison sentences imposed on foreigners explicitly as a specific task while at the same time stressing, in view of the large proportion of foreigners, that it must be treated as an integral part of the general tasks of prison administration.

See also the answers to paras. 106 and 126.

Para. 142 (Disciplinary procedure, house arrest)

The Federal Ministry of Justice makes every effort to ensure that decisions on disciplinary matters are passed quickly, especially in those cases where the prisoner is kept in segregation pending the decision (Section 116 para. 2 of the StVG). In recent years, therefore, the average length of segregated detention has decreased considerably (normally, segregation is credited towards house arrest where this is imposed as a disciplinary sanction). But before any such decision a formal investigation is mandatory, which may cause delays in some cases.

Para. 146 (Solitary confinement)

A formal decision imposing solitary confinement always states the permissible maximum duration only. If conditions change before the maximum period is reached, the prisoner is taken out of solitary confinement without explicit formalities. As far as is known to the Federal Ministry of Justice, prisoners kept in solitary confinement against their wishes - their number is very small - get particulary intensive care. Many personal conversations are conducted with them.

Solitary confinement not requested by the prisoner is normally the result of his behaviour (e.g. aggressive acts against prison staff or other prisoners). When the incident is investigated, the prisoner is of course given an opportunity to state his case. Solitary confinement may then follow as a security precaution, on which the prisoner does not have to be asked for his views, although the prison doctor and the prison psychiatrist may be consulted. It is completely out of the question that any such prisoner is not informed of the reasons of his solitary confinement. Moreover he has a right to appeal. The official decision on any such appeal must be reasoned.

It has to be stressed in this context that the prison administration itself, in view of the general atmosphere in the penitentiary, is interested in keeping such periods of solitary confinement as brief as possible and in returning the prisoner

to normal life as quickly as possible; in fact, if necessary, certain alleviations are allowed from the beginning.

Para. 147 (Special security measures, clothing for prisoners in Stein)

The Stein Governor's memorandum of 10 March 1994 is not intended in any of its points to have prisoners kept naked in solitary confinement or to refuse them outdoor exercise. One sentence, if taken out of context, might, however, be misunderstood to mean that the prisoner is allowed clothing only in exceptional cases. But if read in its proper context, especially against the statutory background, the meaning is clear. Nor has there ever been any case where a prisoner was kept naked in solitary confinement over a protracted period of time. This is only conceivable for the time span between taking off the normal prison uniform and putting on special protective clothing, or for a very short time in serious emergencies where the prisoner cannot be secured otherwise. The same applies to restrictions on outdoor exercise.

The Governor has been advised to use clear language.

Para. 148 (Natural light in special security cells in Stein)

In the last stage of the rebuilding and expansion now in progress, Stein Prison will get new segregation cells. Until then, regrettably, one has to make do with the old facilities.

Paras. 150 and 151 (Prison committees)

Much as a closer involvement of prison committees in the work of prison administrations would be desirable, experience over the last 25 years has shown that even their current activities come up against the limits of the work capacities of their members, who serve in addition to their normal professional work and on an honorary basis. These are committees explicitly structured to act collectively rather than through individual members. Only thereby is a compromise between the various viewpoints guaranteed. Even under the present dispensation, some committees find it difficult to gather enough members for prison visits. Hence weekly visits would not be realistic.

Nevertheless, the CPT's recommendations will be brought to the attention of the committees as requested.

The question of publishing the reports of the prison committees or of other ways to find a place for such reports in the PR activities of the prison service will be examined.

Finally, it may be noted that the CPT's queries and recommendations have been taken into account in the current drafting of a Manual for officials entrusted with reviewing the work of prisons and their supervisory authorities. A copy is enclosed.