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Report

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

from 14 to 22 March 2017

The Croatian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2018) 45.

Strasbourg, 2 October 2018

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EXECUTIVE SUMMARY

In the course of the 2017 visit, the CPT's delegation reviewed the treatment of persons detained by the police, the situation of inmates incarcerated in three county prisons in Zagreb, Split and Osijek and the treatment and conditions of detention at the Zagreb Hospital for Persons deprived of their Liberty. The delegation also examined the treatment of juveniles at Turopolje Juvenile Correctional Facility and the situation of involuntary psychiatric patients in the light of new mental health legislation.

On the whole, the delegation received very good co-operation during the visit from the Croatian authorities with two notable exceptions which are described in the report and which have been the subject of prompt investigations on the part of the national authorities.

Law enforcement establishments

The vast majority of persons met by the delegation stated that they had been treated correctly by police officers at the time of apprehension and while in police custody. However, some allegations of physical ill-treatment consisting of slaps, kicks and punches inflicted by police officers at the time of the arrest and during questioning (including during so-called "informative talks") were received and, in a few cases, the evidence recorded upon admission to prison in the inmates' medical files supported the allegations. The CPT recommends that police officers be reminded that physical ill-treatment is unacceptable and it invokes the need for perpetrators to be subjected to criminal penalties as well as disciplinary sanctions.

The report also includes an analysis by the CPT of recent developments concerning judicial investigations into allegations of ill-treatment. In particular, in two relevant judgments of the ECtHR and of the Constitutional Court of Croatia, it was found that the authorities had failed to conduct effective investigations into serious and credible allegations of physical ill-treatment. The current complaints system against police misconduct at the level of the Ministry of the Interior is also assessed in the report.

In terms of the operational safeguards related to deprivation of liberty by the police, most persons indicated that they were able to inform a third person of their arrest, although this possibility was sometimes delayed by police officers. Further, the provisions on free legal aid, render it virtually impossible for criminal suspects to have access to an *ex officio* lawyer from the outset of their deprivation of liberty. The report is also critical of the fact that citizens summoned to a police establishment for "informative talks" did not have access to legal counsel until they were declared "suspects" by the police authorities, which can take several hours. Similarly, access to a doctor for persons deprived of liberty by the police was considered by the police as emergency assistance rather than a safeguard against physical-ill treatment. In its report, the CPT calls for the necessary legislative and practical changes to address these issues.

As regards material conditions of detention in police establishments, several holding cells still did not comply with the minimum requirements set out in the relevant amended Rulebook (i.e. in terms of size, access to natural light, provision of mattresses and bedding); recommendations are put forward by the CPT in order to remedy these deficiencies.

Prisons establishments

The CPT notes positively the considerable efforts invested by the Croatian authorities to eradicate prison overcrowding, which have yielded significant results in recent years, in particular by limiting the duration of investigative detention and establishing a nationwide probation system.

The majority of inmates met by the CPT's delegation indicated that they had been treated in a correct and professional manner by custodial staff. However, in each of the establishments visited some allegations were received of physical ill-treatment of inmates by staff, consisting primarily of slaps, punches and kicks to various parts of the body, allegedly inflicted as an informal punishment. Several examples are described in the report. Further, some credible allegations of excessive and disproportionate resort to the security measure of placement in a padded cell ("rubber room") along with the application of means of restraint (i.e. ankle- and hand-cuffs as well as pepper spray) against inmates for punitive reasons are also mentioned in the report; such treatment may be considered inhuman and degrading. The Committee recommends that the authorities send a clear message to custodial staff concerning the complete unacceptability of physical ill-treatment, excessive use of force and disproportionate recourse to means of restraint. Further, more consistent efforts need to be invested in training penitentiary staff.

The phenomenon of inter-prisoner violence was a source of concern for the CPT's delegation, which noted several cases involving serious physical injuries inflicted on inmates by their cellmates. The Committee recommends that the Croatian authorities adopt a national strategy to counter this phenomenon, including through more accurate risk assessment of inmates upon admission to prison.

Conditions of detention varied at the prison establishments visited depending on whether or not the accommodation areas had been renovated. Concrete recommendations are put forward by the Committee for improving conditions in cells and remedying the deficiencies observed. As regards the problem of prison overcrowding, improvements were observed by the delegation; however, instances of living space below the minimum of 4 m² per inmate could still be observed. It is necessary for the authorities to remain vigilant in this respect, in particular by reviewing the official capacity of certain prison establishments. Further, the report recommends the abolition of incarceration for misdemeanour offences in the light of the cumulative detrimental effects on prisoners of the poor material conditions of detention, serious levels of prison overcrowding and the impoverished regime on offer to this category of prisoner.

Turning to the regime, the delegation acquired a positive impression of the professionalism of "treatment" staff at the prison establishments visited. That said, more could be done to improve the range of work and vocational activities offered to sentenced prisoners. Further, the excessive restrictions imposed on, and the impoverished regime on offer to, remand prisoners and misdemeanour offenders, as well as the lack of targeted and meaningful activities for juveniles at Zagreb County Prison and isolated female prisoners in remand detention are criticised; urgent action by the authorities is needed to improve the situation of these categories of detained persons.

In relation to health-care services in prison, the provisions of the 2014 Law on Mandatory Health Insurance, whereby prison doctors are not recognised as contracting parties by the national health-care authorities, was creating practical problems in terms of the provision of medication and delays in the provision of specialised medical treatment to inmates; the report addresses a specific recommendation to the authorities on this topic. Further, the CPT also calls for improvements in relation to issues such as the screening of inmates upon admission and the reporting of injuries to judicial authorities, the confidentiality of medical examinations, the prevention and treatment of transmissible diseases, as well as the treatment of inmates suffering from mental health disorders and drug addiction.

The resort to the security measure of placement of an inmate in a “rubber room” varied in terms of frequency at the prison establishments visited. Inmates could still be placed hand- and ankle-cuffed in a rubber room for punitive reasons for prolonged periods without adequate medical supervision. The Committee recommends the adoption of specific guidelines on the use of rubber rooms which should include specific criteria and legal safeguards for the use of the measure. Further, the Committee recommends that the Croatian authorities draw up a directive on the use of pepper spray as a means of restraint.

Other recommendations put forward in the report by the Committee include the filling of vacant posts for custodial officers at various prison establishments, an increase of visit entitlements for sentenced prisoners and the amelioration of visit arrangements for prisoners on remand, the revision of the systematic screening of inmates’ correspondence by prison management, protecting the confidentiality of complaints lodged by inmates, as well as improving the quality of inspections carried out in prisons by supervisory judges.

Turopolje Juvenile Correctional Facility

At Turopolje Juvenile Correctional Facility the CPT’s delegation gained a generally positive impression of the relations between staff and inmates which was, however, marred by two allegations of physical ill-treatment. The management of the facility should exercise increased vigilance in this regard.

Inmates were offered a good variety of educational, vocational and recreational activities, and the CPT’s delegation welcomed the plans to create new sports grounds. Health-care services were generally adequate, though some basic equipment was lacking, as were regular visits by a psychiatrist. Custodial staff were still systematically present during examinations by health-care staff, a longstanding problem.

Disciplinary sanctions could still involve the segregation of inmates in conditions akin to solitary confinement for up to seven days, which goes against the current trend at international level to abolish solitary confinement for juveniles, a trend which the CPT fully endorses. The facility’s management should also ensure that an effective complaints procedure is established and that a comprehensive information leaflet is provided to all inmates.

Hospital for Persons deprived of their Liberty (“Prison Hospital”)

Patients at the Prison Hospital generally spoke positively of clinical staff. Regrettably, however, a number of allegations were received of physical ill-treatment of patients by custodial staff, as well as allegations of verbal abuse. Management should be more vigilant and ensure that all complaints of ill-treatment of patients are adequately investigated. Likewise, a comprehensive policy to prevent inter-patient violence and intimidation should be established.

As regards living conditions, the CPT was pleased to observe that a lift had been installed and that the exercise yard had been enlarged and equipped with a ramp for wheelchairs. In addition, refurbishment works were underway to improve the building; however, these were not expected to resolve the basic problems of restricted living space and the absence of integral sanitary facilities in patients' rooms. These issues should be addressed as a matter of priority by the authorities.

The staffing situation had deteriorated since the last visit, particularly on the psychiatric wards, and the staffing complement of psychiatrists and nurses should be increased. Custodial staff were still visibly present on the wards and actively involved in the restraint of patients, a situation which calls for a fundamental review of the functioning of the clinical areas of the hospital. Some aspects of the use of means of restraint were not in line with the CPT's revised standards, which are reproduced in Appendix III to the report.

Psychiatric establishments

The CPT's delegation visited for the first time the Psychiatric Clinic of the Zagreb Clinical Hospital Centre (KBC) and the Psychiatric Hospital for Children and Adolescents in Zagreb. In addition, the CPT returned to Vrapče Psychiatric Hospital to follow up on the construction of a new Forensic Psychiatric Unit and to examine the situation of patients in the Psychogeriatric Department.

The delegation found no evidence of deliberate ill-treatment of patients by staff in any of the establishments visited. On the contrary, patients expressed their appreciation of the staff, and the CPT's delegation observed a generally relaxed atmosphere on the wards visited.

Living space and general conditions were not adequate on the wards of the Psychogeriatric Department of the hospital, and the CPT's delegation was pleased to be informed that plans were already advanced for the complete reconstruction of the building.

At the Psychiatric Clinic of the KBC Zagreb, rooms in the closed ward were bright, clean and well furnished, however, rooms did not have integral sanitary facilities and some had more than the maximum of four beds prescribed by the CPT and by national legislation. Patients were exposed to passive smoking in the common room, and there was no secure outdoor exercise area.

At the Psychiatric Hospital for Children and Adolescents, rooms did not have integral sanitary facilities or offer the minimum living space of 6 m² per bed required by Croatian law. Further, the unsecured staircase of the building represented a risk for patients with a tendency to self-harm, and the lack of a secure outdoor area meant that the young patients could be deprived of outdoor exercise for days or even weeks. Given these deficiencies, the Croatian authorities should consider relocating the hospital to more appropriate premises.

In terms of psychiatric treatment, the CPT's delegation found no indication of overmedication in any of the establishments visited. That said, at the Psychiatric Clinic for Children and Adolescents, medical files were often incomplete and should be better maintained. There is also a need for written treatment plans to be established for all patients.

In the Psychogeriatric Department of Vrapče Psychiatric Hospital, the CPT's delegation was concerned to note the generalised use of PRN prescriptions without systematic control by doctors, a factor in the increased risk of adverse drug interactions for the elderly patients. At the Psychiatric Clinic of the KBC Zagreb, the only health-care institution in the country to administer ECT, the procedure was carried out in view of other patients; the authorities should ensure that if ECT is administered it takes place in a dedicated room out of the view and hearing of other patients, and that EEG monitoring is part of the procedure.

Staffing problems were identified at the Psychogeriatric Department of Vrapče Psychiatric Hospital, where an increase in the number of psychiatrists could enhance psychiatric input, including at night and on weekends, and at the Psychiatric Hospital for Children and Adolescents, where more nurses were needed.

The CPT welcomes the introduction of enhanced safeguards in respect of the application of means of restraint in Chapter VIII of the LPPMD and in the new Rulebook which came into force in February 2015; however, a number of specific recommendations made in previous CPT reports, which are set out in detail in the report, remain to be incorporated in the legal framework and implemented in practice. The CPT also refers to its revised standards on means of restraint.

More specifically, the CPT's delegation was concerned to note that none of the establishments visited had a dedicated register for recording the use of means of restraint, and that patients could be restrained in view of other patients. Moreover, the CPT requests observations from the management of Vrapče Psychiatric Hospital concerning the remarkable increase since 2014 in the use of restraint measures in the Psychogeriatric Department at the establishment.

A variety of forms of restraint could be used on patients in the closed section at the Psychiatric Hospital for Children and Adolescents. The CPT considers that, in principle, persons under 18 years of age should not be subjected to mechanical restraint; staff should have resort to manual restraint when physical intervention is required. The management of the hospital should take steps as a matter of urgency to establish internal guidelines for the use of means of restraint in the light of the CPT's remarks.

As the CPT has consistently recommended, adult "voluntary" patients who are prevented from leaving a psychiatric ward and/or are subjected to means of restraint should have their legal status reviewed. Further, elderly patients in the Psychogeriatric ward of Vrapče Psychiatric Hospital who are unable to provide informed consent to their hospitalisation and treatment because of severe cognitive deficiencies and who are not under any form of guardianship should be notified to the relevant court and, where appropriate, subject to a procedure for involuntary hospitalisation.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Croatia from 14 to 22 March 2017. The visit formed part of the CPT’s programme of periodic visits for 2017 and was the Committee’s fifth periodic visit to Croatia.¹

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

- Julia Kozma, Head of the delegation
- Dagmar Breznošćáková
- Wolfgang Heinz
- Răzvan Horațiu Radu
- Olivera Vulić
- Victor Zaharia.

They were supported by Janet Foyle, Christian Loda and Natacha De Roeck of the CPT's Secretariat, and assisted by:

- Pétur Hauksson, former Head of the Psychiatric Department at Reykjalundur Rehabilitation Centre, Iceland (expert)
- Davorka Ćurković (interpreter)
- Kristina Kruhak (interpreter)
- Tamara Sladoljev-Agejev (interpreter)
- Tanja Žakula (interpreter).

3. The list of police, prison and psychiatric establishments visited by the CPT’s delegation can be found in Appendix I.

4. The report on the visit was adopted by the CPT at its 93rd meeting, held from 3 to 7 July 2017, and transmitted to the Croatian authorities on 31 July 2017. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Croatian authorities to provide within six months a response containing a full account of the action taken by them to implement the Committee’s recommendations, and replies to the comments and requests for information formulated in this report.

¹ The reports on previous CPT visits to Croatia and related Government responses are available on the Committee’s website: <http://www.coe.int/en/web/cpt/Croatia>.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the CPT's delegation held talks with Lidija Pelivan-Stipetić, State Secretary of the Ministry of Interior, Kristian Turkalj, State Secretary of the Ministry of Justice, and Gordana Haramina-Hranilović, Deputy State Prosecutor. It also met senior officials from the Ministries of Health, Interior and Justice and the Director of the Police. Further, the delegation met Lora Vidović, Ombudsperson of the Republic of Croatia.

At the end of the visit, the delegation presented its preliminary observations to the Croatian authorities.

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

6. On the whole, the CPT's delegation received very good co-operation during the visit by the Croatian authorities at all levels. The delegation had rapid access to all places it wished to visit, was able to meet in private with those persons with whom it wanted to speak and was provided with access to the information it required. The CPT wishes to express its appreciation for the assistance provided by the CPT's new liaison officer designated by the national authorities, Mr Branko Bolanča.

That said, two episodes marred the level of co-operation received from the national authorities. These concerned respectively the Turopolje Juvenile Correctional Facility where a few residents alleged that they had been warned by custodial staff not to speak critically about the establishment to the CPT's delegation, and Osijek County Prison where after the CPT's visit one inmate had allegedly been the object of a reprisal by a member of the custodial staff who threatened that he would be stripped of his privileges for having made negative comments about the establishment to the CPT's delegation. By letter received by the CPT's Secretariat on 11 May 2017, the Assistant Minister of Justice informed the Committee that upon receipt of the CPT's preliminary observations he had ordered targeted inspections to Turopolje Juvenile Correctional Facility and Osijek County Prison in order to clarify the above-mentioned allegations. The inspections in question ascertained that at Osijek County Prison one member of the custodial staff had informed a remand prisoner that some of his privileges would be withdrawn as a result of his conversation with the CPT's delegation. Consequently, the prison administration inspectors and the director of Osijek County Prison decided that the custodial officer in question would be assigned to other duties within the establishment. In respect of Turopolje Juvenile Correctional Facility, the relevant inspection could not ascertain the veracity of the above-mentioned allegations and the director of the establishment was requested to inform the prison administration in writing of the measures taken to exercise better vigilance as regards the conduct of custodial staff.

The CPT appreciates the rapid and comprehensive follow-up undertaken in respect of the above-mentioned allegations and trusts that the Croatian authorities will take the necessary steps to ensure that in the course of future CPT visits, custodial staff are warned in advance of the fact that exercising pressure and threats of reprisals against inmates to whom the CPT's delegation have spoken constitutes a breach of the principle of co-operation set out in Article 3 of the Convention as well as a violation of the Croatian legislation for which custodial staff should be held accountable.

C. National preventive mechanism

7. Croatia ratified the Optional Protocol to the United Nations Convention Against Torture (OPCAT) in April 2005. The National Preventive Mechanism (NPM) started to function only in July 2012 after the Croatian Ombudsman had been mandated to set up the NPM and allocated the necessary funds for its functioning. Amendments to the Law on the National Preventive Mechanism were adopted in March 2015 allowing the NPM the possibility to engage members of NGOs active in the field of human rights, academic experts and staff of the relevant thematic Ombudsmen (e.g. the specialised Ombudsmen for Children and for Persons with Disabilities).

8. Over the last two years the NPM has carried out visits to a number of prison establishments, reception centres for foreign nationals, social care homes, psychiatric establishments and police stations and has produced a number of thematic reports² in addition to its other functions. In terms of staffing and financial resources, the seven full-time posts of advisor provided for in the staffing table of the NPM were filled at the time of the CPT's visit. The staff of the NPM not only carries out preventive tasks but also continues to deal with the processing of individual complaints lodged by persons deprived of their liberty. Further, a new Deputy Ombudsman and Head of the relevant NPM Unit at the Ombudsman's office was appointed by the Croatian Parliament in May 2017. Finally, the operational budget line for field visits has remained stable since 2015, amounting to approximately 13,000 euros per year.

² In particular, in relation to the treatment of irregular migrants of the so-called "Balkan route", conditions of detention in psychiatric establishments and social care homes.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

9. The legal framework governing the deprivation of liberty of criminal suspects has changed slightly since the 2012 periodic visit following the adoption of amendments to the CCP in 2014. Now, a criminal suspect apprehended by the police must be handed over within 24 hours (12 hours in the case of a criminal offence punishable by up to one year of imprisonment) to a custody officer (*prिवorski nadzornik*) in a detention and escort unit (*prिवorska jedinica*). The competent prosecutor is mandated to interrogate the suspect within a maximum of 16 hours following his/her transfer to a custody officer. Further, the prosecutor can directly order the police detention (*prिवor*) of a criminal suspect for a maximum period of 48 hours through a reasoned and legally justified written decision.

10. Article 208 of the CCP authorises the police to summon citizens (*prikupljanje obavijesti*) for so-called “informative talks” during the course of an inquiry. The summons for a compulsory appearance is issued in writing. The maximum duration of “informative talks” is six hours.

11. It is also important to note that the relevant 2014 and 2016 amendments to the Rulebook on Treatment of an Arrested and Detained Person in a Detention and Escort Unit laid down the minimum requirements for the material conditions in cells at the detention and escort units and introduced new records which track the treatment of a detained person by the police from the time of the arrest up to his/her handover to a custody officer.

Finally, pursuant to Article 134, paragraph 3, of the Law on Misdemeanours, persons may be deprived of their liberty by the police in relation to a misdemeanour offence for a maximum period of 24 hours.

2. Ill-treatment

12. The vast majority of persons met by the delegation indicated that they had been treated correctly by police officers at the time of their apprehension and while in police custody. However, the delegation did receive several allegations of physical ill-treatment by police officers. These consisted of slaps, punches and kicks to various parts of the body inflicted at the time of apprehension (for criminal and misdemeanour offences) after the persons concerned had been brought under control and/or during questioning at police stations for the purpose of extracting a confession. The allegations of physical ill-treatment received by the CPT’s delegation concerned the time prior to the handover of a detained person to a custody officer (*prिवorski nadzornik*). Further, some detained persons alleged that they had been subjected to physical ill-treatment while being handcuffed to radiators in the offices of criminal inspectors. In a few cases, the CPT’s delegation found that the medical evidence recorded upon admission to prison was consistent with the allegations of physical ill-treatment by the police.

Finally, some persons met by the delegation also complained that they had been subjected to physical ill-treatment and verbal abuse (including threats of violence) by crime inspectors during the so-called informative talks (*obavijesni razgovori*) while being interviewed without the presence of a lawyer.

The CPT recommends that the Croatian authorities reiterate the message that all forms of ill-treatment (be they at the time of apprehension, transportation or during subsequent questioning) are absolutely prohibited, and that the perpetrators of ill-treatment and those encouraging or condoning such acts will be punished accordingly.

13. The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

Since the CPT's 2012 periodic visit the European Court of Human Rights (ECtHR) and the Constitutional Court have issued two important judgments (i.e. *Mafalani v. Croatia* and the Constitutional Court decision U-III-6559/2010 of 2014) in which procedural violations of Article 3 of the Convention had been established in the light of the fact that the relevant State authorities had not conducted effective investigations into credible and serious allegations of police ill-treatment.³ In the course of the visit, the CPT's delegation met with representatives of the Office of the State Prosecutor of the Republic of Croatia who informed the delegation that following the *Mafalani v. Croatia* case an action plan had been adopted and forwarded to all prosecutors nationwide. Further, the Zagreb County Prosecutor, after re-examining the dismissal of criminal proceedings in the case of Mr Mafalani had decided on 18 December 2015 to conduct a detailed and thorough investigation into the allegations, which is still on-going. The CPT's delegation was also informed that since its 2012 periodic visit a total of 13 criminal proceedings had been initiated throughout the country in respect of 24 law enforcement officials⁴ for physical ill-treatment of persons deprived of their liberty.⁵ Of these 13 cases, six were pending at the adjudication phase,⁶ four were at the investigation phase, two criminal reports had been rejected by the competent prosecutors and in one case criminal charges were withdrawn by the prosecutor during the trial. In respect of the four

³ Mr Mafalani was allegedly subjected to physical ill-treatment at the time of his arrest in 2008 by members of the special police (ATJ) following which he filed criminal charges against the police with the Zagreb Municipal Prosecutor supported by relevant medical documentation. The criminal charges were dismissed by the prosecutor solely on the basis of a report of the Police Director indicating the lawfulness of the use of means of restraint at the time of Mr Mafalani's arrest. The ECtHR observed that the Zagreb Municipal Prosecutor lacked "*the necessary transparency and appearance of independence*" as he did not try to identify the special police officers involved in the applicant's arrest nor did he interview the doctors who had examined the applicant. The ECtHR concluded that "*there are no indications that the domestic authorities were prepared to genuinely and independently investigate the circumstances surrounding Mr Mafalani's arrest*". The Constitutional Court decision U-III-6559/2010 originates from a complaint of Mr. Hršum who alleged that he was apprehended at his house in 2008 by a group of unidentified police officers and subsequently physically ill-treated in a forest near Split and brought to a police station for interrogation. The Constitutional Court could not establish precisely when Mr Hršum had been deprived of his liberty. However, it assessed that the level of seriousness of the inflicted injuries on Mr Hršum deserved a thorough and prompt investigation by the State authorities as to their origin, which had not been carried out.

⁴ Precisely, 17 police officers and seven prison guards.

⁵ The criminal offence in question related in particular to Article 117, paragraph 3 of the CC (infliction of bodily injury), Article 118, paragraph 2 (infliction of serious bodily injury), Article 119, paragraph 2 (infliction of very serious bodily injury), Article 297, paragraph 1 (coerced confession) and Article 104 (torture and inhuman and degrading treatment or punishment).

⁶ Including one case of retrial.

pending criminal investigations, criminal charges had been filed by the alleged victims in respect of physical ill-treatment in the course of October and November 2016. **The Committee would like to receive information on the results of the renewed prosecutorial investigation into the so-called Mafalani case as well as an update on the pending judicial cases and investigations in relation to physical ill-treatment which were reported to the Committee by the State Prosecutor's Office. Further, the CPT would like to receive a copy of the above-mentioned Action Plan adopted by the Office of the State Prosecutor following the ECtHR judgment *Mafalani v. Croatia*.**

14. In the course of the 2017 periodic visit to Croatia the CPT's delegation also examined the system of complaints against police misconduct which is regulated by the 2015 Law on Police. Namely, pursuant to Article 5 of the above-mentioned law, a person who considers that his/her rights and liberty have been infringed by a police officer in the exercise of his functions may file a complaint to the Ministry of the Interior within 30 days. The direct supervisor of the police officer in question must assess the relevant allegations and respond to the complainant within 30 days. The complainant retains the right to appeal, within 15 days of receiving a response, to the Internal Control Service of the Ministry of the Interior⁷ which must provide a response to the complainant within 30 days. If the complainant remains dissatisfied with the response, he/she may file a second complaint to the relevant "Commission for the processing of complaints" (*Povjerenstvo za rad po pritužbama*) which is supposed to be composed of three civilian representatives appointed by the Croatian Parliament and should operate as a civilian oversight body in respect of the work of the police. A total of 21 "commissions" are provided for by the legislation (one at central Ministerial level and 20 at the level of the territorial police administrations nationwide). However, as of July 2017 none of them is operational due to the lack of qualified candidates.

In the course of the visit the CPT's delegation was informed that the Internal Control Service may at any stage intervene in the investigation of a citizen's complaint through a centralised database. That said, the unit does not have sufficient staffing resources⁸ to investigate a great number of complaints and cannot conduct criminal investigations against police officials. In the course of 2015 and 2016, a total of 55 complaints were lodged by citizens for various types of police misconduct including physical ill-treatment against persons deprived of their liberty. None of the above-mentioned complaints had been assessed as well founded by the Internal Control Service: five were assessed as partially founded, eight as unconfirmed and 32 as unfounded. That said, the Internal Control Service also forwarded to prosecutorial authorities information on cases which it had assessed as unfounded where the allegation in question contained elements of criminal responsibility.

The CPT invites the Croatian authorities to proceed to the appointment of the members of the Commission for the processing of complaints which are mandated to supervise the work of the Internal Control Service and would like to receive updated information on this process.

⁷ The Internal Control Service is formally separated from the Police hierarchy and falls under the Ministry's cabinet.

⁸ The Internal Control Service consists of a total of 26 staff members at the national level in charge of the processing of approximately 2,500 complaints per year.

3. Safeguards against ill-treatment

a. introduction

15. The 2016 changes which have been introduced into the Rulebook on Treatment of an Arrested and Detained Person in a Detention and Escort Unit aimed to guarantee a better tracking of the recording of fundamental safeguards offered to detained persons during the first 24 hours of police detention (i.e. prior to the handover of a detained person to a custody officer). In particular, a new form⁹ has been introduced listing the provision of food, clothing and medical assistance to detained persons by the police prior to the handover to a custody officer. The form in question should be attached to the relevant arrest protocol of a detained person.¹⁰

b. notification of custody

16. Most persons met by the CPT's delegation confirmed that they had been able to inform a third party (i.e. a family member) of their custody soon after their deprivation of liberty by the police. That said, the delegation received several complaints, in particular from foreign nationals, that they had not been able to notify their consular authorities of their deprivation of liberty. The draft amendments to the CCP which are currently under discussion in the Croatian Parliament contain provisions¹¹ aimed at reinforcing the right of detained persons to communicate with a third person upon their arrest and for foreign nationals to inform in addition the competent consular authorities of their deprivation of liberty.¹²

The CPT recommends that the Croatian authorities ensure that all persons deprived of their liberty by the police, for whatever reason, be granted the right to notify a close relative or third party of their choice (as well as the relevant consular authorities in the case of foreign nationals) about their situation as from the very outset of the deprivation of liberty (that is, from the moment when they are obliged to remain with the police). Further, the police should record in writing in the relevant registers whether or not notification of custody has been carried out in each individual case, with the indication of the exact time of notification and the identity of the person who has been contacted.

⁹ *Izviješće o postupanju policije s uhićenikom od uhićenja do dovodjenja pritvorskom nadzornikom ili puštanja na slobodu.*

¹⁰ *Izviješće o uhićenju i dovodjenju u pritvorsku policijsku jedinicu.*

¹¹ See in particular the amended version of Articles 108 and 116.

¹² The amendments to Article 108, paragraph 7 and Article 116 of the CCP as currently being discussed provide that an arrested person be granted the possibility by the police to speak to a third party upon his/her arrest and in the case of a foreign national that the relevant consular authorities be informed systematically of the fact of the arrest.

c. access to a lawyer

17. The findings of the CPT's delegation in the course of the visit indicate that access to a lawyer did not constitute a major problem for those detained persons who opted for a defence counsel from the list of lawyers that they could engage for a fee. That said, the relevant provisions of the Croatian legislation on free legal aid stipulate that an *ex officio* lawyer must be appointed by a decision of the President of the County Court upon a motivated motion of the State Prosecutor or the competent judge on preliminary proceedings. This means that in practice detained persons cannot benefit from free legal aid from the beginning of deprivation of liberty but only once they have appeared in court. Several persons with whom the CPT's delegation spoke said that the police had informed them that they could have access to a lawyer only if they could afford one. Consequently, the same detained persons declared that they had waived their right of access to a lawyer and this was noted in their arrest protocol by police officers. **The CPT recommends that the Croatian authorities take all the necessary steps to ensure that the right to free legal aid for persons detained by the police, who are not in a position to pay for a lawyer, is applicable as from the very outset of their deprivation of liberty, irrespective of whether the person concerned has formally been declared as a suspect.**

18. Article 208 of the CCP envisages the possibility for the police to summon citizens (*pozivanje*) while conducting inquiries for so-called "informative talks".¹³ The summons for compulsory appearance is normally issued in a written form. In the course of the visit, police officials told the CPT's delegation that summoned citizens could theoretically refuse to comply with a summons, but that if they did so they might be apprehended by police officers. This was in practice the case. For example, one person met by the CPT's delegation did not respond to the summons and was apprehended by the police, brought to a police station and questioned without the presence of a lawyer. The citizen in question was officially declared suspect and informed of his legal safeguards only the following morning after having spent a night in the police station.

Article 208 of the CCP provides for safeguards in respect of the summoned citizen¹⁴ but not for the right to be assisted by a lawyer. The CPT's delegation learned that amendments to Article 208 are currently being debated by the Croatian Parliament¹⁵ which are, *inter alia*, supposed to address the issue of access to a lawyer from the outset of deprivation of liberty, including in respect of persons summoned for so called "informative talks".

The CPT reiterates its recommendation that the Croatian authorities take steps to ensure that all persons summoned to a police station under Article 40 of the Law on Police Affairs and Duties or Article 208 of the CCP are provided with the possibility of contacting a lawyer (either *ex officio* or of one's choice) from the moment they are required to remain in the police station. Further, the Committee would like to be informed to what extent the amendments to the CCP currently being discussed in the Croatian Parliament could better regulate the status and fundamental safeguards of persons summoned by the police for so-called "informative talks".

¹³ Article 40 of the Law on Police affairs regulates the content and format of the written summons.

¹⁴ I.e. the right of the citizen to be informed of the reasons for the summons, the right to interpretation and the right to remain silent.

¹⁵ The amendments to the CCP are dictated among others by the necessity of integrating into Croatian legislation the relevant provisions of EU Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

d. access to a doctor

19. The findings of the CPT's delegation in the course of the 2017 visit indicate that access to a doctor for persons taken into police custody remains confined to emergency medical assistance as provided by Article 20 of the Rulebook on Treatment of Arrested and Detained Persons. The same legal provision stipulates that the competent prosecutor and investigative judge may authorise medical examination of a detained person at his/her own expense as well as access to a doctor of his/her choice. Further, as mentioned in paragraph 15, the Ministry of the Interior introduced in 2016 an additional form to be attached to the protocol of arrest which tracks the provision of medical assistance (including medication) to a detained person by the police prior to his/her handover to the custody officer.

Finally, the CPT's delegation was concerned by the fact that police officers continued to be present during medical examinations taking place either at a law enforcement establishment or in a hospital.

The CPT recommends that persons deprived of their liberty by the police be expressly guaranteed in the legislation the right to have access to a doctor from the very outset of their deprivation of liberty. The relevant provisions should make clear that:

- **all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff;**
- **the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer.**
- **the exercise of the right of access to a doctor is to be recorded in the custody records.**

e. information on rights

20. The written form on the information on rights (*pouka o pravima*) which is signed by the detained person now includes the right of a criminal suspect to inform his/her family or another person of the arrest. The CPT's delegation observed that the above-mentioned forms were widely available in several languages at all the police establishments visited and were systematically attached to the relevant arrest protocol. That said, it was not uncommon to observe that the *pouka o pravima* had been signed by the detained person only several hours after their apprehension (up to seven hours). **The CPT recommends that the Croatian authorities ensure that the form on information on rights (*pouka o pravima*) is explained to, read and signed by detained persons immediately after their deprivation of liberty.**

4. Conditions of detention

21. At the outset of the visit the CPT's delegation had been informed of the relevant investments made to upgrade the material conditions of detention in seven out of the twenty police administrations since the 2012 periodic visit. Further, the above-mentioned Rulebook on Treatment of Arrested and Detained Persons was amended in the course of 2014 to include the basic minimum standards with which detention cells need to comply. In particular, Article 53 of the Rulebook now stipulates that arrested persons detained for more than 24 hours be, in principle, allowed access to an outdoor exercise facility. In addition, according to the above-mentioned Rulebook detention cells in police establishments should measure at least 5 m², be equipped with a clean bed, mattress, and bed linen, have sufficient access to natural light in order to read by, adequate ventilation and heating systems and possess a sanitary facility (including basic hygiene items) and access to drinking water. Further, all detention cells should be equipped with a CCTV video-surveillance system, as well as a call bell.

22. At the time of the 2017 visit, of the establishments visited only the ten holding cells of the Detention and Escort Unit of Oranice in Zagreb were complying with all the above-mentioned criteria.¹⁶ The rest of the establishments visited which were mandated to accommodate detained persons for stays of up to 24 hours or more showed several deficiencies. In particular:

- at Split I Police Station, the four operational cells measuring between 7.5 m² and 9 m² had no direct access to natural light and three of them lacked mattresses and bedding and possessed no call bells;
- at Split II Police Station, the two cells measuring 9 m² had no access to natural light and possessed no mattress or call bells;
- at Osijek I Police Station, the nine cells (of which one was not in use) which each measured 9 m², lacked access to natural light and possessed no call bells;
- at Vinkovci Police Station, the two one-bed single cells measuring 9 m² were at times accommodating two detained persons each overnight;
- at Vrbanja Police Station, one holding room with a 19 m² area delimited by metal bars and equipped with five foam mattresses had accommodated up to 16 persons for at least one night in recent months;
- at Zagreb II Police Station, a cell measuring 19 m² equipped with only two benches and two (dirty) cushions, which could be used to accommodate up to six persons, lacked access to natural light and possessed no call bell;
- at Zagreb VI Police Station, a cell measuring 11 m² equipped with only two metal benches could accommodate detained persons overnight, and had no direct access to natural light or proper ventilation;
- at Zagreb VIII Police Station, a single cell measuring 4.5 m² offered unsatisfactory conditions with crumbling walls, poor ventilation, no access to natural light and a dirty floor;
- at Velika Gorica Police Station, one single cell measuring 8 m² was often accommodating up to three detainees for a prolonged period including overnight.

¹⁶ See in particular paragraph 23 of the CPT's report on the 2012 periodic visit to Croatia CPT/Inf (2014) 9.

The CPT welcomes the efforts invested by the Croatian authorities in ameliorating the conditions of detention in police establishments, as well as in adopting the mandatory minimum standards for detention cells in its legislation. However, the CPT wishes to point out that cells of about 5 m² in size are scarcely suitable for periods of custody lasting more than a few hours. Namely, all police cells where persons may be held overnight should be of a reasonable size for their intended occupancy (i.e. 7 m² for single cells, and at least 4 m² per person in multiple-occupancy cells). Further, all police cells should be clean and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets (or sheets, in warmer climates).

The CPT recommends that cells at Split I and II, Osijek I and Zagreb VI police stations be provided with mattresses in the case of overnight stays. Further, the cell at Velika Gorica police station and the two cells of Vinkovci police station should only be used for single occupancy and the holding area delimited by metal bars of Vrbanja Police Station should never accommodate more than four detained persons. Finally, call bells should be installed at Split I and II and Osijek I police stations and the ventilation system improved at Zagreb VI police station. Further, the CPT would like to be informed of the timetable foreseen by the Croatian authorities in order to bring the detention cells in police establishments at the national level in compliance with the requirements set out in the Rulebook on Treatment of Arrested and Detained Persons.

B. Prison establishments

1. Preliminary remarks

23. The period between the 2012 and 2017 periodic visits of the CPT to Croatia has been marked by a steady and consistent decrease in the prison population (i.e. from 5,400 to 3,227 inmates) combined with a slight increase in the capacity of the prison estate (i.e. from 3,771 to 3,900 places). Consequently, the rate of prison occupancy has dropped from 143 to 82 per cent. The reduction in numbers has been achieved through limiting the average duration of investigative detention (*istražni zatvor*) and the introduction of alternative measures to remand detention provided for by the new CCP in 2013, as well as the establishment nationwide of a functioning probation system.¹⁷ The CPT welcomes the measures taken by the Croatian authorities since the 2012 periodic visit in order to eradicate prison overcrowding. That said, some prison establishments were still operating above their official capacity at the time of the CPT's 2017 visit and the minimum living space of 4 m² per inmate was not being respected in some of the prison establishments visited, in particular as regards remand prisoners and persons detained for misdemeanour offences.

In the light of the decrease of the prison population the Croatian authorities have abandoned the previously announced plans to construct an extension to Zagreb County Prison (with a capacity of 382 places), as well as the construction of a new State Prison in Šibenik (with a capacity of 1,270 places). Instead, the efforts of the Croatian authorities have concentrated mainly on the refurbishment of existing prison establishments¹⁸ and in particular on the construction of a new building at Turopolje Juvenile Correctional Facility which will allow for the accommodation of all juveniles sentenced to incarceration in one single institution at the national level close to the main urban centre of Croatia. **The CPT recommends that the Croatian authorities ensure that all prisons operate within their official capacities and that every prisoner accommodated in multiple-occupancy cells is provided with a minimum of 4 m² of living space. The CPT would also like to be informed about the steps taken by the Croatian authorities to renovate its prison estate.**

¹⁷ The measures were among those recommended by the Constitutional Court in its Report on Conditions of Detention in Prisons (*Izveštće o uvjetima života u zatvorima Ustavnog suda Republike Hrvatske*, U-X-5464/2012) of 12 June 2014. The report in question was due following the earlier Constitutional Court decision U-III-4182/2008 of 27 March 2009 whereby the same judicial body had ordered the Croatian authorities to adopt long-term measures in order to fight against systemic prison overcrowding.

¹⁸ In particular under the instigation of the Constitutional Court decision U-III 4182/2008 and the ECtHR judgments *Cernbauer v. Croatia*, *Štitić v. Croatia*, *Longin v. Croatia*, *Lonić v. Croatia* in which the Court established a violation of Article 3 of the Convention in the light of the cumulative effects of inadequate living space in cells, the state of hygiene and impoverished regime on offer to inmates.

24. At the outset of the visit, the Croatian authorities informed the CPT's delegation of the on-going plans of the Ministry of Justice to start drafting a new Law on the Execution of Criminal Sanctions (LECS) in order to align it with the new provisions of the CC and CCP.¹⁹ According to the Croatian authorities, the new LECS will also regulate the rights of remand prisoners which are currently enshrined in the CCP. This is to be welcomed as the current approach of judges being responsible for the extremely restrictive regime afforded to remand prisoners is anachronistic. Remand prisoners should be afforded all the same rights as sentenced prisoners and offered a regime that is varied and purposeful, allowing them to be out of their cells at least eight hours a day. Only those restrictions necessary for the purposes of the investigation should be applied and the longer the remand period continues the more such restrictions should be placed under scrutiny.

25. In the course of its 2017 periodic visit to Croatia, the CPT's delegation visited Osijek, Split and Zagreb County Prisons. All three prison establishments had received visits by the Committee in the past.²⁰

Osijek County Prison, located in the centre of the town next to the premises of the local County Court, consisted of a two-storey building which was accommodating 136 inmates for a capacity of 110: 41 sentenced, 84 on remand detention (including one female) and 11 misdemeanour offenders.

Split County Prison, was constructed in 1984 on the northern part of the Split peninsula, was accommodating 134 inmates at the time of the visit for a capacity of 186: 57 convicted, 58 on remand detention (including two females) and 19 misdemeanour offenders.

Zagreb County Prison, located in the neighbourhood of Remetinec in the southern part of the city, has an official capacity of 626 (including a separate semi-open section in Vukomerc and the National Diagnostic Centre²¹). At the time of the CPT's visit the establishment was accommodating 665 inmates (including 27 females and 4 juveniles), 384 of whom were convicted prisoners, 251 on remand detention and 19 misdemeanour offenders. This represented a considerable decrease in the population since the 2012 periodic visit when the establishment was accommodating 910 prisoners.

2. Ill-treatment

26. The great majority of inmates met by the CPT's delegation in the prison establishments visited indicated that they had been treated in a correct and professional manner by custodial staff.

However, in each of the establishments visited, the delegation received some allegations of physical ill-treatment and excessive use of force against inmates by custodial staff. These allegations consisted primarily of slaps, punches and kicks inflicted by custodial staff to various parts of the body as an informal punishment for disobedient behaviour or passive resistance to staff orders; these incidents sometimes took place in the course of cell searches.

¹⁹ See also the Strategic Plan of the Ministry of Justice of the Republic of Croatia 2016-2018, page 18.

²⁰ Osijek County Prison had last been visited by the CPT in the course of the 2007 periodic visit, Split County Prison during the 2004 periodic visit and Zagreb County Prison during the 2012 periodic visit.

²¹ The National Diagnostic Centre accommodated 134 inmates at the time of the CPT's visit.

27. For example, an inmate met by the delegation at Zagreb County Prison, alleged that he had been beaten by custodial staff on several occasions during his period of incarceration at the establishment (i.e. since July 2015), mainly in relation to episodes of passive resistance and disobedient behaviour. The inmate in question had complained three times about the alleged physical ill-treatment to the supervisory judge and had allegedly received no response. Further, his requests to see a doctor after each episode of alleged physical ill-treatment were denied by custodial staff. During a psychiatric consultation he underwent without the presence of custodial staff on 13 December 2016, the psychiatrist recorded in his medical file that *“the inmate had received hits to his head and body by prison staff”*. The following day, while being examined by the prison doctor in the presence of a member of custodial staff, the inmate repeated his allegations of ill-treatment. As the custodial staff member supervising the medical examination contested the inmate’s allegation as to the origin of his injuries, the prison doctor recorded the following entry in the medical file: *“the inmate fell in his cell and displays visible hematomas around both eyes”*.

Another inmate at Zagreb County Prison alleged that on 23 September 2016, following a verbal altercation with a staff member in the prison store (*kantina*), he was taken by two custodial officers to the common showers of module 7 where he was punched in the face and subsequently, when he was lying on the floor, one prison guard applied force with a boot to his left knee. He also alleged that the same custodial officer tried to strangle him until he lost consciousness. When he visited Zagreb Sisters of Mercy Hospital the following day, a certificate was issued by a doctor which stated the following: *“contusion of the right zygomatic part of the face, contusion of the left knee, lost consciousness and vomited four times as a result of the strangling”*. The relevant register on means of restraint at Zagreb County Prison showed that on that same day physical force had been applied to the inmate in question for offering passive resistance and that he had been taken to a special cell in module 7 in order to undergo a body search.

A remand prisoner at Split County Prison alleged that on 9 October 2016, in the course of a cell search he was handcuffed and forced to lie face down on the ground, and was subsequently kicked and punched by a group of four prison officers belonging to an ad hoc intervention group of prison officers from other prison establishments. The prisoner in question initially refused to accept medical assistance. However, later that day as he felt persistent and increasing chest pain, he asked to be examined by a doctor. He was promptly transferred to the Split Clinical Hospital where the fracture of the eighth and ninth ribs and traumatic pneumothorax were diagnosed and the drainage of the thorax was conducted. An internal inspection carried out by the prison administration to Split County Prison on 11 October 2016 concluded that it was not possible to establish the origin of the injuries suffered by the remand prisoner in question. However, the inspectors did not interview the alleged victim and relied on a written statement by the prisoner taken by prison staff during his hospitalisation. On 16 November 2016, the investigative judge in charge of the criminal proceedings related to the prisoner in question requested that the management of Split County Prison provide an explanation of the injuries sustained by the inmate and a copy of the above-mentioned internal inspection report was sent to her by the prison management. On 6 February 2017, the prisoner’s lawyer filed a request to the Split Municipal Prosecutor’s Office for pecuniary compensation for the injuries sustained by his client, which was rejected on 17 May 2017.²²

²² In the case of rejection of the compensation request, the injured party has the possibility to request the competent prosecutor to carry out a criminal investigation.

An inmate from Osijek County Prison alleged that in the course of a regular cell search conducted on 13 September 2016 which he attended as a witness, a custodial staff member had slapped him on his face after a mobile telephone was found in the cell. The inmate filed criminal charges for bodily injuries against the prison management. The Osijek Municipal Prosecutor dismissed the charges on 23 January 2017 after conducting interviews with the prison director and his staff, but not with the complainant.

28. The CPT's delegation also received a few allegations (see also paragraphs 59 and 61) that prison staff at Split and Zagreb County Prisons resorted to the informal and disproportionate application of means of restraint and security measures against inmates for punitive reasons. For example, an inmate met by the delegation at Zagreb County Prison alleged that in December 2016 he had been placed naked and hand-cuffed behind his back in a so-called "rubber room" for around thirty minutes after slamming the phone down in his module during a conversation. Another inmate who had also been placed in a "rubber room" at Zagreb County Prison naked and hand-cuffed behind his back for a period of around 30 minutes was able to describe the design of the rubber room and its exact material deficiencies (i.e. water dripping from the ceiling and papers lying on the padded floor). Neither of the two measures had been recorded in the relevant registers. Further, at Osijek County Prison an inmate who had been placed ankle- and hand-cuffed in a "rubber room" was in addition pepper sprayed by custodial staff after having thus been immobilised.

29. **The CPT recommends that the Croatian authorities deliver to custodial staff the clear message that physical ill-treatment, excessive use of force and unjustified resort to means of restraint and security measures for punitive reasons are not acceptable and will be dealt with accordingly. The management in each prison should demonstrate increased vigilance in this area, by ensuring the regular presence of prison managers in the detention areas, their direct contact with prisoners, the investigation of complaints made by prisoners, and improved prison staff training. In particular, the CPT recommends that appropriate measures be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, in particular by providing training in ways of averting crises and defusing tension and in the use of safe methods of control and restraint. Special focus should also be given to the training of those prison officers who might be called to be part of special intervention groups. Further, independent, in-depth and prompt investigations should be carried out in the event of any complaint of ill-treatment inflicted by custodial staff against inmates.²³**

It is also essential that great care be taken in the selection, recruitment, training (including stress management and physical training) and equipping of the members of special intervention units, in order to ensure that they are as well-trained as possible to deal appropriately (including through the use of minimum force) with situations of risk.

²³ In particular, in the ECtHR judgments *Gladović v. Croatia* and *Dolenec v. Croatia* the Court established a violation of the procedural aspects of Article 3 of the Convention on the grounds that the Croatian authorities had not conducted effective investigations into the arguable claims raised by the inmates concerning the alleged physical ill-treatment and excessive use of means of restraint inflicted against them by prison staff at Varaždin and Split County Prisons. The Croatian judicial authorities had in fact satisfied themselves with the version of events provided to them by the prison management and did not seek to interview the respective complainants.

30. In the course of the 2017 periodic visit, the CPT's delegation received allegations of inter-prisoner violence and/or intimidation in particular at Osijek and Zagreb County Prisons and to a lesser extent at Split County Prison.

For example, a remand prisoner met by the delegation at Zagreb County Prison alleged that he had been repeatedly physically and verbally ill-treated by his cell-mates in the course of December 2016 in the light of the nature of his suspected criminal offence. The alleged ill-treatment consisted of punches, kicks and blows with wet towels to various parts of his body, superficial cuts of the skin with a blade and threats by cell-mates to introduce a broomstick into his anus and coerce him to drink a glass of urine. After his first request to be separated from his cell mates was declined by a custodial officer, the inmate in question was finally taken out of his cell and transported on 17 December to the Zagreb Clinical University Hospital where a certificate was issued recording the following internal and external injuries: *“five mm wide subdural hematoma (through a CT scan finding) as well as hematoma under the left eye, hematoma spreading from the left gluteal region to the scapula, hematoma of the left hand, hematoma in the right popliteal region, suspected fracture of the fifth and sixth ribs ”*.

Another remand prisoner met by the delegation at Osijek County Prison who had just been arrested and remanded in custody as a suspected sex offender of a young girl alleged that he had been physically ill-treated by his cell-mates on 15 and 16 March 2017 due to the nature of his suspected crime. He alleged that he was slapped and punched about the body, verbally threatened and coerced to buy items at the prison store for his cell mates. Finally, he was able to alert the prison staff and was extracted from the cell and taken to Osijek Clinical Hospital where a certificate was issued recording the following injuries: *“contusion of the head zygomatic region, contusion of the hemi-thorax, contusion of the left humerus and contusion of the left knee”*.

Further, at Zagreb County Prison a remand prisoner had been seriously ill-treated by his cell-mates in January 2016, apparently for being the son of a judge who had remanded in custody one of his cell-mates. This incident highlights the importance of all prisons carrying out a risk and needs assessment of every prisoner before allocating them to a cell. The episode was under investigation by the Zagreb Municipal Prosecutor at the time of the CPT's visit.

31. The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and on-going training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

The CPT recommends that an effective strategy to tackle inter-prisoner violence be put in place at the national level, taking into account the above remarks. A component of such a strategy must be the introduction of a screening risk and needs assessment of every prisoner upon entering a prison establishment before they are allocated to a cell. Further, the Committee would like to receive an update on the status of investigation by the Zagreb Municipal Prosecutor in the alleged case of inter-prisoner violence mentioned in paragraph 30 as well as of any other investigative proceedings in respect of the other two cases mentioned in the above-mentioned paragraph.

3. Conditions of detention

a. material conditions

32. Material conditions of detention varied within the prison establishments visited depending on whether or not certain modules or cells had recently been renovated. In particular:

Osijek County Prison offered satisfactory material conditions of detention in terms of state of repair, hygiene, access to natural light and ventilation in most of its cells and sanitary annexes. The prison management had recently installed new PVC windows²⁴ and purchased a new central boiler. The two exercise courtyards in use were equipped with football and basketball pitches, body-exercise and weightlifting equipment and a small gazebo. That said, some cells, in particular those accommodating misdemeanour offenders and conflict-prone prisoners,²⁵ offered less favourable material conditions of detention: crumbling walls covered in graffiti, broken furniture (i.e. stools and tables), non-functioning artificial lighting and high levels of humidity.

At Split County Prison, 33 out of the 49 cells in the five modules had been renovated since March 2016 and offered good material conditions of detention; cells were well ventilated, suitably furnished with fully-partitioned sanitary annexes and in an acceptable state of hygiene. However, conditions in the remaining 16 unrenovated cells were less favourable; walls were crumbling, sanitary facilities displayed signs of wear and tear and the in-cell hygienic conditions left a lot to be desired, due among other things to the poor supply of cleaning products. Further, the access to natural light throughout the whole establishment was obstructed by the presence of metal shutters in front of the windows and the design of the windows (i.e. a long and narrow rectangular shape) made it impossible to read during the day without resorting to artificial lighting. Finally, the inner outdoor exercise area for remand prisoners lacked shelter against inclement weather and the one dedicated to sentenced prisoners lacked the appropriate equipment for sports activities (the basket hoop was damaged and no balls were provided to inmates to play football or basketball).

²⁴ Thus ameliorating the thermic isolation of cells.

²⁵ In particular, cells nos. 7 and 14.

The conditions of detention at Zagreb County Prisons had improved since the CPT's 2012 visit in those cells which had been recently renovated (i.e. most cells of modules 1 and 4 and, to a lesser extent, module 7) and in which the walls had been painted, furniture replaced and sanitary annexes fully partitioned. That said, conditions remained deficient in the unrenovated cells where the semi-partitioned sanitary annexe still provided no privacy to inmates as well as in module 10 accommodating female prisoners where sanitary annexes were only semi-partitioned, toilets dilapidated and the common showers facilities in a poor state of repair; conditions were particularly critical in the two dormitories accommodating misdemeanour offenders in ward 7, with damaged furniture and sanitary installations, damaged window glass and malfunctioning artificial lighting. The cells of modules 1, 4 and 7 overlooking the courtyards still had metal shutters in front of the windows which hampered access to natural light and ventilation during the summer.

The CPT recommends that the Croatian authorities pursue their efforts to ameliorate the conditions of detention at the prison establishments visited, in particular:

- **at Osijek County Prison, by repairing the cells accommodating misdemeanour offenders and conflict-prone prisoners, painting walls, repairing furniture and artificial lighting and decreasing levels of humidity;**
- **at Split County Prison, by removing the metal shutters placed in front of the cell windows, ensuring the renovation of the remaining 16 cells, equipping the courtyard for remand prisoners with shelters against inclement weather and repairing the sports facilities in the courtyard for sentenced inmates. Further, inmates should be provided with a more consistent supply of cleaning products;**
- **at Zagreb County Prison, by urgently accelerating the complete refurbishment of the un-renovated cells with a particular focus on the two dormitories for misdemeanour offenders of module 7 as well as sanitary and common shower facilities of module 10 and removing the shutters in front of windows in modules 1, 4 and 7.**

33. The CPT's delegation received several complaints from inmates at all the establishments visited that they were not being provided with adequate cutlery for eating; apparently, forks and knives were forbidden for security reasons. This is in contradiction with Article 10 of the Rulebook on Standards of Accommodation and Nutrition for Prisoners which stipulates that forks and knives should be provided to prisoners as standard cutlery. Further, the CPT's delegation was informed that the prison administration had issued thematic instructions on the provision of adequate cutlery to inmates in the course of 2015 but their implementation was not uniform due to security-related concerns.

The CPT recommends that appropriate cutlery be provided to all inmates. Any limitation to the provision of adequate cutlery must be part of an individual security assessment by the prison management.

34. On the whole, the minimum standards on living space in multiple-occupancy cells laid down in Article 74, paragraph 3, of the LECS²⁶ were respected at the prison establishments visited and in particular at Split County Prison. However, serious levels of prison overcrowding were still observed at the time of the 2017 visit and were exacerbated by the impoverished regime in force at the establishments visited (see also paragraphs 36-39). For example:

At Osijek County Prison, cells measuring 25 m² were accommodating eight inmates, and six were sharing a cell measuring 18 m²; and it appeared that the official capacity of the establishment had been calculated based on an occupancy level of 2.5 m² per inmate.²⁷

At Zagreb County Prison, the two dormitories for misdemeanour offenders measuring 83 m² and 41 m² respectively were accommodating 23 and 11 persons for periods of up to 23 hours per day. Further, some cells measuring 15 m² were accommodating five inmates. The CPT also wishes to recall that for many years it has voiced its objection in principle to prisoners being held in large-capacity dormitories. Those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions. Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions. Further, the cumulative effect of the precarious conditions of detention, serious level of overcrowding, lack of adequate medical assistance (including the absence of systematic medical screening upon admission to prison) as well as the impoverished regime on offer to misdemeanour offenders (see also paragraphs 39 and 47) should clearly inspire serious reflection by the Croatian authorities on the necessity to avoid the imprisonment of this specific category of offenders. In particular, the Committee of Ministers Rec. (99) 22 clearly states that imprisonment is a sanction of last resort which should only be applied when the seriousness of the offence would make any other sanction clearly inadequate.

The CPT recommends that the Croatian authorities take steps to ensure that the minimum requirement of 4 m² per prisoner in multiple-occupancy cells is respected and that this standard which is also enshrined in the national legislation is attained. The official capacity of each prison establishment and consequently the number of beds in cells should be calculated in accordance with the above-mentioned legal requirement. Further, large-capacity dormitories should be replaced by smaller living units. Finally, the Croatian authorities should give serious consideration to abolishing imprisonment for misdemeanour offences and to exploring alternatives to the imprisonment of this category of offenders.

²⁶ I.e. 4 m² and 10 m³ of minimum living space per inmate in multiple-occupancy cells.

²⁷ For example, a cell measuring 25 m² was equipped with 10 beds, another one measuring 34 m² with 14 beds.

b. regime

35. Firstly, it is to be recalled that pursuant to Article 21 of the LECS, county prisons (*zatvori*) should in principle accommodate remand prisoners, misdemeanour offenders and inmates serving criminal sentences of up to six months, and only exceptionally more. All three of the county prisons visited were accommodating convicted prisoners serving sentences of up to five years although these establishments had been conceived at the time of their construction as remand prisons.²⁸

36. In all the establishments visited, sentenced, remand prisoners and misdemeanour offenders were in principle offered two hours of outdoor exercise per day as provided by the relevant legislation. However, at Osijek County Prison, ten remand prisoners involved in the same criminal case were receiving only one hour of outdoor exercise per day for reasons of investigation. For several of them this state of affairs had lasted for more than 18 months.

37. According to the LECS, all prisoners sentenced to more than six months must undergo a four- to six-week assessment by a team of psychologists, lawyers and social pedagogues at the National Diagnostic Centre (NDC) located within Zagreb County Prison. The NDC is tasked to devise an individual treatment plan for each inmate as well as to formulate recommendations as to the inmate's regime and the general and special programmes²⁹ to be applied individually before the inmate is sent to a prison establishment. On the whole, the CPT's delegation gained a positive impression of the professionalism and dedication of treatment staff at the prison establishments visited: individual treatment plans of inmates were duly filled in and entries individualised, inmates were subject to periodic and regular assessments by the expert team and access to educators did not pose any problem.

At Osijek County Prison, 28 prisoners (including four on remand detention) were engaged in full-time remunerated activity (kitchen, laundry, gardening, maintenance, waste collection, pallet production and car washing) and an additional six prisoners were working outside the prison with external contractors mainly on activities deemed useful for the community. Some rehabilitation, special programmes on drug and alcohol addiction, responsible parenthood, traffic security and development of social skills were on offer for those inmates who had a designated need for those in their treatment plans. Inmates wishing to access vocational or educational courses would normally have to be transferred to another prison such as Lepoglava or Glina State Prisons. For the rest of the day, inmates were confined to their cells. The CPT's delegation was also struck by the fact that the library was poorly furnished.

²⁸ This anomaly has also been acknowledged by the Constitutional Court in its Report on Conditions of Detention in Prisons (*Izješće o uvjetima života u zatvorima Ustavnog suda Republike Hrvatske*, U-X-5464/2012) of 12 June 2014.

²⁹ The LECS differentiates between general programmes such as educational, work and recreational activities to be applied to the majority of the inmate population and special programmes targeting inmates with special needs, such as inmates affected by drug and alcohol addiction, mental health disorders, sex offenders and recidivists. Among the special programmes offered within the Croatian penitentiary system are various educational and socio-developmental programmes in the field of drug and alcohol addiction, sex offenders, behavioral control, PTSD rehabilitation, development of social skills, traffic security and responsible parenthood.

At Split County Prison, 35 prisoners (both sentenced and a few remand) were engaged in a remunerated activity (kitchen, library, laundry, gardening, mechanical workshop, maintenance and vegetable cultivation). Several NGOs active in the rehabilitation of drug-addicted prisoners and various religious communities were paying regular visits to the prison. The prison management had also recently introduced an art workshop to be held three times a month and a vocational cookery course, and an indoor gym was accessible to sentenced inmates once a week. However, despite the efforts of the prison management to relax the regime on offer to the 23 inmates accommodated in module 3 by giving them access to a communal room for six hours, the rest of the prison population (i.e. 111 inmates) continued to spend up to 22 hours per day in their cells with no purposeful activity on offer.

At Zagreb County Prison, around 75 prisoners were involved in a remunerated activity (kitchen laundry, canteen, maintenance work), seven inmates were enrolled in a vocational course for house painters and around 40 were attending the rehabilitation workshops offered by the prison administration on drug addiction, responsible parenthood, development of social skills and prevention of aggressive and recidivist behaviour. The prison establishment offered a wide range of concerts and public encounters with public personalities as well as access to an indoor gym once a week for sentenced prisoners. That said, with the exception of module 9 and three cells of module 8 (i.e. for a total of approximately 50 inmates) where an open-cell regime had recently been introduced for sentenced inmates preparing for release or transfer, in the rest of the establishment (i.e. the remaining 330 sentenced prisoners), cells remained closed for 22 hours per day.

38. Given this state of affairs and the consistent decrease of prison overcrowding over the last few years, in the Committee's opinion, the time is ripe to develop the role of prison officers as integrated players in the provision of purposeful activities, linked to an individualised treatment plan. Proactive measures by the authorities are required, otherwise the prison system is likely to become an even greater breeding ground for criminality.

As prisoners look forward to their release into the community, they need to be prepared for that life, to possess a degree of self-worth and to feel capable of leading a life away from crime. A regime which provides for varied activities is a vital component in the preparation for release, as well as being beneficial for the running of the prison.

In the light of the general recommendations included in its 26th General Report of January 2017,³⁰ the CPT calls upon the Croatian authorities to redouble their efforts to improve the programme of activities, including work and vocational training opportunities, for sentenced prisoners at Osijek, Split and Zagreb County Prisons. In particular, sentenced persons should be able to spend at least eight hours per day outside their cells, involved in purposeful activities.

39. The vast majority of remand prisoners and all misdemeanour offenders at the establishments visited continued to spend 22 hours per day locked up in their cells and were not provided with any kind of organised activity. Such a regime is a relic of the repressive past.

³⁰ See the substantive section of the 26th General Report of the CPT (CPT/Inf (2017) 5) and in particular paragraph 58.

The CPT has stressed in the past that in addition to the regular reviews of the necessity of continuing remand custody, the judicial authorities should also examine the necessity of maintaining any other restrictions they might have put in place. For example, the requirement of investigative judges to keep separate all inmates associated with the same case, even after the persons concerned had spent several months in remand custody constrained the prison management in its efforts to provide more out-of-cell time.

The CPT calls upon the Croatian authorities to devise and implement a comprehensive regime of out-of-cell activities. The aim should be to ensure that remand prisoners are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value, education, sport, recreation/association). The longer the period of remand detention, the more varied the regime should be. All prisoners, without exception, must be offered at least two hours of outdoor exercise a day, in suitable facilities in accordance with the requirement set in the national legislation.

40. The seven female prisoners accommodated in module 10 of Zagreb County Prison were offered slightly better outdoor exercise entitlements, exceeding two hours in a dedicated courtyard where they could play basketball and volleyball. That said, no targeted activities were on offer to the female prisoners apart from remunerated work (two posts). The situation of the two female prisoners held at Split Prison³¹ and the single one at Osijek County Prison was of particular concern for the CPT as they were held alone in conditions akin to solitary confinement in single cells and were not offered any purposeful activity apart from their regular outdoor exercise entitlements.

Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport, etc.) on an equal footing with their male counterparts. In the case where only one woman is held in the establishment, she may *de facto* be subjected to a regime akin to solitary confinement.

The CPT recommends that the Croatian authorities increase their efforts to avoid *de facto* solitary confinement of female prisoners³² and to provide female inmates in such cases with purposeful activities and appropriate human contact including regular access to a psychologist.

41. As it was the case during past visits, the three juveniles³³ accommodated temporarily at Zagreb County Prison for the purposes of the court proceedings were not provided with any purposeful activities and spent 22 hours per day in their cell. This is unacceptable. **The CPT reiterates its recommendation that the Croatian authorities take immediate steps to provide all juveniles temporarily accommodated at Zagreb County Prison with a full programme of purposeful activities.**

³¹ One was a misdemeanour offender and the second a remand prisoner.

³² See also Rules 43, 44 and 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

³³ A fourth juvenile was undergoing assessment at the NDC at the time of the CPT's visit prior to his transfer to a juvenile establishment.

4. Health-care services

42. The provision of health care to inmates in prison remains the responsibility of the Ministry of Justice with an obligation on the Ministry of Health to supervise the quality of the health care provided.³⁴ Following the adoption of the Law on Mandatory Health Insurance in 2014, each inmate should be assigned a doctor in the community since prison doctors are not recognised as contracting parties by the national health-care authorities. This means that prescriptions for medication and referral slips for specialist examinations and treatment of an inmate should be issued by the relevant assigned doctor in the community in order to be recognised by the national health-care authorities. In practice the CPT's delegation observed that nurses at the prison establishments visited would spend a considerable amount of time every day contacting the respective inmates' assigned doctors in order to ask for their validation of prescriptions and referral slips proposed by the prison doctors. This was not only time consuming but also delayed considerably the necessary treatment of inmates. Further, the CPT's delegation learned that in several cases the relevant doctors in the community were reluctant to issue referral slips and prescriptions in respect of inmates/patients with whom they had virtually no contact in the light of their incarceration and/or geographical distance.

The CPT recommends that the relevant Croatian health-care authorities undertake the accreditation of prison health-care staff and infirmaries as fully-fledged contracted parties in accordance with the Rulebooks of the Croatian Health Insurance Fund. In the CPT's view the long-term objective of the Croatian authorities should be to transfer the stewardship for prison health care to the Ministry of Health.

43. By decision no. U-III-64744/2009 of 3 November 2010, the Constitutional Court had ordered the Croatian authorities to establish an efficient supervisory mechanism for the quality of health care provided in prisons. At the time of the CPT's 2017 periodic visit to Croatia this decision had still not been implemented and the Ministry of Health was still not conducting regular inspections of health-care services, limiting itself to reactive visits whenever there were complaints against any of the health-care staff members at the prison establishments. The CPT considers that whatever institutional arrangements are made for the provision of health care in prisons, it is essential that prison doctors' clinical decisions are governed solely by medical criteria and that the quality and effectiveness of their work is assessed by a qualified medical authority.

In particular, the recent policy trend in Europe has favoured prison health-care services being placed, either to a great extent, or entirely, under Ministry of Health responsibility.³⁵ In principle, the CPT supports this trend. In particular, it is convinced that greater participation by the Ministry of Health in this area (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection) will help to ensure optimum health care for prisoners, as well as implementation of the general principle of the equivalence of health care in prison with that in the wider community.

The CPT recommends that an efficient mechanism for the supervision of the quality of the provision of health care in prisons be finally established in accordance with the relevant jurisprudence of the Constitutional Court.

³⁴ As provided for by Article 18, paragraph 7 of the LECS.

³⁵ See, for example, Recommendation No. R (87) 7 of the Committee of Ministers of the Council of Europe to member States concerning the ethical and organisational aspects of health care in prison.

a. staffing levels and access to a doctor

44. At Zagreb County Prison, the equivalent of 2.5 general practitioners were assisted by ten nurses and one pharmaceutical technician. This is an adequate staffing level for a prison population of 650. Further, two full-time dentists and three psychiatrists from Popovača Psychiatric Hospital visited the establishment for a total of 40 hours per month each. That said, after 9.00 p.m.³⁶ no health-care staff, nor any staff member trained in first aid was present at the establishment.

At Split County Prison, the general practitioner attended the establishment only twice a week for a few hours as she had taken a leave of absence to attend a specialisation course. She was supported by three nurses present every weekday from 7.30 a.m. to 7.30 p.m.

At Osijek County Prison, a contracted general practitioner was visiting the establishment twice a week for a total of four hours and one contracted nurse was present on working days as a temporary replacement for the two full-time employed nurses who were on long-term sick-leave. This is not a sufficient presence for a prison population of 135. Further, a psychiatrist was visiting the establishment once a week for a couple of hours.

The CPT recommends that the health-care staffing complement at Osijek and Split County Prisons be increased in order to ensure the presence of one full-time general practitioner at Split Prison and that a doctor visits Osijek County Prison on a daily basis. At Zagreb County Prison, the round-the-clock presence of at least one member of the health-care staff should be ensured. Further, a psychiatrist should visit Split County Prison on a weekly basis and a sufficient nursing staff complement should be put in place at Osijek and Split County Prisons.

45. In terms of material equipment the infirmaries at Split and Zagreb County Prisons were in an adequate state of repair and hygiene and were suitably supplied with medicines. Further, a new dental chair had been acquired at Zagreb County Prison following a previous CPT recommendation. That said, the infirmary was lacking basic equipment such as an ECG machine, a defibrillator and emergency equipment, such as oxygen and a nebuliser.

At Osijek County Prison the two offices composing the infirmary in use by general practitioners and nurses were in a poor state of repair and hygienic conditions. Further, the infirmary was lacking basic equipment such as a defibrillator and an ECG machine.

The CPT recommends that the infirmaries at Osijek, Split and Zagreb County Prisons be equipped with the necessary basic equipment (namely an ECG machine, a defibrillator and emergency equipment, such as oxygen and a nebuliser). Further, the premises of the infirmary at Osijek County Prison (in particular the office used for consultations by general practitioners and the office used by nurses) should be renovated and maintained in an appropriate state of cleanliness.

³⁶ Nurses were present every day from 7.00 a.m. to 9.00 p.m.

46. As regards access to a doctor, inmates placed self-referral requests for medical examinations in boxes at all establishments visited. That said the reduced presence of the general practitioner at Split County Prison led to consistent delays in the access to a doctor. Consequently, some inmates had to file complaints for judicial protection to the supervisory judge in order to have their requests for medical examination fulfilled by the health-care staff.

The health-care service should be organised in such a way as to enable requests to consult a doctor to be met without undue delay. **To this end, the CPT refers to its recommendation in paragraph 44 on the necessity to ensure the presence of one full-time general practitioner at Split County Prison.**

b. screening and reporting of injuries and confidentiality

47. As regards medical screening upon admission, new inmates were generally seen by a doctor within two days at Zagreb County Prison and five days at Osijek and Split County Prisons. This is not adequate. Further, misdemeanour offenders did not undergo a systematic medical screening upon admission at any of the prison establishments visited.

48. With the exception of Zagreb County Prison where newly arrived inmates were physically examined by a doctor, medical examinations of prisoners upon admission were conducted superficially at Osijek and Split County Prisons and no protocol was in place on how to carry out such examinations. At Osijek and Split County Prisons inmates told the delegation that in fact the medical screening generally consisted of a series of questions and a short medical history and did not include any physical examination of the detained person. Further, no protocol on the reporting of injuries was in place at any of the prison establishments visited; doctors told the CPT's delegation that in the case of injuries observed on newly admitted prisoners, they would be referred to a civil hospital in order to undergo an assessment and a description of the injuries. Upon their return to prison a medical certificate issued by the civil hospital would then be attached to the inmate's file. Consequently, no register of injuries observed on inmates upon admission or sustained during their incarceration was in place at any of the three prison establishments visited.

49. Similarly, as regards the reporting of injuries to the competent authorities, the CPT's delegation was concerned to learn that health-care staff at all the establishments visited did not have a clear understanding of the role they could play in the prevention of physical ill-treatment of inmates. General practitioners met by the delegation at the visited prison establishments said that inmates presenting injuries sustained either at the time of their admission to prison or in the course of their incarceration would be referred to civil hospitals and that it would in their view be the responsibility of the hospital doctors to draw up medical certificates and inform the competent prosecutorial and police authorities in accordance with the relevant legal provisions.³⁷ The duty of prison health-care staff would be to attach the relevant medical certificate to the inmate's file and bring the issue to the attention of the prison director. The CPT's delegation was able to ascertain that this was in fact the course of action followed at all the prison establishments visited.

³⁷ Article 22 of the Law on Medical Doctors reads as follows : "*A medical doctor is obliged to report to the police or the prosecutor whenever, while exercising his/her duties, he/she suspects that a case of death or physical injury has been caused by physical violence*".

In the CPT's view, it is impossible to overemphasise the importance of medical screening of newly admitted prisoners, particularly in establishments which constitute points of entry to the prison system. Such screening is essential, particularly to prevent the spread of transmissible diseases and suicides, and for recording injuries in good time.

The CPT wishes to stress that every newly admitted prisoner, including misdemeanour offenders, should be properly interviewed and physically examined by a medical doctor as soon as possible after admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned.

Further, the CPT would recall that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons both before admission and during incarceration, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities.

The record drawn up after the medical screening should contain:

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),
- ii) a full account of objective medical findings based on a thorough examination, and
- iii) the health-care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and any further procedures performed.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

The CPT recommends that steps be taken to ensure that the prison medical services at the establishments visited, as well as other prison medical services in the rest of the country, fully play their role in preventing ill-treatment, ensuring that:

- the doctors indicate at the end of their traumatic injury reports, whenever they are able to do so, any causal link between one or more objective medical findings and the statements of the person concerned;
- traumatic injury reports relating to injuries likely to have been caused by ill-treatment (even in the absence of statements) are automatically forwarded to the independent body empowered to conduct investigations, including criminal investigations, into the matter;
- the doctors advise the prisoner concerned that the writing of such a report falls within the framework of a system for preventing ill-treatment, that this report automatically has to be forwarded to a clearly specified independent investigating body and that such forwarding does not substitute for the lodging of a complaint in proper form.

It would also be advisable that the prison doctors may, at regular intervals, receive information in return about the measures taken by the bodies concerned following the forwarding of their reports.

The CPT further recommends that a register be introduced in each prison to track the progress of investigations concerning allegations or other evidence of all forms of ill-treatment that may come to the attention of the prison doctor. The Prosecutor's Office should be informed about the introduction of such a procedure and their cooperation sought.

50. Contrary to the previous findings from the CPT's 2012 periodic visit, the confidentiality of medical examinations of inmates was not respected, with the exception of female prisoners at Zagreb County Prison and psychiatric consultations. As for other medical consultations, the inmates met by the CPT's delegation confirmed that a member of the custodial staff was systematically present at the time of their medical examination. As mentioned in paragraph 27, this had in fact prevented inmates who wished to raise allegations of physical ill-treatment by staff from lodging complaints or having an objective assessment by the prison doctor of their visible injuries.

Further, on the boards hung in the room for custodial staff in each module of Zagreb County Prison indicating the inmates' names and their cell distribution, it was not uncommon to observe handwritten remarks in red ink indicating that a given inmate was affected by a transmissible disease with the remark "attention".³⁸

The CPT would like to stress that respect for confidentiality is essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship; it should be the doctor's duty to preserve that relationship and to decide on the manner in which the rules of confidentiality are observed in a given case. Therefore, there can be no justification for custodial staff being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions, such as plexiglass doors in front of medical consultation rooms and the installation of call systems whereby a doctor can easily and rapidly alert prison guards in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination, can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. Further, the practice of systematically informing all prison staff about an inmate's transmissible diseases should be discontinued. Such information should in principle only be available to health-care staff; it is for those staff to decide whether – and to what extent – the information needs to be shared with non-medical staff.

The CPT recommends that the Croatian authorities take effective steps to comply with the above-mentioned precepts.

51. The distribution of medicines was in general performed by nursing staff with the exception of Osijek County Prison where custodial staff on a regular basis distributed medicines, which had been previously prepared by the nurse, in the evenings and on weekends.

³⁸ I.e. *pozor*.

In the CPT's view, it is not within the competence of prison officers to dispense prescription medication – dispensing medication should only be carried out by a nurse or a trained pharmaceutical dispenser. Therefore, **the CPT recommends that the prison management of Osijek County Prison revise the presence of nursing staff at the establishment in order to ensure that medication for inmates is always dispensed by a qualified member of the health-care staff.**

c. transmissible diseases

52. No systematic screening for transmissible diseases (such as TB, hepatitis B and C or HIV) was conducted upon admission at any of the establishments visited, though it was available at the Prison Hospital at the inmate's request. Those inmates who had started anti-retroviral therapy and therapy for hepatitis C in the community would in principle continue to receive it during their period of imprisonment.

The risk of disease transmission is enhanced in a closed institution (such as a prison), in particular when general hygiene and environmental conditions are poor. Consequently, prison health-care services should adopt a proactive approach, with a view to minimising the risk of the spread of certain infections.

The CPT recommends that the Croatian authorities ensure that in all the establishments visited and, as appropriate, in other prisons in Croatia all newly-arrived prisoners are subject to a systematic TB screening and voluntary testing for HIV and hepatitis B and C within 24 hours of admission.

d. psychiatric care

53. The CPT's delegation gained a positive impression of the professionalism and dedication of psychiatric staff visiting Zagreb County Prison and there appeared to be no obstacle to transferring inmates in a timely manner to the Prison Hospital in case of need. Inmates also spoke positively of the confidential consultations they had with the psychiatrists and found them to be beneficial for the treatment of their mental health disorders. That said, the number of requests for consultation exceeded the presence of the three psychiatrists and a better triage by nurses/general practitioners was needed in order to prioritise cases. At Osijek County Prison the weekly presence of the psychiatrist was adequate to respond to the needs of the inmate population.³⁹ At both prisons there was no obstacle to the transfer of inmates to Zagreb Prison Hospital in the case of acute crisis. In general, inmates subject to a court-imposed measure of psychiatric treatment pursuant to Article 68 of the CC⁴⁰ were transferred to a prison establishment once the psychiatrists of the Prison Hospital had decided that they could follow their treatment path as an outpatient (see paragraph 115).

That said, the situation was less favourable at Split County Prison, where the psychiatrist had stopped visiting the prison one year previously. Consequently, inmates in need of consultation would be referred to the Split Clinical Hospital or the Zagreb Prison Hospital. **The recommendation put forward in paragraph 44 on the necessity that a psychiatrist visit Split County Prison once a week is also valid in this context.**

³⁹ There were no cases of inmates subject to a court-imposed measure of mandatory psychiatric treatment.

⁴⁰ The overall number of inmates subject to a mandatory security measure for psychiatric treatment stood at 181 at the time of the CPT's 2012 periodic visit and at 71 in the course of the 2017 periodic visit.

e. drug-related issues

54. As was the case in the past, there was no obstacle to inmates initiating and continuing substitution treatment for drug addiction in prison. At the time of the CPT's visit, there were 30 inmates at Zagreb, eight at Osijek and 26 at Split County Prison taking drug substitution treatment. Further, inmates could also be subject to court-imposed mandatory measures for the treatment of drug addiction pursuant to Article 69 of the CC: they were 14 at Zagreb, one at Osijek and three at Split County Prison.

The treatment on offer consisted mainly of pharmacotherapy interspersed with sporadic consultations with the visiting psychiatrists, with the exception of Split County Prison where no psychiatrist had been visiting the establishment for more than one year (see paragraphs 44 and 53) and psychosocial cognitive behavioural programmes offered periodically by the prison administration or NGOs (see also paragraph 37). The January 2014 guidelines for the psychosocial treatment of inmates⁴¹ were still not uniformly implemented due to the lack of appropriate staff training. For example, at Osijek County Prison the psychosocial 34-week-long programme on the prevention of addiction recidivism sponsored by the prison administration⁴² was supposed to start in the autumn of 2017; treating staff were being trained at the time of the CPT's visit.

55. The CPT examined the individual treatment plans of inmates under drug substitution therapy or subject to a court-imposed mandatory treatment for drug addiction in prison. The delegation observed that plans did not contain specific activities and objectives towards the rehabilitation of those inmates. Further, inmates at all the prison establishments visited complained that treatment staff often exerted pressure on them to withdraw their substitution therapy in order to obtain benefits such as leave, extended visits and work. The Committee notes that there is a widespread conviction by prison staff that opiate substitution therapy represents a hedonistic practice indicating a weakness of character of the inmate. The clinical experience in fact shows that coercive abstinence in prison might easily be followed by relapse immediately after release, often resulting in overdose, drug emergencies and death.⁴³

⁴¹ See the document "Guidelines for the Psychosocial Treatment of Drug-Addiction in the Health-Care, Social and Penitentiary System" (*Smjernice za psihosocijalni tretman ovisnosti o drogama u zdravstvenom, socijalnom i zatvorskom sustavu*) adopted by the Commission for the Fight Against Drug Misuse of the Government of Croatia on 28 January. The document in question was drafted in accordance with the best clinical practice advocated by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

⁴² The 34-week long programme was first introduced by the prison administration in 2014 under the codename PORTOs and consisted of various modules aimed at developing cognitive behavioural changes in inmates affected by drug addiction through an introspective stimulation to change their lifestyle habits and the prevention of recidivism.

⁴³ See for example Stover, H. and Michels, I. I. (2010) "Drug use and opioid substitution treatment for prisoners". Harm Reduction Journal available at <http://www.harmreductionjournal.com/content/7/1/17>.

56. The Committee encourages the Croatian authorities to ensure a uniform implementation of the January 2014 guidelines for the psycho-social treatment of drug addiction in prisons which provide for concrete measures for the individual treatment of inmates affected by drug addiction.⁴⁴ In particular, the health-care and psycho-socio-educational services of establishments accommodating significant numbers of prisoners with drug-related problems should be adequately staffed with a closely knit inter-disciplinary team of persons having appropriate training and expertise; in this context, a contribution can be made by prison officers. Moreover, contacts and cooperation between prison services and persons working in community-based organisations providing care, assistance and support to persons with drug problems should be fostered. This is particularly important as regards the preparation for release and the coordination of treatment after release.

The CPT recommends that the Croatian authorities take effective steps in order to provide inmates affected by drug addiction with a clear multi-disciplinary and consistent approach towards their rehabilitation by fully exploiting the potential of the strategic documents already developed at the national level. Further, treatment staff at Osijek, Split and Zagreb County Prisons should refrain from making the granting of benefits and work activities of inmates conditional on their withdrawal from opiate substitution treatment.

5. Other issues

a. prison staff

57. All the prisons visited were understaffed and below the number of official posts allocated to the establishments. At Osijek County Prison, where 67 of 76 prison officer posts were filled; at Split County Prison, only 65 of 101 prison officers' posts were filled; and at Zagreb County Prison, 263 out of 348 posts were filled (i.e. 25 per cent of posts were vacant). The consequence was that custodial staff worked long hours of overtime.

The CPT recommends that the Croatian authorities fill all vacant prison officer posts in order to ensure that every prison is adequately staffed to guarantee security and operate a meaningful regime.

58. Once again the CPT's delegation observed that custodial staff continued to carry truncheons openly including in detention areas.

The Committee wishes to stress that openly carrying truncheons is not conducive to developing positive relations between staff and inmates.

The CPT recommends that the Croatian authorities put in place a timetable setting out clearly the phasing out of batons as standard equipment for prison officers working in detention areas.

⁴⁴ See pages 68-72 of the document "Guidelines for the Psychosocial Treatment of Drug-Addiction in the Health-Care, Social and Penitentiary System". Such interventions include: 1) a short interview with the inmate affected by drug addiction upon admission to prison; 2) cognitive behavioural activities; 3) individual and group therapies; 4) prevention of relapse; 5) contingency management through a system of benefits and sanctions; 6) involvement of inmates in purposeful activities of a recreational, vocational and educational nature; 7) preparation for release and post-penal rehabilitation.

b. security measures⁴⁵ and means of restraint⁴⁶

59. As already mentioned in paragraph 28, once again the CPT's delegation reviewed the application of security measures at the prison establishments visited and in particular the placement of inmates in a room devoid of dangerous objects (i.e. a padded cell, also known as a "rubber room" or *gumenjara*). At the outset of the visit, the Croatian authorities informed the CPT's delegation that an instruction had been issued in December 2016 by the prison administration on the alleged moratorium of the use of the so-called rubber-rooms in all prison establishments nationwide.⁴⁷ In practice, the placement of inmates in a rubber room in order to contain over-agitated and violent inmates and to prevent the escalation of any incidents continued,⁴⁸ and the management of the prison establishments visited were to various degrees not aware of any instructions from the prison administration on this subject.

At Osijek County Prison, in the course of 2016 there had been two instances of inmates being placed in the "rubber room" (measuring 7.5 m² with flickering artificial lighting) and two in the first three months of 2017. The measure was usually applied for a prolonged period of up to 50 hours with inmates ankle- and hand-cuffed, with the cuffs connected together via a metal chain attached to a leather waist belt, and wearing only their underwear. The reason for the placement was variously described as threats to commit suicide and self-injury, disturbance of the house rules, a "fragile psychological state",⁴⁹ and following attempts to escape. In one case, an inmate was placed in a rubber room hand-cuffed but after he had, according to the register, defecated in the rubber room and further assaulted an officer he was also ankle-cuffed. Despite being hand- and ankle-cuffed, he allegedly continued his aggressive behaviour towards staff and was pepper-sprayed in the face. In the view of the CPT, such treatment may be considered inhuman and degrading (see also paragraph 29). To begin with, the CPT can see no justification in having to ankle- and hand-cuff a prisoner who is placed inside a rubber room. Further it is of concern to the Committee that the inmate was compelled to defecate in the rubber room and was not taken to a toilet; moreover, given that the inmate was handcuffed to a waist belt at the time of defecating and thus could not have taken off his clothes, it can be concluded that the inmate was actually naked or at least without his underwear in the rubber room. Finally, to administer pepper spray to a prisoner trussed up in the manner described above can only be for punitive reasons and the CPT considers that the staff members responsible should be investigated for the ill-treatment of this prisoner.

The prison doctor would visit the inmates within six hours in order to assess whether the inmate was fit to undergo such a placement (as provided for by law) and in some cases would order the transfer of the inmate to Zagreb Prison Hospital. That said, the prison doctor did not object to the hand- and ankle-cuffing of inmates placed in a "rubber room".

⁴⁵ Article 135 of the Croatian LECS provides for the following security measures: 1) increased supervision; 2) seizure of objects allowed under normal circumstances; 3) separation from other inmates for a maximum period of 30 days; 4) placement in a room without dangerous objects; 5) placement in an increased supervision department; 6) immobilisation with handcuffs; 7) solitary confinement for a maximum period of three months authorised by the supervisory judge.

⁴⁶ Article 142 of the LECS provides for the following means of restraint: 1) physical force; 2) rubber baton; 3) pepper spray; 4) electro shock weapon; 5) water hose; 6) fire arm.

⁴⁷ It is also to be recalled that an inmate placed in a rubber room at Pula County Prison had died following a fire he started with a lighter he had managed to conceal in the rubber room. The case was under judicial investigation.

⁴⁸ The measure in question had been applied in 51 instances in the course of 2013, 42 in 2014, 38 in in 2015 and 40 times in the course of 2016 at the national level.

⁴⁹ As it was stated in the relevant register in use.

At Split County Prison, the two rubber rooms (measuring approximately 5 m² and equipped with a call bell but lacking access to natural light) had not been used since the beginning of 2016; the CPT's delegation did not receive any allegation of informal use of the rubber rooms.

At Zagreb County Prison, the use of three rubber rooms located in modules 1, 4 and 7 had ceased according to the relevant registers after September 2012.⁵⁰ Further, a multi-disciplinary team (composed of security and treatment staff, as well as a psychologist) would assess the necessity of the recourse to a security measure on a case by case basis and would make recommendations to the prison director. That said, the delegation received two recent credible allegations of placement of inmates in a rubber room for short periods for punitive reasons (for instances of disobedient behaviour and breach of good order). Both inmates had been placed naked or in their underwear as well as hand-cuffed behind their backs for periods of 30 to 60 minutes in a rubber room and in one case ankle-cuffs had been used by custodial staff. The two instances had not been recorded in the dedicated registers.

60. In the CPT's view, an agitated inmate who poses a serious danger to him-/herself or to others could be temporarily isolated in a calming down cell until he/she regains behavioural control only as a last resort when all other reasonable options (such as talking to the inmate in question) have failed to satisfactorily contain these risks. The duration of such a measure should be for the shortest possible time (usually minutes rather than hours) and the inmate should be immediately examined by a prison doctor in order to assess whether his/her mental state requires hospitalisation or whether any other measure is required in the light of the inmate's medical condition. The application of additional means of restraint such as ankle- and hand-cuffs, as well as pepper spray, to an agitated inmate already placed in a rubber room has no justification. Further, in the view of the Committee it is unacceptable that inmates be placed in a rubber room in their underwear or even naked. Over-agitated inmates representing a danger for themselves or others should be provided with rip-proof clothing following an individual risk assessment and upon authorisation by the doctor. Any placement in a "rubber room" should be recorded in a dedicated register, the entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the person who ordered or approved it, and an account of any injuries sustained by the prisoner or staff. Finally, the person concerned should be given the opportunity to discuss his/her experience with a senior member of the health-care staff or another senior member of staff with appropriate training as soon as possible after the end of the application of the security measure in question.

The CPT recommends that the Croatian authorities adopt formal written guidelines on the use of rubber rooms, taking into account the above-mentioned criteria.

⁵⁰ For a description of the rubber rooms in question, see paragraph 53 of the CPT's report on the 2012 periodic visit to Croatia CPT/Inf (2014) 9. Further, the measure of placement of an inmate into a "rubber room" had been resorted to 90 times in the course of 2009 at Zagreb County Prison.

61. The most common security measure applied at the prison establishments visited was increased supervision which consisted in practice of more frequent visual checks of specific inmates by custodial staff. At Osijek County Prison two small holding cells delimited by metal bars at the end of the corridor on the first and ground floor were used for the separation of inmates in the case of incidents and conflicts. The areas were equipped with a table and chair and inmates said that in some cases they had volunteered for such a placement and had found it beneficial as a cooling-off measure. The measure had previously lasted for several hours including overnight until April 2016 when, following criticism raised by the NPM, the prison management had started using these areas for limited periods lasting a maximum of two hours. At Split County Prison, several inmates told the delegation that they had been temporarily isolated by staff in three different cells for over-agitation or breach of house rules and occasionally for passively resisting a staff order. They also alleged that they had been hand-cuffed to a bed in those cells. The CPT's delegation did not find any record in the relevant registers on the separation measure or the application of means of restraint in respect of the above-mentioned inmates.

The CPT recommends that the Croatian authorities ensure that every resort to a security measure in respect of an inmate is duly recorded in the relevant register. Further, inmates should never be hand-cuffed to fixed objects.

62. As regards the application of means of restraint, Articles 141 and 142 of the LECS stipulate that these be resorted to in the case of active and passive resistance to staff orders,⁵¹ self-harming and direct danger to other persons or objects in accordance with the principles of subsidiarity and proportionality. The resort to such a measure must be recorded and the prison administration informed. Further, the person being restrained must be visited by a doctor.⁵² An overview of the statistics of the use of means of restraint at the national level shows that since 2013 only in one case has such a resort been considered as unjustified by the prison administration.⁵³ That said, in addition to the case mentioned in paragraph 59 concerning the use of pepper spray in respect of an inmate placed in a rubber room, the CPT's delegation received some other allegations from inmates at Osijek and Split County Prisons of disproportionate resort to pepper spray by prison staff against them in a confined space in case of passive resistance to orders. For example, a case was registered at Osijek County Prison where an inmate was subject to the use of pepper spray by prison staff in his cell for not having obeyed an order from a prison staff member to stand up from his chair. In such a case the entry in the relevant register on use of means of restraint noted that the legality of the use of pepper spray by staff was justified "*in order to prevent a more serious breach of the house rules*".

Pepper spray is a potentially dangerous substance which should not be used in confined spaces and its use should be governed by principles of subsidiarity and proportionality. Further, if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a qualified member of the health-care staff and be supplied immediately with means to reverse the effects effectively and rapidly. Pepper spray should never be deployed against a prisoner who has already been brought under control and who shows only passive resistance to an order by prison staff.

⁵¹ In such a case the only permitted and applicable means of restraint is the use of physical force and manual control.

⁵² Pursuant to Article 142, paragraphs 7 and 8 of the LECS.

⁵³ In particular means of restraint had been resorted to in respect of inmates by prison staff 65 times in 2013, 59 in 2014, 52 in 2015 and 57 in the course of 2016.

The CPT recommends that the Croatian authorities draw up a clear directive governing the use of pepper spray, which should include, as a minimum:

- clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;
- the provision that pepper spray should never be used against a detained person after he/she has been put under control;
- the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered measures of relief;
- information regarding the qualifications, training and skills of staff members authorised to use pepper spray;
- an adequate reporting and inspection mechanism with respect to the use of pepper spray.

c. discipline

63. The resort to solitary confinement for disciplinary purposes was limited at Osijek and Zagreb County Prison (two cases in the course of 2016 for up to five days) and no cases had recently been recorded at Split County Prison. The number of disciplinary proceedings initiated against inmates was far from excessive (e.g. 36 cases at Osijek and 56 at Split County Prison in the course of 2016). The most frequent sanctions imposed on inmates consisted of reprimands and a ban on the use of financial assets for the purchase of goods at the prison store.

An examination of the disciplinary procedures in the prisons visited revealed that prisoners were in principle able to benefit from the formal safeguards set out by Article 148 of the LECS (notably, the requirement that proceedings be served on prisoners in writing; the possibility to be assisted by a third party, including a lawyer; the possibility to present evidence; the possibility to appeal to the supervisory judge).

d. contact with the outside world

64. Sentenced prisoners are entitled to receive two monthly visits of one hour each⁵⁴ and remand prisoners six visits a month each, lasting from 15 to 60 minutes.⁵⁵ Sentenced prisoners may also be offered up to four unsupervised conjugal visits lasting up to four hours with a spouse/partner per month at the discretion of prison director.⁵⁶ The Committee is of the opinion that all prisoners should be entitled to a minimum of the equivalent of one hour of visiting time every week. **The CPT recommends that prisoners' entitlements to visits be revised accordingly.**

65. Sentenced prisoners at the establishments visited met their visitors in suitably furnished rooms equipped with tables and chairs in an environment which was conducive to maintaining meaningful contact with them.

⁵⁴ Pursuant to Article 117, paragraph 1, of the LECS.

⁵⁵ In accordance with Article 19 of the Rulebook on House Rules on the Execution of Pre-Trial Detention.

⁵⁶ Pursuant to Article 130, paragraph 2, of the LECS.

As was the case in the past, remand prisoners were allowed only closed visits in screened booths equipped with an interphone. At Zagreb County Prison, there was the possibility to lift the screen at the outset of the visit in order to allow a minimum of physical contact with the visitor (depending on the approval of the competent judge). That said, the design of the screened booths at Split and Osijek County Prisons did not provide for them to be lifted to allow physical contact with visitors. Further, the design of the screened booths at Split County Prison, consisting of glass and metal bars, impeded the remand prisoners from properly seeing their visitors.

The CPT accepts that in certain cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have visits take place in booths and/or monitored. However, “open” visiting arrangements should be the rule and “closed” ones the exception, for all legal categories of prisoners. Any decision to impose closed visits must always be well-founded and reasoned, and based on an individual assessment of the potential risk posed by the prisoner. **Further, the metal bars on the booths at Split County Prison should be removed.**

The CPT recommends that the Croatian authorities review the visiting arrangements at Osijek and Split County Prisons in the light of the above remarks.

66. Sentenced prisoners were entitled to a minimum of one telephone call per week lasting ten minutes; remand prisoners continued to be allowed six phone calls per month with a maximum duration of 15 minutes each. That said, remand prisoners complained about the long delays in having their lists of permitted contacts approved by the relevant judge. **The CPT recommends that the process of authorising the permitted contacts for remand prisoners be speeded up by the competent judicial authorities.**

67. Article 124 of the LECS stipulates that sentenced prisoners are entitled to unlimited mail correspondence at their own expense; the content of the letters is systematically checked by the prison authorities (with the exception of complaints to the supervisory judge, the Ombudsman and international organisations). In the CPT’s opinion, the current systematic censorship procedures in place should be reviewed. It is not only an interference in a prisoner’s private life but a waste of resources to read every single letter; only if there are reasonable concerns that the content of a letter may pose a security threat or signal criminal intent should it be read. Otherwise, incoming and outgoing letters should only be checked to ensure that no contraband is being mailed.

The CPT recommends that the Croatian authorities take the necessary steps, including in the context of the drafting of the new LECS, to review the current systematic screening provisions and practice in relation to the correspondence of prisoners in the light of the above remarks.

e. complaints and inspection procedures

68. Sentenced prisoners have the right to lodge complaints to the prison director, the supervisory judge (including for their legal protection against a decision of the prison director) and the prison administration.⁵⁷ Remand prisoners could lodge complaints to the prison administration and the respective investigative judge.⁵⁸ The law guarantees the confidentiality of complaints lodged to the prison administration and the supervisory judge. Further, inmates can also lodge complaints to the Ombudsman institution.

Contrary to the positive practice observed by the CPT at the Prison Hospital whereby patients could send their complaints in sealed envelopes (see paragraph 118), the inmates with whom the CPT's delegation spoke at Osijek, Split and Zagreb County Prisons complained about the fact that their complaints to the prison administration had to be handed over in an open envelope. Further, several inmates said that no adequate follow-up had been given by the prison authorities to inmates' complaints of physical ill-treatment by staff. For example, at Split County Prison one inmate alleged that he had faced pressure by custodial staff consisting in threats of limitation of his entitlements in order to withdraw a complaint he had filed against a police officer for alleged physical ill-treatment at the time of his apprehension. Another inmate met in Osijek County Prison alleged that he had just been transferred from Požega State Prison for lodging a complaint to the prison administration for physical ill-treatment by custodial staff to which he claimed to have been subjected at his previous prison establishment.

69. The CPT considers that complaints should as far as possible be resolved within the prison itself. This requires putting in place a proper internal complaints system; for example, prisoners ought to be able to make written complaints at any moment and place them in a locked complaints box located in each accommodation unit (forms should be freely available); all written complaints should be registered centrally within a prison before being allocated to a particular service for investigation or follow up. In all cases, the investigation should be carried out expeditiously (with any delays justified) and prisoners should be informed in writing within clearly defined time-periods of the action taken to address their concern or of the reasons for considering the complaint not justified. Information on the right to appeal should also be provided. In addition, statistics on the types of complaints made should be kept as an indicator to management of topics of discontent within the prison. The virtual absence of complaints in a place of detention may demonstrate a high degree of satisfaction among inmates. On the other hand, it may provide an indication that, for whatever reason, inmates lack confidence in the complaints procedures concerned. More particularly, a procedure which implies that the lodging of a complaint with an outside authority is systematically brought to the attention of the management of the establishment where the prisoner concerned is held, is almost certainly not conducive to him/her developing a sense of trust in that procedure.

⁵⁷ Pursuant to Articles 15, 16 and 17 of the LECS.

⁵⁸ Pursuant to Article 6 of the Rulebook on House Rules for the Execution of Pre-Trial Detention. Further, the Constitutional Court in its Decision U-III-4182/2008, formally advocated the extension of the possibility of remand prisoners to lodge complaints to the judge of execution of criminal sanctions.

The CPT recommends that the Croatian authorities ensure that all prisoners (both remand and sentenced) have confidential access to the bodies authorised to receive complaints. Where required, practical measures should be taken to ensure that complaints are transmitted confidentially (for example: providing envelopes; installing locked complaints boxes accessible to prisoners, to be opened only by specially designated persons).

Further, the CPT calls upon the Croatian authorities to take the necessary steps to ensure that any information suggesting that a prisoner has been subjected to threats and/or reprisals for having exercised his/her right to lodge applications or complaints is investigated properly and, if necessary, results in appropriate sanctions.

70. As regards inspections, supervisory judges were visiting the prison establishments at least once a year in accordance with their legal obligation⁵⁹ and investigative judges from the local county court paid visits to remand prisoners once a week as provided for by Article 141, paragraph 2 of the CCP. That said, judges were systematically accompanied by custodial staff during their tours to the detention areas and did not speak with inmates in private. Unsurprisingly, the relevant registers filled in by the judges at the end of their visits contained no critical remarks. As mentioned in paragraph 8, the NPM regularly paid visits to prison establishments nationwide.

The CPT attaches particular importance to regular visits to all prison establishments by an independent body (for example, a visiting committee or a judge with responsibility for carrying out inspections) with authority to receive – and, if necessary, take action on – prisoners' complaints and to visit the premises. During such visits, the persons concerned should make themselves "visible" to both the prison authorities/staff and the prisoners. They should not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative and visit the establishments' detention areas and enter into contact with inmates. Those exercising the oversight function should talk with prisoners and staff in the detention areas and carry out spot-checks of practice and conditions. **The CPT recommends that the Croatian authorities encourage judges to take a more rigorous approach towards inspecting prisons in line with the above-mentioned precepts. In particular, the Committee requests that the Croatian governmental authorities transmit this request through the appropriate channel to the State Judicial Council (*Državno Sudbeno Vijeće*).**

⁵⁹ Article 47 of the LECS reads as follows: "*The competent supervisory judge shall visit the respective prison establishments at least once a year in order to speak to sentenced prisoners and inform them of their rights under the legislation and the manner to exercise those rights*".

C. Juvenile Correctional Facility, Turopolje

1. Preliminary remarks

71. There have been many developments since the CPT visited the Turopolje Juvenile Correctional Facility in 1998.⁶⁰ Besides the UN Convention on the Rights of the Child, ratified in 1992, Croatia has since ratified the European Convention on the Exercise of Children's Rights (in 2010) and also upgraded its legal framework relating to children in criminal proceedings. The most important pieces of legislation in this connection are the 2011 Law on Juvenile Courts (LJC),⁶¹ the 2012 Law on the Execution of Sanctions imposed on Juveniles for Crimes and Misdemeanours (LESJ),⁶² and the 2013 Rulebook on the Execution of Correctional Measures in a Correctional Facility (2013 Rulebook).⁶³

Under Croatian law, children can be held criminally responsible from the age of 14. Child suspects/offenders from 14 to 17 years of age (at the time of committing the offence) are subject to different procedures and safeguards than adults, and there is a further differentiation between juveniles aged 14 to 15 years ("younger juveniles") and those aged 16 to 17 years ("older juveniles"). Both groups can be sentenced to correctional measures and security measures (including obligatory psychiatric or addiction treatment),⁶⁴ while older juveniles may also be sentenced to juvenile imprisonment.⁶⁵

Juvenile offenders may be placed by the court in different types of institution⁶⁶ for the purpose of executing a correctional measure, of which only the "correctional facilities" (*odgojni zavodi*) are under the authority of the penitentiary administration, the other types of institution being under the responsibility of the Ministry for Demographics, Family, Youth and Social Policy. The purpose of correctional measures is to make an impact on the personal development and sense of personal responsibility of a juvenile offender by providing protection, care, assistance and supervision, as well as general and professional education.⁶⁷ Correctional measures may last until the offender turns 23 years of age.⁶⁸

⁶⁰ See paragraphs 116 to 142 of CPT/Inf (2001) 4).

⁶¹ *Zakon o sudovima za mladež* (NN 84/11, 143/12, 148/13, 56/15).

⁶² *Zakon o izvršavanju sankcija isrečenih maloljetnicima za kaznena djela i prekršaje* (NN 133/12).

⁶³ *Pravilnik o načinu izvršavanja odgojne mjere upucivanja u odgojni zavod* (NN 22/13).

⁶⁴ Article 31, LJC. See also Articles 68 and 69 of the Criminal Code.

⁶⁵ Under Article 24 of the LJC, a juvenile can be sent to a juvenile prison for an offence subject to three or more years' imprisonment, where the seriousness of the crime and the level of guilt are considered such that a correctional measure would not be sufficient.

⁶⁶ There are also non-custodial correctional measures: court reprimand (*sudski ukor*), special obligations (*posebne obveze*), increased care and supervision (*pojačana briga i nadzor*), increased care and supervision along with daily attendance of a correctional institution (*pojačana briga i nadzor uz dnevni boravak u odgojnoj ustanovi*).

⁶⁷ Article 6, LJC.

⁶⁸ Article 33, LJC.

72. The Juvenile Correctional Facility at Turopolje continues to be the only correctional facility (*odgojni zavod*) for male juveniles (and young adults) in Croatia.⁶⁹ Pursuant to Articles 5 and 16 of the LJC, a court may assign to a correctional facility a juvenile who is exhibiting significant behavioural disorders where it is deemed necessary to separate him from his environment. The court also has discretion to place in such a facility young adults who are under the age of 21 years at the time of the court's judgment, until they reach the age of 23.⁷⁰ Placements have a minimum duration of six months and may be prolonged for up to a total of three years. Every six months, the court must review the placement and decide whether it is to be continued, replaced with another type of correctional measure, or terminated.⁷¹

73. At the time of the visit, the correctional facility was undergoing major restructuring, with the inmates housed temporarily in an existing building on the site, while the main accommodation building was being completely renovated with a view to providing substantially improved accommodation for up to 48 juveniles. In addition, an entirely new building was being constructed in a separate area of the grounds, which would house the closed "enhanced care and supervision unit" (*skupina pojačane skrbi i nadzora*) and the "diagnostic unit" (where juveniles would remain for 30 days⁷² while being assessed for assignment to a specific group). Currently, these two units were located at Sisak County Prison. It was also planned to transfer to the new facility juveniles serving a sentence of juvenile imprisonment. The renovation works were expected to be completed by October 2017. At the time of the visit, the correctional facility was accommodating 41 inmates, including 11 inmates in the closed unit in Sisak; one inmate had escaped. Twenty of the inmates were 18 or older, the oldest being 21.

2. Ill-treatment

74. From its observations and findings during the visit, the delegation gained a generally positive impression of the relations between staff and inmates. Nonetheless, two allegations of physical ill-treatment by staff were received, which involved slaps, kicks and punches to various parts of the body. Further, the delegation was told by "treatment" staff (see paragraph 81) that inmates sometimes went to them with complaints concerning ill-treatment. **The CPT recommends that the management of the Turopolje Juvenile Correctional Facility exercise increased vigilance in their oversight of interactions between the inmates and staff. In addition, it should be reiterated to all staff that ill-treatment of inmates is not acceptable under any circumstances and will be subject to appropriate sanctions.**

⁶⁹ The corresponding facility for female juveniles is in Požega.

⁷⁰ Articles 32 and 33 of the LJC govern cases where the young adult committed the offence while a juvenile, while Article 105 allows the court discretion to send a young adult who committed an offence to such a facility instead of sentencing him/her under adult criminal law. Young adults are subject to the same regime as juveniles in such cases (Article 105(4)).

⁷¹ Article 16, LJC.

⁷² Pursuant to Article 7(4) of the 2013 Rulebook.

75. The only authorised means of force against juveniles, pursuant to Article 51 of the LESJ, are physical containment, self-defence techniques and, where the afore-mentioned are not effective, the use of batons. Custodial staff at the Turopolje Juvenile Correctional Facility did not carry batons while on duty. The CPT's delegation received no allegations, and found no other indications, of the use of excessive force on the part of custodial staff when dealing with incidents (escape attempts, physical violence between inmates, incidents of self-harming, etc.). According to the information provided by the facility's management, there had been a steady decrease in the number of incidents involving the use of force by custodial staff, particularly the use of batons, since 2012,⁷³ and no incidents in the first two months of 2017. The CPT welcomes this development. In the past few years, only one custodial officer had been subject to proceedings before a special court for staff in connection with an allegation of the use of excessive force against inmates, which had resulted in no disciplinary sanction being imposed. **The CPT would like to receive details of the case in question, including documentation relating to the investigation carried out.**

76. Inter-inmate violence did not appear to be a major problem;⁷⁴ however, the CPT's delegation received some allegations of bullying and intimidation, verbal conflicts, and some physical violence, often between groups of different ethnic origins. From the documentation consulted by the delegation, such conflicts were generally resolved without the use of force on the part of custodial staff.

Nevertheless, the delegation did note discrepancies between the number of incidents of inter-inmate violence recorded in the register on disciplinary sanctions (e.g. in 2016, at least seven incidents involving physical attacks by inmates), and the "incidents" records (for 2016 only two recorded incidents involving physical violence between inmates). The comprehensive recording of inter-inmate violence is fundamental to ensuring proper oversight by management. **The CPT recommends that the incidents records be properly maintained.**

77. As regards the practice of accommodating juveniles and young adults together, the CPT considers that it can be beneficial to the young persons involved, but requires careful management to prevent the emergence of domination and exploitation of more vulnerable inmates, including violence. A case-by-case assessment should be carried out in order to decide whether it is appropriate for a particular inmate, once he or she reaches the age of 18, to continue to be held in a juvenile institution or to be transferred to an adult institution, taking into consideration the remaining term of the sentence, the person's maturity, his or her influence on other juveniles, and other relevant factors. If young adult offenders are to remain in a juvenile institution, they should, as a minimum, be accommodated separately from juveniles. **The CPT recommends that these precepts be fully implemented at Turopolje Juvenile Correctional Facility and that they be duly taken into consideration when it comes time to allocate inmates to different groups in the renovated accommodation block and the new closed section.**

⁷³ The use of force by custodial officers was recorded as follows: 20 instances in 2012 (of which 14 involving batons), 12 in 2013 (five involving batons), 11 in 2014 (six involving batons), six in 2015 (three involving batons), and one instance in 2016 not involving batons.

⁷⁴ According to the statistics provided by the management, there were 13 incidents of inter-inmate violence in 2012, 22 in 2013, 13 in 2014, 18 in 2015, and two in 2016.

3. Living conditions and staffing

78. The inmates were temporarily accommodated in four rooms of a building previously used as a storage space.⁷⁵ The rooms were clean and well lit and ventilated but cramped: three out of the four rooms contained several unused beds which limited the space available. In addition, one room did not offer adequate living space.⁷⁶ Rooms were equipped with sufficient tables, chairs and lockable cupboards. Common sanitary facilities (WCs and showers) were located in one wing of the building, and were clean and well ventilated. A separate building housed a room for leisure activities with a number of table games and a small gym, as well as the canteen. The dining room and visiting facilities were located in spacious and airy premises decorated with mosaics made by the inmates, which were well equipped and furnished.

The accommodation building was being completely renovated with a view to providing accommodation in four separate groups, two on each of the first and second floors. Each group would have four rooms measuring some 24 m² accommodating three beds each, as well as common sanitary facilities, a sitting room and a telephone. In a separate part of the compound, fenced off from the main area, a new building was being constructed to accommodate the closed section and the diagnostic unit. **The CPT would like to be provided with information on the completed renovation and construction works. In the meantime, the Committee recommends that the management of Turopolje Juvenile Correctional Facility ensure that a minimum living space of 4 m² is provided for each inmate, and that unused beds are removed from the inmates' rooms.**

79. Pursuant to Article 7 of the LESJ, correctional measures require the establishment of an individualised programme for each inmate, on the basis of small groups organised according to age.⁷⁷ Such programmes should be developed in coordination with the relevant Social Care Centre and should include activities of an educational, vocational and extra-curricular/recreational nature. Juveniles who have not finished their primary education must attend school.⁷⁸ Inmates may also work (inside or outside the facility) as part of their individualised programme, for which they must be remunerated.⁷⁹

80. At Turopolje Juvenile Correctional Facility inmates had well developed individualised programmes and were assigned a "status" with respect to their adherence to their programme – A (very successful), B (successful), C (satisfactory), D (unsatisfactory) - each of which was associated with certain "privileges" (*pogodnosti*), such as permission for external leave or for additional telephone calls. Such privileges were authorised by the director in consultation with the multi-disciplinary team responsible for the inmate. The status of each inmate was reviewed on a monthly basis, and disciplinary sanctions involved downgrading to a lower status.

⁷⁵ The building, which had been renovated, had been used as temporary accommodation from September 2016.

⁷⁶ The room measured 25 m² and was accommodating 9 boys.

⁷⁷ See also Article 3 of the 2013 Rulebook.

⁷⁸ Article 28 of the 2013 Rulebook.

⁷⁹ Articles 33 and 34 of the 2013 Rulebook.

Inmates were offered a good selection of educational, vocational and recreational activities, and the school premises and areas used for vocational (woodworking, welding, food preparation and service) and recreational activities (arts and crafts, including the making of jewellery, puppets and toys, and mosaic work of a high quality) were of a good standard and well equipped. A small “music room” had also been set up on the grounds, where the inmates could listen to music and dance. Sports activities included the use of a gymnasium and outdoor areas, however the latter offered limited possibilities. In this connection, the CPT’s delegation welcomed the information that, along with the renovation and construction works, it was also proposed to create new sports grounds for volleyball, basketball and football. **The CPT would like to be kept informed of developments concerning enhancing sports activities for inmates at the Turopolje Juvenile Correctional Facility.**

81. At the time of the visit, the facility was staffed with 84 employees, including 26 “treatment” staff (including one psychologist, a social pedagogue, 14 educators and eight school teachers),⁸⁰ six vocational instructors and 46 custodial officers. Concerning the custodial staff, Article 45(3) of the LESJ stipulates that security, order and discipline are to be provided by justice department officials specially trained in the treatment of juvenile offenders.⁸¹ In this connection, it is positive that the chief custodial officer had a background in pedagogy. That said, according to the information provided to the CPT’s delegation, custodial staff generally did not receive special training for working with juveniles. **The CPT recommends that all staff at establishments for juveniles, including those with purely custodial duties, receive specialised training for their duties, both during induction and on an on-going basis, as well as benefiting from appropriate external support and supervision in the exercise of their duties.**

4. Health care

82. Article 14 of the 2013 Rulebook provides for medical treatment within the facility, hospitalisation in the Prison Hospital,⁸² dental treatment and “care for the mental health” of juveniles. Treatment in a civil hospital is also possible where treatment cannot be provided at the Prison Hospital. A juvenile must be examined within 24 hours of admission (or on the first working day if admission takes place on a weekend or holiday).⁸³ Further, Article 15 of the 2013 Rulebook provides that doctors must draw up a special report in the case of lesions observed on admission, as well as lesions brought to the doctor’s attention by the juvenile during his stay in the facility. The report must include any allegations made by the juvenile, as well as the doctor’s own conclusions, and must be sent to the director of the facility; a copy must be included on the inmate’s personal file. If the report concerns severe physical injuries, the director of the facility must forward the file to the Juvenile Court and the public prosecutor for juveniles. Such provisions are a welcome development. However, the obligation to report to a court and prosecutor should not be restricted to “severe physical injuries” (*teške tjelesne ozljede*); whenever injuries are recorded which are consistent with allegations of ill-treatment made by an inmate (or which, even in the absence of allegations, are indicative of ill-treatment), the report should be systematically brought to the attention of the relevant judge and prosecutor. **In this connection the CPT refers to its remarks and recommendations in paragraph 49.**

⁸⁰ Three of whom were working at Sisak.

⁸¹ Article 45(3) LESJ.

⁸² In 2016, three inmates had been hospitalised.

⁸³ Article 7 of the 2013 Rulebook.

83. The health-care service consisted of one doctor and three nurses working full time. However, they were also working for the adjacent semi-open prison, the infirmary being located between the two establishments with separate entrances for each.⁸⁴ There were no health-care staff present after 9 p.m., or on weekends or holidays; medication was distributed during these periods by custodial staff after being prepared by the health-care staff. A dentist visited the facility once a week. The infirmary itself was functional but lacked basic equipment. **The CPT refers to its recommendations concerning the provision of basic equipment in paragraph 45 and the distribution of medication in paragraph 51, which also apply to Turopolje Juvenile Correctional Facility.**

84. The delegation found that custodial staff were systematically present during examinations of inmates by health-care staff, whether inside the facility or during external consultations. The CPT notes that whereas the earlier Rulebook on the Execution of Correctional Measures in a Correctional Facility (from 2011) provided that non-medical staff could only be present during medical examinations at the express request of the medical staff,⁸⁵ the 2013 Rulebook contains no such provision.⁸⁶ **In the light of its standard on the confidentiality of medical consultations, the CPT recommends that all examinations of inmates by health-care staff be conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of non-health-care staff.**

85. The health-care staff kept a separate register of incidents of self-harm. The CPT's delegation noted that there had been a notable spike – 80 incidents – in 2012,⁸⁷ followed by an impressive decrease since: 36 instances in 2013; 10 in 2014; four in 2015, one in 2016, and three in the first three months of 2017. Such a development is to be welcomed. That said, there did not appear to have been any analysis of this phenomenon with a view to understanding the underlying reasons for it and preventing further increases in the incidence of self-harm in future; nor was there any policy or practice in place as to how to deal with self-harm, which appeared to be left to the discretion of the custodial staff. **The CPT invites the Croatian authorities to introduce a clear and comprehensive policy for dealing with self-harm, which should include a process of analysis and reflection in respect of data on instances of self-harm by juveniles in detention. The Committee would welcome the observations of the Croatian authorities on this issue.**

86. Further, the CPT notes that among the “serious disciplinary violations” listed in Article 54(3) of the 2013 Rulebook is “the deliberate endangering of one’s own health with the purpose of incapacitation for the performance of obligations” (point 17), which could be interpreted as including self-harm. According to the information received by the CPT’s delegation, juveniles could be subject to placement in the isolation cell for self-harming. In the CPT’s view, acts of self-harm may frequently reflect mental health problems and should be approached from a therapeutic rather than a repression-oriented standpoint. **On this basis, the CPT recommends that the Croatian authorities ensure that self-harm is not regarded as a disciplinary violation and that relevant legislation is amended accordingly.**

⁸⁴ Some 30 to 40 patients were received daily, including from the prison.

⁸⁵ Article 16, NN 84/11.

⁸⁶ Article 16 of the 2013 Rulebook.

⁸⁷ The average number of incidents of self-harm per year for the period from 2001 to 2011 was 30, with the highest number in 2002 (68 incidents) and the lowest in 2010 (nine incidents).

87. Juveniles may be subject, by court order, to compulsory psychiatric treatment or compulsory treatment for addiction while placed in the correctional facility.⁸⁸ At the time of the visit, two of the inmates were subject to compulsory treatment for addiction. The CPT's delegation was told that group therapy sessions on prevention of alcoholism were obligatory for all inmates, and that there were distinct group therapy sessions on prevention of drug addiction for specific inmates. In addition, one of the inmates was subject to a measure of compulsory psychiatric treatment, and eight others were taking psychotropic medication. Until 2014, a psychiatrist had come to the facility three times a week; however, since this arrangement had been terminated by the management, juveniles were now sent for out-patient treatment to the Psychiatric Hospital for Children and Adolescents in Zagreb (see paragraph 125), for which they regularly had to wait several weeks. Juveniles requiring hospitalisation for mental disorders were sent to the Prison Hospital.⁸⁹ **In the light of the number of juveniles taking prescribed psychotropic medication, the CPT recommends that the Croatian authorities ensure that a psychiatrist visits Turopolje Juvenile Correctional Facility at least once a week.**

5. Other issues

88. For juveniles in correctional facilities, contact with the outside world is governed by Articles 22 to 25 of the 2013 Rulebook. Arrangements in place at Turopolje Juvenile Correctional Facility were very good. Inmates were entitled to receive unlimited visits from family members and other persons considered to have a positive influence during regular visiting hours;⁹⁰ visits from lawyers were not limited in any way. Indoor visiting premises were bright and spacious, and in the summer visits could also take place outdoors.

89. Letters sent by inmates to government bodies and institutions, public authorities and human rights organisations were not subject to control or restriction, while all other letters were systematically checked by educators. Telephone calls were permitted during specified hours in the afternoons. Inmates could be granted leave outside the facility for up to four days for good behaviour, and exceptional leave (for up to seven days) was also possible for such reasons as death or serious illness of a family member, or for other occasions such as weddings.⁹¹

⁸⁸ Article 21 of the 2013 Rulebook.

⁸⁹ In 2016 two juveniles had been hospitalised for psychiatric treatment.

⁹⁰ Visits took place between 3 p.m. and 6 p.m. on Wednesdays, and on weekends and holidays, from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m.

⁹¹ Articles 48 and 49 of the 2013 Rulebook.

90. Articles 54 and 55 of the 2013 Rulebook set out the disciplinary violations and sanctions applicable to juveniles in correctional facilities. Sanctions include: verbal warning, reprimand, prohibition on accessing money for up to 30 days, deprivation of some or all privileges for up to 90 days, and “segregation in a special area” (*izdvajanje u posebnu prostoriju*) for up to seven days (in conditions akin to solitary confinement).⁹² Juveniles placed in segregation must be examined by a doctor within 12 hours, and the doctor must visit them at least once a day.⁹³ Juveniles subject to disciplinary proceedings have a formal right to be heard during those proceedings, and to make an appeal before a court within 8 days.⁹⁴ The delegation noted that disciplinary proceedings could take place some days or weeks after the incident occurred: by way of example, in a recent case of inter-inmate violence occurring on 3 March 2017, the disciplinary hearing did not take place until 17 March 2017. Otherwise, the disciplinary procedure appeared to function adequately and was well documented. The CPT recalls that disciplinary proceedings are by their nature summary proceedings and that their function is to respond as quickly as possible after the alleged offence has been discovered. The sooner a necessary sanction is imposed the more likely it is to be effective. Waiting for weeks to hold the hearing and impose any penalty renders the procedure ineffective. **The CPT recommends that disciplinary charges be adjudicated on as soon as possible after the commission of the alleged disciplinary offence.**

According to the documentation consulted by the CPT’s delegation, segregation in a special area was relatively rare, with an average of 13 instances annually in the years 2013 to 2016. The duration of the sanction was normally less than 6 hours, with rare occasions up to 12 hours. The management of the correctional facility explained that it was generally not in favour of imposing segregation and that where necessary inmates were sent instead to the closed unit at Sisak. The CPT welcomes such an approach and recalls that there is an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles.⁹⁵ The Committee fully endorses this approach. **The CPT recommends that the Croatian authorities formally abolish the imposition of a measure of “segregation in a special area” (*izdvajanje u posebnu prostoriju*) on juveniles as a disciplinary punishment and that the relevant legislation be amended accordingly.**

91. Juveniles could also be placed in isolation as a security measure for up to 24 hours, whenever their behaviour presented a risk to their own or another’s security or a risk of damage to property.⁹⁶ From the information gathered by the CPT’s delegation, resort to this measure did not appear to be excessive and the duration was generally not more than a few hours. This is positive as the CPT considers that a juvenile should not be placed for more than a few hours in a “calming down” room, and should be under enhanced supervision for the duration of the measure. A room had been set aside in the temporary accommodation block for such isolation measures. The room, equipped with a bed, measured approximately 8 m² and was adequately lit and ventilated.

⁹² The Rulebook refers to confinement in a “special area”, with the right to three hours of outdoor exercise per day and to keep personal clothing, personal hygiene items and (text)books. See also Article 43 of the House Rules.

⁹³ Article 60 of the 2013 Rulebook.

⁹⁴ Article 57 of the 2013 Rulebook; Article 48(2) of the LESJ.

⁹⁵ See, in particular, Rule 45(2) of the revised United Nations Minimum Rules on the Treatment of Prisoners (“Nelson Mandela Rules”).

⁹⁶ The Rulebook refers to placement in a “special area”. Articles 52 and 53 of the 2013 Rulebook.

92. Effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments. Juveniles should have avenues of complaint open to them, both within and outside the establishment's administrative system, and be entitled to confidential access to an appropriate authority.

Pursuant to Article 51 of the 2013 Rulebook, juveniles placed in a correctional facility can submit complaints to the director, and the director has the obligation to respond within 3 days. If the director's decision is not to the juvenile's satisfaction, he can request, in writing and via the management of the correctional facility, a decision by the juvenile council of the competent county court as to the validity of his complaint. The juvenile is entitled to legal assistance for such proceedings.⁹⁷ As referred to in paragraph 89 above, letters from inmates to government bodies and institutions, public authorities and human rights organisations were not subject to control or censorship.

The CPT's delegation learned that there was no formal complaints procedure in place and no record of complaints addressed to the management; it was told that, in practice, "juveniles could complain to the staff at any time". The juveniles interviewed by the delegation were generally aware that they could address a written complaint to the management; however, several expressed a reluctance to make written complaints owing to a perceived risk of reprisals, particularly the loss of privileges. The CPT considers that it could be beneficial to appoint a designated liaison officer for juveniles who is independent of the management and charged with safeguarding the wellbeing of all juveniles; the role of such an officer would be to investigate any complaints (whether from juveniles or staff), with a view to making general recommendations to improve current policy. **The CPT recommends that the Croatian authorities establish an effective complaints procedure at the Turopolje Juvenile Correctional Facility and refers to its remarks and recommendations in paragraph 69.**

93. Article 97 of the LJC provides for court oversight of correctional measures. The director must send a report to the competent court, as well as the public prosecutor, every three months, concerning every juvenile inmate's progress; where appropriate, the report may propose the cessation of the measure or the imposition of a less restrictive correctional measure. The competent judge and the prosecutor must visit the institution at least twice a year, and during the course of such visits must meet with the inmates and staff and examine the records. If problems are observed, the judge must immediately notify the entities responsible for the supervision of the execution of correctional measures, as well as the management of the establishment concerned. From the information provided to the CPT's delegation, it appeared that judges and prosecutors regularly visited the establishment. Inspections were also carried out by external experts engaged by the Ministry of Justice, and there had been such an inspection some ten days prior to the visit of the CPT. **The Committee would like to receive full details for the years 2014, 2015 and 2016 of visits to the Turopolje Juvenile Correctional Facility by judges and prosecutors, and representatives of the Ministry of Justice, including the number of visits, reports drawn up, and action taken on proposals made.**

⁹⁷ Article 51 of the 2013 Rulebook; Article 100(1) and (2) of the LJC.

94. Neither the House Rules nor any other written information was provided to juveniles on their arrival at the establishment. Juveniles were informed orally by staff about their rights and obligations on arrival at the diagnostic centre in Sisak, and they could request to see the House Rules or the 2013 Rulebook at any time during their stay in the correctional facility. The juveniles interviewed by the delegation confirmed that they were aware that they could request from staff the House Rules and 2013 Rulebook. That said, the CPT does not consider such a system to be an adequate substitute for a comprehensive information leaflet, which sets out in a straightforward and non-legalistic manner the main features of the establishment's regime, the inmates' rights and duties, disciplinary violations and sanctions, complaints procedures, etc. **The CPT recommends that a comprehensive information leaflet be provided to all inmates on their arrival at the Turopolje Juvenile Correctional Facility. Further, inmates who have difficulties in understanding the leaflet should be provided with appropriate assistance.**

95. In terms of external monitoring, the office of the Croatian Ombudsman for Children,⁹⁸ which publishes an annual report on its activities, visited the facility in 2014 and 2016.

⁹⁸ Set up pursuant to the Law on the Ombudsman for Children (*Zakon o pravobranitelju za djecu*, NN 96/03), as an independent authority answerable solely to Parliament, with the exclusive objective of the protection, monitoring and promotion of the rights and interests of children.

D. Hospital for Persons deprived of their Liberty

96. The CPT's delegation visited for the third time⁹⁹ the Hospital for Persons deprived of their Liberty ("Prison Hospital") in Zagreb, which continues to provide somatic and psychiatric in- and out-patient care for sentenced and remand prisoners from all over Croatia. The hospital occupies a three-storey building with wards on the first and second floors, in each case divided into two separate wings separated by a custodial staff station and a stairway.

With an official capacity of 126, the Prison Hospital was accommodating 106 adult patients on the day of the visit,¹⁰⁰ including 37 patients in the "acute" psychiatry ward¹⁰¹ and 33 forensic psychiatric patients.¹⁰² Six female patients, including four psychiatric patients,¹⁰³ were accommodated separately from the male patients in two rooms on the second floor (see paragraph 104 below).¹⁰⁴

97. In general, patients met by the delegation spoke positively of the clinical staff.

However, a number of allegations were received of ill-treatment of patients by custodial staff. The alleged treatment consisted of pushes, slaps and punches as well as verbal abuse and occurred primarily at night, when patients' rooms had to be unlocked and the patients escorted to the sanitary facilities. In this regard, the CPT's delegation observed that the hospital's corridors were not equipped with CCTV cameras, an important additional means to ensure security in common areas and prevent ill-treatment.

⁹⁹ Previous visits took place in 1998 (see paragraphs 144 to 162 of CPT/Inf (2001) 4) and 2012 (see paragraphs 76 to 88 of CPT/Inf (2014) 9).

¹⁰⁰ One other patient was being treated in a civilian hospital.

¹⁰¹ Patients in the "acute" psychiatric ward were in principle those transferred from other penitentiary establishments for psychiatric treatment; patients in remand detention placed in the hospital under Article 551 of the Criminal Procedure Code (see paragraph 116) were also accommodated on this ward.

¹⁰² For purposes of the Prison Hospital, "forensic" psychiatric patients were those subject to mandatory psychiatric treatment under Article 68 of the Criminal Code (see also paragraph 115).

¹⁰³ Two were subject to mandatory psychiatric treatment under Article 68 of the Criminal Code, one was in remand detention awaiting a court decision as to her criminal irresponsibility under Article 551 of the Criminal Procedure Code and one was being treated as an acute psychiatric patient.

¹⁰⁴ The Prison Hospital also had wards for respiratory and infectious diseases, internal medicine, and surgery.

98. The delegation learned that there had been an incident of alleged physical violence (punches to the head and nose) against a patient, O.B., by a member of the custodial staff two days prior to the visit of the CPT's delegation (i.e. on 12 March 2017). The incident had apparently happened in the context of the patient's request to be allowed to go to the toilet. Documentation in the incidents reports consulted by the delegation contained an account of the allegations of the patient concerned, an inconclusive doctor's certificate attesting to a lesion observed on the patient's nose, and partially corroborating information provided by the patient's roommates in a handwritten note. The patient in question had been transferred to another prison before the arrival of the delegation. The prison management told the delegation that they had been informed of the incident by the chief custodial officer and had ordered an inquiry. The delegation was provided with a copy of the results of the investigation in which the chief custodial officer, following consultation of the written reports and interviews with O.B., his roommates and the custodial staff concerned, concludes that the incident arose as a result of O.B.'s provocative behaviour with a view to obtaining "material benefit and privilege" and that the custodial staff "had not exceeded their authority but had acted in accordance with the House Rules of the Prison Hospital, the Rulebook governing the Work of the Security Department and the Law on the Execution of Criminal Sanctions". Based on its own findings, the delegation considers that the investigation conducted into this case has not been effective. In particular, no explanation was given as to why the account of the alleged perpetrator was lent more credence than the allegations by the inmate; moreover, no reference is made to the extent to which force was used, or not, by the custodial officers, nor is any explanation provided as to the visible lesion on O.B.'s nose referred to in the doctor's report.

99. The CPT recommends that the management of the Prison Hospital be more vigilant in their oversight of custodial staff and in following up on patient welfare and that they reinforce the message to custodial staff that all forms of ill-treatment, including verbal abuse, are prohibited and will be subject to appropriate sanctions. In addition, the CPT recommends that corridors and common areas be equipped with CCTV cameras and that all complaints relating to ill-treatment by custodial staff be the subject of an independent, in-depth and properly documented investigation.

100. In this connection, the CPT's delegation was somewhat dismayed to be told by the medical staff that, while they acknowledged that they had an obligation to record injuries and allegations, there was no obligation to record their considerations concerning the consistency between any allegations made and the objective medical findings. **The CPT refers to its recommendation in paragraph 49.**

101. The delegation also received several allegations concerning inter-patient violence, and clinical staff acknowledged that more vulnerable ("weaker") patients could be subjected to intimidation or physical violence by other patients. In some cases the patients would turn to clinical staff and/or the prison management for protection.¹⁰⁵ From the documentation consulted by the CPT's delegation, it appeared that few complaints on this issue had been received from inmates, and those that were did not always contain the name of the alleged perpetrator, and were apparently not followed up.

¹⁰⁵ By way of example, patients who felt threatened would sometimes ask to keep their cigarettes in the nurses' office.

The Committee recommends that the management of the Prison Hospital put in place a comprehensive policy to prevent inter-patient violence and intimidation. This should include on-going monitoring of patients' behaviour by all staff (including the identification of likely perpetrators and victims), proper reporting of confirmed and suspected cases of inter-patient intimidation and violence and thorough investigation of all incidents.

102. The CPT's delegation also met a patient, R.M., who had sustained severe head injuries and brain damage during an incident of inter-patient violence in Lepoglava prison two years earlier. **The CPT would like to be informed of the outcome of the investigation and any proceedings arising out of the serious incident at Lepoglava Prison.**

103. Regarding living conditions, at the time of the visit refurbishment works to replace windows and doors in the establishment, renovate the roof and facade and improve the heating system were being carried out. The CPT welcomes the efforts of the penitentiary authorities to upgrade the living conditions in the Prison Hospital. That said, the CPT's delegation noted that the works underway were not expected to resolve the inadequate living space in some rooms (for example, several rooms held six persons in 21.5 m² or less)¹⁰⁶ or the lack of integral sanitary facilities in all but one of the rooms. Moreover, as observed during the 2012 visit, custodial staff reportedly did not always respond in a timely manner to the patients' calls, particularly at night, with the result that patients had to resort to portable urinals or to rubbish bins to comply with the needs of nature. **The CPT reiterates its recommendation that all patients in the Prison Hospital be guaranteed ready access to proper toilet facilities at any time, including at night. Further, all patients should be guaranteed a minimum of 4 m² of living space per person in multiple-occupancy rooms (and preferably much more), and patients' rooms should accommodate no more than four beds.**

104. Female patients were accommodated in two rooms on the second floor in an area next to the custodial staff station. The CPT's delegation observed that the male patients in the adjacent ward had to pass regularly through the women's ward, compromising the privacy of the female patients. The prison management, on being alerted to this problem by the delegation, expressed a willingness to consider alternative options for accommodating the female patients. **The CPT would like to receive information on the measures taken by the Prison Hospital management to resolve this matter.**

105. Furthermore, owing to the insufficient capacity in the psychiatric wards, psychiatric patients were accommodated in the other wards, in some cases in separate rooms, but also in rooms with other patients. The CPT's delegation was told by the management that, when necessary to accommodate incoming psychiatric patients, psychiatric patients whose condition was considered more stable were moved to the other wards. The delegation noted that this complicated the work of the psychiatrists, who then had to seek out their patients on other wards. In the light of the staffing situation referred to in paragraph 109, the CPT has misgivings concerning this practice and, in particular, the potential disruption it could represent with respect to the psychiatric treatment of the patients concerned. **The CPT would like to receive the observations of the Croatian authorities on this issue.**

¹⁰⁶ As in other penitentiary establishments, the standard of 4 m² living space per prisoner is guaranteed by Article 74(3) of the LECS. See also paragraph 34.

106. There was no designated smoking area in the Prison Hospital; instead, patients were accommodated in smoking and non-smoking rooms. The CPT's delegation noted with dismay that the room accommodating patients with respiratory illnesses was particularly smoke-filled, and that some non-smoking patients had to share rooms with smokers. The issue of passive smoking was the object of complaints by non-smoking patients, according to the clinical staff. **The CPT recommends that the Prison Hospital management devise a clear policy regarding smoking, enabling persons who are non-smokers to be accommodated in smoke-free areas. Further, designated smoking areas should be set up within the hospital.**

In addition, many of the patients were only issued with pyjamas and had no clothing adequate for using the exercise yard in cold weather. As a result, some patients did not take part in outdoor exercise for months at a time. **The CPT reiterates its recommendation that patients should wear normal clothes and that appropriate clothing should be provided for outdoor exercise.**

107. On a more positive note, the CPT's delegation was pleased to observe that a lift had been installed to facilitate the access of patients with physical disabilities to different parts of the building and to the exercise yard.¹⁰⁷ Further, the yard, which now had green areas, seating and some sports equipment, had been enlarged to 140 m² and equipped with a ramp for wheelchairs. That said, the yard still had no shelter to protect patients against rain and sun. **The CPT recommends that the exercise yard of the Prison Hospital be equipped with a sheltered area.**

108. The CPT's delegation noted that the staffing situation had deteriorated considerably since 2012. According to the Prison Hospital management, this was due in part to the reduction of staff positions for budgetary reasons, but more particularly to the difficulties in recruiting psychiatrists and nurses. At the time of the visit, the number of doctors had decreased from 18 to 11: two psychiatrists, four general practitioners, a surgeon, an internist, a pulmonologist, a radiologist, and a physical medicine and rehabilitation specialist. According to the information provided to the CPT's delegation, there were a further 10 vacant posts (six psychiatrists,¹⁰⁸ an anaesthesiologist, an internist, an infectologist, and the head of the pulmonary/infectious diseases ward). There were 23 nurses working at the Prison Hospital (as compared to 27 in 2012), with a further 13 posts vacant. There was also a physiotherapist.

In addition, the "treatment" department was composed of nine staff, including a psychologist, two occupational therapists and three expert associates (a pedagogue, a sociologist, and a theologian). There was no social worker, the psychologist taking on many of the tasks a social worker would normally carry out (assisting with contacts with family, lawyers and the administration, etc.).

107 The installation of the lift was in line with the CPT's recommendation in paragraph 79 of CPT/Inf (2014) 9 and with Constitutional Court decision U-III/647442009 of 3 November 2010.

108 One of the psychiatrists had been on sick leave for two years.

109. The situation on the psychiatric wards had particularly deteriorated, with only two psychiatrists (as compared to five in 2012) to treat some 70 psychiatric in-patients as well as dealing with considerable numbers of out-patients sent from other penitentiary establishments for psychiatric assessment and treatment. A new shift system had been introduced in 2016, whereby the two psychiatrists worked alternate 12-hour day shifts and 12-hour night shifts with breaks of one to two days in between, so that in a psychiatric ward there might be no psychiatrist present during the day for up to three days. The CPT's delegation was told that the relatively low salaries and deterioration in working conditions made it exceedingly difficult to recruit psychiatrists, both inside and outside the penitentiary system. By way of example, the delegation was told that salaries were lower than in public hospitals and had actually been reduced, since duty shifts were no longer paid, but instead doctors were required to take compensatory leave (which further exacerbated the lack of sufficient medical presence on the wards). To compound the problem, there was a serious problem with psychiatrists leaving the country to take up better remunerated positions abroad.

During the day shift there were only two or three nurses present in each of the two psychiatric wards; from 3:30 p.m. to 7:30 p.m. there were two or three nurses for the entire hospital, and from 7:30 p.m. to 7:30 a.m. there were only two nurses for the entire hospital. There were no auxiliary staff.

In the light of the large numbers of psychiatric patients in the Prison Hospital, **the CPT recommends that the Croatian authorities recruit at least three more psychiatrists as a matter of priority. Further, the system of psychiatrists working alternate 12-hour day and night shifts should be reviewed with a view to increasing their therapeutic input during the day. Similarly, the number of nurses should be increased to ensure the presence of at least four nurses on each of the psychiatric wards during the day and at least two nurses dedicated to the psychiatric wards during the night. In this context, the CPT invites the Croatian authorities to strive to render employment in the Prison Hospital more attractive, including financially.**

110. It is positive that custodial staff¹⁰⁹ no longer carried batons while on duty on the wards and that such equipment was kept in a designated room. However, as in 2012, custodial staff were clearly present on all the clinical wards and were actively involved in the restraint of patients (see below, paragraph 114). Once again, this situation appeared to be related both to the lack of ward-based clinical staff, and to the conception of the regime itself.

The CPT recommends that, in line with the increase in the numbers of nurses and psychiatrists referred to in paragraph 109, there should be a fundamental review of the functioning of the clinical areas of the hospital, with a view to ensuring that custodial officers called upon to intervene in security related incidents always work under the supervision of the health-care staff.

¹⁰⁹ At the time of the visit, the complement of custodial staff was 46, with a further 20 posts vacant.

111. From discussions with clinical staff and patients, the CPT's delegation gained the impression that the somatic care provided to patients remained, as in 2012, generally adequate. It was also positive that custodial staff were not present during consultations between patients and doctors. However, since the 2014 Law on Mandatory Health Insurance, the clinical staff had similar problems to their colleagues in other penitentiary establishments, in that they had to contact external doctors for certain prescriptions, referral slips for transfers to hospitals, and specialist consultations and analyses. In this connection, **the CPT refers to its recommendation in paragraph 42.**

112. Regarding the treatment of psychiatric patients, supplies of medication appeared adequate and there was no indication of overuse of medication. There were no individual treatment plans. Therapeutic activities were limited, though efforts were made to provide male forensic psychiatric patients with psycho-social rehabilitative activities (including psychotherapy, group therapy focusing on alcohol and gambling addiction and post-traumatic stress disorder and occupational therapy) as well as workshops on art, the theatre and computing. Representatives of civil society organisations and different religions also visited the Prison Hospital.

Female patients did not participate in such group activities, and benefited from individual therapy sessions only; in addition, they could play board games, read books from the establishment's library and attend drama performances put on by the other patients.

As observed during the 2012 visit, the direct therapeutic input of medical and nursing staff was limited owing to the inadequate staffing levels (see also paragraph 109 regarding staffing).

The CPT recommends once again that further efforts be made to develop the range of rehabilitative psycho-social activities and to ensure that all psychiatric patients may access them. In this connection particular attention should be given to the situation of female patients, who could, for example, be allowed to participate in some of the activities offered to male patients, under appropriate supervision. Where required, additional qualified staff should be recruited. Further, individual treatment plans should be established for all patients.

113. Regarding resort to means of restraint, seclusion was not used, and the extent to which chemical restraint was used was not clear from the medical records consulted. The Prison Hospital had drawn up new guidelines in 2015 concerning the use of mechanical restraint, as well as a specific protocol, which followed to an extent the CPT's revised standards on *Means of restraint in psychiatric establishments for adults*.¹¹⁰ Regrettably, the guidelines lacked detailed indications concerning the frequency of reviews of the measure by the doctor/psychiatrist; the necessity for continuous supervision, including the permanent presence of a member of the clinical staff; the necessity for debriefing patients after termination of the measure; and the implications of applying means of restraint to psychiatric patients who were being treated in the hospital on a voluntary basis (see also paragraph 115).

¹¹⁰ CPT/Inf (2017) 6, available on the CPT website and reproduced in Appendix III.

The CPT notes the establishment of a dedicated room for mechanical restraint. The room, equipped with a single bed, cloth straps (five-point fixation) and CCTV surveillance, measured some 8 m² and had sufficient natural light and ventilation. The hospital's guidelines on mechanical restraint explicitly provided for the right of patients under restraint to have access to toilet facilities. However, from the consultation of the documentation it was clear that patients were regularly put in diapers when fixated and not released to use the toilet. According to the clinical staff, this could occur not only when there were medical indications, but also when there were insufficient custodial staff available to escort the patient to the toilet. This is unacceptable and could be considered to amount to degrading treatment. **The CPT reiterates its recommendation that steps be taken to ensure that patients subjected to mechanical restraint are able to access toilet facilities when necessary.**

Custodial staff kept an informal list of such measures; however, there was no dedicated register. In the 62-week period since 1 January 2016 there had been a total of 76 instances of resort to mechanical restraint for the whole hospital, for an average of 1.2 instances per week. Records were generally well kept, with a few cases of missing dates or incomplete information on the reason(s) behind the measure. As for duration, it was not uncommon for patients to remain 12 hours or more under mechanical restraint without interruption, and two cases were found lasting 41 hours and 51 hours (albeit with release for short periods for using the toilet, meals, personal hygiene, etc.). Patients under mechanical restraint did not benefit from the continuous presence of a member of the clinical staff, and the limited presence of psychiatrists appeared to contribute to patients being restrained longer than required. **The Committee recommends that a dedicated register be established for recording the use of all forms of restraint (see also the recommendation in paragraph 114 below).**

114. The CPT's delegation noted once again that custodial staff were always directly involved in applying means of mechanical restraint and could even initiate the measure. This is unacceptable. The CPT wishes to stress that the application of mechanical restraint to psychiatric patients should always be authorised by a doctor and performed by properly trained clinical staff. The hospital's guidelines referred to above provide explicitly that custodial staff may only intervene at the express request of the medical staff, and may only resort to the use of force on patients with a view to preserving order and security, as in other penitentiary establishments.¹¹¹

The CPT recommends that the Croatian authorities ensure that the application of mechanical restraint is always authorised by a doctor and performed by properly trained clinical staff, that patients be placed under mechanical restraint for the shortest possible time, and that a qualified member of the clinical staff be permanently present in the room with the patient in order to maintain a therapeutic alliance and provide necessary assistance.

In addition, the Committee recommends that all other principles and minimum safeguards concerning the use of means of restraint, including chemical restraint, set out in the CPT's revised standards on restraint (CPT/Inf (2017) 6), and reproduced in Appendix III to this report, be applied in the Prison Hospital and reflected in its guidelines.

¹¹¹ In accordance with Article 142 of the LECS and the Rulebook on the use of means of force (NN 48/2009).

115. The CPT notes that patients subject to the security measure of compulsory psychiatric treatment were placed in the Prison Hospital by decision of the court under Article 68 of the Criminal Code,¹¹² while patients who developed mental disorders during their imprisonment were transferred from their prison of origin and treated in the acute psychiatric ward, usually with their consent. In the case where patients of this latter category expressed a lack of consent, the procedure for involuntary placement of persons in psychiatric institutions under the 2014 Law on the Protection of Persons with Mental Disorders (LPPMD) would be applied (see also paragraph 122).¹¹³ According to the hospital management, such cases were rare, and at the time of the visit all the patients in the acute psychiatric ward were considered to be voluntary. Nevertheless, it transpired that several of those patients had been subjected to mechanical restraint, and also that it was not infrequent for incoming patients to be placed under restraint on arrival. The CPT recalls its longstanding standard on this issue (see also paragraph 155) and **recommends that where the application of means of restraint to a voluntary patient is deemed necessary and the patient disagrees, the legal status of the patient be reviewed; patients who do not fulfil the criteria for involuntary placement should be returned to their establishments of origin.**

116. The LPPMD provides for persons deemed to be criminally irresponsible in criminal proceedings (pursuant to Article 24 of the Criminal Code) to be placed in a civil psychiatric institution, and the majority of such patients were accommodated in forensic psychiatric sections in civil psychiatric hospitals around the country. The Prison Hospital regularly accommodated persons in remand custody awaiting a court decision as to their criminal irresponsibility and placed in the hospital under Article 551 of the Criminal Procedure Code.¹¹⁴ The CPT's delegation was told that even after the court decision determining them to be criminally irresponsible was delivered, such patients could remain in the Prison Hospital for some months, and in one case, apparently since 2015, while awaiting transfer to a civil psychiatric hospital. To the extent that the Prison Hospital clearly had neither the capacity nor the resources for the treatment of such patients, **the CPT would welcome the observations of the Croatian authorities on this matter.**

117. Patients' contact with the outside world was regulated as for inmates in other penitentiary establishments. Patients who had been sentenced were entitled to visits twice per month for one hour, which is not sufficient. **The CPT refers to its remarks and recommendation in paragraph 64 in this regard.** Once a year, a special programme was organised for children to visit their parents, within the context of an annual week of awareness for children of incarcerated parents.¹¹⁵ In addition, patients had access to a pay phone in each ward.

¹¹² Article 68 of the Criminal Code provides for the imposition by the court of the security measure of compulsory psychiatric treatment where the criminal offence committed is subject to one year or more of imprisonment, where the person's state at the time of committing the offence was one of substantially diminished responsibility, and where there exists a danger that the underlying mental disorders of the person may induce the perpetration of another serious criminal offence. Where the measure is accompanied by a criminal sentence, it is served in the Prison Hospital under Article 20(4) of the Law on the Execution of Criminal Sanctions.

¹¹³ Article 4 of the 2014 Law on the Protection of Persons with Mental Disorders.

¹¹⁴ Under Article 551 of the Criminal Procedure Code, where the prosecution has requested in the indictment that the defendant's criminal irresponsibility be determined, the defendant may be remanded in custody if there exists the probability that he/she may commit a further serious criminal offence, and where such "dangerousness" is established in consultation with an expert psychiatrist. In such cases the defendant must be sent to the prison hospital or another appropriate psychiatric institution. At the time of the visit there were 16 such patients.

¹¹⁵ In association with the Ombudsman for Children and the network of Children of Prisoners Europe. See also <http://childrenofprisoners.eu/fr/2014/11/20/the-office-of-the-ombudsman-for-children-croatia/>.

118. Patients could send complaints in sealed envelopes to the management or to outside bodies, for which they had access to a locked complaints box which could only be opened by a staff member of the treatment department and the chief custodial officer, acting jointly. The CPT's delegation noted that copies of a specific form for sending complaints (or requests) to the management were available on each ward, and that all letters of complaint were registered before being dispatched. That said, few complaints had actually been filed. From the information gathered by the CPT's delegation, there did not appear to be problems with sending confidential letters to outside bodies.

119. In terms of monitoring visits, the Prison Hospital had been visited by the NPM in 2013.

120. The Prison Hospital remained under the authority of the Ministry of Justice and all its staff were employees of the prison service. According to the clinical staff, there was some oversight by the Ministry of Health, although the situation was far from ideal. For example, medical staff were obliged to participate in professional training courses in their own time as these were not provided for as part of their employment. **The CPT refers to its remarks and recommendation in paragraph 43.**

E. Establishments under the authority of the Ministry of Health

1. Preliminary remarks

121. The CPT's delegation visited for the first time the Psychiatric Clinic of the Zagreb Clinical Hospital Centre and the Psychiatric Hospital for Children and Adolescents, both in Zagreb. In addition, it examined the situation of patients in the Psychogeriatric Department of Vrapče Psychiatric Hospital, as well as following up on the construction of a new forensic psychiatric unit.

122. The legal framework regarding involuntary hospitalisation of a civil nature has undergone a number of changes with the adoption of the new Law on the Protection of Persons with Mental Disorders (LPPMD), which came into force on 1 January 2015¹¹⁶ and replaced the former 1997 Law.¹¹⁷ The new law has introduced a number of new safeguards for psychiatric patients. These include: a requirement for the written consent of all voluntary patients; a revised procedure for involuntary hospitalisation which includes an obligatory oral hearing of the patient by the court; revised provisions on the use of means of restraint including a reporting obligation for all psychiatric establishments to the State Commission on the Protection of Persons with Mental Disorders; and a new provision concerning consent for electroconvulsive therapy (ECT). For further details, see paragraphs 138, 144, 155 and 158.

123. The CPT's delegation was pleased to observe at Vrapče Psychiatric Hospital that construction works were underway to house the new 70-bed Forensic Psychiatric Unit. The new building will provide improved living space and conditions for patients and should address the concerns raised by the CPT during its previous visits in 2003 and 2007.¹¹⁸ The works were expected to be finished by the end of 2017.

During the visit, the CPT's delegation focused on the 87-bed Psychogeriatric Department, which had not been visited before. The department consists of three wards and was accommodating 70 patients at the time of the visit: 10 in "Intensive Care", 21 in "Social-therapeutic", and 39 in "Chronic", including 11 in the Palliative Care unit. None of the patients present during the visit were subject to involuntary hospitalisation. Nonetheless, the CPT's delegation was concerned to observe the presence of a number of patients with severe cognitive deficiencies who were no longer in a position to consent to psychiatric treatment and who were not under any form of guardianship. To the extent that such patients were not allowed to leave the hospital, they could be considered to be *de facto* deprived of their liberty without benefiting from the safeguards provided by Croatian law (see paragraph 156 for further details).

¹¹⁶ *Zakon o zaštiti osoba s duševnim smetnjama*, NN 76/14.

¹¹⁷ See paragraph 117 of CPT/Inf (2007) 15.

¹¹⁸ See CPT/Inf (2008) 29, paragraph 108, for the report on the 2007 visit.

124. The Zagreb Clinical Hospital Centre (*Klinički Bolnički Centar* - KBC) is the largest hospital complex in Croatia, and is associated with the Medical Faculty of the University of Zagreb as a clinical teaching institute. It was opened in 1942 as a foundation hospital and has over 30 clinics, departments and other facilities, which are located at six different sites in Zagreb, with the majority in the Rebro district, several kilometres from the city centre. The Psychiatric Clinic (located at the Rebro site), the focus of the CPT's visit, comprises four divisions specialised in schizophrenia and other psychotic disorders, mood disorders, anxiety and somatoform disorders, and personality and eating disorders, as well as an emergency admission unit and crisis centre. The Clinic has 53 beds for in-patients, including two separate 10-bed closed units for female and male patients. At the time of the visit, the Psychiatric Clinic was operating at full capacity, including 20 patients in the closed units, all of whom were considered voluntary. From the observations made by the CPT's delegation, in particular concerning restrictions on leaving the closed units, some patients appeared to have been *de facto* deprived of their liberty (see paragraph 155 for further details).

125. The Psychiatric Hospital for Children and Adolescents, located in a historical building near the centre of Zagreb, was constructed as an orphanage in the first decades of the last century and refurbished as a hospital in the 1970s. The hospital is specialised in the diagnosis and treatment of patients aged from 6 up to 18 years suffering from different forms of mental disorder. Besides the 37-bed closed hospital ward – the only closed facility for juvenile psychiatric patients in Croatia – the hospital also has a day hospital, a specialist consultation department, a neurological day clinic specialised in electroencephalogram (EEG) examination, and an emergency admission unit open on a 24-hour basis. At the time of the visit, the closed hospital ward was accommodating between 25 and 30 patients ranging in age from 8 up to 18 years, of whom some 55 per cent were female.¹¹⁹ Written consent to the placement of the young patients had been provided by parents or guardians.

2. Ill-treatment

126. The CPT's delegation received no allegations and found no other indications of ill-treatment of patients by staff at any of the psychiatric establishments visited. On the contrary, patients generally expressed their appreciation of the staff, and the atmosphere on the wards visited was relaxed.

Further, inter-patient violence did not appear to be a problem at any of the institutions visited.

3. Patients' living conditions

127. In the Social-therapeutic and Chronic wards of the *psychogeriatric department of Vrapče Psychiatric Hospital* patients were accommodated in rooms with two to six beds. Most rooms did not have integrated sanitary facilities. Living space was not always sufficient; by way of example, one of the rooms in the Social-therapeutic ward was accommodating six beds in a space of only 21.5m². The Intensive Care ward consisted of a large dormitory with 23 beds, which accommodated both male and female patients. The building was generally in a dilapidated state, with damaged walls (falling plaster), and common sanitary facilities in a particularly poor state of repair (rusted fittings, peeling paint, etc.).

¹¹⁹ The CPT's delegation visited the establishment over two days, during which time a number of admissions and discharges took place.

The CPT's delegation was informed that the current building was to be completely reconstructed, with works to begin within the two months following the visit. In this connection, the CPT notes that the 2011 "Rulebook on minimal conditions with respect to space, staffing and medical and technical equipment" relevant to health-care institutions, and its subsequent amendments,¹²⁰ establish specific norms concerning, *inter alia*, living space per patient and the maximum number of beds per room. In particular, according to the Rulebook, the premises must ensure at least 6 m² for each patient bed. Further, patients' rooms may accommodate a maximum of four beds (three in the case of palliative care), and must have integral sanitary facilities (bath/shower, WC). **The CPT trusts that these standards will be taken into account in the context of the reconstruction of the Psychogeriatric wards of Vrapče Psychiatric Hospital. Further, male and female patients should be accommodated separately.**

128. The male and female closed units of the *Psychiatric Clinic of the KBC Zagreb*, separated by a corridor, were each composed of a six-bed room (approximately 50 m²) and a four-bed room (approximately 32 m²). In the men's unit both rooms were equipped with CCTV, and the larger room had an observation window from which the patients could be observed from the nurses' station. In the women's unit, which was otherwise identical, only the smaller room was equipped with CCTV cameras. All rooms were clean, furnished with tables and chairs and personal lockers, and well ventilated; they also had access to adequate natural light and artificial lighting. Each unit had two common sanitary annexes with a WC, washbasin and shower, one of which was equipped for disabled patients. **The CPT recommends that the norms stipulated in the Rulebook to the effect that patients' rooms should accommodate no more than four beds and should be equipped with integral sanitary facilities be respected.**

129. Patients in each of these units had access to a common room (approximately 16 m²) looking onto the hospital grounds, furnished with tables, chairs and a television and equipped with CCTV cameras, which was also the only space where patients were permitted to smoke; non-smoking patients were obliged to tolerate passive smoking if they wanted to make use of these rooms. The CPT's delegation observed that there was no special ventilation for removing smoke (though windows could be opened), which tended to waft into the corridors. **The CPT recommends that a designated smoking area be set up for patients in each of the (male and female) closed units of the Psychiatric Clinic of the KBC Zagreb, which is properly ventilated and separate from the common room used by non-smoking patients.**

130. Patients had access, with the approval of the treating psychiatrist, to a large and pleasant yard bordered on three sides by the buildings of the Psychiatric Clinic, and with the fourth side open to the rest of the hospital grounds.¹²¹ Not all patients were allowed to access this open area, and the CPT's delegation was told that, as a rule, newly admitted patients and emergency cases were not allowed to go outside for up to a week. The CPT considers that access to the outdoors should be a right for all patients. Spending time outdoors can have a beneficial impact on patients' well-being and recovery and should as a rule be proactively promoted. **The CPT recommends that measures be taken to ensure that all patients in the closed units of the Psychiatric Clinic of the KBC Zagreb benefit from unrestricted access to outdoor exercise during the day in a secure setting unless treatment activities require them to be present on the ward.**

¹²⁰ *Pravilnik o minimalnim uvjetima u pogledu prostora, radnika i medicinsko-tehničke opreme za obavljanje zdravstvene djelatnosti*, (NN 61/11 and 128/12) and the *Pravilnik o izmjenama i dopunama Pravilnika o minimalnim uvjetima u pogledu prostora radnika i medicinsko-tehničke opreme za obavljanje zdravstvene djelatnosti* (NN 124/2015).

¹²¹ The hospital grounds were surrounded by a wire fence.

131. In-patients at the *Psychiatric Hospital for Children and Adolescents* were accommodated in two separate units depending on their age: children aged six to 14 years of age were accommodated on the third floor (16 beds), while adolescents aged 15 up to 18 were accommodated on the second floor (21 beds). Rooms were equipped with four or five beds, and in most rooms at least one bed was empty at the time of the visit. All rooms were equipped with CCTV cameras and open or closed cupboards for personal belongings. In the adolescent unit, one four-bed room which had a window onto the nurses' station was used for close supervision. Common sanitary facilities for patients on the third floor consisted of a single shower and a WC. On the second floor, there were two separate sanitary annexes, one for boys, with two showers and two WC, and a separate annex for girls with one shower and one WC. The CPT's delegation noted that none of the rooms offered the minimum required living space of 6 m² per patient set down in the Rulebook.

On a positive note, the premises were generally bright, pleasant and well-ventilated, including rooms for educational and therapeutic activities located in the closed hospital ward. In addition, children sometimes took part in activities for day patients in facilities located in other parts of the hospital.

Owing to the lack of facilities on the closed ward, the patients had to take their meals in the cafeteria located in the basement of the building. The CPT's delegation noted that the rather steep open staircase leading to the lower floors provided no security whatsoever and could present a considerable risk for young patients with a tendency to self-harm. The delegation was informed that children who presented a serious risk were not allowed to leave the ward and had to take meals in their unit.

Further, the hospital had no secure exercise yard, but only an open paved terrace with no green areas located just off the main entrance of the building (located up a flight of steps above ground level). As a result, the patients from the closed wards could only access the yard under supervision, which meant that none of the patients had daily access to fresh air. Some patients had not been allowed outside for days or even weeks. According to the management, the problem of access to the yard, even after its planned conversion into a therapeutic garden, would remain as it could not be secured.

In the light of the deficiencies referred to in the preceding sub-paragraphs and of the unique role of the Psychiatric Hospital for Children and Adolescents, the CPT encourages the Croatian authorities to consider relocating the hospital to a more appropriate building in order to ensure that the CPT's standards and those set out in the relevant domestic legislation are respected. In the meantime, the CPT recommends that measures be taken as a matter of urgency to ensure that all patients in the hospital's closed ward have daily access to outdoor exercise for at least two hours. Furthermore, efforts should be made to secure the staircase of the building in order to prevent accidents or self-harm.

4. Treatment

132. The CPT's delegation found no indication of overmedication in any of the establishments visited. However, psychiatric treatment was based primarily on pharmacotherapy. At the Psychiatric Clinic of the KBC Zagreb and in the Psychogeriatric Department of Vrapče Psychiatric Hospital medical files were generally well maintained and patients had individual treatment plans.

133. The CPT's delegation was concerned to note that many of the chronic psychogeriatric patients in Vrapče Psychiatric Hospital had concurrent prescriptions for different psychotropic and other medications, and that there appeared to be a generalised use of PRN (*pro re nata*) prescriptions without systematic control by doctors, including for the administration of medication by intramuscular injection.¹²² The use of PRN prescriptions was often not recorded in medical or nursing files, and there was no centralised register for such prescriptions. The CPT considers that, while such prescriptions may be appropriate for selected patients over limited periods of time, such generalised use without systematic control by doctors places too much responsibility on nurses and opens the door to abuse. This is all the more relevant in the light of the fact that elderly patients are more at risk of adverse drug interactions. **The CPT recommends that steps be taken to ensure that a doctor is systematically and immediately notified whenever medication is administered under a PRN prescription and that the clinical effects of such medication are carefully monitored at sufficiently frequent intervals. Furthermore, the potential adverse effects arising out of the interaction of different medications should be the object of particular attention on the part of all staff.**

134. Therapeutic activities for the psychogeriatric patients were very limited, in part owing to the physical condition of many of them. Moreover, it was not clear from the information provided to the CPT's delegation whether any specialised facilities for providing therapeutic activities for psychogeriatric patients had been foreseen for the new building. **The CPT would like to receive information concerning the facilities for therapeutic activities foreseen in the context of the planned reconstruction of the Psychogeriatric Department at Vrapče Psychiatric Hospital.**

135. The CPT considers that the location of a palliative care unit in a psychiatric hospital may not be appropriate in the light of the specialised somatic care required by such patients, which is unlikely to be provided at an adequate level by staff specialised in psychiatric care. Moreover, other departments of Vrapče Psychiatric Hospital could not be called upon to provide resources to support an adequate level of somatic care for patients in need of palliative care. By way of example, there was only one internal medicine specialist on staff for the entire hospital. Furthermore, the presence of such patients in the Chronic ward appeared not to be accepted fully by (at least) some of the staff, who expressed resentment at having to care for such patients, in addition to the psychiatric patients on the ward. Indeed, it transpired that the recent establishment of a palliative care unit at Vrapče had been the result of an instruction from the Ministry of Health, the logic of which was clear to neither the hospital staff, nor the CPT's delegation. **The CPT would like to receive the observations of the Croatian authorities on this issue.**

136. At the Psychiatric Clinic of the KBC Zagreb patients' pharmacological treatment was based on the administration of combinations of different psychopharmaceuticals, depending on the patients' diagnosis. PRN prescriptions were not used, and indeed, the CPT's delegation was pleased to note that patients were seen on a more or less daily basis by psychiatrists, and that they generally expressed satisfaction with the results of their treatment. In addition, patients had access to a range of therapeutic activities, including individual and group therapy sessions, as well as cultural and recreational activities both inside and outside the hospital (e.g. film evenings, excursions to the zoological garden and to museums), which appeared adequate in the light of the fact that patients remained on average less than three weeks in the clinic.

¹²² On the Chronic ward around 80 percent of patients had PRN prescriptions.

137. The Psychiatric Clinic is the only facility in Croatia where ECT is administered, and the clinic receives patients from all over the country, as well as from neighbouring countries. A team comprised of a doctor, two specially trained nurses, an anaesthesiologist and an anaesthesiology nurse carried out the procedure, and specific forms were used to note observations concerning the patient before, during and after the treatment. ECT is carried out using modern equipment which also takes ECG and blood pressure readings, under anaesthesia and with the use of muscle relaxants, but without electroencephalography (EEG). The CPT's delegation noted that patients systematically signed a consent form which was placed in their medical file. Owing to the lack of a dedicated space for ECT, patients underwent the treatment in one of the six-bed rooms in the closed section, after the patients accommodated in the room had been removed to the corridor or common room. An average of 10 to 12 patients underwent the treatment at any given session, with up to six patients in the room at one time.¹²³ The portable ECT equipment was moved from bed to bed, and, although a special screen was set up around each bed while the ECT was administered, the other patients were present in the room and able to see and hear the procedure. The CPT considers this to be unacceptable.

The CPT recommends that the management of the Psychiatric Clinic of the KBC Zagreb take measures to ensure that ECT is administered out of the view and hearing of other patients, preferably in a room which has been set aside and equipped for this purpose. Further, the application of ECT should always be performed with EEG monitoring.

138. The clinical staff expressed concern to the CPT's delegation concerning certain, albeit rare, cases (e.g. of malignant neuroleptic syndrome or catatonia) where the patient was not in a position to consent to ECT, though they considered this to be the only treatment option. Since the LPPMD specifies that only the patient him/herself may consent to ECT, the hospital would be in the unenviable position of having to choose between violating the provisions of the LPPMD and the best interests of the patient. The delegation was told that proposals had been made to amend the current legislation to allow more flexibility in such cases. **The CPT would like to receive the observations of the Croatian authorities on this issue.**

139. Patients at the Psychiatric Hospital for Children and Adolescents had access to a wide range of pedagogical and therapeutic activities, including individual and group therapy sessions, art and music classes, and relaxation and psycho-educative therapy. Education was provided up to the eighth grade only, secondary education not being obligatory under Croatian law; however, efforts were made to provide some secondary classes for individual patients.

Further, no treatment plans had been established for patients, and the delegation noted that medical files were often incomplete; in particular progress notes of patients were lacking in many cases.

The CPT recommends that treatment plans be established for all patients at the Psychiatric Hospital for Children and Adolescents and that medical files be adequately maintained.

Further, the CPT encourages the Croatian authorities to take measures to ensure that juvenile psychiatric patients are able to continue their education, including at secondary level, while being hospitalised in the Psychiatric Hospital for Children and Adolescents in Zagreb.

¹²³ ECT treatment sessions were held regularly, three times per week.

140. The CPT's delegation was told that only 20 to 30 per cent of the patients at the Psychiatric Hospital for Children and Adolescents had clinical indications for being hospitalised on a closed ward, while the rest would have been more appropriately treated on an open ward. In the absence of such a ward, both categories of patients were accommodated together, so that in fact the majority of the young patients were subject to an excessive restriction of their movements. The CPT notes in addition that this situation could seriously undermine the provision of adequate therapeutic treatment and of a sufficiently secure environment for the patients. **The CPT would like to receive the observations of the Croatian authorities on this issue.**

5. Staff

141. The Psychiatric Clinic of the KBC Zagreb was particularly well staffed, with 32 psychiatrists, two specialist residents, six psychologists, 46 nurses, and one occupational therapist. Two social workers employed at the social work unit of the KBC also worked with the patients of the clinic. Ten female nurses and eight male nurses worked on shifts in the closed section alone. Psychiatrists saw their patients every day and the CPT's delegation did not receive any complaints or other indications of staffing problems.

142. The Psychogeriatric Department of Vrapče Psychiatric Hospital employed three full-time psychiatrists, with a fourth psychiatrist working part-time, three residents specialising in psychiatry, 42 nurses, one physiotherapist and a social worker. A psychologist and a doctor specialising in internal medicine could be called in from other departments of the hospital, if necessary. The CPT's delegation was somewhat surprised to note that there was no neurologist on the staff. Eight nurses worked on the Social-therapeutic ward (28 beds), 14 nurses on the Intensive Care ward (15 beds), and 19 nurses on the Chronic ward (44 beds), including eight nurses in the Palliative Care unit (15 beds). The psychiatrists were present on weekdays from 8 a.m. to 4 p.m., and outside of these hours there were only two psychiatrists on duty for the entire hospital; however, they worked exclusively in the admission unit, while a resident was responsible for consultations for the entire hospital. **The CPT considers that the number of psychiatrists in the Psychogeriatric Department of Vrapče Psychiatric Hospital should be increased in order to enhance psychiatric input, including at night and on weekends. Furthermore, it would be desirable to have a neurologist on the staff.**

143. On the closed hospital ward of the Psychiatric Hospital for Children and Adolescents four psychiatrists, all with a sub-specialisation in child and adolescent psychiatry, worked from 7 a.m. to 3 p.m. Mondays to Fridays. In addition, a duty psychiatrist was present after 4 p.m. on weekdays, and on weekends from 8 a.m. until 8 a.m. the following day. Nursing staff comprised 19 nurses. The head nurse and one nurse responsible for accompanying children to external consultations worked from 7 a.m. to 3 p.m., while the rest of the nursing staff worked in shifts to ensure a minimum of one nursing staff member to be present at all times in the children's unit and two in the adolescent unit. From 8 p.m. to 7 a.m. Mondays to Fridays and on weekends and holidays, one of the nurses from the adolescent unit was also responsible for receiving patients in the emergency admission unit. There was also a social worker, an occupational therapist and a psychologist, all of whom worked part-time (50 per cent).

According to the hospital's management, the current staffing situation placed considerable pressure on nursing staff in the closed hospital ward, particularly at night and on weekends when the nursing staff in the adolescent unit had to share resources with the emergency admission unit. The CPT's delegation concurs with this. The delegation was told that the inadequacies in staffing levels were due both to budgetary constraints and to the difficulties in recruiting qualified nursing staff. The management had conveyed their concerns regarding staffing to the Croatian health-care authorities. Nevertheless, the current staffing situation cannot be allowed to continue. **The CPT recommends that the Croatian authorities take steps to significantly increase the number of nurses at the Psychiatric Hospital for Children and Adolescents in Zagreb. In addition, it would be beneficial if the psychologist and social worker positions were full time.**

6. Seclusion and means of restraint

144. The use of means of restraint is regulated by Chapter VIII of the LPPMD (Articles 60 to 67). The details as to the means of restraint and how they are to be applied have been set out in a "Rulebook on the types and methods of applying means of restraint to persons with severe mental disorders" which came into force in February 2015 ("Rulebook on Restraint").¹²⁴ Under the new legislation means of restraint may only be used as a last resort, in situations where the patient's behaviour gives rise to serious and direct threats to the patient's own or another's life or health. The definition of restraint refers to "means and methods of physically restricting the movement and actions of a person with serious mental disorders who is placed in a psychiatric institution".

The decision to resort to restraint must normally be taken by a psychiatrist. In cases of emergency where it is not possible to wait for the psychiatrist's decision, a non-psychiatrist doctor, nurse or other health-care staff member may take the decision; however, the psychiatrist must be immediately informed and must examine the person and decide on whether to continue the use of the restraint. The law also requires that professional medical staff constantly monitor the physical and psychological condition of the restrained person. The law does not contain any obligation on psychiatric institutions to maintain a register of restraint measures; however, the means of restraint, the reasons for their use, the type and duration of the restraint, and the name of the person who ordered the restraint must be recorded in the medical and nursing files. The person of trust, legal guardian, and ethics commission of the institution must also be informed by the psychiatric institution, which is obliged to report to the State Commission for the Protection of Persons with Mental Disorders twice a year on the use of means of restraint. Where restraint is used on juveniles, the psychiatric establishment must inform the State Commission of every instance of use. Furthermore, the psychiatric establishment must inform the competent court of the use of means of restraint where this is requested in writing by the patient, the person of trust or the guardian, and the court must rule on its use after examining the justification, intensity and duration of the measures.

The LPPMD does not explicitly refer to the use of chemical restraint; however, Article 9(1) of the Rulebook on Restraint sets out that mechanical restraint (*sputavanje*) may involve the use of equipment (such as magnetic straps or belts, straightjackets, etc.) and also "chemical means, for example, rapid tranquillisation or sedation" (Article 9(1)). The Rulebook also covers seclusion as a means of restraint.

¹²⁴ *Pravilnik o vrstama i načinu primjene mjera prisile prema osobi s težim duševnim smetnjama, Na temelju članka 60. stavka 2. Zakona o zaštiti osoba s duševnim smetnjama (NN 76/2014).*

The Rulebook further provides that patients should be mechanically restrained where possible in their own room under constant CCTV surveillance and monitoring by health-care staff (Article 11(4)); however, the continuous physical presence of a staff member in the room with the restrained patient is not specified. Mechanical restraint may be applied for a maximum of four hours, after which a psychiatrist must review the use of the measure, and after 24 hours a psychiatrist must see the patient and evaluate his/her psychological and physical state (Article 9(3)-(5)). There is no reference to a systematic debriefing of the patient after the measure (see paragraph 145).

Furthermore, unlike the LPPMD (see Article 61(3)), the Rulebook does not make explicit that when the emergency situation resulting in the application of restraint measures ceases to exist, the patient should be released immediately. **The CPT recommends that this deficiency be remedied.**

Psychiatric establishments must provide detailed written guidelines for staff on how to deal with aggressive patients and the use of restraint measures, along with an obligation on staff to become familiar with them, and there should be a copy in each office or department (Article 4(4)-(5)). Each instance of use of restraint must be analysed within the department (Article 18(1)), and the establishment must devise a strategy for the prevention of the use of restraint and to this end must put in place appropriate training for staff in alternative measures (Article 19).

145. The CPT welcomes the adoption of the legislation referred to above. That said, a number of specific recommendations made in previous CPT reports have not been incorporated. More particularly:

- patients should not be subjected to mechanical restraint in view of other patients (unless the patient explicitly expresses a wish to remain in the company of a certain fellow patient); visits by other patients should only take place with the express consent of the restrained patient;
- every instance of the use of restraint (including chemical restraint and seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. Such a measure will greatly facilitate both the management of such incidents and the oversight of their prevalence, and will contribute to the prevention of means of restraint;
- in the case of mechanical restraint, a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance. If patients are held in seclusion, the staff member may be outside the patient's room (or in an adjacent room with a connecting window), provided that the patient can fully see the staff member and the latter can continuously observe and hear the patient. Clearly, CCTV surveillance cannot replace continuous staff presence;
- once the means of restraint have been removed, it is essential that a debriefing of the patient takes place, to explain the reasons for the restraint, reduce the psychological trauma of the experience and restore the doctor-patient relationship. This also provides an opportunity for the patient, together with staff, to find alternative means to maintain control over him/herself, thereby possibly preventing future eruptions of violence and subsequent restraint.

The CPT recommends that, in addition to the existing provisions of the LPPMD and the Rulebook on Restraint, the above precepts be implemented in all psychiatric establishments in Croatia where measures of restraint are used and included in their internal guidelines. In addition, all other principles and minimum safeguards set out in the CPT's revised standards on restraint (see Appendix III) should be respected. If necessary, legislation (including the Rulebook) should be amended accordingly.

146. In all three establishments visited, mechanical restraint and chemical restraint could be used. Seclusion was also used in the Psychiatric Hospital for Children and Adolescents. None of the establishments had a dedicated space for seclusion or mechanical restraint or a dedicated register for restraint measures.

147. At the Psychiatric Clinic of the KBC Zagreb, patients could be subjected in their own beds to mechanical restraint using cloth straps with magnetic closures (five-point fixation). The clinical staff followed the 2016 Guidelines on the Prevention of Aggressive Behaviour and on the Use of Means of Restraint in Psychiatry issued by the Croatian Psychiatric Society,¹²⁵ as well as internal guidelines on restraint and on dealing with aggressive patients, which followed the relevant provisions of the LPPMD and the Rulebook on Restraint. Seclusion was not used. Chemical restraint was used and recorded in the medical and nursing files; however, it was not distinguished from pharmacotherapy. According to the information gathered by the CPT's delegation, the duration of the restraint could be up to 12 hours and there were rare cases of patients being restrained for up to 24 hours. Although it appeared from the information obtained during the visit that resort to mechanical restraint was relatively infrequent, in the absence of a centralised restraint register, the CPT's delegation was unable to obtain clear information on the frequency and duration of the instances of use of mechanical restraint. The CPT's delegation was particularly concerned to note that patients could be mechanically restrained in full view of other patients and without the continuous and direct monitoring of a staff member present in the room. **The CPT recalls its standards to the effect that patients should not be subjected to mechanical restraint in view of other patients, and that a qualified member of staff should be permanently present in the room. See also paragraph 145.**

148. During the visit, the CPT's delegation noted that the restraint equipment present on the wards included five sets of straightjackets, which had apparently not been used for some years (which is in itself positive). **The CPT recommends that the straightjackets be removed from the wards.**

149. At the Psychogeriatric Department of Vrapče Psychiatric Hospital, patients could be subjected to mechanical restraint. Generally, this was for the purpose of preventing falls or disruption of intravenous treatment and took the form of fixation with cloth straps (secured around the waist and/or around limbs). Such measures were recorded in the medical and nursing files, however, the CPT's delegation noted that entries were sometimes illegible or unclear and that the underlying reasons for the measure were not always clearly indicated.

¹²⁵ *Smjernice za prevenciju agresivnog ponašanja i primjene mjera prisile u području psihijatrije*, Hrvatsko Psihijatrijsko Društvo, Zagreb 2016.

According to the statistics provided by the hospital management, there had been a remarkable increase in the use of such measures in the psychogeriatric department since 2014, with 435 instances recorded for 2016, compared with 126 instances for 2015 and only three instances in 2014. The longest duration of such a measure noted by the CPT's delegation was 19 hours. Owing to the lack of a centralised restraint register, and to the incomplete and/or unclear records kept in respect of the use of restraint, the CPT's delegation was unable to obtain a clear view of the average duration of such measures or the extent to which the safeguards set out in the LPPMD and the Rulebook on Restraint were respected. **The CPT refers to its recommendation in paragraph 145 above. In addition, the CPT would like to receive the observations of the management of Vrapče Psychiatric Hospital concerning the underlying reasons for the increase in the instances of use of restraint measures in the Psychogeriatric Department.**

150. Concerning juvenile patients, the CPT notes that Croatian legislation does not specifically regulate the use of restraints on children in psychiatric establishments. Indeed, the only relevant reference is in Article 64(4) of the LPPMD, which sets out that all instances of the use of restraint on juveniles must be reported to the State Commission for the Protection of Persons with Mental Disorders. Restraint measures were used at the Psychiatric Hospital for Children and Adolescents, details of which are provided below. Regrettably, the hospital had not yet established any internal guidelines, despite the fact that Article 4(4) of the Rulebook on Restraint specifically specifies this as an obligation on all psychiatric establishments.

151. Patients at the Psychiatric Hospital for Children and Adolescents could be subjected to mechanical restraint using cloth straps, generally for periods of not more than several hours. In the absence of a dedicated space for patients under mechanical restraint, such measures were carried out in one of the rooms, usually the close supervision room in the adolescent unit, which other children were prevented from entering for the duration of the measure. The CPT's delegation also heard during interviews that younger patients could also be placed under restraint in one of the rooms in the children's unit, and the delegation noted that many of the beds in both units were equipped with special "handles" for the use of restraint straps. Mechanical restraint was recorded on a special form which was placed in the incidents records, and a copy of the report was sent to the State Commission for the Protection of Persons with Mental Disorders, in accordance with Article 64(4) of the LPPMD. Such measures were relatively infrequent: eight instances had been recorded for 2017 up to the time of the CPT's visit (most of them lasting less than one hour); in 2016 there were 64 recorded instances, of which 26 were for less than one hour, 23 for one to two hours, and 15 between two hours and three hours and 45 minutes.

152. The CPT's delegation was particularly concerned to note that juvenile patients under mechanical restraint could be observed by other patients through the window of the door of the room where the measure was carried out. Many of the juveniles spoken to had observed such measures, which was distressing for both the patient under restraint and the observer.

The delegation was told by the hospital management that seclusion was not used in the establishment; however, during interviews the CPT's delegation was told that patients could be locked in their rooms for 30 minutes to one hour as "punishment" if they became agitated or aggressive. It transpired that chemical restraint could also be used. It was difficult to determine the frequency of such measures, as instances of seclusion and chemical restraint were not always recorded in the patients' files or in other records.

153. In the light of the special vulnerability of juvenile patients, the CPT considers that special attention is warranted whenever it is judged necessary to use any form of restraint on such patients. The CPT is of the view that, as a matter of principle, persons under 18 years of age should not be subjected to mechanical restraint. The risks and consequences are indeed more serious taking into account the juveniles' vulnerability. Where it is deemed necessary to intervene physically to avoid harm to the patient him-/herself or others, staff should resort to manual restraint, that is, staff holding the juvenile until he/she calms down. **The CPT would like to receive the observations of the Croatian authorities on this issue.**

Furthermore, measures of restraint should never be used as a punishment, and the fact that the patients spoken to obviously did regard them as such calls into question the efforts made by staff to exhaust all alternative measures. The CPT considers, in addition, that the necessity of carrying out a debriefing following the application of means of restraint is all the more pressing in the case of juveniles, in order to ensure that they are not left with a feeling of injustice and frustration, potentially aggravating their existing mental and psychological condition.

In the light of the above remarks, the CPT recommends that the management of the Psychiatric Hospital for Children and Adolescents take steps as a matter of urgency to establish internal guidelines for the use of restraint measures.

7. Safeguards

154. It is of note that not a single patient in the Psychiatric Clinic of the KBC Zagreb or in the Psychogeriatric Department of Vrapče Psychiatric Hospital was subject to a measure of involuntary placement.

155. All patients in the closed units of the Psychiatric Clinic of the KBC Zagreb at the time of the visit had signed a written consent form with respect to their hospitalisation, pursuant to the provisions of Article 12 of the LPPMD, which introduced the principle that consent to a "medical procedure" (see paragraph 157) must be in writing. This was generally done within the first 48 hours, which was the time period within which the psychiatrist had to take a decision concerning the patient's compulsory detention pending the involvement of the court.¹²⁶ Some patients told the delegation that they had been persuaded by family and/or staff to sign the consent form on the basis that their hospitalisation as a "voluntary" patient would most likely be less than the 30-day period which the court could order initially under the involuntary placement procedure.¹²⁷ The CPT's delegation was informed by the hospital management that the average stay in the clinic was around 17 days.

¹²⁶ Article 29(1) LPPMD. Under the 1997 law, the time period within which the decision had to be taken had been 72 hours.

¹²⁷ Article 39(2)-(3) LPPMD. The court took the decision based on an oral hearing, a procedure introduced with the new legislation. Subsequent prolongations of the involuntary hospitalisation could be ordered by the court for up to three months, and thereafter for periods of up to six months, and had to involve an oral hearing carried out under the same procedure as for the initial placement decision.

From the information gathered by the CPT's delegation, it transpired that these patients were subject to a number of restrictions. Firstly, the house rules stipulated that patients had to approach the nursing staff should they wish to go outside to walk in the hospital grounds, and that a doctor's permission was required for patients to leave the hospital premises. A number of patients confirmed that they considered that they could only leave the unit, whether to access the hospital grounds or to leave the hospital premises, with the permission of their psychiatrist. Further, from the incidents register it was obvious that, in some cases at least, where voluntary patients "escaped" from the closed units, their absence would be alerted to police with a view to having them brought back to the hospital. Moreover, the CPT's delegation identified cases of voluntary patients being subjected to means of restraint.

In the light of the above, the CPT considers that in the closed units of the Psychiatric Clinic, a number of patients were *de facto* deprived of their liberty. **The CPT recommends that the legal status of such patients be reviewed.**

156. In the psychogeriatric department of Vrapče Psychiatric Hospital, many of the patients, especially in the Chronic ward (including the Palliative Care unit) were clearly unable to give an informed consent to their hospitalisation and treatment because of severe cognitive deficiencies. Only a very few of such patients were under any form of guardianship.

In this regard, the CPT notes with interest that Croatia, in line with a growing tendency in European countries, has abolished the legal institutions of total deprivation of legal capacity and total guardianship for adults, pursuant to Article 234(2) of the 2015 Family Law, which came into force on 1 November 2015.¹²⁸ The decision as to the extent of deprivation of legal capacity in respect of an adult person is taken by the court on the basis of an expert medical opinion, and guardianship may cover questions concerning health.¹²⁹

It is also of interest that Article 26 of the LPPMD introduces a specific safeguard with respect to persons admitted to psychiatric establishments with the consent of their guardian or person of trust.¹³⁰ Such admissions must now be systematically notified to the Ombudsman for Persons with Disabilities within 48 hours, and the Ombudsman may refer the case to the court, who must initiate the procedure for involuntary placement if there exists a suspicion that the placement of the person is not justified. By the same token, if a person admitted under the consent of his/her guardian or person of trust opposes his/her placement, then the psychiatric establishment must inform the court within 12 hours that the person is under "compulsory detention" (*prisilno zadržavanje*) within the meaning of the LPPMD, pending the initiation by the court of the involuntary placement procedure.

According to the management of Vrapče Psychiatric Hospital, Social Care Centres were refusing to take on new cases of guardianship in respect of patients who were not or no longer able to consent to their hospitalisation. Furthermore, families of such patients often opposed the initiation of an involuntary placement procedure for fear that the process might subject their family member to distress and provoke a deterioration in their state of health.

¹²⁸ *Obiteljski zakon (OZ)*, NN 103/15.

¹²⁹ Article 234(3) and (5) OZ.

¹³⁰ The LPPMD introduces the possibility for a person to appoint a "person of trust" (*osoba povjerenja*) who is empowered to give or withhold consent in respect of "medical procedures".

The CPT considers that, to the extent that they are not permitted to leave the psychiatric establishment, patients who are not or no longer able to give informed consent to their hospitalisation and treatment are *de facto* deprived of their liberty without benefiting from the safeguards provided for by law in respect of involuntary patients. **Such patients should be notified to the relevant court and, where appropriate, be subject to a procedure for involuntary hospitalisation which takes into account their particular vulnerabilities in terms of both physical health and cognitive deficiencies.**

157. In all three establishments visited, it became apparent that no distinction was made in practice between consent to placement and consent to treatment, and this was also reflected in the consent forms signed by patients on their admission (or by the parents of the patients in the Psychiatric Hospital for Children and Adolescents). Indeed, doctors interviewed by the delegation appeared not to distinguish clearly between the notions of involuntary placement and involuntary treatment. This is perhaps not surprising in the light of the fact that the LPPMD itself does not clearly distinguish between the two concepts. The key provision in Article 12 of the law stipulates that a “[p]erson with mental disorders may be subjected to a medical procedure only on the basis of his/her written consent”, while in Article 3(4) of the law, “medical procedure” is defined as “admission, detention and placement in a psychiatric institution, as well as diagnosis and treatment of a person with mental disorders.”

The CPT wishes to stress once again that psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment, and the admission of a person to a psychiatric establishment on an involuntary basis should not preclude seeking informed consent to treatment. Every patient, whether voluntary or involuntary, should be fully informed about the treatment which it is intended to prescribe and given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

The CPT recommends that all patients, whether voluntary or involuntary, or where appropriate, their guardian or other legal representative, be provided systematically with information about their condition and the treatment prescribed for them, and that doctors be instructed that they should always seek the patient’s consent to treatment prior to its commencement. Relevant information should also be provided to patients, or their guardian or other legal representative, during and after treatment.

158. In terms of the placement and discharge of patients subject to involuntary hospitalisation, from the documentation consulted by the CPT’s delegation, the procedure set out in the LPPMD appeared to have been followed in practice. In particular, it appeared that a lawyer (usually an *ex officio* lawyer) was systematically present at all stages of the procedure and the patient attended the oral hearing on placement.

159. None of the three establishments visited provided adequate information for patients in the form of a comprehensive brochure including, besides general information about the establishment, information on the establishment's routine and patients' rights with respect to legal assistance, review of placement, consent to treatment and possibilities to lodge complaints. **The CPT recommends that such a brochure be drawn up and given to all patients on admission to psychiatric establishments in the country, as well as to their families. Patients unable to understand the brochure should receive appropriate assistance. In respect of the patients at the Psychiatric Hospital for Children and Adolescents, the CPT recommends that a special brochure presenting such information in a form appropriate for juveniles be drawn up for the patients, in addition to the brochure provided to parents.**

160. In respect of contact with the outside world, arrangements in place for visits, telephone calls and correspondence were adequate in all the establishments visited and do not call for particular comment.

161. Regarding the external monitoring of psychiatric establishments, the CPT welcomes the establishment of the State Commission for the Protection of Persons with Mental Disorders (*Povjerenstvo za zaštitu osoba s duševnim smetnjama*),¹³¹ which was set up on 26 January 2015 pursuant to Article 78(4) of the LPPMD. The 11-member Commission¹³² is tasked with monitoring psychiatric establishments with a view to protecting the rights, freedoms and dignity of persons suffering from mental disorders on the basis of visits to psychiatric and social care institutions. It is also responsible for the oversight of the use of means of restraint, and for approving biomedical research projects. The Commission may include recommendations in its reports, and must inform without delay, and at the latest within 15 days, the competent governmental body and other competent authorities of violations of the LPPMD. **The CPT would like to receive from the Croatian authorities details concerning the activities of the State Commission for the Protection of Persons with Mental Disorders and copies of any reports it has issued.**

162. In addition, the NPM had visited Vrapče Psychiatric Hospital in 2014, the Psychiatric Clinic of KBC Zagreb in 2017, and the Psychiatric Hospital for Children and Adolescents in 2016, and the Ombudsman for Children had visited the Psychiatric Hospital for Children and Adolescents in 2013 and 2015.

¹³¹ The organisation and mandate of the Commission are set out in Chapter X of the LPPMD, Articles 74 to 76.

¹³² The 11 members, appointed by the Minister of Justice for a four-year term, must be comprised of five professionals in psychiatry, four professionals in law, one social worker and one representative of registered human rights organisations.

APPENDIX I

List of the establishments visited by the CPT's delegation

Police establishments

Osijek Police Station I
Split Police Station I
Split Police Station II
Velika Gorica Police Station
Vinkovci Police Station
Vrbanja Police Station
Zagreb Detention and Escort Unit (Oranice)
Zagreb Police Station II (Črnomerec)
Zagreb Police Station VI (Remetinec)
Zagreb Police Station VIII (Trnje)

Penitentiary establishments

Osijek County Prison
Split County Prison
Zagreb County Prison
Prison Hospital in Zagreb
Juvenile Correctional Facility, Turopolje

Psychiatric hospitals

Vrapče Psychiatric Hospital, Zagreb
Psychiatric Clinic of the Rebro Clinical Hospital Centre (KBC) in Zagreb
Zagreb Psychiatric Hospital for Children and Adolescents

APPENDIX II

**List of the national authorities, other bodies and non-governmental organisations
with which the CPT's delegation held consultations**

A. National authorities

Ministry of the Interior

Lidija Pelivan-Stipetić	State Secretary
Marko Srdarević	Director of Police
Branko Bolanča	Acting Head of the Operative Police Communication Centre
Roberta Mijalić Krešić	Head of Unit of Legality of Police Conduct at the Internal Control Service
Mladen Katanec	Head of Department of Analytics at the Internal Control Service

Ministry of Justice

Kristian Turkalj	State Secretary
Anđelko Dundić	Assistant Minister

Ministry of Health

Jasminka Hlupić	Head, Sector for Hospital Healthcare, Health Institutions and Human Resources
Dunja Skoko-Poljak	Head, Sector for Public Health
Kristina Hrgar	Head, Service for Hospital Healthcare Organization
Marija Coupe	Service for Hospital Healthcare Organization
Mirjana Tadić	Head, Service for Health Inspections
Ivanka Taskov	Service for Primary Healthcare
Božica Šarić	Service for European Affairs
Dijana Vuksan	Croatian Health Insurance Fund
Ksenija Krajnović	Head, Department for International Cooperation

Office of the State Prosecutor

Gordana Haramina-Hranilović

Deputy State Prosecutor

Ombudsperson Office

Lora Vidović

Ombudsperson of the Republic of Croatia

Ksenija Bauer

Advisor

Ira Bedrač

Advisor

B. Non-governmental organisations

Udruga Sjaj (Association for the Social Affirmation of Persons with Mental Health Impairments)

APPENDIX III

Revised CPT standards on means of restraint in psychiatric establishments for adults

Strasbourg, 21 March 2017
CPT/Inf(2017)6

In the light of previous publications¹³³ on this subject matter and its findings during many visits in recent years to civil and forensic psychiatric establishments in various European countries, the CPT has decided to review its standards regarding the use of means of restraint and to consolidate them in the present document.

Introduction

Given their intrusive nature and the potential for abuse and ill-treatment, the CPT has always paid particular attention to the use of various types of restraint vis-à-vis psychiatric patients.

At the outset, the CPT wishes to stress that the ultimate goal should always be to prevent the use of means of restraint by limiting as far as possible their frequency and duration. To this end, it is of paramount importance that the relevant health authorities and the management of psychiatric establishments develop a strategy and take a panoply of proactive steps, which should *inter alia* include the provision of a safe and secure material environment (including in the open air), the employment of a sufficient number of health-care staff, adequate initial and ongoing training of the staff involved in the restraint of patients, and the promotion of the development of alternative measures (including de-escalation techniques).

In most countries visited by the CPT, one or more of the following types of restraint may be used:

- (a) physical restraint (i.e. staff holding or immobilising a patient by using physical force – “manual control”);
- (b) mechanical restraint (i.e. applying instruments of restraint, such as straps, to immobilise a patient);
- (c) chemical restraint (i.e. forcible administration of medication for the purpose of controlling a patient’s behaviour);
- (d) seclusion (i.e. involuntary placement of a patient alone in a locked room).

¹³³ See paragraphs 47 to 50 of the 8th General Report on the CPT’s activities (CPT/Inf (98) 12) and paragraphs 36 to 54 of the 16th General Report on the CPT’s activities (CPT/Inf (2006) 35), as well as document CPT (2012) 28 on “the use of restraints in psychiatric institutions”.

1. General principles

- 1.1. The restraint of violent psychiatric patients who represent a danger to themselves or others may exceptionally be necessary.¹³⁴
- 1.2. Means of restraint should always be applied in accordance with the principles of legality, necessity, proportionality and accountability.
- 1.3. All types of restraint and the criteria for their use should be regulated by law.
- 1.4. Patients should only be restrained as a measure of last resort (*ultimo ratio*) to prevent imminent harm to themselves or others and restraints should always be used for the shortest possible time. When the emergency situation resulting in the application of restraint ceases to exist, the patient should be released immediately.
- 1.5. Means of restraint are security measures and have no therapeutic justification.
- 1.6. Means of restraint should never be used as punishment, for the mere convenience of staff, because of staff shortages or to replace proper care or treatment.
- 1.7. Every psychiatric establishment should have a comprehensive, carefully developed policy on restraint. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should be aimed at preventing as far as possible the resort to means of restraint and should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; recording; internal and external reporting mechanisms; debriefing; and complaints procedures. Further, patients should be provided with relevant information on the establishment's restraint policy.

2. Authorisation

Every resort to means of restraint should always be expressly ordered by a doctor after an individual assessment, or immediately brought to the attention of a doctor with a view to seeking his/her approval. To this end, the doctor should examine the patient concerned as soon as possible. No blanket authorisation should be accepted.

3. Application of means of restraint

- 3.1. Means of restraint should always be applied with skill and care, in order to minimise the risk of harming or causing pain to the patient and to preserve as far as possible his/her dignity. Staff should be properly trained before taking part in the practical application of means of restraint.

¹³⁴ See also Article 27 of Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder, as well as the judgments of the European Court of Human Rights in *Bureš v. the Czech Republic* (18 October 2012; application no. 37679/08; paragraph 86) and *M.S. v. Croatia* (19 February 2015; application no. 75450/12; paragraph 97).

- 3.2. When recourse is had to physical (manual) restraint, staff should be specially trained in holding techniques that minimise the risk of injury. Neck holds and techniques that may obstruct the patients' airways or inflict pain should be prohibited.
- 3.3. For the purpose of mechanical restraint, only equipment designed to limit harmful effects (preferably, padded cloth straps) should be used in order to minimise the risk of the patient sustaining injury and/or suffering pain. Handcuffs or chains should never be used to immobilise a patient. Patients under restraint should always be face up with the arms positioned down. Straps must not be too tight and should be applied in a manner that allows for the maximum safe movement of the arms and legs. The vital functions of the patient, such as respiration and the ability to communicate, must not be hampered. Patients under restraint should be properly dressed and, as far as possible, be enabled to eat and drink autonomously and to comply with the needs of nature in a sanitary facility.
- 3.4. The use of net (or cage) beds should be prohibited under all circumstances.
- 3.5. Patients should not be subjected to mechanical restraint in view of other patients (unless the patient explicitly expresses a wish to remain in the company of a certain fellow patient); visits by other patients should only take place with the express consent of the restrained patient.
- 3.6. Staff should not be assisted by other patients when applying means of restraint to a patient.
- 3.7. If recourse is had to chemical restraint, only approved, well-established and short-acting drugs should be used. The side-effects that medication may have on a particular patient need to be constantly borne in mind, particularly when medication is used in combination with mechanical restraint or seclusion.
- 3.8. As regards seclusion, the room in which patients are placed should be specially designed for that specific purpose. In particular, it should ensure the safety of the patient and provide a calming environment for the patient concerned.

4. Duration

- 4.1. The duration of the use of means of mechanical restraint and seclusion should be for the shortest possible time (usually minutes rather than hours), and should always be terminated when the underlying reasons for their use have ceased. Applying mechanical restraint for days on end cannot have any justification and could, in the CPT's view, amount to ill-treatment.
- 4.2. If, exceptionally, for compelling reasons, recourse is had to mechanical restraint or seclusion of a patient for more than a period of hours, the measure should be reviewed by a doctor at short intervals. Consideration should also be given in such cases and where there is repetitive use of means of restraint to the involvement of a second doctor and the transfer of the patient concerned to a more specialised psychiatric establishment.

5. Selection of type(s) of restraint

In cases where the use of restraint is considered, preference should be given to the least restrictive and least dangerous restraint measure. When choosing among available restraint measures, factors such as the patient's opinion (including any preferences expressed in advance) and previous experience should as far as possible be taken into account.

6. Concurrent use of different types of restraint

Sometimes seclusion, mechanical or physical restraint may be combined with chemical restraint. Such a practice may only be justified if it is likely to reduce the duration of the application of restraint or if it is deemed necessary to prevent serious harm to the patient or others.

7. Supervision

Every patient who is subjected to mechanical restraint or seclusion should be subjected to continuous supervision. In the case of mechanical restraint, a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance. If patients are held in seclusion, the staff member may be outside the patient's room (or in an adjacent room with a connecting window), provided that the patient can fully see the staff member and the latter can continuously observe and hear the patient. Clearly, video surveillance cannot replace continuous staff presence.

8. Debriefing

Once the means of restraint have been removed, it is essential that a debriefing of the patient take place, to explain the reasons for the restraint, reduce the psychological trauma of the experience and restore the doctor-patient relationship. This also provides an opportunity for the patient, together with staff, to find alternative means to maintain control over him/herself, thereby possibly preventing future eruptions of violence and subsequent restraint.

9. Use of means of restraint at the patient's own request

Patients may sometimes ask to be subjected to means of restraint. In most cases, such requests for "care" suggest that the patients' needs are not being met and that other therapeutic measures should be explored. If a patient is nevertheless subjected to any form of restraint at his/her own request, the restraint measure should be terminated as soon as the patient asks to be released.

10. Use of means of restraint vis-à-vis voluntary patients

In case the application of means of restraint to a voluntary patient is deemed necessary and the patient disagrees, the legal status of the patient should be reviewed.

11. Recording and reporting of instances of means of restraint

11.1. Experience has shown that detailed and accurate recording of instances of restraint can provide hospital management with an oversight of the extent of their occurrence and enable measures to be taken, where appropriate, to reduce their incidence. To this end, a specific register should be established to record all instances of recourse to means of restraint (including chemical restraint). This should supplement the records contained within the patient's personal medical file. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this entitlement; at their request, they should receive a copy of the full entry.

- 11.2. The frequency and duration of instances of restraint should be reported on a regular basis to a supervisory authority and/or a designated outside monitoring body (e.g. health-care inspectorate). This will facilitate a national or regional overview of existing restraint practices, with a view to implementing a strategy of limiting the frequency and duration of the use of means of restraint.

12. Complaints procedures

Effective complaints procedures are basic safeguards against ill-treatment in all psychiatric establishments. Psychiatric patients (as well as their family members or legal representatives) should have avenues of complaint open to them within the establishments' administrative system and should be entitled to address complaints – on a confidential basis – to an independent outside body. Complaints procedures should be simple, effective and user-friendly, particularly regarding the language used. Patients should be entitled to seek legal advice about complaints and to benefit from free legal assistance when the interests of justice so require.