

## EXECUTIVE SUMMARY

During its periodic visit to Austria, the CPT's delegation reviewed the measures taken by the Austrian authorities in response to various recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and the conditions under which irregular migrants were held in police detention centres. The delegation also examined various issues related to prisons, including the situation of juvenile prisoners and inmates subjected to court-ordered forensic placement (*Massnahmenvollzug*). In addition, it carried out a targeted visit to a psychiatric hospital in order to examine the use of means of restraint (*freiheitsbeschränkende Massnahmen*).

Throughout the visit, the delegation received very good co-operation from both the national authorities and staff at the establishments visited. However, at Otto Wagner Psychiatric Hospital, the delegation repeatedly faced major obstacles to gaining access to medical files and interviewing patients in private.

### *Police custody*

As was the case during the 2009 visit, the vast majority of detained persons interviewed by the delegation indicated that they had been treated correctly whilst in police custody. However, the delegation did receive several allegations of excessive use of force at the time of apprehension (such as kicks and/or punches after the person concerned had been brought under control); some allegations of excessive use of force by police officers were also received from psychiatric patients who had been transferred against their will to Otto Wagner Psychiatric Hospital. Further, a few allegations were received from detained persons that they had been subjected to physical ill-treatment or threats during police questioning.

The CPT stresses the need for the Austrian authorities to remain vigilant and to pursue their efforts to prevent police ill-treatment. In particular, it recommends that police officers throughout Austria be reminded, at regular intervals, that all forms of ill-treatment of persons deprived of their liberty are not acceptable and that no more force than is strictly necessary should be used when carrying out an apprehension. The CPT also recalls that an essential component of any strategy to prevent ill-treatment lies in the diligent examination by the competent authorities of all complaints of ill-treatment brought before them and, where appropriate, the imposition of a suitable penalty. In this connection, the Committee expresses some doubts as to whether investigations carried out by investigators of the Federal Bureau of Anti-Corruption (BAK) – and even more so those carried out by criminal police officers of the regional police headquarters – against other police officers can be seen to be fully independent and impartial.

As regards the implementation in practice of the fundamental safeguards against ill-treatment (namely the right to have the fact of one's detention notified to a relative or another trusted person and the rights of access to a lawyer and to a doctor), the report gives a generally positive assessment. Nevertheless, the CPT expresses concern about the fact that certain long-standing recommendations regarding fundamental safeguards have still not been implemented. In particular, it is not acceptable that many juveniles (some as young as 14 years of age) are still subjected to police questioning and are requested to sign statements without the benefit of having either a lawyer or a trusted person present. Further, the situation had not improved as regards access to a lawyer for detained persons who could not afford to pay for a lawyer themselves. It remained the case that such persons could have a telephone conversation with a lawyer free of charge through the 24-hour hotline of the Bar Association, but could not usually benefit from the presence of a lawyer during police questioning.

In this regard, the CPT emphasises once again that allowing detained persons to benefit from the presence of a lawyer during police questioning is an important safeguard against ill-treatment; this safeguard should be available to all detained persons, irrespective of their financial situation. The Committee also reiterates previous recommendations aimed at guaranteeing the confidentiality of conversations between detained persons and their lawyers and ensuring that the right of detained persons to have a lawyer present during police questioning is never denied.

#### *Detention of foreign nationals under aliens legislation*

In the course of the visit, the CPT's delegation visited the new Detention Centre in Vordernberg and carried out a follow-up visit to the police detention centre (PAZ) at Vienna-Hernalser Gürtel, in order to review the situation of foreign nationals held in detention pending deportation (*Schubhaft*). In neither establishment did the delegation receive any allegations of ill-treatment by staff. On the contrary, all foreign nationals interviewed by the delegation spoke favourably about the manner in which they were treated by both custodial police officers and private security staff.

The CPT's delegation was very much impressed by the high standard of detention conditions at the Vordernberg Detention Centre for Foreigners, both in terms of material conditions and activities offered to foreign nationals. In particular, foreign nationals could move freely within their living unit throughout the day. Further, the Centre employed several caretakers (*Betreuer*) who organised a comprehensive activity programme (including sports activities, language classes, computer training and handicrafts).

The CPT welcomes the fact that the number of immigration detainees in the PAZ Hernalser Gürtel had drastically decreased since the 2009 visit and that foreign nationals were usually being held in the PAZ for short or even very short periods only. However, as in 2009, the majority of foreign nationals were being held under the closed regime in which regular out-of-cell activities were mostly limited to one hour of outdoor exercise per day. The CPT urges the Austrian authorities to ensure that, at the PAZ Hernalser Gürtel, the placement of foreign nationals in the open regime becomes the rule and the closed regime the exception.

The delegation gained a generally favourable impression of the health-care services at the Vordernberg Detention Centre. It is particularly praiseworthy that a qualified nurse was present around the clock and that inmates benefited from the daily presence of a psychologist. Further, the CPT welcomes the fact that, at the Vordernberg Detention Centre, the roles and tasks of treating doctor and public health doctor (*Amtsarzt*) have been separated and recommends that the same approach be followed at Vienna Hernalser Gürtel as well as in all other PAZ in Austria. The Committee also recommends that the current system of delegating nursing functions to police officers be discontinued (as has been done at the Vordernberg Detention Centre). In both establishments visited, newly-arrived foreign nationals were subjected to medical screening by a doctor within 24 hours. However, despite the specific recommendations made by the Committee after previous visits, there was no systematic screening for transmissible diseases other than tuberculosis and medical confidentiality was not respected (as police officers were usually present during medical examinations of inmates and had access to medical records).

In both establishments, interpreters were called in whenever needed. In addition, doctors could resort to a recently established telephone interpretation service with a pool of qualified interpreters. Further, newly-arrived foreign nationals were provided upon admission with information on the internal rules and the applicable procedures. In addition, foreign nationals benefited from the daily presence of various NGOs which provided legal counselling and social services.

The CPT also gained a positive impression of the existing arrangements at the Vordernberg Detention Centre for immigration detainees' contact with the outside world. However, despite the specific recommendation made after previous visits, foreign nationals held at the PAZ Hernalser Gürtel were still only allowed to receive closed visits. The Committee calls upon the Austrian authorities to ensure that foreign nationals are, as a rule, allowed to have visits under open conditions and that closed visits behind a screen are limited to exceptional cases.

### *Prisons*

The CPT welcomes the initiatives taken by the Austrian authorities in recent years to ensure that the overall prison population is kept within manageable levels. In particular, reference should be made to a system of house arrest of prisoners under electronic surveillance (introduced in 2010). It is also praiseworthy that the authorities have started to carry out a comprehensive reform of the detention of juveniles with a view to reducing resort to imprisonment to a strict minimum. Several pilot projects have been launched to this end, as a result of which the number of juveniles in prisons had significantly decreased in recent years (from 5% to 1% of the total prison population).

That said, it is a matter of serious concern that, despite a specific recommendation made after the 2009 visit, major staff shortages were once again observed in the prisons visited, which inevitably had a negative impact on prisoners' access to out-of-cell activities. It also remained the case that the "night shift" of prison officers started at around 3 p.m. (and even at noon on Fridays and weekends), with the result that most prisoners remained locked up in their cells until the following morning. Whilst acknowledging the efforts being made by the Austrian authorities to recruit additional staff, the CPT calls upon the authorities to carry out a complete overhaul of the staffing situation in Austrian prisons.

The CPT's delegation received hardly any allegations of physical ill-treatment of prisoners by staff in the prisons visited; indeed, the majority of the inmates interviewed spoke positively about the manner in which they were treated by custodial staff. Further, the information gathered during the visit suggested that inter-prisoner violence did not constitute a major problem in any of the establishments visited.

Material conditions of detention were on the whole satisfactory in all the prisons visited. It is also positive that the majority of adult sentenced prisoners in the establishments visited were provided with work and were offered a range of other organised out-of-cell activities (in this regard, the situation was particularly favourable at Graz-Karlau Prison). However, the regime for adult remand prisoners was not acceptable; for the vast majority of them, the only daily out-of-cell activity was an hour of outdoor exercise.

As regards juveniles, the delegation observed significant improvements at Vienna-Josefstadt Prison compared to the situation found in 2009. Indeed, all juveniles were offered a structured programme of purposeful activities and were thus able to spend most of the day outside their cells. The CPT also welcomes the efforts made at Graz-Jakomini Prison to provide the few juvenile prisoners with educational and vocational activities. However, it is a matter of concern that on most days of the week (including at weekends) juveniles held in this prison were locked up in their cells as of 3.30 p.m. until the following morning.

As regards health care, the CPT expresses serious concern about the almost total lack of medical confidentiality in all the establishments visited. In particular, it remained the case that, in every prison, various health-related tasks which are normally reserved for qualified nurses, were performed by prison officers with only basic health-care training (*Sanitätsbeamte*). These officers were usually present during medical consultations, had access to medical documentation and were responsible for the distribution of prescribed medicines. At the same time, they continued to perform custodial functions. The CPT

emphasises that this practice should be abolished as it is in breach of the principle of medical confidentiality and compromises the perception of the professional independence of prison health-care staff.

Further, the CPT formulates a number of specific recommendations regarding various other prison-related issues, such as prisoners' contact with the outside world, discipline and security. In particular, the Committee recommends that pepper spray no longer form part of the standard equipment of custodial staff and that the Austrian authorities reconsider their policy regarding the carrying of firearms by prison staff inside detention areas.

#### *Situation of persons subjected to a court-ordered measure of forensic placement at Stein Prison*

Material conditions in the two units for *Massnahmenvollzug* were adequate in terms of repair but not suitable for accommodating persons in need of therapy and assistance. In particular, they lacked appropriate facilities for therapeutic activities. As regards activities, a more relaxed regime was offered to inmates in Unit T2 where some inmates were accommodated in a residential sub-unit (*Wohngruppenvollzug*) with single- and double-occupancy cells. In contrast, the regime applied to inmates in Unit 1 (mostly inmates who did not work or participate in therapeutic activities) was far too restrictive. In the CPT's view, it is not acceptable that inmates were usually locked up alone in their cell every day from Mondays to Thursdays from 10.30 a.m. to 1.30 p.m. and from 2.30 p.m. until the following morning; from Fridays to Sundays, the "night lock-up" even started at noon.

Whilst acknowledging the efforts made by the Austrian authorities to provide inmates with work or other occupational activities, the CPT considers that the existing arrangements in terms of psychological treatment were far from satisfactory, and it is a matter of grave concern that a psychiatrist was present for only nine hours per week, and that for the whole prison with a population of more than 700 inmates.

The CPT fully concurs with the views expressed by various interlocutors that Stein Prison, like any other "ordinary" prison, is not suited to the implementation of a meaningful *Massnahmenvollzug* in which persons suffering from a mental disorder are offered, according to their needs, medical, psychiatric, psychotherapeutic, psycho-hygienic and educational care, as required under the relevant legislation. The Committee recommends that, in the context of the ongoing reform of the *Massnahmenvollzug*, a comprehensive concept for motivation and individualised treatment be drawn up for all inmates and that special training of custodial staff and multi-disciplinary teamwork be introduced.

#### *Psychiatric establishments*

During its visit to the Otto Wagner Psychiatric Hospital, the delegation received no allegations of physical ill-treatment of patients by staff. Further, the CPT welcomes the ban on the use of net beds in psychiatric and social welfare institutions which has recently been introduced by the Federal Ministry of Health (with effect from 1 July 2015). That said, it is a matter of concern that a number of specific recommendations made by the Committee after previous visits regarding the use of means of restraint (*freiheitsbeschränkende Massnahmen*) had not been implemented at the Otto Wagner Hospital. In particular, the hospital had no central restraint register and there was usually no permanent and direct supervision of persons under mechanical restraint (*Fixierung*) in the form of a *Sitzwache*. Further, it remained the case that patients were sometimes subjected to mechanical restraint or placed in a net bed in full view of other patients, and that patients were occasionally restrained whilst naked. The CPT recommends that an immediate end be put to such practices.