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

**from 27 March to 7 April 2006
and from 21 to 24 June 2006**

The Czech Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2007) 33.

Strasbourg, 12 July 2007

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Copy of the letter transmitting the CPT's report

Strasbourg, 2 August 2006

Dear Ms Marečková,

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 the Czech Republic drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to the Czech Republic from 27 March to 7 April 2006 and from 21 to 24 June 2006. The report was adopted by the CPT at its 60th meeting, held from 3 to 7 July 2006.

The various 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 Czech 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 Czech authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made. In respect of the recommendations and requests for information in paragraph 36, the CPT requests the Czech authorities to provide a response within **three months**.

The CPT would ask, in the event of the responses being forwarded in the Czech language, that they be accompanied by an English or French translation. It would also be most helpful if the Czech authorities could provide a copy of the response in a computer-readable form.

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

Yours sincerely,

Silvia CASALE
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

Ms Jana MAREČKOVÁ
Secretary of the Committee against Torture
Government Human Rights Council
Vladislavova 4,
CZ - 110 00 PRAGUE 1

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 carried out a visit to the Czech Republic from 27 March to 7 April 2006 and from 21 to 24 June 2006. The visit was organised within the framework of the CPT's programme of periodic visits for 2006; it was the Committee's third periodic visit to the Czech Republic.

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

- Aleš BUTALA (Head of delegation)
- Ladislav GETLIK
- Pétur HAUSSON
- Renate KICKER
- Isolde KIEBER.

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

- Hugh CHETWYND
- Marco LEIDEKKER

and assisted by

- Mr James MacKEITH, Consultant Forensic Psychiatrist, United Kingdom (expert)
- Mr Alan MITCHELL, Former Head of Health Care, Scottish Prison Service, United Kingdom (expert)
- Mr Jurgen VAN POECKE, Director of Youth detention centre "De Grubbe", Everberg, Belgium (expert)
- Ms Jana FRANKOVÁ (interpreter)
- Ms Alena HANUSOVÁ (interpreter)
- Ms Jitka KOCIÁNOVÁ (interpreter)
- Mr Vladimír OLEXA (interpreter)
- Mr Tomas OPOCENSKY (interpreter)

- Ms Helena REJHOLCOVÁ (interpreter)
- Ms Jana REJSKOVÁ (interpreter).

B. Establishments visited

3. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of Interior

Brno region

- Brno District Police Station

Liberec region

- Liberec District Police Station
- Jablonec Police Station
- Jičín District Police Station

Ostrava region

- Masná District Police Station, Ostrava
- Strma Municipal Police Station, Ostrava

Plzeň region

- Dobřany Police Station

Prague region

- Kongresová Police Headquarters, Prague
- Hybernska Police Station, Prague
- Vysehradska Police Station, Prague

Establishments under the authority of the Ministry of Justice

- Liberec Prison
- Mírov Prison
- Ostrava Prison
- Valdice Prison

The delegation also interviewed certain patients at Brno Prison Hospital, as well as some recently arrived remand prisoners at Prague-Pankrác and Prague-Ruzyně Prisons.

Establishments under the authority of the Ministry of Health

- Brno Psychiatric Hospital
- Dobřany Psychiatric Hospital
- Acute Psychiatric Assessment and Detoxification Unit, Ostrava Municipal Hospital

Establishments falling under the authority of the Ministry of Labour and Social Affairs

- Brandýs nad Labem Social Care Home
- Prague 1 Municipality Social Care Home
- Střelice Social Care Home

C. Consultations held by the delegation

4. In the course of the visit, the delegation held consultations with Ivo HARTMANN, Deputy Minister of Justice, Marián HOŠEK, Deputy Minister of Labour and Social Affairs, Miloslav KOUDELNÝ, Deputy Minister of Interior, and Michal VÍT, Deputy Minister of Health, as well as Luděk KULA, Director General of the Prison Service and other senior officials from relevant Ministries and Services. The delegation also met with Otakar MOTEJL, the National Ombudsman, and with Svatopluk KARÁSEK, the Government Commissioner for Human Rights, as well as with representatives of Czech civil society.

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

D. Cooperation between the CPT and the Czech authorities

5. The degree of co-operation received during the visit from the Czech authorities at central and local level was on the whole very good. The delegation noted that, in general, information about a possible visit by the Committee, and of its mandate and powers, had been provided to places used for holding persons deprived of their liberty; it had rapid access to the establishments it wished to visit, to the documentation it wanted to consult and to individuals with whom it wished to interview. In particular, the delegation would like to thank the CPT's liaison officer, Ms Jana MAREČKOVÁ, for the assistance provided before and during the visit.

6. However, in the case of Prague 1 Municipality Social Care Home the delegation was refused access to medical records by the Director of the Home who cited his legal obligation to abide by national rules on medical confidentiality. The CPT understands the importance of medical confidentiality but recalls that in the context of its mandate it is entitled to have access to medical records. At the end of the visit, senior representatives from the Ministry of Health reaffirmed the right of members of the CPT to have such access in order to carry out their tasks effectively.

In this context, the CPT wishes to stress that Article 8, paragraph 2.d, of the Convention stipulates that Parties to the Convention shall provide the Committee with information available to them which is necessary for it to carry out its task.

7. The good co-operation was also marred by a denial of access to the Social Care Home for Retarded People in Brandýs nad Labem. The Deputy Head of the Regional Council of Central Bohemia informed the delegation that the council was of the opinion that the CPT mandate did not cover social care homes. He stated that the delegation would only be granted access to the home under the direct supervision of the staff, and that all interviews with residents would have to be conducted in their presence. The delegation explained that such conditions can never be accepted by the CPT. When the delegation did attempt to visit the social care home the next day, it was denied access. Consequently, the delegation made an immediate observation in relation to this social care home (cf. paragraph 8 below).

From the information subsequently provided by the Czech authorities on 9 May 2006, it was clear that certain persons placed in the Brandýs nad Labem Home may be deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights. Consequently, by letter of 12 June 2006 the CPT conveyed its intention to return to the Czech Republic from 21 to 24 June 2006 for the purpose of visiting the care home.

On this occasion, the CPT's delegation encountered no obstacles in visiting the social care home. Further, the CPT is pleased that the misunderstanding over the denial of access during the first part of the visit, on 1 April 2006, has been fully resolved. Nevertheless, the Committee is obliged to recall that a refusal to permit access to a place in which persons are deprived of their liberty constitutes a serious breach of cooperation. The CPT trusts that there will be no repetition of such a situation.

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

8. At the meeting which took place at the end of the visit on 7 April 2006, the CPT's delegation made five immediate observations under Article 8, paragraph 5, of the Convention as regards information pertaining to the Social Care Home for Retarded People in Brandýs nad Labem and a number of issues relating to the treatment of prisoners in Valdice Prison. The Czech authorities were requested to provide the CPT, respectively, with:

- by 8 May 2006, detailed information pertaining to the Social Care Home for Retarded People in Brandýs nad Labem, including: the number of residents and their legal status; the use of restraints, such as net beds and cage beds, and other involuntary measures; whether when applying restraints to those deprived of their legal capacity, the consent of the guardian is sought and obtained; whether in such cases the guardian may be a staff member of the establishment or of an official body;
- by 31 May 2006, confirmation that the systematic handcuffing of all prisoners sentenced to life imprisonment has been ended in Section E of Valdice Prison;
- by 31 May 2006, information on the treatment and regime of the two vulnerable prisoners from Section E of Valdice Prison whom the CPT's delegation requested to be transferred to Brno and Prague prison hospitals for the purposes of being medically examined;
- by 31 May 2006, information about the safeguards instituted in Valdice Prison, as well as in other prisons, as concerns the use of strapped beds for agitated prisoners;
- by 30 June 2006, the outcome of the thorough review of the treatment of prisoners within Section E of Valdice Prison.

9. By letters of 9 May, 31 May and 23 June 2006 the Czech authorities responded to the immediate observations raised by the delegation at the end of the visit with respect to the Brandýs nad Labem Social Care Home and Valdice Prison. These responses have been taken into account in the relevant sections of the present report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

10. The CPT's delegation visited ten establishments under the authority of the Ministry of Interior, certain of them for the first time.

The rules governing detention of criminal suspects by the police have not changed since the visit by the CPT in 2002. Police custody of persons arrested on suspicion of having committed a criminal offence is limited to a maximum of 48 hours; within that period, they must either be brought before a court or be released. The judge has an additional 24 hours to decide on whether to remand the person in custody. To sum up, a person may be held up to 72 hours in police detention facilities.

It should also be noted that the Police Act (283/1991) provides the police with the power to summon persons to present themselves at police stations in order to provide an "explanation" (Section 12) or to prove their identity (Section 13); in the latter case, a person cannot be held more than 24 hours.

2. Ill-treatment

11. Most persons interviewed about their experience in police custody indicated that they had not been ill-treated. However, the delegation did receive a few allegations of ill-treatment by the police, certain of which related to ill-treatment during questioning and, more particularly, during interrogation by officers of the criminal police. The allegations consisted of being punched, kicked and struck with various objects; juveniles were among those who made such allegations. No medical evidence of ill-treatment was gathered by the delegation; however, the time of the alleged ill-treatment pre-dated the delegation's visit by several weeks and any marks which might have been caused by the ill-treatment alleged would almost certainly have healed in the meantime.

In the light of all the information at its disposal, **the CPT recommends that senior police officers remind their subordinates, particularly officers of the criminal police, that the ill-treatment of persons in their custody is not acceptable and will be the subject of severe sanctions.**

3. Conditions of detention

12. Material conditions in the police establishments visited were on the whole satisfactory for short-term custody, and the Committee welcomes the adoption of the Binding Guideline of the Police President of 29 December 2004 on Police Cells. There was no overcrowding at the time of the visit. Nevertheless, certain police stations required upgrading.

The cells in the police stations visited were of an adequate size for holding one or two persons¹. Further, appropriate sleeping arrangements (plinths, beds, mattresses, clean blankets) were available for detainees held overnight in custody and the toilet facilities were generally satisfactory. The main deficiencies concerned the lack of access to natural light and poor ventilation in the police stations visited; some of the occupied cells in Kongressova police station were especially malodorous and stuffy. **Steps should be taken to remedy these shortcomings.**

13. The delegation heard complaints about how detained persons had been handcuffed to metal rings in uncomfortable positions in certain police stations, and in particular the one in Jablonec. In this last establishment the delegation observed in the custody area the presence of five metal rings attached to the wall some 50 cm from the floor. As the CPT has stated in the past there can be no justification for shackling detained persons to a fixed object. **The CPT calls upon the authorities to ensure that the metal rings in Jablonec police station are removed, as well as in all other police stations where such rings exist.**

14. The delegation received many complaints from persons who had recently been in police custody in the districts of Liberec and Ostrava, that they had either not been offered any food during their detention or that the food proffered was extremely meagre, particularly during weekend periods. In this respect, it was noted that while most police stations appeared to have 84 crowns per day allocated per detained person, in Liberec the amount was only 65 crowns. Complaints were also heard about limited access to drinking water. Such a situation would not be acceptable. **The CPT recommends that steps be taken to ensure that persons deprived of their liberty by the police are given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day, and have ready access to drinking water at all times.**

¹ For example, in Jičín and Liberec District Police Stations the single occupancy cells were 7m² and 5.6m² respectively; in Ostrava and Liberec District Police Stations the double occupancy cells were 12m²; and in Jablonec Police Station the double occupancy cells were 11.4m².

4. Fundamental safeguards against ill-treatment

15. In previous visit reports, the CPT examined in detail the formal safeguards against ill-treatment which are offered to persons detained by law enforcement agencies in the Czech Republic and their operation in practice. The Committee has placed particular emphasis on three fundamental rights, namely the rights of detained persons to inform a close relative or another third party of their choice of their situation, and the right of access to a lawyer and to a doctor. It is equally fundamental that persons deprived of their liberty by the police be informed without delay of all their rights, including those mentioned above. Such safeguards should also apply to persons under aliens' legislation, and to persons who are obliged to remain with the police for identification purposes or to provide an explanation.

The information gathered in the course of the 2006 visit highlights that there continues to be a need to improve the practical effectiveness of these rights.

a. notification of custody

16. As in 2002, a number of persons interviewed by the CPT's delegation alleged that the right of notification of custody had not been granted to them as from the outset of their deprivation of liberty. Instead notification occurred in the course of questioning by an investigator when a protocol concerning the charge was drawn up. For example, the delegation met a person who had been apprehended at 3 a.m. in Prague but only detained in a cell in Kongressova Police Headquarters in Prague at 2 p.m. (some eleven hours later) and who, a little while later, had still not been able to contact his family. In this respect, it is essential that when persons are detained in police cells the duty officer should verify whether they have been notified of their rights and had an opportunity to contact their next of kin or another person.

The CPT recommends that the Czech authorities ensure that all detained persons are granted the right to notify a close relative or third party of their choice of their situation as from the very outset of their deprivation of liberty by the police.²

b. access to a lawyer

17. The legal situation governing the right of access to a lawyer has not changed since the 2002 visit. As in previous visits to the Czech Republic, the CPT's delegation found that the right of access to a lawyer often only became effective some time after the persons concerned had been deprived of their liberty. Many of the persons interviewed by the delegation claimed that they had not been permitted to contact a lawyer or even informed of their rights until after being questioned by the criminal police. In most cases, it appeared that it was only when the protocol drawing up the charges was presented to the detained person to sign, which includes a paragraph on the rights of the detained person, was it possible to contact a lawyer. The delegation also heard specific allegations concerning juveniles being denied the right of access to a lawyer while being interrogated by an investigator.

18. The CPT is obliged to reiterate its concern at this state of affairs. The Committee must draw

² Any exception to the exercise of this right should be clearly circumscribed in law and any delay be made subject to appropriate safeguards (i.e. any delay to be recorded in writing along with the reason, and to require the approval of the prosecutor or judge) and strictly limited in time.

to the attention of the authorities once again that, in its experience, it is during the period immediately following the deprivation of liberty that the risk of ill-treatment, including intimidation, is greatest. Consequently, the right for persons deprived of their liberty by the law enforcement authorities to have access to a lawyer during this period is a fundamental safeguard against ill-treatment. Further, as regards juveniles steps should be taken to ensure that an adult responsible for the interests of the juvenile (i.e. a relative or a guardian) is present when the juvenile concerned is interviewed.

The right of access to a lawyer must include the right for any detained person to talk to his lawyer in private upon being admitted into the police station. The person concerned should, in principle, be entitled to have a lawyer present during any interrogation, whether this be before or after he is charged. Naturally, the fact that a detained person has stated that he wishes to have access to a lawyer should not prevent the police from beginning to question him on urgent matters before the lawyer arrives. Provision could also be made for the replacement of a lawyer who impedes the proper conduct of an interrogation, on the understanding that such a possibility should be strictly circumscribed and subject to appropriate safeguards.

The Committee further recognises that, in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person's access to a particular lawyer. However, this should not result in the right of access to a lawyer being totally denied during the period in question; in such cases, access to another lawyer should be arranged.

The CPT recommends that the Czech authorities ensure that the right of access to a lawyer, as defined above, is explicitly granted in law and in practice to everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty. If necessary the Police Act and/ or the Code of Criminal Procedure should be amended accordingly.

19. The Committee would, nevertheless, like to highlight a positive initiative undertaken by the Brno municipal police service to issue guidelines concerning the rights of notification of custody and of access to a lawyer. These guidelines were drawn up further to recommendations made by the Ombudsman, **and could well serve as an example of improved practice for other police services in the Czech Republic.**

c. access to a doctor

20. In the course of the 2006 visit the CPT's delegation did not hear any complaints that persons in police custody had not been granted access to a doctor when needed. Nevertheless the Committee remains concerned about the legal provisions on the subject. Section 28 (2) and (3) and Section 32 of the Police Act provide for the possibility of access to a doctor for a person *placed in a police cell*. This right does not apply throughout the whole deprivation of liberty. Indeed, apprehended persons can be interrogated and kept in police stations for many hours before being formally placed in a cell.

The CPT recommends that the right of access to a doctor be formally guaranteed for all persons in police custody as from the very outset of their deprivation of liberty.

21. The Committee has been informed that the Health Care Bill, currently in Parliament,

expressly provides that a person detained in a police cell does not have the right of access to a doctor of his/her own choice. The reason provided being that “if a patient detained in a police cell demands health care at a place a considerable distance from the place of detention, his/her state of health could deteriorate by the time such care is secured.”³

The CPT does not share this analysis. The question of treatment should be decided, in the first place, by the doctor called by the police including whether the person in question needs to be transferred to a hospital. The purpose of allowing a person the right to consult their doctor of choice in addition is inter alia to serve as an important safeguard against ill-treatment, as well as to ensure the continuity of care with their treating doctor. Such consultations can take place within the premises of the police stations as long as the rules of medical confidentiality are respected.

The CPT recommends that the Czech authorities reconsider the Health Care Bill, in the light the above remarks.

d. information on rights

22. The situation regarding information on rights has not changed since the 2002 visit. At best persons deprived of their liberty were informed orally of their rights at the time of apprehension; though, it would appear, not systematically. Information in writing on a person’s rights was contained in the protocol drawn up by the investigator relating to the charges; this would suggest that a person was only informed of his/her rights some hours after apprehension, towards the end of being questioned. Moreover, many of the persons interviewed by the delegation stated that they had been concentrating on what the protocol stated regarding their charges and did not even notice or assimilate the paragraph on rights. The existing system for notifying persons deprived of their liberty of their rights is neither effective nor sufficient.

In the light of the above, the CPT recommends that the Czech authorities ensure that all persons detained by the police – for whatever reason –are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment they are obliged to remain with the police). This should be ensured by provision of clear oral information at the very outset, to be supplemented at the earliest opportunity by provision of a separate written form setting out detained persons' rights in a straightforward manner. The form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a separate statement (that is, separate from the protocol on charges) attesting that they have been informed of their rights.

³ cf. 2nd follow-up response to the CPT’s 2002 visit report (CPT/Inf (2006) 13, p.5).

e. custody records

23. The custody records for the detention units in all the police stations visited were, in general, correctly maintained with the relevant information. However, the CPT's delegation noted that persons could be kept in a police station for periods of up to twelve hours without any specific record of this custody. If persons are deprived of their liberty in police stations, this should be duly recorded in a register similar to the ones used for the custody units.

The CPT recommends that the necessary steps be taken in the light of the above remarks.

f. complaints and inspections procedures

24. The Committee welcomes the fact that the Czech Republic has ratified the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that it has nominated the Ombudsman's Office as the independent national preventative mechanism. It further notes that the Ombudsman's Office has already initiated a series of inspections of police stations around the country. **The CPT would be interested to receive information on the responses given by the Czech authorities to the Ombudsman's reports.**

B. Acute Psychiatric Assessment and Detoxification Units

25. The delegation visited one such unit, falling under the authority of the Ministry of Health, in Ostrava. The CPT would like to acknowledge that units of this kind can be helpful in managing and treating inebriated persons who otherwise might find themselves detained in police stations, where there is no specialised care. The unit has a staffing level of one doctor and two nurses on a 24 hour basis and the detoxification unit has a capacity to accommodate, in two rooms, six men and three women respectively; for the first three months of 2006 the average occupancy rate was six persons per day. The duty doctor also explained that according to the law intoxicated persons had to be kept in the unit for a minimum of eight hours, after which the medical practitioner decides whether they are sober and can be released. **The CPT would like to receive a copy of the legal norms governing the detention of persons in such detoxification units.**

26. As observed by the delegation, the registers seemed to indicate that persons admitted into the unit are routinely strapped to a bed at the ankles and wrists and across the body. A register recorded the time when ankle and wrist straps were applied and released, but not the body strap. The doctor would give patients who became agitated a dose of intramuscular chlorpromazine (an anti-psychotic neuroleptic) according to their body weight, in order to sedate them. Ongoing surveillance was conducted via a video camera in the room and one of the duties of the nurses was to check on patients every 30 minutes; however, there was no record of any such checks being made. Further, there appeared to be an over-reliance on the use of video-surveillance, even though the room was dark and it was difficult to discern the silhouette of the patient lying on the bed, let alone whether that person was breathing.

27. The CPT considers that patients who are immobilised should always be subject to continuous, direct personal supervision by a member of the medical staff. Further, it is not convinced of the necessity for intoxicated persons to be always strapped to a bed; if recourse to the straps on the bed is considered essential in a given case they should be applied on the direct order of a doctor, and should be removed at the earliest opportunity. Moreover, additional staffing resources should be made available. **The Committee recommends that the Czech authorities take the necessary steps in the light of the above remarks.**

C. Prison establishments

1. Preliminary remarks

28. In the course of the 2006 visit, the CPT's delegation visited the Prisons of Liberec and Ostrava, and undertook targeted visits to Mírov and Valdice Prisons. The focus of the visits to these latter two high security prisons was to examine the conditions of detention of persons sentenced to life-imprisonment, as well as of other prisoners placed in the special high security unit in Valdice.

29. At the time of the visit, the prison population stood at 19,564⁴ for an overall design capacity of 18,876. While the number of persons on remand (2,709) has continued to decrease since the 2002 visit, the number of persons sentenced to imprisonment has been rising steadily (16,855). Consequently, overcrowding is becoming a concern once more, especially in those prisons located in the centre of urban areas.

30. The Committee was pleased to note that the amendments to the Confinement Act and to the Remand Act in 2004 introduced the norm of a minimum of 4m² per prisoner in multi-occupancy cells. However, an exemption to this rule was introduced and, as the Czech authorities noted in their follow-up response of 14 April 2005 (cf. CPT/Inf (2005) 5), "based on a minimum accommodation area of 4m² per prisoner, most prisons are significantly overcrowded".

The increased emphasis being placed upon mediation and alternative sanctions is to be welcomed. However, the CPT was concerned to learn that nearly 1,000 persons were committed to prison for non-fulfilment of their non-custodial sanction in 2005. **The CPT would like to receive the comments of the Czech authorities regarding this matter.**

More generally, **the CPT would like to receive detailed information on the measures envisaged to put an end to prison overcrowding.**

31. *Liberec Prison*, located in the centre of the town in a building dating back to 1887, underwent extensive reconstruction in 2003; it now has an official capacity for 169 persons on remand and 208 sentenced prisoners. At the time of the visit, the population was 387 of whom 120 on remand and 267 sentenced. Within the sentenced population there were some 90 prisoners who were "in transit"⁵, and who were held in the remand sections of the prison but who were subject to an even more limited regime than persons on remand.

⁴ cf. 17,924 at the time of the 2002 visit.

⁵ "In transit" prisoners either had recently been sentenced and were waiting to be allocated to a prison or were sentenced prisoners who had been transferred temporarily to the prison for a court case or for reasons of an ongoing investigation. Persons whose alternative sanctions had been converted into a short-term prison sentence were also held in the same sections as "in transit" prisoners.

Ostrava Prison, located in the centre of the town, was built in the 1920's as part of the Palace of Justice of the regional court and has an official capacity for 460 persons on remand and 129 sentenced prisoners. At the time of the visit the prison population was 610, with 350 on remand (including eight women) and 236 sentenced (including twelve women), and 24 juveniles. More than half of the sentenced prisoner population was "in transit", and their conditions of detention were, as in Liberec Prison, of poor quality.

Mírov Prison has already been described in paragraph 36 of the 1997 CPT visit report (cf. CPT/Inf (1999) 7). The official capacity is 344 and at the time of the visit the prison held 359 sentenced prisoners, of whom 318 were under the high security regime (Category D). The twelve life-sentenced prisoners were held in single or double cells in a wing separate from other prisoners.

Valdice Prison, described in paragraph 61 of the 2002 CPT visit report (cf. CPT/Inf (2004) 4), has a capacity of 1,094 and held 1,197 sentenced prisoners, of whom 629 were under the high security regime (Category D). A special stand-alone unit (Section E) with a capacity for 48 prisoners accommodated, at the time of the visit, sixteen persons sentenced to life-imprisonment and 22 high security prisoners who were considered the most "dangerous" and/or "troublesome" in the prison system.

2. Ill-treatment

32. The CPT's delegation heard no allegations of physical ill-treatment inflicted directly on prisoners by prison staff in Liberec, Ostrava and Mírov Prisons. However, the CPT is concerned about allegations of such a nature that its delegation received in respect of Section D of Valdice Prison. The delegation also heard a number of allegations concerning prison officers mocking prisoners during medical consultations in Mírov Prison and in Section E of Valdice Prison (cf. paragraphs 52 and 53 as well as paragraphs 83 and 84 below). **The CPT recommends that the Czech authorities deliver the clear message to prison officers that all forms of ill-treatment are not acceptable and will be the subject of severe sanctions.**

33. More generally, there was a clear atmosphere of intimidation and dread within Section E of Valdice Prison, characterised by a reluctance to complain for fear of being sent to the confinement cell or of being deprived of a privilege or of an activity, or even of being placed in a cell where a prisoner might be at risk of sexual abuse. This matter is pursued in the following paragraphs.

34. Inter-prisoner intimidation/violence was a significant phenomenon in Sections D and E of Valdice Prison and additional such allegations were made concerning certain other establishments.

In the case of Valdice Prison the delegation was able to document several cases of prisoners who had been physically and sexually abused by other prisoners. Prison staff in Section D explained to the delegation that certain vulnerable prisoners often had to be moved from one dormitory to another as they did not get on with other prisoners. It would appear that a number of such prisoners in Sections D and E were being routinely raped and sexually abused, when they were moved to a new dormitory or cell.

Moreover, the delegation was concerned that vulnerable prisoners who had clearly suffered physical abuse and rape while in Section D were, subsequently, transferred to Section E because they were perceived as being “difficult” prisoners. Further, it appeared that these prisoners were often accommodated in the same cell as persons who were known to have perpetrated acts of violence and/or rape on other prisoners. An examination of the records and interviews with prisoners (both alleged perpetrators and victims) confirmed these findings.

35. The example of F, an Ukrainian, is one of several cases examined by the CPT’s delegation. F is a slight man who is gaunt and tremulous. Members of the delegation met F in the confinement cell of Section E of Valdice Prison, where he had been sent for six days by the educator for “destroying prison property”⁶; a medical member of the delegation subsequently examined him and consulted his medical records. After further cross-referencing, the delegation formed the view that F had been repeatedly raped and physically abused while in Valdice Prison. Moreover, during his time in Section E he had been subjected to forced anal and oral intercourse with three different prisoners, and had also been obliged to masturbate them.

An examination of F showed that there was an area of thickening of the perineum between the scrotal sac and the anal ring, consistent with repeated perineal trauma. F’s medical records revealed that in December 2005, while in Brno Prison Hospital, an area measuring 5 cm x 1 cm was noted on the perineum, which was felt to be consistent with perineal injury; the psychiatrist’s report mentioned the possibility of sexual abuse.

Moreover, it is interesting to note that on 14 March 2006, eight days prior to being placed in the confinement cell, for two consecutive periods of five and six days, the psychiatrist in Valdice Prison saw F and concluded that he “was incapable of an independent life in the prison environment. The objective of prison cannot be met here.”⁷

36. The delegation requested that F be immediately transferred to Pankrác Prison Hospital for a medical assessment. Five days later two medical members of the CPT’s delegation met with the director and chief physician of the hospital to discuss the results of the preliminary observations concerning F. The chief physician noted the perineal injury and agreed with the CPT’s doctors that F had probably been subjected to repeated rape, and he recommended that F should not return to Valdice Prison.⁸ Further, he proposed that an independent opinion be commissioned as to whether F was mentally fit to remain in prison at all.

⁶ This spell in confinement immediately followed a previous one of five days and, several months earlier he had spent 20 days consecutively in a confinement cell (19 December 2005 to 7 January 2006).

⁷ One of the delegation’s psychiatrists met F on 6 April 2006 in Pankrác Prison Hospital, and reached the conclusion that symptoms of severe post-traumatic stress disorder were apparent.

⁸ By letter of 23 June 2006, the Czech authorities informed the CPT that F had been transferred to Mírov Prison.

The Committee is very concerned by the information it subsequently received from the Czech authorities on 31 May 2006 in relation to F in response to the immediate observation made under Article 8, paragraph 5, of the Convention (cf. paragraph 8 above). The allegations of sexual abuse do not appear to have been taken seriously.⁹ However, it is not at all surprising that F made no complaints to the medical staff in Valdice Prison (Section E) as there is no medical confidentiality, given that prison officers are always present at medical examinations. Moreover, the perception that the medical staff are not independent, combined with the general climate of fear, does not permit the establishment of trust between the doctor and a prisoner. Further, it should be noted that F is but one example; there are other prisoners in Section E who have been abused. The authorities must recognise the seriousness of this matter.

In line with the proposal made by the chief doctor at Pankrác Prison Hospital, **the CPT recommends that an independent psychiatric opinion be commissioned and that the Committee be informed about the subsequent placement of F.**

More generally, and in the light of the above, **the CPT calls upon the authorities to conduct a thorough review of the treatment of vulnerable prisoners within Section E of Valdice Prison, and to inform the Committee of the outcome of the review.**

37. The CPT has stressed in the past that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. Tackling the phenomenon of inter-prisoner violence, including sexual violence and abuse, requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority; this should include reviewing the placement of individual prisoners.

Addressing effectively the problems posed by inter-prisoner violence requires the implementation of an individualised risk and needs assessment of prisoners.

38. Ministry of Justice Instruction No. 41 of 9 September 2002 represents a clear effort by the Czech authorities to take preventive measures to avoid inter-prisoner violence, by identifying four categories of prisoner: (i) those with low body weight; (ii) those who are mentally weak or (iii) physically weak; and (iv) those who are potential perpetrators of violence. All prisoners who are placed in categories (i) to (iii) must be examined by a doctor every month and prison officers are supposed to check them regularly for signs of physical abuse (for example, at shower times once a week).

⁹ There appears to be a complete denial of the existence of any sexual abuse in Valdice Prison due to the fact that the persons concerned did not complain about their treatment. Moreover, with regard to the case of F the medical analysis is incomplete, as there is no mention of his long-term treatment in prison with high doses of psycho-pharmaca, including depot injections (fluanxol), or of the tardive dyskinesia which was most likely caused by such treatment.

However, from the delegations findings it is evident that Instruction 41 is not being applied effectively in Valdice Prison. Clearly there is a need to ensure that the individual needs and risk assessment is rigorous and comprehensive. Further, prison officers, as well as specialist staff, should possess the appropriate skills and knowledge to identify situations which might place vulnerable prisoners in harm's way and, thereafter, to be in a position to take the necessary action, including placing a prisoner in a safer environment.

39. In the light of the above remarks, **the CPT recommends that the Czech authorities institute a review of the application of Instruction No. 41 in Valdice Prison. Further, it recommends that additional emphasis be placed upon providing prison officers and specialist staff with the skills and knowledge to ensure that the measures foreseen by Instruction No. 41 can be effectively implemented. This should include being able to identify perpetrators of violent acts against other prisoners and to recognise when vulnerable prisoners might be seeking help through actions that are contrary to the internal prison rules.**

Moreover, **the CPT would like to be informed about what additional measures have been taken in Sections D and E of Valdice Prison to put an end to inter-prisoner violence.**

The Committee also recommends that the Czech authorities make it clear to all prison officers that deliberately placing a vulnerable prisoner in a cell where he is at risk of being physically and/or sexually abused is tantamount to inhuman and degrading treatment, and will be dealt with accordingly.

Further, in the light of the example of F, **the CPT recommends that the management of Section E take due account of specialist opinions when dealing with individual prisoners.**

3. Persons sentenced to life-imprisonment

a. introduction

40. As mentioned above, the delegation visited the units accommodating twelve and sixteen life-sentenced prisoners in Mírov and Valdice Prisons, respectively.

41. The Committee notes that the amendments made to the Confinement Act¹⁰ and to the Rules of Imprisonment¹¹, since the CPT's visit in 2002, represent an important step forward in regulating how persons sentenced to life imprisonment should be treated. Notably, the provisions of the law leave open the possibility for such persons to associate with other prisoners. In their follow-up response to the 2002 visit report, the Czech authorities stated that "life-sentenced prisoners are housed in a common section with other sentenced prisoners" (cf. CPT/Inf (2005) 5, page 15). Likewise, the Imprisonment Rules provide for the possibility of a more varied regime and that handcuffs should only be applied "for especially justified reasons". This latter provision is in line with the response received from the Czech authorities to the 2002 visit report ¹²(cf. CPT/Inf (2004) 5, page 22).

¹⁰ Act No 52/2004 of 1 July 2004 amended Act No 169/1999, to Regulate the Service of a Term of Imprisonment

¹¹ Act No 378/2004 amended Act 345/1999, on the Rules of Imprisonment.

¹² «The systematic use of transferring life-sentenced prisoners at Valdice Prison has been discontinued. Handcuffs are currently used on an individual basis in accordance with evaluations of security risks.»

Regrettably, these amendments are not being implemented in practice in Valdice Prison and, to a lesser extent, in Mírov Prison. Further, the CPT's delegation had the distinct impression that the measures foreseen in the now rescinded Methodological Order No 13 continued to be applied¹³.

42. The Committee considers that the above-mentioned amendments ought to be built upon and that the Czech authorities should institute a process for integrating persons sentenced to life-imprisonment into the general prison population. Particular reference should be made to the Council of Europe's Committee of Ministers' Recommendation (2003) 23, on the "management by prison administrations of life-sentence and other long-term prisoners" of 9 October 2003. One of the general principles underpinning such management is the *non-segregation principle*, which states that consideration should be given to not segregating life-sentence prisoners on the sole ground of their sentence. This principle should be read in conjunction with the *security and safety principle*, which calls for a careful assessment of whether prisoners pose a risk of harm to themselves, to other prisoners, to those working in the prison or to the external community. It recalls that the assumption is often wrongly made that the fact of a life-sentence implies a prisoner is dangerous. The explanatory report to this recommendation notes that "as a general rule, the experience of many prison administrations is that many such prisoners present no risk to themselves or to others" and that "they exhibit stable and reliable behaviour".

Hence, the placement of persons sentenced to life-imprisonment should be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence.

The Committee would like to receive the comments of the Czech Republic on the approach taken towards life-sentenced prisoners, in the light of the above remarks.

b. regime and treatment

43. As compared to the visit in 2002, the most important development concerns the fact that some life-sentenced prisoners now have an opportunity to work. In Valdice, seven of the sixteen prisoners work from 7 a.m. to 11 a.m. five days a week making envelopes (a maximum of eight work places are available); the work is conducted in designated cells, with no more than two prisoners being allowed to work together. In Mírov, five of the twelve prisoners work between 6.30 a.m. and 2 p.m. five days a week with ten minutes for breakfast and twenty minutes for lunch. The five prisoners work on hammering and filing aluminium plates; the work is physically demanding and the other life-sentence prisoners are apparently unable to manage it.

The CPT recommends that the Czech authorities make additional efforts to ensure meaningful work can be offered to all persons sentenced to life imprisonment. Further, it recommends that in Mírov Prison the daily breaks for breakfast and lunch, for those prisoners working, should be extended.

¹³ For example, persons sentenced to life-imprisonment continue to be classified into three groups. The most restrictive regime is the third group, who are all held in Valdice, whereas group two could also be accommodated in Mírov. Group one, which has the least restrictive regime and permits greater association, is held in Mírov. Group classification is determined by the Governor and transfers between the two prisons are decided by the respective Governors. Only the strict timetable for when such prisoners could be moved between the three groups no longer applies.

44. In Valdice, the daily regime remained the same as described in the 2002 visit report¹⁴. Prisoners who did not work continued to spend 21 hours or more per day locked up alone in their cells. During the one to two hours of outdoor exercise per day, one hour of sport and one hour of cultural activity several times a week, no more than two (and occasionally three) prisoners were allowed to associate at one time. Strenuous efforts were made to ensure that life-sentenced prisoners never saw or met other prisoners in Section E, let alone associated with them.¹⁵

Educational activities were limited. One cell had been fitted with two computers and a basic computing course offered. However, when the one-year course finished the prisoners who took it were denied the possibility to continue using the computer. Further, the number of activities available to the prisoners was limited, and the time they could associate together (with one other prisoner) was hardly sufficient to complete, for example, a game of chess.

Further, there was little in the way of any individualised sentence plan and, in this respect, the role of the educators and pedagogues remained unclear. The delegation was concerned by the fact that the educators never met the prisoners on a face-to-face basis, but instead held consultations through a grill, ostensibly “to protect the prisoner from having violent urges”. Their approach seemed to be based on one of security and control rather than on developing a sense of responsibility and autonomy among the prisoners. Further, the six monthly evaluations appeared to be formalistic and not oriented towards the needs of the prisoner.

45. In Mírov, the regime for life-sentenced prisoners was slightly more relaxed as compared to Valdice, as there was the possibility to associate among themselves in groups of five or more (during work, outdoor exercise, cultural events). Further, the cultural activities could consist of five or six prisoners and an educator watching a film and discussing some books for several hours at a time. However, the number of activities available was extremely limited and those prisoners not working still spent up to 21 hours in their cells every day. Further, many of them complained that they were no longer permitted to exercise or play football in the large sunny courtyard but were restricted to the inner dark yard, known as the “rubbish bin”¹⁶, which had no means of rest nor any shelter from inclement weather. Moreover, prison staff confirmed that life-sentence prisoners could not associate with other categories of prisoners.

46. As the CPT has stated in both its 1997 and 2002 visit reports, long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. In the view of the CPT, the regimes that are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

¹⁴ cf. CPT/Inf (2004) 4, paragraph 68.

¹⁵ It should be noted that the structure of Section E and the profile of the other sentenced prisoners are not conducive to encouraging association, even if it were to be permitted.

¹⁶ Prisoners in cells overlooking the inner-yard apparently threw their rubbish into the yard; also, the prison administration often parked their work vehicles in the yard.

The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release.

47. It is clear that the regime applied to life-sentenced prisoners at Valdice, and even at Mírov, does not meet the above criteria. The Committee is also very concerned, despite claims by the authorities to the contrary, about the systematic rule that, at Valdice, no more than two life-sentenced prisoners can ever associate together. In this connection, the CPT wishes to re-emphasise that life-sentenced prisoners are not necessarily more dangerous than other prisoners; many of them have a long-term interest in a stable and conflict free environment. Therefore, the approach to the management of life-sentenced prisoners (as indeed for all prisoners) should proceed from individual risk and needs assessment to allow decisions concerning security, including the degree of contact with others, to be made on a case-by-case basis.

In this respect, reference should be made to the Revised European Prison Rules (EPR)¹⁷ which state in Rule 103.8 that “particular attention shall be paid to providing appropriate sentence plans and regimes for life-sentenced prisoners”, taking into consideration the principles and norms laid down in the Council of Europe Recommendation on the “management by prison administrations of life-sentence and other long term prisoners” (cf. paragraph 42 above). Thus, more needs to be done to develop the range of activities available for life-sentenced prisoners and to permit a much greater out-of-cell time, including opportunities for associating with other prisoners.

The CPT recommends that the regime applicable to persons sentenced to life-imprisonment be reviewed, in the light of the above remarks; such a regime should include a significant out-of-cell activity programme, drawn up in consultation with the prisoner, which is both purposeful and diverse.

As regards more particularly Section E of Valdice Prison, **the CPT recommends that the Czech authorities review the manner in which the educators and pedagogues operate in Section E of Valdice Prison in the light of the remarks made in paragraph 44 above.**

Further, **the CPT wishes to re-emphasise that it can see no justification for systematically keeping such persons apart from other sentenced prisoners.**

¹⁷ Adopted on 11 January 2006 by the Council of Europe’s Committee of Ministers [Rec (2006) 2].

c. contacts with the outside world

48. Maintaining contacts with the outside world should be fostered in order to reduce the negative effects of institutionalisation upon prisoners serving long sentences. In particular, efforts should be made to avoid impairing marital and family relationships, as this in turn will have detrimental consequences on the prisoner's mental health and, often, motivation to use time in prison positively.¹⁸

The CPT's delegation was particularly concerned that one prisoner, from China, had lost all contact with his family and the outside world since 2003 when his father had moved house. No attempts had been made by prison staff to try and assist the prisoner in re-establishing contact with his family. No doubt this lack of contact was a contributing factor to the perceived sense of hopelessness and personal neglect that now affected this prisoner. **The CPT requests that efforts be made to establish contacts with the family of this prisoner.**

49. At Valdice, family visits for persons sentenced to life-imprisonment either took place in a room where there was no possibility for physical contact (plexiglas separation) or in a room where the prisoner and visitor were separated by a grill. All visits were held in the presence of a prison officer who, as regards the second room, allegedly hit the grill with his truncheon if there was any attempt at physical contact. By contrast, in Mírov life-sentenced prisoners were offered open visits.

Despite official claims that closed visits should be the exception, in Valdice life-sentenced prisoners were systematically denied the possibility of having open visits. Such an approach is indefensible and reinforces the impression that, in practice, Methodological Order No. 13 continues to be applied. **The CPT recommends that open visits be introduced forthwith for all persons sentenced to life-imprisonment and that withholding such visits should be based on an individual risk assessment.**

Further, life-sentenced prisoners in both Mírov and Valdice complained that they were only allowed visits during weekdays and not at weekends, as was the case for other sentenced prisoners; this made it more difficult for their families to visit as they had to take a day off work. **The CPT would appreciate the Czech authorities comments regarding this matter.**

¹⁸ cf. Principle 22 of the Rec (2003) 23 on the Management by Prison Administrations of life-sentence and other long-term prisoners.

d. use of handcuffs

50. As was the case in 2002, the CPT's delegation observed that at Valdice all persons sentenced to life imprisonment were systematically handcuffed, with the handcuffs then attached to a belt around their waists, whenever they were taken out of their cells.¹⁹ When the prisoners left the unit they were hand and leg-cuffed; this was also the case for medical consultations (cf. paragraph 52 below). Even when prisoners were allocated to another cell on a random basis every few months for security reasons, they had to move their belongings while handcuffed. Despite claims to the contrary by prison managers, it was evident that all prisoners sentenced to life-imprisonment were systematically handcuffed with no individualised risk assessment taking place.²⁰

By contrast, in Mírov the systematic handcuffing of life-sentenced prisoners was ended in 2004 and handcuffs were not being applied to any of the prisoners at the time of the visit.

The CPT is compelled to reiterate that, in its view, there can be no justification for routinely handcuffing life-sentenced prisoners outside their cells, all the more so when the measure is applied in an already secure environment. Such a practice can only be seen as disproportionate and punitive, and is perceived as such by those prisoners with whom the CPT's delegation met. The response to the immediate observation made on this matter (cf. paragraph 8 above) is woefully inadequate, and **the Committee calls upon the Czech authorities to end the routine handcuffing of life-sentenced prisoners in Valdice Prison, in the light of the above remarks.**

e. material conditions

51. The material conditions in Section E of Valdice Prison were, as in 2002, satisfactory. Likewise, the cells for life-sentenced prisoners in Mírov²¹ were, in general, in good condition, with sufficient access to natural light and ventilation, equipped with lighting and heating, basic furniture and a separate toilet facility in each cell. However, the cells were impersonal; inmates could only keep an absolute minimum of personal belongings within their cells and were not allowed to decorate them.

Efforts should be made to provide premises, furniture and decoration of a pleasant and user-friendly character. In particular, life-sentenced prisoners in both Mírov and Valdice should be allowed to personalise their cells through hanging paintings, bookshelves and other objects on the inner walls; at the time of the visit, they were clearly forbidden from doing so. Lockers for personal belongings, including food, should be placed within the cells so the prisoners can access them at all times.

¹⁹ Each prisoner was even handcuffed in his cell before the prison officers would open the cell gate to allow members of the delegation to meet with the prisoner. Subsequently, the handcuffs were only removed at the insistence of the delegation members.

²⁰ One prisoner sentenced to life imprisonment in 1990 and accommodated in Section E of Valdice Prison since January 2001, explained that his situation improved in February 2006 as he no longer had to be handcuffed to a belt each time he left his cell; instead, he was merely handcuffed.

²¹ In 2000, life sentenced prisoners were moved from a purpose-built section to some converted former workshops. The rooms were of different sizes, the majority being for two prisoners.

Further, for those prisoners in poor health or who are physically handicapped additional efforts need to be made to ensure that their cells are adapted appropriately and that they can benefit from the various activities offered (for example, in Mírov, a means of rest should be placed within the outdoor exercise yard).

The CPT recommends that the Czech authorities take the necessary steps in light of the above remarks.

f. medical examinations

52. The CPT's delegation learned that in Valdice, all medical examinations of persons sentenced to life-imprisonment took place in the presence of at least two prison officers, and that the inmates were handcuffed and/or leg-cuffed throughout the consultations. For appointments with the psychiatrist, the prisoner was not handcuffed but the consultation took place through a metal grill (in the same room used for visits).

In Mírov, instruments of physical restraint were not systematically applied to life-sentenced prisoners during the medical examinations; however, prison officers were always present. In both prisons, the inmates alleged that the prison officers often made fun of the prisoners during the medical consultations and they perceived this as degrading.

53. In the CPT's view, such practices infringe upon the dignity of the prisoners concerned, are questionable from a standpoint of medical ethics and prohibit the development of a proper doctor-patient relationship. **The CPT recommends that the Czech authorities take the necessary steps to put an end to such practices.**

Further, certainly the routine presence of prison officers during medical examinations breaches the principle of medical confidentiality (cf. also paragraph 83 below). **The CPT recommends that all medical examinations of life-sentenced prisoners should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers. In those exceptional cases when a prison officer is required to be present during a medical consultation, he should act in a professional manner, respecting the confidential nature of the doctor–patient relationship (cf. also paragraph 84).**

g. discipline and internal rules

54. The CPT is also concerned by the system of discipline administered by the staff of Section E at Valdice Prison, especially by the educators. The approach towards persons sentenced to life-imprisonment was based upon control and submission. Any challenge to such an approach resulted in the prisoner being sent to the confinement cell, upon the authority of the educator. For example, in one case, a prisoner renowned for his meticulous cleanliness was moved to a cell formerly accommodated by another prisoner who habitually protests by smearing mucus on the walls and refusing to clean his cell. The former prisoner refused to clean up the mess of the previous occupant; as a result he was sent to the confinement cell for four days.

The internal rules permit the educators to send prisoners to the confinement cells for up to seven days. A prisoner may appeal the measure to the pedagogue, who must respond within three days. However, an appeal does not stay the application of the sanction; if, subsequently, the pedagogue finds the measure unjustified the only remedy lies in the fact that the prisoner in question is taken out of the confinement cell and the disciplinary offence is removed from his record. In any event, the delegation was informed that there had been no such “unjustified” placements. The CPT does not consider that adequate safeguards are in place to prevent an arbitrary use of the measure of placement in confinement, and **recommends that the Czech authorities review the application of the disciplinary system in Section E of Valdice Prison.**

Reference should also be made to the policy of requiring all life-sentenced prisoners to change cells every few months; the policy is not based upon any individual risk assessment and is perceived by prisoners as an additional punishment. **The Committee would like to receive the comments of the Czech authorities as regards the necessity for such a policy.**

55. The arbitrary approach towards the prisoners in Section E was further illustrated by a decision taken by the Governor to forbid all electronic and battery-powered games, which a number of prisoners had in their possession for some time. The decision was made orally, with no written record available, and no reasoning was provided to the prisoners. However, the confiscation or seizure of an object, as laid down in Sections 46, 48, 50 and 52 of the Imprisonment Act, requires a written justification and the possibility for the prisoner in question to contest such a decision.

In the CPT’s experience it is essential that internal prison rules should be clear and unambiguous (as well as being in conformity with the primary prison legislation), and that any disciplinary measures must be carried out in accordance with such rules and be subject to appropriate safeguards. This is in the interests of both inmates and staff, and is a necessity of good management.

The CPT recommends that the Czech authorities take the appropriate measures in the light of the above remarks.

h. staffing

56. The staff assigned to work with life-sentenced prisoners in both Mírov and Valdice must be carefully chosen. They should be appropriately trained, possess highly developed communication skills and have genuine commitment to the exercise of their skills in a particularly challenging environment. The CPT’s delegation observed that relations between staff and prisoners were not based upon a spirit of communication and assistance. Neither were measures taken to encourage direct contact (i.e. without grills in Valdice) between prisoners and the different categories of staff that had dealings with them.

The CPT recommends that the Czech authorities ensure that all members of staff assigned to work with life-sentenced prisoners possess the appropriate skills and are provided with the necessary training and leadership to carry out their tasks professionally, including the ability to communicate with, and offer support to, the prisoners.

i. early release

57. Persons sentenced to life-imprisonment become eligible for early release after they have served 20 years in prison. The first such prisoner will become eligible in 2007. The CPT's delegation was informed that it is for the prisoner to apply to the District Court for early release; the prison is, in turn, requested to submit its evaluation and an independent expert (psychologist) also submits a report to the court, which must render its decision one month before the 20 years expire. The prison should start working with the prisoner six months prior to the possible date of early release.

The Governor of Mírov informed the delegation that he could only provide a positive evaluation supporting early release if the prisoner in question was classified under group one of the life-sentenced prisoners. If a prisoner were not classified under group one he could still apply for early release but, without the support of the prison in which he was being held, it would be unlikely that his request would be granted.

58. As regards the prisoner who will become eligible in 2007 for early release, the Governor explained that he intended to place him in the exit unit of Mírov Prison in order to prepare him for possible release. If the request failed the Governor thought that the prisoner might be accommodated among the general prison population and not in the special section for life-sentenced prisoners.

When the delegation met the prisoner in question, it turned out that he was still classified under group two. For this reason, he explained he was doing extra cleaning work in order to get his disciplinary offence, dating back to 1994, removed from his inmate record. This would hopefully enable him to be classified into group one.

The Committee recommends that the Czech authorities, with reference to the classification system for life-sentenced prisoners, put in place transparent procedures that enable prisoners to clearly identify the action and behaviour required of them in order to qualify for placement within a group with more favourable conditions.

Further, the Committee would like to be informed about the precise procedures concerning the early release of persons sentenced to life-imprisonment.

4. Conditions of detention of the general prison population

a. material conditions

59. Both Liberec and Ostrava Prisons provided adequate material conditions in the accommodation for sentenced prisoners; cells were reasonably furnished, access to natural and artificial lighting was satisfactory and ventilation was adequate. However, the same cannot be said for the remand sections of these prisons.

In Liberec Prison, as well as in Ostrava Prison, many of the cells in the remand sections were dilapidated: broken window panes, paint and plaster peeling off the walls, decrepit furniture and ground level toilets which were not adequately partitioned. **The CPT recommends that steps be taken to refurbish and repair the cells in the remand sections of the two prisons.**

60. Further, many cells in the remand sections of these prisons were overcrowded, with four prisoners in 9.6m² and five prisoners in 12.6m² not uncommon. The norm of 4m² per prisoner is far from being met. At the same time, the delegation noted that other cells were either empty or used under their capacity; for example, in Ostrava at the time of the delegation's visit there were 21 empty cells. This state of affairs cannot be convincingly explained away by the need to keep various categories of prisoner apart.

The CPT recommends that optimal use is made of the accommodation in the remand sections of Liberec and Ostrava Prisons with the objective of meeting the norm of a minimum of 4m² per prisoner.

b. activities

61. In the 2002 visit report, the CPT had criticised the inadequate programme of activities for persons on remand. The amended Remand Act, which entered into force on 1 July 2004, sought to address this problem by laying down that "the Prison shall offer to the Accused a participation in preventive guidance programmes and training, leisure-time and sport programmes, in dependence on the availability thereof."²² However, the findings of the delegation in 2006 highlight that the major problem encountered in the Liberec and Ostrava Prisons concerns precisely the limited regime. More specifically, the CPT's delegation saw no sign of "preventive guidance programmes and training" for persons in pre-trial custody, as referred to in the Remand Act.

In both prisons, persons on remand and sentenced prisoners "in transit"²³ are locked in their cells up to 23 hours a day, with the possibility of only one or two hours of activities (usually in the gym or the fitness room) during the week.

62. Further, the one-hour of outdoor exercise prisoners on remand or "in transit" enjoyed every day took place in unfavourable conditions. In Liberec, the six walking areas of a mere 10m² were more like walled cages and up to six prisoners could be placed simultaneously in each cubicle. Further, many prisoners chose not to take advantage of this "outdoor exercise" because there was no shelter from inclement weather and there were only enough winter coats for less than half the persons taking outdoor exercise at any one time. The larger exercise yard, which was less frequented, was for the sole use of sentenced prisoners in Liberec Prison.

In Ostrava, the walking areas were also somewhat limited in size, and there was no possibility for outdoor exercise in inclement weather, except for in that part of the yard that was reserved for sentenced prisoners.

The CPT recommends that steps be taken to improve the outdoor exercise areas in both prisons.

²² Section 4a of Act No 293/1993, on remand, as amended by Act No 52/2004.

²³ Some 90 prisoners in Liberec and 116 in Ostrava were in transit at the time of the visit.

63. The role of the educators in these prisons was not entirely clear to the delegation. Their job seemed to consist of making rounds in the morning to listen to the requests of prisoners concerning the activities they would like to undertake and, subsequently, in the afternoon to inform them that there was unfortunately no opportunity for any such activity. Nor did it understand why the educator had to monitor a group of prisoners who would be placed in the cultural room to watch television for an hour or so.

The CPT would like to receive information about the role of the educator in practice, in respect of persons on remand and “in transit”.

64. The CPT’s delegation also observed that in both prisons the inmates from one cell, whether on remand or “in transit”, were not allowed to associate with inmates from other cells during outdoor exercise or during cultural or sports activities. This meant that the prisons were not optimising the use of their potential to provide activities; for example, in Ostrava Prison the delegation noted that only two prisoners were watching a film in a cultural room with six places because of the rule of not mixing inmates of one cell with another cell; also in Ostrava Prison, the weights room and gym were within the same space, but if five persons were using the weights no-one was permitted to use the gym. It would take little additional organisation to run a football match or other sporting activity for some ten or more inmates at the same time as the weights were being used. The same observation is valid for Liberec Prison.

65. As the CPT has stated in its previous reports on the 1997 and 2002 visits, the aim should be to ensure that all prisoners, including those on remand and “in transit”, spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

Despite an improvement in the legal norms, the reality is that that there has been little progress made in this respect. For this reason, **the CPT reiterates its recommendation that the Czech authorities take the necessary measures to ensure that Section 4a of the Remand Act is implemented in full, and that persons on remand throughout the prison system are offered a programme of purposeful activities.**

As regards more specifically Liberec and Ostrava Prisons, **the CPT recommends that the Czech authorities review the organisation of the activities in both prisons in order to ensure that optimal use is made of the limited facilities in these prisons, and thus enable persons on remand or “in transit” to benefit from a more extensive and diverse regime.**

66. The CPT’s delegation had been informed that juveniles on remand or “in transit” should spend a minimum of four hours per day in out-of-cell activities. However, in neither Liberec nor Ostrava was this the case. **The Committee recommends that the Czech authorities ensure that all juveniles remanded in custody or placed “in transit” are offered, or may continue, educational and recreational activities, which take into account the specific needs of their age group. Physical education should form a major part of that programme.**

67. As regards sentenced prisoners serving their sentences in these two prisons, the majority worked and their regime could be considered as good. However, for those prisoners who did not have work there were few activities available. **Steps should be taken to ensure that sentenced prisoners who do not have work are offered activities of a purposeful and diverse nature.**

5. Women prisoners

68. In Ostrava Prison there were six women serving their sentences; this number corresponded to the number of jobs available for women in the prison. These women were located in a separate apartment, which consisted of a large common room, a kitchen and eating area, and two rooms with six and three beds respectively. Their material conditions and regime could be considered as good.

Both Liberec and Ostrava Prisons also accommodated women who were either on remand or who had been sentenced and were waiting to be allocated to the establishments where they would serve their sentence²⁴. These women were located in cells which formed part of the main male prison accommodation, and their material conditions and regime can only be described as impoverished. For example, in Liberec two women were accommodated in a dilapidated cell, which displayed many of the deficiencies already described in paragraph 59 above. Further, there was no running water in the basin. They had been in the prison for six and seven months respectively, and had both been sentenced a month earlier and were waiting to be transferred elsewhere. During their time in Liberec they had been offered no activities and had even refused outdoor exercise for the previous five months, as it had been so cold and there had been no winter clothing available.

Another young woman held on remand in Liberec had been accommodated in a cell on her own for six weeks, during which time she had not associated with anyone else, and had only taken outdoor exercise on three occasions due to the inclement weather and lack of winter clothing. This woman, as well as two others, had to use the men's shower facility, which included a urinal, to wash themselves.

In Ostrava Prison too, women on remand or "in transit" spent some 23 hours or more locked in their cells, forbidden to associate with anyone not in their cell; several were alone in their cells.

The CPT recommends that specific sections within both Liberec and Ostrava Prisons be created for women prisoners, which can provide them with appropriate material conditions and enable them to participate in purposeful activities. Further, allocation of women prisoners upon sentence should be carried out efficiently to minimise additional time spent in a prison not specifically dedicated to accommodating women prisoners.

²⁴ Opava and Světlá nad Sázavou are the two main establishments accommodating sentenced women prisoners.

6. High Security Departments

a. high technical security wards (HTSW)

69. The CPT's delegation was informed that wards with reinforced security were established in five prisons around the country, and were primarily intended to undermine the influence of organised crime gangs within the prisons. Placement in such a ward could result from a prisoner having been placed in category (iv) under the terms of Instruction 41 of the Ministry of Justice (cf. paragraph 38 above). Further, a prisoner could be sent to one of the prisons with such wards if they were judged to be a "troublemaker" or a bully.

The procedures for placing a prisoner in such a ward were not transparent. Until 7 February 2006, it was a decision for the Governors of the prisons concerned. Following this date, all requests to place a prisoner in such a ward must be approved by the Deputy Director General of the Prison Service. The measure is often purely preventive and the prisoner has no right of appeal nor is there any proper mechanism in place to review placement in such a ward, nor criteria enabling inmates to regulate their behaviour.

The CPT recommends that the Czech authorities institute a transparent procedure for placement in HTSW's, including the possibility for the prisoner concerned to appeal the decision, and that regular reviews of such a placement be established.

70. The delegation visited the high technical security ward in Ostrava Prison, which at the time was accommodating two inmates although it had a capacity for 12 prisoners. The material conditions were satisfactory but the regime was extremely limited, as the two inmates were not allowed to work; visiting the weights room several times a week was practically their only activity. There appeared to be little proactive interaction by the educator to assist these prisoners. Further, the delegation noted that one of the prisoners in Ostrava HTSW, sentenced by the courts to a regime under "supervision" (Category B), had been placed in a ward in virtual isolation for long periods of time.

Prisoners who present a particularly high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. Special efforts should be made to develop a good internal atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security and of staff safety.

The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit than on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in the bubble-like atmosphere of such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners.

The CPT recommends that steps be taken to provide prisoners placed in HTSW's with a more purposeful regime, in the light of the above remarks.

b. Section E of Valdice Prison

71. In addition to life-sentenced prisoners, Section E in Valdice Prison also held some 22 Category D (high security) inmates at the time of the visit. Their placement in Section E was authorised by the Deputy Director General of the Prison Service upon a request from Valdice Prison. It was explained to the delegation that within Category D there were normally three differentiation groups (I to III). However, Valdice had introduced a fourth group for prisoners who, through their actions, had proved to be particularly “troublesome” or “dangerous”. In theory, only persons allocated to this fourth group were subsequently placed in Section E, where their conditions of detention were similar to those for life-sentenced prisoners. However, at the time of the visit Section E also accommodated seven prisoners who were Category D, differentiation group III.

72. The CPT’s delegation noted that although prisoners allocated to Section E could subsequently be returned to the normal accommodation blocks for high security prisoners (Sections C and D) this was rare. More likely, it appeared that many prisoners in Sections E would be sent to the prison psychiatric hospital in Brno or to the prison hospital in Prague for a period of time, before being sent back to Section E. Consequently, Section E was considered the “end of the line” by both prison staff and prisoners; it held those prisoners who had been categorised by the system as “troublesome” and “difficult to manage”, concepts which englobed not only perpetrators of abuse but also victims.

73. The Committee does not doubt that there may be a need to provide a more secure setting for particularly violent prisoners who represent a threat to staff and other prisoners. However, the Committee has grave misgivings concerning the way in which decisions are taken to place prisoners in Section E. In reviewing the files, the CPT’s delegation learned that the Deputy Director General took a decision to approve the placement of a certain prisoner in Section E simply on the basis of a one-line request from the Governor of Valdice Prison.²⁵

Moreover, there was no formal process whereby prisoners could express their views about being placed in Section E; nor was there any possibility to appeal their placement. Further, the six-monthly reviews occurred without any clear criteria being established and excluded any proper consultation with the prisoner concerned. Hence, it was difficult to elucidate the purpose of Section E; this was illustrated by the fact that it accommodated a number of extremely vulnerable prisoners who could scarcely be categorised as presenting a particularly high security risk.

The CPT recommends that the Czech authorities institute more rigorous procedural safeguards prior to placing prisoners in Section E, and that the Deputy Director General should have greater oversight over such placements. Further, there should be a regular multi-disciplinary review of each placement and its purpose.

²⁵ For example, cf. note of 17 May 2005 from Valdice Prison to the Deputy Director General in respect of prisoners K and M.

74. As regards regime, these prisoners were locked in their cells for up to 22 hours a day, with one hour of outdoor exercise every day and the possibility to go to the cells used for cultural, exercise and educational activities for one or two hours per day. Access to television was permitted from 11 a.m. to 1 p.m. and from 4 p.m. to 10 p.m. daily. The comments made above (cf. paragraph 70) concerning regime and staffing apply equally to prisoners held in Section E. **The Committee recommends that greater efforts be made to engage with these prisoners and to provide them with a more purposeful regime, which includes a diverse range of activities.**

75. The delegation noted that some of the prisoners were not only systematically handcuffed every time they left their cells but were also handcuffed during their outdoor exercise. The remarks made in paragraph 50 above apply equally to these prisoners, and **the Committee recommends that the Czech authorities end the routine handcuffing of prisoners in Section E.**

76. The CPT also has serious concerns as regards the application of restraints. The strapped bed (five-point immobilisation) in cell 113 in Section E of Valdice Prison appeared to be used for punitive purposes. A review of its use revealed that the decision to place someone on the bed was often taken by the prison officers themselves, and that the length of time during which a prisoner could be strapped to the bed was excessive. For instance, the delegation learned that one prisoner actually walked from his cell to cell 113, where he was strapped to the bed for a period of six hours and ten minutes; he was only seen by the doctor once, after the straps had been applied.

Similar concerns arise regarding the use of the strapped bed in the seclusion room in Section D of Valdice Prison, where high security (Category D) prisoners are accommodated. One prisoner was strapped to the bed for a 26-hour period, released for three hours into an isolation cell and, subsequently, spent another 17 hours strapped to the bed. Another prisoner was strapped for 21 hours and, 24 hours later, strapped to the bed for a further 23 hours; at no time did a doctor see him during this period. There was no record of the doctor having been called every 20 minutes, in any of the above cases, to report on the prisoners' condition, which the delegation was informed was the usual practice.

77. The CPT acknowledges that prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high-risk situations as regards the possible ill-treatment of prisoners and, as such, call for specific safeguards.

In those rare cases where resort to instruments of physical restraint is required to restrain an agitated or violent prisoner (i.e. the strapped bed) they should only be applied upon the direct order of a doctor. Thereafter, the prisoner concerned should be kept under constant, direct and personal supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as punishment. Finally, a detailed record should be kept of the time during which a prisoner is immobilised to the bed, including the reason for the continuing immobilisation.

The CPT recommends that the policy on, and the practice of, the use of the strapped beds in Valdice Prison be reviewed, in the light of the above remarks.

Further, **the Committee would like to receive information about the number of times the strapped beds in Sections D and E have been resorted to between April and September 2006, whether the same prisoner has been immobilised on more than one occasion and the longest time a prisoner has been immobilised in the course of a five day period.**

78. The Committee has already highlighted its concerns with regard to the system of discipline in Section E (cf. paragraph 45 above). Further, from the registers it became evident that a number of prisoners within Section E could spend very long periods in the confinement cells. For example, K spent 121 days in confinement in a seven and a half month period between 16 February and 30 September 2005; GR spent 91 days in confinement in the course of an eight-month period between 23 June 2005 and 22 February 2006; and IR spent 51 days in such a cell between 17 January and 8 November 2005.

The Committee would appreciate the comments of the Czech authorities as to the purpose of these lengthy placements in a confinement cell.

7. Health care

79. The principle of the equivalence of care is well entrenched in the legislation, and in practice, as regards health care in prisons. However, the Ministry of Justice explained that there was a genuine difficulty in recruiting young doctors into the Prison Service. Nevertheless, the findings of the 2006 visit confirm that the health care service provided to prisoners is, in general, satisfactory and appeared to be representative of the care provided in the community.

a. staff and facilities

80. In Liberec Prison, there was one full-time general practitioner and four nurses who all worked from 6.30 a.m. to 3 p.m., Monday through Friday. A psychiatrist visited twice a week for five hours each time and a dentist visited three times a week. The facilities were clean and appropriate. Each prisoner had a separate medical file, which contained comprehensive information.

In Ostrava Prison, there was one full-time and two part-time general practitioners, six nurses and a number of specialists contracted from the local hospital. From 3.30 p.m. to 7 a.m. a duty doctor, who was one of six doctors working on a rota basis to cover the nightshift, managed the health care service. The facilities were well equipped and clean, and the medical records comprehensive and well kept.

81. The CPT's delegation noted that in Liberec Prison, prisoners wishing to see the doctor were required to undress to their underwear in the waiting room in front of the other prisoners, before being escorted by a prison officer into the examination room. They could, as observed, be waiting around undressed for some length of time. Undressing in such a manner can be considered as degrading, and **the CPT recommends that this practice should be ended.**

b. medical screening

82. The CPT welcomes the fact that all new arrivals in the prison establishments visited undergo a medical examination by a member of the prison' health care service on the day of admission, if possible. During this initial medical screening prisoners' blood is taken for testing for the presence HIV, hepatitis and syphilis. However, the Committee is concerned that prisoners are not informed about the reasons for the tests or the implications of a positive result. Pre-test counselling permits an opportunity to discuss risk factors as well as whether testing is appropriate at that time. Furthermore, prisoners should routinely be informed about the results of the tests, with the possibility of a post-test counselling offered.

The CPT recommends that the Czech authorities ensure that pre- and post-test counselling takes place with all prisoners in relation to such blood tests.

c. confidentiality

83. The CPT has already addressed the question of the systematic presence of prison officers during medical examinations in prison (cf. CPT/Inf (2004) 4, paragraph 92). The Czech authorities have explained in their response that the Czech Medical Chamber has informed the Prison Service that prison officers may be present during medical consultations as long as "they are bound by the obligation to keep confidential all matters of which they learn in the course of their professional duties.. and that all prison officers have signed a pledge of confidentiality .. with possible labour-law or penal consequences" in case of a breach (cf. CPT/Inf (2004) 5, page 27).

The CPT continues to have serious misgivings about this approach. It has already indicated that special security measures may be required during medical examinations in a particular case, when medical staff perceive a threat. However, there can be no justification for prison officers being *systematically* present during such examinations; their presence is detrimental for the establishment of trust and of a proper doctor - patient relationship and usually unnecessary from the security standpoint. Further, if the Prisoner Management Plan were properly implemented the prison management would have at their disposal an individual needs and risk assessment pertaining to all prisoners and, hence, would be better placed to identify those rare times when it might be necessary to have a prison officer standing by.

84. Moreover, medical confidentiality is a principle that cannot be ensured by simply obtaining signatures to the effect that prison officers would not reveal the information they gathered during the medical examinations. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility, which the Committee already proffered in the 2002 visit report, might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination.

The CPT reiterates its recommendation that steps be taken to ensure that medical confidentiality is fully guaranteed in all prison establishments in the Czech Republic. This implies that all medical examinations of prisoners should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers.

8. Other issues

a. prison staff

85. Prison staff should have a professional and humane approach to prisoners, bearing in mind the necessity to maintain security and good order. In this regard, prison management should encourage staff to have a reasonable sense of trust and expectation that prisoners are willing to conduct themselves properly. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment, but also enhance control and security. In turn, it will render the work of prison staff more rewarding.

In all the prisons visited the CPT's delegation noted that staff-inmate relations appeared rather formal and distant; there was little attempt at interaction. In Liberec Prison there were many complaints that prison officers never explained their decisions to inmates nor were they willing to discuss problems in an open and constructive manner. For example, persons on remand had to fill out a form requesting a visit with a time and a date; several explained that they had specifically requested for their visits to take place around the middle of the day (1 p.m.) as their partners worked. However, prison officers would merely return the request forms with a red line through the proposed time and a new time imposed. The consequence could mean a cancelled visit and, thereby, also the lost opportunity to continue wearing one's own clothes instead of regulation prison track suits.

While it might not be possible to satisfy all the requests from inmates, it is incumbent on the prison management to attempt to meet them if they are reasonable, and to explain to the inmate concerned why a particular request cannot be met.

The CPT recommends that prison staff be encouraged to interact more with prisoners and that they be provided with training in order to acquire the necessary inter-personal skills to develop such communications.

86. As to means of coercion, it was noted that in all the establishments visited prison officers carried handcuffs and a truncheon; inside the truncheon was a tear-gas canister, which could be dispersed via a trigger out of one end. Although the prison officers with whom the delegation spoke could not remember when they had last had recourse to their truncheons and none of them had ever used the tear gas, they nevertheless stated that possessing such equipment made them feel safer. The Committee doubts whether this feeling is well-founded.

The visible wearing of such devices in a prison setting could well be seen as a sign of weakness rather than one of strength, demonstrating a lack of confidence in the ability of prison officers to control a situation without possible recourse to a weapon. Further, the delegation noted that it would be quite easy for a determined prisoner to relieve a prison officer of his truncheon.

It is for this reason that the CPT constantly stresses the importance of providing prison officers with appropriate training in control and restraint techniques (i.e. manual control). The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to prisoners and staff. Moreover, such skills will complement and reinforce the confidence of prison officers to interact with prisoners, as referred to above.

The CPT recommends that the Czech authorities seriously consider phasing out the systematic equipping of prison officers with truncheons, handcuffs and tear gas canisters. For as long as such equipment is carried on a routine basis by a prison officer, it should be hidden from view. Further, it recommends that training in control and restraint techniques be made widely available to prison officers.

b. contacts with the outside world

87. It is very important for prisoners to be able to maintain good contact with the outside world. Above all, they must be given the opportunity to maintain their relationships with their family and friends, and especially with their spouse or partner and their children. The continuation of such relations can be of critical importance for all concerned, particularly in the context of prisoners' social rehabilitation. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. The 2006 Revised European Prison Rules, referred to above, highlight these points in Rule 24, sub-paragraphs 1 and 2.

The delegation observed that in the prisons visited prisoners on remand were entitled to a visit from their family every two weeks, if they made a prior written request, and that these visits could last for ninety minutes. The CPT is pleased to note that in most cubicles the plexiglass had been removed, thus allowing the visits to take place in a more open environment.

88. The rules governing access to the telephone are now the same for remand and sentenced prisoners.²⁶ However, as the Czech authorities themselves note (cf. CPT/Inf (2005 5, page 19), the legislative amendments do not guarantee regular access to the phone. Calls can only be made to their next of kin "in justified cases" and other persons only "for serious reasons". Further, it was stated that payphones would only be installed in the prisons after 2007.

Effectively, access to the telephone continued to be restricted in the establishments visited. Its use being conditional in Liberec and Ostrava upon a written request to the governor, with a five minute time-limit. Some prisoners complained that if the number dialled was occupied they were forced to make a new written request to phone again. **The CPT reiterates its recommendation that both remand and sentenced prisoners be granted regular access to a telephone.**

²⁶ cf. Remand Act 293/1993 (Section 13a), as amended in 2004.

89. The Committee understands that the number of parcels that can be received by prisoners has been reduced from four to two per year, but that they could now buy food products from the prison shop. However, the CPT's delegation questions why prisoners were only allowed to purchase a very limited range of goods when the shop was well stocked with a wide range of products. For example, prisoners could not purchase fresh fruits or salads and were instead limited to tinned meat and chocolate. **The CPT recommends that the list of foodstuffs prisoners can buy be reviewed.**

c. discipline and restraints

90. The disciplinary sanctions²⁷ which may be imposed upon prisoners range from reprimand to solitary confinement of up to five days (for juveniles), ten days (for remand prisoners or female prisoners, although women who are pregnant cannot be subjected to solitary confinement as a sanction) to twenty days (for sentenced prisoners). All sentenced prisoners subject to disciplinary confinement can continue to receive visits, and in certain cases may be allowed to continue to work for the duration of the sanction. Further, sentenced prisoners could be placed in a confinement cell for up to 28 days, but in these cases they would be allowed out of the cell to continue the activities under their Convicts' Management Programme; such confinement could entail being placed with another prisoner in the disciplinary cell.

The delegation gathered no evidence of excessive resort to disciplinary sanctions in either Liberec or Ostrava Prisons, and little recourse was had to the confinement cells.

91. In both prisons visited, the disciplinary cells were of an appropriate size, with adequate ventilation and sufficient natural light, and were equipped with a fixed metal bed, some storage space, a wash basin and a lavatory. However, the cells in Liberec and Ostrava Prisons were not appropriate for placing prisoners at risk of self-harm, as there were too many sharp edges within the cell and the exposed bars over the window area were a potential suicide hazard. Further, in Liberec a single comprehensive register should be introduced for recording all placements in the disciplinary cells and care should be taken to ensure that such a register is accurately maintained. **The CPT recommends that the necessary steps be taken to address these points.**

92. As to the use of the strapped bed for agitated inmates in Ostrava and Mírov Prisons, the CPT considers when a prisoner is immobilised, he should always be subject to continuous, direct personal supervision by a member of staff. Further, the register should record all the relevant facts relating to the immobilisation in detail. **The CPT recommends that the necessary steps be taken in the light of these remarks.**

The CPT's delegation also informed the Governor of Ostrava Prison about the unsuitability of placing any prisoner at risk of self-harm in the padded crisis cell (No. 356), which had apparently never been used since its commission in the late 1990's. **The CPT wishes to be informed about the current use of this cell.**

²⁷ cf. Confinement Act 169/1999 (Sections 46 to 55, 64 and 66); Remand Act 293/1993 (Sections 22 to 24 and 26, sub-paragraphs 3-5); and Rules of Imprisonment 345/1999 (Sections 58 to 70).

D. Psychiatric establishments

1. Preliminary remarks

93. The CPT's delegation visited two psychiatric institutions: the psychiatric hospital in Dobřany near Plzeň, and the psychiatric hospital in the municipality of Brno. Both hospitals were originally built in the 19th century and are large-scale institutions, consisting of various pavilions set in extensive grounds. Apart from providing a wide range of psychiatric care (including child psychiatry, geriatric care and forensic psychiatry), both hospitals are equipped to provide somatic health care to their patients. For example, the hospital in Dobřany has a special department for patients suffering from lung diseases such as tuberculosis.

Brno Psychiatric Hospital was accommodating 812 patients at the time of the visit, 84 of whom were involuntary. The psychiatric hospital in Dobřany was even larger, with 1,221 patients, 388 of whom involuntary; 1,164 patients were accommodated on the main site, while the remaining 57 patients were living in a former sanatorium near the town of Pisek.

94. In addition to involuntary patients placed under the provisions of the Civil Procedure Code, both hospitals provide care for patients sentenced to the penal measure of 'protective treatment' (Section 72 of the Penal Code). The placement of such patients in civil hospitals is contested by senior managers and psychiatrists, inter alia, for reasons of security in respect of other patients and staff. During the 2006 visit, the delegation was informed that the proposed revision of the criminal code includes provisions for establishing a special clinic for patients requiring protective treatment. **The CPT would like to receive information concerning the proposed special clinic.**

The delegation concentrated in particular on the closed wards with the highest number of involuntary patients placed under the provisions of civil law, and the wards accommodating patients under "protective treatment", with a focus on sex offenders.

2. Ill treatment

95. In both hospitals, the delegation generally observed a good relationship between staff and patients. Staff in both hospitals seemed to be doing their utmost to create a caring environment for patients in circumstances which were, at times, difficult. However, in respect of Dobřany hospital, the delegation heard several allegations of slaps and other rough treatment of patients by staff. In particular, it appeared that on ward 13B certain staff members, most of whom were assistant nurses (*'sanitars'*), resorted to excessive use of force on occasion when faced with aggressive or intrusive patients. Such unprofessional behaviour is unacceptable.

No such allegations were received at Brno Psychiatric Hospital.

The CPT recommends that staff at Dobřany Psychiatric Hospital be reminded that all forms of ill-treatment of patients are unacceptable and will be dealt with severely.

3. Living conditions

96. Material conditions for patients at Dobřany Psychiatric Hospital were generally adequate; the wards were clean, sufficiently ventilated, well-maintained and had good access to natural light. However, in some pavilions, patients' rooms or dormitories were austere and impersonal, with no furniture other than beds and bedside tables. **Additional attention should be given to improving the decoration of patients' dormitories and bedrooms.**

97. In several wards (such as 8 and 13B), the dormitories were locked during the day, leaving a meagre living space of between 2 and 4 m² per person. The CPT considers such limited living space as inadequate, especially for patients on ward 13B where the communal bathroom also served as a smoking area and there was restricted access to outdoor exercise (cf. paragraph 98 below).

In this respect, the CPT's delegation was informed about the plan for the further development of Dobřany Psychiatric Hospital, including the renovation of certain wards (such as ward 13B) and the building of new additional accommodation. These measures, when combined with the plan to further reduce the number of beds in the hospital, would lead to increased living space for patients and thus to an improvement in their quality of life. The CPT welcomes the plan for the renovation of Dobřany Psychiatric Hospital and **would like to be kept informed of its implementation. Further, the CPT would like to be informed about the measures taken to further reduce the capacity of Dobřany Psychiatric Hospital.**

98. For the CPT, offering at least one hour of daily outdoor exercise for psychiatric patients has always been a fundamental minimum requirement. Although the delegation noted that walks in the hospital grounds featured prominently in the daily programmes of all the wards visited, it found that, in a few of the wards visited these walks were frequently cancelled. For example, on ward 13B outdoor exercise appeared to take place irregularly, with only a few outings during the first four months of 2006. When the delegation asked staff on ward 13B for an explanation, several reasons were invoked, amongst others inclement weather conditions and security risks due to a shortage of staff.

However, the delegation met with several patients from ward 13B who apparently had been denied their walks as a sanction for misbehaviour. This would be unacceptable. Every patient should be allowed at least one hour of outdoor exercise every day, if their medical condition so permits. Given that the hospital has constructed a special fenced-off area close to ward 13B, security reasons cannot be invoked to deny such exercise.

The CPT recommends that the Czech authorities take the necessary steps to ensure that, as a matter of principle, all patients at Dobřany Psychiatric Hospital whose medical condition so permits are offered at least one hour of outdoor exercise every day; in particular, restriction of the right to outdoor exercise should never be used as a punishment.

99. With respect to Brno Psychiatric Hospital, the wards were generally adequately-lit and well-ventilated, in a good state of repair and clean. However, some of the wards, and in particular ward 18 and the ward for acute patients (“JIPP”), were overcrowded, while other wards lacked decoration and had an impersonal atmosphere.

The CPT's delegation was given to understand that Brno Psychiatric Hospital is engaged in an expansion project. **The CPT would like to receive more details about this project; in particular, the Committee would like to be informed as to whether the project will contribute to remedying the lack of living space observed in some of the wards. Further, special attention should be given to improving the decoration of patients' dormitories and bedrooms.**

100. In both hospitals, patients on a number of wards habitually wore pyjamas during the day. This is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process. When patients do not possess their own clothes they should be provided with appropriate individualised clothing. **The CPT recommends that patients who are not bedridden are encouraged to wear clothes other than pyjamas during the day.**

4. Treatment

101. In both hospitals, patients received the psycho-pharmacological medication required by their state of health and no indication of overmedication was found. Modified electro-convulsion therapy (ECT) was applied in both hospitals with appropriate procedures and safeguards in place (cf. paragraph 118, CPT (2004) 4). Further, regular consultations were held between the patients and their psychiatrist. Also, in both hospitals patients had their own medical file, containing an individual treatment plan; although in some cases such plans were rather cursory

Commendable efforts were also made to involve as many patients as possible in a wide range of therapeutic and rehabilitative activities. These activities, included limited occupational therapy (embroidery, painting, sports, carpentry), group therapy and outdoor activities (work in the gardens, etc). However, the delegation considers that a much broader range of occupational therapy, which focuses on the preparation of patients for an independent life in the community, be available in both hospitals.

102. In this context, as in 2002, the CPT's delegation was informed that some involuntary patients whose mental state no longer required them to be held in hospital nevertheless remained in-patients due to a lack of adequate care/ accommodation in the outside community. In particular, with respect to Dobřany Psychiatric Hospital, the poor collaboration with social care homes was raised regularly during discussions with staff, some of whom estimated that 20% of current in-patients could benefit from community care if it were to be made available.

Deprivation of liberty of persons due to an absence of appropriate external facilities is a highly undesirable state of affairs. Contrary to what the Czech authorities stated in their response to the CPT's 2002 visit report, it would appear that this is a general problem and not confined to a few isolated cases. In this respect, lack of community care facilities is seen as a serious problem currently facing Czech psychiatry.

The draft Social Services Act, which will come into force in January 2007, is expected to enable easier access to social care homes for psychiatric patients. While such a development would be positive, the CPT's delegation considers that both hospitals could themselves contribute significantly to the re-insertion of patients in society through greater attempts to establish out-patient facilities. **The CPT would like to receive the comments of the Czech authorities, in the light of the above remarks.**

5. Treatment of sex offenders

103. The CPT's delegation paid particular attention at both Dobřany and Brno Psychiatric Hospitals to the treatment of sex offenders all of whom were placed under the judicial measure of 'protective treatment'. At the time of the visit, there were thirteen sex offenders undergoing treatment in ward 13A at Dobřany Psychiatric Hospital and eleven sex offenders in ward 40 at Brno Psychiatric Hospital.

At the outset, **the CPT wishes to state clearly that it has serious reservations concerning the specific medical intervention of surgical castration as applied to certain sexual offenders (see paragraph 107). The Committee has grave doubts as to whether such an intervention should be applied in the context of persons deprived of their liberty.**

104. In Brno Psychiatric hospital sex offenders attended group therapy meetings and individual psychotherapy; nevertheless, the CPT considers that there is room for improving their treatment. For example, the psychologist working on ward 40 did not use standardised methods for assessing patients. In undertaking this demanding work he also lacked a higher specialist qualification in clinical psychology and would have welcomed more supervision. Further, the information collated by the psychologist was not shared with other staff. The clinical work therefore lacked the informed participation of psychiatrists and nurses.

It was also noted that at Brno Psychiatric Hospital, the medical treatment for sex offenders appeared to be under the responsibility of two external psychiatrists, who were specialists in sexology, and each of whom visited the hospital once a week. They apparently did not work under the direction of the senior doctor, and the relevant information from the records of their visits was unavailable to staff working on ward 40. This division of responsibility at Brno Psychiatric Hospital raised questions about the management responsibility for ongoing clinical assessment and treatment of sex offenders. The CPT has consistently stressed the need for different categories of staff to meet regularly and to share information and to form a team under the senior doctor, in order to allow day-to-day problems to be identified and discussed and guidance to be given.

Further, there was no treatment protocol in force for sex offenders. Such a protocol should facilitate the assessment of the treatment outcome and cover the various phases of treatment, including medical examinations and check-ups to monitor the physical side effects of libidinal suppressant or other medication on patients.

105. In Dobřany Psychiatric Hospital the senior doctor of ward 13A was a trained sexologist who was fully in charge of the treatment of sex offenders. The thirteen sex offenders could attend therapeutic sessions both individually and as a group. However, it was noted that no treatment protocol had been put in place.

106. **The CPT recommends that the Czech authorities ensure that:**

- **relevant information on patients is made available to all members of the treatment team, in particular nursing staff, and that there are regular meetings of the team;**
- **ongoing training and supervision is provided for the psychologist and the rest of the team attached to ward 40 of Brno Psychiatric Hospital;**
- **a treatment protocol for sex offenders is developed at Brno Psychiatric Hospital and at Dobřany Psychiatric Hospital.**

Further, the CPT would like to be informed of the division of tasks and responsibilities between hospital staff and outside clinicians with regard to the treatment of sex offenders on ward 40 of Brno Psychiatric Hospital.

107. All the sex offenders in both hospitals had undergone libidinal suppressant treatment (also referred to as ‘chemical castration’).²⁸ While such treatment appeared to be routine, surgical castration could, exceptionally, also be applied. Both patients and staff told the CPT's delegation that, in principle, all patients would be treated with medication to reduce their libido, thus rendering them more receptive to psychotherapy and other non-medicinal interventions. However, a few patients, most notably those who had committed murder, were encouraged to consider surgical castration.

108. Section 27a of the 1996 “Law on the care for the People’s Health” describes the procedure to be followed when surgical castration is under consideration. The Law states that the operation should only be carried out at the request of the person concerned. It also states that the operation should be approved by a panel of experts consisting of a lawyer and at least two physicians specialising in the appropriate field, as well as two other medical doctors, who may not be involved in the medical intervention. Further, Section 27a states that, prior to the submission of an application for surgical castration, the persons must be properly advised about the nature of the intervention and its possible side effects.

²⁸ The medication used in both establishments was cyproteronacetat (Androcur).

The CPT's delegation found that the application of the procedure described in Section 27a was as follows: the patients received information about the potential adverse effects of surgical castration and, in all cases examined, final authorisation for the intervention was given by the panel of experts (often consisting of the medical ethical committee of the hospital that was to carry out the operation). Moreover, patients who had undergone such an operation told the CPT's delegation that they had had the opportunity to withdraw from the treatment, even after they had made their request. One of the patients interviewed explained that an outside consultancy had been offered to him to help him make his decision, but that he had declined this. However, it would appear that the surgeon carrying out this treatment at Brno Teaching Hospital and at least one of the sexologists are also members of the above-mentioned panel of experts. The CPT considers such dual functions inappropriate.

109. The CPT considers that medical interventions, and in particular medical interventions which have irreversible effects on persons deprived of their liberty, should as a rule only be carried out with their free and informed consent. Given the particularly vulnerable position of persons deprived of their liberty in this regard, it should be ensured that the patient's consent is not directly or indirectly given under duress and that the patient receives all the necessary information when making his decision. Furthermore, the Committee considers that the concept of 'free and informed' consent is hardly reconcilable with a situation in which the options open to an individual are extremely limited: surgical castration or possible indefinite confinement in a psychiatric hospital.

In the Czech Republic there were no legal norms (such as ministerial regulations), professional guidelines, or ethical codes in place with respect to the application of surgical castration apart from the provisions of Sector 27a of the "Law on the care for the People's Health", whereas the administration of libidinal suppressant medication appeared not to be subject to any legal provisions. Important procedural safeguards with respect to the administration of libidinal suppressant medication to ensure free and informed consent, such as: the type of information that should be given to the patient (including minimum requirements concerning the quality of such information); inclusion and exclusion criteria for such an intervention or treatment; and access to outside consultation (including a second opinion), remain therefore insufficiently regulated.

The CPT recommends that the Czech authorities elaborate a comprehensive and detailed procedure (including proper safeguards) with respect to libidinal suppressant treatment, which should include provisions on:

- **criteria for inclusion and exclusion for such treatment;**
- **information to be given to the patient;**
- **medical examinations before and after treatment;**
- **access to outside consultation, including an independent second opinion.**

110. In the course of the visit, it was not possible to provide the delegation with statistics relating to sexual offenders, who had been either chemically or surgically castrated. In particular statistics on their rate of re-conviction (for a sexual offence which involves violence against persons) and the exact number of these two types of medical intervention carried out each year appeared to be unavailable. **Therefore, the CPT would like to receive information on:**

- **the annual number of men under “protective treatment” who have undergone or are undergoing libidinal suppressant treatment in the course of the past five years in the Czech Republic;**
- **the annual number of surgical castrations carried out on men subjected to “protective treatment” during the past five years in the Czech Republic;**
- **statistics concerning re-convictions, for a sexual offence involving violence against persons, of men who have been surgically castrated, as well as of patients who have undergone or are undergoing libidinal suppressant treatment.**

6. Staff

111. The staffing levels at the two hospitals seem, in general, adequate: Brno Psychiatric Hospital employs 657 staff (including 57 doctors, 14 clinical psychologists, 11 physiotherapists and 292 qualified nurses) and Dobřany Psychiatric Hospital 970 staff (including 65 doctors, 4 clinical psychologists, and 378 qualified nurses). Although neither of the hospitals had any vacancies, the Director of Dobřany Psychiatric Hospital informed the delegation that his attempts to recruit a further six psychiatrists had failed due to labour migration to other European Union member States; Brno Psychiatric Hospital did not appear to face such a problem.

112. The CPT has some concerns with regard to the level of training for assistant nurses employed in both hospitals. These assistant nurses receive only two months basic training. Two months vocational training may be sufficient to gain a basic understanding of the work in a psychiatric hospital but it is clearly insufficient when it comes to working with more demanding patients. The allegations of ill treatment (cf. paragraph 95 above) bear testimony to this. **The CPT recommends that the Czech authorities provide more thorough initial and in-service training for assistant nurses.**

7. Restraint of agitated and/or violent patients

113. In any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary; this is a subject of particular concern to the CPT, given the potential for abuse and ill-treatment. In the 2002 report, the CPT commented in detail upon the use of net- and cage-beds in particular in psychiatric institutions in the Czech Republic.

Since the 2002 visit, the ‘Methodological measure on the use of means of restraints for patients in psychiatric facilities in the Czech Republic’²⁹, published by the Ministry of Health in 2005, has entered into force. This methodological measure, drawn up by the Czech Psychiatric Association, concerns all types of restraints applied to patients, including net-beds. Although not legally binding, it represents good practice for regulating various aspects of the use of restraints, such as authorisation by a doctor, registration, and monitoring and care during the application of the restraints. Further, as the delegation was informed, the ban on the use of cage-beds, introduced by the Minister of Health in 2004, was still in force.

114. At Dobřany Psychiatric Hospital, the delegation was informed that recourse could be had to net-beds, seclusion and instruments of mechanical restraint (in particular, straps). The use of such means was based on a written policy.

In fact, the delegation found that the hospital had fifteen net-beds and that their use was commonplace. For example, in a separate room located on ward 13B there were two net-beds, both occupied, one of them by a naked patient, visible to the three ordinary beds in the same room, one of which was occupied. Of the four net-beds on ward 15, one was in use during the CPT’s visit; it had been placed in a room which contained two other, non-occupied, net-beds. According to the staff of ward 15, these two net-beds were never used.

The net-beds on both ward 13B and ward 15 were monitored by cameras 24 hours a day. However, several patients told the delegation of their difficulties in attracting the staff’s attention, especially at night. Further, one of the patients, who was ambulant, claimed that he was provided with bottles in order to urinate, as opposed to being able to go to the toilet. Such a practice would be unacceptable.

As already indicated in the report on the 2002 visit, the CPT is of the opinion that alternatives to the use of net-beds should be sought and that in any case such beds should never be used in the presence of other patients, let alone when the restrained patient is naked. The CPT considers it a sign of good co-operation that, as a result of its comments during the visit, the three ordinary beds were removed from the room on ward 13B and that the naked patient was appropriately clothed.

Further, individuals subject to restraints such as a net-bed, should at all times have their mental and physical state continuously and directly monitored by an identified member of the medical staff who can offer immediate human contact, communicate with the individual and rapidly respond, including to the individual’s personal needs regarding oral intake, hygiene and urination and defecation. Such individualised staff supervision should be performed from within the room or very near the door (within hearing and so that visual contact can be established immediately).

The CPT recommends that the Czech authorities further reduce the use of net-beds at Dobřany Psychiatric Hospital by developing alternatives to their use. Further, the Committee recommends that patients placed in net-beds are directly and continuously monitored by a member of staff.

²⁹ No. 31829/2004/OZP.

115. Of the wards visited, ward 13B possessed three seclusion cells which served other wards as well, including wards for women, while ward 15 had one. The seclusion cells on ward 13B were in a good state of repair, clean and equipped with cameras. One of the cells was padded and had a mattress attached to the floor. The other cells had tiled walls and did not have fixed bedding but patients placed in these cells were given a mattress and a blanket at night.

However, the floors of these tiled cells were uneven, with an incline down towards the floor level toilet; several patients complained that their mattresses would slide towards the toilet during the night. **The CPT recommends that measures should be taken to prevent the mattresses sliding towards the toilets in the seclusion rooms in ward 13B.**

116. There are no cage-beds at Dobřany Psychiatric Hospital. However, in ward 21A, a ward for young children, two beds were found with vertical metal bars on each side. According to the staff on this ward, these beds were intended for patients with transmissible diseases but were never used. This being the case, **the CPT recommends that these beds be removed from ward 21A.**

117. No specific register was kept on the use of restraints, but their use was recorded in the patient's medical record only. The CPT considers it essential that the use of restraints in a psychiatric hospital be recorded in such a way that their use can easily be monitored. Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff.

This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence. **The CPT recommends that the Czech authorities introduce a specific register on the use of means of physical restraint at Dobřany Psychiatric Hospital.**

118. At Brno Psychiatric Hospital, the delegation found no cage-beds and no net-beds.

The restraints would be applied either on the patient's own bed or in a separate room close to the nurses' office. A protocol on the use of immobilisation was in force, but the protocol does not mention the surveillance intervals; it appears that the hospital staff had adopted a practice to monitoring an immobilised patient every twenty minutes.

The delegation was pleased to note that registers recording the use of restraints had been introduced on the wards of Brno Psychiatric Hospital, thus meeting a long-standing CPT recommendation. However, the delegation found that the entries were not always meticulously kept; the release time and, on occasion, the moment of application of the immobilisation were not recorded.

As indicated above (cf. paragraph 114), in the CPT's view, patients who are immobilised should always be subject to continuous, direct personal supervision by a member of staff. However, the delegation was told that a pilot project on ward 12 to have patients accompanied by a member of staff for the full duration of the immobilisation had failed due to a lack of staff. Nevertheless the CPT considers that hospital management should ensure the permanent presence of a staff member whenever a patient is immobilised.

The CPT recommends that in Brno Psychiatric Hospital:

- **the register on restraints clearly records the duration of the measure, as well as all other events that occur during the period of restraint;**
- **the protocol on restraints be amended in order to include a paragraph on supervision of an immobilised patient.**

Further, the CPT recommends that all patients who are immobilised are always subject to continuous, direct personal supervision by a member of staff.

8. Safeguards

- a. relating to involuntary hospitalisation and discharge

119. As mentioned above, both hospitals provide care to involuntary patients placed under either Section 191a-g of the Civil Procedure Code or Section 72 of the Penal Code, dealing with protective treatment.

120. The Civil Procedure Code states that the institution concerned is under an obligation to notify the competent court of every case of involuntary placement within 24 hours of admission of the patient. Within seven days, the court has to take a decision as to the lawfulness of the involuntary placement. For this purpose, the judge is obliged to interview the patient (if the patient's health condition permits).

If the court has declared the involuntary admission lawful, it pursues judicial proceedings to examine the admissibility of continued detention in the health-care institution. In its decision, which has to be taken within three months, the court has to determine the duration of involuntary placement (for a maximum period of one year). If it is considered necessary to extend the detention beyond the period fixed by the court, new judicial proceedings must be initiated.

121. Section 191 b (2) of the Code of Civil Procedure states that a person shall have the right to be represented by a proxy during legal proceedings; if he fails to select a proxy, an attorney-at-law shall be appointed. However, this provision is apparently not interpreted uniformly by the courts. For example, in Dobřany a patient would be represented during the hearing on the lawfulness of the admission (i.e. within eight days of the admission). In contrast, in Brno the judge concerned explained to the delegation that a patient would only be represented when the court decided on further detention (i.e. within three months of the decision on the admission of the patient). Further, the delegation was concerned to learn from staff at Brno Psychiatric Hospital that in an estimated 50% of cases, the patients were deemed to be unfit to be heard in person by the court. This means that in Brno a patient could be placed involuntarily in a psychiatric hospital for up to three months without being represented by a lawyer, a proxy or him/herself.

The CPT recommends that measures be taken to ensure that all patients may be represented throughout the decision-making process on the lawfulness of admission to a hospital.

122. The CPT's delegation also has serious doubts as to whether the legal representation is of sufficient quality to constitute a practical and effective safeguard. The delegation attended a court hearing on the premises of Dobřany Psychiatric Hospital and noted that the legal representatives of the patients were trainee lawyers who had only been given the patients' files just before the hearing. They informed the delegation that the role of a lawyer was not to represent the interests of the patients but to verify the legality of the admissions procedure. Further, a patient would not, in many instances, be represented by the same lawyer throughout the placement process but instead their file would be treated by the "duty lawyer".

The CPT would like to receive the comments of the Czech authorities on the effectiveness of the legal safeguards in place, in the light of the above remarks.

123. As regards patients who had been admitted to Brno Psychiatric Hospital and Dobřany Psychiatric Hospital by a criminal court for the purpose of protective treatment, the comments made by the CPT in its 2002 visit report remain valid: the placement was still being ordered for an indefinite period of time without automatic review.

The CPT reiterates its recommendation that steps be taken to provide an automatic review, at regular intervals, of placement measures ordering protective treatment in all psychiatric establishments in the Czech Republic. This review procedure should offer guarantees of independence and impartiality, as well as objective medical expertise.

b. safeguards during placement

124. An introductory leaflet/brochure setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families. Any patients unable to understand this brochure should receive appropriate assistance.

At Brno Psychiatric Hospital, a brochure was available for patients. The brochure contained information about a range of different subjects such as the daily programme. In contrast, at Dobřany Psychiatric Hospital no written information was given to patients upon admission. Patients were informed orally upon admission about the internal rules; some of these rules, most notably those that concern visiting rights, were displayed on notice boards in the wards.

The CPT recommends that an introductory leaflet/brochure be issued at Dobřany Psychiatric Hospital to each newly-arrived patient (and his/her legal representative), supplemented, if necessary, by an appropriate oral explanation.

125. An effective complaints procedure is another basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist, enabling patients to lodge formal complaints with a clearly designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment. The CPT's delegation was informed that the complaints procedure in place in psychiatric hospitals is regulated in the Civil Procedure Code and based on Regulation 500/2004. **The CPT would like to receive copies of the relevant legal provisions, and in particular Regulation 500/2004.**

126. In both hospitals, patients could submit a complaint to the Director, the head nurse or staff at ward level. External complaints could also be lodged by patients and their legal representatives with the competent authorities or with the Ombudsman. Complaints may be delivered orally or in writing and should be registered.

However, at both Dobřany and Brno Psychiatric Hospitals, only oral information was provided to patients regarding the existence of such possibilities. **The CPT recommends that, in both psychiatric hospitals, patients be informed in the introductory leaflet/brochure issued upon admission about their right to lodge complaints as well as how to exercise this right in practice.**

127. At Brno Psychiatric Hospital, the complaints procedure is outlined in a director's ordinance, dated 30 December 2005, and provides, amongst other things, that all complaints be investigated by the legal department of the hospital; the complainant should receive a reply within 60 days.

However, the delegation was informed that, in practice, the legal department's investigation consists mainly of discussions with the medical staff concerned, and that the complainant is, in fact, never heard. It is also noteworthy that all complaints lodged in 2004 and 2005 (13 in total) were considered to be unfounded.

The CPT recommends that a more active investigatory role be undertaken by the legal department, which should include, as a matter of course, a hearing involving the patient and his/her guardian or legal representative.

128. More generally, a point of serious concern for the CPT is that neither the Civil Procedure Code nor the Penal Code nor the Law on People's Health contain provisions enunciating the legal position of involuntary patients. Although the delegation was informed about the intention to draft legislation that would spell out the rights of involuntary patients, no indications were given concerning the time-frame of these plans, nor could any details be provided as to their content.

The CPT would like to receive information about the existence of plans to draft legislation enunciating the legal position of involuntary patients.

129. Reference has already been made to the legal provisions governing involuntary placement in a psychiatric hospital on a civil and a criminal law basis. During the delegation's discussions with the medical staff in both psychiatric hospitals visited, it emerged that the standard interpretation of those provisions was that the hospital may proceed with involuntary treatment in any case where a court authorises involuntary placement. In the CPT's opinion such an approach is unacceptable.

All patients should, as a matter of principle, be in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as automatically authorising treatment without his/her consent. Every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and apply only in clearly and strictly defined exceptional circumstances.

The CPT recommends that steps be taken - including, if necessary, by amending the relevant legislation - to distinguish clearly between the procedure for involuntary placement in a psychiatric institution and the procedure for involuntary psychiatric treatment, in the light of the above remarks.

130. The CPT is concerned that patients under protective treatment who systematically refuse to take their medication may be charged with obstruction before a criminal court, as the delegation was told was the case in Brno Psychiatric Hospital.

The CPT would like to receive the comments of the Czech authorities concerning this matter.

131. Contact with the outside world was adequate in both establishments. Patients could send and receive an unlimited number of uncensored letters. Further, even patients on closed wards were allowed to keep their mobile phones. Card phones were available in both hospitals and visits were allowed every day with the exception of the weekend; the CPT welcomes this state of affairs.

E. Social care homes

1. Preliminary remarks

132. Since the CPT's last visit to the Czech Republic in 2002, a new law on social security has been adopted by parliament, which will replace the current Social Care Act by 1 January 2007. According to representatives from the Ministry of Labour and Social Affairs, it will result in a new system of social care in the Czech Republic. Public care homes will loosen their close administrative ties with the authorities at local, regional or national level and will be allowed to focus on specific groups of patients. Further, the regional government councils and the Ministry of Labour and Social Affairs will be given the power to inspect social care homes on a regular basis. However, such inspections will not address all the issues related to patients' treatment in a social care home. For instance, medical treatment of residents will remain under the responsibility of the Ministry of Health.

133. The delegation visited the Social Care Home for mentally retarded juveniles in Střelice, outside the city of Brno, and the Social Care Home for mentally retarded women in Brandýs nad Labem, in the Central Bohemian Region.

The Social Care Home in Střelice, administered by the region of Southern Moravia, provides accommodation for 112 residents, both male and female, all of whom entered the care home between the ages three and 26 years. At the time of the visit, the average age was 32, with four residents below the age of 18, and the eldest being 70. Once accepted, residents tend to remain in the care home for most of their lives.

The Social Care Home in Brandýs nad Labem, administered by the Region of Central Bohemia, has 95 female residents between 20 and 85 years of age. The average age of the residents at the time of the visit was 55 years. Most residents suffered from learning disabilities, and many had physical handicaps too; a considerable number of residents also suffered from psychiatric disorders (some of them as their primary diagnosis).

134. The CPT's delegation received no allegations of ill-treatment of residents by staff in Střelice Social Care Home, and gathered no other evidence of such treatment. On the contrary, it was impressed by the caring attitude displayed by staff towards residents.

The delegation also heard no allegations of ill treatment of residents by staff in the Brandýs nad Labem Social Care Home. However, staff did tell the delegation that violence between residents was a regular occurrence. Unfortunately, it was not possible to obtain a clear picture of the extent and nature of such violence as incidents were only recorded when they were considered to be part of a behavioural pattern. Further, it transpired that any damage to property or allegations of theft were also not recorded. In the CPT's view, the lack of a detailed system of recording represents a serious impediment to gauging the nature of the problem and, subsequently, to taking effective measures to ensure a safe environment exists for all residents. **The CPT recommends that a detailed system of recording all incidents of violence and of theft be introduced, in the light of the above remarks.**

2. Material conditions

135. In Střelice, the establishment consists of three main buildings on extensive, forested grounds. One of the buildings has two residential wards and a small health care facility, comprising of two sections with respectively nineteen and twenty beds. A second building has a mixed designation, which includes administrative offices as well as four wards providing accommodation. There is one female ward, while male residents are allocated to wards according to age, self reliance, intellectual capacity and degree of disability. At the time of the visit, all living quarters were impeccably clean and in a good state of repair. The third building is purpose-built for recreation, sports (including a swimming pool) and educational activities; it was only opened a few years ago and has excellent, well-designed facilities with a pleasant, luminous atmosphere.

The Social Care Home in Brandýs nad Labem was located in a sizeable house consisting of four floors, in the middle of a large, well-tended garden, surrounded by a high wall. The care home was well-maintained and clean, with bright dormitories.

3. Staff and treatment

136. With 83 employees, the Social Care Home in Střelice has, in general, sufficient staff at its disposal.³⁰ For specialist medical treatment, the care home has access to external professionals such as a psychiatrist, a psychologist, a general practitioner and a paediatrician, and the services of a nearby hospital. It is expected that staff numbers in the care home will be enhanced by one additional educator towards the end of 2006. During the night, on every ward and in both of the two sections of the health care facility, a nurse and an assistant nurse are on duty.

However, despite the presence of an equipped facility, no physiotherapist was employed by the care home at the time of the visit. Further, the psychologist apparently was only present for a few hours each week, although a much more substantial presence was required. **The CPT recommends that the Czech authorities recruit a physiotherapist and increase the number of hours that the psychologist is present at Střelice Social Care Home.**

137. The Střelice Social Care Home offers a wide variety of educational and therapeutic programmes, including pottery, candle-making, basket-weaving, and horse riding. All residents are allowed daily outdoor exercise, with the exception of some of the immobilised residents accommodated in the home's hospital ward. A lack of staff prevents these residents from benefiting from daily outdoor exercise. **The CPT recommends that the Czech authorities do their utmost to ensure that outdoor exercise be made possible for immobilised residents.**

138. Staffing levels in Brandýs nad Labem Social Care Home were more modest with 49 employees, of whom twelve were educators and 14 were nurses (including seven 'sanitars'). There was a lack of specialised staff trained in rehabilitation, such as a physiotherapist. Further, the high prevalence of psychiatric disorders among the residents requires the presence of the psychiatrist on a more regular basis than the current one visit per month. **The CPT recommends that the Czech authorities increase the number of staff specialised in rehabilitation and ensure more frequent visits by a psychiatrist.**

³⁰ Including: thirty-seven educators (of whom eighteen have specialist training for working with the mentally handicapped); ten nurses; eight assistant nurses; a masseur; and an occupational therapist.

139. The Social Care Home in Brandýs nad Labem possessed several rooms for workshops, where residents could engage in various activities including pottery, knitting and gardening. However, most of the residents seemed to spend their days doing nothing. The delegation considers that more could be done to offer the possibility of purposeful activities to a higher number of residents. **In this respect, trained educators should take a more proactive role in stimulating the residents.**

As to medication, the CPT's delegation was informed about a general authorisation given to nurses to administer certain sedative drugs, including injections, to agitated residents without consulting a doctor. The CPT disagrees with such a practice and is of the opinion that it should be stopped immediately. "Medication to be given as needed" should be prescribed on an individual basis. **The CPT recommends that the necessary steps are taken in the light of the above remarks.**

4. Restraint of agitated and/or violent residents

140. Since the CPT's last visit to the Czech Republic, the Social Care Act has been amended in order to include Section 89a, which deals specifically with the use of restraints in social care homes: Section 89a defines criteria for the use of restraints; indicates to whom such use should be reported; and obliges care homes to maintain registers concerning their use.

Střelice Social Care Home has no cage-beds but it does possess a number of net-beds which are used regularly. At the time of the visit, nine residents were placed in such beds every night and the beds are also resorted to during the day. The use of net-beds appeared to be in conformity with Section 89a; indeed, the regional authorities are informed about the use of net-beds, and registers exist to record their use.

However, as indicated above in the context of psychiatric establishments (cf. paragraph 114) other, more appropriate, means of restraint than net-beds should be found, including as regards the safety of residents with impaired mobility or nocturnal disorders, such as disorientation or sleep-walking. **The CPT recommends that efforts be made to find other means of restraint than net-beds in the Střelice Social Care Home.**

141. Patients could be segregated in a single room attached to locked ward No. 2. Although transfers to this ward were recorded in a logbook which was kept on every ward, no internal guidelines on segregation appeared to be operating. **The CPT recommends that the Czech authorities draw up a protocol on the use of segregation in Střelice Social Care Home.**

142. The Brandýs nad Labem Social Care Home currently has one cage-bed, five others having been taken out of use in 2005. Although this remaining bed is being used on a daily basis by one resident, commendable efforts are being made to discontinue its use. It is the CPT's delegation's understanding that the bed will be taken out of service once a special room is ready. This new room will be equipped to accommodate the resident, who currently spends up to 16 hours a day in the cage-bed.

The CPT considers that the initiative of the care home to provide a dedicated assistant for this particular resident, thus enabling her to spend eight hours a day outside the cage-bed, is a major step forward. Both the Social Care Home management and the funding authorities deserve praise for this initiative. **The CPT would like to be informed when the cage-bed in Brandýs nad Labem Social Care Home is taken out of use.**

143. The CPT's delegation is concerned with the current practice of secluding residents in a special room. Incidents of seclusion were not recorded, and there was no guideline or protocol in place setting out a policy on seclusion. The CPT is of the opinion that, when a resident is subject to a measure of seclusion, there should be a transparent procedure in place, allowing for verification by management and guardians as well as being understandable for residents. This was certainly not the case at the Brandýs nad Labem Home. **The CPT recommends that the Czech authorities draw up a protocol on the use of segregation and seclusion in Brandýs nad Labem Social Care Home. Further, it recommends that all incidents of segregation and seclusion be recorded in a special register.**

5. Safeguards

a. initial placement and discharge procedures

144. The regions of Southern Moravia and Central Bohemia are in charge of the placement of residents in the social care homes under their responsibility (such as Střelice and Brandýs nad Labem respectively) via a procedure already described in the 2002 visit report (cf. CPT/Inf (2004) 4, paragraph 141). Placement can be initiated by the resident himself or by his/her guardian; in either case, the placement is considered to be voluntary, even when the resident opposes such placement.

With respect to Střelice, some residents enter the care home before the age of eighteen, placement being decided in such cases by a court or the parents or guardian of the minor. At the age of eighteen, the legality of the placement lapses; for those residents not already under guardianship, the management of the care home will initiate procedures to deprive them of their legal capacity.

In Section F below, the CPT will comment more extensively on the institute of guardianship as implemented in the Czech Republic. Nevertheless, the CPT wishes already to reiterate its position, as reflected in the 2002 visit report, that placing incapacitated persons in a care institution based solely on the consent of the guardian deprives such persons of essential procedural safeguards.

b. safeguards during placement

145. In the Střelice Social Care Home, all residents and their guardians are given an information leaflet. However, it mainly contains information about activities, including educational activities, available in the care home. The leaflet does not contain information regarding patient's rights, such as the right to complain, although they are apparently informed of such a right at the time of admission.

At the time of the visit, no written information to residents or their guardian was provided at Brandýs nad Labem. The delegation was told that guardians and residents are orally informed about the possibility to lodge complaints during the admission procedure. However, the procedure and other information in this respect is only handed over following an explicit request.

The CPT recommends that an introductory brochure for residents and guardians be introduced at the Brandýs nad Labem Social Care Home, setting out the establishment's routine and residents' rights, and that in both social care homes such brochures include information about their right to lodge formal complaints, and the modalities for doing so.

146. As the CPT has stated before, an effective complaints procedure is a basic safeguard against ill-treatment in social care homes. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

In Střelice, complaints from residents against members of staff were registered in the personal files of residents, which are kept on the wards and are apparently dealt with by the director, other staff or the representatives of the Southern Moravian region. Complaints from parents and guardians are discussed at the regular meetings between the guardians and parents and the director. The procedure for complaints is posted on every ward.

In Brandýs nad Labem, a formal complaints procedure was absent in practice, the last official complaint dating back to around 1986. Otherwise complaints are dealt with informally and hence not recorded. **The CPT recommends that a clear procedure for the examination of complaints be introduced at the Brandýs nad Labem Home and that all complaints, both oral and written, be registered.**

147. The maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. In this respect, in both social care homes there is unrestricted access to a (public) telephone and residents are allowed to possess a mobile phone. There were also generous visiting arrangements in both homes.

F. Guardianship

148. The delegation noted that significant numbers of patients in the psychiatric institutions and of residents of the social care homes it visited were placed under guardianship: 51 patients in Dobřany Psychiatric Hospital; 127 patients in Brno Psychiatric Hospital; around 98 residents of Střelice Social Care Home; and 65 residents of the Brandýs nad Labem Social Care Home. A considerable number of these patients or residents were accommodated in locked wards or could apparently be restrained by the staff of the institution whenever it was considered necessary.

149. In the Czech Republic, a person who is considered "unable to conduct legal acts" (i.e. legally incompetent) due to a mental disorder may be partially or fully deprived of his legal capacity, and subjected to a measure of guardianship. Guardians have far reaching powers with respect to their wards. For example, Section 78 (1) of the Decree on Implementation of the Social Security Act (182/ 1991) states that a resident of a social care home cannot leave the premises of the care home without prior approval of the guardian.

Further, as noted above, a guardian may also decide on the question of admission to a psychiatric hospital or a social care home by providing his/her consent, a practice which the CPT criticised in its 2002 visit report. Although such a placement may go against the expressed will of the patient/resident and the person cannot leave the care home without permission from the guardian, it is still considered voluntary under Czech law.

The powers of a guardian can only be taken away by court decision. Therefore, a fully recovered patient will remain deprived of any legal capacity until such time as the court decides otherwise.

150. The CPT's delegation's findings illustrate that the institution of guardianship, applied in its most rigorous form, creates a significant organisational and administrative burden for care institutions. The delegation was informed on various occasions that without the prior consent of the guardian no decision concerning the treatment of a fully incapacitated patient (or resident) could be taken (including the use of restraints). In practice, the institutions visited tackled the constraints posed by the institution of guardianship in different ways. For example, with respect to medical treatment, the director of the Střelice Social Care Home informed the delegation of the existence of a list of medical interventions for which consent from the guardian was needed. From interviews with medical staff it transpired that in practice only surgery and psychiatric hospitalisation were put to the guardian for prior authorisation. A similar practice was noted in the Brandýs nad Labem Social Care Home. By contrast, at Brno Psychiatric Hospital the delegation was informed that all physical treatment was apparently put to the guardian, with the exception of injections.

151. The delegation noted that some of the establishments promoted the (informal) transfer of powers from certain individual guardians to the care institute. Further, at least two of the institutions visited have introduced a form to be signed by the guardian upon admission of a patient which provides the care institution with prior blanket approval for all decisions taken in respect of treatment and placement (in an open or closed ward). Another institution visited considered that the consent of the guardian in respect of medical interventions or the application of means of restraints to be unnecessary apart from exceptional cases. The delegation also learned that some institutions, such as Brno Psychiatric Hospital, would start legal proceedings in order to replace a guardian who opposed treatment considered to be necessary.

152. The practice described above results in the enhancement of the decision-making power of the care institution at the expense of the guardian with respect to legally incapacitated patients or residents and their treatment, a development which could undermine the protection of such patients.

Even more so, this seems to be true when members of staff of the care institution are appointed as legal guardians of a resident or of a patient³¹, a practice already criticised by the CPT in its 2002 visit report. For example, the delegation met a boy in the Střelice Social Care Home whose guardian was the director of the home. The director had given prior authorisation for the use of a net-bed during certain hours of the day and, if necessary, at night as well. As reports of the social care home to the regional authority on the use of net-beds show, this boy spent his nights in a net-bed as a matter of routine. The evident conflict of interest that arises when a social care home or an employee of such a home is appointed guardian over a resident within that same institution needs to be addressed. **The CPT recommends that the Czech authorities take the necessary steps in the light of the above remarks.**

153. As to the law regulating guardianship, the Czech authorities recently amended the Civil Procedure Code to ensure that a person whose legal competence is being decided by the court is represented by a qualified lawyer. This is certainly a positive development. However as stated above it is essential that such representation is effective.

Concerns remain as to the safeguards in place regarding medical interventions on persons deprived of their legal capacity. For example, the delegation learned of four cases of intrusive medical interventions on patients at social care homes carried out at the request of the guardian or with his/her approval: two male patients who had undergone surgical castration and two female patients were sterilised. With respect to the two cases of surgical castration, aggressive sexual behaviour was noted as the reason for the intervention; as for the sterilisation, the delegation was told that these were meant to serve as contraceptives. Although the interventions in these four cases date back four years or more, the CPT's understanding is that it is still legally possible to carry out such intrusive medical interventions as surgical castration and sterilisation with the sole consent of the guardian.

³¹ For example, staff at Střelice Social Care Home act as guardian for twelve residents, while at Brandýs nad Labem the director is the appointed guardian for some 34 residents.

154. In this context, the CPT would like to remind the Czech authorities of Recommendation R (99) 4 of the Committee of Ministers of the Council of Europe to member States on Principles Concerning the Legal Protection of Incapable Adults. Principle 19 (2) of this Recommendation encourages national governments to determine whether decisions by a guardian on certain serious matters should require the specific approval of a court or other body. In the view of the CPT, irreversible medical interventions such as sterilisation and castration would certainly qualify for close scrutiny by a court or another outside body.

Further, Recommendation R (99) 4 contains 27 other governing principles concerning guardianship. The CPT considers that an institute of guardianship based upon these principles would be balanced, fair and, above all, proportionate. **The CPT recommends that the Czech authorities consider incorporating the Council of Europe's Principles Concerning the Legal Protection of Incapable Adults and, in particular, Principle 19 (2) into the legal norms governing guardianship in the Czech Republic. Further, the CPT would like to be informed about the number of surgical castrations and sterilisations that were carried out on incompetent persons in the last five years and whether, in those cases, the consent of the guardian had been sought.**

APPENDIX I

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

Police establishments

Ill-treatment

recommendations

- senior police officers to remind their subordinates, particularly officers of the criminal police, that the ill-treatment of persons in their custody is not acceptable and will be the subject of severe sanctions (paragraph 11).

Conditions of detention

recommendations

- the metal rings in Jablonec police station to be removed, as well as in all other police stations where such rings exist (paragraph 13);
- steps to be taken to ensure that persons deprived of their liberty by the police are given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day, and have ready access to drinking water at all times (paragraph 14).

comments

- steps should be taken to improve access to natural light and ventilation in the police stations visited (paragraph 12);

Fundamental safeguards against ill-treatment

recommendations

- all detained persons to be granted the right to notify a close relative or third party of their choice of their situation as from the very outset of their deprivation of liberty by the police (paragraph 16);
- the right of access to a lawyer to be explicitly granted in law and in practice to everyone deprived of their liberty by the law enforcement authorities, from the very outset of their deprivation of liberty. If necessary the Police Act and/ or the Code of Criminal Procedure should be amended accordingly (paragraph 18);

- the right of access to a doctor to be formally guaranteed for all persons in police custody as from the very outset of their deprivation of liberty (paragraph 20);
- the Czech authorities to reconsider the Health Care Bill, in the light of the remarks in paragraph 21 (paragraph 21);
- all persons detained by the police – for whatever reason – to be fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment they are obliged to remain with the police). This should be ensured by provision of clear oral information at the very outset, to be supplemented at the earliest opportunity by provision of a separate written form setting out detained persons' rights in a straightforward manner. The form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a separate statement (that is, separate from the protocol on charges) attesting that they have been informed of their rights (paragraph 22);
- the necessary steps to be taken concerning the recording of deprivation of liberty, in the light of the remarks made in paragraph 23 (paragraph 23).

comments

- the guidelines concerning the rights of notification of custody and of access to a lawyer drawn up by the Brno municipal police service could well serve as an example of improved practice for other police services in the Czech Republic (paragraph 19).

requests for information

- the responses given by the Czech authorities to the Ombudsman's reports on his inspection of police stations (paragraph 24).

Acute Psychiatric Assessment and Detoxification Units

recommendations

- the Czech authorities to take the necessary steps as regards immobilisation of patients, in the light of the remarks made in paragraph 27 (paragraph 27).

requests for information

- a copy of the legal norms governing the detention of persons in detoxification units (paragraph 25).

Prison establishments

Preliminary remarks

requests for information

- the comments of the Czech authorities regarding the matter raised in the second subparagraph of paragraph 30 (paragraph 30);
- detailed information on the measures envisaged to put an end to prison overcrowding (paragraph 30).

Ill-treatment

recommendations

- the Czech authorities to deliver the clear message to prison officers that all forms of ill-treatment are not acceptable and will be the subject of severe sanctions (paragraph 32);
- an independent psychiatric opinion concerning F to be commissioned and the CPT to be informed about the subsequent placement of this prisoner (paragraph 36);
- a thorough review to be conducted of the treatment of vulnerable prisoners within Section E of Valdice Prison, and the CPT to be informed of the outcome of that review (paragraph 36);
- the Czech authorities to institute a review of the application of Ministry of Justice Instruction No. 41 in Valdice Prison (paragraph 39);
- additional emphasis to be placed upon providing prison officers and specialist staff with the skills and knowledge to ensure that the measures foreseen by Instruction No. 41 can be effectively implemented. This should include being able to identify perpetrators of violent acts on other prisoners and to recognise when vulnerable prisoners might be seeking help through actions that are contrary to the internal prison rules (paragraph 39);
- the Czech authorities to make it clear to all prison officers that deliberately placing a vulnerable prisoner in a cell where he is at risk of being physically and/or sexually abused is tantamount to inhuman and degrading treatment, and will be dealt with accordingly (paragraph 39);
- the management of Section E of Valdice Prison to take due account of specialist opinions when dealing with individual prisoners (paragraph 39).

requests for information

- the additional measures taken in Sections D and E of Valdice Prison to put an end to inter-prisoner violence (paragraph 39).

Persons sentenced to life-imprisonment

recommendations

- additional efforts to be made to ensure meaningful work can be offered to all persons sentenced to life imprisonment (paragraph 43);
- in Mírov Prison the daily breaks for breakfast and lunch, for those prisoners working, to be extended (paragraph 43);
- the regime applicable to persons sentenced to life-imprisonment to be reviewed, in the light of the remarks made in paragraphs 44 to 47; such a regime should include a significant out-of-cell activity programme, drawn up in consultation with the prisoners, which is both purposeful and diverse (paragraph 47);
- the Czech authorities to review the manner in which the educators and pedagogues operate in Section E of Valdice Prison, in the light of the remarks made in paragraph 44 (paragraph 47);
- open visits to be introduced forthwith for all persons sentenced to life-imprisonment; withholding such visits should be based on an individual risk assessment (paragraph 49);
- the Czech authorities to end the routine handcuffing of life-sentenced prisoners in Valdice Prison, in the light of the remarks made in paragraph 50 (paragraph 50);
- the necessary steps to be taken as regards material conditions for life-sentenced prisoners, in the light of the remarks made in paragraph 51 (paragraph 51);
- the necessary steps to be taken to put an end to the practices referred to in paragraph 52 as regards medical examinations of life-sentenced prisoners (paragraph 53);
- all medical examinations of life-sentenced prisoners to be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers. In those exceptional cases when a prison officer is required to be present during a medical consultation, he should act in a professional manner, respecting the confidential nature of the doctor-patient relationship (paragraph 53);
- the application of the disciplinary system in Section E of Valdice Prison to be reviewed (paragraph 54);
- the appropriate measures to be taken, in the light of the remarks made in paragraph 55 as regards internal prison rules (paragraph 55);

- the Czech authorities to ensure that all members of staff assigned to work with life-sentenced prisoners possess the appropriate skills and are provided with the necessary training and leadership to carry out their tasks professionally, including the ability to communicate with, and offer support to, the prisoners (paragraph 56);
- with reference to the classification system for life-sentenced prisoners, transparent procedures to be put in place that enable prisoners to clearly identify the action and behaviour required of them in order to qualify for placement within a group with more favourable conditions (paragraph 58).

comments

- the CPT can see no justification for systematically keeping life-sentenced prisoners apart from other sentenced prisoners (paragraph 47);
- efforts should be made to establish contacts with the family of the prisoner referred to in paragraph 48 (paragraph 48).

requests for information

- comments on the approach taken towards life-sentenced prisoners, in the light of the remarks made in paragraph 42 (paragraph 42);
- comments as regards the possibility for life-sentenced prisoners to receive visits at weekends (paragraph 49);
- comments as regards the necessity for the policy requiring all life-sentenced prisoners to change cells every few months (paragraph 54);
- the precise procedures concerning the early release of persons sentenced to life-imprisonment (paragraph 58).

Conditions of detention of the general prison population

recommendations

- steps to be taken to refurbish and repair the cells in the remand sections of Liberec and Ostrava Prisons (paragraph 59);
- optimal use to be made of the accommodation in the remand sections of Liberec and Ostrava Prisons with the objective of meeting the norm of a minimum of 4 m² per prisoner (paragraph 60);
- steps to be taken to improve the outdoor exercise areas in Liberec and Ostrava Prisons (paragraph 62);

- the Czech authorities to take the necessary measures to ensure that Section 4a of the Remand Act is implemented in full, and that persons on remand throughout the prison system are offered a programme of purposeful activities (paragraph 65);
- the organisation of the activities at Liberec and Ostrava Prisons to be reviewed in order to ensure that optimal use is made of the limited facilities in these prisons, and thus enable persons on remand or "in transit" to benefit from a more extensive and diverse regime (paragraph 65);
- the Czech authorities to ensure that all juveniles remanded in custody or placed "in transit" are offered, or may continue, educational and recreational activities, which take into account the specific needs of their age group. Physical education should form a major part of that programme (paragraph 66).

comments

- steps should be taken to ensure that sentenced prisoners who do not have work are offered activities of a purposeful and diverse nature (paragraph 67).

requests for information

- the role of the educator in practice, in respect of persons on remand and "in transit" (paragraph 63).

Women prisoners

recommendations

- specific sections with both Liberec and Ostrava Prisons to be created for women prisoners, which can provide them with appropriate material conditions and enable them to participate in purposeful activities (paragraph 68);
- allocation of women prisoners upon sentence to be carried out efficiently to minimise additional time spent in a prison not specifically dedicated to accommodating women prisoners (paragraph 68).

High Security Departments

recommendations

- a transparent procedure to be instituted for placement in high technical security wards (HTSW's), including the possibility for the prisoner concerned to appeal the decision, and regular reviews of such a placement to be established (paragraph 69);

- steps to be taken to provide prisoners placed in HTSW's with a more purposeful regime, in the light of the remarks made in paragraph 70 (paragraph 70);
- more rigorous procedural safeguards to be instituted prior to placing prisoners in Section E of Valdice Prison, and the Deputy Director General to have greater oversight over such placements (paragraph 73);
- a regular multidisciplinary review of each placement in Section E of Valdice Prison and its purpose to be introduced (paragraph 73);
- greater efforts to be made to engage with prisoners in Section E of Valdice Prison and to provide them with a more purposeful regime, which includes a diverse range of activities (paragraph 74);
- the Czech authorities to end the routine handcuffing of prisoners in Section E of Valdice Prison (paragraph 75);
- the policy on, and the practice of, the use of the strapped beds in Valdice Prison to be reviewed, in the light of the remarks made in paragraph 77 (paragraph 77);

requests for information

- the number of times the strapped beds in Sections D and E of Valdice Prison have been resorted to between April and September 2006, whether the same prisoner has been immobilised on more than one occasion and the longest time a prisoner has been immobilised in the course of a five day period (paragraph 77);
- the purpose of lengthy placements in a confinement cell referred to in paragraph 78 (paragraph 78);

Health care

recommendations

- the practice, in Liberec Prison, whereby prisoners wishing to see the doctor are required to undress to their underwear in the waiting room in front of other prisoners before being escorted by a prison officer into the examination room to be ended (paragraph 81);
- pre- and post-test counselling to take place with all prisoners in relation to blood tests for HIV, hepatitis and syphilis (paragraph 82);
- steps to be taken to ensure that medical confidentiality is fully guaranteed in all prison establishments in the Czech Republic. This implies that all medical examinations of prisoners should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers (paragraph 84).

Other issues

recommendations

- prison staff to be encouraged to interact more with prisoners and to be provided with training in order to acquire the necessary inter-personal skills to develop such communications (paragraph 85);
- the Czech authorities to consider seriously phasing out the systematic equipping of prison officers with truncheons, handcuffs and tear gas canisters. For as long as such equipment is carried on a routine basis by a prison officer, it should be hidden from view (paragraph 86);
- training in control and restraint techniques to be made widely available to prison officers (paragraph 86);
- both remand and sentenced prisoners to be granted regular access to a telephone (paragraph 88);
- the list of foodstuffs prisoners can buy to be reviewed (paragraph 89);
- the necessary steps to be taken to address the points raised in paragraph 91 concerning disciplinary cells (paragraph 91);
- the necessary steps to be taken as regards the use of the strapped bed for agitated inmates in Ostrava and Mírov Prisons, in the light of the remarks made in paragraph 92 (paragraph 92).

requests for information

- the current use of the padded crisis cell (No. 356) at Ostrava Prison (paragraph 92).

Psychiatric establishments

Preliminary remarks

requests for information

- information concerning the proposed special clinic for patients requiring protective treatment (paragraph 94).

Ill-treatment

recommendations

- staff at Dobřany Psychiatric Hospital to be reminded that all forms of ill-treatment of patients are unacceptable and will be dealt with severely (paragraph 95).

Living conditions

recommendations

- the necessary steps to be taken to ensure that, as a matter of principle, all patients at Dobřany Psychiatric Hospital whose medical condition so permits are offered at least one hour of outdoor exercise every day; in particular, restriction of the right to outdoor exercise should never be used as a punishment (paragraph 98);
- patients who are not bedridden to be encouraged to wear clothes other than pyjamas during the day (paragraph 100).

comments

- additional attention should be given to improving the decoration of patients' dormitories and bedrooms at Dobřany Psychiatric Hospital (paragraph 96);
- special attention should be given to improving the decoration of patients' dormitories and bedrooms in Brno Psychiatric Hospital (paragraph 99).

requests for information

- the implementation of the plan for the renovation of Dobřany Psychiatric Hospital (paragraph 97);
- the measures taken to further reduce the capacity of Dobřany Psychiatric Hospital (paragraph 97);
- more details about the expansion project at Brno Psychiatric Hospital and, in particular, whether the project will contribute to remedying the lack of living space observed in some of the wards (paragraph 99).

Treatment

requests for information

- the comments of the Czech authorities, in the light of the remarks made in paragraph 102 as regards the re-insertion of patients in society (paragraph 102).

Treatment of sex offenders

recommendations

- the Czech authorities to ensure that:
 - relevant information on patients is made available to all members of the treatment team, in particular nursing staff, and that there are regular meetings of the team;

- ongoing training and supervision is provided for the psychologist and the rest of the team attached to ward 40 of Brno Psychiatric Hospital;
- a treatment protocol for sex offenders is developed at Brno Psychiatric Hospital and at Dobřany Psychiatric Hospital.

(paragraph 106);

- the Czech authorities to elaborate a comprehensive and detailed procedure (including proper safeguards) with respect to libidinal suppressant treatment, which should include provisions on:
 - criteria for inclusion and exclusion for such treatment;
 - information to be given to the patient;
 - medical examinations before and after treatment;
 - access to outside consultation, including an independent second opinion;(paragraph 109).

comments

- the CPT has serious reservations concerning the specific medical intervention of surgical castration as applied to certain sexual offenders; the Committee has grave doubts as to whether such an intervention should be applied in the context of persons deprived of their liberty (paragraph 103).

requests for information

- the division of tasks and responsibilities between hospital staff and outside clinicians with regard to the treatment of sex offenders on ward 40 of Brno Psychiatric Hospital (paragraph 106);
- the annual number of men under “protective treatment” who have undergone or are undergoing libidinal suppressant treatment in the course of the past five years in the Czech Republic (paragraph 110);
- the annual number of surgical castrations carried out on men subjected to “protective treatment” during the past five years in the Czech Republic (paragraph 110);
- statistics concerning re-convictions, for a sexual offence involving violence against persons, of men who have been surgically castrated, as well as of patients who have undergone or are undergoing libidinal suppressant treatment (paragraph 110).

Staff

recommendations

- more thorough initial and in-service training to be provided for assistant nurses (paragraph 112).

Restraint of agitated and/or violent patients

recommendations

- the Czech authorities to further reduce the use of net-beds at Dobřany Psychiatric Hospital by developing alternatives to their use (paragraph 114);
- patients placed in net-beds at Dobřany Psychiatric Hospital to be directly and continuously monitored by a member of staff (paragraph 114);
- measures to be taken to prevent mattresses sliding towards the toilets in the seclusion rooms in ward 13B of Dobřany Psychiatric Hospital (paragraph 115);
- the two beds with vertical metal bars on each side to be removed from ward 21A of Dobřany Psychiatric Hospital (paragraph 116);
- a specific register on the use of means of physical restraint at Dobřany Psychiatric Hospital to be introduced (paragraph 117);
- at Brno Psychiatric Hospital:
 - the register on restraints to clearly record the duration of the measure, as well as all other events that occur during the period of restraint;
 - the protocol on restraints to be amended in order to include a paragraph on supervision of an immobilised patient;
 - all patients who are immobilised to be always subject to continuous, direct personal supervision by a member of staff.(paragraph 118).

Safeguards

recommendations

- measures to be taken to ensure that all patients may be represented throughout the decision-making process on the lawfulness of admission to a hospital (paragraph 121);
- steps to be taken to provide an automatic review, at regular intervals, of placement measures ordering protective treatment in all psychiatric establishments in the Czech Republic. This review procedure should offer guarantees of independence and impartiality, as well as objective medical expertise (paragraph 123);

- an introductory leaflet/brochure to be issued at Dobřany Psychiatric Hospital to each newly-arrived patient (and his/her legal representative), supplemented, if necessary, by an appropriate oral explanation (paragraph 124);
- in both Brno and Dobřany psychiatric hospitals, patients to be informed in the introductory leaflet/brochure issued upon admission of their right to lodge complaints as well as of how to exercise this right in practice (paragraph 126);
- a more active investigatory role to be undertaken by the legal department of Brno Psychiatric Hospital in relation to complaints, which should include, as a matter of course, a hearing involving the patient and his/her guardian or legal representative (paragraph 127);
- steps to be taken - including, if necessary, by amending the relevant legislation - to distinguish clearly between the procedure for involuntary placement in a psychiatric institution and the procedure for involuntary psychiatric treatment, in the light of the remarks made in paragraph 129 (paragraph 129).

requests for information

- the comments of the Czech authorities on the effectiveness of the legal safeguards in place as regards the placement process, in the light of the remarks made in paragraph 122 (paragraph 122);
- copies of legal provisions as regards the complaints procedure in psychiatric hospitals, and in particular Regulation 500/2004 (paragraph 125);
- information about the existence of plans to draft legislation enunciating the legal position of involuntary patients (paragraph 128);
- the comments of the Czech authorities as regards the information received that patients under protective treatment who systematically refuse to take their medication may be charged with obstruction before a criminal court (paragraph 130).

Social care homes

Preliminary remarks

recommendations

- a detailed system of recording all incidents of violence and theft to be introduced in Brandýs nad Labem Social Care Home, in the light of the remarks made in paragraph 134 (paragraph 134).

Staff and treatment

recommendations

- a physiotherapist to be recruited at Střelice Social Care Home and the number of hours that the psychologist is present to be increased (paragraph 136);
- the Czech authorities to do their utmost to ensure that outdoor exercise be made possible for immobilised residents at Střelice Social Care Home (paragraph 137);
- the Czech authorities to increase the number of staff at Brandýs nad Labem Social Care Home specialised in rehabilitation and to ensure more frequent visits by a psychiatrist (paragraph 138);
- the necessary steps to be taken at the Brandýs Home as regards medication, in the light of the remarks made in paragraph 139 (paragraph 139).

comments

- trained educators should take a more proactive role in stimulating the residents at Brandýs nad Labem Social Care Home (paragraph 139).

Restraint of agitated and/or violent residents

recommendations

- efforts to be made to find other means of restraint than net-beds at Střelice Social Care Home (paragraph 140);
- a protocol to be drawn up on the use of segregation at Střelice Social Care Home (paragraph 141);
- a protocol to be drawn up on the use of segregation and seclusion at Brandýs nad Labem Social Care Home (paragraph 143);
- all incidents of segregation and seclusion at Brandýs nad Labem Social Care Home to be recorded in a special register (paragraph 143).

requests for information

- information as to when the cage-bed at Brandýs nad Labem Social Care Home is taken out of use (paragraph 142).

Safeguards

recommendations

- an introductory brochure for residents and guardians to be introduced at the Brandýs nad Labem Social Care Home, setting out the establishment's routine and residents' rights, and in both the Brandýs and Střelice Homes such brochures to include information about their right to lodge formal complaints, and the modalities for doing so (paragraph 145);
- a clear procedure for the examination of complaints to be introduced at the Brandýs nad Labem Social Care Home and all complaints, both oral and written, to be registered (paragraph 146).

Guardianship

recommendations

- the Czech authorities to address the conflicting interest that arises when a social care home or an employee of such a home is appointed guardian over a resident within that same institution (paragraph 152);
- the Czech authorities to consider incorporating the Council of Europe's Principles Concerning the Legal Protection of Incapable Adults and, in particular, Principle 19 (2) into the legal norms governing guardianship in the Czech Republic (paragraph 154).

requests for information

- the number of surgical castrations and sterilisations carried out on incompetent persons in the last five years and whether, in those cases, the consent of the guardian had been sought (paragraph 154).

APPENDIX II

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

A. National authorities

Ministry of Health

Michal VÍT	Deputy Minister
Marek RADIMSKÝ	Director of Brno Psychiatric Hospital
L'ubomír AUGUSTIN	Legislative and Legal Department
Helena SAJDLOVÁ	Department of Health Care and Pharmacy

Ministry of Interior

Miloslav KOUDELNÝ	Deputy Minister
Radim BUREŠ	Deputy Director of the Crime Prevention Department & Head of the Human Rights Unit
Milan GREGOR	Deputy Director of the Public Order Police Service of the Police Presidium
Aleš BELKA	Refugee Facilities Administration
Adam BORGULA	Human Rights Unit
Eva ČERVINKOVÁ	Department of Asylum and Migration Policy
Zdeněk SÝKORA	Department of Asylum and Migration Policy
Benedikt VANGELI	Department of Security Policy

Ministry of Justice

Ivo HARTMANN	Deputy Minister
Luděk KULA	Director General of the Prison Service
Zdeněk KREUZZIEGER	1st Deputy Director General of the Prison Service
Michal Řeháček	Deputy Director of the Pre-trial Detention and Imprisonment Department

Ministry of Labour and Social Affairs

Marián HOŠEK	Deputy Minister
Martin ŽARSKÝ	Head of the Department for Social Services
Petr HANUŠ	Head of the Social Services Conception Unit
Ivana JANIŠOVÁ	Social Services Conception Unit

The Government Commission for Human Rights

Svatopluk KARÁSEK	Government Commissioner for Human Rights
Kateřina JACQUES	Head of the Section for Human Rights and Equal Opportunities & Head of the Secretariat
Jana MAREČKOVÁ	Secretary of the Committee against Torture of the Council for Human Rights
Lucie RYBOVÁ	Secretary of the Committee for Human Rights and Biomedicine

Otakar MOTEJL	National Ombudsman
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B. Regional authorities

Office of the Central Bohemia Region

Radim GABRIEL	Head of the Social Affairs Department
Romana KULICHOVÁ	Social Affairs Department

C. Non-governmental Organisations

Czech Helsinki Committee
MDAC Legal Monitor in the Czech Republic
The Counselling Centre for Citizenship, Civil and Human Rights
Czech Association of Psychiatrists