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

from 30 March to 8 April 2005

The Hungarian Government has requested the publication of this response. The report of the CPT on its March/April 2005 visit to Hungary is set out in document CPT/Inf (2006) 20.

Strasbourg, 29 June 2006

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

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The reply of the Hungarian Government and Judicial Authorities to the Report on the visit to Hungary between 30th March and 8th April, 2005 carried out by the delegation of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)

We have highly appreciated the thorough Report, the recommendations, the remarks and comments of the CPT made during their visit to Hungary between 30th March and 8th April. Similar to the previous years, we declare that the statements of CPT are treated seriously and the recommendations are considered to be the main tasks that must be fulfilled in Hungary. The Committee "has welcomed already at this juncture the constructive spirit in which the Hungarian authorities took note of and reacted to its delegation's observations".

The Hungarian authorities unanimously thank the CPT for its activities, in which the will to help and the concrete help can be recognized. It shows that the Committee has blamed and blame for the deficiencies, but it has also acknowledged and acknowledge the ambitions and the results. The delegation of the CPT has contributed to the realization of our common purpose to observe the human rights of the inmates and to improve the circumstances of their accommodation. Nevertheless, we believe that the statements and remarks of the Report made by the CPT are worth specifying and supplementing. It would be necessary so that an objective picture of the practice of detention of the Hungarian police, the Border Guard and the authority of the Prison Service could be formed, from the legal point of view specification would help to understand the constitutional function, so the belief in infallibility of the CPT would remain. In connection with this we hereby state our viewpoints, supplements, and measures that have already been taken, at the same time we give information about all the questions that have been required by the CPT.

A.

On the statements concerning the establishments under the supervision of the Ministry of the Interior

I. To the preliminary remarks

On point 11:

According to the CPT, the medium-term objective should be to end completely the practice of accommodating remand prisoners in police establishments. It is made possible for a limited period of time by the decision of the court pursuant to Section 135 (2) of Act XIX of 1998 on the Criminal Procedure (hereinafter: Be.), therefore the aim suggested by the CPT could be achieved by amendment of the law.

On point 12:

In connection with this point of the Report it is necessary to specify the description of detention which can be ordered by the immigration authorities. The Immigration and Nationality Office of the Ministry of the Interior (hereinafter: BM BÁH) is entitled to order detention for refusal of entry and alien policing detention, and the Border Guard is entitled to order detention in preparation for expulsion. The BM BÁH can order the detention for five days within its own competency, then the local court having competency in the area of detention is entitled to prolong it. The length of detention in preparation for expulsion is 30 days, in the case of alien policing detention it is 12 months. The county (metropolitan) court having competency in the area of detention is entitled to prolong the alien policing detention for more than six months. Once the conditions of the journey have been established, the detention must be terminated immediately.

II. Ill-treatment

On point 13:

According to the CPT's recommendation, the police's attention should be drawn to the fact that the ill-treatment of detained persons is not acceptable. It should be mentioned that after the visit of the CPT to Hungary in 1999 the National Police Headquarters (hereinafter: ORFK) issued instructions to the commanders. According to this, the briefing before entering into service should draw the attention to the requirement of proportionality and to the prohibition of cruelty, coerced confession as well as cruel, inhuman and degrading treatment. The commanders regularly remind staff that means of coercion should not be used any longer if the resistance has been broken and the outcome of the police action can be insured without it. These rules are included in the Decree No. 12/2001. (IV. 4.) ORFK – sent to CPT at that time as well – which was made to implement the recommendation of the delegation of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment.

The origin of the recommendation – according to the evidence detailed in point 13 of the Report – lies in the complaint of an inmate in Szeged. The inmate alleged that in the course of his apprehension on the evening of the previous day, he had been struck by police officers who jumped on him while he was lying in bed, handcuffed him behind the back and dragged him out of the room. Upon medical examination, the person concerned displayed bruising on the chest consistent with having suffered a fracture of the breast bone. Proceedings were initiated against the police officers who had committed ill-treatment, pursuant to Section 227 (forced interrogation) and Section 170 (1) (actual bodily harm) of Act IV of 1978 on the Criminal Code (hereinafter: Btk.) The Csongrád County Prosecutorial Investigating Office has terminated the investigation according to Section 190 (1) b) of Be. as the police officers caused the harm while they tried to break the resistance and therefore the continued procedure was not expected to yield any result. On the recommendation of CPT the public security director of Csongrád County Police Headquarters has drawn his subordinates' attention in a warrant dated 13th January, 2006.

On point 14:

After the delegation's oral report – on the final session – about "the person handcuffed to a radiator in an office at Röszke Border Guard Station for 12 hours", the case was investigated by the Commander of the National Border Guard Headquarters (hereinafter: HŐR OPK). The oral and the written report did not contain the precise time of apprehension and the citizenship of the person subject to measures of coercion. Considering that the Committee's information comes from an inmate who was accommodated in the Aliens' Centre, the investigation could concentrate on the apprehension of the inmates and established:

a) The inmates of the detention facility stated that they did not speak about this topic with the members of the Committee.

b) There was only one person among the inmates who was apprehended at Röszke Border Guard Station on 31st of March, 2005. This person was expelled from the territory of Serbia-Montenegro for two years and then he entered the territory of the Hungarian Republic illegally. After capturing him he was put temporarily (until the interpreter arrived) into the apprehension room of the road border guard station but there is *no* radiator in this premises. He was interrogated in the investigating room between 19.30 and 23.30 in the presence of the Albanian interpreter, then he was taken to the aliens' detention facility.

On point 15:

The CPT would like to receive information about the number of complaints of ill-treatment made against police and Border Guard staff, the number of criminal and disciplinary proceedings instituted as a result of these complaints, and an account of criminal and disciplinary sanctions imposed. The police, the Border Guard, the prosecution service and the court have separate register of complaints about ill-treatment that they have received or they have disclosed, therefore the numbers are different at the different bodies. Such complaints are also sent to the Ombudsman as well as to civil organizations (NGO), which are not always forwarded to the competent authorities. Considering that the authorities do not have information about data of the proceedings carried out at different bodies and organizations, therefore the data asked from bodies might differ from data of different bodies. In respect of 2004, according to the prosecutorial service's register concerning ill-treatment, 23 charges were pressed against 26 police officers, and 2 charges were pressed against 2 Border Guard staff. In each case a proceeding was initiated. As far as the police officers are concerned in 22 cases the proceedings were terminated, and in one case the charge was refused. Proceedings against Border Guard staff were terminated. 68 proceedings were initiated against prison staff in 2004. Disciplinary proceedings were not initiated.

According to the information of the Disciplinary Section of the Human Politics Department of ORFK, the following can be stated about the disciplinary proceedings at the police and the Border Guard:

a) In 2004, there were 59 disciplinary proceedings against police staff for ill-treatment, out of which 43 were terminated, 5 people got warning, 8 people were rebuked, 2 people were reprimanded, and 1 person was put back in one payment category.

b) In 2005, there were 64 disciplinary proceedings against police staff for ill-treatment, out of which 44 were terminated, 11 people got warning without disciplinary punishment, 7 people were rebuked and 2 people were reprimanded.

The number of complaints against Border Guard staff was very low. In the past 3 years in 8 cases 12 people under prosecution made complaint against acting Border Guard staff. These cases were investigated first at the directorate level, then under the prosecutor supervision after notifying the prosecution office. In each case the complaints turned out to be unfounded.

Proceedings for maltreatment in official proceedings were initiated against 3 people, but in each case the proceeding was terminated for lack of provability.

In order to avoid deportation, the foreigners do everything to abdicate the rules of detention, or to make unfounded statements against the prison staff who apply the law, or to ease the fulfilment of the requirements of detention, therefore they often turn against the prison staff.

On point 16:

On the basis of experience, the legality of proceedings against foreigners strengthens that the authorities executing means of coercion (apprehension) and the authorities initiating immigration proceedings and making decisions are different, there is not a hierarchical relationship between them but a co-operating one. Taking this into consideration, the foreigners could make complaints about their apprehension without fear to the staff proceeding in the case of the immigration organ of the BM BÁH.

On point 17:

The CPT raises objections against the fact that medical examination of detained persons is carried out in the presence of the police staff.

Earlier, the police accepted the CPT's recommendations by having changed the logical order, that is the basic rule is the presence of the police staff, and their absence is the exception. Pursuant to Section 4 of the ORFK Decree – if it does not violate the requirements of guarding and personal security – it is possible for the detained person or the doctor to ask the police staff to be out of hearing and sight during the medical examination. The decision is made by the commander of the police staff.

According to the police doctors' experience the perception of threat does not always precede the real threat. In the case of a detained person suffering from unpredictable illness causing aggressiveness (e.g. schizophrenia), the violent action can happen without any sign, and the time between the alarm and the appearance of the police is not sufficient to protect the doctor's safety. Nevertheless, there is a detention facility, where a call system has been installed in the medical room, for example in Székesfehérvár Central Detention Facility of Police Headquarters of Fejér County. The exclusive presence of the doctor might encourage the detained person to threaten him or to bribe him (demanding pills, tranquilizers, drugs). Concerning the fact that it is the police commander's responsibility and not the doctor's to maintain the safety of guarding, the ORFK found it necessary to prescribe that even if this kind of demand (concerning the absence of the prison staff) arises it is the commander of the police staff who decides the question after taking the circumstances into consideration.

According to information from the Health Section of Human Politics Department of ORFK, the proceeding suggested by the CPT is not consistent in international practice, as there are some states where doctors are not left alone with the detained person.

On points 18-19 and 24:

As far as the detained persons presenting injuries are concerned, the CPT recommends that they should be seen by an outside forensic medical expert and the case should be referred to a prosecutor. Pursuant to points 7, 8 and 9 of the ORFK Decree detecting outside injuries upon admission, the doctor carrying out the medical examination makes the detained person declare the origin of the injury, then – if the detained person makes allegations of ill-treatment by the member of the authority – the medical statement is forwarded to the directorate of detention, and then to the prosecutor by observing the due process.

The CPT emphasizing its viewpoint states that it has doubts about the police doctors' impartiality. The medical examination made upon the admission of the detained persons as well as the statements about the origin of the outside injuries are carried out by police doctors, concerning the fact – pursuant to Section 22 (1) of Decree No. 19/1995. (XII. 13.) BM of the Ministry of the Interior 'On the Rules of Police Detention Facilities' (Decree of Detention Facilities) – that the medical treatment of the detained people are provided by the police doctor service in the first place. There are detention facilities where the detained persons are taken to an outside specialist apart from the most simple "basic illness", for example the Detention Facility of the Police Headquarters of Pécs or Salgótarján.

The police directorate thinks that the professional relation itself does not establish partiality, but it is true inversely; the independency does not involve unimpressionability by all means. The police doctor does not take part in the investigation, during the treatment of the detained person he is neutral, he is subordinated to the law and to his professional knowledge. While practising his medical profession he does not fall under his employer's influence, from this point of view the lay employer cannot overrule the doctor's professional decision. On the other hand, criminal doctors working for the police doctor service must pass the specialist examination in forensic medical science for their practice. Pursuant to point 2 of the Appendix No. 2. of Decree No. 66/1999. (XII. 25.) EüM of the Ministry of Health 'On Obtaining the Qualification of doctor specialist, dentist specialist, pharmacist specialist and clinical psychologist specialist', the candidates have to fulfil practice in internal medicine, psychiatry, traumatology and prison doctor in order to obtain the specialist examination in forensic medical science. Moreover, they have to carry out forensic specialists' tasks which involve examination of a human being. The constitutional fundamental rights are not infringed if the inmates are examined by the police doctor. This is also supported by the fact that if the doctor thinks that the medical treatment of the examined person cannot be carried out in the detention facility, he makes a suggestion and takes measures about the future, the accommodation and the treatment of the person concerned. If the doctor who attends the inmate thinks it is reasonable to arrange a specialist consultation, he has the possibility to make use of the specialist treatment at outpatient and inpatient facilities.

In connection with point 18 of the Report, it should be mentioned that during the immigration proceedings taking over the inmate from the apprehension organ is possible only if the representative of the organ and the foreigner under prosecution as well make a statement that he has no injury. If the foreigner's statement or any visible sign or circumstances indicate that the foreigner has injury, he can be taken over only if the doctor's statement is attached. This requirement (the medical examination about the origin of the injury) is enforced by the aliens' detention facilities as regards the foreigners detained by BM BÁH.

On point 20:

The CPT wishes to stress the desirability of routine control performed in police detention facilities by independent outside bodies. We inform the CPT that the ORFK and the Hungarian Helsinki Committee have made an agreement about the initiation of a so-called detention inspecting programme. This also justifies the fact that the police has no objection against the civil control. (The Hungarian Helsinki Committee visited the Central Detention Facility of the Police Headquarters of Budapest in Gyorskocsi Street eleven times in 2005.) Careful consideration should be given to a more extensive outside control because we should keep in view the fact that detention ensures the availability of the person suspected of committing illegal act for the authority during the proceeding, which should take into consideration security, investigation and other interests. There are some cases when – deriving from the special character of the police and the tasks transferred upon them by law – publicity is not desirable because of the effectiveness and the success of carrying out the tasks. Therefore, the co-operation with civil organizations should take this into consideration. Co-operation with other civil organizations should be considered.

Every second week – or more if it is necessary – the detention facilities are visited by ***independent*** prosecutors who belong to the independent Division for Supervision of Legality of the Execution of Punishments and for Legal Protection. There are only five who belong to the Prosecutor General's Office, the other 25 are on the spot or near the detention facilities in the whole country. Thus, these prosecutors do not belong to the Department of Supervision of Investigation or other Departments, but they are independent from other departments because of the guaranteed points of view. The visits of inspection are unannounced. The members of the delegation often tried to adjust the Hungarian prosecution service to the constitutional position of their own country's prosecution service, and this might have caused the mistake. During the visit, the Hungarians often emphasized that the Hungarian prosecution service is independent from the law-enforcement authority as well as from the judicial authority, its constitutional position is similar to the court. This independency is such as the independency of the prosecution service in Portugal. The Constitutional Court strengthened the position and the role of the prosecution service, and these norms were given to the delegation. In Hungary not only the court but also the prosecution service is an 'outside organ independent' from the law-enforcement. While the judges and the prosecutors cannot be members of a political party, the governmental and the civil organization can, there are even such organizations that consist of members of a political party. It should be supplemented why the report considers the civil organizations that is members of political parties as 'independent, outside organizations', pushing the controlling function of the independent court and prosecution service of constitutional status into the background.

III. Safeguards against ill-treatment of persons detained by the police

On points 21-22:

Pursuant to Section 128 (1) of Be. the relative of the defendant designated by the defendant should be notified of the warrant of custody and the place of detention within 24 hours; in the absence of such a relative, notification should be made to another person designated by the defendant. CPT finds this period of time too long – notwithstanding the fact that the inmates interviewed did not indicate infringement of rights or interest – and the CPT is of the view that notification should be made immediately.

On point 23:

The CPT suggests: the police should take steps to ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty. Section 5 (3) of the new Be. provides that a person who is the subject of criminal proceedings has a right to legal assistance at every stage of the proceedings. It logically means that the person has the right to legal assistance when he becomes a defendant: that is when the suspicion was disclosed to him. In line with this, Section 48 (1) of the new Be. provides that if the defence is statutory – in the case of the detained defendant – the counsel for the defence shall be appointed not later than the first hearing of the defendant.

Subsections (2) and (3) of Section (4) of the Joint Decree No. 23/2003. (VI. 24.) BM-IM of the Ministry of the Interior and the Ministry of Justice 'On the Detailed Rules of Investigating Authorities under the Authority of the Ministry of the Interior and on the Rules of Recording investigatory actions other than in the form of minutes' provide stricter rules than the new Be. because the defendant has the right of access to a lawyer not when the first hearing of the defendant takes place, but when the first procedural action (e.g. issue of summons, means of coercion involving deprivation of liberty, order of warrant or arrest warrant) takes place.

The CPT has expressed its worry about the fact that pursuant to Section (33) of the Act on the Police (Act No. XXXIV/1994.) the access to a lawyer of the apprehended is not unequivocal, "that is a period of up to 12 hours – during which the person has the status of apprehended – might elapse before contact with a lawyer is permitted". The CPT has the point about the uncertainty originating from the deficiency of the legal regulation, therefore in order to eliminate it, the law must be amended.

In connection with access to a lawyer, it must be highlighted that the authority always makes the necessary steps to inform the foreigners about their right of legal representation in the aliens' proceedings. Before the hearing the proceeding clerk informs the foreigner about his procedural rights and obligations, which involve his right to legal representation. The proceedings take place in the language which is understood by the person under prosecution, thus during the immigration proceeding in front of the BM BÁH, the foreigner receives all the information in connection with his procedural status, the content of the decision and his right for remedy. The BM BÁH does not apply means of coercion without the enforcement of the abovementioned guaranteed rules.

On points 25 and 35:

CPT suggests that the information sheets on the rights and obligations of detainees should be available in all police establishments in an appropriate range of languages. Section 11 of the ORFK Decree draws attention to the fact that pursuant to Section 2 (8) and (9) of the Decree of Detention Facilities, detainees have to be provided with a written information sheet which should be signed by the detainees in order to confirm the reception of it. The directorate responsible for detention has to arrange that the information sheet is available in the necessary languages. The Commander of the Police Headquarters of Csongrád County indicated that they make use of interpreters while informing the foreign detainees and carrying out procedural acts.

The CPT statements referring to the Central Detention Facility of the Police Headquarters of Budapest in Gyorskocsi Street are the consequences of misunderstanding, as the written information made by the police and the Hungarian Helsinki Committee as well as the facilities' regulations translated into 9 languages are available, and they are hung at every level of the facility, and they were shown to the CPT delegation.

On point 26:

In connection with the developments of 'a code of conduct for police interrogations', the CPT is interested in Joint Decree No. 23/2003. (VI. 24.) BM-IM of the Ministry of the Interior and the Ministry of Justice 'On the Detailed Rules of Investigating Authorities under the Authority of the Ministry of Internal Affairs' that came into force on 1st July, 2003.

On point 28:

The drafting of Point 28 should be specified, as Section 54 (3) (b) of the Aliens Act (Act No. XXXIX/2001.) does not state that the foreign national should have access to a lawyer, it only provides that the foreign national under detention has the right to be in contact with his legal representative and the member of the consulate without any control. In connection with the legal representation see Point 23.

People apprehended by the Border Guard have the right to choose a legal representative or a lawyer at any time of the proceedings, and in this case the Border Guard ensures the people's presence while carrying out procedural acts. The current legislation does not prescribe the obligation of representation or a lawyer during the immigration proceedings, thus the proceeding organs do not have to appoint a representative, except in the case of minors and people who are incapable, because in these cases the very first hearing can take place in the presence of the case guardian.

In each apprehension room of the Border Guard and aliens' centre there is information on the availabilities of human rights and humanitarian organizations which deal with protection of rights in Hungary, are in cooperation with the Border Guard and turn to the Border Guide with this request. During the first hearing the foreign nationals under prosecution receive information about their rights and obligations in the presence of an interpreter, they confirm with their signature that they have understood it, and this declaration is attached to their file. Moreover, the abovementioned information sheet as well as the general rules, the facilities' regulations and the daily routine are displayed in buildings and places restricting the personal liberty of foreign nationals.

After the Committee's oral information on the improper practice of giving information on fundamental rights of foreign nationals in Szeged was investigated and immediate measures were taken to terminate it. Before the visit and after it as well there is a continuous control, such case has not appeared so far. In order to avoid similar cases the deficiencies have been treated and commands were given out so that the law-enforcement staff announce the information about the rights, obligations and the possibility of representation just as the first thing when the interpreter has arrived.

On point 29:

Deportation orders are implemented by the staff in the detention facilities for aliens. Their preparation and psychological filtration is higher than those of the Border Guard patrols and they regularly take part in skill-development and conflict management courses and trainings.

It was a new and special task for the Border Guard to take over the deportation by air from the police. Twenty people are prepared for the deportation in a trainings made on the basis of international experience (taking over the Dutch theoretical and practical training and the German experience) and with the help of the staff that has been trained to deport.

On the two-week preparation only the 50% of the staff met the high requirements, most of them fell out at the physical preparation and some of them at the psychical preparation. The training is far-reaching, among others it contained international law, training in close fighting, the aliens' law, the psychological preparation, it also spanned the dangerous situations that can be carried out and resolved with the adequate training.

The measures restricting personal liberty by the Border Guard during their aliens' action are under multi-layer and manifold control. On the one hand, because of the hierarchical structure of the organization the supervising organs continuously terminate the deficiencies arising during the professional and legal controlling activities, on the other hand internal rules which are not qualified as legal regulation, and special measures are taken in order to work out the appropriate practice. According to the law, every second week the prosecution organs check the documentation in connection with the people detained in the detention facilities for aliens, the treatment of foreign nationals and the insurance of their rights.

They hear the detainees personally in the situations where they find it necessary, their experience is written in memorandums, the attention of the leaders of the establishments is drawn to the termination of the inappropriate practice in signalizations. Their controlling activity covers the establishment of the places of detention, and they make recommendations on the base of their experience.

Prolonging the detention belongs to the court, who in the frame of judicial review – during the examination of documents and the personal hearing of the foreign nationals – examine the legal base, the content and the necessity of the maintenance of detention.

Moreover, the establishments detaining foreign nationals are under a continuous civil control, on the base of a co-operation agreement or members of other legal protection and legal assistant organizations occasionally visiting the detention facilities take steps in order to protect the detainees' alleged or real interests in each case. The Border Guard makes it possible for all the organizations to be in contact with the detainees of foreign nationals which can provide the detainees with legal, psychological or religious help.

Pursuant to Point 29 of the Report the CPT attaches considerable importance to the manner in which deportation orders are enforced in practice. The following information is in connection with this:

On the 18th December, 2003 following the death of a Cameroonian national during deportation accompanied by the authority, the case was investigated by the General Deputy Parliamentary Commissioner for Civil Rights. As the result of the investigation, the medical experts of Judicial and Medical Institute of SOTE stated that the cause of the death of the foreign national was heart failure, there was no injury on the corpse which can be related to his death. In connection with this case, the General Deputy Parliamentary Commissioner for Civil Rights took the initiative to make the law on deportation taking into consideration Recommendation No. 1547 of the Parliamentary Assembly of the Council of Europe on Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity. While making the aliens' law, the recommendation of the General Deputy Parliamentary Commissioner for Civil Rights was taken into consideration, the execution of deportation was regulated in a Joint Decree No. 40/2004. (VII. 2.) BM-IM of the Ministries of the Interior and Justice. It states that the deportation must be executed by respecting the human dignity of the foreign national. The regulation prescribes obligatory instructions for the authority in connection with the execution of the deportation regarding the rights that must be insured for the deported foreign national, with special regard to women and minors, specifying the rights of the deported person at the same time. The Decree also regulates what is forbidden at the execution of deportation and to what extent and under which rules the accompanying authority can use the means of coercion against the foreign national.

A former internal regulation – Order No. BM 3/2001. (BK. 2.) of the Ministry of the Interior – on the execution of deportation of foreign nationals, provides that if the deported foreign national needs permanent medical control the deportation is executed by the police doctor service or the medical service of the Border Guard, and if the foreign national needs continuous medical control the deportation is executed by the doctors of BM Central Hospital and Institutions.

The deportation is carried out pursuant to international legal instruments and the PACE Recommendation No. 1547 (2002). The Office's staff taking part in the execution of the deportation have the possibility to widen their knowledge and exchange national (Dutch, Danish) experience in the frame of international projects. On several trainings the Office prepared the police officers carrying out the accompanying tasks.

IV. Conditions of detention in police establishments

On points 31-32:

a) The CPT has raised objections about the inadequacies found especially in the Police Central Holding Facility in Budapest, the 3rd and 7th District Police Stations in Budapest and the Csongrád County Main Police Directorate in Szeged – these inadequacies are connected mostly with the access to natural light and ventilation.

According to the information received from the Budapest Police Headquarters (BPH), the frontal windows built in the houses of detention corresponded fully at the time they were built to the then effective regulations. In order to have more incoming natural light and better ventilation, a change the size of the windows would be needed. This would qualify as alteration to the frontal aspect and would result in a procedure for building permit. To change the windows would cost approximately 35-40 million HUF, but the financial possibilities of the BPH do not allow such investments, the estimated budget of the BPH for 2006 does not cover the work for necessary modernization and reconstruction.

In the Police Central Holding Facility in Budapest there was a renewal of the lighting network in year 2002, which answers all requirements. The alterations of the outdoor exercise yards and their covering with corrugated slate has been done; this, together with the ironing beneath it gives protection against the falling lime-cast of the outer façade, although the natural lighting of the exercise yard has considerably diminished.

Regarding the detention cells of Csongrád County Main Police Directorate in Szeged, the CPT states that the access to natural light and the ventilation was limited due to the presence of dense grilles on the windows. In the present conditions of detention the only possible solution to remove these shortcomings would be the following: to remove the wiring from the wall-grill that is before the window in the inside of the detention cells, and the remaining grill should be strengthened in the middle against burst-out. All this could only be feasible, if it would not contradict the security regulations. With the removal of the wiring there is the great danger that the prisoner reaching through the grills could break the window-glass and thus bring about an extraordinary event with the glass splinters (self-destruction, assault against the guards, etc).

In case there is a method to prevent the glass breaking into splinters, the removal of the wiring becomes possible. In this case another problem also has to be solved: the windows should be opened and closed only by the guards. In reality even the security foil on the windows would not be an adequate solution, as the splinters can be taken out of the foil. Only the "vandal-secure" PE-MO type window would meet the requirements, which are already used in some detention rooms, but their adjustment would have significant financial consequences.

b) The CPT required the changes of the narrow sleeping platforms that are to be found at the Csongrád County Main Police Directorate in Szeged. In this detention facility the sleeping platforms are indeed narrower and shorter (length: 180-190 cm, width: 60 cm) than the sleeping platforms usually used in other detention facilities (200x90 cm). In year 2006 there will be a possibility to change 20 sleeping platforms, the costs will be covered by the National Police Headquarters (NPH). The financial experts of the Csongrád County Main Police Directorate have already asked for a bid for the implementation.

On point 33:

The CPT wishes that the police forces offer some sort of activities to the prisoners, by ex. setting up communal rooms. The police can not agree with this recommendation. The communication of prisoners – detained in detention cells – with each other is basically regulated in the Article 18 (1) of the Decree of Detention Facilities, which phrases the aspects of the confinement. The rules of confinement and the preservation of investigation interests leave a very narrow margin for the detainees to meet their fellow-detainees other than the cell-mates, because contrary to the convicted inmates, here there are cases, where the communication or "conspiracy" of certain detainees would endanger the outcome of the investigation. Even Article 2 (7) of the Decree of Detention Facilities enounces that the detainees' rights can not endanger the procedure in course against the detainee. Hence it follows that the rules of confinement are to be observed even during the outdoor exercises and leisure activities, thus on such places only detainees from the same cell can be located at the same time.

It is to be noted that there is no such locality at the Police Central Holding Facility in Budapest, Gyorskocsi street. This can not cause serious harm, because according to the enumeration in the annex of the Decree of Detention Facilities, the detainees can keep several objects (ex. books, newspapers, periodicals, religious objects, pocket radio, battery operated TV, cards, check game, and other games) which can assure their leisure time activities even in the lack of a communal room.

On point 34:

a) The CPT recommends that the police amplify the possibilities for preliminary arrested detainees to contact the outside world, among others the possibility to meet with their families at least once a week. According to the dispositions of Article 2 (1) point c), the prisoners under preliminary arrest can receive a visitor once a month. This disposition gives only the lower limit of the frequency of the visits, thus there is no obstacle for the prisoner to meet the family more often.

b) According to the report, several prisoner complained to the CPT, that they "had not received authorization or that it had been granted only sporadically" for visits, telephone calls, etc. Without detailed facts there is no possibility to react to these complaints in depth, but we have to draw attention to the Article 2 (2) of the Decree of Detention Facilities, which allows – for the success of the criminal procedure – a restriction of the correspondence, receive of packets or visits of the preliminary arrested. These restrictions do not apply to the contacts with lawyers or with members of other organisations defined in the Decree of Detention Facilities.

According to the Article 6/B (2) of the Decree of Detention Facilities, the detainee can use the telephone only to keep contact with persons determined by the head of the organ conducting the procedure resulting in the detention. The communication can be exercised with supervision, the detainee has to be informed about this fact. The supervision does not apply to communications with the lawyer, this is also forbidden by Article 43 (3) of the Code on Criminal Procedure. The authority has thus the right to refuse the request of the detainee for contact, in order to avoid the risking of the outcome of the ongoing procedure. If it weren't so, or if the permission would not be given by the police or prosecutor in charge for the procedure, then it could happen that the detainee would correspond with his accomplice at large.

According to the statement on page 22, a detainee in the Csongrád County Main Police Directorate in Szeged claimed, that the investigator in charge has "intercepted" his telephone calls with his lawyer. As there was no factual information in the report, it can not be ascertained, which detainee complained on what exactly. The "interception" covers the activity, when the officer listens to the telephone conversation of the detainee through a "partyline telephone", which is connected to the telephone used by the detainee. Such practice however is not conducted by the police in case the detainee talks with his lawyer, their task is only to initiate the call. According to the Article 55/C of the Police Service Rules for Detention Facilities – which had been promulgated by the ORFK Decree no. 19/1996 (VIII. 23.) – the detainee himself can not initiate telephone calls (not even non-supervised ones), this is always the task of the holding facilities' staff or the representative of the organ conducting the procedure. The reason for such a regulation: the police have to be ascertained that it is the lawyer who is called. After the police make sure that it is the lawyer on the other side of the line, they give the telephone to the detainee and not follow the conversation any more.

On point 36:

a) The CPT mentions that detainees complain about the quality of health care. The aim of the health care of detainees is to prevent the health impairment in connection with and during the detention, furthermore to restrain the worsening of already existing health problems. It happens frequently that detainees seek medical help for quasi unfeasible, aesthetical claims or long existing but up to now not minded problems, although this is not the objective of health care under detention.

b) The report complains about the poor medical documentation (ex. sparse character of medical notes, etc.) A solution would be the electronic data storage, which at the present can not be resolved due to the lack of technical conditions. Nevertheless, all medical examinations are recorded and can be looked up and retrieved on a yearly basis; these files are used also during the trial phase of the procedure. The registry of the doctors encompass also the administered medicines, together with the dosage and the duration. The leader of the Healthcare Division of the Department for Human Resources of NPH in his circular expressly drew the attention of police doctors to describe the dosage and duration of medication (ex. 3x1 tablets for 5 days).

c) The CPT disapproves that the distribution of medicine is carried out – with some exceptions – by medically untrained staff (guards). According to the professional standpoint of the Healthcare Division of the Department for Human Resources of NPH, medical training is not required to distribute medicines, it is not required even in international comparison. The Healthcare Division of the Department for Human Resources of NPH proposes the introduction of such a uniform packaging practice that is already used abroad. According to this practice the doctor in charge of the detainees could dose precisely the medicine (morning, noon, evening), and the guards could distribute the capsules, tablets accordingly.

d) The CPT expresses concern that the prescription of medicines to relieve the symptoms of detained persons suffering from drug withdrawal is "not tailored to meet the individual's needs". Unfortunately the report does not specify the problem in details. Nevertheless, the leader of the Healthcare Division of the Department for Human Resources of NPH points out, that these medicines can cause addiction and the detainees many times take advantage of their use. The deliberation of the needs is a professional medical question that always belongs to the competence of the doctor.

e) The CPT expresses concern about the approach adopted towards detainees suffering from HIV infection or hepatitis (ex. segregation, obligation to use separate toilet and shower). The standpoint of the police is different. According to the present doctrines of medical science, the AIDS that evolves from the HIV infection is a lethal, incurable disease. It is a great responsibility for the staff of the holding facility that no other detainee or member of the guards be infected. In a surrounding where detainees of the same sex are compelled to be locked up 24 hours a day a situation could happen where infection is transmitted through a small lesion or bruise. This is the reason why the leader of the Healthcare Division of the Department for Human Resources of NPH finds the segregation useful from a medical-professional point of view.

V. Border Guard establishments

On point 42:

The border guards have defined as outstanding objective to follow the various dietary habits of the detainees and have elaborated in the past 10 years – without regard to the costs – the conditions for free religious practice. In the detention facilities one can usually choose from 2-4 types of menus, thus various dietary habits can be taken everywhere into consideration. Aliens can indicate their preferences already at the time they are admitted, but detention facilities also care about the vegetarian catering or special diet due to a medical decision. Regarding the fact that at the Orosháza holding facility and the thence suspended Balassagyarmat border guard holding facility the number of both the staff and the foreign detainees is low, on rest-days the once-a-day warm catering for aliens is resolved by heated canned food.

According to the recommendation the authorities shall examine whether there is a possibility to give warm food to aliens even on rest-days. The knowledge of religious habits is important even at the time of the admission, because at the designation of the sector the authorities take into consideration the various religions to be able to prevent conflicts between the detainees. In connection with the alimentation, ex. during the month of the Ramadan the authorities help the observance of religious impositions by guaranteeing the appropriate time for the meals.

On point 43:

According to the legal prescriptions, detainees have the right to cultural and leisure activities, but there is little financial support to widen these. In the majority of the detention facilities there is a small library as well, with some foreign language publication.

All border guard detention facilities have colour TV and VCR, which allow the broadcasting of 14-55 channels (foreign language channels as well) through satellite dish. There is no possibility to purchase foreign newspapers, but some religious groups have provided the detention facilities with religious books (ex. Koran, Bible).

From the national airways left-over foreign newspapers had been sent regularly to the establishments. Naturally in case of demand, the detainees can buy – at their own expenses – foreign language literature, newspapers, periodicals.

The legal prescriptions do not allow foreign detainees to work – with the exception of cleaning their own sectors.

On point 44:

At the time of taking into custody, all foreigners are examined by a doctor, the allocation can happen only afterwards. During the time of their detention the aliens are under feldsher care, who supervises the medication and deals with the emergency cases. During the detention the medical supervision is provided by the doctors of the directorates, in the individual establishments by contract doctors. In all establishments the special medical care is guaranteed by the local hospitals. The personnel and the guards have completed first-aid courses, they are thus able to provide adequate help until the arrival of the doctor or ambulance.

In the border guards detention facilities security measures cannot be by-passed during the medical consultations, as the devices in the medical room allow self damage, attack against other person; the happening of such extraordinary events call for security supervision. Naturally in all cases the security supervision is done by a same-gender guard, their position (physical) can not hurt the human rights of the detainees. In the majority of cases a translator is also needed, in this case it is more difficult to provide a same-gender person. The persons in such a case can not see each other.

By taking into consideration all possibilities there is an effort to ensure that the detainees' disclosures of personal character (especially the data that belong to the protection of health law) do not come to the knowledge of the guards. In some cases this problem cannot be solved, ex. when the translator belongs to the opposite sex and is present though out of sight. Besides the above mentioned facts, the staff responsible for the deportation have to have information on the state of health of the persons for the sake of a secure escorting.

On point 45:

During the training of the staff special attention is given to trainings of various levels on communication, conflict solving and conflict prevention. The psychological service of the border guards participate in the selection and regular filtration of the staff, also in the elimination and subsequent treatment of events, both in the case of detainees and guards, in groups or individually, regarding the events.

There are regular training courses organised by or on the initiative of civil organisations, where guards participate in lectures and seminars on human rights and other humanitarian topics, furthermore where they are prepared how to deal with persons of damaged personality.

A special attention is given to the requirement that the staff should be able to speak a foreign language on a basic level. This has an eminent role already at the selection of the staff. In all of the service groups there are persons with basic English or German communication knowledge. In the past 3 years there were 37 persons participating in an intensive (3-5 months) English, 10 people in German and 5 in French courses. Following these courses they passed basic and medium level language exams; furthermore, around 30 people participated on shorter (30 days) courses.

On point 46:

Regarding the fact that the guards are responsible not only for the prevention of leave without permission, but also for the protection of the serving and administrative staff and the safety of other detainees, they would be unable to perform their duties without coercive devices. The staff at the border guard facilities carry out their duties always without firearms, only the persons not having personal contact with alien detainees are provided with guns (ex. those who cover the holding facility from outside). The guns can be used only for the protection of the bodily safety of others and themselves and only as a last resort; the use of firearms against aliens that seek to evade justice (tentative of escape) is inconceivable.

The use of coercive measures has been determined for several decades by the practice of tactics, these are connected integrally to the way how these devices are worn. According to this, the proposed covered and hidden carriage of these devices can bring about serious consequences.

On point 47:

It is said in the report that at the time of the CPT visit in the Orosháza holding facility no written information was available on rights, internal rules and procedures in any foreign language. According to our experiences, foreign detainees tore these information sheets from the walls, damaged them; probably this must have happened in this case as well, and there was no time for the replacement. Following the inquiry steps have been taken to the substitution of the written information sheets, furthermore to do it in a way that helps the prevention of damaging.

On point 48:

Several proposals were made and steps have been taken for the amelioration of the communication and the abrogation of communicational and cooperative problems with other immigration authorities (especially with the Ministry of Interior's Office of Immigration and Nationality – hereinafter OIN). The cause of the problems is the inadequate division of competence and work between the authorities, when during the execution of the OIN decisions the border guards can not encroach the activities necessary for the accomplishment of its duties, can not gear it up, and does not disposes of enough information to deal with the signals of the alien detainees kept at their holding facilities.

That's why:

a) within the frame of co-operational discussions they have cleared the existing problems, evaluated the events, and with the punctualisation of the regulations they made the duties connected with the information, documentation and forwarding of the memorials clearer in case of clash of competences.

b) they have submitted a proposal for the modification of an act to have the duties of the executive phase referred to border guard competence; in such a way the co-ordination parallelism could be abolished, and the number of cases where the lack of information leaded to serious consequences could be diminished.

Concerning the complaints written in point 48 it has to be said that the foreign detainee receives accurate information on his case at every phase of the procedure. An alien can be taken into custody by the border guards only for a period of 5 days; in case his departure from the country can not be organised within this period of time, the court shall decide on the prolongation of the custody. During the time of the custody, the OIN shall arrange without delay the conditions of the departure. The travel documents are to be issued by the embassy of the detainee's country of origin; neither the OIN nor the border guards have any information on how quickly the embassy or consulate deal with such problems, thus they are unable to give answer on this question to the detainee. In such cases the communication between the two authorities is exceptional, but it is only the embassy/consulate that is able to give information to the detainee. The alien is informed without any delay by the border guards when the conditions of the departure are fulfilled.

During the asylum procedure – at the time of the first hearing – the alien receives a detailed written information sheet on the course of the whole procedure, especially on the duties concerning the first meeting with the OIN, on the compulsory personal attendance, on the legal assistance, on the possibility to receive other help, on the basic rights and duties, on the compulsory medical examination, on the judgement of pleas concerning the kith and kin, on the necessary documents, on the expected behaviour at the communal quarters, on the possibilities to work, on the detailed interview, on the duration of the procedure, on the shortened procedure, on the right to appeal, on the possibility to search family members, on the function of the Search Office. The information sheet is translated to 18 languages and is given to the detainee in his own mother tongue.

On point 50:

The possibility for detainees to receive visitors is regulated by law (Decree of the Ministries of Justice and Interior No. 27/2001 (XI.29) and by the house rules of the detention facilities. The frequency of receiving visitors is not regulated, but the time limit and the number of visitors are. Visits are limited to half an hour and only one visitor is allowed at a time, in case of an alien, a longer time-limit can be permitted. However, based on equity the head of the establishment can increase the number of visitors at a time and extend the length of the visit. The due moment of the visits is regulated by the house rules of each detention facility, it has been elaborated with the help of psychologists. The duly elaborated, not too rigid but controlled house rules can have positive effects on detainees, but at the same time the regularization of the detainees' daily routine has to be based on discipline. The commander of the detention facility can of course give permission – in individual cases and out of humanity – to a visit different from the daily routine, if this does not disturb the rest of other detainees, the administration, or the security of the detention.

On point 51:

The obligatory cases where a detainee must be handcuffed is prescribed by law (Decree of the Ministry of Interior No. 40/2001 (XII.23) on the standing instructions of the border guards). Handcuffing can be ordered by the provost also for transfer and custody outside the facility, especially on places like ambulant policlinic (there are dangerous devices within reach), court hearing (because of perhaps negative decisions, for the maintenance of the order of the court) or during deportation at public places with big traffic. According to the international regulations, the decree prohibits any handcuffing that might be degrading or that might cause unjustified injury. With the exception of transportation in a vehicle, the decree permits handcuffing to objects, to prevent self-injury, assault, escape; to break down rebellion, or in case the outcome of the taken measures cannot be secured otherwise.

Practical observations led to the use of leash handcuffs, where the escorted person – upon public appearance – tried to evade the procedure, and when even a short pursuit would cause a source of danger and extraordinary efforts (ex. in a bank).

On point 52:

Provisions concerning disciplinary sanctions applicable to foreign detainees at border guard facilities is a major problematic question of the legislation, because the length of the detention of aliens (especially those in custody for return) cannot be modified according to their conduct – as they are not convicted – thus it is more difficult to motivate them, unlike the convicted. The time spent is custody is rather short, the sphere of attainable privileges is very narrow; the withdrawal of some of these privileges would violate humanitarian principles (ex. the forbiddance of a visit different from the daily routine, the limitation of the frequency of sending/receiving packages), and by the already restrained possibilities the withdrawal of leisure/cultural activities would be inhuman.

The heads of the establishments can usually withdraw the privileges given by themselves (ex. to put the time of the curfew at a later hour, to withdraw this, to restrict the outdoor activities to the minimum length prescribed by law, etc.), but they do seldom practice this power as it already led several times to the intensification of tension. The segregation of the insubordinate persons is ordered only for a short period of time because it needs further guards to carry out duties and because in practice it became successful only as a short term disciplinary sanction.

On point 53:

During the procedures of the OIN – during the time of apprehension or retention – food and water is provided for the aliens. A separated amount of money is to be spent on alimentation, the authority pays special attention to minors as well.

The equipment and furnishing of the border guard establishments mentioned in the report is prescribed by inner regulations; the provision of food and drinking water is regulated by law. The detainees remain at the apprehension establishment in Röszke only until the arrival of the transferring staff, this establishment – due to reorganisations – is not used as a proper detention facility. This is the reason why the only exigency is that of security, and thus only fixed chairs have been provided. The other sub-offices are continually developed and renovated – as seen in Szeged – these establishments are provided with beds, lavatories. By the shaping of these new and renovated apprehension facilities the humanity and security were equal notions. Both at the planning, and during the construction the experiences and proposals of the police, the staff at the detention establishments, prosecutors, border guards, civil organisations and psychologists were taken into consideration.

Those taken into custody are entitled to a meal according to the phase of the day, these are provided either by the kitchen of the establishment or by restaurant menu, in extreme cases by canned food which can be heated or by cold meal in the case of the breakfast. There is no restriction for the detainees to have access to drinking water, the detainees should indicate their need to drink; any restriction from the side of the staff would be a punishable act. The law prescribes the frequency of access to drinking water only during deportation/transport: it is 2 hours for adults, 1 hour for minors.

B.

On the viewpoints in connection with the statements and suggestions concerning the institutions under the supervision of the Ministry of Justice

I. To the preliminary remarks

On points 54-55:

In Hungary the prison facilities operated with an average over-population rate of 145 % in 2005, which is equivalent to the 2004 data. No changes occurred in the accommodation normative of the prison population in the year of the Committee's visit, with the overall capacity of penal institutions slightly dropping, as compared to the previous year, to 11,263. On 31st December, 2005 15,048 prisoners were accommodated in the prison facilities, and 398 persons stayed in the Healthcare institutions of the penal organization.

- Unit III of the Metropolitan Penitentiary Institution (with 628 places in 2000)
- Sátoraljaújhely Strict and Medium Regime Prison (80 places in 2000)
- Sopronkőhida Strict and Medium Regime Prison (220 places in 2003)
- In Bács-Kiskun County a Mother and Child Unit was built (20 places in 2003)
- Szeged Strict and Medium Regime Prison, Unit II (230 places in 2002)
- Juvenile Regional Prison, Szirmabesenyő (115 places- in 2002)
- Jász-Nagykun-Szolnok County Remand Prison (70 places – in 2002)
- Veszprém County Remand Prison (214 places – in 2003)
- Budapest Strict and Medium Regime Prison – inauguration of the Transfer Unit (2004)
- Fejér County Remand Prison (10 places – in 2004)

In the framework of the PPP prison construction project 800 prisoners will be accommodated in Szombathely, and 700 in Tiszalök in the first half of 2007. In Pécs, under the support of PHARE, an institute is being built to house 50 juveniles and will begin operating in the second half of the year 2006.

In the Baracska National Remand Prison the cells holding large numbers of prisoners will be transformed to four-man cells with an investment of 50 million forints in 2006.

By opening the new prison facilities the current overcrowding could be reduced to some 125-130% even if the present number of people would remain, which has no chance at all. From year to year the number of imprisoned people and peolple in pre-trial detention has reduced. The amendments of the provisions of law have made it possible and the Hungarian authorities have been using the alternatives which do not include detention.

II. Ill-treatment

On point 56:

In the Kalocsa Strict and Medium Regime Prison, following the CPT inspection, one of the prisoners complained of ill-treatment in the framework of a hearing by the prison director. According to her allegation the unit's chief inspector on duty had pulled her by the hair across 3-4 meters on 26th January, 2005. On 17th May, 2005, the prison director initiated disciplinary proceedings against the chief inspector on account of the reasonable suspicion of the commission of maltreatment in official procedures as well as the infringement of the rules of punishment and treatment. The Judge Advocate General of Szeged dismissed the charge, and discontinued proceedings No. B.130./2005. in the absence of a criminal offence, qualifying the act as the use of a means of coercion with the purpose of preventing the imminence of a graver act (fighting female prisoners had to be separated in the presence of a larger group of prisoners).

With respect to the complaints about verbal abuse, the prison staff admitted even before the Committee that such kind of acts may have occurred in small numbers against prisoners showing an unruly, insubordinate and disrespectful behaviour. The prison leadership has always prohibited the above conduct, and encourages the prisoners to report such cases.

The Committee's statement that "the general atmosphere appeared to be rather tense" is not supported with objective facts, as there have not been any illegitimate incidents, to the harm of prisoners or regarding services in the prison facility for years.

No unreasonably strict controls "as a result of which inmates appeared over-controlled and intimidated" were imposed, only everyday routine inspections were carried out in compliance with the provisions of law.

On point 57:

In the Szeged Strict and Medium Regime Prison the physical-ill treatment, intimidation and verbal abuse of inmates cannot be investigated unless the prisoners indicate concrete persons and dates in connection with the incident. It is a general experience, gained from investigations instituted on the basis of such complaints, that when the reporting person is heard the inmates do not know or are reluctant to identify the perpetrator, whether the perpetrator was a fellow inmate or a member of the prison staff. This fact is particularly characteristic of the incidents of sexual assaults.

In the event that the perpetration of a crime is suspected, the prison staff is required to take the necessary measures, and based on the prisoner's report in most cases charges are made against persons unknown. Complaints involving the prison staff are handled in accordance with the rules of law in force, as these legal institutions aim to detect the actual perpetration of the offence by ordering disciplinary proceedings and, if necessary, by reporting the case to the competent Judge Advocate General.

The activities of the staff beyond their service time take place under controlled conditions. This is ensured by the camera systems installed to monitor the detention areas (although they are primarily designed to serve the safe holding of prisoners), as well as the continuous, planned or ad hoc inspections of the prison management, which also contribute to the prevention and detection of arbitrary acts and abuses and to the lawful performance of service duties.

On point 58:

As regards the event described in connection with Unit III of the Metropolitan Penitentiary Institution – involving the physical ill treatment of a prisoner – no factual information is available. Until the penitentiary facility is in full knowledge of a concrete event, including concrete dates persons attached to it, it is not allowed to conduct an investigation in merit, unfortunately.

On point 59:

In accordance with the order of the Director General of the National Prison Administration, the Directors of the Szeged Strict and Medium Regime Prison and the Kalocsa Strict and Medium Regime Prison are required to take all necessary arrangements to ensure that in the course of training and briefing the permanent staff priority is given to the rules of behaviour of the prison staff towards the prisoners, the regulations relating to treatment, the lawfulness and professionalism of the measures taken during the performance of service duties, as well as the legal consequences of the unlawful actions.

A separate order is issued for the respective Directors of the Szeged and Kalocsa Prisons, to ensure that intensified supervision is exercised over the detention areas of the prisoners, the performance of service duties is controlled, that they make efforts to acquire first-hand information for their management activity. Also, they must devote proper attention to the documentation of their experiences.

The Director of the Kalocsa Strict and Medium Regime Prison held a staff meeting after the visit of the Committee, where he gave a briefing about some of the findings of the examination, and at the same time he called the staff's attention in the strictest way to the consequences of physical or verbal abuses.

On point 60:

Each authority fully agrees with the proposition of the CPT that it is necessary to increase the number of staff working in the detention areas. At the same time, it is important to highlight that in some special groups where the treatment and education of the prisoners need greater attention from some aspects, the custodial staff is already present in larger numbers. It is also essential to mention that in the accommodation areas of such special groups the service duties are nearly always performed by permanent staff who know the prisoners and their personal problems well.

On point 61

Pursuant to Section 171, Subsection (2) of Act XIX of 1998 on the Criminal Procedure (hereinafter: Be.), the directors of penal institutions shall report - ex officio and without exception - to the competent Judge Advocate General any a fact coming to their knowledge which refers to the reasonable suspicion of the perpetration of a crime.

The guarantees for the performance of the above reporting obligation immediately and without exception are laid down in Act IV of 1978 on the Criminal Code (hereinafter: Btk.), in Act XLIII of 1996 on the Service Relation of the Professional Staff Members of the Armed Forces (hereinafter: Hszt.), and in the Service Regulations, which provide that a director who fails to fulfil his obligation of reporting and taking action after becoming aware of a breach of duty - i.e. who fails to report the reasonable suspicion of a crime order disciplinary proceedings when it is required by the law - shall be deemed to commit a crime himself.

The time limit for the conduct of disciplinary proceedings ordered in such a way and the related decision-making is 30 days or in more complicated cases - by extension - 60 days as set forth in Hszt. In spite of this, the disciplinary proceedings instituted on account of the reasonable suspicion of ill-treatment in official proceedings – in the majority of the cases – shall be suspended until the conclusion of the criminal proceedings which were initiated parallel with it, and will be finished only after the criminal proceedings are closed.

Owing to the well-founded suspicion of the crime of ill-treatment in official proceedings disciplinary proceedings were initiated against 16 members of the Prison Service Corps in 2004. From among these proceedings only one condemnatory judgment was delivered against one person, but taking into consideration the negligible material weight that the offender's conduct represented, no punishment was imposed, only a sanction of 'reprimand' was inflicted. The proceedings were dismissed against 9 persons, with no investigation carried out and no indictment raised, because in the case of 6 persons it could already be established at the investigation phase that no criminal act was committed, and in the case of three persons the occurrence of the incident indicated in the report could not be evidenced. At present, proceedings are still pending against 6 persons.

In the year 2005 the number of criminal proceedings initiated owing to the reasonable suspicion of crime had doubled, but only one final condemnatory judgment was passed against one person, who was sentenced by the military court to a fine of HUF 50,000.

More than half of the investigations ordered in 2005 were discontinued, against 7 persons for the lack of a crime and against 10 persons for the lack of evidence. Now investigations are conducted against 14 people in criminal proceedings instituted in 2005 for the reasonable suspicion of ill-treatment.

From the above data it is clearly seen that more than half of the criminal proceedings initiated for the suspicion of ill-treatment had been discontinued. The explanation for this might be that prisoners often lodge unfounded complaints against prison guards, who strictly make the house rules obeyed, and initiate proceedings against insubordinates. With such complaints the prisoners often manage to achieve that the prison guard would be transferred to another position or he himself requests his transfer to another place of duty in order to avoid the inconveniencies that accompany criminal proceedings. If the physical ill-treatment of a prisoner can be established, the Prison Director imposes a heavy disciplinary punishment upon the guard, unless he himself has already asked during the proceedings for the termination of his service relation, as it happened in the above mentioned case.

III. Prisoners placed under a special security regim

On point 64:

Pursuant to Section 30, Subsections (2) and (3) of Act CVII of 1995 On the Prison Service Organisation:

" (2) The prisoner is entitled to be informed of the data kept on him/he, - with the exceptions included in Subsection (3) - and he/she may ask for the rectification of any incorrect data or the deletion of data kept in an unlawful way. Such requests of the prisoner shall be fulfilled.

(3) No data concerning the safety and security of detention and arising in connection with a measure which the prisoner is obliged to endure in pursuance of the provisions of law, shall be disclosed to the prisoner. Upon the prisoner's release, at his/her request, such data may be disclosed, with the exception of information classified as service secrets or state secrets."

In our opinion, the standard and reasonable application of the above legal provisions meets the requirements set by the CPT.

It should be highlighted that under the provisions of the Decree of the Minister, the Prison Management shall draw up regulations regarding the exercise of rights of the prisoners classified into the respective security regimes, but such regulations must not injure the rights provided by the law.

At present, the Admission and Employment Board communicates its decision on classification to the prisoners in a verbal form. There is no reason to issue a written statement containing the prisoner's classification into security groups and the availability of legal remedy, since the former fact is communicated and, according to the rules of law in force, no complaint or appeal is possible against the classification, as the determination of the grades of security groups constitutes an integral part of the Prisons' security system. We do not have any reservations against providing information to the prisoners unless this presents danger to the security of the prison, and we even support this practice in our prison facilities.

According to the provisions of the Act on the Prison Service Organisation, the inmate is entitled to be informed of his data kept on record by the penitentiary facility, and the dismissal of the request for access to the data shall be adjudged by a resolution. The provision of law, which says that the Commissioner of Data Protection shall be informed of the dismissal of the request for access to the data, is an important guarantee.

It might be the case that in some prisons the classification of prisoners into security groups is by excessive prudence, and that explains the lack of communication regarding the reason underlying the decision. Methodology letters can bring about a change, and the need for preparing such letters is subject to consideration. Within this letter it may also be ordered that upon announcing the respective security grades, the inmates should be instructed about their rights of complaint.

The Draft drawn up in the course of the codification of the new Penitentiary Code contains radical changes in respect of the classification of prisoners, and its entry into force will provide a solution to the above problem.

According to the Draft the security assessment of the inmates must take place within thirty days after their admission, in which process the security risk assessment of the prisoners is also covered. Upon the security assessment the enforcement of rights is also regulated. The schedule of reviews is determined according to the respective regimes (Strict, Medium and Minimum Regime Prisons). It is reasonable to take the request of the prisoners into consideration as well, therefore, at their initiative, the reviews may take place on an annual basis. The obligation of providing information was also included in our Draft.

On point 66:

In connection with the the CPT's relevant statements it is necessary to make a clear difference between the definitions of application of means of restricting movement and the application of means of coercion.

In the Kalocsa Strict and Medium Regime Prison, the means of coercion have never been used against prisoners in the course of outdoor activities.

The observation in relation to the Metropolitan Penitentiary Institution, stating that "all Grade 4 prisoners were handcuffed each time" desires specification inasmuch as no means of coercion are applied during medical consultations, when the prisoner receives visitors, or during outdoor activities. When prisoners are escorted sometimes means of restricting movement need to be applied.

In the system developed in the Szeged Strict and Medium Regime Prison security measures are applied exclusively as a protection against those prisoners who represent actual danger for the prison staff. This prison institute is unique in that it holds the highest number of (male) prisoners, who are condemned to life imprisonment. This refers to the circumstances of the perpetration of the crime, as well as to the prisoners' behaviour, which is presumably or apparently aggressive and unpredictable.

The use of handcuffs and body belts during the internal movement of Grade 4 prisoners raises a problem on a wider scale, since we have already come across such practices during our professional inspections. Paragraph 2 of Order No. 1-1/25/2000. (IK.Bv.Mell.6.) OP of the Director General provides that the means of restricting movement shall solely be applied in the case of prisoners who are secluded from the others on some security or disciplinary grounds (upon leaving the cell and/or the detention area), where the public prosecutor or the judge ordered increased guarding, and for Grade 4 prisoners accommodated in special security cells or detention areas. In any other cases these tools shall only be used when upon the external transfer of prisoners. Thus the fact itself that a prisoner belongs to this security group does not justify the internal application of the means of coercion.

On point 67:

Further to the recommendations regarding the Szeged Strict and Medium Regime Prison, it is important to highlight that it is the responsibility of penal institutions to ensure that the sanitary facilities are partitioned within the cells. In the present prison practice, in most cases a curtain placed in the cells serves the purpose of separation, but several times the prisoners ruin these, and their replacement is time-consuming and imposes a heavy financial burden. When we inspected the Szeged Prison in December 2005 we did not find any curtains missing from the cells (Although the recommendation did not refer only to the curtains…).

On point 68:

The employment level of the prisoners in the Szeged Strict and Medium Regime Prison is relatively favourable, but full employment could not be achieved as yet. Accordingly, the employment of 50 from among the Grade 4 prisoners demonstrates an effective practice. The Metropolitan Penitentiary Institution is in a much less favourable situation than the Szeged Prison. Here the jobs come exclusively from the maintenance works of the prison estate. Law Decree No. 11 of 1979 On the Execution of Punishments and Related Measures (hereinafter: Bv. Tvr.) provides for the prisoner's right to work that is useful for society. Nevertheless, in respect of the suspension of civil rights, this same law provides that the right to work shall be temporarily suspended for as long as the cause that impedes employment exists. In the case of both prison facilities, the reason of impediment was the lack of jobs.

Most inmates housed in the Metropolitan Penitentiary Institution are pre-trial detainees. In their case the legal provision mentioned above does not yet provide for the general application of the right to work, but makes it dependent on the request of the detainee. In the absence of jobs the requests shall be dismissed.

As defined in the work plan of the Directorate General of the National Prison Administration, the experts of the competent professional area will examine the possibility of weekend and free-time activities in the framework of a thematic control to be carried out in 15 prison facilities. After the completion of the summary report, arrangements will be taken to remedy the eventual deficiencies revealed, which – according to our opinion - will be in line with the CPT recommendation.

On points 69-71:

There has been a significant change in the housing conditions of prisoners sentenced to actual life imprisonment in the Szeged Strict and Medium Regime Prison, including the introduction of the new or restructured HSR (Special Regime for Prisoners serving Lengthy Sentences): there are single and double cells available for 20 prisoners. A communal facility was constructed for spending free-time with useful activities, where a kitchenette, wall-bars and a fitness machine were installed, and even a chat-corner was added. A personal Computer was also made available for the prisoners in the detention area.

With a view to increasing the amount of usefully spent out-of-cell time, two persons have been employed. Closed premises were built on the roof of the block for outdoor exercises. It is covered with grilles from above, and only a few square meters of the roof-space is covered with plexiglass, which is transparent, thus ensuring openness while meeting the security rules, as well.

In the design works of the HSR Unit of Szeged Strict and Medium Regime Prison the CPT recommendations were taken into consideration. Even if the CPT sees no reason for a detached unit, still it is sensible to uphold the current system. It is in the Szeged Prison that safe and secure accommodation facilities are provided, where the physical integrity of the prison staff enjoys full protection,and the professional staff members needed for the treatment of prisoners are also available, having gained extensive experience in dealing with prisoners condemned to lengthy sentences.

A team dealing with the prisoners determines the daily activities individually, which ensures that prisoners can spend as much time as possible out of the cells.

The present system of accommodation and the rules of treatment set by the prison facility give an adequate foundation for the treatment of prisoners placed under HSR, because the personality of the prisoners and the protection of the life and the physical integrity of both the prison staff and the inmate population are taken into consideration.

IV. Conditions of detention in the prisons visited

On point 72:

In the Metropolitan Penitentiary Institution pre-trial detention ordered by the court is executed. The seat of the court acting in the case determines the place of pre-trial detention, as provided by law. A majority of the authorities proceeding in crimes perpetrated in the capital or in its suburban area are seated in Budapest, so the accommodation of detainees must be provided locally, namely in the Metropolitan Penitentiary Institution. After the pre-trial detainees are admitted to the prison, the transfer of inmates can only take place in exceptional cases, upon the permission of the competent public prosecutor or penitentiary judge. In respect of the fact that almost 50 % of all the criminal offences occur in Budapest and in its surroundings, the overburdening and overcrowding of the institute is higher than the national average, with an approximate 155 %. No substantial improvement is expected in the future. In order to reduce overcrowding, the Director General of the National Prison Administration ordered that only a minimum number of prisoners necessary for doing the maintenance works should be accommodated in the facility.

On point 73:

At the end of the year 2005 several programs were organised for the inmates in all units of the Metropolitan Penitentiary Institution. The events on the occasion of holidays were held in the communal facilities of the units. The implementation and observation of the CPT Recommendation deserves closer attention from the part of the institutes. As indicated earlier, according to the work plan of the Directorate General of the National Prison Administration, the experts of the competent professional fields are going to examine the possibility and range of weekend and free-time activities in the framework of a thematic control in 15 prison facilities, including the Metropolitan Penitentiary Institution. Following the completion of the summary report arrangements will be taken to remedy the possible deficiencies revealed and to elaborate an appropriate professional concept.

On points 75-76:

The Kalocsa Strict and Medium Regime Prison agreed with the observation that the institute was overcrowded. The statistical indicators also verify that the occupancy level of the institute (146%) is high.

The accommodation problems result both from the lack of space and the architectural design and are further aggravated by the fact that the management must ensure the holding of male prisoners to do the prison maintenance works. There are certain skilled jobs, which require vocational qualification, experience and sometimes physical strength (plumber, electrician, brick-layer, etc.), so they cannot be performed by female prisoners. At the same time, this practice is more favourable from the aspect of the employment of inmates, rather than procuring such activities from an external service provider.

On point 77-81:

In order to improve the illumination of cells, it will be part of the examination to find out what kind of security equipment could be used that would much less impede access to natural light, while maintaining the required level of security.

The inmates are permitted to decorate the cells in the Kalocsa Strict and Medium Regime Prison in accordance with the regulations. The Institute intends to take arrangements for the purchase of reproductions, to create a friendlier atmosphere in the residential areas and the environment of the inmates. It is characteristic of the Kalocsa Prison that the works of art made by the inmates are displayed to decorate the communal facilities and the corridors.

The range of objects that the inmates may keep is specified in the Decree of the Minister, and photos are included in the list, but no rules are applied as to the way they are kept. According to the present prison practice the inmates are allowed to place their photos in their immediate environment, even for the purposes of decoration. In Kalocsa an action contrary to this practice was called for because there were abuses of the family photos. Unauthorised persons stole the photos and utilised them in their correspondence and in advertisements.

From a professional point of view, prohibition is not always the most effective means to solve a problem, therefore we must draw the attention of the institute's management to show a greater tolerance to the use of family photos for decoration.

On points 82-86:

The daily program of the inmates is in line with the schedule of the prison staff and the working opportunities, but in most cases the duties of the staff are adapted to the inmates' daily activities in the institutes.

This professional principle is applied in the Kalocsa Strict and Medium Regime Prison, too. The daily routine is set up in consideration of the practical aspects; the time between meals is planned in a way that the breakfast, lunch and supper are not served too early or too late for the inmates, because if the inter-meal period is too short, the inmates would not eat all the food, while if it is too long, hunger would arouse dissatisfaction.

After work, the workers can have lunch in the common canteen. The working hours are adjusted to the meal-times. The relatively early wakening alarm is needed because of the morning activities of the high number of inmates (washing, cleaning). Yet, it seems justifiable to examine the possibilities of setting the wakening to a later time in the institute.

The courtyard of the Kalocsa Strict and Medium Regime Prison is really small and bare, but it cannot be changed in merit owing to the architectural design of the building. The exercise period is fully assured for the inmates and for the workers, too. It is up to the needs of inmates whether they take advantage of this free-time activity or not. Obviously, under unfavourable weather conditions, fewer inmates will want to use this opportunity, than in good weather. This statement similarly applies to inmates kept in all other institutes, irrespective of the conditions of their outdoor facilities. We appreciate the institute's effort to have some large potted flowers put on the courtyard to make its atmosphere more pleasant.

In Point 86 of the CPT Report there is a recommendation for ensuring a 'varied regime of activities'. We have to point out that in the Hungarian penitentiary system under the word "regime" we mean certain groups of inmates requiring different treatment methods. In Kalocsa this was organized in a duly elaborated, logical system. The recommendation probably refers to the free-time activities. Since we plan to conduct a comprehensive review of this subject, in which we will put these activities of the institutes under close scrutiny.

On point 95:

The CPT recommendation regarding the conditions of accommodation in the Szeged Strict and Medium Regime Prison would incur a large amount of expenses to be continuously financed from the institute's own budget, but the institute cannot afford to cover all the tasks from its own resources.

In spite of the scarce financial means it can never occur that the change of the inmates' bedding be omitted. In the course of a comprehensive control conducted in the institute the inspectors did not find any unclean bed-linen.

The institute guarantees the change of beddings for each inmate, although not all of them take advantage of this service on a regular basis. The area supervisors and the educators are responsible for emphasizing the importance of the rules of general hygiene and reminding the inmates to observe such rules.

On points 98-100:

We are in complete agreement with the statements formulated in the CPT Report, namely that the prisoners serving lengthy terms of imprisonment are highly exposed to the danger of becoming institutionalised, and are more threatened by the dissocializing effects of the prison. At the same time, painstaking efforts have been made to increasingly fill the free time of the inmates with a varied range of sensible activities. This is supported by the findings of our comprehensive special examination carried out in the Szeged Strict and Medium Regime Prison, and is also stated in the CPT Report. The performance of this duty does not only require a vast amount of money – and they have only restricted financial resources - but in several cases the security aspects have to be taken into account as well.

Characteristically, the inmates serving heavy sentences and the perpetrators of aggravated crimes constitute some 80 % of the entire prison population. The examination clearly established that the system of regimes created in the institute entails the provision of differentiated treatment and accommodation for the respective groups of inmates, and by this the compliance with the principle of individualisation is completely ensured. In the Szeged Strict and Medium Regime Prison the attendance of free-time programs is assured almost entirely utilising the available opportunities, however, it is important to call the attention of the management to consider the possibilities of allowing more out-of-cell time for the non-working inmates.

V. Healthcare services in the prisons visited

On point 103:

Although the CPT found the procedure of seeing a doctor satisfactory at the inspected establishments, it raises objections to the practice observed in the Kalocsa Prison. They are concerned about the delayed access to doctors, as well as the quality of treatment and care and the organisation of medical consultations.

After the CPT monitoring examination, the chief medical officer of the Kalocsa Prison retired in May 2005. There was no complaint about his medical activity from a professional aspect, but the management was dissatisfied with his performance and conduct. (He did not observe the regulations or perform his obligations as clearly set for him.)

The above statement is supported by the fact that in the past five years no proceedings were initiated against him by any of the inmates or the released prisoners owing to deterioration or damage caused in their health conditions.

They managed to replace him with an eligible medical specialist, who meets the expectations. The healthcare system that he set up serves the interests of the inmates well. Of course, cases of emergency continue to enjoy special prompt treatment. The fortnight shift of medical consultations and the differentiation between working and non-working inmates were eliminated. Those in need of medical care may apply at the nurse. They would fill in the application form themselves, so as to avoid eventual misunderstandings and follow the chronological order of events.

The standard of medical treatment improved massively. Every time a detailed case history is taken, a physical examination is conducted, and a therapy is prescribed based on the perceived symptoms. In justified cases a medical consultation is convened, and/or the patient is referred to an in-patient hospital, namely to the Central Hospital of Prison Inmates (Tököl) or if an acute condition develops, to the Kalocsa Town Hospital.

If, despite the careful medical information, an inmate exercises his right to reject the required treatment, he must confirm this fact by signing the medical documentation. All things considered, the organisation of medical consultations and the quality of healthcare have taken a positive turn.

On point 104:

In the Report the members of the delegation, in general, expressed their disapproval of the presence of prison guards at the medical examinations. In their opinion this practice does not comply with the principle of medical confidentiality and can inhibit the establishment of a doctor-patient relationship, may even hinder the detection and recording of injuries received prior to admission to prison.

Section 14 of the Act XLVII of 1997 on Handling and Protecting Health and Related Personal Data provides that

"(1) Only those persons can be present at a medical treatment in addition to the physician providing the treatment and other patient-care personnel, whose presence the involved party has consented to. The following persons (in addition to other persons listed) are allowed to be present without the consent of the involved party, provided that the human rights and dignity of the involved party are respected:

a. Persons legally providing services in penal institutions, if the treatment is being given to a person serving a prison sentence in a penal institution, and their presence is required in order to ensure the security of the person providing the treatment or if there is a risk of escape…"

Act CLIV on Healthcare (Eü.tv.) refers to this legal provision. The detailed rules of its execution are laid down in Order No. 0132/1998. (IK Bv.Mell.4.) OP of the Director General, which obliges persons becoming aware of any data to observe the obligation of medical confidentiality and requires the management of prison facilities to hold briefings and instructions about the rules of law on the protection of personal and health data.

In the prison facilities it is not typical that prison guards are present at the medical examinations, except when so ordered by the law, particularly in respect of Grade 4 prisoners.

As for Grade 3 prisoners, the prison guard stays near the door, without hearing or seeing the doctor and his patient. He is not entitled to approach them and interfere, unless the medical staff find it necessary. The above practice is based upon the rules and security of the prison facility, and serves the protection of the medical staff – who may not always be the employees of the prison service. It is not an accident that the law provides for the possibility of deviation.

On point 105:

The Committee speaks with appreciation about the maintenance of health data in the records in Unit III of the Metropolitan Penitentiary Institution and the Kalocsa Prison, but it is concerned about the data content of the computerised health-care records in the Szeged Strict and Medium Regime Prison, finding the information contained there insufficient, inadequate and improper from a chronological point of view. A special comment is made about the records kept on injuries and the related proceedings. An enumerative list is given of the administration process they find adequate. According to their expectation, the statements of the inmates regarding the alleged ill treatment, as well as a full description of all relevant data and allegations along with the doctor's report on the case should be recorded. They advise to follow this practice of examination and data recording after any violent offence in prison. Furthermore, they propose that all data and records in the context of ill-treatment should be brought to the attention of the relevant authority, and the results of such examinations should be made available to the inmate and his lawyer.

As for the paper-based data management, the practice in the prison has generally been circumspect. Undoubtedly, the psychiatrist employed as a counsellor has kept records insufficiently and subsequently. Generally speaking, there have also been backlogs in the computer-based documentation.

The CPT statements concerning the proper documentation of the health data are deemed as important instructions. In order to ensure the quick remedy of the losses found, the establishment's management took actions immediately after the delegation's visit. Both the paper-based and the electronic health records have been brought up-to-date by now, with special attention to psychiatric examinations and diagnostic results. After any case of ill-treatment or other injury eventually perceived at the time of admission, a copy of the diagnostic results made out by the doctor on duty shall be forwarded to the public prosecutor responsible for judicial review. Any other information is made available to the concerned inmate and his lawyer at the required extent.

On point 106:

The Report appreciatively took note of the changed system of HIV tests, the introduction of the voluntary, anonymous procedure. (It should be noted that the former practice questioned by the CPT was based on a statutory obligation.)

As for the Decree No. 18/2002. (XII.28.) EszCsM of the Minister of Youth and Family Affairs on Preventing the Spread of the Infection Causing the Syndrome of Acquired Immunodeficiency, the modification of its regulations reduced the scope of mandatory examinations to a minimum, as a consequence of which the number of screenings conducted in the prison facilities fell back to a fraction of the earlier figure. The actual cases of infection may remain hidden.

The CPT feels concerned about the separate accommodation of the HIV positive inmates.

The separate accommodation of infected inmates, who are found HIV positive based on the tests undertaken on a voluntary basis or as a result of the convincing information they received, is primarily supported by medical-professional arguments. It is impossible to provide continuous treatment and an appropriate level of Healthcare services suitable for their health condition and the state of their immune system in all the penitentiary facilities. The medical care of confirmed HIV positive persons takes place in the National Institute for Dermatology and Venerology or at the ambulatory departments responsible for the treatment of HIV in Szent László Hospital in Budapest, which have a special professional and laboratory background and are authorized to provide therapies. Residing close to the capital presents an advantage for the civil patients, too, because it saves the trouble of the time-consuming and exhausting travelling, which is detrimental to their immune state, and the unnecessary risks of the opportunistic infections. This privilege is of particular importance for inmate patients.

It is also well known that, in addition to the special protective lifestyle, having regular controls with extended examinations conducted by specialists seems vital in the professional and correct treatment of HIV infected persons.

Pursuant to Section 6, Subsection (2) of Government Decree No. 217/1997.(XII.1.)Korm On the Implementation of Act LXXXIII of 1997 On the Provision of the Obligatory Health Insurance,

"Persons detained, remanded in custody, sentenced to imprisonment and/or serving their punishment of deprivation of personal liberty (hereinafter: inmates) are entitled to the provision of health-care services – due to the restriction imposed upon their personal freedom – within the penitentiary facility, or if the treatment required for their health condition cannot be ensured there, at the Healthcare service provider appointed by the penitentiary facility."

Under Section 1, Subsection (4) of the Decree No. 5/1998. (III. 6.)IM of the Minister of Justice On the Treatment of Prison Inmates, which further specifies the latter provision of law, the free and full-scale Healthcare treatment is *"principally provided by the prison facility executing the detention, the Central Hospital of Prison Inmates (Tököl), and the Judicial Institute for Observation and Mental Treatment (hereinafter: IMEI), and the inmate shall take advantage of this treatment."* The presently applied method meets the professional expectations as well as the regulations of the rule of law mentioned above.

The determination of the place of detention that will execute the punishment of deprivation of personal liberty belongs to the competence of the authority of the Prison Service. Nevertheless, a HIV infected inmate will always be informed that he is referred to a special place – in the designated facility – with the aim of providing an adequate care for him. Nobody has raised any objections against this yet.

With the accommodation of the HIV positive inmates at the Tököl Prison Facility – located on the same premises as the Central Hospital of Prison Inmates – (besides the special daily program and a protective lifestyle) the prison's health-care service simultaneously ensures the continuous presence of an infectologist and an internist, as well as the availability of specialists within easy reach, and the laboratory tests and other examinations to be conducted with the necessary surgical instruments.

The regular service and the exclusive authorization of the medical specialist of the AIDS ambulatory department enables the conduct of an antiviral treatment in the required cases, which is rather expensive, but with the assistance of this special treatment the patients' condition can be improved, the process can be decelerated and an asymptomatic state can be achieved.

VI. Other issues of relevance in the CPT's mandate

On points 107-110:

As of 1st January, 2005, the total permitted number of permanent staff of the Prison Service Organisation was 7,873, including 1,018 public employees, 83 part-time public employees, and 6,772 professionals. In the year 2005 there was a staff increase of 44. From the increased staff 34 people were employed in the Regional Juvenile Prison under construction in Pécs, and 10 for the operation of the security unit in Sopronkőhida Strict and Medium Regime Prison. In 2006, the permitted staff will be extended with 560 employees, resulting in a total staff of 8,433, as there was a staff increase required for the operation of the two new prison facilities being built with the PPP method.

It was a substantial challenge in the history of the Prison Service's staff and wage management that 1.5% of the 6% wage increase of the permanent staff dating back to 1st January, 2005, covered by the Prison Service Organisation. This requirement could only be met by blocking the staff level of institutes, institutions and business organizations. All in all, 151 full-time (117 professional and 34 public employees) and 7 part-time public employee statuses were blocked. During the year modifications were effected, as a consequence of which by 31st December, 2005 160 full-time (118 professional and 42 public employees) and 2 part-time public employee statuses were blocked. In the year 2006 it is not foreseeable that – due to the lack of financial resources – the staff restrictions will be lifted. This state of affairs will also add to the overtime hours of the staff

As of 1st October, 2005, the Minister of Justice approved a new staff organisation table for the Directorate General of the National Prison Administration. With this move the modernising and rationalising process of the organization was launched, with its main objective being - in addition to the massive redundancy of permanent staff - to cut the number of senior positions, set up an organisation capable of working effectively, with a smaller budget, and to strengthen the professional and economic autonomy of the prison service facilities as provided by the law. The number of the permanent staff was reduced by 49, with 37 reserve statuses.

Taking effect on 31st December, 2005 the Central Supply Institution of the Prison Administration (hereinafter: KEI), was terminated without a legal successor. A part of the duties and the staff were transferred and redeployed in the Directorate General of the National Prison Administration (6 commissioned officers), in the Budapest Strict and Medium Regime Prison (1 commissioned officer, 13 non-commissioned officers), and in the Metropolitan Penitentiary Institution (5 commissioned officers, 16 NCOs and 4 public employees), resulting in 38 reserve statuses out of the staff of 83.

The rationalising process has not come to an end yet with the winding-up of the KEI, the organisation of the other institutes and institutions is still being modernized. The related project will be elaborated in the near future, and the staff-organisational tables containing the permitted number of the individual institutes and institutions will be modified accordingly. In the framework of this project an inter-institutional redeployment of the staff is foreseeable.

In the second half of 2006, the staff increase of institutions may take place in some other ways as well: from the status vacancies resulting from the reorganisation of the Directorate General of the National Prison Administration, and the termination of KEI - positions for supervisors nurses, educators, psychologists and doctors can be created in the prison facilities where the staff increase is indispensable.

Unfortunately, although several facilities would need a substantial development in their staffing levels, only directed staff increases have been effected for years.

A further serious concern is the enormously high number of the sick leave days of the staffs (an average 400-450 people on sick leave), which massively contributes to the overtime working hours.

Looking back to the past three years, the overall number of the permanent prison staff shows an agreeable occupancy rate, which means an average of 97-99%. Besides the positive occupancy indicators, however, there was a significant growth in the number of those who retired due to their health condition in the years of 2004 and 2005. In 2004 - 134, and in 2005 - 247 was the number of those who retired for this reason.

The prison staff is actually trained on several levels; the newly admitted staff members participate in an introductory training course, and then in a basic level course. The officers in charge of medium-level positions will be enrolled in a secondary level training course. The graduates with non-vocational higher education diploma will be registered in higher degree vocational training courses. The basic and medium-level vocational training courses are organised in the Educational Centre of the Prison Service Organisation meaning a weekly instruction a month, with a five-month or eight-month duration, respectively. The students prepare for the examination of the higher degree vocational training in an autodidactic form. Each of the three courses will end with an examination.

It was a major step forward in the history of penalty enforcement when the prison supervisor and chief supervisor courses were introduced, where the graduates received an OKJ (National Training Register) Certificate. Since 2003, the prison facilities have not been able to enrol any members of their staff in vocational training, because the daytime courses would involve the non-attendance of the trainees for a five- or an eight-month period. For several institutes even the absence of just one person has presented acute problems.

At present, the introductory and the basic trainings are on the way to being combined, with the integration of several practical elements into the training curricula, and, according to our plans, a special emphasis will be laid on the improvement of communication skills.

There is an agreement with the recommendation of the Report that it would be useful to raise the proportion of female colleagues in the prison staff especially in the detention areas where female inmates are held.

The explanation for the practice and the need of carrying truncheons lies partly in the low level of custodial staff in the Hungarian prison facilities and partly in its deterrent effects. The supervisor of an area is frequently in charge of the guarding, controlling and moving of some 100-120 inmates, and in the given part of the area he has to serve alone, not in pairs. The truncheon is needed as an efficient means in order to prevent and put an end to possible disorders, and to control attacks against the staff members. In 2005 the inmates attacked the supervisors in 46 cases, in 2004 in 53 cases. It is impossible to carry the regulation truncheons of the prison service "hidden from view". Although there exists a collapsible truncheon, it cannot be kept completely out of sight– especially when wearing the summer uniform - and we would have to make arrangements for the procurement of approximately one thousand pieces, which we have not been able to finance so far.

On point 112:

The Decree of the Minister regulating the contacts of inmates allows a minimum of 30 minutes of visit, and the Bv.tvr., i.e. the rule of law providing for the inmates' rights prescribes one occasion per month. In the penitentiary institutions the directors may permit more frequent and/or longer visits.

The personal meeting with relatives is a fundamental right of the inmates. Accordingly, the reception of visitors is guaranteed in all three prison facilities for at least one hour every month. In the prison facilities certain forms of remuneration granted to the prisoners enhance personal contact without leaving the institution: extra visits or the prolongation of visiting time.

Based on annual statistics we can point out that these forms of remuneration are widely utilised by the penal institutions, in consideration of the principle of progressiveness and the opportunities of the prisoners. In addition to the availability of remunerations, the prisoner or his/her relative may request the prolongation of the visiting time.

In the prison facilities, including the Szeged Strict and Medium Regime Prison and the Metropolitan Penitentiary Institution, the prisoners are allowed to receive visitors within the framework specified of law, in consideration with the local conditions. The continuous controls conducted in the facilities clearly demonstrate that the present system of outside contacts contributes to the social reintegration of inmates.

The Director's order given in the Szeged Prison is not in contradiction with any rules of law in force; yet it is necessary to apply the principle of individualisation for allowing the welcoming hugs and kisses upon the reception of the relatives.

The new Penitentiary Code will allow the maintenance of immediate family and intimate relationships.

The use of the canteen of the Kalocsa Strict and Medium Regime Prison as a visiting area is a second-best solution. They are aware of the fat that the environment is not suitable for visiting and, moreover, it means they have to incur a security risk. Substantial progress can only be achieved upon having an adequate architectural solution and sufficient financial resources.

On point 113:

In the Metropolitan Penitentiary Institution the rules governing telephone calls were changed, and at present remand prisoners are entitled to make telephone calls three times a week for a period of ten minutes, which may be extended by a further ten minutes, at request. The working inmates are entitled for five minutes a day.

According to the Bv.tvr., that is, the penitentiary law, the civil rights of inmates shall be modified as follows:

"*The inmate shall be entitled to use the telephone under the given circumstances of the prison facility, but the telephone conversations are subject to control, and the sentenced prisoner shall be informed about the possibility of the exercise of such control*."

As regards the availability of telephone calls for remand prisoners, the Bv.tvr. does not contain any regulations, but the rules of execution concerning both sentenced prisoners and remand prisoners are included in the Decree.

The concrete duration of the phone calls is not defined in any of the rules of laws, not even in the case of remand prisoners. Pursuant to the provisions of the Decree the use of the telephone appliance must be guaranteed in accordance with the House Rules of the given prison facility. The elaboration and approval of the House Rules belongs under the jurisdiction of the prison director, therefore the frequency and the possible duration of the phone calls are prescribed by the House Rules approved by the prison director. Upon the Director General's Order the inmates are entitled to one five-minute phone call per week to their relatives or their lawyer.

In the year 2005, in a number of penal institutions, including the Szeged Prison, a new telephone network was installed, which considerably increased the permitted duration of phone calls. Nevertheless, in our prison facilities the regulation of telephone calls is adapted to the prison's daily activities and the House Rules. Every inmate is entitled to use the telephone within the given time limit. As regards remand prisoners, the practice established in a majority of the prison facilities is that the time of the phone calls made to the lawyer shall not be restricted, even if other forms of contact with the lawyer, such as personal meetings and correspondence, are also allowed.

The experts of the competent field of the Directorate General of the National Prison Administration regularly check compliance with the rules applicable to telephone calls in the framework of various controls. No complaints have been lodged by a significant number of inmates about the use of the telephone. However, there have been a few individual complaints, but these were raised on account of the excessive demands, mostly by inmates who were reluctant to accept the House Rules and failed to respect the demand of other inmates.

Taking all things into consideration it can be stated that as a result of the increasingly modernised system, the prisoners' access to the telephone is guaranteed in a way that it meets the requirements of nearly everyone.

On point 114:

The correspondence of inmates is regulated under the provisions of the Bv.tvr., which does not limit the frequency and the length of letters. We are authorised to exercise control over the content of the correspondence in general, but there are exceptions to this rule, such as in case of letters sent to or received from international organisations, authorities and/or defence lawyers. We keep records of the official letters, and the prisoners certify the delivery/receipt of letters with their signature. The same system applies to all prison facilities.

The delivery of letters to the hands of the inmates must take place within two working days, and this rule similarly applies to the dispatch of correspondence. Experience shows that there have actually been complaints from inmates regarding the delivery of letters, but almost exclusively in special cases. After reviewing such complaints it was found that the educators usually hand over or dispatch the letters within the prescribed time limit, and the handling of letters suffers delays exclusively owing to the defaults of the postal service. Such complaints are dismissed, because the prison facilities are not responsible for these problems.

In the event that the prosecutor or the judge acting in the case restricts the rights of inmates held in pre-trial detention to maintain relationships, the delivery of letters arriving in the institutions may be delayed, but beyond the Prison Service Organisation's control.

The rules of correspondence must be fully observed by the prison facilities. All in all, we can point out that the question at issue does not present a general mistake, so there is no reasonable need for modifying the regulations.

On point 115:

Regarding the proposals and practices allowing prisoners to leave the penal institution temporarily, the experience gained from the all-inclusive professional inspection conducted in the Kalocsa Strict and Medium Regime Prison is in diametrical opposition to the statements of the CPT Report. The absences, short leaves, the external reception of visitors and the home-leaves of prisoners are initiated in full compliance with the principle of individualisation. Petitions for the interruption of punishment are handled with due care; not only the personality of the inmate is evaluated (the probability of his return), but priority is given to the assessment of the reason behind the petition.

The most important means of informing inmates is to prepare the House Rules and make them available to the prisoners. This regulation comprises the different legal titles allowing the temporary leaves of the prison facility, the procedure of the submission of petitions, the types of leaves applicable at the individual legal institutions, and the possibilities of remuneration. The House Rules are displayed in each cell, making them available to all inmates. In addition, the rules of law which contain concrete norm-texts are accessible in the prison libraries for those interested.

A Directive of the Director General orders the compulsory issue of decisions on the requests and their availability to inmates. All prison institutes, including the Kalocsa Prison, comply with this measure. The leaves of absence are: short leaves, external reception of visitors, the reward of prison leave, or an option attached to an applied legal institution (placement into a transitional group, application of the Mitigated Execution Rules). So the leaves at issue are not guaranteed as civil rights for the inmates. There is no reason for changing the practice described above, the prison facility acted in accordance with the rules of law in force.

On point 117:

The statements made in the Kalocsa Strict and Medium Regime Prison of staff on the application of informal sanctions cannot be examined on merits until concrete dates, persons and places are attached to the complaints. Similarly, if a guard instructs inmates staying in the corridor area to stand in silence, this cannot be qualified as a group sanction in our opinion. In the detention areas the members of the prison staff perform their duties, in other words they do their work. The noisy and insubordinate inmates disturb the professional and efficient performance of service duties, which means an extra security risk in case of a larger group.

The possibility of removing television sets from the cells is restricted in such a way that it cannot be applied as a disciplinary act. In this context a circular was issued to the institutions based on the recommendation of the ombudsman. The implementation of this recommendation is being continuously monitored.

The Bv.tvr. prescribes the prisoners' obligation to take part in the maintenance works of the institution, including cleaning. Each inmate may be obligated to do such work in a maximum of four hours a day, and not more than 24 hours a month. There may have been some inaccurate data in the records kept with the aim of avoiding abuses, but the prison staff must never require the cleaning of corridors as a disciplinary action.

On point 118:

Pursuant to the Decree of the Minister of Justice (hereinafter: IM Decree) specifying the rules of disciplinary segregation, the maximum length of segregation is 15 days. The CPT Report states that inmates can stay in the disciplinary cell for as long as 45 days depending on the regime, which is not correct. Disciplinary segregation is regulated in Decree 11/1996 (X. 15.) IM of the Minister of Justice on the disciplinary liability of inmates held in penal institutions (hereinafter referred to as the disciplinary decree): "*In a disciplinary action, the segregation of the inmate may be ordered, if his transfer to another cell is found reasonable in order to clarify his disciplinary liability. The duration of the disciplinary segregation may last until the procedure in the first instance is completed, but not longer than 15 days. During this term, without prejudice to his rights defined in the Bv. Tvr, .the inmate shall not have a contact with the other perpetrators of the disciplinary actions, nor with the witnesses and the injured parties.*"

The disciplinary segregation and solitary confinement must be executed in a different way and in different cells. Pursuant to the IM Decree the rights of the segregated inmates guaranteed by the Bv. Tvr. shall not be limited – unlike in the case of those held in solitary confinement – and this requirement is fully complied with in the prison facilities. The relevant Directive of the Director General allows the limitation of permitting certain community activities, but this rule is not against the effective law, either.

Based on the draft of the new penitentiary law the entire duration of the disciplinary segregation shall be reckoned in the period of time of the solitary confinement imposed.

On points 119-120:

In the Szeged Strict and Medium Regime Prison, the cell for disciplinary segregation was completely refurbished. The execution of disciplinary segregation is effected in Unit II.

In the course of our inspections in the prison facilities it was often raised that the early wakening and exercising of inmates and the lifting up of sleeping platforms is not needed. The Director General has taken steps for revision.

On point 121:

As regards the statements concerning the security segregation cells with padded walls, we must highlight the fact that – given their size – they do not serve as residential cells, the inmate can stay there for a limited time period, and the larger we make the place, the greater the probability of the risk of self-destruction will grow. (For example he may gather more speed to run against the wall on the opposite side, and he may sustain injury despite the padded walls.) The installation of a call or signal system may be subject to consideration involving the competent field of the profession. The constant observation and control of the prisoners placed there is also prescribed by the currently effective regulations.

On point 122:

In connection with the remarks of the CPT concerning the educator's approach to the complaints lodged to the official authorities, we again have to underline that any examination should be based on concrete data attached to the complaints. The individual allegations of the inmates can only be compared with the agreeing or negating allegations of educators, which cannot be deemed to have a probative value, but the truth content of the inmate's allegation cannot be evidenced either.

Described in the CPT Report, all penitentiary institutions comply with the requirement (letter-boxes of command) aiming to keep the 'confidential' nature of complaints. The administration of letters takes place as mentioned above, which guarantees the maximum protection of the secrecy of their content.

Notwithstanding the facts stated here, the experts of the competent fields will immediately report any such incidents to the management of the prison facilities so as to take the necessary measures.

On point 123:

In the Kalocsa Strict and Medium Regime Prison the competent public prosecutor hold his inspections in every two weeks. In the course of his inspections, he carries out a general examination, and upon his own request he is accompanied, while he holds private hearings without the staff's presence.

On points 124-125:

The police investigation officers operate in the penitentiary facilities on basis of the Joint Directive of the Ministry of Justice and the Ministry of the Interior No. 6/2001. (IK.12.) IM-BM On the Co-operation of the Directorate General of the National Prison Administration and the National Police Headquarters. A Joint Order No. 2/2002. (VIII. 22.) BVOP-ORFK. was issued on the authorisation of this Directive. Point 4/B a) of the Joint Order declares that *police investigation officers are entitled to move freely on the premises of penitentiary facilities in compliance with the rules applicable to the penal institution*. Pursuant to Act CVII of 1995 on the Prison Service Organization, they also have the right to inspect the data of the inmates and may make copies thereof. Under the provisions of this act, the police is authorised to request any data in relation to the inmate. The authorities having competence on the basis of the relevant laws make decisions in the cases of the inmates; the investigation officers are only entitled to make recommendations. With regard to the fact that the investigation officers belong to the Police Organisation, neither the specification of their tasks, nor their job description belongs under the competency of the Prison Service.

On point 126:

In this point it was not the means of coercion, but the means of movement restriction, the frequent use of which is disapproved by the Report. The use is based upon the law, and the detailed rules were drafted with the consent of the Prosecution. The explanation for the general use outside the prison facility lies basically in the fact that the transfer of inmates to the competent authorities mostly takes place – due to the low staff number – with the method of assigning 'one prison guard to one inmate' - unlike in the Police Forces, where such duties are always performed in pairs. In consequence of this, the prison guard is often left to his own devices at an incident of disturbance, attack, or the intent of escape; there is no one to assist him. (In 2005 there were over 42 thousand inmates transferred to the courts, the prosecution offices, or to other destinations.)

The prison staffs are trained both for the use of the means of coercion and the means of movement restriction. The 'manual control technique' (means of coercion) is applicable solely in cases of open disobedience or disorder committed by the inmates. The handcuffing of the guard with the escorted inmate is unknown to the Hungarian prison practice, as it is deemed dangerous.

On point 127:

The use of electric batons was introduced in September, 2003. Its application is permitted under Section 20 of Act CVII of 1995 on the Prison Service Organisation, and its types are specified in the Directive of the Minister of Justice No. 5/1998. /IK 10/IM. It is applicable exclusively for preventing attacks and breaking active disobedience. Generally there are 1-2 pieces per prison facility, e.g. from the hand batons 42 pieces were distributed among the 32 facilities. The rules of application are extremely severe in order to preclude abuses. The Order of the Director General No. 1-1/49/2003 (IK Bv.Mell.7.) OP and the Methodology Guide issued as its Annex regulate the training of the staff authorized to use this device, as well as the person responsible for training. Since its introduction, it has not been used at all; the prison staffs have always been able to stop disorders by applying alternative measures.

VII. Judicial Institution for Observation and Mental Treatment (IMEI)

On point 128:

The Judicial Institution for Observation and Mental Treatment (IMEI) shares joint premises with the Budapest Strict and Medium Regime Prison complex.

The examination and treatment of the following groups of patients and referrals are provided in the IMEI under the relevant rules of law.

Patients:

- persons subject to involuntary treatment in a mental institution (Section 74 of Btk.),
- defendants subject to temporary forced treatment (Section 140 of Be.),
- sentenced prisoners re-classified as mentally disabled in the prison pursuant to Section 31, Subsection (1) of Law Decree No 11 of 1979);

Referrals:

- pre-trial detainees subject to observation of their mental state as ordered by the court under Section 107 of the Be.,
- pre-trial detainees and sentenced prisoners held in a penitentiary or in a military facility, whose treatment in the IMEI is needed dueto their supposed insane mental state or organic-neurological disease,
- sentenced prisoners held in a penitentiary facility, whose treatment in the IMEI is necessary, because his involuntary treatment in a mental institution was also ordered, and his limited mental capacity was diagnosed in accordance with Section 24, Subsection (2) and Section 75 of the Btk.,
- where in the course of the execution of punishment the medical doctor of the penitentiary facility perceived symptoms referring to personality disorder in case of a prisoner, and concluded that his forensic assessment in the IMEI is needed according to Section 31, Subsection (2) of the Bv.tvr.,
- if the pre-trial detainee requires psychiatric treatment, but there is no ground to order temporary forced treatment, the pre-trial detention – upon the order of the court – shall be executed in the IMEI in pursuance with Section 141 Subsection (2) of the Be.

The *involuntary treatment in a mental institution* is a measure having an indefinite term. The competent court shall review the necessity of the treatment annually. The law also allows for the conduct of expedited, prompt reviews.

The time limit for *involuntary preliminary treatment in a mental institution* is six months. The competent court may extend this deadline in every six months until the proceedings are concluded with a final decision.

The same conditions and patients' rights (save the adaptation leaves and the sickness benefit) apply to *sentenced prisoners re-classified as mentally disabled in the prison* – requiring a permanent psychiatric treatment in an in-patient clinic – as to those undergoing involuntary treatment in a mental institution. However, they won't receive involuntary treatment in a mental institution, but their punishment shall be executed in the IMEI in hospital circumstances. Upon the termination of the punishment they will be released irrespective of their state. The medical treatment may last until the necessity ceases to exist, which will be reviewed annually by the chief medical officer of the IMEI – based on the opinion of two psychiatric experts - but expedited, prompt reviews are also available.

In Building II of the IMEI those referred inmates are accommodated whose in-patient treatment, namely observation/assessment and medical care is required on grounds of the acute psychiatric and/or neurological diseases they developed under custody.

On point 130:

The CPT Report gives voice to reservations as to the very location of the IMEI within the boundaries of a prison complex. According to their expectation the institution, as an actual psychiatric hospital, should offer living conditions which generate a positive therapeutic environment and are conducive to the proper observation/assessment of patients. This would ensure that a medical, rather than penal ethos prevails.

According to professional opinions the prison custody is not in contradiction with any medical treatment. The legal status of the psychiatric ward of any civilian health-care institution cannot be compared to that of the IMEI considering the comprehensive ways its operation is regulated, the professional controls, the judicial review it undergoes, and the guarantees ensuring the patients' rights. Medical control is exercised through health-care organisations, irrespective of which Ministry runs the institution.

The Decree No. 15/2005. (V.2.) EüM of the Health Minister, On the Professional Supervision of the Providers of Healthcare Services entered into force after the visit of the CPT delegation. It clearly sorts out the issues concerning the professional supervision, assigning the task under the jurisdiction of an independent body.

The Decree names the supervisory authority of the IMEI in a separate Point – with respect to its special legal institution – raising it to a national level. The professional supervisory inspections had been of a regular frequency in the past, too, and used to ensure a continuously high standard of performance. It has not yet become necessary to replace the body responsible for operation. In fact, it could not even be carried out because the Hungarian health-care services are unprepared (provision of the conditions for specially closed institutions) for this task.

The problems of accommodation are first and foremost caused by the architectural characteristics, therefore the Prison Service is constantly looking for solutions (by submitting grant applications and trying to raise funds) which would make it possible for the IMEI to move to new premises and provide more adequate housing for both the staff and the patients.

On point 132:

Point 132 of the Report mentions that according to the allegations of some patients the staff did not intervene in cases of inter-patient violence or intimidation.

Without the examination of the concrete case we are not able to give an answer in merit, but we may point out that all members of the staff are required to prevent the disorderly conduct and the intimidation of others caused by patients of any legal status. With the extension of the scope of further training organised in the institution so far an ever-greater emphasis is laid on teaching how to address similar conflict situations. The envisaged staff increase will also contribute favourably to the elaboration of a plan of proactive actions.

On point 133:

The Report discusses accommodation conditions in detail. While setting up a list of deficiencies resulting from the architectural design (overcrowding, wards with large numbers of patients, poor access to natural light), the delegation did appreciate that the wards were clean and tidy, decorated with plants and pictures, and each ward had a variety of areas for recreation and socialization.

In addition to keeping the movement of the IMEI to new premises on the agenda, we envisage the enlargement of Ward IV by continuing its reconstruction, which depends on the available central budget. This is expected to reduce the overcrowding of Wards I and II. The transformation of the large sick wards in accordance with the relevant rules is not feasible for architectural reasons, however, it would reduce the capacity level.

Building III is a historic monument, therefore all intended architectural interventions (particularly those affecting the façade) are subject to special permissions and are restricted. The competent authority did not give consent to the replacement of windows.

On point 134:

The Report lays down the facts experienced in building II. It mentions the stringent security arrangements and the unfriendly and impersonal character of the material environment.

Building II does suggest a “penitentiary hospital” feeling, as the psychiatric observation/assessment and in-patient care of pre-trial detainees and sentenced prisoners is carried out there. In addition to providing the conditions of patient care, the observation of penitentiary rules must also be ensured, such as the segregation of inmates of different execution grades, and the sick-ward doors must be kept permanently closed.

The disadvantage of this latter requirement is that it considerably hinders efficient psychiatric follow-up and psychiatric intervention, not to forget about the humanitarian aspects. The planning of the call-system is underway.

On point 135:

The building engineering circumstances heavily influence the possibility of cleaning. The maintenance works and repairs are carried out regularly, and the IMEI management regards compliance with the hygienic rules as a priority objective, which is even more justified by the extremely bad accommodation conditions.

On point 136:

We are pleased to acknowledge that that delegation found the food provided to in-patients satisfactory.

On point 137:

The CPT recommends that the uniform of the in-patients should be changed within the IMEI. Therapeutic and other grounds support this proposal, but the joint location of the IMEI with the Budapest Strict and Medium Regime Prison represents a serious security risk. By moving the IMEI to a new place the conditions for the modification of the relevant laws will be fulfilled, and the use of civil clothing will become permissible.

On point 138:

The Report discusses the details of the examinations and treatment, accepting and recognising the applied practice. It is an inaccurate comment, however, that the chosen therapy is reviewed once a year, as it is constantly adjusted to the state of the patient.

On point 139:

Point 139 details the various types of non-pharmacotherapeutic treatment, while criticizing the lack of special activities, education and work, and urges the involvement of more patients in the available activities. The IMEI does its best to achieve this goal, but a major obstacle is presented by the well-known inactivity of the chronic psychiatric patients.

A further reason is that the inpatients in Building II stay for a relatively short period of time and mostly receive acute psychiatric and neurological treatment, so only short individual and group therapies are provided for those in need.

In the present circumstances the permanently open wards would cause a serious security risk. The adequate segregation of the persons classified into different grades (minimum, medium, strict security regimes) could only be provided in a new building.

The competent Department will put the free-time activities of the inmates under scrutiny.

On point 140:

The provision of outdoor activities is mandatory in all the institutes, including the IMEI. The outdoor exercise known as "walking" cannot be omitted unless the inmate is unwilling to take benefit of this. We are not able to prolong the time of walking despite all of our efforts, owing to the architectural conditions of the building.

In Building II the one-hour outdoor exercise is guaranteed for all patients, unless medically inappropriate. If the patient does not want to make use of this option, he must certify this with his own signature.

On point 142:

The personal requirements applying to health-care professions and related forms of treatment are governed by the Decree of the Minister of Youth, Family, Social Affairs and Equal Opportunities No. 60/2003. (X.20.) EszCsM on the Minimum Conditions required for the Provision of Health-care Services. The rule of law applies with equal force to the IMEI as a provider of health-care services. The motion concerning the staff increase is reasonable. In our opinion the psychiatrist/patient rate cannot be regarded as optimal either, not to mention the extremely low level of the number of psychologists, social workers, psycho-pedagogues and other specialists contributing to the institution's operation.

The fundamental tasks of the security staff performing service duties in the IMEI are the same as in the other institutes. They perform activities related to the entry control and exit control, safeguard the activities of the health-care staff in the sick wards, and hold security inspections and examinations. The further training of the staff takes place in the framework of local courses held by experts on an annual basis. In addition to the performance of security tasks, the curriculum covers the characteristics of the care and treatment of psychiatric patients.

On point 143:

In respect of persons undergoing involuntary treatment in a mental institution the CPT Report points out that the means of coercion are applied in the IMEI in conformity with the provisions of the Health-care Act.

On point 144:

The delegation has raised objections under point 144 against the use of means restricting movement in case of Grade 4 inmates. The IMEI acts in this case in accordance with the relevant rules of law in force, the modification of which has already been initiated in the new Code on Criminal Proceedings, which is under drafting.

As regards inmates classified as Grade 4 prisoners we have to refer back to the comments made on point 66.

On point 145:

This point discusses the operation of the Special Security Cell (hereinafter: KBZ). Remarks are made about the absence of a register and a call system, and it is proposed that the equipment should be modernised. The KBZ is a room with special functions, and has the purpose of holding persons who might endanger the security of penalty enforcement, and of whom a special register is kept. The elaboration of plans for the modernisation of the equipment and the installation of the call system has already been started.

On point 146:

The CPT provides information on the necessity of the judicial review of patients under involuntary treatment in a mental institution and recommends that the IMEI opinion should be regularly submitted.

From the 1st July, 2006. the Be. will prescribe a more frequent judicial review of the necessity of involuntary treatment. Pursuant to the new rules the judge may review the necessity of involuntary treatment six months before the involuntary treatment begins. If the judge does not terminate the involuntary treatment, the review has to be repeated every six months (due review).

The IMEI complies with the effective health-care regulations concerning the provision of information in respect of health data and registers. In the course of the review proceedings the defendant and his lawyer are entitled to access any document sent to the courts at the seat of the competent court.

Under Section 566, Subsection (1) of the Be., the prosecutor and the defence counsel are required to attend the trial reviewing involuntary treatment in a mental institution. If the patient has no authorised lawyer, the court shall appoint a defence council ex officio, whose costs and remuneration shall be settled by the state.

On point 147:

The period of time of the forensic psychiatric assessment is criticized in the report. Pursuant to Section 18, Subsection (2), Paragraph a) of Chapter III of the Decree of the Minister of Justice No. 36/2003. (X.3.) IM on the execution of involuntary treatment and involuntary preliminary treatment in a mental institution and the duties of the Judicial Institution for Observation and Mental Treatment, the IMEI must report cases exceeding the 60 day official time limit to the Chief Public Prosecutor's Office. This obligation is complied with, and further arrangements are beyond the control of the IMEI.

On point 148:

The CPT mentions the system of providing information, and finds the state of affairs experienced in Building II unsatisfactory. As a result of the measures taken in the meantime, every referral in Building II receives the oral and written information, which they certify with their signature. In addition, they may request that all such information be forwarded to their families and lawyers.

On point 149:

According to the present legal practice applied in the case of patients subject to involuntary treatment in a mental institution, the provided therapy is based on a court decision made by a penitentiary judge. Any other issues are governed by the provisions of the Health-care Act (Section 13) and the decrees on its execution.

On point 150:

The practice for controlling the outside contacts of patients was developed as a result of two arguable professional approaches. According to the first approach it seems reasonable to allow patents to maintain relationships, even if, unfortunately, they are rather poor. On the other hand, due to the psychiatric changes of the patients' state, also occurring in the institution, patients often show insane passions towards their close relatives.

The present system of controls must be reconsidered. We can agree with the remark that the routine control of the patients' correspondence "for therapeutic purposes" is unnecessary. Therefore, according to the new practice, the head of the ward providing involuntary treatment in a mental institution will be responsible for deciding whose correspondence needs to be checked, particularly in cases when the patient tends to destroy his relationships with his letters.

On point 151:

The CPT finds the number of patients with granted adaptation leaves too low, and they ask for information on the decision-making process leading to granting the "adaptation leave".

An adaptation leave was granted to 3 patients in 2003, 4 in 2004 and 7 in 2005.

The rules of procedure are defined in the Decree. Following the discussion (which covers full-scale information about the adaptation rules, the psychiatric disease, the expectable prognosis) with the relatives ready to undertake the adaptation leave, and given their oral consent, the competent local municipality will prepare a study of the living conditions. The decision is made by the chief medical officer of the IMEI on the basis of the study on living conditions, and the recommendation of the Adaptation Board. The Board members comprise all the heads of wards of the institution, the chief psychologist, and the Patients' Representative. The Board requests a detailed report on the case history, and hears privately each and every patient proposed for granting adaptation leave, and submits its opinion with a majority vote. In case of a positive decision, the doctor providing treatment contacts the psychiatric district nurse, makes arrangements for the necessary medical check-ups and gives information to the patient and his relatives. The criteria of adaptation leaves are rarely met, mostly because of the lack of readiness from the part of the relatives to receive patients.

On point 152:

The operation of the Patients' Representative is governed by Sections 30-33 of the Health-care Act, with the detailed terms and conditions regulated in the Decree of the Minister of Youth, Family and Social Affairs No. 1/2004. (I.5.) EszCsM. The Public Foundation for the Rights of Patients, Persons under Care and Children appoint the Patients' Representative by means of a competition.

As a result, the Patients' Representative enjoys full independence of the Providers of Health-care Services, the IMEI, and the authorities supervising the Providers. In the In-patient Institutions the Patients' Representative – under the provisions of the above rule of law – is required to hold consulting hours for the patients at least once a week, and the material conditions for this shall be assured by the hospital.

On point 153:

In the past few years we have received visits on a regular basis from the national and international non-governmental organisations (Helsinki Committee, MDAC, TASZ, etc.), and our fruitful co-operation with these bodies has been further enhanced.

In 2005 the Advocacy Forum of Psychiatric Patients held discussions about the status of the IMEI on two occasions, representing the interests of persons under its care, with particular attention to patients undergoing involuntary treatment in a mental institution. The representatives of non-governmental organisations attending the conference agreed with the CPT experts in several issues.

They acknowledged the necessity of improving the conditions of the IMEI, offered their continued support and regular contribution, as well as their assistance to the operation of the IMEI.

On point 154:

In the Report, CPT expects an explanation in regard of patients placed on the waiting list, for whom involuntary treatment in a mental institution is no longer necessary, and on the basis of their state they can be referred to social care homes.

Further to this issue we can point out that the involuntary treatment in a mental institution is a legal measure specified in the Criminal Code, and in the review procedure the court is entitled to decide on the further necessity of the measure, taking the opinion of independent medical experts into account. In the opinions attached – among others – by the IMEI, the recording of the fact that the patient lacks the protective environment will supposedly be subject to serious considerations, and its judgement also belongs under the jurisdiction of the court proceeding in the matter. As regards patients discharged from the IMEI, their reference to social care institutions for psychiatric patients ran by the local municipalities is subject to the provisions of Act III of 1993 on the Social Administration and Social Care Services. The very same Act orders the obligation to create transitional establishments for psychiatric patients, which will be referred under the authority of the local municipalities. It should be noted that in Hungary there is a very high demand for the institutional services providing psychiatric care. There are no exceptions in respect of patients discharged from the IMEI, either.

VIII. Concluding opinion about the fields under the supervision of the Ministry of Justice

In order to stabilize the situation of the Hungarian Prison Service Organization and improve the conditions of detention, it is indispensable to put an end to the overcrowding of prisons, increase their capacities and modernise institutions operating in old buildings and with outdated infrastructure.

This purpose is served by the investments described in the comment on point 54 and the continuous reconstruction of penitentiary facilities that are in need of renovation, which extend to the improvement of the conditions of accommodation (construction of cells designed to hold a small number of inmates, separation of sanitary facilities, enlargement and renovation of lavatories, establishment of communal areas and premises, etc.).

To remedy the deficiencies revealed by the CPT, the Director General of the National Prison Administration will issue an action plan on the coordination of tasks indicated in the Report, the specification of the deadlines of implementation and the designation of responsible departments and institutions.

In its Report, the CPT called the attention of the Ministry of Justice to the need for relevant codification tasks. The Ministry's approach regarding these codification tasks is as follows:

The Report contains several statements, which require the modification of effective penal laws. A significant part of these statements are in line with the provisions of law intended to be amended or rectified by the Penitentiary Code. It can be stated that all codification requirements mentioned in the Report had been on the agenda during the elaboration of the draft of the new Penitentiary Code (e.g. point 37, point 64, point 81, point 104, point 106, point 113, point 118, point 125 and point 146).

It is in fact of pressing necessity to address issues that require new legislation, however, this cannot be reasonably expected to take place before a bill is introduced to the Parliament at its 2006 autumn session at the earliest. It is up to the Government's decision whether a brand new Penitentiary Code will be drafted or the modification of Law Decree No. 11 of 1979 on the Execution of Punishments and Related Measures (Bv. tvr.) will be proposed. One of the reasons for this is that the new Penitentiary Code will have to be drawn up in the framework of the ongoing reform of the entire penal branch. The other reason is that the reform of penal law requires substantial reorganization and is rather cost-demanding in itself.

Should it be decided in 2006 that the introduction of the new Penitentiary Code will be delayed, the modified penal law decree will have to cover several issues – also mentioned in the Report – that require similarly considerable budgetary funds (e.g. the minimum living space of 4 m2).

The Ministry of Justice agrees with most of the issues raised in the Report, and has aimed to enforce them in the new bill. Nevertheless, we have often encountered the problem that the current situation of prison facilities (e.g. limited budget, employment of only a fraction of the inmates) and their physical condition make the fulfilment of the relevant codification tasks impossible. This is such a pressure for legislators, under which they unable to draft penal laws that would meet up-to-date European requirements, including those of the CPT. On the other hand, those enforcing the laws in penal institutions cannot be expected to ensure the execution of unenforceable legislation, even if they conform to the European norms.

According to point 22 of the Report, Section 128, Subsection (1) of the Act on Criminal Proceedings prescribes that the relative designated by the defendant has to be notified of the fact of detention only after a 24-hour deferment. This is obviously a misunderstanding, as under no circumstances should the Act on Criminal Proceedings be construed as prescribing such 'deferment' before notification.

This provision of the Act on Criminal Proceedings clearly aims to ensure that the designated relative or other person must be notified of the fact of detention within a maximum of 24 hours, which undoubtedly sets the upper limit of the time available for notification. This of course entails the possibility of notification immediately after the commencement of the detention. True enough, there may be cases when there immediate notification is simply impossible, and the legislator should not preclude such cases in our opinion. Obviously, we must make every effort to establish a legal practice which guarantees the shortest possible notification times.

Points 124-125 of the Report contain obscure contradictions as well as rather inaccurate statements in relation to the provisions of the new Penitentiary Code on covert information-gathering that does not require a warrant.

Point 124 of the Report disapproves the 'presence' of police officers in penal institutions, as they are independent of the institution's directorate. In point 125, on the other hand, it raises objects to the effort of the new bill to refer covert information-gathering that does not require a warrant to the competence of the penal institution in order to increase their internal security. With regard to the fact that it is these two organizations that are capable of performing these tasks - and we are aware that it is not an appropriate solution to have the police, which is independent of the institution's management, guarantee the security of the penal institution – it is not clear what solutions the CPT could recommend beyond the presented objections.

It is also necessary to point out that the draft of the new Penitentiary Code does not intend – as alleged in the Report – to assign all tasks currently performed by the police investigators to the prison staff. It cannot be the case anyway, since the prison service organization is not an investigating authority, so it is not authorized to pursue such activities.

In fact, by allowing covert information-gathering, the only purpose of Section 357 (and not Section 346 as indicated in the Report) of the draft Penitentiary Code is to prevent and impede acts that pose a risk to the order and security of prison facilities. If an investigation needs to be ordered based on the covert information-gathering activity, this will obviously be carried out by the competent bodies, which the penal institution must provide with the relevant information.

Pursuant to Section 357, Subsection (3) of the draft Penitentiary Code, should the penal institution become aware of information, as a result of covert information-gathering that does not require a warrant, in respect of which it is not entitled to covert information-gathering, it is required to notify the competent bodies authorized and obliged to act pursuant to specific other legislation.

C.

Establishments under the authority of the Ministry of Youth, Family, Social Affairs and Equal Opportunities

On point 157:

To avoid the "institutionalisation" of psychiatric patients and disabled people, one possibility should be highlighted: that of the program for residential accommodation. For years there have been calls for tender to develop residential accommodation able to provide familiar quartering for small groups of people. The aim is to provide integral and homely social institutional service for disabled people and psychiatric patients. The program would like to break away with the big-size establishments.

The support of the development of day-care centres is achieved through the Human resources Operative Programme of the European Union. Within the day-care boarding developing occupations, social employment can take place for the target group. Along with the day-care accommodation patients can spend their lives with their families, but during the day the burdens of the family are taken over by the institution. This program reinforces also the integration into society.

On point 162:

Steps shall be taken to provide appropriate equipment in order to facilitate the bathing of bedridden residents.

The duties concerning the material conditions of the establishment fall upon the maintainer. Legal regulations on the use, purchase and hire of devices have changed last year. These changes enable these persons to acquire these devices more easily and cheaper.

On point 163:

Steps have been taken to augment the number of staff members within the employments concerning rehabilitation activities.

The implementing decree of the Act III. of 1993 on the social welfare and the Decree no. 1/2000 (I.7.) SzCsM (Ministry of Social Affairs and Family) on the working conditions and professional duties of special institutions giving personal care have regulated the necessary number of staff at the establishments. Apparently the decree shall be amended this year. This amendment will presumably cover also the conditions of the staff number. The concept of modification of the staff number differs from the regulations that have previously appeared in the field of such activities, it now rather turns to the activity based regulation. This way the institutions can set the management of staff more flexibly and more to the needs of the patients.

On point 171:

The Act IV of 1959 on the Civil Code contains the safeguard rules which are described by the CPT in its recommendation (Article 14/A). Moreover, the chapter on the rights of the patients in the Act III. of 1993 on the social welfare gives possibility to the patient to request the supervision of the institutional catering even without the assistance of his guardian.

On point 175:

Independent outside bodies can visit the institution. There is an existing agreement dating back several years with the Forum for the Protection of the Interests of Psychiatric Patients for the visits of the institutions, but also the safeguard associations of disabled persons participate actively and constantly in the outer control of the activities of the institutions.

D.

On the measures taken by the prosecution service

The prosecution service considers the activities and the evaluations of the CPT as a standard and promote the emergence of the recommendations at the executing organs through the means of justice.

Several impositions for the implementation of the CPT recommendations appearing in our circulars have been emphasised also in the directives issued by the prosecutor general. The detention facilities are inspected and examined at least twice a month, this has seriously contributed to the prevention of ill-treatment and inhuman behaviour, as even the CPT noticed it in its report of 2003. For the elimination of the abuses committed by some members of the police and the service for the execution of punishments, the frequency of inspections and examinations have to be preserved, because in spite of the lower statistical numbers unwanted and preventable cases still can happen and happen as well.

Results have been achieved by the prosecution service concerning the retaliations against the detainees in cases where the prosecutors dealing with the supervision of legality of the execution of punishments and for legal protection (hereinafter: specialised prosecutor) have questioned the detainee and this was the reason why retaliation or some other detriment was employed against the detainee. Such cases can not happen anymore, as the prosecutor returns to visit the detainee in around two weeks. The prosecutor has to act against the ill-treatment of the detainee also in case when it was the CPT delegation that has questioned the prisoner. Such case has neither yet happened, nor can happen in the future, because otherwise the prosecution service shall initiate impeachment. The CPT in its reports on Hungary has always emphasized “the pre-eminent role of the prosecution service in the supervision of the legality of the execution of punishments concerning the protection of rights, the safeguard of the rightful treatment of detainees… the prevention of torture”.

The decree of the Minister of Interior is interpreted by the prosecution service the same way the CPT interprets it: the cases have to be reported to the prosecutor instantly, with the by-pass of the official channels.

The prosecutors supervising detention do not belong to any other organizational structure – not even to the Department for Supervision of Investigations, which by the way is a long-existing unit – but are independent; this is shown also in the name: prosecutors for the supervision of the legality of the execution of punishments and for legal protection. This very favourable change has been supported and helped by the CPT itself following the visit of 1994, because this way no other professional interests can influence these prosecutors. There are 30 such prosecutors in Hungary, but only 5 of them at the Office of the Prosecutor General; others are working in the proximity of other prisons and detention facilities in each of the counties. This way they can quickly be present (even at night) at the inquiry of extraordinary events concerning the prisoners.

They can never announce beforehand their arrival or the time of the inspection and examination, and they never do. This is the only way to get a real picture of the inspected facility. This is a long-standing working method. At these occasions they do not only have random conversations with the detainees, but also hearings at their request, or they question the detainees who have evidence backing another co-prisoner.

The detainee who wants to see the prosecutor can meet him at his detention sector as well, because hearings can also be conducted there; all this is documented. On the other hand no one can be forced to talk with the prosecutor, if the person does not want to. It has never happened, that a detainee wanting to talk to the specialised prosecutor couldn't do so – even tête-à-tête.

In the Szeged Strict and Medium Regime Prison the life-sentenced prisoners have been interviewed several times. No one of them requested tête-à-tête talks. When there was no special reason for the hearing, the detainees were not disturbed wantonly. They were informed of the fact that they have the possibility to talk to a prosecutor. In year 2005 in the Szeged Strict and Medium Regime Prison 415 prisoners were interviewed by specialised prosecutors – in accordance with the request letters and tête-à-tête randomly.

These happenings are documented, but the members of the delegation coming to Szeged were not at all interested in the dossier, they have not even had a look at the documents contradicting their presumptions. They accidentally met the prosecutor conducting the inspection, but apart from the presentations they have not asked any questions, nor opinion. The prosecutor had tête-à-tête talks with 63 prisoners at Kalocsa. According to the documentation, in year 2005 the prosecutors heard 8935 inmates in all detention facilities and prisons nationwide, among these persons 2377 detainees (26,6%) expressly requested the hearing.

The management of the prisons can not be present and is not present when the specialised prosecutor interviews the inmate tête-à-tête. The specialised prosecutors visit the cells twice every month, they interview the inmates and at the same time they inform them about the possibility of tête-à-tête talks. In such cases the custodial staff is outside the cell, only to open and close the door of the cell.

The specialised prosecutors have greatly attended to the filtering of the infractions committed against detainees and to validate the internationally required correct treatment.

The Article 4 of the Recommendation Rec (2000) 19 of the Council of Europe Committee of Ministers mentions as a function of the prosecutors to "supervise the execution of court decisions", and according to the provisions of Article 24 they respect and seek to protect human rights; furthermore, according to the commentary of the Recommendation, the prosecution service has a particularly important role in the execution of imprisonment punishments. The European Committee of Human Rights has highlighted the role of prosecutorial supervision of legality as a form of legal remedy (21.967/1993).

According to the CPT report of 2003, "the prosecutorial supervision of the detention facilities in Hungary disposes of the possibility to prevent ill-treatment and inhuman behaviour, and generally said, to ensure the appropriate circumstances of the detention". In this report the CPT has positively evaluated the effective prosecutorial actions and acknowledged the earnest approach of the prosecutors.

The CPT has expressly welcomed in its report on the visit in 2005 the existence of the prosecutorial visit system in Hungary. The visit system of course means the visits that the specialised prosecutors paid at the detention facilities.

Finally, we have to accentuate that in the opinion of Hungarian authorities, the CPT recommendations, estimations and remarks greatly promote their work and provide them with exploitable information. To safeguard the cooperation they express their special thanking for the helping support. The Hungarian Government and the organs and authorities affected by the visits request – according to the general European practice – the publication of the present answer given to the report on the CPT visit in Hungary (31st March 2005 – 10th April 2005), together with the amended CPT report.

(The Hungarian answer has been put together from the written answers and opinions of the affected authorities, furthermore the final version has been harmonised with them and the competent persons of the Government by Prof. Dr. György VÓKÓ, CPT Liaison Officer).