



CPT/Inf (2001) 9

**Response of the Austrian Government  
to the report of the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
on its visit to Austria**

**from 19 to 30 September 1999**

The Austrian Government has requested the publication of the CPT's report on the visit to Austria from 19 to 30 September 1999 (see CPT/Inf (2001) 8) and of its response. The response, translated into English by the Austrian authorities, is set out in this document.

*The German text of the response can be found on the CPT's website ([www.cpt.coe.int](http://www.cpt.coe.int)).*

Strasbourg, 21 June 2001



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**from 19 to 30 September 1999**



**Or. German**

Vienna, 13 October 2000

**C O M M E N T S**  
**of the Republic of Austria**  
on the Report of the  
European Committee for the Prevention of Torture and  
Inhuman or Degrading Treatment or Punishment (CPT)  
on its Visit to Austria  
from 19 to 30 September 1999

**Introduction**

Since the first and second reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the measures introduced by Austria in this sphere, it has been possible to achieve improvements in the protection and treatment of persons who have been deprived of their liberty and for whom protection against torture and inhuman or degrading treatment or punishment may possibly need to be further strengthened.

Article 10 of the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (BGBl. [*Federal Law Gazette*] 74/1989), states that after each visit, the Committee produces a report on its findings during the visit, taking into account statements made by the contracting party concerned, and sends its report to the contracting state containing the recommendations which it deems appropriate.

The report from the Committee adopted on 10 March 2000 concerning its visit to Austria from 19 to 30 September 1999 was sent to the Austrian authorities with a covering letter dated 13 April 2000. Under Item 191 of the report, the Republic of Austria is requested to produce comments on the recommendations, commentaries and requests for further information made by the CPT in the report within six months.

These comments from the Republic of Austria follow the structure of the CPT's report (Appendix 1). For clarity, the Committee's individual recommendations, commentaries and requests for further information are set out in boxes before the explanations.

**Re: APPENDIX I  
Summary of the Recommendations, Commentaries and Requests for  
Further Information**

**A. Institutions within the sphere of competence of the Federal Ministry of the Interior**

**1. Instances of ill-treatment**

**Recommendations**

**Item 20:** *It is recommended that police officers be reminded that at the point of arrest, no greater degree of force may be applied than is absolutely necessary, and that there is no justification whatsoever for brutal behaviour on the part of police officers as soon as the person being apprehended is brought under control.*

As was also acknowledged by the CPT in its last report, the apprehension of a person, in particular where the person concerned resists the intervention by the law enforcement officers and/or if it may be assumed that this person poses a direct threat, constitutes a task which is frequently associated with danger.

Within the context of the ongoing training measures for law enforcement officers within the various service groups, the significance of the proportionality of police intervention and of the ultima ratio [*final argument*] principle and the relevant legal regulations in this context are dealt with in particular under the course topic "law enforcement service". In addition to conveying the appropriate basic knowledge, an effort is made via the examination of relevant case studies to thoroughly extend and deepen this coherently interrelated knowledge and to ensure that officers consistently observe these fundamental principles of police intervention. In addition, the content provided in other course topics, such as in particular "Constitutional law" and "Intervention tactics", round off the teaching of the appropriate responsible action.

Within the context of continuous training, the proportionality of police intervention is taught both on a topic-orientated basis, via corresponding seminars and training sessions (e.g. on the range of topics covering "The use of weapons", "Gendarmerie legislation" or "Violence in the family"), and also within regular departmental training sessions, service meetings and reports.

Information is made available more intensively and officers are made more sensitive via regular departmental training sessions, service meetings and reports, since this route allows a large number of officers to be targeted within a reasonable period and without incurring additional costs.

In orders of 10 July 2000 and 21 July 2000 respectively, Group II/A (Federal Police) and Group II/B (Federal Gendarmerie) recently gave instructions that those standards associated with the protection of human rights should be recalled during regular training measures. During the autumn of the year 2000, the following topics in particular are to be dealt with in advanced training courses: Human rights (ECHR and Federal Constitutional Act relating to the protection of personal liberty), intrusion into the personal liberty, the rights of the persons concerned, regulations relating to the custody of individuals, the committal order, the use of the appropriate degree of physical strength for the action (AEK) – appropriate behaviour during interventions, in particular when searching individuals and when applying handcuffs.

**Item 22:** *It is recommended that efforts be made to incorporate the significance of human rights into practical vocational training, in order to cope with high risk situations, such as for example arrest and the interrogation of suspects.*

The Federal Ministry of the Interior is already endeavouring to convey the significance of human rights in all areas of initial and advanced training, since it is aware that it is a matter of major significance to reinforce positive attitudes towards this topic and to change views, rather than purely to teach theory. This applies in particular to the course topic "law enforcement service", which deals inter alia with the topic of arrest, and to initial and advanced training in "Interrogation techniques".

In general terms, the following training courses are held in order to avoid prejudice and discrimination and to deal with situations of conflict:

1) Applied psychology

In view of tasks to be coped with during their professional career, course participants should

- consciously broaden their views in this respect,
- be helped to more successfully cope with their special vocational demands via their social skills, and
- be capable of perceiving themselves and others more precisely and subtly.

Content/individual topics:

- professional profile, model,
- Perception,
- Authority, power, obedience,
- Dehumanisation and possible danger,
- Aggression,
- Communication,
- Stress,
- "Marginal groups",
- Coping psychologically with the seriously injured,
- Coping psychologically with the conveying of shocking news,
- Official dealings with various groups of individuals,
- Altering one's attitudes to expectation.

2) Rhetoric, communication techniques and handling conflicts

Course participants should

- develop and improve their communication skills through exercises and theoretical information and
- establish appropriate skills to deal with conflicts.

3) "law enforcement service"

Course participants should be familiarised with the subject matter and with the resulting duties and powers to such an extent that they are able to comply with their obligation to guarantee the maintenance or restoration of public peace, order and safety and their duty to provide first general assistance, in a proper, independent, secure manner appropriate to the situation concerned.

Content/individual topics

- Inter alia human rights, including fundamental legal principles,
- Principles of police intervention,
- The principle of legality,
- The ex officio principle,
- The ultima ratio principle,
- Proportionality,
- The rights of the parties concerned during the exercise of authorities pursuant to § 30 SPG [*Sicherheitspolizeigesetz - Security Police Act*]
- The directives for intervention pursuant to § 31 SPG in conjunction with the provisions of the Directives Order,
- Duties of the security authorities according to the SPG,
- The duty to provide first general assistance (EAH),
- Maintenance of public security,
- Averting risks,
- Preventive protection of legally protected objects,
- Postponement of intervention,
- Police investigation to locate and detect a suspect,
- Criminal police consultation,
- Mediation of disputes,
- Powers of public security service officers,
- The performance of duties,
- Interference with legally protected objects within the context of the EAH,
- Ending dangerous attacks,
- Ascertaining identity,
- House and personal searches,
- Arrests,
- Principles of constitutional law - ECHR, Federal Constitutional Act in relation to the protection of the personal liberty,
- Arrest according to the Aliens' Act,
- The arrest and committal of persons without criminal responsibility, minors and the mentally ill, according to the Security Police Act (SPG),
- The rights of detained persons,
- Official acts involving "marginal groups".

4) Constitution

The teaching of the history and content of human rights and fundamental freedoms is intended to provide officers with greater in-depth understanding of human rights and to help ensure that officers consistently take care to safeguard these rights during interventions and in particular that they preserve human dignity.

Content/individual topics:

- The historical development of human rights and fundamental freedoms,
- Overview of human rights and fundamental freedoms,
- Examination of selected human rights and fundamental freedoms,
- Freedom of the individual,



- The right to life and the ban on torture,
- Protection of domiciliary rights and respect for private and family life,
- The inviolability of property,
- Freedom of association and assembly, freedom of speech,
- Rights of minorities,
- The right to freedom of faith and conscience,
- The principle of equal treatment,
- The basic right to data protection,
- Enforceability and institutions aimed at safeguarding human rights and fundamental freedoms.

5) Leadership

Individual senior officers play a fundamental role in fostering consciousness of the importance and handling of human rights.

It is intended to foster greater sensitivity via the teaching of appropriate leadership skills and improvement of the knowledge of how to behave in relation to specific topics (in particular in the spheres of "Authority" and "Dealing with conflicts"), which should consequently follow through, via senior officers, to day-to-day service routines.

6) Human Rights Week

Within the context of the European Council Programme "Police and Human Rights 1997 – 2000", the Federal Ministry of the Interior is again holding a "Human Rights Week" project in the year 2000 (a similar project was already held in February 1998, at the instigation of the CPT). The topics selected for this event are intended to foster awareness and sensitivity in the sphere of human rights.

Training measures alone are not sufficient to effectively prevent possible violations of human rights and additionally to achieve a general sensitivity amongst officers. On this premise, it is necessary to consider and discuss the relationship between the police and human rights in a coherently interrelated manner. To this end, in addition to dealing with legal problems, the focus is on a discussion on measures of value and ethical questions.

The content will be devised in collaboration with representatives of organised civil society (e.g. Amnesty International and Caritas), who will present their work and explain how they envisage the duties of the law enforcement agency.

Content/individual topics:

- The origin and history of human rights,
- Forms of human rights violations,
- Presentation of the work and aims of human rights organisations,
- Explanation of the legal situation and work on individual studies and case studies,
- Research into the causes of (wrong) self-images and professional profiles (both external and internal), motivation, decisively effective processes and mechanisms, social and psychological aspects and aspects of group dynamics, in particular within the context of aggression, frustration, prejudice, comradeship, authority and dealing with power,
- Devising preventive plans in conjunction with violations of human rights,
- The advisory board on human rights and the work of human rights co-ordinators.

The declared primary aim is to seek causes (and mechanisms) for violations of human rights via

- A description of appropriate human rights action on the basis of the available authorities,
- Analysis of organisations and systems,
- Creating consciousness (and confronting critical opinions),
- Fostering transparency in political dealings (and clarification of the professional profile).

7) Series of seminars entitled "The situation of foreigners and the social intercourse between them and the enforcement agency"

Since 1995, seminars have been offered and held, together with Volkshilfe Österreich, on the above topics. The seminars are aimed

- to foster a better understanding and appreciation of the living circumstances and situation of foreigners and consequently to promote unprejudiced behaviour,
- to better understand conflict situations which can result from the origin of the various cultural groups and to behave towards them in a manner which upholds their human rights, and
- to better appreciate the work of NGO's, their methods, objectives and motivations.

In addition, participants are

- made sensitive to respect human rights.

The lecturers/trainers are full-time police teachers and representatives from Volkshilfe Österreich, who are teaching as a team. In addition, representatives of institutions who are closely involved in working with foreigners are actively involved in the running and organisation of the seminars.

8) The PAVEMENT Project

One of the political aims of the European Union is the fighting of any form of discrimination. The PAVEMENT Project was initiated in order to achieve this, and the Austrian Federal Ministry of the Interior is involved together with bodies representing other EU member states. The aim of this project is to find pioneering measures for the successful and efficient implementation of Article 13 of the EC Treaty, by public service providers in Austria and Europe, using the example of law enforcement bodies. The national PAVEMENT project is a transnational project backed by the European Commission, and Austria's partner countries are Italy, France, Spain and Germany.

Article 13 of the EC Treaty provides that the European Union Council may take appropriate precautions to fight discrimination on grounds of

- gender,
- race, ethnic origin,
- religion or ideology,
- age,
- disability or
- sexual orientation.

Project aims:

- Clarification of the question of how the police can be kept from exercising discriminating behaviour,
- Creation of an awareness that the police service is the guarantor of the implementation of Article 13 of the EC Treaty,
- Analysis of questions related to the police and discrimination:
  - In which areas and how does the police currently discriminate and in what areas and how is the police currently fighting discrimination?
  - In which areas and how is it possible to exert influence, in order to positively alter discriminating behaviour by the police and to reinforce existing positive attitudes on the part of the police?
  - What measures need to be taken in order to change the existing situation for the better?
- Development of a multiple year plan for implementation of the measures.

**Item 28:** *It is recommended that the person arrested and his legal counsel be provided on request with a copy of the medical report produced by police doctors in conjunction with injuries.*

Medical officers are fundamentally official experts who produce expert opinions for individual proceedings. The authority conducts the proceedings, and normally also makes the request to the medical officers for an expert opinion. For this reason, the findings are sent to the authority. Persons under arrest and their legal counsel have the opportunity, via the file inspection procedure, of gaining knowledge of the content of the opinion of the medical officer, and if necessary of taking copies, on the basis of the applicable procedural law in the case concerned (e.g. Code of Criminal Procedure, Law concerning Administrative Offences [*Verwaltungsstrafgesetz*]).

There are no fundamental objections to the provision of copies in response to an explicit request by a detainee. The authorities were instructed in orders of 10 and 21 July 2000 that copies of the opinion of the medical officer should be given to the party involved on request.

**Item 33:** *It is recommended that the application of specific directives in relation to the organisation and undertaking of deportations by air be extended to cover any deportations (special flights, by land).*

The directives drawn up by the Directorate General for Public Security, in relation to the organisation and undertaking of deportations by air should make reference to the special situation in the case of flight deportations. It must be noted that the directives concerned (and consequently in particular the rule that only specially trained officers should accompany deportees) are also applied to "special flights" (charter flights).

The directives make special mention of the admissibility of exercising power of command and coercive force by Austrian public security service officers, which is restricted under the Tokyo Convention and by the special status of the pilot which is established therein.

The medical examination to be undertaken at most 24 hours before a flight deportation aims to appraise the state of health of the deportee with a view to the impending flight, i.e. his fitness to fly.

The requirement for a medical examination was explicitly also ordered when undertaking deportations on charter flights.

As regards transport by land, the directives drawn up for flight deportations cannot be applied, since they focus on the special circumstances on board of an aircraft. If necessary, specially adapted vehicles (prison vans) are available, in which there is no need from the outset to restrain the persons being deported. Special training for the officers accompanying a land transport cannot be undertaken, on the one hand due to the frequency of deportations and the large number of officers needed, and on the other hand due to the fact that the training courses run by the Police and Gendarmerie already deal with such situations. In addition, in contrast to flight deportations, it is possible to interrupt or stop a land transport at any time, so that the deportee can be taken directly to a doctor or a hospital should an acute health problem arise.

*Excursus: Initial and advanced training measures for public security service officers*

A distinction is to be made in Austria between two major security law enforcement agencies: in 14 (major) towns, officers of the Federal Police operate, whilst elsewhere officers of the Federal Gendarmerie are in charge of the law enforcement service for the security authority. In order to cope with partly different tasks in urban and rural areas and with differing structures of command and organisation, different initial and advanced training systems exist, whose fundamental content is however more or less the same. The figures relating to the officers concerned (at 31 December 1999) are shown in the table below:

Officers	<i>Police</i>	<i>Gendarmerie</i>
E 1 officers	312	414
E 2a officers	4775	6400
E 2b and E 2c officers	7746	7284
Border personnel (VB/S)		900
<i>Total</i>	<b>12833</b>	<b>14998</b>

*Training*

All officers undergo basic training E 2c, which takes between 21 and 24 months. On average around 1800 officers are involved in basic training every year. After completing their basic training and passing the service examination, these officers become what is known as assigned officers (E 2b). E 2a officers are duty officers (commanders), whose training takes between 9 and 12 months, and an average of around 350 officers are involved in such training every year. The executive officer (E1) training requires successful completion of the E 2c and E 2a training and takes 24 months, and an average of around 50 officers are involved in E1 training every year.

The annual number of trainees fluctuates considerably, since it depends on political and legal circumstances (budget, amendments to the law). There is no point in making a strict distinction and explaining separately the course contents of the individual training levels, since what is learnt during basic training is supplemented, considered in greater depth, extended and updated during continuous training.

### *Advanced training*

The above-mentioned differences in training, which are matched to requirements, are also reflected in the continuous training of both forces. The middle and higher management levels are assigned to teach lower grade officers, during the regular (in some cases weekly and in others monthly) training days (Federal Gendarmerie) and departmental training (Federal Police) as well as during seminars, service meetings and reports, their supplementary knowledge on individual topics, which they acquired via external input or private study. The external input, which is to be passed on, as described above, to all law enforcement officers, is inter alia achieved via seminars and via seminar weeks relating to individual sectors which require regular attendance. Some of these seminars are held in mixed teams (officers, members of organised civil society, NGO's) and use a range of teaching methods.

An example serves to explain this mechanism: In February 1998 the "Human Rights Week" was held, attended by 38 higher management grade officers (so-called Police and Gendarmerie "Multipliers"). The input during this week led to a number of subsequent Police and Gendarmerie events, during which, in different ways, the course content was passed on to lower grade officers (snowball system), thereby making them more sensitive to human rights (seminars, workshops, podium discussions with the public, involving organised civil society etc.).

### **Commentary**

**Item 18:** *The CPT is of the opinion that it would be extremely useful, in the interest of transparency and to stimulate discussions by the police on questions related to detention, to publish the annual reports of the Human Rights Advisory Board.*

The annual reports of the Human Rights Advisory Board are published in the security report, pursuant to § 93 para. 2 of the Security Police Act (SPG).

### **Request for further information**

**Item 18:** *Request for information concerning the initial working results of the Human Rights Advisory Board.*

In its report on so-called problem deportations in October 1999, the Advisory Board on Human Rights made 32 recommendations, the majority of which had already been implemented or are being permanently implemented within current measures. In July 2000 the Human Rights Advisory Board also made 43 recommendations in its report on "Minors in custody pending deportation". The comments from the Federal Ministry of the Interior on this report are in preparation.

**Item 19: Request for information concerning** *comments from the Austrian authorities in relation to the observations contained in the second subsection of paragraph 19 with respect to the inspections undertaken by the police care personnel.*

The inspections are referred to in orders dating from the years 1990, 1991 and 1995. Most of the Federal Police Directorates questioned also regularly made these inspections in the past using medical officers. In instances in which, contrary to the orders, no such inspections were undertaken, senior staff at least undertook inspections in the police jails at regular intervals. Following the CPT's criticism, the relevant orders were recalled in an order dated 10 July 2000.

As far as the Federal Gendarmerie is concerned, inspections of the detention cells are made by senior officers as part of their service supervisory and monitoring duties: the district Gendarmerie Commanders or their representatives not only inspect the cells as part of the prescribed annual visit, but also on other occasions (during staff meetings, when dealing with complaints, during co-ordination meetings, duty roster monitoring etc.). The respective provincial Gendarmerie Command arranges for a doctor and a senior officer to inspect the cells. The Gendarmerie Central Command also arranges for senior officers to undertake random inspections of the cells. This guarantees that every cell is inspected over 12 times a year by senior officers. These inspections are normally carried out by the heads of the department concerned or by duty officers (in this way individual employees remain unaware of the extent of inspections).

**Item 21: Request for information concerning** *initial preventive and support measures for members of the police forces.*

In this context, first of all, reference is made to the training courses mentioned (in particular "Applied psychology" and "Dealing with conflict") and the following supplementary comment added:

In order to increase the efficiency of the teaching topic "Applied psychology", a project was launched in 1994 which fundamentally altered the training of teachers in this subject and also made some far-reaching reforms to the teaching methods. The training of teachers was intensified; i.e. the basic training lasts four weeks now. The teaching of students, which takes place in the form of seminars and involves only small groups (maximum 25 people), is undertaken on a team teaching basis, with an internal teacher and a police officer from outside the school. Advanced teacher training takes place during follow-up seminars every one or two years. The following preventive and support measures are worthy of mention:

1. Regulations of admission to the law enforcement service

The psychological aptitude tests, which are undertaken in a total of 22 admission centres of the Federal Police and the Federal Gendarmerie, include in addition to examination of intelligence and command of the German language in the form of a multi-factor intelligence test, a dictation and a grammar test, a recognised and proven personality test, which provides information about the behaviour, opinions, and attitudes of the examinee in relation to nine different personality dimensions, these being:

- Control of behaviour,
- Emotional stamina,
- Feeling of social solidarity,
- Self-confidence and satisfaction with life,
- Mental and physical health,
- The ability to maintain control and freedom from inhibitions and feelings of inferiority
- The ability to make independent decisions and to take responsibility,
- Evenness of temperament,
- Social intuition, willingness to help and consideration for others.

In order to improve the admission procedure, proposed amendments have been in preparation since March of 1998 within an internal working party of the Ministry of the Interior. One decisive new feature is to be the reintroduction of the admission interview, which had been abolished by the 1989 Competitive Tender Act. The plan in relation to the interview itself and to the training of the interviewers was approved in principle by the Federal Ministry of Finance, although it referred to a planned amendment to the Competitive Tender Act and proposed that the actual training of the test supervisors should await enforcement of the amendment to the law.

The plan in relation to the admission interview and for training of the interviewers provides for the following specific areas to be considered:

- Communication, social skills,
- Ability to cope with emotional stress,
- Social intuition, willingness to compromise,
- Self-confidence, appearance, pleasing overall impression.

The assessments will be made by two independent interviewers. If a candidate fails to adequately display even a single one of these characteristics, then he will be rejected. When training the test supervisors, there is also discussion of the professional profile of the law enforcement officer, and of how it can be guaranteed that preference is given to people with a fundamentally tolerant attitude.

## 2. Counselling after the use of a firearm:

In 1994 the educational and psychological service of the BMI [*Federal Ministry of the Interior*] developed a model for the counselling of law enforcement officers after the use of firearms. This model was evaluated and further developed in 1997 on the basis of experience.

The model is based on the assumption that the fact of having shot at or killed someone or even to have been a witness to the violent death of another person, also represents serious mental stress for law enforcement officers, which is outside the sphere of normal human experience. The effects of such stress and the degree to which the reaction to it is expressed to the outside world differs from one person to another. Since such an experience represents a major stress factor, serious symptoms of stress, so-called "post-traumatic stress reactions" can manifest themselves even amongst those with a higher than average ability to cope with stress, and have a permanent effect on the psyche of the individual concerned.

The counselling model comprises the following levels:

Level 1:

Information for every law enforcement officer: what constitute post-traumatic stress reactions?

Level 2:

Involvement of superiors; the proper way to deal with staff members who are affected after an incident.

Level 3:

Counselling for staff members who are affected after an incident; counselling by specially trained counsellors.

Level 4:

Advisory meeting with (internal) psychologists.

Further basic elements of the counselling model are:

- Active approach by the counsellor after an incident becomes known, the offer of an initial counselling session within 24 hours,
- The voluntary nature of the counselling session, refusal by the officer concerned is possible at any stage.
- Counselling by appropriately trained officers from service group E 1 (executive officers): in view of the necessary field skills, these officers serve at their normal place of work and act as counsellors when the need arises.

3. The PROCOP Project - counselling of law enforcement officers

In 1997 an internal psychological counselling model for law enforcement officers was set up within the Federal Police under the working title of "Counselling in extreme situations (coaching)", into which the experiences gained during the early pilot scheme involving attendant supervision were incorporated.

The model is based on the basic assumption that law enforcement officers are frequently subjected to social tensions and unreasonably high mental stress as a result of their work, which has a permanent effect on the psyche of the individual but which is rarely articulated. In order to be able to better cope with the resulting mental problems and crisis situations and to pick these up and minimise their effects during the early stages, such manifestations need to be worked through with the aid of specially trained law enforcement officers, and consequently used as an opportunity for change and ongoing development ("Help to achieve self-help").

The basic elements of this counselling model are

- Counselling by specially trained law enforcement officers,
- The voluntary nature of the counselling,
- Guarantee of anonymity,
- Advice and help in the form of individual counselling sessions,
- Spatial separation of counselling location and the offices of the public authority.

In view of the areas of work envisaged, training of the counsellors used was based on the content of the life and social counselling training.



After creating the necessary general framework conditions and realising the accompanying measures, the actual counselling work commenced in February 1998, under the working title "PROCOP - Counselling law enforcement officers", and was initially restricted to law enforcement officers of the BPD [*Federal Police Directorate*] in Vienna and of the BMI.

In contrast to the "Counselling after the use of firearms" model, the "PROCOP" model provides for a considerably broader spectrum of work and includes inter alia

- Counselling prior to a post-traumatic stress reaction,
- Counselling in case of "burn-out syndrome", mobbing and depression, where no clinical illness exists,
- Counselling during private or family problems,
- Crisis intervention.

Following the extremely positive feedback, the model has since been extended to include staff members of the Security Administration and further extension of the project to the Federal Police Directorate in Graz is planned.

The gradual inclusion of further authorities is now (2000) being given greater consideration, based on the available personnel and budgetary resources.

The following further projects were initiated in 1999 in order to provide support to officers during their day-to-day work:

- "Coping with stress and dealing with conflicts" for officers of the Mobile Operational Commands (MEK). This four day seminar has so far been held at BPD Graz and BPD Linz.
- "Mass psychology" for officers of the operational units. This project was started up in 1999 at the Provincial Gendarmerie Command (LGK) for Upper Austria.

**Item 22: Request for information concerning the precise content of the special training in interrogation techniques.**

Within the context of the basic training for police detectives, the requisite knowledge is taught in the form of a seminar entitled "Interrogation technique".

With a view to their service in the future, it is aimed that participants should

- be familiar with the relevant legal principles for the questioning of witnesses and the interrogation of suspects,
- learn, apply in practice and reflect on the different methods and techniques of questioning and interrogating, and

as a result thoroughly extend, consolidate and acquire a greater depth of topic-specific basic knowledge and practical knowledge of how to act.

Content/individual topics:

- Topic-related legal principles and formal requirements,
- Psychological aspects, in particular perception of persons,
- Preparation for questioning and/or interrogating,
- Undertaking the questioning and/or interrogating,
- General principles of the questioning phase,
- Questioning phases in relation to various groups of individuals (e.g. children, elderly persons),
- Interrogation documentation,
- Protection against retraction.

In addition, interrogation technique is a constituent of every basic training phase (service groups E2c, E2a, E1) within the course topic "Criminology". The main constituents are, regardless of the level of training and experience of the trainees,

- Preparation of interrogations (study of files, time and resource management),
- Legal prerequisites (inter alia duties to caution, tone of address etc.),
- Rules for successful communication,
- Diagnosis - recognising lies and fictions,
- Questioning techniques,
- Exercises based on practical experience.

As part of their advanced training, officers from the criminal departments and Gendarmerie posts, who are employed within the co-ordinated criminal service, receive further training in seminars which are led by an external trainer (psychologist).

The following topics are dealt with:

- Fundamental psychological knowledge,
- Communication and interaction strategies,
- Management models,
- Personality development,
- Interrogation tactics and techniques, interrogation psychology (rules, principles, tactics of the interview process: phases, preparation, diagnosis, methods of target-orientated questioning, questioning witnesses, interrogations with children, confessions, note-taking, positioning, interpreters, backgrounds of offences, offenders).

In addition, the project "Interrogation technique - appearing as a witness in court" was initiated within the Federal Police in 1998. The aim of the project is to develop a modular training system whereby each module builds on the previous one, for employees of the security law enforcement service, in order to increase professionalism during questioning and interrogations and to improve appearances as witnesses in court.

The first stage involved the preparation of a plan for an appropriate basic module, which was on the one hand to be used within the basic training for the law enforcement service and on the other hand within the advanced training for the security police stations and the security administration.

Aim of the basic module

a) Interrogation technique

Building on their topic-related prior knowledge, participants should

- recognise the psychological factors, influences and aspects operating during the questioning of witnesses and the interrogating of suspects,
- get to know, apply in practice and reflect on the various questioning and interrogation methods and techniques,
- be aware of the significance of personal evidence in criminal proceedings,
- know and apply in accordance with the law the legal standards and formal regulations applicable to the questioning of witnesses and the interrogating of suspects,

and thereby thoroughly extend, consolidate and achieve a greater depth of practical knowledge of how to act.

b) Appearing as a witness in court:

Course participants should

- be aware of the effect and significance of the statements of law enforcement officers during criminal proceedings,
- recognise and reflect on their own situation-based behaviour in this context and
- develop appropriate routines for action.

Content/individual topics:

a) Interrogation technique

- Perception, selective perception, perception filters,
- Judgement of character,
- Preparation for questioning and/or interrogating,
- Phases within questioning and/or interrogating,
- Questioning witnesses and/or interrogating suspects,
- Legal principles of questioning and interrogating, relevant formal requirements,
- Protecting personal evidence from retraction,
- Case analysis,
- Topic-based role-plays and subsequent video analysis.

b) Appearing as a witness in court

- The principle of directness, "role distribution" in court,
- General basic rules for appearing as a witness in court,
- Rhetorical aspects of the statement of the witness,
- Preparatory measures for production of a witness statement,
- Legal principles,
- Case analysis,
- Topic-based role-plays and subsequent video analysis,
- Summary/feedback.

In order to achieve the modular structure of the individual training stages, further target group-orientated and application-based modules are being prepared, and will build on this basic module (e.g. add-on module for the investigation department). The corresponding project work is in progress.

**Item 24: *Request for information concerning a copy of the new directive from the Ministry of Justice in relation to the investigation of complaints against police officers regarding instances of ill-treatment.***

A copy of the order from the Federal Ministry of Justice of 30 September 1999, including appendices, has been made available to the CPT.

**Item 25: *Request for information concerning any developments in the reform of the police disciplinary proceedings.***

The Federal Ministry for Public Services and Sport is responsible for preparing a government bill for the amendment of the disciplinary law provisions within the Public Service Act (BDG). Any initiatives for amendments to the Public Service Act (BDG) will be forwarded immediately to the committee.

**Item 26: *Request for additional information concerning the activities of the special commission entrusted with the task of investigating complaints regarding ill-treatment, which was set up within the Vienna Police.***

No such special commission was set up within the Federal Police Directorate in Vienna. This must be a reference to the special commission of the Directorate General for Public Security, which was set up under an order of 12 March 1999.

During the period between entry into force of the order and 17 July 2000, around 300 complaints of ill-treatment notified by the subordinate security authorities were registered and investigated within the Federal Police. It was found that the vast majority of the complaints of ill-treatment investigated had already been declared to the competent office of public prosecution at the time of their notification to the special commission. As regards the area of the Federal Police Directorate in Vienna, an explicit instruction from the head of the authority requires such notification. In some cases the special commission was notified once the declaration had been dealt with by the office of public prosecutions pursuant to § 90 of the Code of Criminal Procedure.

In those cases in which the courts had not yet become involved when the notification was made, the competent authority was given an instruction to immediately pass on the result of the investigation to the office of public prosecution and to send a supplementary report to the special commission. Within the Federal Police, the work of the special commission was restricted to ancillary monitoring. In some cases, instructions for further consideration of the accusations and a report to the special commission were necessary. A direct intervention of the special commission has not to date been ordered in any case.

Since the order entered into force and up to July of the year 2000, 103 notifications of complaints of ill-treatment were registered within the area of the Federal Gendarmerie. These complaints were forwarded to the competent offices of public prosecution by the public authorities. In four cases, the local head of the Federal Gendarmerie was forced to initiate further action by the commission as provided for by the order.

**Item 29: Request for information concerning further preparatory work on the study project**  
*"What is the attitude of the law enforcement agency to aliens in Austria and how does it deal with them?"*

In response to a request from the current Directorate General for public security, a working party was set up in July 1999, which was required to arrange for an external company to examine whether and if so to what extent xenophobic tendencies exist within the individual service sectors of the Federal Police and the Federal Gendarmerie. If racism was found to be inherent within the system, then the causes of this were to be investigated. The Institute for Conflict Research in Vienna was commissioned in February 2000 to conduct the study.

The self-contained study is to incorporate the following work:

- 1) The conducting of an anonymous, representative (quantitative) survey throughout Austria of approximately 500 staff members of a whole range of service departments and service branches of the Federal Police and the Federal Gendarmerie.
- 2) The conducting of a qualitative, intensive survey throughout Austria of approximately 50 staff members of a whole range of service departments and service branches of the Federal Police and the Federal Gendarmerie. The agreement of participants is to be obtained in advance for each of these 50 inquiries, and care is to be taken that the survey has no negative effects on service operation.
- 3) The result of the investigation must also take account of small regional and/or organisational units.
- 4) The Institute for Conflict Research may arrange to be assisted in conducting the study by the Institute for Empirical Social Research (IFES).

The study seeks to clarify the following questions:

- 1) Does prejudice against aliens exist within the Austrian law enforcement agency, and if so, how does this affect its work?
- 2) Is any prejudice which may exist also expressed in racist or discriminatory activities?
- 3) What are the causes of any prejudice which may exist?
- 4) What external influences play a major part (e.g. influence of the media)?
- 5) What is the relationship between any xenophobia which may exist within the Austrian population as a whole and any which may exist within the Austrian law enforcement agency?

It was made explicitly clear to the Federal Police and the Federal Gendarmerie that the persons conducting the surveys are to be contractually bound to observe confidentiality. It was also made explicitly clear that the interviews are to be voluntary and that any employee may decline to participate in the survey without giving reasons.

According to the competent experts from the Institute for Conflict Research and the Institute for Empirical Social Research, the preliminary results of the study which have been ascertained to date indicate that the law enforcement agency has a neutral attitude towards foreigners. However a few individual groups of foreigners came out worse amongst those questioned. This is fundamentally due to communication problems (language barriers) and in quite general terms the completely different cultural backgrounds. However law enforcement officers having intensive and frequent contact with foreigners quite specifically only mentioned individual problems and showed no evidence of xenophobia.

The Institute for Conflict Research and the Institute for Empirical Social Research must now prepare precise tables, extensively compare their results with those of surveys of the population as a whole, complete the qualitative evaluation and finally create a link between the representative and the qualitative surveys. The final result of the survey is expected during the autumn of 2000.

**Item 32: *Request for information at the appropriate time on the results of criminal prosecution and disciplinary proceedings instituted against the officers who were escorting Mr. Omofuma.***

The preliminary court investigation against the officers involved is still in progress. A supplementary court medical report is currently being obtained. It should be noted from a disciplinary law point of view that the suspension of the officers involved is in force.

**Item 33: *Request for precise information concerning the content of the special training for officers who are involved in the implementation of deportation measures.***

In the case of deportations by air, which are accompanied by security service officers, only appropriately trained officers may be used. As a result those officers intended to be used within the police for such deportations by air received training in the summer of 1999 in the following topics:

- Training on the directives order issued on 28 May 1999,
- Introduction to the legal framework which is of relevance to their work,
- Psychological aspects of such official actions and conflict management, the establishment of intercultural communication and behavioural skills, the situation of deportees,
- Training to ensure optimum use of the requisite detention techniques and means (application of the physical force appropriate to the circumstances),
- Instruction in the deportation procedure at Vienna-Schwechat airport,
- Training in the Austrian Airlines emergency training centre,
- English, in particular as far as this is necessary for contact communication with aliens and pilots,
- First Aid training.

Follow-up training for accompanying officers from the Federal Police (45 officers) and the Federal Gendarmerie (60 officers) on the following topics was held in early summer of 2000, for consolidation and practice purposes:

- Practice and consolidation of knowledge of the directives issued in relation to deportation by air;
- Exchange of experiences with the officers involved;

- Practice and consideration in greater depth of the relevant legal framework;
- Practice and consideration in greater depth of the psychological aspects in relation to such official acts, in particular conflict management and multicultural communication;
- Practice and consideration in greater depth of training in order to ensure optimum handling of the necessary detention techniques and means of application;
- Practice and consideration in greater depth of first aid training, involving a doctor;
- Practice and consideration in greater depth of the foreign language English (focusing on relevant specialist terminology);
- Practice and consideration in greater depth of the deportation procedure at Vienna/Schwechat airport (involvement of the airport operational department).

## 2. Guarantees against ill-treatment

### Recommendations

**Item 37:** *It is recommended that it be acknowledged without further delay that persons suspected of a crime have the right of access to a legal counsel from the very start of their arrest, and that this should take the form described in paragraph 37.*

In the Austrian comments on paragraph 46 of the preliminary report it was stated that the reform of the preliminary criminal proceedings, within the context of which consideration is to be given to the arrangements for access by detainees to lawyers, is still under discussion. This discussion process has still not been concluded.

In the meantime the Federal Ministry of Justice proposed in a draft published in April 1998, that the right of the suspect to contact his legal counsel at any time, from the point at which he is arrested, should be prescribed and that he should, in principle, also be permitted to speak with a defence counsel prior to his interrogation. This draft received broad approval by interested specialist circles. The Federal Ministry of Justice intends to bring up for discussion the proposed extension of the rights of the detained suspects in the draft bill mentioned in the comments in relation to paragraph 36, which is to be completed in the spring of 2001. For considerations related to security and in order to avoid collusive agreements, however, the possibility for surveillance should be upheld for the first 48 hours after arrest. Austria does not consider that this will prejudice the required prevention of possible ill-treatment.

It should further be noted that under the Joint Directives mentioned in the comments in relation to paragraph 36, all security authorities and security departments were instructed to permit contact after conclusion of the investigations by the security authority or in the event that there is no risk of collusion after conclusion of interrogation of the suspect. In the light of the recommendations of the CPT and in view of the fact that the law in force does not exclude contact between the suspect and a defence counsel during the first 48 hours of custody, it is planned to examine the possibility of extension of this opportunity for contact before the above-mentioned reform enters into force.

**Item 38:** *It is recommended that it be guaranteed that any medical examination should not take place within hearing or seeing distance of the police officers, unless this is specifically requested by the doctor.*

Conducting medical examinations outside the hearing or seeing distance of police officers constitutes too great a risk for the doctor concerned. The possibility that the doctor may make an explicit request for the involvement of a law enforcement officer does not alter this fact, since generally speaking the doctor cannot himself assess the potential risk in advance. As a result, the Chief Medical Service of the Federal Ministry of the Interior considers the presence or proximity of a law enforcement officer (where available, a law enforcement officer who is trained as a medical orderly) to be necessary.

**Item 43:** *It is recommended that it be guaranteed that the right to access to a legal counsel should be made possible at every stage of the "airport procedure".*

Pursuant to § 17 paragraph 1, Asylum Act, aliens who apply for asylum after arriving at an airport, at the time of the border control procedure undertaken at a border post, must in any event be brought before the Federal Asylum Office, unless they had a residence permit or their application would have to be rejected due to a final decision on the case taken previously (res iudicata).

Asylum seekers may be accompanied during their examination at the Federal Asylum Office by a person of trust (family member, compatriot, lawyer etc.). In addition, on 1 January 1999 a refugee adviser was appointed for airport procedures, pursuant to § 40 of the Asylum Act. He receives the necessary information concerning examinations held at the airport from the Federal Asylum Office.

Since no specific application from the alien concerned is available during his first meeting with the border police, e.g. he may wish to leave again, the involvement of an interpreter appears adequate. If an application for asylum is made, then the procedure described above is immediately instituted by the Federal Asylum Office.

### **Commentary**

**Item 39:** *The CPT makes the comment that it should be guaranteed that the information sheet intended for detained persons should be made available to all persons arrested by the police as soon as they are taken into custody.*

As things currently stand, the information sheet for persons taken into custody must be given to arrested persons as soon as they are taken to the office at which they are (initially) to be held in custody, however in any case prior to their first examination. Exceptions are only those instances in which a person is held in custody for a very short time (up to 1 hour), for example to ascertain his identity. Making the information sheet available "as soon as they are arrested" is not practical in administrative terms, since in order to achieve this, adequate numbers of the information sheets would have to be carried at all times, together with all 16 translations, by every officer of the public security service, even those on foot patrol.



The importance of immediately handing out the information sheet in accordance with the valid rules mentioned at the outset is forcefully made clear both during basic training and during advanced training. Officers are continuously reminded during such training that detainees suffer from a lack of information concerning the reason, the length of their custody, their rights and medical care, and that they can only be provided with such information via the immediate provision of the information sheet in a language which is comprehensible to the arrested person.

### **Requests for further information**

**Item 36:** *Request for confirmation that the recommendation which states that the grounds for a delay in information relating to the arrest of a person be precisely defined, is being implemented in practice.*

In the spring of 2001 the Federal Ministry of Justice will subject a draft bill for a comprehensive reform of preliminary criminal proceedings to a general expert appraisal procedure. The reform focuses on expansion of the suspect's rights to defence, whereby it is intended to inform the suspect of his rights to notify a defence counsel and to involve a person enjoying his confidence (who may also be the legal counsel) in his interrogation already upon arrest. The possibility of postponing this notification is to be deleted.

It should be noted that even under the current legal situation, the arrested suspect has a right, which is guaranteed under constitutional law, to request that at his choice a family member and a legal counsel be notified of his arrest either at the time of his arrest or without unnecessary delay immediately thereafter, and in any event before he is interrogated (Art. 4 paragraph 7 of the Federal Constitutional Act of 29 November 1988 relating to the protection of personal freedom (PersFrG), BGBl. No. 684; see also §§ 178, 179 paragraph 1, StPO (Criminal Procedure Code); § 36 paragraph 3 VStG (Administrative Penal Law); § 8 paragraph 1.1 and paragraph 2 of the Directives Order of the Federal Minister of the Interior according to the Security Police Act (SPG); Joint Directives of the Federal Ministries of the Interior and of Justice, JABl. no. 28/1989; Introductory Decree from the Federal Ministry of Justice in relation to the 1993 Criminal Procedure Amendment Act, JABl. No. 6/1994).

**Item 40:** *Request for information concerning the results of the pilot project for the electronic recording of police interrogations, which was initiated in Linz at the beginning of 1997.*

The project "Video documentation during interrogations" was set up at the beginning of 1997, initially in the area of the Upper Austria Security Directorate, and was subsequently extended to the Tyrol Security Directorate and the Vienna Federal Police Directorate. However, the reports on experiences regularly obtained from the authorities concerned highlight a number of problem areas.

Experiences to date with video examinations indicate that only a small proportion of suspects are prepared to collaborate in video examinations. In contrast, officers are extremely willing to use video recording. It has proven that recidivist offenders "experienced in dealing with the police " are aware of the risk that recorded confessions can no longer be retracted by claiming alleged ill-treatment or inhuman interrogation practices by the law enforcement services. This also explains the fact that those prepared to accept recording were for the most part first offenders. Persons suspected of having committed a sexual offence tended towards counterproductive behaviour under interrogation in view of the video recording. This is unquestionably the result of the shame associated with the detailed description of the crime.

Presumably, to counter claims of ill-treatment via the recording of questioning will only be possible to a limited extent also in the future. This finding is based on the fact that the time of the actual examination normally only takes up a small proportion of the overall period of custody. In view of the possibility of using the video recording in subsequent court proceedings, there is additionally the question of prior contact with a defence counsel.

Notwithstanding the impression described above, the trial use for the Federal provinces of Vienna, Upper Austria and Tyrol was extended to the end of January 2001. Expansion of this project to the Security Directorates, other Federal Police Directorates and Provincial Gendarmerie Commands is under discussion.

**Item 40: Request for information on the subject of whether such recordings should be undertaken throughout Austria.**

See the explanations above.

**Item 42: Request for information concerning comments from the Austrian authorities with respect to the allegations that a certain number of foreigners, in particular in the transit area of the airport, were not informed of their rights.**

No persons are held in custody in the transit area of the airport. There may be aliens in the transit area, who have been turned back during border control because they do not fulfill the entry requirements for Austria. Such persons are free to leave the country and to have any contact with other persons. They are simply not permitted to pass the frontier point into Austria. An alien who is actually arrested may have contact with his legal counsel, family members, persons of trust or the consulate, as provided for in § 65, Aliens' Act, at any time.

Asylum seekers who are in the transit area of the airport are given a notice pursuant to § 26, Asylum Act, in a language which they understand, before examination by the Federal Asylum Office. The examination is not commenced until the asylum seeker has read the notice and has confirmed when asked that he has understood it.

In addition, the competent specialist department from the Federal Ministry of the Interior will guarantee observance of the provisions in a circular which recalls the obligations deriving from the law.

It is further evident from the available official reports that aliens who are taken into custody are habitually informed of the reasons for their arrest. If this is not possible immediately and in situ, as a result of language difficulties, then this information is provided, with the aid of an interpreter, during examination in the aliens' police department of the authority concerned. No irregularities were ascertained in these areas.

**Item 44: Request for information concerning commentaries by the Austrian authorities with respect to the observations in the second subsection of paragraph 44.**

§ 57 of the Aliens' Act provides that aliens should not be permitted to be deported to a specific country if there are valid grounds for the assumption that they would run the risk of being subject to inhuman treatment or punishment or to the death penalty. Deportation to a country in which the life or freedom of an alien on grounds of his race, religion, nationality, membership of a specific social group or political views would be threatened, is only permissible if the alien seriously represents a risk to the security of the Republic or if he has been found guilty without appeal by an Austrian court for a particularly serious crime and represents a risk to the community due to this punishable behaviour (Art. 33 lit. 2 GFK).

Under the provisions of the 1997 Asylum Act, the asylum authorities are required to examine the ban on deportation according to Art. 3, ECHR, and in the event of the official rejection of an asylum application, to also give an official decision on the question of the admissibility of repatriation to the country of origin. If the repatriation is inadmissible, then the alien is to be granted a limited term residence permit pursuant to § 15, Asylum Act.

The deportation of aliens in open asylum proceedings is in any case inadmissible and is excluded by law (§ 21 paragraph 2, Asylum Act).

**Item 44: Request for information concerning the special training for representatives of the Federal Asylum Office in the exercise of their duties, and concerning their sources of information in relation to the human rights situation in other countries.**

The staff of the asylum authorities is given special training via a number of initial and advanced training measures, inter alia within the context of the advanced education collaboration between the Swiss Federal Office for Refugees, the German Federal Office for the Recognition of Foreign Refugees, the Federal Asylum Office and the Federal Ministry of the Interior (Asylum law department). Within the advanced training plan of the Federal Asylum Office, to which special priority is given, a number of advanced training events are planned for the year 2000, including for example a provincial seminar on the topic of "Afghanistan" and a seminar on the non-deportation principle.

The Federal Asylum Office uses the information from the UNHCR, Austria's diplomatic and consular missions, NGO's and the German Federal Office for the Recognition of Foreign Refugees and the Swiss Federal Office for Refugees as sources of information in relation to the human rights situation in other countries.

**Item 44:** *Request for information concerning the monitoring and continued observation of the situation of persons after their deportation from Austria by the Austrian authorities.*

In its report on the so-called "problem deportations" of 5 October 1999, the Human Rights Advisory Board recommended inter alia (recommendation no. 20 on page 25 of the report) that information should be obtained regarding the situation of deported persons within their country of destination and that the findings obtained should be incorporated into the training of officers and into the preparation of potential deportees in Austria. A comprehensive asylum and aliens' law documentation in relation to countries of origin is maintained within the asylum law department of the Federal Ministry of the Interior. This documentation has been and is still regularly updated and improved, and is accessible both to the Federal Asylum Office and to the officers dealing with deportations.

### 3. Police jails

#### Recommendations

**Item 47:** *It is recommended that the question of the setting up of special centres for foreigners should be investigated once again in view of the comments explained in paragraph 47.*

The duration of the custody pending deportation is by law to be kept as short as possible, with the average term of detention being 20 days.

The rules relating to detention which came into force in May 1999 (Committal Order) emphasise that detainees must be detained with due respect of their human dignity and according to the most considerate treatment. Minimum standards are set, which must be met during detention: medical care, the provision of clothing and other effects, pastoral care, hygiene, food, occupation, exercise in the open air etc. The police jail in Linz plans to set up a so-called "open station", in which foreigners in custody pending deportation can spend time outside the detention rooms and will have their own kitchen.

Although it may be assumed in principle that the police jails in Vienna, Salzburg and Graz have adequate material facilities in the sense required by the CPT, it does not appear advisable to exclusively detain foreigners in custody pending deportation within these police jails, for reasons related to enforcement. On the one hand it does not appear practicable to set aside specific jails exclusively for housing foreigners in custody pending deportation who have a long detention term, and on the other hand the evident categorisation of detainees via different material conditions must also be avoided for reasons related to equal treatment.

The plan to erect a deportation station at Vienna Schwechat airport had to be suspended during the planning phase due to funding problems.

**Item 48:** *It is recommended that the provisions of the Aliens' Act be strictly observed with reference to the deprivation of liberty in the case of minors.*

The Federal Ministry of the Interior made mention on several occasions, via circulars, of the obligation to observe § 66, Aliens' Act, which provides that the Aliens' police authority must apply the more lenient means in the event that the prerequisites for the custody pending deportation exist in relation to minors. Custody pending deportation may only be imposed on a minor if such a minor has already used the more lenient means ordered in his respect in order to go underground, or if a delinquent minor is involved. Minors under the age of 14 may not be held in custody pending deportation.

In the context of holding minors in custody pending deportation, it must be stated that in many cases no documents confirming age are available and the authority has at its disposal only very restricted other means of determining age during the preliminary investigation (appraisal of evidence).

In its report on "Minors in custody pending deportation" in July 2000 the Human Rights Advisory Board made 43 recommendations; the Federal Ministry of the Interior's first comment on this report is presently being prepared.

**Item 50:** *It is recommended to give urgent priority to the renovation of the Hernalser Gürtel Police Jail and to make basic hygiene products available to detainees without delay.*

The general renovation project for the police jail at Hernalser Gürtel 6-12, Wien 8., has priority. Compared to projects of a similarly high investment volume it was possible to keep the pre-building phase very short. In view of the Aliens' Police of the Vienna Federal Police Directorate being established in the area of the former Local Court for Criminal Matters and the progress of construction resulting therefrom it is intended to complete the general renovation of the building in 2003.

Each detainee newly arriving at the police jail receives a parcel of hygiene products containing toothbrush, toothpaste and a beaker. Women are additionally given specific hygiene articles such as, for example, sanitary towels. Soap is offered via liquid soap dispensers. Each detainee is provided with sufficient toilet paper; any additional requirements of hygiene articles are met after the floor warden has been contacted.

**Item 52:** *It is recommended to introduce immediate measures to ensure that each person held in Austrian police jails for more than 24 hours has at least one hour's daily outdoor exercise.*

Systematic daily walks in the yard of approximately one hour per detainee did indeed sometimes not take place previously in the area of the Vienna Federal Police Directorate, partly due to staff problems. First steps concerning an increase in personnel have now been taken on a supervising officer level. The staff situation has thus been eased and it has been ensured that it is possible, in principle, to grant each detainee one hour's outdoor exercise in the yard per day within the area of the Vienna Federal Police Directorate. It must be pointed out, however, that a large number of persons committed does not make use of this opportunity offered in accordance with § 17 of the Committal Order.

Furthermore basketball baskets were mounted in the exercise yard of the Rossauer Lände Police Jail in order to be able to offer the detainees an increase in leisure activities and physical exercise.

**Item 54:** *It is recommended further that efforts be made in Austrian police jails to offer persons held in custody over a longer period a wider range of activities outside their cells. Specific measures are to be taken to ensure that minors are offered activities appropriate to their age. The longer the term of detention lasts, the more varied the activities on offer should be.*

The average committal period in cases of custody pending deportation in Austria is 20 days. Jobs in workshops which require further training do for that reason not appear to be very sensible. In the police jails of the Vienna Federal Police Directorate there are at present 52 “work places”, these are domestic worker functions. Foreigners in custody pending deportation are also partly employed in these. However, this work essentially consists of rather simple activities which - in the respective area - can also be performed by unskilled people.

For the purpose of occupation / leisure activities there are newspapers and magazines in the police jails which are presently available in five foreign languages. In Vienna, it is also possible to purchase newspapers from a newsagent visiting police jails. Apart from this, there is a library comprising a total of approximately 1,300 books, also partly in foreign languages, within the precincts of the Rossauer Lände Police Jail. Detainees are able to borrow books from this library twice a week. A comparable library is envisaged in the area of the Hernalser Gürtel Police Jail after its renovation.

The activities described above which are possible in the area of the Vienna Federal Police Directorate are also undertaken and/or aimed for in the area of other authorities’ police jails within the framework of existing staff and budgetary resources in each case.

**Item 56:** *It is recommended to set up (with immediate effect) at least one further full time post for a qualified male/female nurse amongst the nursing staff of each police jail in Vienna and to endeavour a step by step replacement of medical orderlies by qualified nursing staff.*

The present form of care by medical orderlies is considered to be sufficient since these are specially trained in nursing services. If this type of care is insufficient, detainees are removed to a hospital. There are no sick wards in police jails which might be used as a replacement for a hospital stay. Sick persons are immediately moved to the nearest hospital and cared for there. In the police jails “in-house nursing care” is offered and provided by medical orderlies.

**Item 59:** *It is recommended to ensure that the medical examinations carried out on arrival at the prisons of Vienna and Graz should comprise a detailed assessment of the detainees' state of health, both from a preventive and a curative point of view.*

The provision of the Committal Order (§ 7, paragraph 3) evidently referred to in the report is indeed a provision concerning the examination of physical fitness for custody and not concerning a "thorough medical check-up". Observations and findings made by the medical officer must be fully documented. A new supplement to the custody report led to qualitative improvement of these examinations - in particular with regard to certain "cases of suspicion" (such as impairment due to drugs). It should not be overlooked either that in view of the large number of detainees numerous examinations by the medical officer are necessary in police jails (examinations of physical fitness for custody, interviews, daily examinations in cases of detainees on hunger strike). Furthermore it must also be pointed out that there is an anamnesis form available - drawn up in several languages - which is intended as a basis for the examination of detainees. Unfortunately, though, not all detainees complete this form.

**Item 59:** *It is recommended that any observations made during the medical examination and any corresponding conclusions be recorded properly in writing.*

As already mentioned above, all observations and findings made by the medical officer must be fully documented.

**Item 60:** *It is recommended that the medical approach regarding the treatment of hunger strikers be reviewed in order to ensure that this approach does justice to criteria which make an appropriate assessment of their state of health possible.*

The assessment of a hunger striker's state of health is already carried out not solely by means of checking the weight of the person concerned. Rather the parameters listed in the so-called "hunger strike form" are checked. In Vienna any thickening of the blood (haematocrit) is also checked; there are plans to introduce this throughout Austria. In future there will also be daily pulse oximetry checks. And, finally, the medical services also order detainees to be removed to hospital where further blood parameters are checked.

**Item 60:** *It is recommended that detainees starting a hunger strike be properly informed of the possible consequences which their actions may have on their health.*

Following CPT's comments police jails were instructed to hand out an information sheet drawn up by the Chief Surgeon's Services of the Ministry of the Interior, which draws attention to the risks to health of such actions to any detainee on hunger strike or giving notice of a hunger strike. This information sheet has been translated into 18 foreign languages and, following the Decree of 30 August 2000 by the Federal Police in the Ministry of the Interior, was forwarded for use to the Federal Police Directorates and the Vorarlberg Security Directorate.

**Item 61:** *It is recommended that priority measures be taken in order to provide detainees in Viennese police jails and possibly also in other Austrian police jails with the appropriate psychological and psychiatric care.*

Of the officers serving in the 12 police jails 12 officers were trained as instructors in the “psychology of the penal system”, amongst other things; these officers implement training measures amongst staff of police jails.

The aim is an increase in social competence, guidance towards professional, unprejudiced actions and improved handling of stress and conflicts. These training teams consist in each case of one executive officer and one instructor from the field of “applied psychology”. Due to this measure the general psychological competence of staff is increased to a considerable extent. Further training by instructors for police jail staff is planned and in part already being offered.

Measures going beyond that are restricted by budgetary limits. Sensible psychological and/or psychiatric care of detainees held in police jails would entail costs which can in no way be covered within the budgetary framework. On the one hand, suitable staff would have to be “bought in”, on the other any psychological care offered can almost always only take place in the mother tongue. With regard to foreigners in custody pending deportation who on average are only held in police jails for a period of approximately 2 weeks this would require calling in large numbers of interpreters in various languages.

A project carried out on the basis of a contract between the Vienna Municipality, the “DIALOG” association and the Vienna Federal Police Directorate is primarily concerned with the care of drug-dependent detainees under administrative law (*Verwaltungsstrahfänglinge*) (starting a drug substitution programme plus the appropriate care). Should there be free working capacity, the needs of detainees who are not part of the primary target group may also be cared for. This is rarely possible, though.

**Item 62:** *It is recommended to ensure that every time a detainee is kept in a padded cell, instructions for this have expressly been given by a doctor or he/she is immediately notified for approval. As soon as a person is taken to such a cell, regular supervision by medical staff must take place.*

Holding a detainee in a particularly safe cell (padded cell) is done on the basis of § 5 of the Committal Order (paragraph 6 in conjunction with paragraph 3 (5)). It does not follow from the Committal Order that instructions for transfer to a padded cell may only be given by a doctor; nor does this seem to be necessary.

Holding detainees in a padded cell is done as a safety measure in order to avoid risks to the public or self-injury. Within the area of the Vienna Federal Police Directorate such transfers are made by the floor officer after having informed his superior (duty officer or police commander). Transfer to a specially secured cell is linked directly to this information being given to the medical officer who has to decide on further physical fitness to remain in custody or, in accordance with the Confinement Act, possibly has to give instructions for admission to a psychiatric clinic.



The reasons for holding detainees in a specially secured cell are on the one hand to protect them from injuring themselves and on the other to prevent officers having to use increased physical force or other means in order to prevent self-injury. Even fitting a straight-jacket would in such cases only be possible with considerable use of physical force.

Detainees are always kept in padded cells for short periods only and this is in no way a disciplinary measure.

**Item 62:** *It is recommended that a possibility for entry of daylight be provided at the padded cell of the Rossauer Lände Police Jail; should this not be possible, this cell must be taken out of use.*

Only persons who are at risk of self-injury are held in specially secured and padded cells. This is not a disciplinary but a protective measure. The time spent in such cells is limited to a maximum of three hours. § 5, paragraph 5 of the Committal Order stipulates that keeping a detainee in a specially secured, padded and otherwise empty cell to the extent absolutely required is permissible in cases where the facts justify the assumption that the detainee may endanger his/her life or health by use of violence.

With regard to setting up new specially secured cells the CPT recommendation will be examined in the individual case for its technical feasibility. Based on a rough estimate by the competent authority, the costs for any subsequent insertion of windows into the existing specially secured cell in the Rossauer Lände Police Jail would be between ATS 80,000.-- and 100,000.--. Due to a lack of budgetary resources, rapid implementation for providing daylight to this cell is therefore not possible at present.

**Item 64:** *It is recommended that the necessary measures be taken in order to ensure that medical staff or nursing staff are able to use the services of a qualified interpreter immediately, if they are unable to make a correct diagnosis due to language problems.*

As a basis for the medical officer's examination regarding physical fitness to remain in custody, there are anamnesis forms available in 12 languages which should be completed by the detainee voluntarily. Moreover, multilingual staff members assisting aliens in custody pending deportation and co-detainees "speaking the same language" can help to overcome language barriers. Should it be absolutely necessary, the medical officer may, in individual cases, also request an interpreter. Experience has shown that it is not necessary to constantly call in interpreters nor would it be possible to finance this.

**Item 66:** *It is recommended to ensure that the agencies charged by the Ministry of the Interior with social welfare of, and help for, foreign detainees are able to do their work efficiently.*

The project of assistance during custody pending deportation by NGOs, which has been running for some years, is generally also seen as positive by the authorities.

In the course of interrogation by officers of the Aliens' Police of the Vienna Federal Police Directorate, aliens who are detained are informed as far as possible about the further procedure regarding their person. Difficulties frequently result from the fact that many aliens held in police jails are "guest detainees" for other authorities and the police jail frequently does not know the actual state of procedure and is frequently unable to establish this in the short term. Nevertheless the problem of more information for detainees is being addressed increasingly. The increased integration of NGOs also in these areas is an important point.

The aim of specific contracts (*Förderungsverträge*) concluded with non-governmental organizations is to obtain the support of the federal agencies with regard to the assistance of foreigners detained in police and court prisons pending deportation, in order to improve humanitarian and social standards during custody pending deportation and to reduce the potential for conflict by giving information to those involved.

Compared with the contracts of previous years the contracts for the year 2000 were revised considerably in some areas. The aim with the new version was on the one hand the implementation of the recommendations of the Human Rights Advisory Board regarding problem deportations. On the other hand, care should be taken to ensure that all foreigners in custody pending deportation are given detailed information about welfare possibilities whilst detained and that the welfare institutions concerned receive all the information required for their work as well as sufficient possibilities of access.

**Item 66:** *It is recommended that additional efforts be made in order to eliminate communication problems and to ensure that persons detained pending deportation are properly informed about their rights and duties as well as the state of the procedure.*

Informing foreigners in custody pending deportation about their legal status, in particular about the procedures pending with regard to them, is one of the tasks within the framework of assistance during custody pending deportation. Helpers of such detainees will also find a lawyer on request.

Agencies dealing with assistance during custody pending deportation attempt to minimise communication problems by employing as many multilingual assistants as possible and, if need be, by using additional interpreters, if required. To date the Ministry of the Interior has not learnt of any communication problems with regard to the implementation of assistance during custody pending deportation.

**Item 67:** *It is recommended that the rooms used for visits at the Rossauer Lände Police Jail be redesigned in order to ensure that visits can take place under more open conditions.*

The visiting area at the Rossauer Lände Police Jail was redesigned in the course of recent rebuilding works. Visits by legal advisors, representatives of the authorities and of non-governmental organizations include talks at tables. For security reasons visits by private persons (in most cases family members) take place in rooms specially adapted for that purpose. In the Rossauer Lände Police Jail of the Vienna Federal Police Directorate there are between 50 and 60 visits every visiting day. Visitors are received by a security officer who also accepts parcels of clothing and money for the detainees. Visits are handled, supervised and their duration (maximum 30 minutes, cf. § 21, paragraph 2 Committal Order) is controlled by 3 to 4 officers.

If visits by family members were allowed to take place at tables, three times the number of officers would be needed in order to prevent items such as knives or firearms, for example, being handed over; even if staff numbers were increased three-fold during such visits, supervision could not be assured. Furthermore it must be pointed out that even with visits which include talks at tables, the intimacy of those talking would not be assured since the talks can be overheard from adjoining tables.

### **Commentary**

**Item 49:** *The CPT is hoping that single cells on the first floor of the Rossauer Lände Police Jail will soon be renovated.*

Renovation of the single cell wing is presently in the planning stage. Rapid implementation is intended, depending on budgetary allocations.

**Item 51:** *The CPT is of the opinion that the Austrian authorities are called upon to remedy the material defects found in the police jails of Graz and Leoben.*

Ventilation of the cells at the Graz Federal Police Directorate's Police Jail is effected via the windows situated along the outside wall. They may be tilted or, if needed, opened entirely. In the WC area of each cell there is a mechanical exhaust air unit. Since the filters were exchanged there have been no complaints concerning deficient or insufficient ventilation from either the detainees, the Central Inspectorate or on the part of the jail's management. The preventive custody cells are ventilated by an electrical ventilation unit.

At the Leoben Federal Police Directorate there was for a short while a higher than normal occupancy in one of the double cells at the time of the Committee's visit on 25 September 1999. Due to the arrival of a higher than usual number of detainees, two double-deck beds had to be erected in the largest cell in order to be able to house four detainees for a short period. Although, when compared to the occupancy of the other cells, the number of occupants was higher here, in view of the fact that the detainees were held for a relatively short time only, and considering the size of the cell, this measure was not considered a fault. Once two single cells had become vacant the occupancy of the cell concerned was again reduced to two detainees. Even if there should be an arrival of a large number of detainees in future, occupancy of this cell will continue to be limited to two.

**Item 56:** *The CPT is of the opinion that it would be desirable to arrange for the regular presence of a fully qualified male nurse at the Graz police jail.*

7 security officers have received training as medical orderlies and have been on duty at the police jail since 1 January 1999 - that same year they also undertook E2a training (see explanations above); one officer is on day duty and 5 further officers on group duty. One further medical orderly is assigned to the Police Medical Service. This ensures that during the day on weekdays there is at least one medical orderly present in the police jail. During night duty and also on Sundays, however, it is in certain cases of absence (holidays, sickness) not possible to find a substitute for the medical orderly.

**Item 57:** *The CPT is of the opinion that the Austrian authorities are called upon to take measures to ensure that the medical and care staff of the Vienna police jails can be clearly recognised as such by the detainees.*

White coats are available to the police jail's medical officers. According to the Chief Medical Officer of the Vienna Federal Police Directorate these are indeed worn in principle; medical orderlies wear a specific medical orderly badge on their uniform. No problems regarding the detainees' ability to recognise care personnel are known to the commander of the police jail.

**Item 63:** *The CPT is of the opinion that other police jails in Austria should follow the example of the Viennese police jails with regard to care of drug-dependent detainees.*

In general, an attempt is being made to keep drug-dependent detainees in custody for as short a period as possible - unless they have to be moved to a hospital in any case. Due to the lack of resources treatment beyond the care provided by medical officers is not possible at present, this is being looked at for the future, though. Furthermore, visits by other persons to these detainees for social and medical care purposes are neither refused nor restricted.

Contacts with the *Federal Provinces* have shown that taking over the psychiatric care of drug-dependent detainees to the required extent - apart from acute cases of emergency – seems to be hardly possible in view of the high costs of bringing in external psychiatrists, but also due to communication difficulties as a result of language barriers, above all with foreigners in custody pending deportation. As is reported, in cases where there is a suspicion of serious psychological disturbance it is again and again the problem of a person being unfit to be kept in custody which comes to the fore. The authorities' Medical Service points out that in cases of serious psychiatric disturbance and in view of the known tendency of deterioration in conditions of detention, such persons are in most cases physically unfit to be kept in custody.

### **Request for further information**

**Item 68:** *Request for explanations regarding the question whether detainees can appeal against disciplinary measures taken and, if so, in which way.*

Detainees who deliberately ignore a duty imposed upon them by internal regulations who try to flee or attempt to obtain an early release by artifice, commit an administrative offence under § 24 of the Committal Order. After an administrative offence on the part of a detainee has been notified by the supervising officer, the commander is obliged to investigate the facts in accordance with paragraph 3 and to question the detainee regarding the charge made. Depending on the seriousness of the offence the commander must either issue a reprimand without formal procedure or give orders for a temporary withdrawal of rights, specified as rights subject to restriction in §§ 15 to 18 of the Committal Order (right to employment, housework, exercise outdoors or to make purchases), for a maximum period of one week or for detention in solitary confinement for a maximum of three days.

In accordance with § 23, paragraph 2 of the Committal Order, an appeal may be lodged against the commander's orders. In cases of complaint by the detainee involved, the commander - unless he regards the complaint as being justified and has already himself restored lawful conditions - must submit the facts to the Security Directorate without delay. The latter has to examine the facts and - should it reach the conclusion that the complaint is justified - must restore lawful conditions.

Furthermore, in accordance with § 24 of the Committal Order, the detainee involved can lodge a complaint with the independent Administrative Senates: in cases of direct command and compulsion by the administrative authorities this is done in accordance with § 88 paragraph 1 Security Police Act, and in cases of any other violation of rights caused by the handling of the detention, by means of a complaint in accordance with § 88 paragraph 2 Security Police Act.

**Item 69:** *Request for information regarding the following questions: Are solitary confinement measures checked at regular intervals? Do detainees have the possibility to be heard with regard to the measures taken? Which means are available to the detainee to lodge an appeal against a decision to be held in solitary confinement?*

The terms of procedure - including duration, imposition of "solitary confinement" as well as the possible "legal remedies" in this respect - are stipulated in the provisions of §§ 5, 23, 24 of the Committal Order.

Prior to the imposition of this measure it is also customary to hear the detainee in the course of examining the facts. Whilst being kept in solitary confinement the detainee has the possibility at any time to apply for an "interview" with the commander.

If detention in solitary confinement is effected for medical reasons, the decision to terminate the measure lies with the medical officer carrying out the daily visits provided for in such cases.

#### **4. Other Police and Gendarmerie institutions**

##### **Commentary**

**Item 71:** *The CPT is of the opinion that ventilation in the local gendarmerie post at Oberwart leaves something to be desired.*

The necessary alterations to the local gendarmerie post at Oberwart are taken into account within the skeleton building programme for 2001. As an interim solution to improve ventilation of the detention room, an additional mechanical ventilation unit is being fitted (opening up the wall and fitting a pipe ventilator).

## 5. Detention zone at Wien-Schwechat Airport

### Recommendations

**Item 76** *The detention zone at Wien-Schwechat Airport: It is recommended that measures be taken in order to ensure that persons held in custody in the Special Transit zone can receive visits by family members and attorneys and have access to a telephone.*

Persons in the Special Transit room are not being held in custody. They can leave the country at any time and for that purpose can request to be moved back to the general transit area. The stay in Special Transit - as also the stay in the general transit area - serves the purpose of securing a refusal of application during proceedings.

A telephone is available for use around the clock in the Special Transit room. Visits by family members and attorneys can be received. There are also daily visits by representatives of the Airport Social Services of *Caritas*, of the Vienna Archdiocese.

### Commentary

**Item 76:** *The CPT is of the opinion that within the framework of renovation works in the transit zone it would also be appropriate to provide for the installation of a shower.*

In the course of structural alterations a hand wash basin has been installed in the general transit room: the washing area is separate from the remaining waiting area and the door can be locked; it is completely tiled and separately ventilated. In agreement with the Airport Social Services of *Caritas* a shower was not installed since - in spite of the possibility of closing the door - the development of moisture would seriously have affected other persons in the waiting rooms. But there is still a possibility of taking a shower; staff members of Airport Social Services were offered the possibility by the airport authorities to visit shower installations in hotel rooms in the airport area together with waiting persons.

### Request for further information

**Item 76:** *Request for information about the completion of the renovation works in the transit zone.*

The transit zone at Wien-Schwechat Airport has already been rebuilt: the Ministry of the Interior was represented during the negotiations on 15 March 2000. After extensive negotiations and a visit to the site the authorities granted the building permission to Vienna Airport.

The structural alterations have in the meantime been completed (permission for use was given on 26 May 2000); the rooms have daylight which is a considerable improvement of the situation of those waiting. The rooms are sufficiently ventilated and cannot be looked into from the outside; there is also an area in front of these rooms where people can stay. This measure also contributes considerably to an improvement of the waiting persons' situation.

The Flughafen Wien AG continues to provide facilities for sitting and lying down, which were available in the waiting room prior to the alterations. The same applies to the table and armchairs. Three additional beds have been made available by the Ministry of the Interior.

Regarding the question of provisions we are informed that these are the same as those notified by Federal Minister Mag. Schlögl to the Committee on 20 December 1999.

**Special Transit:** The situation in Special Transit is in accordance with the statements made in Federal Minister Schlögl's letter of 20 December 1999, on the understanding that the satellite unit has now also been obtained and installed by Flughafen Wien-Schwechat and - according to their statement of 19 June 2000 - is already operational.

## **B. Facilities within the sphere of responsibility of the Ministry of Justice**

### **1. Visit to Wien-Josefstadt and Schwarzau Prisons**

With regard to the recommendations and comments concerning the **Wien-Josefstadt Court Prison** it must be stated beforehand that, based on a corresponding order by the Minister of Justice, a "Working party for the reorganisation of the Wien-Josefstadt Court Prison" has been set up since the beginning of January 2000; this working party operates under the direction of the Ministry of Justice and has been given the task to design a more flexible and efficient organisational schedule and to bring about structural improvements in various areas.

*(Incidents of ill-treatment)*

#### **Recommendations**

**Item 80:** *It is recommended that instructions be given to the prison governor to pass on a notice to staff regarding ill-treatment and to punish any incidents.*

Corresponding instructions to the prison governor of Wien-Josefstadt Court Prison have already been given.

#### **Request for further information**

**Item 81:** *Request for information regarding the number of complaints because of ill-treatment lodged in Austria in 1999 against members of the prison staff and how these complaints were followed up.*

Under Item 80 the delegation stated that at Wien-Josefstadt Court Prison they were informed by the staff of detainees' complaints of physical ill-treatment. In order to obtain a national overview with regard to such infringements by staff, the CPT requests information in Item 81 of the report concerning the number of complaints regarding ill-treatment, which were lodged in Austria in 1999 against prison staff members and how these complaints were followed up.

All complaints and submissions containing allegations of ill-treatment received in 1999 were examined and - provided these incidents occurred in 1999 - a summary was arranged according to prisons. This summary is divided into type of detention, name, prison where ill-treatment is alleged, date of submission or complaint, type of examination and final result. In total there were twelve complaints/submissions for alleged ill-treatment made by ten persons - 8 prisoners, 1 committed person (he made 3 submissions) and 1 detainee under administrative law (*Verwaltungshäftling*). Two were investigated by the prison governor, four by the Ministry of Justice and six by the prosecuting authorities. In four cases the allegations could not be proved, in four further cases the proceedings instituted were discontinued in accordance with § 90 StPO (Code of Criminal Procedure), in two cases the investigation by the prosecuting authorities has not yet been completed and in two cases the complaint was shelved in accordance with § 165 paragraph 1.1 StVG (Prison Administration Act) (complaints which have obviously been lodged solely due to mental and psychological disturbance are shelved without formal proceedings).

An examination of all disciplinary procedures showed that in 1999 there was not a single case of a warden being sentenced for ill-treatment or physical injury of an inmate under disciplinary law or criminal law.

In 2000 a criminal and disciplinary matter due to a suspicion of physical injury with serious permanent consequences was initiated by the end of September. In this case the public prosecutor's office filed indictments against 4 wardens on 19 June 2000. As far as disciplinary law is concerned, the charge was reported to the Chief Disciplinary Committee at the Ministry of Justice on 13 July 2000. Both proceedings are pending.

<b>Item 82: Request for information concerning access to services, food distribution, night duty at Wien-Josefstadt Court Prison.</b>
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In each wing of the Wien-Josefstadt Court Prison "wish notes" are available, which all inmates may use to approach the psychological, psychiatric, medical or social services. Apart from this, the Social Services have a conversation with each inmate on arrival. There is a medical visit once a week in each wing. In urgent cases specialist services are contacted by telephone by the officers of the respective wing, by employees in charge or employees of specialist services of other professions in order to speed up the necessary care.

Food is given out at 07.00 hrs. (breakfast), 10.30 hrs. (lunch) and 17.00 hrs, if there is a hot evening meal (Mondays and Wednesdays). On the other days a cold evening meal is handed out, which is done by the day shift at around 14.15 hrs. The cold evening meal can be kept in the detention room without having to be cooled until it is eaten during late afternoon, without its quality being affected.

In view of scarce staff resources the night shift at present starts at 15.00 hrs.

The percentage of remand prisoners in the Wien-Josefstadt Prison Court is 55 % of the total occupancy; remand prisoners are not obliged to work. Approximately two thirds of the other prisoners can be employed in the workshops and operating units (*Wirtschaftsbetriebe*), as domestic workers or in an industrial workshop (*Unternehmerbetrieb*). High fluctuation of inmates affect the working situation to a large extent (the average period of remand in custody in Austria is approximately 60 days).



Delays in the handling of applications were to date only found in connection with obtaining the necessary permission from the competent judges (situated also at the Vienna Juvenile Court or the Korneuburg Regional Court).

Problems with informing family members may arise if the inmate or his/her relatives do not know German. In such cases, relatives are informed by the Social Service after the conversation which takes place on admission, at the earliest. Apart from this, each inmate receives a so-called "admission letter" (= a form in several languages) in which he/she receives basic information in his/her mother tongue.

*(Material conditions)*

### **Recommendations**

**Item 83:** *It is recommended that the necessary measures be taken to improve material conditions at the Wien-Josefstadt Court Prison.*

Due to the budgetary situation renovation works cannot always be carried out quickly enough, so that the usual signs of wear and tear cannot always be avoided. Since the inmates are aware that they are not going to be kept in their detention room for a longer period they are frequently not making an attempt to treat its furnishings carefully and to keep the room tidy and clean. Although wardens urge inmates to maintain cleanliness this does not always have the desired effect.

With regard to the mattresses and blankets objected to it must be pointed out that approximately 200 worn-out mattresses are replaced each year. Newly purchased foam rubber cores are covered with mattress covers in the Wien-Josefstadt Court Prison upholstery workshop. In 1999 193 mattresses were issued to the various wings in exchange for worn-out ones.

For 1999 220 new blankets were issued. For the year 2000 a further 800 blankets were requested.

**Item 84:** *It is recommended that an appropriate supply of hygienic products be ensured.*

After interviewing detained mothers it emerged that they were involved in a flourishing traffic in which they traded the issued care products for articles they desired (cigarettes). It was therefore decided how long they have to manage with the issued care products, although a generous standard is maintained.

Furthermore there is the possibility of acquiring care and hygienic products in the form of supplementary nutritional provisions and semi-luxury goods.

For the purpose of cleaning the detainee's private clothing it is permitted to give washing to relatives as a washing packet upon visits or to send them such a packet by post.

**Item 85/87:** *It is recommended that the meals at the Josefstadt Court Prison in Vienna be investigated.*

The nutritional values which, according to the Food Regulations of 1993, should be provided in a certain amount correspond to the prescribed upper limit.

With regard to the claimed monotony of the meals at present various recipes are made from 194 articles (303 recipes for normal diets, 230 for ritual diets, 230 for bland diets, 200 for vegetarian diets and 190 for diabetic diets). These menu plans have been repeated since February 2000 at an interval of 70 days. The average period for which detainees are remanded amounts to 61 days. The range of meals issued at present comprises 222 articles. Furthermore the list of meals offered each week is extended by 16 articles within a framework of special offers corresponding to the inmates' wishes.

The expiry date of articles offered is checked before they are issued. Articles whose best-before date has already expired and which have been mistakenly issued are exchanged in an informal manner.

**Item 86:** *It is recommended that the mother-and-child section of the Josefstadt Court Prison in Vienna be investigated.*

The mother-and-child section consists of 6 cells each 18.52 m<sup>2</sup> in size. One cell has been adapted to serve as a community room (kitchen and recreation area). Furthermore, the mothers and children have that area of the corridor (at most 60 m<sup>2</sup>) appertaining to the mother-and-child section at their disposal. On average 2 to 3 children are accommodated in the mother-and-child section. During the period of September/October 1999, there were, for the first time since this section was created, 5 mothers and 6 children living together in this section at the same time. Most recently there were 2 mothers in detention, each with 1 child.

Every cell is equipped with warm and cold water, and warm water is also provided in the adjacent mother-and-child section bathroom, where there is also a washing machine and a spin-dryer. However, if larger amounts of water are used, then warm water shortages (lower water temperature) may occur only for a short time. Furthermore, water can be heated by means of the hot plates both in every cell and in the recreation room.

*(Programme of activities)*

#### Recommendations

**Items 87 and 91:** *It is recommended that a programme for the occupation of detainees etc. at the Josefstadt Court Prison in Vienna be developed, and further that a greater frequency of sports activities and active organisation of leisure time be ensured.*

As already stated above, a 'Working group for the reorganisation of the Josefstadt Court Prison in Vienna' has been in existence since the beginning of January 2000, when the Federal Minister of Justice gave orders for it to be set up; this working group is under the direction of the Federal Ministry of Justice and has in particular the task of designing the operational organisation of the prison in a more flexible and efficient way and of introducing structural improvements in various areas. Among other things the aim is to implement structural measures, for example replacing inefficient companies, especially those which employ few inmates, by companies in which more inmates can be provided with a job.

With regard to stimulating the employment of all the inmates it should be stated that approx. 55% of the inmates at the Josefstadt Court Prison in Vienna are remand prisoners who are awaiting trial and who are under no obligation to work, but can only be integrated into the work processes on a voluntary basis.

Efforts towards a greater frequency of sports activities and an active organisation of leisure time are currently being made by the Federal Ministry of Justice.

Furthermore, work is being carried out with the aim of reorganising the canteen system, in particular that of the mother-and-child section.

*(Medical care)*

### Recommendations

**Item 93:** *It is recommended that dental and psychiatric care at the Josefstadt Court Prison in Vienna be improved.*

In 1999 there were 2,548 cases of dental treatment being given to inmates of the Josefstadt Court Prison in Vienna (with an average of 946 inmates). On the basis of this proportion the dental care can be described as sufficient.

Psychiatric care is provided by the University Clinic for Psychiatry in Vienna and appears, according to the Federal Ministry of Justice, to be sufficient taking into account the presence of 11 social workers and 5 psychologists responsible for care, while other psychiatrists from the University Clinic of Vienna are also ready to assist at the general care stations if necessary. However, the amount of medical assistance given at those general care stations has so far tended to be rather small.

**Item 97:** *It is recommended that the recommendations of Items 118 and 119 of the CPT Report dating from the visit in 1994, with regard to the medical provisions of the Schwarzaau Prison, be implemented.*

By 31 October 2000 the prison doctor cancelled his contractual agreement with the Schwarzaau Prison. The doctor's surgery hours which are therefore lacking are currently being conducted on the basis of an agreement with the hospital in Neunkirchen, situated only a few kilometres away. The current negotiations are based on 20 hours medical care per week or according to requirements.

Psychiatric care in the field of a methadone programme and drug-related treatments is being undertaken by a specialist twice a week, also on the basis of an agreement with the hospital in Neunkirchen. Once a week a further psychiatrist is available for individual and group therapy. A psychologist is present in the prison all day.

Having one female nurse on duty 24 hours is not regarded as being appropriate. The female inmates of the Schwarzaub Prison receive medical treatment according to their needs, in the event of acute cases during the day or in the night an emergency doctor can be called, alternatively the inmate can be transported to the Neunkirchen Hospital, which can be reached in approx. 10 minutes. Such acute cases occur 10 times per year at the most.

**Items 99 and 101:** *It is recommended that the psychiatric department at the Josefstadt Court Prison in Vienna be provided with sufficient specialist staff and that therapeutic care be ensured.*

The average period of an inmate's stay at ward Z 6 of the Josefstadt Court Prison in Vienna has, since this ward was set up, amounted to 138 days (not 18 months). In this ward those inmates who have been detained according to § 429/4 Code of Criminal Procedure (StPO) are given post-acute treatment after their stay at the psychiatric clinic. The treatment continues there until they are transferred to a suitable establishment in accordance with § 21/1 of the Penal Law Code (StGB). During this period (before the court's final decision on the question of confinement) general medical and psychiatric care is ensured. Special therapeutic measures are not necessary during this period of the proceedings, in accordance with § 21/1 of the Penal Law Code they are provided at the special prison after the court's decision.

With its 5 psychologists, the Josefstadt Court Prison in Vienna is sufficiently staffed in this area. The court prison is constantly trying to introduce ergotherapy; however, all over Austria there is an extreme lack of trained ergotherapists.

Furthermore, at the inmates' wishes, they can be visited and attended by external care services (the Viennese Aids Help service, various drug counselling centres etc.).

**Items 103 and 104:** *It is recommended that the ergotherapeutic care at Josefstadt Court Prison in Vienna be intensified and that further activities be introduced in the areas of rehabilitation and therapy.*

An intensification of ergotherapeutic measures, as proposed in the CPT Report, is at present hampered by a shortage of resources, in particular with regard to staffing, and by the lack of ergotherapists available on the labour market. In the case of psychiatric care the reader is referred to the statement in Item 99.

In the infirmary of the Josefstadt Court Prison in Vienna psychiatric care is given as it would be at the psychiatric departments of general hospitals; acute cases which require a more intensive treatment are transferred to public psychiatric hospitals.

**Item 105:** *It is recommended that the use of 'cage beds' be stopped immediately.*

On 13 October 1999, immediately after the fact (ascertained by the CPT) that 'cage beds' with metal bars were (still) in use at the Josefstadt Court Prison in Vienna, the further use of the same was prohibited upon the instructions (given by telephone) of the Federal Ministry of Justice. On 18 November 1999 any further use of 'cage beds' as a special security measure, within the meaning of § 103 Paragraph 2 lit 5 StVG, was prohibited anywhere in Austria, although the use of so-called 'net beds' is regarded as permissible, in accordance with the view of the CPT. Since the above mentioned ministerial decree, 'cage beds' have not been in use at any prison under the responsibility of the Federal Ministry of Justice and, as far as they still existed, have been removed.

**Item 106:** *It is recommended that care be taken to give every new detainee a full preliminary medical examination.*

The examination of new detainees should occur at the latest within 24 hours, whereby the course of the examination should partly be determined by the information provided by the inmates themselves. If new information emerges from this, then an appropriate additional examination by a specialist should be ordered. A comprehensive full examination ('check-up') of every arrested person is not provided for by the Austrian prison system, nor does it comply with the requirements to be met by doctors outside of the prison system.

**Item 107:** *It is recommended that the entries made in medical records correspond to the requirements of Item 107.*

From the doctors' side, the records and entries made in medical card-indexes for internal use may be described as sufficient. The entries, taking the form of keywords on index cards are comprehensible to full-time colleagues who have worked in the prison for a long time and provide all the necessary information. However, possibilities of changing the manner of documentation is at present under investigation.

It is not possible to effect regular health check-ups, due to the great fluctuation of inmates. However, every detainee has the possibility of contacting the prison doctors at all times.

In the infirmary the nurses and doctors make daily entries on the so-called temperature chart of specific inmates, as well as in the accompanying patient's reports sheets.

**Items 108 and 109:** *It is recommended that satisfactory medical care (relationship between doctor and patient) be established at the Schwarzau Prison.*

By 31 October 2000 the prison doctor cancelled his contractual agreement with the Schwarzau Prison. The doctor's surgery hours which are therefore lacking are at present being conducted on the basis of an agreement with the hospital in Neunkirchen.

In this way the unsatisfactory medical situation mentioned in this connection in the CPT Report has been repaired. Negotiations for filling the doctor's vacant post are at present underway. Since December 1999 a specialist for psychiatry and neurology has been employed for the psychiatric care of inmates at the Schwarzaau Prison. Since July 2000 the socio-psychiatric department of Neunkirchen General Hospital has also assisted with psychiatric care at the Schwarzaau Prison. A weekly quota of approx. 20 hours is 'purchased' as a specialist service, for which a corresponding contract has already been signed. The reader may be referred to Item 97.

**Item 110:** *It is recommended that notices about medical diagnoses should not be posted on the doors of cells.*

Such announcements are prohibited by the prison management. The prison governor was instructed to strictly check that this prohibition is adhered to. The little coloured cards posted on the doors of the cells serve for information about meals taken and should indicate solely the kind of diet (special diet, bland diet, etc.).

### **Commentary**

**Item 112:** *The CPT is of the opinion that it is necessary for the Ministry of Health to take more responsibility in the area of medical care at prisons.*

The statement by the CPT, to the effect that the clinical decisions of doctors should depend on medical criteria alone, meets with complete agreement. Special attention has been paid to this requirement for many decades now. In all prisons medical care has been provided by resident doctors and additionally summoned specialists. Medical care is provided in the infirmaries of the prisons as well as in public hospitals. This ensures that standards are maintained which sometimes clearly surpass the standards of utilisation of doctors by persons living in freedom.

Thus all prisons provide for the necessary medical care and have doctors for general medicine, while specialist medical care – insofar as there is otherwise no specialist present – is available for detainees as outpatients and inpatients in hospitals. The Josefstadt Court Prison in Vienna, for example, has at its disposal ten doctors (the services of eight further specialists may be called upon should they be needed) and 22 qualified health care and nursing staff. Furthermore the Federal Ministry of Justice also has at its disposal expert medical knowledge in the person of a university professor. In 1999 the Federal Ministry of Justice's expenditure on health care amounted to an approx. total of ATS 360,000,000.--.

However, against the background of these resources, which are set aside by the Federal Ministry of Justice for the purpose of health care in prisons, the transfer of increased responsibility for the area of health care in the prisons to the Department of Health does not appear to be, contrary to the opinion of the CPT, a leeway to further improvements including questions concerning the recruitment of the staff and the supervision of the jobs that they perform. From the perspective of achieving possible optimal quality of care it would appear to be worth placing health care in prisons on a par with that of the rest of the population, as far as that is feasible, i.e. using the resources of the rest of the health care system, such as freelance doctors, hospitals etc.. Including health care in prisons as part of the general health care can ensure that medical decisions are taken by doctors who do not have any prior internal knowledge of the prison and can therefore make medical decisions without being influenced by any other factors.

Yet not even an increased use of qualified nursing staff in court prisons can lead to the substitution of these for the medical services of a doctor, especially since the doctor has the responsibility of giving orders to the nursing staff in the so-called collaborative areas of activity (delegation).

Moreover, the Federal Ministry of Justice and the Federal Ministry of Social Security and Generations (BMSG) are working in close co-operation on fundamental medical questions, such as those involved in the fight against tuberculosis, or the prevention of HIV. Furthermore, the relevant professional regulations which come under the legislative jurisdiction of the Federal Ministry of Social Security and Generations (e.g. regulations for doctors, fully qualified nursing staff and others) naturally also apply to the work of members of health care professions in prisons.

Request for further information

**Items 94 and 95: *Request for information about the appointment of permanent health care staff at the Josefstadt Court Prison in Vienna.***

The scheme for filling vacant positions at the Josefstadt Court Prison in Vienna foresees 5 permanent appointments in the field of health care/nursing staff for the Wilhelmshöhe branch and 23 for the main establishment. Apart from one permanent position at the Josefstadt Court Prison in Vienna, all the permanent posts are occupied. This 23rd permanent post at the Josefstadt Court Prison in Vienna cannot at present be advertised due to the current measures undertaken by the Federal Government towards consolidation of the budget.

With regard to the rest of the recommendations concerning this matter reference is made to the statement in Item 93.

**Item 96: *Request for information about waiting periods experienced before being admitted to the hospital of the Barmherzigen Brüder in Vienna.***

In a patient's ward at the hospital of the Barmherzigen Brüder in Vienna there are 8 hospital beds (and one emergency bed) available. There is sufficient capacity for admissions. There are no waiting periods for detainees. 5 to 6 beds are usually occupied.

**Item 98: *Request for information about the care provided for mothers and children at the Josefstadt Court Prison in Vienna.***

As far as possible, mothers and children are attended by specialist doctors in the prison itself. Otherwise, the appropriate treatment is provided by being escorted to a child care clinic or to child care specialists. For the care of infants there are, according to need, regular escorts to the hospital in which the birth occurred.

The Schwarzaau Prison ensures comprehensive care for mother and child by carrying out all those medical examinations which are foreseen as part of the “mother-and-child passport”. There is also the possibility of consulting the prison doctor. If necessary, escorted visits are made to child care specialists and hospitals. The post-natal care of mother and infant is supplemented by intensive care by a midwife, arranged according to time and need.

*(Other questions within the mandate of CPT)*

### **Recommendations**

**Item 119:** *It is recommended that a bed be placed in isolation cells.*

It has already been decreed that a bed be placed in all rooms used for the purposes of house arrest and isolation.

**Item 121:** *It is recommended that the inmates of the Josefstadt Court Prison in Vienna be informed about their rights and duties in a language that is understandable to them and that their relatives are informed.*

Difficulties in informing relatives may arise insofar as the inmates or their relatives do not speak German. In such cases the relatives cannot be informed until after the admission interview with the social service. Independently of this, each of the inmates receives a form in his or her own native language, on which the most important phrases for communication with the officers are translated. This form is provided in 9 different languages. The reader is referred to the statement made in Item 82.

### **Commentary**

**Items 115 to 117:** *The CPT is of the opinion that both the organisation and the conditions pertaining to visits and correspondence should be investigated.*

In the course of structural improvements undertaken within the framework of the ‘Working group for the reorganisation of the Josefstadt Court Prison in Vienna’, particular attention was paid to the transfer of staff members from their administrative offices to the general prison services, in order to guarantee more intensive care of the inmates and more efficient organisation of visits.

Delays in the delivery of mail have so far only been established in connection with cases where it was necessary to obtain the approval of the competent judges (partly under the jurisdiction of the Juvenile Court in Vienna or the Provincial Court in Korneuburg).



**Item 124:** *The CPT hopes that the Prison Committees will be made more sensitive to the actual significance of their work.*

In order to fulfil the Federal Ministry of Justice's special responsibility for the Prison Committees, the corresponding reports are continuously evaluated, the competent specialist departments are informed accordingly and the implementation of those recommendations which emerge is evaluated.

In May 2000, partly as a result of the CPT report, the Director-General for Prison Affairs invited all the chairpersons of the committees to a meeting. There the significance of the work of the Prison Committees for the Federal Ministry of Justice was emphasised and the chairpersons were encouraged to communicate possible problems and shortcomings to the Federal Ministry of Justice immediately by telephone.

### **Request for further information**

**Item 113:** *Request for comments on the decision in § 45 Paragraph 3 of the Code of Criminal Procedure, according to which the investigating magistrate may be present at a meeting between a detainee who has already been charged and his or her legal counsel, if the person concerned was detained due to the existence of a danger of collusion.*

§ 45, Paragraph 3 of the Code of Criminal Procedure (StPO) states the fundamental right of a suspect who has been detained to be allowed to speak with his or her defence lawyer without the presence of any court officers. Only if the person (against whom no indictment has yet been filed) is also in custody on account of an existing danger of collusion, the investigating magistrate may – as an exception – monitor the conversation. This possibility is, in principle, limited to a period of 14 days, after which (although at most within 2 months of the date of arrest) the investigating magistrate can order such supervision with a special decision, if it is to be feared, on the basis of exceptional circumstances, that the interview with the defence lawyer would otherwise lead to an impairment of evidence. This may be justified by the fact that the Code of Criminal Procedure – unlike comparable legal systems (cf. § 138a of the German Code of Criminal Procedure) – does not admit any possibility of excluding the defence counsel on account of suspected collusion and for that reason, in the event of the existence of a danger of collusive collaboration, elects to avail itself of the milder means of monitoring the interview – although this is also subject to temporal limitation. In practice, little use is made of this monitoring possibility, since it entails that the investigating judge must carry out the supervision personally.

**Items 122 and 123:** *Request for information concerning the carrying of firearms.*

The carrying of firearms is basically regulated in the provisions of Item 6.2 Paragraph 2 of the Regulations for the Execution of Criminal Sentences (VZO) (general), Item 6.6.1.4., Paragraph 1 of the Regulations for the Execution of Criminal Sentences (for guard duty) and in § 4 of the Escort Regulations (for the escort service). During the night, those officers on night duty are to be regarded as guards in the sense of Item 6.6.1.4., Paragraph 1 of the Regulations for the Execution of Criminal Sentences. In this case the law states that the prison governor has to determine the area to be guarded and the duties of the guards in the form of a written order. This order should state what arms and equipment are to be used, as well as those measures which are to be taken in the event of special occurrences.

For the duration of the night duty there exist in practically all prisons orders by prison governors which state that those officers employed on night duty have to carry the service pistol. From the point of view of the European Prison Rules quoted by the CPT there would seem to be no objections to this insofar as such officers do not normally come into direct contact with detainees and furthermore special circumstances in the sense of this regulation exist during the night duty, since a very small number of officers regularly face a larger number of inmates. If during the night it should become necessary to open a cell, then the above mentioned orders ensure that the officer who directly opens the door is unarmed, although the security officer standing at some distance away (as incidentally the CPT correctly observed) does carry his service weapon. The purpose of this procedure is to ensure that, should the inmate from the opened cell attack the officer who opens the cell, then the security officer (insofar as the situation demands it) can make use of his weapon in order to protect the other officer and in particular that the security officer can make a retreat should the officer opening the cell be overcome. In this way it is on the one hand ensured that, as far as possible, the inmates cannot gain possession of the key for the locking mechanism which is kept by the security officer, and on the other hand that the security officer can make his retreat in order to report the incident and take any relevant measures. From the view of the Federal Ministry of Justice the risk that the inmate might obtain use of the weapon of the security officer is much less serious than the danger that might arise if no weapon is carried, when both officers might be overcome, the inmates obtain possession of the key for the locking mechanism and surprise the guard room from the detention area.

Furthermore, the circumstance that the inmate is aware of the fact that the security officer is armed also has a preventive effect and therefore provides an essential part of the protection of that officer who is not armed.

A contradiction to Item 63, Paragraph 3 of the European Prison Rules is not considered to exist, since the officer who actually comes into direct contact with the inmate and would be easiest to overcome, is unarmed.

The procedure described here is the one generally followed in prisons and also tested in this form at duty examinations. Furthermore it may be remarked that all prison officers who are equipped with a weapon receive training from specially trained instructors.

## **2. The Göllersdorf Prison**

### **Recommendations**

<b>Items 129 to 136: <i>Recommendations for the Göllersdorf Prison</i></b>
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The Federal Ministry of Justice is aware of the shortage of trained personnel for the Göllersdorf Prison, resulting from the given budget situation; the provision of care staff to a degree comparable to that of civil psychiatric hospitals is at present hampered by restrictive government personnel regulations.

Nevertheless from the side of the Federal Ministry of Justice an attempt has been made to ensure a certain quality of care through structural improvement. Corresponding work in accordance with the principle of 'less administration, more care' is being carried out in several working groups.

Since the inmates of the Göllersdorf Special Prison predominantly display signs of psychiatric illness, medical treatment primarily becomes part of the responsibility of the 9 specialist doctors. Individual therapy is, if necessary, carried out by the psychologists (6) and social workers (5).

The employment of nurses is hampered by restrictive personnel quotas and the existing shortage on the labour market for nurses.

The Göllersdorf Prison is run as a "psychiatric prison hospital"; possibilities of education and work can only be introduced to a limited extent, due to the mental health problems of the inmates. Insofar as such activities appear to be feasible, they are carried out within the context of therapy (ergotherapy).

The Göllersdorf Prison at present has at its disposal two full-time ergotherapists who direct the work therapy workshops.

Measures for the improvement of the basic training and specific further training of the custodial and nursing staff in the field of internment measures:

Apart from the general basic training received at the start of their employment, members of the staff at the Göllersdorf Prison are given a special course of training for use on duty at the prison. In the first few years after the Göllersdorf Prison opened, this comprised a three-week practical training course at the Psychiatric University Clinic in Vienna, at Gugging Psychiatric Hospital and at the prisons of Mittersteig and Favoriten (specialised in internment measures). This special training was subsequently given on site by the psychiatric direction of the Göllersdorf Prison. The prison warders also have the possibility to take part in job-related seminars, organised by the professional training centre of the prison service. In the area of group counselling too, great importance is attached to training in tandem with counselling for the prison officers employed in this field.

Only fully qualified nursing staff is employed to fill the permanent posts in the nursing service of the Göllersdorf Prison. Furthermore, applicants must have either a generally recognised diploma with specialised training, or else basic training as a psychiatric nurse, in order to have the necessary qualifications for the special training course required for carrying out special psychiatric tasks at the Göllersdorf Prison. When the Law of Health Care and Nursing (GuKG, 1997) came into force on 1 September 1997 a corresponding job-related training offer was developed in which nursing staff are obliged to attend, regulated by a training certificate, various training and professional courses of at least 40 hours within 5 years. These courses serve to provide information about the latest developments and advances in knowledge, particularly in the field of social care and medical science, and further provide more in-depth study of the perceptions and skills developed during the basic training course.

Inside the prison, interdisciplinary working discussions are institutionalised and these take place once a week within the respective departments. The respective head of the care service as well as representatives of the prison guard service and of the prison management participate in such discussions.

**Item 138:** *It is recommended that the 3rd special room receives the appropriate furnishing.*

Appropriate furnishing of the third special room for patients suffering violent crises will be provided for.

**Item 142:** *It is recommended that written approval be provided for treatment, and that any deviation from this only be allowed in clearly defined exceptional cases.*

For the enforcement of internment in accordance with § 21 Paragraph 1 of the Penal Law Code, it has been provided that, for achieving the aim of treatment and maintaining security and order in the prison, the person confined should be treated in consideration of his or her state, in accordance with the principles and generally recognised methods of psychiatry, psychology and pedagogy (§ 165 of the Prison Act). Should the confined person refuse to give permission for treatment, then the written approval of the Federal Ministry for Justice is to be obtained in accordance with § 69 of the Prison Act which grants such approval only as an exception and even then only to those prisons where the capability of dealing with possible consequences is safeguarded.

It is not possible to draw up a strictly defined catalogue of exceptions, due to the individual criteria applying to the treatment required in each case.

### **C. Baumgartner Höhe Psychiatric Clinic**

#### **Recommendations**

**Item 156:** *It is recommended that a special index be kept which lists enforced physical measures .*

Even if the measures under discussion should actually be recorded in the respective health record, the Federal Ministry of Social Security and Generations (BMSG) has contacted the clinic in question, in order to investigate the possibility of creating a special index. Should a feasible solution be found, then it could serve as an appropriate model for all relevant clinics.

**Item 157:** *It is recommended that the use of 'cage beds' be stopped.*

The Federal Ministry of Social Security and Generations (BMSG) has contacted the clinic in question, in order to find ways of avoiding the use of cage beds in communal rooms or in publicly viewable areas, e.g. in corridors. The Federal Ministry of Social Security and Generations has made the generally formulated recommendation that the use of cage beds be stopped the subject of discussion and examination on a specialist scientific level.

**Commentary**

**Item 145: *Baumgartner Höhe Psychiatric Clinic***

For the sake of exactness, it should be remarked that the above-mentioned hospital is a public hospital belonging to the City of Vienna and is therefore not under the jurisdiction of the Department of Health. Solely the compulsory measures implemented in this hospital in accordance with the laws of confinement are carried out on the basis of a so-called ‘collateral’, i.e. they are to be regarded as measures attributable to the jurisdiction of the Federal Government and therefore to the Federal Ministry of Social Security and Generations.

**Item 154: *the CPT suggests reconsideration of restrictions on personal clothing being worn by patients.***

The Federal Ministry of Social Security and Generations adopts the suggestion of the CPT and is prepared to contact those concerned, in order to examine the question of whether there actually are any reasons which could justify restrictions on personal clothing being worn by patients.

**Item 159: *the CPT suggests the production of a general presentation brochure.***

The Federal Ministry of Social Security and Generations will refer the question of the production of a general presentation brochure to the legal entity responsible for the Baumgartner Höhe Psychiatric Clinic, namely the City of Vienna.

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