COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2005) 13

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

from 14 to 23 April 2004

The Austrian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2005) 14.

Strasbourg, 21 July 2005

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Copy of the letter transmitting the CPT's report

Strasbourg, 14 December 2004

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Austria drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Austria from 14 to 23 April 2004. The report was adopted by the CPT at its 55th meeting, held from 8 to 12 November 2004.

I would like to draw your attention in particular to paragraph 150 of the report, in which the CPT requests the Austrian authorities to provide **within six months** a response on the action taken upon its report. The Committee would be grateful if it were possible, in the event of the response forwarded being in German, for it to be accompanied by an English or French translation. It would also be most helpful if the Austrian authorities could provide a copy of the response in an electronic form.

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

Yours faithfully,

Silvia CASALE
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Ambassador Hans WINKLER
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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT visited Austria from 14 to 23 April 2004. The visit formed part of the Committee's programme of periodic visits for 2004 and was the CPT's fourth periodic visit to Austria.[1]

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

- Silvia CASALE, President of the CPT (Head of the delegation)
- Laszlo CSETNEKY
- Pétur HAUKSSON
- Hildburg KINDT
- Veronica PIMENOFF
- Pieter Reinhard STOFFELEN

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

- Petya NESTOROVA
- Muriel ISELI
- Michael NEURAUTER.

They were assisted by:

- James McMANUS, Professor of Criminal Justice, Glasgow Caledonian University, Scotland (expert)
- Ingrid KURZ (interpreter)
- Bettina LUDEWIG-QUAINE (interpreter)

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[1] The CPT's previous visits to Austria took place in May 1990, September/October 1994 and September 1999. The Committee's reports on these visits, as well as the respective responses of the Austrian authorities, have been made public (cf. documents CPT/Inf (91) 10, CPT/Inf (91) 11, CPT/Inf (96) 28, CPT/Inf (96) 29, CPT/Inf (2001) 8 and CPT/Inf (2001) 9).

- Friederike SCHLEGL (interpreter)
- Suzanne WATZEK (interpreter)
- Alexander ZIGO (interpreter).

B. Establishments visited

3. The delegation visited the following places of detention:

Police establishments

- *Police detention centre* (*Polizeianhaltezentrum*, "PAZ"), Innsbruck
- PAZ Linz
- PAZ Vienna-Hernalser Gürtel*
- PAZ Wels
- Police station, Maximilianstrasse 4, Innsbruck
- Criminal police headquarters East (*Kriminalkommissariat*), Leopoldgasse 18, Vienna
- Police station, Tannengasse 8-10, Vienna
- Criminal police headquarters West (*Kriminalkommissariat*), Wattgasse 15, Vienna
- Police station, Westbahnhof, Vienna
- Police station, Eferdinger Strasse 12, Wels
- Police station, Linzer Strasse 155b, Wels

Prison establishments

- Linz Prison
- Vienna-Josefstadt Prison* (units for juvenile prisoners)
- Vienna-Mittersteig Prison, including the detached unit at Floridsdorf

Psychiatric hospitals

- Secure wards at Wagner-Jauregg Psychiatric Hospital, Linz.

* Follow-up visit.

C. Co-operation received during the visit

4. As had been the case during the CPT's previous visits to Austria, the degree of co-operation received by the delegation, both from the national authorities and from staff at the establishments visited, was excellent.

5. The CPT is grateful for the considerable time devoted to its delegation by Dieter BÖHMDORFER, Federal Minister of Justice, Maria RAUCH-KALLAT, Federal Minister of Health and Women's Issues, and senior officials from the Federal Ministries of Foreign Affairs, the Interior and Justice. In the course of the visit, the delegation also met Ernst STRASSER, Federal Minister of the Interior, and had discussions with Peter KOSTELKA, Member of the Ombudsman Board, Wolfgang TAUCHER, Director of the Federal Asylum Agency, and Erwin FELZMANN, Chairman of the Human Rights Advisory Board, as well as a number of members of that board.

The CPT wishes in particular to express its appreciation of the assistance provided to its delegation by Stefan SCHOLZ, Counsellor at the Federal Ministry of Foreign Affairs, designated as contact person during the visit.

A number of discussions were also held with representatives of international and non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations met by the delegation is set out in Appendix II to this report.

6. The delegation enjoyed immediate access to all the places visited (including those not notified in advance), was provided with all the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty. It was clear that information on the CPT's mandate had been circulated to all relevant staff.

7. However, the principle of co-operation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. Regrettably, the delegation's findings during the visit suggest that such action has not been taken in certain areas which have given rise to serious concerns by the CPT in the past, in particular the detention of foreign nationals pending deportation and conditions of detention of remand prisoners. As regards the legal safeguards for persons in police custody, the introduction of provisions granting the right of access to a lawyer during police custody is a welcome development; however, the CPT remains concerned about the actual content of this right and the practical implementation of the new provisions.

The CPT trusts that the Austrian authorities will make continued efforts to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.

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

8. At the end of the visit, the CPT's delegation met senior Government officials in order to acquaint them with the main facts found during the visit. On this occasion, the delegation made two immediate observations, in pursuance of Article 8, paragraph 5, of the Convention.

9. The first immediate observation concerned the police detention centres (PAZ) in Linz and Vienna-Hernalser Gürtel. At the PAZ in Linz, outdoor exercise was limited in practice to 30 minutes a day and even this was not offered every day; further, detainees placed in the segregation cells were not allowed to take outdoor exercise at all. At the PAZ in Vienna-Hernalser Gürtel, the vast majority of deportation detainees were not offered any out-of-cell activities, not even one hour of outdoor exercise. The delegation called upon the Austrian authorities to take steps to remedy this situation. All detainees, without exception, should be offered the possibility to take at least one hour of outdoor exercise every day. Further, urgent steps should be taken to offer some activities to deportation detainees at the PAZ in Vienna-Hernalser Gürtel.

10. The second immediate observation related to the regime of activities offered to juvenile prisoners at Vienna-Josefstadt Prison. Due to the low number of staff, which had reached a critical level, this regime was drastically reduced. For those juveniles who did not attend school, out-of-cell activities were limited to outdoor exercise (between 1 hour and 1½ hours a day) and access to a recreation room two to three times a week for some 1½ hours. The delegation called upon the Austrian authorities to significantly increase the number of hours during which juveniles can engage in out-of-cell activities.

11. The above-mentioned immediate observations were subsequently confirmed in a letter of 5 May 2004 from the President of the CPT. The Committee requested the Austrian authorities to provide:

- within three months, a report on the action taken in the light of the immediate observation concerning the police detention centres in Linz and Vienna-Hernalser Gürtel;

- within three months, a concrete plan of action in the light of the immediate observation concerning Vienna-Josefstadt Prison, and within six months, an account of the actual measures taken to implement this plan.

By letters of 2 and 4 August 2004, the Austrian authorities informed the CPT of measures taken in response to the above-mentioned immediate observations. Those measures will be assessed later in the report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Establishments under the authority of the Federal Ministry of the Interior

1. Preliminary remarks

12. At the time of the 2004 visit, the basic legal provisions governing the detention of persons by the law enforcement agencies remained as summarised in the CPT's report on the 1999 visit. It is recalled that the maximum period of detention by the police or gendarmerie is 48 hours in the case of criminal suspects, and 24 hours in the case of persons suspected of administrative offences. Further, the police may hold persons for up to 6 hours for the purpose of establishing their identity.

As regards persons detained under the Aliens Act, they can be held by the police for up to 48 hours. The detention of foreign nationals awaiting enforcement of a removal order (*Schubhäftlinge*) should not, as a rule, exceed two months; however, such persons may be detained on the basis of the same information for up to six months within a two-year period.

It should be noted that a series of amendments to the Code of Criminal Procedure, with implications for the rights of criminal suspects, were adopted in 2004 and will enter into force on 1 January 2008. Further, amendments to the Asylum Law entered into force on 1 May 2004 (cf. paragraph 35).

2. Ill-treatment

13. In the course of the 2004 visit, the CPT's delegation received a considerable number of allegations of physical ill-treatment of criminal suspects detained by the police. The preponderance of those allegations came from persons who had been detained in Linz and the surrounding area. The allegations heard related to both the time of apprehension and that of subsequent questioning, the risk of ill-treatment apparently being particularly high in respect of criminal suspects who did not confess immediately.

The forms of physical ill-treatment alleged concerned slaps, punches, kicks, blows to the head with a telephone book, prolonged and tight handcuffing, and the combined use of hand and ankle cuffs – linked together – for lengthy periods. In respect of several detained persons, medical members of the delegation found marks consistent with their allegations that handcuffs had been applied tightly. Further, some allegations were received of rude behaviour, verbal abuse, rough treatment during body searches and excessive psychological pressure during questioning.

Of particular concern to the CPT are the allegations made by a number of juvenile detainees – sometimes as young as 14 – of physical ill-treatment and threats in order to obtain confessions.

It should be noted that many detained persons interviewed by the delegation were of the opinion that being ill-treated by the police was something "normal" and not worth complaining about. Staff involved in the admission procedure at Linz Prison indicated that persons arriving from police custody frequently spoke, confidentially, about problems of ill-treatment by the police, and sometimes bore injuries. However, as a rule, they did not lodge formal complaints.

14. In the report on its visit in 1999, the CPT noted that there had been some improvements as regards the treatment of persons detained by the police. In their response to that report, the Austrian authorities referred to a number of positive steps taken to combat police ill-treatment. These steps included increased emphasis on human rights issues as part of the professional training of law enforcement officials, the setting up of a Human Rights Advisory Board, as well as the adoption of new rules for the investigation of complaints of ill-treatment against police officers.

Unfortunately, the information gathered during the 2004 visit suggests that the situation, rather than continuing to improve, remains stagnant. Concern about the persistence of ill-treatment by the police was expressed by many of the delegation's interlocutors. This highlights the need for the Austrian authorities to exercise greater vigilance in this area. **The CPT calls upon the Austrian authorities to redouble their efforts to combat ill-treatment by the police. Senior police officers should be required to deliver to their staff the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions.**

15. On a more positive note, as was the case during previous visits, hardly any allegations were received of physical ill-treatment by officers responsible for supervising the detention areas of the four police detention centres (PAZ) visited. However, a small number of allegations were heard of rude behaviour (including xenophobic or racist remarks) by certain officers in respect of foreign nationals detained at the PAZ visited. In addition, the delegation received a number of allegations from such persons concerning the imposition of arbitrary sanctions and undue restrictions. The frequent lack of a common language clearly did not help matters.

16. Specific mention should be made of the PAZ in Linz, where a foreign national detained pending deportation alleged that, two weeks prior to the delegation's visit, he had been placed in a padded segregation cell with his hands cuffed behind his back, his ankles cuffed and the two sets of cuffs linked in a way which maintained him in a hyper-extended position for several hours. The duty officer's report indicated that, after being taken to hospital in order to have a battery (which he had swallowed) removed from his stomach, the person concerned was placed in a segregation cell because he threatened to commit suicide and was being aggressive, and his hands and ankles were cuffed. Staff spoken to by the delegation confirmed that the two sets of cuffs were linked.

The delegation was informed that hand and ankle cuffs were the only means of restraint available at the PAZ, and that it was a matter for the officer in command to decide when they should be applied. The cuffs were kept on for as long as necessary, but no longer than one night. Staff affirmed that the practice of joining the two sets of cuffs was permitted. According to the Director of Linz Police Directorate, this method was not part of the staff's standard training and was used only very rarely, when there was an extreme danger of self-injury.

In their letter of 4 August 2004, the Austrian authorities provided additional information on

the circumstances of the above-mentioned case. According to that information, the person concerned was hand and ankle-cuffed from 5.20 p.m. to 10 p.m.; however, the hand and ankle cuffs were not linked together at any time. It was also indicated that during the period from 1 January 2003 to 16 April 2004, there had been six cases of hand and ankle cuffs linked together, but only for the duration absolutely necessary and under permanent supervision by staff.

In a custodial setting, the practice of restraining a person in a hyper-extended position with hand and ankle cuffs linked together behind the back is not acceptable. Staff should be trained to use other, less hazardous, methods for controlling detained persons who represent a danger to themselves or to others, such as verbal instruction and manual control techniques. Further, the police should call in a medical doctor whenever it is found necessary to restrain an agitated or violent detainee, and act in accordance with his opinion. If recourse is had to means of physical restraint vis-à-vis such a detainee, they should be removed at the earliest opportunity; means of restraint should never be applied, or their application prolonged, as a punishment. **The Committee recommends that the Austrian authorities issue instructions, in the light of the above remarks.**

17. In 2003, the CPT received reports concerning the death of Cheibani WAGUE, which occurred on 15 July 2003 in Vienna while he was being restrained – in a highly agitated state – by police officers and a medical emergency team. He was reportedly placed face down on the ground, ankle-cuffed and injected with sedating medication; in the meantime, police officers were apparently standing on him with both feet.

During the 2004 visit, the CPT's delegation was informed of a decision dated 29 January 2004 of the Independent Administrative Senate (UVS) in Vienna concerning the above-mentioned case. In that decision, inter alia, the following acts were declared unlawful: (i) the disproportionate and life-threatening restraining of the person on the ground; (ii) the way in which ankle cuffs were applied; (iii) the ill-treatment of the person concerned whilst being restrained on the ground (including punches to the head, neck and upper part of the body; insults).

The CPT would like to be informed in due course of the outcome of the criminal and disciplinary proceedings initiated in the above-mentioned case, as well as measures subsequently taken to avoid similar situations in the future (including any amendments to Instruction No. 5121/35-II/4/02 of the Federal Ministry of the Interior concerning the use of means of restraint by law enforcement agencies).

18. Adequate professional training for law enforcement officials is an essential component of any strategy for the prevention of ill-treatment.

In their response to the Committee's report on the visit in 1999, the Austrian authorities provided detailed information on the content of training programmes for law enforcement officials as well as other training projects in the area of human rights. This information suggests that an effort has been made to incorporate human rights concepts into the initial and ongoing training of police officers. Further, the CPT has noted with interest the information provided by the Austrian authorities on the procedure for recruiting law enforcement staff (which includes psychological aptitude tests) and the psychological counselling offered to such staff with a view to helping them cope with extreme situations.

The CPT is also grateful for the comprehensive information contained in the authorities' response to the 1999 visit report on the content of special training in interrogation techniques. At the time of the 2004 visit, the delegation learned that the Federal Ministry of the Interior was in the process of standardising interrogation techniques and implementing additional guidelines on the conduct of interrogations. **The CPT would like to receive further information on this issue.**

Moreover, **the CPT would like to be informed of the steps taken by the Federal Ministry of the Interior to implement the recommendations of the study carried out by the Human Rights Advisory Board on the use of discriminatory language by law enforcement officials.**

19. Another essential component of any strategy to prevent ill-treatment is 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; this will have a very strong dissuasive effect.

The Austrian authorities have taken certain measures to meet the concerns expressed by the Committee in respect of the investigation of complaints of ill-treatment by the police. In particular, according to a Federal Ministry of Justice Instruction of 30 September 1999[2], all such complaints should immediately be brought to the attention of the prosecutor's office and any investigation should be carried out by an investigating judge (and no longer by the police).

In order for the CPT to obtain a full picture of the current situation, **the Committee would like to receive the following information in respect of 2003 and 2004:**

- **the number of complaints of ill-treatment made against law enforcement officials;**

- **the number of criminal and disciplinary proceedings instituted as a result of those complaints;**

- **an account of criminal and disciplinary sanctions imposed.**

Further, the CPT would like to be informed of progress made in respect of the drafting of a Government bill for the amendment of the disciplinary law provisions within the Public Service Act (*Beamtendienstrechtsgesetz* **).**

20. Systems for the inspection of police detention facilities by an independent authority are capable of making an important contribution towards the prevention of ill-treatment and, more generally, of ensuring satisfactory conditions of detention.

In 1999, the Austrian authorities set up the Human Rights Advisory Board (*Menschenrechtsbeirat*), with a view to introducing a mechanism for inspecting conditions of detention in police establishments and monitoring the observance of human rights by law enforcement agencies.[3] During the 2004 visit, the delegation had the opportunity to hold meetings with senior members of the Advisory Board and discuss in detail its activities.

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2 Instruction 880.014/37-II.3/1999.

3 Cf. Sections 15a, 15b and 15c of the Security Police Act (SPG) and Ordinance of the Federal Minister of the Interior No. 395/1999 (as amended by Ordinance No. 260/2004).

The Advisory Board is entitled to visit all places of detention falling under the authority of the Federal Ministry of the Interior, as well as to monitor police actions involving the use of coercion, such as supervising demonstrations and raids. Six regional commissions have been set up which visit police detention facilities on a regular basis and draw up reports concerning their findings. On the basis of these findings, the Board can issue recommendations to the Federal Minister of the Interior. The Advisory Board can also establish thematic working groups, which deal with specific human rights matters. According to its Chairman, the Advisory Board's role is not to identify individual deficiencies but structural problems. The Advisory Board has published a number of annual and thematic reports, copies of which have been provided to the CPT[4].

In its report on the visit in 1999, the Committee stressed that, if it operates efficiently, the Advisory Board would constitute a significant safeguard against ill-treatment. Unfortunately, the information gathered during the 2004 visit suggests that certain aspects of the Advisory Board's status diminish its effectiveness. In particular, the Advisory Board cannot be seen as being truly independent, to the extent that its activities are financed by the Federal Ministry of the Interior and it is the Federal Minister of the Interior who selects three of the Board's members, chooses the NGOs represented on the Board and can terminate the Board members' appointment. Further, due to the fact that the Advisory Board's jurisdiction is limited to detention facilities under the Federal Ministry of the Interior, the Board cannot follow cases through to a logical conclusion, i.e. interview detained persons after their transfer to prison. **The CPT invites the Austrian authorities to review the status of the Human Rights Advisory Board, in the light of the above remarks.**

21. The role played by medical doctors in the prevention of ill-treatment has been emphasised by the CPT in the past (cf. paragraph 27 of CPT/Inf (96) 28). The Austrian authorities have subsequently taken steps to bring the medical reporting of injuries observed on persons in police custody in line with the Committee's recommendations.

At the time of the 2004 visit, the recording of injuries observed on persons in police custody, as well as on newly admitted prisoners, was made on a standard form filled out in three copies (one kept in the doctor's office, one filed in the medical records and one sent to the competent authorities). The form recorded the responsible police officer's account of the incident, any relevant statements by the detained person, a description of the injuries observed and the doctor's assessment of their degree of seriousness. That said, no conclusion was drawn by the doctor as to the consistency between the objective medical findings and the allegations made by the detained person concerned. Further, the delegation's examination of forms recording injuries revealed that they did not always record the detained persons' statements.

The CPT recommends that the form filled out by doctors concerning injuries observed on persons in police custody contain, in addition to the already existing elements, the doctor's conclusions as to the degree of consistency between any allegations made by the detained person concerned and the objective medical findings.

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[4] Of particular interest are the 2003 report "Use of discriminatory language by law enforcement officials", the 2004 report "Use of force by the police – minimising risk in problematic situations", and the 2003 evaluation report on the state of implementation of the Board's recommendations.

3. Safeguards against the ill-treatment of persons deprived of their liberty

22. In previous visit reports, the CPT examined in detail the formal safeguards against ill-treatment which are offered to persons deprived of their liberty by the law enforcement agencies in Austria and their operation in practice. The Committee has placed particular emphasis on three rights, namely the rights of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer, and to have access to a doctor. As the CPT has repeatedly stressed, these are fundamental rights which should be enjoyed by all categories of persons from the very outset of their deprivation of their liberty (that is, from the moment when the persons concerned are obliged to remain with the law enforcement agency).

As far as the rights of notification of custody and access to a doctor are concerned, the 2004 visit did not bring to light any particular problems (however, cf. paragraph 50 concerning the presence of police officers during medical examinations).

a. access to a lawyer

23. The CPT has repeatedly indicated the importance it attaches to the right of access to a lawyer during police custody, a right which should apply from the very outset of custody. In their response to the report on the visit in 1999, the Austrian authorities indicated that, in the context of the reform of the Code of Criminal Procedure (*StPO*), consideration would be given to granting this right to persons in police custody.

By the time of the 2004 visit, a notable change had finally taken place. The possibility of access to a lawyer for persons in police custody was granted via a joint instruction of the Federal Ministries of the Interior and Justice of 14 February 2003, issued following a decision of the Higher Administrative Court[5]. This right will also be incorporated into the Code of Criminal Procedure (Sections 57 to 63 and 164), pursuant to amendments which will enter into force on 1 January 2008.

24. The CPT welcomes the introduction of these new provisions. However, the 2004 visit revealed that they still do not fully comply with the standards advocated by the CPT.

According to the above-mentioned provisions, the police may decide that contacts between a detained person and his/her lawyer be supervised (and limited to the provision of general legal advice) during police custody[6] and/or deny the presence of a lawyer during interrogations, "insofar as it is considered necessary to avoid that the investigation or the gathering of evidence are adversely affected by the lawyer's presence" [7].

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5 In a decision of 17 September 2002, the Administrative Court of Appeal ruled that suspects are entitled to contact and call in a legal assistant when being questioned by the police or gendarmerie, and must accordingly be informed of that right.

6 Section 59, paragraph 1, of the amended Code of Criminal Procedure.

7 Section 164, paragraph 2, of the amended Code of Criminal Procedure.

25. The CPT acknowledges that it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer chosen by him. However, this should not result in the rights to talk to a lawyer in private and have a lawyer present during interrogations being totally denied during the period in question. 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 that the Austrian authorities take steps to ensure that:

- **the right of access to a lawyer is enjoyed by all persons deprived of their liberty, as from the moment they are obliged to remain with the law enforcement agency;**

- **the rights to talk to a lawyer in private and to have a lawyer present during interrogations are never totally denied to persons deprived of their liberty.**

26. During the visit, the delegation sought information about the availability of legal aid to persons in police custody. It became clear that criminal suspects who lack the means to pay for legal services may, in accordance with the provisions of the Code of Criminal Procedure, be appointed an ex officio lawyer only after the court's decision to remand them in custody, i.e. 96 hours after their apprehension. The delegation was told that some Bar Associations in the provinces were trying to organise legal aid to indigent suspects, but in general there were not enough lawyers interested in criminal matters, the financial arrangements were inadequate and lawyers were not available around the clock.

For as long as 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 at that stage will remain, in most cases, purely theoretical. **The Committee recommends that a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer be developed as a matter of urgency and be applicable as from the very outset of police custody.**

b. information on rights

27. At all police establishments visited, the delegation noted the presence of an information sheet setting out the rights of persons detained by the police, which was available in a variety of languages. However, at some police stations (e.g. at the Criminal police headquarters West, Vienna), it was noted that only the German version of the information sheet had been updated to reflect the previously mentioned joint circular by the Federal Ministries of the Interior and Justice concerning the right of access to a lawyer.

Most detained persons interviewed by the delegation indicated that they had received information on their rights upon or soon after apprehension. However, few of them seemed to understand their rights fully. In this connection, it should be noted that the German version of the information sheet was rather legalistic and not very easy to understand (other language versions were notably simpler and more user-friendly). Further, the delegation observed that the approach of police staff to providing information on rights appeared to be largely bureaucratic: the information sheet was regarded as one more piece of paperwork and, provided that police officers had gone through the process of having it signed or giving it out, that task was considered as completed. Ensuring that detained persons are in a position to understand their rights fully and therefore to exercise them effectively is, of course, a different matter.

28. Following the CPT's visit, the Austrian authorities have taken some further steps to improve the provision of information to detained persons on their rights. By circular of 29 April 2004, the Federal Ministry of the Interior issued an updated information sheet for persons in police custody (drawn up jointly with the Federal Ministry of Justice), which came into use on 1 May 2004. A copy of this information sheet was made available to the Committee; it reflects the current legal situation and also applies to foreign nationals detained pending deportation. Further, by letter of 15 May 2004, the Federal Ministry of Justice instructed all presidents of appeal courts and chief public prosecutors to take particular care to ensure that arrested suspects are not only given the information sheet but are actually able to understand their rights; for this purpose, it should be checked during the interrogation that the information has been given and understood.

The CPT welcomes the Austrian authorities' efforts to improve the provision of written information to persons in police custody. **The Committee invites the authorities to take further steps to ensure that the information sheet is made more user friendly.**

c. specific issues related to young persons

29. The delegation paid particular attention to the application of specific safeguards concerning young persons apprehended in relation to criminal offences.

Austrian legislation makes special provision for juveniles (under 18) and young adults (under 21) apprehended in relation to a criminal offence. In particular, it is specified that in the case of persons under 18, a parent, guardian or another relative should be informed of the apprehension. Further, under Sections 37 (1) and 46a of the Juvenile Justice Act, persons under 21 can ask for a trusted person to be present while they are being questioned. In this case, the interrogation should not start until the arrival of the trusted person, provided that that could be reconciled with the purpose of the interrogation and that the delay would not unacceptably extend the period of custody.

The CPT must stress that the point of special provisions for young persons is to protect this age group and to provide them with adult support so that they do not have to make decisions with important legal implications on their own. If the onus is placed on the young person to request the presence of a trusted person, this defeats the object; such a presence should be obligatory. **The Committee recommends that the Austrian authorities take steps to ensure compliance with this requirement.**

30. The delegation was particularly concerned to find from interviews with detained juveniles and police officials, as well as from court and police documents, that persons as young as 14 were questioned for long periods and "invited" to sign statements admitting to criminal offences without the benefit of the presence of either a person of confidence or a lawyer. This is totally unacceptable.

The CPT recommends that steps be taken to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present.

31. The information sheet provided to persons in police custody contained a special section concerning the rights of juveniles and young adults. However, the delegation encountered several instances of juveniles who had signed at the top of the information sheet, but who had clearly not understand the special rights described in it. In some cases this was apparently due to the fact that the information sheet was presented as general paperwork; in other cases, the suspects were unable to understand the convoluted legal language of the sheet or were foreign nationals who could not read German.

The CPT recommends that a specific version of the information sheet, setting out the particular position of detained juveniles and young persons, be developed and given to all such persons taken into custody. **For this age group especially, the information sheet should be made more easy to understand and available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension. In this connection, the Austrian authorities should take into account the recent 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[8].**

32. More generally, the CPT wishes to stress that the setting up of separate juvenile police departments, as occurs in some countries, is one way of acknowledging the vulnerability of this age group and the need to provide special safeguards. By removing juveniles from the general population of persons in police custody, this approach provides an opportunity to reinforce the special treatment that should be accorded to this age group. In such systems, juvenile police staff are specially recruited and trained in the specific legal procedures relating to juveniles. **The CPT invites the Austrian authorities to consider adopting the above-mentioned approach.**

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8 Cf. 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. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult…"

d. conduct of interrogations

33. During the visit, senior officials from the Federal Ministry of the Interior informed the delegation that an experiment had been tried with video-recording of police interviews. This had to be done on a voluntary basis as far as criminal suspects were concerned, due to the privacy laws. However, the experiment was terminated, apparently because criminal suspects did not feel comfortable being filmed and refused to speak. It was also indicated that the police officers who took part in the experiment had not received specific training.

The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions. Consequently, **the CPT invites the Austrian authorities to persevere in their attempts to introduce electronic recording of police interviews. Further, police officers should receive specific training for the conducting of electronically recorded interviews.**

4. Conditions of detention

a. police detention centres (PAZ)

i. introduction

34. The detention by the police of foreign nationals awaiting enforcement of a removal order (*Schubhäftlinge*) was one of the focal points of the CPT's visit in 2004. The delegation consequently visited four police detention centres (*Polizeianhaltezentren, PAZ*), in Vienna-Hernalser Gürtel, Innsbruck, Linz and Wels.

It should be recalled that such centres perform a multiple function: they are used to hold several quite distinct categories of detainees, namely criminal suspects (for up to 48 hours), persons serving an administrative sanction (for up to 6 weeks) and foreign nationals detained pending deportation (for a maximum of 6 months within a two-year period). While examining in their totality conditions at the police detention centres visited, the delegation concentrated on the situation of the last category of detainee, which constituted between 76% and 93% of the population of each PAZ.

35. The delegation which carried out the 2004 visit held a meeting with the Director of the Federal Asylum Agency (*Bundesasylamt*) in order to discuss, inter alia, the implications of the entry into force on 1 May 2004 of amendments to the Asylum Law introduced in 2003. The delegation was informed that asylum seekers would be accommodated in three reception centres operating throughout the country, where an accelerated procedure will make an initial decision about asylum applications. The first asylum interview should be conducted within no more than 72 hours. Trained counsellors will be available to assist asylum seekers and at the second interview, the presence of an independent legal counsel, funded under legal aid, will be mandatory. A first-instance decision should be taken within 20 days. Asylum seekers who leave the reception centre without authorisation, or whose application is rejected at the first instance, will be placed in a PAZ; detention in a PAZ pending deportation cannot exceed two months.

In this connection, the CPT has taken note of the decision of the Constitutional Court dated 15 October 2004, whereby some of the 2003 amendments to the Asylum Law have been declared unconstitutional, in particular Section 32 (3), which excludes an automatic suspensive effect of an appeal against a negative first instance decision.

The CPT would like to receive information on the experience stemming from the implementation of the amended Asylum Law and its impact on the detention of foreign nationals.

ii. material conditions

36. The PAZ in Vienna-Hernalser Gürtel was first visited by the CPT in 1999 (cf. paragraph 50 of CPT/Inf (2001) 8). Since that time, the centre had undergone extensive renovation. The refurbished accommodation, with an official capacity of 310, had only been in use for a few weeks before two of the four floors were closed, due to lack of staff. At the time of the visit, the PAZ was holding 121 foreign nationals detained pending deportation, 8 Austrian nationals under administrative sentence and 1 criminal suspect in transit. There were four juveniles (all of them from Nigeria and over 16 years of age). In 2003, the average stay of foreign nationals was reportedly 23 days.

The delegation observed that the refurbished cells were of a good standard. In particular, they were of an adequate size for the number of persons held (e.g. six detainees in a cell measuring some 30 m²; eight detainees in a cell of some 40 m²), well-lit and ventilated, and equipped with a toilet and wash-basin with hot water. However, the level of cleanliness of a number of cells and sanitary facilities left something to be desired. Detainees complained that no cleaning materials other than a bucket and brush were provided to them.

Access to showers was allowed twice a week. Upon arrival at the centre, detainees received bed linen, towels, cutlery and a toiletry kit consisting of toothbrush, toothpaste, razors for men and sanitary towels for women. However, no shampoo was provided, and the supply of soap appeared to be a problem; long-term detainees in particular complained about the lack of personal hygiene products. Bed linen was changed once a week; as for personal clothing, detainees washed it themselves in the cells.

Food was brought in thermostatic containers from the PAZ in Vienna-Rossauer Lände. The centre's Director stated that in addition to the normal menu, food was prepared for different religious requirements and there were special diets for diabetics. However, most of the detainees interviewed complained about the quantity and quality of the food. Further, in some of the cells the delegation saw food which was past its sell-by date.

37. The PAZ in Innsbruck is located in a building dating back to the 1950s. With an official capacity of 81, at the time of the visit the centre was accommodating 49 detainees, of whom 38 were foreign nationals detained awaiting deportation (including 3 women); the remainder were administrative detainees.

Accommodation was provided on four levels, one of which comprised an open unit for deportation detainees. Cells designed for double occupancy measured some 10 m²; living space was less generous in the larger cells, which measured 15-16 m² and were holding four persons. Access to natural light and artificial lighting were in general adequate; however, some of the windows (e.g. in one of the cells for female detainees) were broken. Further, certain of the cells (especially those used by administrative detainees, many of whom had alcohol problems) were malodorous and dirty. The cells were fitted with single or bunk beds, a table, stools, cupboards, a wash-basin with cold water and a toilet (in most cases without a seat and not screened). The equipment was often in a poor state of repair.

The basement of the building contained a number of cells originally intended to hold inebriated and homeless people, which were very rarely used. **Better use could be made of the space taken up by these cells, e.g. by fitting out a gym or other recreational facilities.**

Upon arrival, detainees received plastic cutlery and a range of personal hygiene products. However, female detainees were apparently not provided with materials for their monthly needs (though such items were seen in the centre's stockroom). Male detainees had access to shower facilities in the centre's basement twice a week, and female detainees could use a shower in the medical room more often. As for bed linen, it was changed once a fortnight.

Some complaints were heard about the food provided at the centre, which was said to be insufficient and not reflecting the different dietary habits of foreign detainees.

38. The PAZ in Linz is situated in a wing of the building of the regional police directorate. With an official capacity of 92, on the day of the visit it was holding 63 detainees of the following categories: 48 deportation detainees (of whom 5 were women), 9 administrative detainees (including 2 women) and 6 criminal suspects. The delegation was informed that the average stay of deportation detainees was 20 days; however, there were a number of detainees who had spent over a month at the centre, the longest stay at the time of the visit being almost three months.

The detention area comprised four units: unit "A", on the second floor of the building, was an open unit for male deportation detainees; unit "B", on the third floor, was a closed unit for male detainees of all categories; units "C" and "D", on the fourth floor, were respectively closed units for men and for women.

Living space in most of the cells was adequate at the time of the visit (e.g. two persons in a cell measuring 12 m²; four persons in a cell measuring some 19 m²). However, it was clear that conditions would become cramped if the centre were to operate at its official capacity (e.g. there were five to six beds in cells measuring some 19 m²). Access to natural light and artificial lighting were generally acceptable, and there was adequate ventilation. Further, the cells were adequately equipped, though the state of repair and cleanliness left something to be desired. In this connection, the delegation heard complaints about the lack of cleaning materials.

Access to showers varied from daily (for the women and male detainees in the open unit) to twice a week. As regards personal hygiene products, only soap and toilet paper were provided on a regular basis.

Food was brought in from the regional police directorate and distributed three times a day (except for weekends when detainees received cold meals). Some complaints were heard about the food, which was said to be insufficient, monotonous, and not in line with the dietary needs of detainees with health problems.

39. With an official capacity of 38, the PAZ in Wels was holding 22 detainees on the day of the visit, of whom 19 were deportation detainees (including one woman), and the remaining 3 administrative detainees.

The establishment offered the best material conditions of all the PAZ visited by the delegation. Following a fire in December 2001, it had been thoroughly renovated before being reopened in 2003. This was an opportunity to redesign the detention area and make it more fit for its main purpose, i.e. the holding of foreign nationals. Living space in the cells was generous (two persons in a cell measuring 11 m²; three persons in a cell measuring 23 m²). The cells were light, airy and well equipped, with beds, table, chairs, wardrobes and a sanitary annexe (toilet and wash-basin with hot water). The whole establishment was spotlessly clean and attractively decorated.

The shower facility was of a very good standard and could be used at least twice a week (and was usually used daily) by male detainees, and every day by female detainees. Detainees were provided with a range of personal hygiene items, stored in a separate room. The centre also had an excellent laundry and ironing room, both of which were freely accessible to detainees.

Food was brought from the local prison in thermostatic containers; three meals were provided daily, including a hot lunch. A small kitchen with a microwave oven, cooker and fridge was available to detainees, who were allowed to buy food twice a week and cook it themselves.

40. **The CPT recommends that the Austrian authorities take steps to:**

- **restore all cells at the PAZ in Innsbruck and Linz to a good state of repair and ensure that all in-cell sanitary facilities are suitably partitioned from the rest of the cell;**

- **ensure cell occupancy levels which guarantee a minimum of 4 m² per detained person (sanitary facilities excluded);**

- **review the provision of personal hygiene products to detainees at the PAZ in Vienna-Hernalser Gürtel, Innsbruck and Linz, in the light of the above remarks;**

- **ensure that detainees are provided with sufficient materials to clean their cells;**

- **review the food arrangements at the PAZ in Vienna-Hernalser Gürtel, Innsbruck and Linz, in order to ensure that the specific dietary habits and needs of detained persons are being adequately catered for.**

iii. activities

41. Despite the renovation which had taken place at the PAZ in Vienna-Hernalser Gürtel, the regime under which foreign nationals were held there remained totally unacceptable. The jobs available were limited to 4 detainees, who distributed meals. A detainee went around the dormitories with a list of books, from which inmates could order; further, a few board games were in evidence. In some dormitories, there were private TV sets; however, they could receive only German-speaking channels (of limited interest to most detainees, who were unable to understand German). No radios were provided. There were also recreation rooms on each level equipped with a table tennis table; however, they were rarely used, due to the shortage of staff.

According to the centre's Director, detainees were allowed one hour of outdoor exercise in the morning and one in the afternoon. However, detainees interviewed by the delegation claimed that the duration of outdoor exercise varied and might at times be as little as 20 minutes. That said, in the three days preceding the visit, detainees had apparently been allowed one hour of outdoor exercise per day.

To sum up, the vast majority of foreign nationals spent the bulk of the day locked up and idle in their cells. However, the Director informed the delegation of plans to alleviate the situation by means of introducing an open regime in a number of cells on each floor.

42. At the PAZ in Innsbruck**,** the management was making efforts to compensate for the structural limitations of the building by setting up an open unit where male deportation detainees with good behaviour could be accommodated after a one-week observation period. The open unit had a capacity of 14 places; however, only 9 detainees were being held in it at the time of the visit. Cell doors in this unit were unlocked between 8 a.m. and 6 p.m., during which time detainees had access to a TV room and a small fitness room.

All detainees were guaranteed at least one hour of outdoor exercise per day, which took place in a fairly large exercise yard. Other than that, foreign nationals held under the closed regime spent up to 23 hours a day confined to their cells, in a state of idleness, their main distraction being reading books (the centre had a small collection of foreign-language books).

43. The PAZ in Linz also had an open unit ("A") where deportation detainees could associate and engage in recreational activities throughout the day. Some 14 foreign nationals were accommodated in that unit at the time of the visit; they had been selected after a two-week observation period and could be moved back to a closed unit if they violated the internal regulations or went on a hunger strike. The unit had a TV room with a small library, a games room with table tennis, table football and exercise bikes, as well as a well-equipped kitchen. However, the only form of organised activity offered to detainees were sporadic German language classes.

Male detainees in the closed units were locked up all the time save for "up to one hour" of outdoor exercise or when allowed to take a shower or make a telephone call. Unit "B" had a recreation room and a television room, but they were clearly not used (according to staff, due to conflicts between detainees of different nationalities). As for female detainees, they spent most of their time in a common room equipped with a TV and some foreign-language books; the door of that room was locked and detainees were not allowed to go to their cells during the day.

The delegation was concerned to learn from interviews with detainees that outdoor exercise was limited to 30 minutes a day, and even this was apparently not offered every day. Further, the exercise yards, located on the roof of the building, were of a rather oppressive design: they were bare and surrounded by high walls which prevented detainees from seeing anything but the sky.

44. The PAZ in Wels had the great advantage of having been redesigned in 2003. Maximum openness within the outer perimeter was the guiding principle of the design of the refurbished facility. The centre's management had a strong commitment to making the regime as positive as possible. Male deportation detainees were accommodated in an open section and had access throughout the day to well-equipped recreation facilities (TV room, fitness room, a small library with foreign-language books) and a spacious exercise yard. Female detainees, of whom there were usually only a few, were provided with a free TV in their cell and had access to the exercise yard twice a day. There were, however, very few organised activities. Once a week, an NGO organised a language class. Further, some detainees did painting and minor repairs.

45. As already noted (cf. paragraph 9), at the end of the visit, the delegation made an immediate observation under Article 8 (5) of the Convention, requesting the Austrian authorities to ensure that all detainees at the PAZ in Vienna-Hernalser Gürtel and Linz are offered outdoor exercise of at least one hour on a daily basis. Urgent steps were also required to offer some activities to deportation detainees at the PAZ in Vienna-Hernalser Gürtel.

In their letter of 4 August 2004, the Austrian authorities referred to Section 17 of the Detention Regulations (*Anhalteordnung*), which stipulates that all persons detained for more than two days are entitled to at least one hour of outdoor exercise per day (which in case of inclement weather or "other reasons" may be replaced by some other form of physical exercise). However, the authorities emphasised that outdoor exercise was of a voluntary nature and detainees often did not want to spend all the allocated time outdoors because of bad weather or lack of motivation.

As regards activities at the PAZ in Vienna-Hernalser Gürtel, the authorities drew attention to the existence of a library (with 800 books, 400 of which were in foreign languages) and a variety of board games (in 2003 alone, some 2,000 Euros were spent on games). Reference was also made to plans to extend the library.

46. The CPT considers that the introduction of open units at the PAZ in Innsbruck, Linz and Wels is a step in the right direction. However, it should be noted that only a small proportion of the foreign nationals held in Innsbruck and Linz were benefiting from an open regime. The CPT does not dispute that special precautions might have to be taken vis-à-vis certain foreign nationals detained under aliens legislation (e.g. for disciplinary, health or security reasons). However, to apply a closed regime to the majority of such persons has no justification and as such is unacceptable. For as long as the PAZ continue to accommodate foreign nationals detained under aliens legislation, there should be a presumption in favour of holding them under an open regime; placement under a closed regime should be exceptional and the reasons therefor recorded in each individual case.

The CPT calls upon the Austrian authorities to review as a matter of urgency the detention regime at all police detention centres accommodating foreign nationals detained under aliens legislation, in the light of the preceding remarks. As regards in particular the PAZ in Vienna-Hernalser Gürtel, an open regime unit should be introduced in the establishment as a matter of priority.

Further, the CPT recommends that:

- **steps be taken to guarantee that all persons detained at PAZ can fully benefit from their entitlement to at least one hour of outdoor exercise per day. Conditions in the outdoor exercise yards at the PAZ in Linz should be reviewed;**

- **efforts continue to be made at all PAZ to provide a wider range of out-of-cell activities for persons detained for prolonged periods. In this connection, steps should be taken to ensure that the already existing facilities (e.g. recreation rooms, books, games, etc.) are made accessible to all detainees.**

iv. staff

47. The staffing situation at the PAZ visited – with the notable exception of the establishment in Wels – left a lot to be desired. The existing staff complement was not enough to provide adequate out-of-cell activities and limited the possibilities for extending the open regime to more detainees; female detainees, of whom there was admittedly a small number, were at a particular disadvantage.

Staff working at the PAZ had received little specialised training for the job. The delegation observed that there was little communication between staff and detainees, not least because of language barriers, and learned that it was very difficult for staff to get language training unless they paid for it themselves. Further, it appeared that many responsibilities – such as the provision of information or assistance to detainees – had been delegated to NGOs under contract to the Ministry of the Interior (cf. paragraph 58). In fact, the job of PAZ staff was mainly reduced to guarding detainees. This had a negative impact on the staff's perception of their role.

The CPT recommends that the Austrian authorities take steps to increase staffing levels at the PAZ and encourage staff to work more proactively with detainees, in particular by enhancing their possibilities for training (including language training). In this connection, the Austrian authorities might take into account the remarks contained in paragraph 29 of the CPT's 7th General Report.

v. health care

48. Each of the four PAZ visited had a number of doctors employed for a varying number of hours per day, who were also available on call. In addition, one or more medical orderlies (*Sanitätsbeamt* e) were assigned to assist the doctors in the performance of health-related duties (e.g. distributing medication, bringing files). However, as in the past, no qualified nursing staff was employed at any of the PAZ visited, despite earlier recommendations made by the CPT (cf. paragraph 56 of CPT/Inf (2001) 8). The existing arrangement might be feasible for small establishments, such as the one in Wels; however, at larger PAZ, such as Vienna-Hernalser Gürtel, the presence of a qualified nurse, in addition to medical orderlies, is indispensable.

The CPT calls upon the Austrian authorities to take steps to employ at least one fully-qualified nurse at the PAZ in Vienna-Hernalser Gürtel, and to organise regular attendance by a fully-qualified nurse at the rest of the PAZ.

49. All persons admitted to PAZ were examined by a doctor promptly after their arrival. However, some foreign detainees interviewed by the delegation (in particular at the PAZ in Linz) complained that communication with the doctors was rendered difficult due to language barriers. To circumvent this problem, doctors at some of the PAZ (e.g. Vienna-Hernalser Gürtel, Wels) used a detailed medical questionnaire which was available in many languages. **The CPT recommends that such medical questionnaires be introduced at all police detention centres in a range of languages.**

50. The CPT is concerned by the current approach to the confidentiality of medical information at the PAZ visited. As a rule, medical examinations took place in the presence of police officers. Further, the delegation's observations suggest that police officers (e.g. those assigned to help the doctors) had access to medical records.

In their letter of 4 August 2004, the Austrian authorities stated that the presence of police officers during the medical examination of detainees is indispensable since the police doctor would otherwise be exposed to serious risks (physical aggression by the detainee, hostage-taking, etc.).

The CPT has serious misgivings about this approach. It acknowledges that special security measures may be required in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for police officers being *systematically* present during medical examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security standpoint. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert police officers in those exceptional cases when a detainee becomes agitated or threatening during a medical examination. **The Committee recommends that the Austrian authorities take steps to bring practice in line with the above considerations. Further, keeping detained persons' medical files should be the doctor's responsibility.**

51. In the report on the visit in 1999, the CPT paid particular attention to the issue of hunger strikes announced by persons held at police detention centres, and made certain recommendations in this respect (cf. paragraph 60 of CPT/Inf (2001) 8).

The incidence of foreign nationals in police custody in Austria going on hunger strike remains high.[9] At the time of the 2004 visit, an information sheet drawing attention to the risks to health caused by a hunger strike was available at the PAZ visited in a range of foreign languages. The CPT welcomes this development.

The delegation observed a certain difference in approach to persons on hunger strike at the PAZ visited. At some of the establishments (e.g. the PAZ in Linz and Vienna-Hernalser Gürtel), detainees on hunger strike were placed in a segregation cell and subjected to a more restrictive regime; at others (e.g. the PAZ in Innsbruck), such detainees remained in their usual cells. In this connection, **the CPT wishes to stress that hunger strikes should be approached from a therapeutic rather than punitive standpoint.**

52. The CPT remains concerned about the provision of psychological and psychiatric support to foreign nationals held in police detention centres (cf. paragraph 61 of CPT/Inf (2001) 8). During the 2004 visit, the delegation came across a number of foreign detainees who clearly suffered from psychiatric disorders.

It should be noted that none of the PAZ visited employed a psychologist. Further, the arrangements for psychiatric care appeared inadequate. The PAZ in Vienna-Hernalser Gürtel received visits by doctors from the project *Ðialog* " two to three times a week, in order to see to detainees who were substance-dependent or had psychiatric disorders; such detainees were subsequently transferred to the PAZ in Vienna-Rossauer Lände, where mental health services were reportedly available. At the other PAZ visited, no provision was made for access to specialist consultations/support and detainees had to rely on the assistance of police doctors. Transfer to a psychiatric hospital was in principle possible, although this meant that the person concerned had to be declared unfit for detention and released.

The CPT must stress once again the need for particular attention to be paid to the mental health and psychological state of foreign nationals in custody, some of whom are asylum seekers and may have experienced difficult situations – including torture or other forms of ill-treatment – in their home countries. **The CPT calls upon the Austrian authorities to take measures, as a matter of priority, in order to provide professional psychiatric and psychological services to foreign nationals detained at police detention centres.**

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[9] For example, there were 8 foreign nationals on hunger strike at the PAZ in Innsbruck at the time of the CPT's visit.

vi. discipline and segregation

53. Each of the PAZ visited possessed a number of cells used for segregation purposes (disciplinary punishment, isolation of persons considered to represent a danger to themselves or to others and, in the case of Vienna-Hernalser Gürtel and Linz, persons on hunger strike).

At the PAZ in Vienna-Hernalser Gürtel, there was a segregation unit with 24 single cells, including two security cells and one padded cell; conditions in these cells call for no particular comment. The PAZ in Innsbruck had one padded cell in the basement, which had no access to natural light. At Linz, there was one padded cell and three other cells used for segregation purposes; all the cells had many ligature points and could not safely be used for the accommodation of detainees representing a suicide risk without constant supervision. At the PAZ in Wels, the segregation cells were of a good standard, with adequate access to natural light and ventilation.

54. The delegation was informed that the procedure for placing a detainee in a segregation cell was for the station officer to make a written report to the officer in command, who took a decision. Typical reasons for placement in a segregation cell were disobedience or aggressive behaviour; however, some detainees interviewed by the delegation claimed that they had been placed in a segregation cell because they had not immediately understood an order given by staff (in German). It appeared that staff had a wide margin of discretion to impose disciplinary sanctions. The fact that detained persons were not given a hearing before a sanction was imposed clearly did not help matters. Further, it should be noted that at the PAZ in Innsbruck, Linz and Wels, although the use of the segregation cells was recorded in the day book and/or the personal file of the person concerned, no specific register was kept (such a register was seen at Vienna-Hernalser Gürtel).

At the PAZ in Wels, the delegation was informed that detainees placed in a segregation cell were entitled to one hour of outdoor exercise per day. However, at the PAZ in Linz, detainees placed in such cells were not allowed to take outdoor exercise.

55. **The CPT recommends that:**

- **conditions in the segregation cells of the PAZ in Innsbruck and Linz be improved, in the light of the remarks made in paragraph 53;**

- **detained persons placed in segregation cells be guaranteed one hour of outdoor exercise per day;**

- **detained persons placed in a segregation cell for disciplinary reasons be given the right to be heard on the subject of the offence of which they are accused and to appeal against a disciplinary sanction to a higher authority;**

- **a separate register be established for the use of the segregation cells, setting out the full details of the persons held in them: date and time of entering and leaving, grounds for placement, etc.**

Further, the CPT invites the Austrian authorities to provide suicide-proof clothing for use in appropriate circumstances.

vii. information and assistance to foreign detainees

56. The provision of information to foreign detainees about the internal rules varied from one PAZ to another. At the PAZ in Wels, there was a variety of information material in 26 different languages and detainees appeared to be well informed of their rights and obligations. Further, at the PAZ in Vienna-Hernalser Gürtel, the internal rules were posted in each unit in a variety of languages.

The situation was less positive at the other two PAZ visited. In Innsbruck, detainees received some information about the possibility to receive support from NGOs, but no information on the internal rules. In Linz, information about the internal rules was available only in German; staff were not aware of the availability of leaflets in other languages and stated that it was up to the visiting NGO representatives to provide detainees with information. **The CPT recommends that information on the internal rules and other procedures applicable to foreign detainees be systematically provided at the PAZ in Innsbruck and Linz, in an appropriate range of languages.**

57. The major complaint of foreign nationals detained at the PAZ visited was the lack of knowledge of what was happening in their case and how long they would spend in custody. Many of them had been detained on the eastern border of the country and transferred to the PAZ in Linz, Innsbruck and Wels because there was no vacant accommodation available elsewhere. Some foreign detainees had requested asylum and were awaiting an interview with the Federal Asylum Agency. This uncertainty greatly exacerbated the experience of confinement for the foreign detainees. The observations made during the visit suggest that staff working at the PAZ need to be more attentive to these problems.

58. As already noted (cf. paragraph 47), under a contract with the Federal Ministry of the Interior, several NGOs visited the PAZ on a regular basis and provided a variety of services to foreign nationals detained pending deportation[10]. Representatives of these NGOs spoke some foreign languages and informed detainees about their rights, put them in contact with lawyers, provided phone cards, social assistance and general support. However, it appeared that detainees did not always understand the status and function of the NGOs and expected that they would advance their cases. The delegation heard a number of complaints that the NGOs were "not helpful", "giving bad information" or "making promises they did not keep".

The CPT recommends that the Austrian authorities step up their efforts to ensure that foreign detainees are duly informed about the state of their case. In this context, the Committee wishes to stress that the fact that outside bodies have been contracted to help foreign detainees does not discharge the State from its responsibility for providing information and assistance to such persons.

Further, the CPT would like to be informed of any safeguards to guarantee adequate accountability and contract monitoring incorporated in the contracts between the Federal Ministry of the Interior and organisations providing care to deportation detainees.

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[10] For example, ARGE Schubhaft in Innsbruck, SOS Menschenrechte in Linz and Wels, Verein für Menschenrechte in Vienna.

viii. contact with the outside world

59. Foreign detainees were formally entitled to receive visits, make phone calls and send letters. However, the delegation observed that the existing provisions were not always respected at the PAZ visited.

Contact with the outside world was particularly problematic at the PAZ in Linz. Staff informed the delegation that detainees could receive visits only with the permission of the Aliens Police; in practice, none of the detainees interviewed had received a visit. Further, detainees were allowed to make a phone call only once or twice a week, provided that they had money (which was not the case for most of the detainees). Detainees' mobile phones had been confiscated and were kept by staff. Many foreign detainees felt isolated and suffered from lack of contact with their families, from whom, in some cases, they had been separated at apprehension.

At the PAZ in Vienna-Hernalser Gürtel, the delegation noted with concern that the approach to visits had changed: instead of meeting their relatives and friends around a table, as had been the case in 1999, foreign detainees received visits under closed conditions (i.e. behind a glass screen). As stressed by the Committee in the report on the 1999 visit, such an approach cannot be justified, bearing in mind the low security status of most detainees. Concerning access to the telephone, detainees were allowed one free telephone call upon arrival and could subsequently buy phone cards; however, access to the telephone was limited to three times a week.

At the PAZ in Innsbruck, detainees were allowed to make phone calls without restriction. Meetings with lawyers and NGO representatives took place under open conditions. However, visits from relatives and friends took place behind a glass screen.

At the PAZ in Wels, there were good possibilities for maintaining contact with the outside world (a telephone accessible throughout the day; a visiting room).

60. **The CPT recommends that:**

- **steps be taken at the PAZ in Linz to ensure that detainees' right to visits and phone calls is fully respected;**

- **the visiting facilities at the PAZ in Vienna-Hernalser Gürtel and Innsbruck be revised in order to ensure that visits take place under more open conditions.**

The Committee would also like to be informed of the official position as regards the keeping of mobile phones by foreign nationals detained pending deportation.

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61. The findings during the 2004 visit highlight once again the fundamental flaw in the Austrian authorities' approach to the detention of foreign nationals pending deportation. Police detention centres were designed and staffed as holding facilities for criminal and administrative offenders; they have neither the material environment nor the human resources to cater for foreign nationals who have applied for asylum or are awaiting deportation, and to offer a detention regime appropriate to the legal status of such persons.

As stressed by the CPT in the report on the 1999 visit, persons detained for an extended period under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate for their legal situation, and staffed by suitably-qualified personnel.

The CPT calls upon the Austrian authorities to give a high priority to the creation of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under aliens legislation.

b. police stations

62. In the report on the 1999 visit, the CPT noted that conditions of detention at the police stations visited were on the whole of a good standard. Unfortunately, the assessment from the visit in 2004 is less favourable.

63. Conditions of detention at the Criminal police headquarters East (*KK Ost*) in Vienna were inadequate in many respects. In particular, the cells were in a poor state of repair, and access to natural light was very limited (though artificial lighting was adequate). Further, there was no systematic provision of mattresses and blankets to detained persons, despite the existence of a sufficient supply of such items. As for the food arrangements, they were satisfactory.

64. The detention area at the Criminal police headquarters West (*KK West*) in Vienna was relatively new. However, it displayed a number of design faults: in particular, the cells had small windows which let in only a meagre amount of natural light. As to artificial lighting and ventilation, they were satisfactory. Large sloping wooden plinths covered much of the floor space in the cells, and the delegation observed that not all detainees had been provided with mattresses and blankets. Staff indicated that ready-made food, heated by microwave, was provided to detainees, account being taken of different dietary needs. However, there was no ready access to drinking water.

65. At the police station in the railway station Vienna-Westbahnhof, the delegation saw a holding cell which measured less than 1 m² and was unsuitable for holding persons even for very short periods of time. At the end-of-visit talks, the delegation stressed that the cell in question should be taken out of service without delay.

66. Conditions of detention at the police station Vienna-Tannengasse were on the whole of an acceptable standard. All cells had access to natural light and adequate artificial lighting, and were fitted with a call bell. However, ventilation in certain cells left something to be desired.

The police station Innsbruck-Maximilianstrasse had one cell measuring some 3.5 m²; it had no access to natural light, but artificial lighting and ventilation were adequate. The cell was fitted with a narrow bench. According to the custody registers, persons had been held in this cell for a maximum of 90 minutes.

The two police stations visited in Wels (in Eferdinger Strasse and Linzer Strasse) possessed one cell each; however, these cells (measuring some 2 m²) were not being used, in keeping with an order of the Federal Ministry of the Interior dated 2 December 2002, banning the use of cells measuring less than 2.5 m². As a result, detained persons were taken directly to the local PAZ.

67. In their letter of 4 August 2004, the Austrian authorities indicated that the management of the Criminal police headquarters East in Vienna had been instructed to provide detainees with mattresses and blankets. It was also specified in the letter that a holding cell had never been intended at the police station at Vienna-Westbahnhof, and it was clearly a violation of the internal instructions that a person had been held in that cell. The authorities reassured the CPT that all necessary measures had been taken to avoid such instances in future (i.e. the lock of the cell had been removed).

Further, according to the above-mentioned letter, the authorities intended to improve material conditions of detention at the Criminal police headquarters East "within the limits of the obligations which are incumbent on tenants"[11]. The CPT must stress that the State cannot discharge itself from its responsibility vis-à-vis persons deprived of their liberty. **The Austrian authorities must ensure that conditions of detention at the Criminal police headquarters East in Vienna correspond fully to the criteria outlined in the report on the 1994 visit (cf. paragraph 30 of CPT/Inf (96) 28).**

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

- **guarantee ready access to drinking water for all persons in police custody;**

- **ensure that all detained persons throughout the country are provided with a clean mattress and clean blankets at night.**

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[11] Police premises are formally owned by a private company of which the State is the only shareholder, and the police rent the premises.

B. Establishments under the authority of the Federal Ministry of Justice

1. Preliminary remarks

68. The CPT's fourth periodic visit to Austria included first-time visits to Linz Prison and Vienna-Mittersteig Prison (including the detached unit at Floridsdorf). Further, a follow-up visit was carried out to Vienna-Josefstadt Prison, in order to examine the conditions under which juvenile prisoners were held there.

69. At the outset of the visit, senior officials of the Federal Ministry of Justice voiced their concern about the trend of a rising prison population in the course of the last two years: with a maximum official capacity of 7,900 places, the prison system was holding over 8,000 prisoners (8,500 in July 2004). Following a period of successfully controlling the application of remand custody through the so-called "detention deadline regime", the number of remand prisoners had started rising again, the majority of them being foreign prisoners. Prison overcrowding represented a significant challenge for the prison administration, which saw itself confronted with the need to introduce new measures to address this problem. In this context, the delegation was informed of plans to develop the system of conditional release (parole), though there was still no concrete time-frame for the implementation of this measure. Further, the authorities have embarked on the construction of new pre-fabricated accommodation units in order to provide more space and absorb the prison population growth. A recent development concerned the financing of the construction of a new prison in Romania, to which Romanian nationals sentenced in Austria would be transferred.

The CPT recommends that the Austrian authorities pursue vigorously the application of a range of measures designed to combat prison overcrowding, including policies to limit or modulate the number of persons sent to prison. In this connection, the Austrian authorities should take into account the principles and measures set out in Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole).

70. The problem of overcrowding has a direct bearing on the issue of activities for prisoners. In this connection, it should be emphasised that the situation as regards the provision of work, training and education to inmates in the prison establishments visited was far from satisfactory, a problem which apparently exists throughout the Austrian prison system. The delegation was concerned to learn that, notwithstanding the increase in the prison population, prison staff resources had been reduced; the low staff/prisoner ratio inevitably had a negative effect on the regime of activities for prisoners.

The CPT recommends that the Austrian authorities introduce measures aimed at ensuring that both sentenced and remand prisoners are provided with work. Further, the Committee recommends that efforts be made to develop programmes of education and vocational training in all penitentiary establishments. The provision of a satisfactory regime of activities for prisoners will require having an adequate staff complement and a staff attendance system which ensures the availability of staff throughout the day.

2. Ill-treatment

71. The CPT's delegation heard no allegations of ill-treatment of inmates by staff at Vienna-Josefstadt Prison and Vienna-Mittersteig Prison (including the detached unit at Floridsdorf).

As regards Linz Prison, the delegation received practically no allegations of ill-treatment of inmates by staff and observed that the atmosphere in the establishment was generally relaxed. However, some foreign prisoners complained of occasional rude behaviour by certain members of staff. Given the high proportion of foreign prisoners at the establishment, a greater effort is needed to establish positive interaction with them (cf. also paragraph 108).

72. During the end-of-visit talks, the Austrian authorities made reference to the on-going reform of prison staff training (initial and on-going), in the course of which special attention would be put on the acquisition of skills for dealing with foreign prisoners.

Further, in their letter of 2 August 2004, the Austrian authorities highlighted measures to address the problems faced by foreign prisoners at Linz Prison. In co-operation with the NGO "*SOS-Menschenrechte*", an assessment was being carried out of the way in which groups of foreign inmates were allocated and the disadvantages for such inmates in comparison with the situation of domestic inmates. On the basis of this assessment, it was intended to draw up measures for a proper approach to foreign inmates (including steps to make junior prison staff more sensitive to their needs).

The CPT has noted with interest the above information **and would like to receive more details in due course.**

73. More generally, the CPT wishes to stress that ensuring positive staff-inmate relations will depend greatly on having an adequate number of staff present at any given time in detention areas and in facilities used by prisoners for activities. An overall low staff complement and/or specific staff attendance systems which diminish the possibilities of direct contact with prisoners will certainly impede the development of positive relations; more generally, this will generate an insecure environment for both staff and prisoners.

It should also be noted that when staff complements are inadequate, significant amounts of overtime can prove necessary in order to maintain a basic level of security and regime delivery in the establishment. This state of affairs can easily result in high levels of stress in staff and burnout, which is likely to exacerbate the tension inherent in any prison establishment.

The CPT recommends that the Austrian authorities review their prison staffing and deployment policy, in the light of the above remarks (cf. also paragraph 70).

3. Linz Prison

74. Linz Prison is essentially a closed establishment for remand prisoners and prisoners serving sentences of up to 18 months, though it also comprises an open section in Asten. The main prison complex, situated in the centre of the city of Linz, was originally constructed in the 1860s and extended in 1993. On the first day of the visit, it was holding 230 inmates, including 6 women and 9 juveniles. Remand prisoners constituted some 60% of the prison population. Nearly 40% of the inmates were foreign nationals, originating from some thirty-five different countries. The open section in Asten, which was not visited by the delegation, was holding 57 sentenced prisoners. Further, 44 prisoners were hospitalised at Wagner-Jauregg Psychiatric Hospital in Linz (cf. paragraphs 121-126).

a. material conditions

75. The main prison complex comprised an old wing, dating back to the 19th century, which contained, inter alia, a separate unit for women and the infirmary, and a new wing constructed in 1993. Prisoners were accommodated in cells for one, two, three or four inmates. All cells were of an adequate size for the number of prisoners which could be held in them: a single cell in the old wing measured 8.5 m², and in the new wing, 6 m² (excluding the sanitary annexe); double cells measured some 12 m², and cells holding four prisoners, 36 m².

All cells were reasonably well equipped with beds, storage space for personal effects, tables, chairs and fully partitioned toilets; further, many prisoners had their own TV and radios. The single cells in the new wing were particularly attractive and had good toilet facilities. The cells were also fitted with a call bell, though prisoners indicated that it could take some time for a member of staff to answer a call, especially at night. The whole establishment was clean and tidy, and the presence of pictures in the corridors alleviated somewhat the custodial setting.

The majority of the cells had good access to natural light and ventilation. However, the delegation saw some nine cells (facing the yard leading to the court-room) in which over two-thirds of the window's area was occluded, as a result of which the cells were rather dark. At the end-of-visit talks, the delegation indicated that the screens obstructing access to natural light in these cells should be removed. In their letter of 2 August 2004, the Austrian authorities explained that the lattice windows had been installed in order to prevent inmates from throwing items (particularly food) into the prison yards, which had led to problems with rats. The authorities were looking into which type of window would allow more light through while still serving the purpose of preventing food projectiles.

76. The CPT was particularly concerned to learn that some juvenile prisoners were sharing cells with adults.

In their letter of 2 August 2004, the Austrian authorities indicated that "the juveniles' permanent segregation from adults is hardly possible due to the overcrowded occupancy, on the one hand, and to the lack of a separate juvenile unit, on the other. Above all, a strict segregation of juveniles from adults is difficult when several accomplices are committed to the prison at the same time". Nevertheless, according to that letter, the forthcoming expansion of the open section in Asten was expected to improve the situation and enable the segregation of juveniles.

The current state of affairs must be remedied; to accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation.

77. Female prisoners were held in a separate self-contained unit. It had a capacity of 24, but rarely accommodated more than 17 prisoners. The cells (measuring between 12 and 20 m^2) were intended for double or quadruple occupancy, and were well-appointed, with impeccable furniture and fully partitioned sanitary annexes. The presence of curtains, carpets and plants contributed to the creation of a cheerful atmosphere. The unit also had a well-equipped kitchenette, an association/recreation room with a TV and a small library, a bathroom and an ironing room. Cell doors in the unit remained unlocked for most of the day and prisoners were free to use these facilities.

78. Male prisoners were allowed access to showers twice a week, and female prisoners daily, within their own unit. The establishment had a good supply of basic personal hygiene items which, according to staff, were available to any prisoner on request. However, some prisoners interviewed by the delegation complained about the lack of access to such items, save at their own expense. It may be that not every prisoner had been informed, in a language which they understood, of the availability of such supplies. To circumvent this problem, the establishment's social workers proposed introducing a system whereby each prisoner would automatically receive a set of personal hygiene items.

The prison had a well-equipped laundry where prisoners could have personal laundry done for a small charge; bed linen and towels were washed free-of-charge weekly.

A few complaints were received about the food provided at the prison, which was said to be monotonous or insufficient, especially for prisoners who had no means to buy additional food.

79. To sum up, material conditions of detention at Linz Prison were generally good, especially in the recently constructed part of the prison and the unit for women. **However, the CPT recommends that:**

- **the mixing of juvenile and adult prisoners be discontinued as a matter of priority. Juvenile prisoners should be held in separate accommodation, staffed by persons trained in dealing with the young and offering regimes tailored to their needs (education, sport, vocational training, recreation and other purposeful activities);**

- **measures be taken to ensure adequate access to natural light in all cells; any devices fixed to cell windows should be of such a design as not to deprive prisoners of this basic element of life;**

- **personal hygiene items be systematically provided to all prisoners.**

b. activities

80. All prisoners were entitled to one hour of outdoor exercise per day, which took place in four reasonably spacious exercise yards. However, the yards had no shelters against inclement weather, and prisoners complained that, when it rained, outdoor exercise did not take place. Further, there were no benches or seats in the yards, except for the one attached to the women's unit.

In their letter of 2 August 2004, the Austrian authorities indicated that an instruction had been issued to place seats in the men's exercise yard. Further, it was intended to partially cover that yard in the future. **The CPT would like to receive confirmation that the outdoor exercise yards used by male prisoners have been equipped with seats and that all yards have been provided with shelters against inclement weather.**

It should also be noted that some female prisoners complained that outdoor exercise did not take place at weekends, due to the shortage of staff. **The CPT recommends that steps be taken to ensure that all prisoners are offered at least one hour of outdoor exercise every day, including weekends.**

81. Only about a third of the inmates in the closed part of the prison benefited from some form of work activity. Inside the establishment, jobs were provided to 56 inmates (36 sentenced and 20 on remand), essentially in the area of general prison services (laundry, cleaning, kitchen, etc.). In addition, 29 sentenced prisoners were employed by various outside companies[12].

No educational classes were offered to inmates – not even German language classes for foreign prisoners – and there were practically no possibilities for vocational training (except for those working in the kitchen).

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12 Further, 21 prisoners worked at the open section in Asten, which was not visited by the delegation.

82. As regards other activities, twice a week, prisoners could play volleyball in one of the yards or attend a gym with weight-lifting equipment and table-tennis tables. However, prisoners interviewed by the delegation claimed that these sports activities only took place if a member of staff was available to supervise, and were limited at best to once a week, for one to two hours.

The prison possessed two small craftshops (for Tiffany lamps and woodwork), which appeared to be under-used, due to the shortage of staff. In this connection, the delegation was informed that only one member of staff was in charge of supervising all recreational and sports activities.

Further, the prison had a library with some 8,000 books in a variety of languages. There was also a large chapel where services were held once a week, available to all prisoners regardless of their legal status and gender.

The delegation was informed that, once a week, prisoners could watch TV in common rooms available on each floor. However, a number of foreign prisoners alleged that they had not been taken to the common rooms – and could not afford to have a TV set in their cells – as a result of which they were cut off from the outside world (no newspapers were provided to prisoners).

83. Despite the different activities referred to above, it was commonplace for prisoners without work to spend up to 23 hours a day confined to their cells. The regime of activities suffered from the fact that the prison had been designed following an outmoded concept of what a remand establishment should consist of, and continued to have all the attributes of such an establishment, despite the fact that more than half of the inmate population was sentenced. Thus the "day" ran from 7.30 a.m. to 3.30 p.m. during the week, and from 7.30 a.m. to midday on Friday, Saturday and Sunday. Staffing levels were geared to the high escort commitment during these hours, leaving minimal patrol shifts for the rest of the time. The available workshops, sports facilities and rooms for recreation were under-utilised, due to the staff attendance system.

The newly appointed prison Director was aware of the above-mentioned problem and saw the lack of occupational options for prisoners as one of the major challenges. It should be noted that staff were making some efforts to improve the situation: for example, several prison officers with specialised training offered group counselling to inmates, and the prison's social workers were trying to introduce language training for foreign prisoners. However, the scope for real improvement was limited by the inadequate staffing levels.

The CPT recommends that strenuous efforts be made to improve the programme of activities offered to prisoners at Linz Prison. For this purpose, staffing levels and the staff attendance system need to be reviewed. Further, a proactive approach is required on the part of staff in order to engage more prisoners in work and other purposeful activities (in particular education and vocational training). As stressed by the CPT in previous visit reports, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).

4. Units for juvenile prisoners and young adults at Vienna-Josefstadt Prison

84. Vienna-Josefstadt Prison had already been visited by the CPT in 1990 and 1999. The principal objective of the 2004 visit was to explore the conditions of detention of juvenile prisoners, who had been accommodated in the establishment since January 2003, following the closure of the juvenile prison in Vienna. At the time of the visit, Vienna-Josefstadt Prison was holding 129 juveniles and young adults (124 male and 5 female). The majority of them (some 75%) were on remand. Around 80% of the inmates were foreign nationals, with about 70 different nationalities being represented, in particular from eastern European countries.

The closure of the juvenile prison in Vienna and the transfer of its population to Vienna-Josefstadt Prison had obviously increased the pressure on the latter establishment, which was accommodating a total of 1,203 inmates for an official capacity of 921 (at the time of the 1999 visit, there had been 1,051 prisoners).

a. material conditions

85. Juveniles (aged 14 to 18) and young adults[13] were accommodated in units D and E. The second floor of each unit (D2 and E2) was reserved for juveniles, while the first floor (D1 and E1) held a mixture of juveniles and young adults. Young adults were also housed on the ground floor of each unit.

86. On the whole, material conditions in the juvenile units were of a good standard and the CPT's delegation noted the commitment and efforts of management and staff to provide a positive environment for juveniles. Living space in the cells was generous (e.g. two persons in cells measuring some 20 m²; five persons in cells measuring between 37 and 54 m²). Access to natural and artificial light and ventilation were satisfactory, and the cells were adequately equipped (including fully partitioned sanitary facilities). However, the state of cleanliness in certain of the cells left something to be desired.

87. Inmates were allowed to take a shower twice a week, and those who performed cleaning duties, every day. Upon admission, all prisoners received a kit with personal hygiene products (shampoo, razor, after-shave, toothbrush and toothpaste), and indigent prisoners were provided with such items throughout the period of detention. Further, there was a well-equipped laundry.

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[13] Pursuant to Section 55(3) of the Federal Law on Juvenile Justice (*JGG*), placement in a regime for young adults may be extended, in exceptional circumstances, up to the age of 27.

88. As had been the case during the 1999 visit (cf. paragraph 85 of CPT/Inf (2001) 8), prisoners complained about the quantity and lack of diversity of the food provided at the establishment. The delegation learned that the daily food allowance per prisoner had been 3.30 Euros in 2003. The few inmates who could afford it supplemented their diet with purchases at the prison canteen. Further, the situation as regards the hours for distribution of meals had not improved: dinner was normally served at around 3 p.m.

In the light of the above remarks, the CPT recommends that steps be taken to improve the provision of food to juveniles and young adults at Vienna-Josefstadt Prison and review the hours at which food is distributed.

b. activities

89. The daily schedule for juveniles was heavily circumscribed by the shortage of staff and the staff shift system. The night shift started at 3 p.m. (and even earlier at weekends) and ran until 7 a.m. During that time, juveniles remained locked up in their cells, left to their own devices, their main distractions being reading, listening to the radio or watching television. Two staff members were on extended duty from 3 p.m. until 5 p.m. on weekdays to offer two groups of juveniles an hour each of additional activity. However, on the whole, juveniles were subject to an impoverished regime, which was totally unadapted to their needs.

90. The delegation was informed that schooling was provided by outside teachers who came to the prison on weekdays. Further, German language classes were offered to foreign inmates and at least some inmates attended computer classes.

Juveniles were entitled to at least two hours of outdoor exercise per day, weather permitting[14]; however, a number of juveniles interviewed separately stated that outdoor exercise lasted between half an hour and an hour each day. Further, twice a week, juveniles could take part in sports activities (football, volleyball), for 90 minutes. There was also a fitness room, access to which was allowed for half an hour once or twice a week.

As regards other recreational activities, inmates had access to a library (with 16,000 books in 24 languages); however, some juveniles interviewed claimed that they could not have books from the library. Inmates could also watch television in their cells, subject to good behaviour. At weekends, the activities were confined to religious worship; however, Moslem juveniles interviewed by the delegation complained that they had neither an Imam nor a Moslem service.

Only three juveniles had work (cleaning the corridors and showers in the juveniles' units, distributing food, etc.).

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14 Cf. Section 58 (3) of the Federal Law on Juvenile Justice.

91. As already mentioned (cf. paragraph 10), at the end-of-visit talks on 23 April 2004, the delegation made an immediate observation concerning Vienna-Josefstadt Prison, calling upon the Austrian authorities to significantly increase the number of hours during which juveniles can engage in out-of-cell activities.

In their letter of 2 August 2004, the Austrian authorities indicated that their plan of action in the light of the delegation's immediate observation was based on two main approaches: to intensify and diversify the work offered to juveniles, by setting up supervised craft shops for the largest possible number of juveniles and ensuring permanent staffing of at least two more craft shops, and to provide extended leisure activities from 3 p.m. to 7 p.m. In order to implement this plan, it was determined that five additional staff members were needed and an urgent communication to the effect was sent to the relevant department of the Federal Ministry of Justice on 14 June 2004.

By letter of 11 November 2004, the Austrian authorities provided additional information concerning the measures taken to implement the above-mentioned plan of action. According to it, the daytime shift in the two units for juveniles (D2 and E2) has been extended until 6 p.m. on weekdays and juvenile prisoners have been provided with some additional activities, such as sports, various discussion groups, hobby groups and a cinema group. The authorities also announced the setting up of a workshop (for ceramics, synthetic materials and wood) with a view to providing occupation and training for juvenile prisoners.

92. The CPT has noted with interest the above information. **The Committee would like to receive information on the number of juveniles actually benefiting from the increased possibilities for out-of-cell activities and the average number of hours per day spent by them engaged in such activities. The CPT would also like to know what measures have been taken in respect of units D1 and E1.**

Further, the CPT recommends that steps be taken to ensure that all juveniles held at Vienna-Josefstadt Prison can fully benefit from their entitlement to two hours of outdoor exercise per day.

5. Health-care services at Linz and Vienna-Josefstadt Prisons

93. The health-care team at Linz Prison consisted of a general practitioner and a registered nurse, both of whom worked part time. The presence of a nurse at the establishment was relatively new – until December 2003, nursing tasks had been performed by prison officers acting as paramedical staff – and there were plans to increase the nurse's attendance hours first to 30, and later 40, hours per week. At night and weekends, no qualified health-care staff were present at the prison. The establishment relied on prison officers, who had some basic medical training, for the distribution of medication to inmates.

The prison also employed a full-time psychologist. A consultant psychiatrist paid periodic visits and inmates in need of psychiatric care could be hospitalised in the Wagner-Jauregg Psychiatric Hospital in Linz (cf. paragraphs 121-126). As regards dental care, it was provided by a visiting dentist; no complaints were heard by the delegation as regards access to a dentist.

The CPT recommends that steps be taken at Linz Prison to:

- **increase the attendance hours of the doctor to the equivalent of a full-time post and substantially reinforce the nursing cover;**

- **ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the prison's premises, including at night and weekends.**

94. Since December 2003, the health-care unit of Vienna-Josefstadt Prison had acquired a special status (*Sonderkrankenanstalt*), which had resulted in, inter alia, 24-hour medical cover. As had been the case in 1999, the team of doctors (5) and nurses (25) responsible for prisoners' general health care could be considered adequate. The establishment also employed 4 psychiatrists and 6 psychologists. In addition, a number of medical specialists (including a dentist) periodically attended the prison.

95. As regards in particular juvenile prisoners at Vienna-Josefstadt Prison, given the reported scale of psychological and psychiatric problems they experienced (drug abuse, post-traumatic stress disorder, depression, psychosis, self-injury, etc.), the care they received could not be considered satisfactory. At the time of the visit, two doctors, neither of whom were fully qualified in psychiatry, attended the juvenile units on a temporary basis; together, they ensured a presence of some 23 hours per week, apparently spent for the most part on conducting a research project of psychiatric diagnostics involving German-speaking juveniles. They did not provide any structured therapies to inmates with psychological/psychiatric problems, not even crisis intervention or supportive therapy.

The CPT recommends that steps be taken at Vienna-Josefstadt Prison to employ a fully qualified specialist in child/adolescent psychiatry, to take care of the specific problems of juvenile prisoners.

As regards the research project carried out with juvenile prisoners at Vienna-Josefstadt Prison, it appeared that the procedure for obtaining informed consent to participation in research did not involve the legal representative or parent of the juvenile concerned. **The CPT invites the Austrian authorities to take steps to ensure that any medical research on juvenile prisoners is carried out in compliance with the international standards concerning information for and consent of research participants.**

96. Newly admitted prisoners at Linz Prison were usually seen by the doctor on the day following their arrival at the establishment, and at Vienna-Josefstadt Prison, on the day of arrival. However, the delegation was concerned to learn that the initial medical examination of prisoners at Linz Prison took place in the presence of non-medical prison staff. In this connection, it should be noted that a number of prisoners met by the delegation at Linz Prison alleged that they had been ill-treated by the police prior to their arrival at the prison, but did not feel at ease drawing the doctor's attention to their injuries. Such a state of affairs clearly does not facilitate the detection and recording of injuries received prior to admission to the prison, which is one of the functions of prison health-care services.

In their letter of 2 August 2004, the Austrian authorities indicated that an instruction had been issued "allowing prison officers to stay at close range to the medical examination only if special security concerns exist". Nevertheless, it is stated in the letter that the presence of prison staff during medical examinations cannot be completely excluded since those examinations are mostly carried out by female medical personnel who are put at some risk of being harassed or possibly attacked by inmates.

The above argument is difficult to comprehend given that the establishment's psychologist and social workers – who were also women – normally had private interviews with prisoners. In paragraph 50, the CPT has already set out its views on the issue of the presence of non-medical staff during medical examinations. **The Committee recommends that steps be taken to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of non-medical prison staff.**

97. At Vienna-Josefstadt Prison, only health-care staff had access to prisoners' medical files. Further, the observance of the confidentiality of medical documentation had improved at Linz Prison since the arrival of the nurse (previously, paramedical staff had had access to such documentation).

98. More generally, during the 2004 visit, the delegation was informed that plans were increasingly being implemented, by which prison doctors would no longer be employed by the Federal Ministry of Justice but would instead be contracted in from the general health service. This could be an opportunity for a greater involvement of the Ministry of Health in the provision of health care in prisons (cf. paragraph 112 of the report on the visit in 1999, CPT/Inf (2001) 8). **The Committee would like to receive more information on the above-mentioned plans.**

6. Other issues concerning Linz and Vienna-Josefstadt Prisons

a. contact with the outside world

99. Under Austrian law, remand prisoners are formally entitled to at least two 15-minute visits per week from their family[15], and sentenced prisoners to one 30-minute visit per week and one 1-hour visit every six weeks[16]. As for juvenile prisoners, they can receive at least one 1-hour visit per week[17].

At Linz Prison, the delegation was informed that 95% of the visits took place under closed conditions, i.e. behind a screen with communication through a telephone system. In addition, there were two small rooms where prisoners could receive visits under more open conditions, i.e. around a table; however, these rooms were only used with special permission. Further, a separate room was available for visits by lawyers and there was a video-conferencing facility used by the courts to enable the 48-hour time limit for appearance before a judge to be met.

Conditions in the room where juvenile prisoners at Vienna-Josefstadt Prison received visits were more open: only a low plexi-glass partition (some 30 cm above the counter) separated prisoners from their visitors. Further, as at Linz Prison, there was a video-conferencing facility for interviews with judges.

The CPT recommends that possibilities be explored for introducing more open visiting arrangements at Linz Prison.

100. A number of telephones were installed around Linz Prison and in the exercise yards, and there was no limitation on the number of calls inmates could make. A selective surveillance of prisoners' phone calls could be performed by order of an investigating judge. The CPT welcomes these arrangements.

Juvenile prisoners at Vienna-Josefstadt Prison could make telephone calls once or twice a week, depending on demand for the telephone. Telephone cards were available for purchase or could be sent in by the prisoners' families; however, a number of foreign inmates complained that they had little or no resources to make phone calls. Staff accompanied juveniles to the telephone to listen to what was said; in this connection, the CPT was concerned to note that only conversations in German or English were allowed.

The CPT wishes to stress that the active promotion of good contact with the outside world can be especially beneficial for juveniles deprived of their liberty, many of whom may have behavioural problems related to emotional deprivation or a lack of social skills. **The Committee invites the Austrian authorities to review the possibilities for juvenile prisoners to make phone calls (e.g. by providing free-of-charge telephone cards and following the same approach to the surveillance of phone calls as was observed at Linz Prison).**

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15 Cf. Section 187 (3) of the Code of Criminal Procedure.
16 Cf. Section 93 of the Federal Law on the Execution of Sentences (*StVG*).
17 Cf. Section 58 (7) of the Federal Law on Juvenile Justice.

b. discipline and segregation

101. Five types of disciplinary sanctions are provided for by law for sentenced prisoners: reprimand, withdrawal of privileges, loss of rights, fine of a maximum of 145 Euros, and placement in "disciplinary custody" (i.e. segregation in an ordinary or disciplinary cell) for up to 28 days for an adult, and up to 14 days for a juvenile. As regards remand prisoners, only reprimand and "disciplinary custody" may be imposed as sanctions.

The delegation did not gather evidence of an excessive use of disciplinary sanctions at Linz Prison. As regards juvenile prisoners at Vienna-Josefstadt Prison, an examination of the relevant registers indicated that disciplinary segregation was imposed very sparingly and usually for periods not exceeding 3 days.

102. During the 2004 visit, the CPT's delegation explored how the procedure for the imposition of disciplinary sanctions worked in practice. Prisoners were entitled to have a lawyer present during disciplinary hearings. The Committee welcomes this legal provision; however, it did not seem to work in practice at either Linz Prison or Vienna-Josefstadt Prison. Further, it became clear that prisoners facing disciplinary charges could present their point of view, but were not allowed to call witnesses on their own behalf and to cross-examine evidence given against them. Prisoners had the right to appeal within 14 days to the Execution of Sentences Commission (*Vollzugskammer*) against sanctions imposed.

The CPT invites the Austrian authorities to review the disciplinary sanctions procedure with a view to ensuring that prisoners facing disciplinary charges are formally guaranteed the right to call witnesses on their own behalf and to cross-examine evidence given against them.

103. At Vienna-Josefstadt Prison, the delegation was informed that, if interpretation was needed during disciplinary hearings, it was usually provided either by a member of staff who knew the language or another prisoner[18]. **The CPT has reservations about the use of prisoners as interpreters for other prisoners during disciplinary hearings. If, exceptionally, recourse is had to such an approach, the consent of the prisoner facing disciplinary charges should be carefully documented.**

104. At Linz Prison, there was a cell on each floor which could be used for segregation purposes; the cells in question were designed and equipped like normal cells (cf. paragraph 75) and their use was recorded in a special register. Further, in the basement of the main accommodation block, the delegation saw four segregation cells which were reasonably well equipped; however, their location far from where staff would be stationed made them unsuitable for use. The newly appointed prison Director indicated that he had decided to take these cells out of service. In their letter of 2 August 2004, the Austrian authorities informed the CPT that the use of the four segregation cells had been officially terminated by order of the prison management on 7 June 2004. The CPT welcomes this development.

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[18] An official interpreter could also be called in if the expense was justified by the requirements of the particular case.

The segregation cells at Vienna-Josefstadt Prison have already been described in the report on the visit in 1999 (cf. paragraph 119 of CPT/Inf (2001) 9). The delegation was pleased to note that the recommendation made in that report concerning the provision of beds to prisoners placed in these cells had been implemented.

105. Under Austrian law, acts of self-harm and suicide attempts are considered as disciplinary offences and may be punished accordingly[19]. At Vienna-Josefstadt Prison, the delegation was informed that there was a policy of not punishing juvenile prisoners who had committed such acts (though the prisoners concerned might be segregated as a management measure). This was confirmed by information received on all reported cases in the prison of serious self-harm or attempted suicide during the past six months. There had been 64 cases involving 62 individuals, none of whom had been the subject of a disciplinary procedure or punishment. The CPT welcomes this approach.

The CPT wishes to stress that acts of self-harm and suicide attempts frequently reflect problems and conditions of a psychological or psychiatric nature, and should be approached from a therapeutic rather than punitive standpoint. **The Committee invites the Austrian authorities to review the relevant legal provisions, in the light of the above remarks.**

c. complaints and inspection procedures

106. At Linz Prison, the delegation was informed that there were two types of complaint, surveillance and administrative. Surveillance complaints related to issues within the prison and could be brought to the director's notice orally or in writing. If the complaint was upheld, the director issued a decree to that effect; in the opposite case, the prisoner was informed verbally. No register of complaints was kept at the prison. As for administrative complaints, they related mainly to the criminal proceedings and were sent directly to the Ministry of Justice.

It should be noted that prisoners interviewed by the delegation at Linz Prison believed that all correspondence – including complaints to the director or outside bodies – had to be handed over to the duty officer in an open form.

The CPT recommends that the Austrian authorities reconsider the application of complaints procedures, with a view to ensuring that they are operating effectively. In particular, the internal complaints system should be reviewed to ensure that prisoners receive, within a reasonable time, reasoned answers in writing to written complaints and that a proper record is maintained of every complaint. It should also be verified that the existing arrangements do indeed enable prisoners to send complaints on a confidential basis.

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[19] Cf. Section 107 (1) of the Federal Law on the Execution of Sentences (*StVG*).

107. As regards inspections, the delegation learned that the prison monitoring committees (*Vollzugskommissionen*) in general visited prisons only once a year; this significantly limited the effectiveness of their work. Further, at Vienna-Josefstadt Prison, following a recent fatal incident in segregation, a self-inspection mechanism *(Jugendbeirat*), had been set up; it met quarterly to discuss issues of current relevance. As regards the Human Rights Advisory Board, its activities were limited to establishments under the Ministry of the Interior, though discussions were underway concerning the possible extension of its work to prisons.

The CPT wishes to stress once again that effective inspection procedures constitute a fundamental safeguard against ill-treatment in prisons. **The Committee recommends that the Austrian authorities develop a system of regular inspections of prison establishments by an independent body.**

d. foreign prisoners

108. As already pointed out, foreign prisoners constituted about 40% of the population of Linz Prison and 80% of juvenile inmates at Vienna-Josefstadt Prison. Some foreign prisoners interviewed by the delegation indicated that they had received an information sheet about the internal regulations in a language they understood; however, others had never heard of this, and complained of a lack of information concerning their legal situation and rights. The delegation noted that copies of the internal regulations were not available in all of the cells. Further, a number of foreign prisoners complained of difficulties in communicating because of language barriers. Moreover, their contact with the outside world was often problematic as they lacked money to pay for phone calls, and envelopes and stamps were not readily available. All this created an impression of isolation and discrimination which can be detrimental to the general atmosphere in the prison.

The CPT recommends that information on the internal regulations be routinely provided to all prisoners on admission, in a language they understand.

Further, the Committee invites the Austrian authorities to introduce programmes of language education for foreign prisoners and language training for staff working with them.

e. carrying of firearms by staff in direct contact with prisoners

109. At Vienna-Josefstadt Prison, the delegation was informed that, in accordance with the regulations in force, officers on night duty continued to carry firearms. Whenever it became necessary to open a cell, the officer who directly opened the cell door was unarmed, but there was always an armed security officer standing some distance away.

In the report on the 1999 visit (cf. paragraph 123 of CPT/Inf (2001) 8), the CPT stressed that the carrying of firearms by staff who are in direct contact with prisoners is a dangerous and undesirable practice, which could lead to high-risk situations for both prisoners and prison officers. Indeed, this is acknowledged in most Council of Europe States, where the carrying of firearms within prison premises is generally prohibited.

The CPT invites the Austrian authorities to reconsider the current policy on the carrying of firearms by staff working within prison premises.

7. Vienna-Mittersteig Prison

a. introduction

110. Vienna-Mittersteig Prison is located close to the city centre in a former court building, which was renovated in the early 1980s. The layout is a four-storey square with a small central courtyard. It is an institution primarily intended for the detention of persons who, without being criminally irresponsible, have committed a criminal offence under the influence of a serious psychiatric or psychological abnormality[20].

With an official capacity of 90 places, at the time of the visit the establishment was accommodating 88 sentenced prisoners, all adult men, of whom 80 were being held under Section 21 (2) of the Criminal Code and 3 under Section 21 (1) of the Criminal Code[21]. In addition, there were 5 sentenced prisoners being held as maintenance workers.

111. Since 1997, Vienna-Mittersteig Prison has had a detached unit in Floridsdorf, on the outskirts of Vienna. The unit, renovated in 1997, is located on the premises of a former prison. With an official capacity of 40 places, at the time of the visit it was accommodating 40 prisoners, of whom 39 were held under Section 21 (2) of the Criminal Code and the remaining one under Section 21 (1) of the Criminal Code.

The unit in Floridsdorf also houses the Austrian Centre for documentation, co-ordination and assessment of sexual offenders. Since the end of 2001, this centre has been performing assessments of sentenced sexual offenders with a view to issuing recommendations as regards their treatment. Prisoners are admitted to the centre on a voluntary basis, for a 12-day assessment period. At the time of the visit, the centre was accommodating four prisoners.

b. material conditions

112. Material conditions at both Vienna-Mittersteig Prison and the detached unit in Floridsdorf were of a good standard. Most of the cells were intended for single or double occupancy; there were also a few cells with three or four beds at Floridsdorf. The cells were of an adequate size for the number of prisoners held in them (e.g. single cells measured some 9 m^2), and had good natural light, artificial lighting and ventilation. Further, the equipment in the cells was adequate (including a partitioned toilet). Prisoners were allowed to have TV sets, music equipment, personal computers and small pets in their cells.

Each unit had a number of communal facilities: sitting rooms, small kitchens or tea/coffee-making areas, showers and laundry. Those premises, to which prisoners had adequate access, were clean and in a good state of repair. Further, there was evidence of efforts to personalise the environment and reduce the carceral atmosphere, with plants and pictures. The delegation was impressed by the high standard of general hygiene.

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20 Cf. Section 21 (2) of the Criminal Code.

21 This latter provision authorises the judicial placement of persons who have committed offences while not in full possession of their mental faculties.

c. health-care staff

113. At Mittersteig, the health-care team consisted of two psychiatrists (the head of the medical unit, who had training in forensic psychiatry, and another part-time psychiatrist), two nurses, six psychologists, an occupational therapist and four social workers.

At the detached unit in Floridsdorf, the health-care team comprised a part-time psychiatrist, a nurse, a psychologist, a psychotherapist, two part-time occupational therapists and three social workers.

The above-mentioned health-care staff resources can be considered as adequate in terms of doctors and specialists providing therapeutic activities. However, the same cannot be said about the number of nurses. **The CPT recommends that steps be taken to increase the number of nurses qualified in psychiatric care at both Vienna-Mittersteig Prison and the detached unit in Floridsdorf.**

d. treatment

114. A structured and transparent treatment approach, based on individual needs assessment and combining efforts to control the psychiatric condition with measures to reduce the risk of re-offending, was followed at the establishment. Newly admitted inmates underwent a 4 to 6 week assessment by a multi-disciplinary team, leading to the establishment of a diagnosis and the drawing up of an individual treatment plan. During that period, special emphasis was put on explaining to the inmates the nature of their placement and the planned measures and treatment (including re-socialisation). Further, each inmate was assigned a "case manager" (a psychologist or social worker).

Following the first phase of assessment/orientation, inmates went through three successive stages: training for therapy (approximately ten weeks), therapeutic group (on average 1½ years), and individual therapy (mostly outside the establishment). The treatment was provided by multidisciplinary teams comprising health-care and custodial staff, who met regularly; this allowed an ongoing exchange of information, served to enhance dynamic security and ensured regular reviews of the situation of each inmate.

115. Staff were endeavouring to provide appropriate care to inmates and to involve them in a range of activities suited to their needs. The treatment included medication, individual analyses, individual and group therapy (with elements focusing on building self-esteem, empathy, communication, impulse control, addressing offending behaviour and alcohol control), as well as various types of occupational therapy.

All inmates benefited from generous out-of-cell time (upwards of 8 hours) and had at least one hour of outdoor exercise per day. The vast majority of the inmates (some 90%) were employed in workshops[22] or on domestic services[23]. The therapeutic and recreational activities included work in ceramics, glass and silk, basketry, woodwork and carpet making, as well as painting, sports and games. Some educational programmes (German, English, computer classes) were also available. The prison also published its own newspaper. All recreational and therapeutic facilities were well equipped, though some of them appeared somewhat underused, reportedly because of custodial staff shortages.

The establishment also provided pre-release outpatient programmes[24] and collaborated with rehabilitation projects[25].

To sum up, the delegation gained a very favourable impression of the therapeutic activities offered to inmates at both Vienna-Mittersteig and the detached unit in Floridsdorf.

116. At the Austrian Centre for documentation, co-ordination and assessment of sexual offenders, a multidisciplinary team performed standardised assessment of sentenced sexual offenders, examined the therapeutic options and made recommendations for the treatment of the prisoners concerned with a view to reducing the probability of re-offending. A network of therapists trained to provide the recommended treatment was being set up throughout the Austrian prison system.

e. safeguards in the context of involuntary hospitalisation

117. The procedure for the placement of prisoners under Section 21 (2) of the Criminal Code is set out in Sections 435 to 442 of the Code of Criminal Procedure. In particular, pursuant to Section 439 (1) and (2) of the Code of Criminal Procedure, the placement is decided by a court, the person concerned must be assisted by a lawyer throughout the proceedings, and the court decision must be based on the opinion of at least one doctor with professional qualifications in psychiatry.

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22 Sorting, packing and filling envelopes; book-binding; electrical assembly; woodwork.

23 Work to clean and maintain the establishments (including woodwork); work in the laundry, kitchen or food store.

24 A forensic outpatient service and an alcohol outpatient service in the clinic of the psychiatric institute.

25 E.g. a residential living project where prisoners could live on a trial basis and on conditional release, and a transitional work project offering various types of work placements outside the prison, with the work continuing after release.

118. Placements under Section 21 (2) of the Criminal Code are for an indeterminate period. They must be reviewed by the court at least once a year[26], and prisoners themselves may also request that the necessity for placement be considered by the court.

The information gathered by the delegation indicated that every prisoner's status was reviewed yearly[27]. The court decided on the basis of a proposal from the establishment and decisions for release were invariably accompanied by an external opinion to back up the reports from Mittersteig/Floridsdorf. The prisoner was entitled to see all the files concerning his case and had 14 days to appeal against a negative ruling by the court. However, the delegation noted that most prisoners could not afford a lawyer to assist them. Further, some records showed that the judicial review procedure could take up as much as a year.

The CPT recommends that the Austrian authorities take steps to ensure, in the context of the placement review procedure, that prisoners have legal representation (including legal assistance to prisoners who are not in a position to pay for a lawyer themselves).

f. means of restraint

119. At both Vienna-Mittersteig Prison and the detached unit in Floridsdorf, the restraint of prisoners was the subject of a clearly-defined policy. The first response to an agitated or a violent prisoner was dialogue. When this was not sufficient, health-care staff was called in in order to apply means of restraint. In the case of a serious incident, threatening the health and safety of staff or prisoners, an intervention team consisting of four specially trained officers could be summoned. However, this reportedly happened rarely (six to seven interventions per year).

120. Vienna-Mittersteig Prison had one segregation cell and the detached unit in Floridsdorf, two. These cells were used for the placement of prisoners exhibiting very disturbed behaviour or for voluntary seclusion ("time out"); it should be noted that seclusion was not used as a disciplinary measure. Conditions in the segregation cells were adequate. Further, the use of the cells was recorded in a special register, the examination of which revealed that they were rarely used (ten entries in 2003 and five in 2004), usually for stays of less than a day[28].

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26 Cf. Section 25 (3) of the Criminal Code.

27 The deadline for the first review was calculated as one year from the court's decision on the placement; the deadline for each subsequent review was calculated as one year from the court ruling on the previous review.

28 During the day, the stay lasted a few hours. The usual pattern was staying overnight and being taken out in the morning. In 2003, there had been one stay of three nights and one stay of two nights. In 2004, there was only one stay of more than one night.

C. Secure wards at Wagner-Jauregg Psychiatric Hospital, Linz

121. The purpose of the delegation's visit to Wagner-Jauregg Psychiatric Hospital in Linz was to examine the situation of prisoners who had been transferred for treatment from Linz Prison. Consequently, the delegation visited only wards B7 and A9, which were holding the prisoners in question[29].

Most of the prisoners receiving treatment at the hospital had been admitted under Section 21 (1) of the Criminal Code. Further, there were eleven prisoners admitted pursuant to Section 429 (4) of the Code of Criminal Procedure.[30] Almost all the prisoners were Austrian nationals.

122. The delegation heard no allegations of ill-treatment of prisoners by staff working at the hospital and observed that the general atmosphere was relaxed.

123. Ward B7 was an admission ward for diagnosis and crisis intervention, with 13 beds and an intensive care room; it was accommodating 13 prisoners on the day of the visit. Ward A9 was a therapy ward used for re-socialisation; with a capacity of 30 beds, it was accommodating 27 prisoners. The latter ward was undergoing refurbishment which involved a future extension, with a view to meeting the demand for more places.

Living conditions in the wards were of a high standard. The rooms were bright, with large windows and nice furniture. Most of the rooms were intended to accommodate up to 5 patients. The toilet and bathroom facilities were also clean and allowed patients some privacy.

However, the delegation observed that patients were continuously dressed in pyjamas (except for a few patients who were allowed outside the wards). This is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process. **The CPT recommends that an individualised approach be adopted as regards patients' clothing.**

124. The psychiatric treatment provided to patients involved, in addition to pharmacotherapy, individual psychotherapy, group therapy and various rehabilitative activities. In particular, social skills training was offered, such as kitchen and office training.

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29 Ward A10, which was holding four female prisoners, was not visited by the delegation.

30 Placement of a remand prisoner who represents a danger to himself or is in need of psychiatric assessment.

125. As regards staff, there was a full-time psychiatrist in ward B7, as well as four full-time nurses working during the day and two at night. Most of the nurses had received specialised psychiatric training. Further, the unit had one full-time social worker, as well as a music therapist and a physiotherapist working part time.

Ward A9 had a full-time social worker, two part-time psychologists and eight occupational therapists (used as an overall term, including art therapists, etc.).

126. The delegation was informed that means of restraint were used extremely rarely. The restraining was done with straps in a special isolation room on Ward B7, which had video surveillance. There were no net-beds at the hospital. All instances of physical restraint were recorded in a special register.

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127. More generally, in the report on the 1999 visit, the CPT asked the Austrian authorities to put an end to the use of net-beds (*Netzbetten*) and cage-beds (*Gitterbetten*) at all establishments where such a practice existed (cf. paragraphs 120 and 157 of CPT/Inf (2001) 8). **The Committee would like to receive confirmation that an end has been put to the practice of using net-beds and cage-beds at all psychiatric hospitals and prisons throughout Austria.**

III. RECAPITULATION AND CONCLUSIONS

A. Establishments under the authority of the Federal Ministry of the Interior

128. In the course of the 2004 visit, the CPT's delegation received a considerable number of allegations of physical ill-treatment of criminal suspects detained by the police. The preponderance of those allegations came from persons who had been detained in Linz and the surrounding area. The allegations heard related to both the time of apprehension and that of subsequent questioning, the risk of ill-treatment apparently being particularly high in respect of criminal suspects who did not confess immediately.

The forms of physical ill-treatment alleged concerned slaps, punches, kicks, blows to the head with a telephone book, prolonged and tight handcuffing, and the combined use of hand and ankle cuffs – linked together – for lengthy periods. Of particular concern to the CPT are the allegations made by a number of juvenile detainees – sometimes as young as 14 – of physical ill-treatment and threats in order to obtain confessions.

129. In the report on its visit in 1999, the CPT noted that there had been some improvements as regards the treatment of persons detained by the police. In their response to that report, the Austrian authorities referred to a number of positive steps taken to combat police ill-treatment. These steps included increased emphasis on human rights issues as part of the professional training of law enforcement officials, the setting up of a Human Rights Advisory Board, as well as the adoption of new rules for the investigation of complaints of ill-treatment against police officers.

Unfortunately, the information gathered during the 2004 visit suggests that the situation, rather than continuing to improve, remains stagnant. This highlights the need for the Austrian authorities to exercise greater vigilance in this area. The CPT has called upon the Austrian authorities to redouble their efforts to combat ill-treatment by the police. Senior police officers should be required to deliver to their staff the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions.

130. On a more positive note, as was the case during previous visits, hardly any allegations were received of physical ill-treatment by officers responsible for supervising the detention areas of the four police detention centres (PAZ) visited. However, a small number of allegations were heard of rude behaviour (including xenophobic or racist remarks) by certain officers in respect of detained foreign nationals. In addition, the delegation received a number of allegations from such persons concerning the imposition of arbitrary sanctions and undue restrictions.

Further, in the light of specific information received at the PAZ in Linz, the CPT has recommended that the Austrian authorities issue appropriate instructions on the subject of controlling detained persons who represent a danger to themselves or others.

131. In previous visit reports, the CPT has stressed that formal safeguards against ill-treatment should be enjoyed by all categories of persons from the very outset of their deprivation of liberty. As far as the rights of notification of custody and access to a doctor are concerned, the 2004 visit did not bring to light any particular problems.

As regards the right of access to a lawyer, the CPT has welcomed the introduction of new provisions which grant this right to persons in police custody. However, the 2004 visit revealed that these provisions still do not fully comply with the standards advocated by the Committee. The CPT has recommended that the Austrian authorities take steps to ensure that the rights to talk to a lawyer in private and to have a lawyer present during interrogations are never totally denied to persons deprived of their liberty. Further, a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer should be developed as a matter of urgency and be applicable as from the very outset of police custody.

132. Particular attention has been paid in the report to the application of specific safeguards concerning young persons apprehended in relation to criminal offences. The CPT has recommended that steps be taken to ensure that such persons do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present. Further, a specific version of the information sheet provided to persons in police custody, setting out the particular position of detained juveniles and young persons, should be developed and given to all such persons taken into custody.

133. The CPT's delegation visited four police detention centres (PAZ), in Vienna-Hernalser Gürtel, Innsbruck, Linz and Wels, concentrating on the situation of *foreign nationals awaiting enforcement of a removal order* (*Schubhäftlinge*). Material conditions of detention were of a good standard at the PAZ in Wels, but left something to be desired in the other centres. As for the regime under which foreign nationals were held, it remained totally unacceptable. Admittedly, the introduction of open units in Innsbruck, Linz and Wels was a step in the right direction. However, only a small proportion of the foreign nationals held in Innsbruck and Linz were benefiting from an open regime. The CPT has called upon the Austrian authorities to review as a matter of urgency the detention regime at all police detention centres accommodating foreign nationals detained under aliens legislation. As regards in particular Vienna-Hernalser Gürtel, an open regime unit should be introduced as a matter of priority.

134. The staffing situation at the police detention centres visited – with the notable exception of the establishment in Wels – left a lot to be desired. The staff complement was insufficient and the existing staff received little specialised training for their duties. The CPT has recommended that the Austrian authorities take steps to increase staffing levels and strive to enhance possibilities for training (including language training).

The CPT has also addressed a number of specific issues concerning health-care services. In particular, the Committee has called upon the Austrian authorities to take steps to employ at least one fully-qualified nurse at Vienna-Hernalser Gürtel, and to organise regular attendance by a fully-qualified nurse at the rest of the PAZ. Other recommendations made concern the observance of the confidentiality of medical information and the provision of professional psychiatric and psychological services to foreign nationals.

135. A number of recommendations and comments have been made about other issues at the police detention centres (discipline and segregation; information and assistance to foreign detainees; contact with the outside world). In particular, the Committee has recommended that increased efforts be made to ensure that foreign detainees are duly informed about the state of their case. In this context, the CPT has stressed that the fact that outside bodies have been contracted to help foreign detainees does not discharge the State from its responsibility for providing information and assistance to such persons.

More generally, the CPT has stressed once again that persons detained for an extended period under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal status, and staffed by suitably-qualified personnel. Consequently, the Committee has called upon the Austrian authorities to give a high priority to the creation of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under aliens legislation.

136. In the report on the 1999 visit, the CPT noted that conditions of detention at the police stations visited were on the whole of a good standard. Unfortunately, the assessment from the 2004 visit was less favourable. For example, conditions of detention at the *Criminal police headquarters East (KK Ost) in Vienna* were inadequate in many respects (poor state of repair, limited access to natural light, no systematic provision of mattresses and blankets to detained persons). Further, the relatively new detention area at the *Criminal police headquarters West (KK West) in Vienna* displayed a number of design faults; in particular, the cells had small windows which let in only a meagre amount of natural light. Steps have already been taken by the Austrian authorities to address some of the shortcomings observed.

B. Establishments under the authority of the Federal Ministry of Justice

137. The CPT's delegation heard no allegations of ill-treatment of inmates by staff at Vienna-Josefstadt Prison and Vienna-Mittersteig Prison (including the detached unit at Floridsdorf).

As regards Linz Prison, the delegation received practically no allegations of ill-treatment of inmates by staff and observed that the atmosphere in the establishment was generally relaxed. However, some foreign prisoners complained of occasional rude behaviour by certain members of staff.

138. At the time of the 2004 visit, overcrowding represented a significant challenge for the Austrian prison system. This was having a negative impact upon both material conditions of detention and activities for prisoners. The CPT has recommended that the Austrian authorities pursue vigorously their efforts to tackle this problem, including through policies to limit or modulate the number of persons sent to prison. As regards more particularly activities, the Committee has also stressed that the provision of a satisfactory regime for prisoners presupposes that staff resources are adequate.

139. Material conditions of detention at *Linz Prison* were generally good, especially in the recently constructed part of the prison and the unit for women. However, the CPT has recommended that the mixing of juvenile and adult prisoners be discontinued as a matter of priority; it inevitably brings with it the possibility of domination and exploitation. Juvenile prisoners should be held in separate accommodation, staffed by persons trained in dealing with the young and offering regimes tailored to their needs (education, sport, vocational training, recreation and other purposeful activities).

As regards activities, it was commonplace for prisoners without work (i.e. about two-thirds of the inmates in the closed part of the prison) to spend up to 23 hours a day confined to their cells. The available workshops, sports facilities and rooms for recreation were under-utilised, due to the staff attendance system. Consequently, the CPT has recommended that strenuous efforts be made to improve the programme of activities offered to prisoners. For this purpose, staffing levels and the staff attendance system need to be reviewed. Further, a proactive approach is required on the part of staff in order to engage more prisoners in work and other purposeful activities.

140. On the whole, material conditions in the *units for juvenile prisoners and young adults at Vienna-Josefstadt Prison* were of a good standard, and management and staff were clearly making determined efforts to provide a positive environment for the inmates. However, in the light of the information gathered, CPT has recommended that steps be taken to improve the provision of food to the inmates and review the hours at which it is distributed.

The situation as regards activities was far less favourable. The juveniles were subject to an impoverished regime, which was totally unadapted to their needs. The daily schedule was heavily circumscribed by the shortage of staff and the staff shift system. At the end of the visit, the delegation made an immediate observation, calling upon the Austrian authorities to significantly increase the number of hours during which juveniles can engage in out-of-cell activities. The Austrian authorities subsequently indicated that the daytime shift in the two units for juveniles (D2 and E2) had been extended until 6 p.m. on weekdays and juvenile prisoners had been provided with some additional activities. The CPT has sought more details on the current situation as regards activities as well as information on the measures taken in respect of the units for young adults (D1 and E1). Further, the Committee has recommended that steps be taken to ensure that all juveniles held at Vienna-Josefstadt Prison can fully benefit from their entitlement to two hours of outdoor exercise per day.

141. The report contains a number of proposals aimed at further improving the provision of health care to inmates at Linz and Vienna-Josefstadt Prisons. In particular, the CPT has recommended that steps be taken at Linz Prison to increase the attendance hours of the doctor to the equivalent of a full-time post and substantially reinforce the nursing cover. As regards Vienna-Josefstadt Prison, the Committee has recommended that steps be taken to employ a fully qualified specialist in child/adolescent psychiatry to take care of the specific problems of juvenile prisoners.

More generally, the CPT has recommended that steps be taken to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of non-medical prison staff.

142. Other issues addressed concerning Linz and Vienna-Josefstadt Prisons include contact with the outside world, discipline and segregation, complaints and inspection procedures, foreign prisoners, and the carrying of firearms by staff in direct contact with prisoners. Particular mention should be made of the recommendations that the Austrian authorities reconsider the application of complaints procedures, with a view to ensuring that they are operating effectively, and develop a system of regular inspections of prison establishments by an independent body.

143. Material conditions at both *Vienna-Mittersteig Prison* and the *detached unit in Floridsdorf* were of a good standard. The cells were of an adequate size for the number of prisoners held and suitably equipped. Further, there was evidence of efforts to personalise the environment and reduce the carceral atmosphere, and the CPT's delegation was impressed by the high standard of general hygiene.

144. The health-care staff resources could be considered as adequate in terms of doctors and specialists providing therapeutic activities. However, the same cannot be said about the number of nurses. Consequently, the CPT has recommended that steps be taken to increase the number of nurses qualified in psychiatric care at both Vienna-Mittersteig Prison and the detached unit in Floridsdorf.

145. The CPT's delegation gained a very favourable impression of the treatment provided to inmates at Vienna-Mittersteig and Floridsdorf, which included medication, individual analyses, individual and group therapy, as well as various types of occupational therapy. All inmates benefited from generous out-of-cell time (upwards of 8 hours) and had at least one hour of outdoor exercise per day. Further, the vast majority of the inmates (some 90%) were employed in workshops or on domestic services.

146. It is also noteworthy that at both Vienna-Mittersteig Prison and the detached unit in Floridsdorf, the restraint of prisoners was the subject of a clearly-defined policy. Conditions in the segregation cells were adequate. Further, the use of these cells was recorded in a special register, the examination of which revealed that they were rarely used.

C. Secure wards at Wagner-Jauregg Psychiatric Hospital, Linz

147. The purpose of the visit to Wagner-Jauregg Psychiatric Hospital in Linz was to examine the situation of prisoners who had been transferred for treatment from Linz Prison. Consequently, the CPT's delegation went only to wards B7 and A9, which were holding the prisoners in question.

The delegation heard no allegations of ill-treatment of prisoners by staff working at the hospital and observed that the general atmosphere was relaxed.

148. Living conditions in wards B7 and A9 were of a high standard. However, the majority of patients were continuously dressed in pyjamas. This is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process. The CPT has therefore recommended that an individualised approach be adopted as regards patients' clothing.

149. The psychiatric treatment provided to patients involved - in addition to pharmacotherapy - individual psychotherapy, group therapy and various rehabilitative activities. Further, staffing levels could be considered as adequate.

D. Action on the CPT's recommendations, comments and requests for information

150. The recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Austrian authorities to provide **within six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Austrian authorities to provide in the above-mentioned response, reactions to the comments formulated in this report which are listed in Appendix I as well as replies to the requests for information made.

APPENDIX I

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

A. Establishments under the authority of the Federal Ministry of the Interior

Ill-treatment

recommendations

- the Austrian authorities to redouble their efforts to combat ill-treatment by the police. Senior police officers should be required to deliver to their staff the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions (paragraph 14);

- the Austrian authorities to issue instructions, in the light of the remarks made in paragraph 16 (paragraph 16);

- the form filled out by doctors concerning injuries observed on persons in police custody to contain, in addition to the already existing elements, the doctor's conclusions as to the degree of consistency between any allegations made by the detained person concerned and the objective medical findings (paragraph 21).

comments

- the Austrian authorities are invited to review the status of the Human Rights Advisory Board, in the light of the remarks made in paragraph 20 (paragraph 20).

requests for information

- the outcome of the criminal and disciplinary proceedings initiated in the case referred to in paragraph 17, as well as measures subsequently taken to avoid similar situations in the future (including any amendments to Instruction No. 5121/35-II/4/02 of the Federal Ministry of the Interior concerning the use of means of restraint by law enforcement agencies) (paragraph 17);

- further information concerning the introduction of standardised interrogation techniques and additional guidelines on the conduct of interrogations (paragraph 18);

- steps taken by the Federal Ministry of the Interior to implement the recommendations of the study carried out by the Human Rights Advisory Board on the use of discriminatory language by law enforcement officials (paragraph 18);

- in respect of 2003 and 2004:

  - the number of complaints of ill-treatment made against law enforcement officials;

  - the number of criminal and disciplinary proceedings instituted as a result of these complaints;

  - an account of criminal and disciplinary sanctions imposed

  (paragraph 19);

- progress made in respect of the drafting of a Government bill for the amendment of the disciplinary law provisions within the Public Service Act (paragraph 19).

Safeguards against ill-treatment of persons deprived of their liberty

recommendations

- the Austrian authorities to take steps to ensure that:

  - the right of access to a lawyer is enjoyed by all persons deprived of their liberty, as from the moment they are obliged to remain with the law enforcement agency;

  - the rights to talk to a lawyer in private and to have a lawyer present during interrogations are never totally denied to persons deprived of their liberty

  (paragraph 25);

- a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer to be developed as a matter of urgency and to be applicable as from the very outset of police custody (paragraph 26);

- the Austrian authorities to take steps to ensure compliance with the requirement referred to in paragraph 29 (paragraph 29);

- steps to be taken to ensure that juveniles do not make any statement or sign any document related to the offence of which they are suspected without the benefit of a trusted person and/or a lawyer being present (paragraph 30);

- a specific version of the information sheet, setting out the particular position of detained juveniles and young persons, to be developed and given to all such persons taken into custody. For this age group especially, the information sheet should be made more easy to understand and available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension. In this connection, the Austrian authorities should take into account the recent Recommendation Rec(2003)20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (paragraph 31).

comments

- the Austrian authorities are invited to take further steps to ensure that the information sheet setting out the rights of persons detained by the police is made more user friendly (paragraph 28);

- the Austrian authorities are invited to consider setting up separate juvenile police departments (paragraph 32);

- the Austrian authorities are invited to persevere in their attempts to introduce electronic recording of police interviews. Further, police officers should receive specific training for the conducting of electronically recorded interviews (paragraph 33).

Conditions of detention

recommendations

- the Austrian authorities to take steps to:

  - restore all cells at the PAZ in Innsbruck and Linz to a good state of repair and ensure that all in-cell sanitary facilities are suitably partitioned from the rest of the cell;

  - ensure cell occupancy levels which guarantee a minimum of 4 m² per detained person (sanitary facilities excluded);

  - review the provision of personal hygiene products to detainees at the PAZ in Vienna-Hernalser Gürtel, Innsbruck and Linz;

  - ensure that detainees are provided with sufficient materials to clean their cells;

  - review the food arrangements at the PAZ in Vienna-Hernalser Gürtel, Innsbruck and Linz, in order to ensure that the specific dietary habits and needs of detained persons are being adequately catered for

  (paragraph 40);

- the Austrian authorities to review as a matter of urgency the detention regime at all police detention centres accommodating foreign nationals detained under aliens legislation. As regards in particular the PAZ in Vienna-Hernalser Gürtel, an open regime unit should be introduced in the establishment as a matter of priority (paragraph 46);

- steps to be taken to guarantee that all persons detained at PAZ can fully benefit from their entitlement to at least one hour of outdoor exercise per day. Conditions in the outdoor exercise yards at the PAZ in Linz should be reviewed (paragraph 46);

- efforts to continue to be made at all PAZ to provide a wider range of out-of-cell activities for persons detained for prolonged periods. In this connection, steps should be taken to ensure that the already existing facilities (e.g. recreation rooms, books, games, etc.) are made accessible to all detainees (paragraph 46);

- the Austrian authorities to take steps to increase staffing levels at the PAZ and encourage staff to work more proactively with detainees, in particular by enhancing their possibilities for training (including language training) (paragraph 47);

- the Austrian authorities to take steps to employ at least one fully-qualified nurse at the PAZ in Vienna-Hernalser Gürtel, and to organise regular attendance by a fully-qualified nurse at the rest of the PAZ (paragraph 48);

- medical questionnaires similar to those used at the PAZ in Vienna-Hernalser Gürtel to be introduced at all police detention centres in a range of languages (paragraph 49);

- the Austrian authorities to take steps to bring the practice as regards the medical examination of detained persons in line with the considerations outlined in paragraph 50. Further, keeping detained persons' medical files should be the doctor's responsibility (paragraph 50);

- the Austrian authorities to take measures, as a matter of priority, in order to provide professional psychiatric and psychological service to foreign nationals detained at police detention centres (paragraph 52);

- conditions in the segregation cells of the PAZ in Innsbruck and Linz to be improved, in the light of the remarks made in paragraph 53 (paragraph 55);

- detained persons placed in segregation cells to be guaranteed one hour of outdoor exercise per day (paragraph 55);

- detained persons placed in a segregation cell for disciplinary reasons to be given the right to be heard on the subject of the offence of which they are accused and to appeal against a disciplinary sanction to a higher authority (paragraph 55);

- a separate register to be established for the use of the segregation cells, setting out the full details of the persons held in them: date and time of entering and leaving, grounds for placement, etc. (paragraph 55);

- information on the internal rules and other procedures applicable to foreign detainees to be systematically provided at the PAZ in Innsbruck and Linz, in an appropriate range of languages (paragraph 56);

- the Austrian authorities to step up their efforts to ensure that foreign detainees are duly informed about the state of their case (paragraph 58);

- steps to be taken at the PAZ in Linz to ensure that detainees' right to visits and phone calls is fully respected (paragraph 60);

- the visiting facilities at the PAZ in Vienna-Hernalser Gürtel and Innsbruck to be revised in order to ensure that visits take place under more open conditions (paragraph 60);

- the Austrian authorities to give a high priority to the creation of holding facilities specifically designed for the accommodation of foreign nationals deprived of their liberty under aliens legislation (paragraph 61);

- the Austrian authorities to take steps to:

  - guarantee ready access to drinking water for all persons in police custody;

  - ensure that all detained persons throughout the country are provided with a clean mattress and clean blankets at night

  (paragraph 67).

comments

- better use could be made of the space taken up by the cells in the basement of the PAZ in Innsbruck, e.g. by fitting out a gym or other recreational facilities (paragraph 37);

- hunger strikes should be approached from a therapeutic rather than punitive standpoint (paragraph 51);

- the Austrian authorities are invited to provide suicide-proof clothing for use in appropriate circumstances (paragraph 55);

- the fact that outside bodies have been contracted to help foreign detainees does not discharge the State from its responsibility for providing information and assistance to such persons (paragraph 58);

- the Austrian authorities must ensure that conditions of detention at the Criminal police headquarters East in Vienna correspond fully to the criteria outlined in the report on the 1994 visit (cf. paragraph 30 of CPT/inf (96) 28) (paragraph 67).

requests for information

- information on the experiences stemming from the implementation of the amended Asylum Law and its impact on the detention of foreign nationals (paragraph 35);

- information on any safeguards to guarantee adequate accountability and contract monitoring incorporated in the contracts between the Federal Ministry of the Interior and organisations providing care to deportation detainees (paragraph 58);

- the official position as regards the keeping of mobile phones by foreign nationals detained pending deportation (paragraph 60).

B. Establishments under the authority of the Federal Ministry of Justice

Preliminary remarks

recommendations

- the Austrian authorities to pursue vigorously the application of a range of measures designed to combat prison overcrowding, including policies to limit or modulate the number of persons sent to prison. In this connection, the Austrian authorities should take into account the principles and measures set out in Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole) (paragraph 69);

- the Austrian authorities to introduce measures aimed at ensuring that both sentenced and remand prisoners are provided with work. Further, efforts to be made to develop programmes of education and vocational training in all penitentiary establishments. The provision of a satisfactory regime of activities for prisoners will require having an adequate staff complement and a staff attendance system which ensures the availability of staff throughout the day (paragraph 70).

Ill-treatment

recommendations

- the Austrian authorities to review their prison staffing and deployment policy, in the light of the remarks made in paragraph 73 (paragraph 73).

requests for information

- more details on the outcome of the assessment of the situation of foreign nationals at Linz Prison, referred to in paragraph 72 (paragraph 72).

Linz Prison

recommendations

- the mixing of juvenile and adult prisoners to be discontinued as a matter of priority. Juvenile prisoners should be held in separate accommodation, staffed by persons trained in dealing with the young and offering regimes tailored to their needs (education, sport, vocational training, recreation and other purposeful activities) (paragraph 79);

- measures to be taken to ensure adequate access to natural light in all cells; any devices fixed to cell windows should be of such a design as not to deprive prisoners of this basic element of life (paragraph 79);

- personal hygiene items to be systematically provided to all prisoners (paragraph 79);

- steps to be taken to ensure that all prisoners are offered at least one hour of outdoor exercise every day, including weekends (paragraph 80);

- strenuous efforts to be made to improve the programme of activities offered to prisoners at Linz Prison. For this purpose, staffing levels and the staff attendance system need to be reviewed. Further, a proactive approach is required on the part of staff in order to engage more prisoners in work and other purposeful activities (in particular education and vocational training) (paragraph 83).

requests for information

- confirmation that the outdoor exercise yards used by male prisoners have been equipped with seats and that all yards have been provided with shelters against inclement weather (paragraph 80).

Units for juvenile prisoners and young adults at Vienna-Josefstadt Prison

recommendations

- steps to be taken to improve the provision of food to juveniles and young adults at Vienna-Josefstadt Prison and review the hours at which food is distributed (paragraph 88);

- steps to be taken to ensure that all juveniles held at Vienna-Josefstadt Prison can fully benefit from their entitlement to two hours of outdoor exercise per day (paragraph 92).

requests for information

- the number of juveniles in units D2 and E2 actually benefiting from the increased possibilities for out-of-cell activities and the average number of hours per day spent by them engaged in such activities, as well as measures taken in respect of units D1 and E1 (paragraph 92).

Health-care services at Linz and Vienna-Josefstadt Prisons

recommendations

- steps to be taken at Linz Prison to:

  - increase the attendance hours of the doctor to the equivalent of a full-time post and substantially reinforce the nursing cover;

  - ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the prison's premises, including at night and weekends

  (paragraph 93);

- steps to be taken at Vienna-Josefstadt Prison to employ a fully qualified specialist in child/adolescent psychiatry, to take care of the specific problems of juvenile prisoners (paragraph 95);

- steps to be taken to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a particular case – out of the sight of non-medical prison staff (paragraph 96).

comments

- the Austrian authorities are invited to take steps to ensure that any medical research on juvenile prisoners is carried out in compliance with the international standards concerning information for and consent of research participants (paragraph 95).

requests for information

- plans for contracting doctors in from the general health service instead of prison doctors being employed by the Federal Ministry of Justice (paragraph 98).

Other issues concerning Linz and Vienna-Josefstadt Prisons

recommendations

- possibilities to be explored for introducing more open visiting arrangements at Linz Prison (paragraph 99);

- the Austrian authorities to reconsider the application of complaints procedures, with a view to ensuring that they are operating effectively. In particular, the internal complaints system should be reviewed to ensure that prisoners receive, within a reasonable time, reasoned answers in writing to written complaints and that a proper record is maintained of every complaint. It should also be verified that the existing arrangements do indeed enable prisoners to send complaints on a confidential basis (paragraph 106);

- the Austrian authorities to develop a system of regular inspections of prison establishments by an independent body (paragraph 107);

- information on the internal regulations to be routinely provided to all prisoners on admission, in a language they understand (paragraph 108).

comments

- the Austrian authorities are invited to review the possibilities for juvenile prisoners at Vienna-Josefstadt Prison to make phone calls (e.g. by providing free-of-charge telephone cards and following the same approach to the surveillance of phone calls as was observed in Linz Prison) (paragraph 100);

- the Austrian authorities are invited to review the disciplinary sanctions procedure with a view to ensuring that prisoners facing disciplinary charges are formally guaranteed the right to call witnesses on their own behalf and to cross-examine evidence given against them (paragraph 102);

- the CPT has reservations about the use of prisoners as interpreters for other prisoners during disciplinary hearings. If, exceptionally, recourse is had to such an approach, the consent of the prisoner facing disciplinary charges should be carefully documented (paragraph 103);

- the Austrian authorities are invited to review the legal provisions concerning acts of self-harm and suicide attempts, in the light of the remarks made in paragraph 105 (paragraph 105);

- the Austrian authorities are invited to introduce programmes of language education for foreign prisoners and language training for staff working with them (paragraph 108);

- the Austrian authorities are invited to reconsider the current policy on the carrying of firearms by staff working within prison premises (paragraph 109).

Vienna-Mittersteig Prison

recommendations

- steps to be taken to increase the number of nurses qualified in psychiatric care at both Vienna-Mittersteig Prison and the detached unit in Floridsdorf (paragraph 113);

- the Austrian authorities to take steps to ensure, in the context of the placement review procedure, that prisoners have legal representation (including legal assistance to prisoners who are not in a position to pay for a lawyer themselves) (paragraph 118).

C. Secure Wards at Wagner-Jauregg Psychiatric Hospital, Linz

recommendations

- an individualised approach to be adopted as regards patients' clothing (paragraph 123).

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requests for information

- confirmation that an end has been put to the practice of using net-beds and cage-beds at all psychiatric hospitals and prisons throughout Austria (paragraph 127).

APPENDIX II

LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS WITH WHOM THE CPT'S DELEGATION HELD CONSULTATIONS

A. National authorities

Federal Ministry of Foreign Affairs

Hans WINKLER	Ambassador, Head of the Office of the Legal Adviser, Liaison Officer of the CPT
Stefan SCHOLZ	Counsellor, Human Rights Officer at the Office of the Legal Adviser

Federal Ministry of Health and Women's Issues

Maria RAUCH-KALLAT	Federal Minister

Federal Ministry of the Interior

Ernst STRASSER	Federal Minister
Erik BUCHSBAUM	Police President and Director General of Public Security of Vienna
Wolfgang TAUCHER	Director of the Federal Asylum Agency
Alexandra SCHREFLER-KÖNIG	Head of Department for Aliens Police and Border Control
Erwin FELZMANN	Chairman, Human Rights Advisory Board (*Menschenrechtsbeirat*)
Udo JESIONEK	Member, Human Rights Advisory Board
Walter WITZERSDORFER	Head of the Secretariat, Human Rights Advisory Board
Gudrun RABUSSAY	Secretariat, Human Rights Advisory Board

Federal Ministry of Justice

Dieter BÖHMDORFER	Federal Minister
Roland MIKLAU	Director General
Michael NEIDER	Director General
Irene KÖCK	Director, Central Prison Administration

Ombudsman Board (*Volksanwaltschaft*)

Peter KOSTELKA	Ombudsman

B. Intergovernmental Organisations

Office of the United Nations High Commissioner for Refugees (UNHCR) in Vienna

C. Non-governmental organisations

Amnesty International, Austrian Section

Caritas Österreich

Verein für Sachwalterschaft und Patientenanwaltschaft

Verein Menschenrechte Österreich

Vereinigung Österreichischer StrafverteidigerInnen