



CPT/Inf (2009) 9

**Response of the Czech 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 the Czech Republic**

from 25 March to 2 April 2008

The Czech Government has requested the publication of this response. The report of the CPT on its 2008 visit to the Czech Republic is set out in document CPT/Inf (2009) 8.

Strasbourg, 5 February 2009

Introductory remarks

Under Resolution No 1277 of 15 October 2007, the Government of the Czech Republic took due note of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter “the CPT Report”) on its visit to the Czech Republic from 25 March to 2 April 2008 and enjoined the Government Commissioner for Human Rights to present the Government – and subsequently the CPT – with information on the fulfilment of the recommendations contained in the CPT Report.

The structure of the response of the Government of the Czech Republic mirrors the structure of the CPT Report. The Response is structured in accordance with Appendix I to the CPT Report, which contains a list of the CPT’s recommendations, comments and requests for information, with a specification of the CPT Report paragraph number containing the relevant recommendation.

Assistance provided to the delegation

Recommendation

- **To take steps necessary for effective access of CPT delegations to medical documents in all institutions visited by the Committee as required by Art. 8(2)(d) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”) (paragraph 9).**

As to paragraph 9 of the Report, the Ministry of Health (hereinafter “the MH”) states that, under the current legislation embodied in Act No. 20/1966 Coll. on Human Health Care, as amended (hereinafter “Act No. 20/1966 Coll.”), the Committee is not a subject authorized to inspect medical documentation of patients without their consent and even the future legislation (the Medical Services Act), which is being now presented to the Government of the Czech Republic for approval, does not intend to increase the number of persons entitled to inspect medical documents by the Committee members. No relevant reasons for such change have been found, particularly with regard to protection of personal data and patient rights. According to the MH, a breakthrough of the general protection of sensitive personal data without their subjects' consent is not a step which would contribute to an increase of protection of patient rights compared with the current (or future) legislation.

The above-mentioned bill orders medical service providers to ensure assistance if such duty arises from international treaties by which the Czech Republic is bound; if it is necessary for the fulfilment of the purpose of the visit to the provider, the provider shall ensure access to patients' medical documents only on the basis of anonymization of personal data kept in the medical documents.

The MH has already informed that, according to our legal opinion, access to medical documents cannot be inferred from a relatively vague provision of the Convention concerning access to information and it is impossible to give priority to this provision over the Czech legal regulation in Act No. 20/1966 Coll. Article 8 of the Convention defines individual rights of the Committee towards the state which has acceded to the Convention. These rights include, among other, the Committee's right to demand, beside other information, also additional information necessary for the performance of the Committee's task (cf. Art. 8(2)(d) of the Convention). At the same time, Art 8(2)(d) of the Convention stipulates that "In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics." We infer from the quoted articles that, although this is an agreement which has the priority over an "ordinary" law in accordance with Art. 10 of the Constitution of the Czech Republic, this article contains a restrictive clause applying to the Committee members as regards the provision of information relating to its tasks. Having interpreted this article of the Convention in conjunction with the explanatory report of the Council of Europe, we note that, as regards standards regulation protection of personal data (sensitive personal medical data included in the medical documentation) and medical secrecy, the Convention itself refers to national law. Inviolability and inalienability of these rights is declared and guaranteed to every citizen of the Czech Republic by constitutional laws, i.e. by the Charter of Fundamental Rights and Freedoms and the Constitution of the Czech Republic (i.e. legal documents having the same legal force as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), and is also reflected in the relevant laws, for instance, in Act No. 20/1996 Coll., Act No. 101/2000 Coll. on Protection of Persona Data, as amended, and others. Therefore, it is impossible, with reference to provisions of Czech law regulating personal data protection, including medical data, to permit the Committee without further steps to inspect the medical documents, except in cases where 1) the patient himself determines in writing, pursuant to Section 67b(12)(d) of Act No. 20/1966 Coll., that the Committee is entitled to inspect medical documents kept with respect to him, or if 2) the medical documents presented to Committee members for inspection are presented on a wholly anonymous basis so that it would be impossible to identify the person to whom the sensitive personal data in the medical documentation relate. In this respect, however, we can refer to the difficulty of the application of such procedure in case of voluminous medical documents.

Remarks

- **Under the obligation in Art. 8(2)(b) and (d) of the Convention, all information on the places where persons deprived of their liberty are being held and on the specific persons held there must be accurate (paragraph 10).**

Kuřim Prison's employees endeavoured to provide accurate information. All minor discrepancies caused by terms used by the interpreters which did not correspond with commonly used terms, and by the specification of the relevant requirements which was not always clear were immediately clarified and explained.

- **Requests for information**

A written confirmation of steps taken to ensure effective access of CPT delegations to medical documents (paragraph 9).

An extract from the Bill on Medical Services and Terms of Their Provision, which relates to duties of medical service providers and their obligation to provide necessary assistance arising from international commitments stipulates the following:

“Section 1”

Provider's Obligations

(1) *The provider is obliged to provide medical services at an appropriate professional level, to create conditions and measures to ensure the exercise of the rights of patients and other entitled parties, medical workers and other professionals during provision of medical services.*

(2) *The provider is obliged*

- a) *to provide medical services in accordance with his authorization to provide medical services;*
- b) *to provide medical services solely in places specified in the authorization to provide medical services; this does not apply to the provision of medical services which may be provided in cases stipulated by the law outside the premises of a health care establishment or in the patient's own social environment;*
- c) *to inform the patient, prior to the provision of medical services, on the amount of financial reimbursement (if any) for provided medical service and to issue a bill for paid medical services, unless specified otherwise in another law;*
- d) *to prepare a list of prices of provided medical services which are not covered or which are partly covered by health insurance, and to place such list at a public place; this shall not apply to providers of pharmaceutical medical services;*
- e) *to specify operating and consulting hours and to place the relevant information at a public place in the health care establishment so that such information is continuously available to patients;*
- f) *to furnish the health care establishment with a visible sign, which must include the provider's corporate name, designation or name and surname and identification number, if allocated;*
- g) *to arrange for substitution during absence or temporary interruption of provision of medical services in order to ensure medical services for patients in cases of emergency, and to publish such information at a public place in the health care establishment so that such information is continuously available to patients;*
- h) *to deliver a report on provided medical services to the registering provider in the field of general medical practice or medical practice for children and adolescents if such provider is known to him, and upon request also to the provider of emergency medical service; this duty shall not apply to registering provider in the field of dentistry or gynaecology – obstetrics, unless such provided medical services have been indicated by the registering provider in the field of general medical practice or medical practice for children and adolescents;*
- i) *to deliver the necessary information about the patient's health to ensure subsequent provision of further medical and social services to the patient;*
- j) *to elaborate a list of medical services which require written consent to be provided, except for medical emergency service, medical transport service and pharmaceutical medical services;*

- k) *to accept the patient for*
 - 1. *isolation, quarantine, treatment or medical supervision stipulated by the Public Health Protection Act, if the provider is entitled to provide the required medical services;*
 - 2. *court-ordered protective treatment, if the provider provides such service under the Act on Specific Medical Services;*
- l) *to provide medical services indicated by a Prison Service physician to an accused or a convicted person, with the exception of urgent medical services, on the date and time agreed in advance with the Prison Service;*
- m) *to deliver data to the National Medical Information System;*
- n) *to conclude a contract on insurance of his liability for damage caused in connection with the provision of medical services in the scope within which he may reasonably expect to incur such liability; such insurance must cover the entire period of provision of medical services; a copy of the insurance contract shall be sent by the provider to the relevant administrative authority not later than within 15 days after the start of the provision of medical services.*

(2) The provider is further obliged

- a) *to deliver to the patient a medical report for the labour office if such patient is unable, due to his health, to fulfil his obligation to cooperate with the labour office in job mediation²⁶⁾;*
- b) *to allow access to persons authorized by the relevant administrative authority, a public health protection authority, a health care insurance company, the chamber, to physicians delegated by the assessment service of the social security administration, authorized employees of controlling departments of the social security administration, the public protector of rights and authorized employees of his Office in order to find materials necessary to carry out tasks prescribed by this Act or by other laws regulating the activities and tasks of the above authorities; the entry of such persons may not interrupt the provision of medical services;*
- c) *to allow access to authorized physicians and authorized employees of controlling departments of service authorities under the Sickness Insurance Act²⁷⁾ and bodies of the Ministry of Defence, Ministry of the Interior or Ministry of Justice under the Social Security Act²⁸⁾ to find materials necessary to carry out tasks prescribed by this Act, the Sickness Insurance Act or the Social Security Act in connection with the performance of tasks relating to pension insurance; the entry of such persons may not interrupt the provision of medical services;*
- d) *to provide to the regional authority and to the ministry upon request reference materials and data necessary for the preparation and resolution of emergencies and crises;*
- e) *to send to the regional authority once every calendar year not later than by 15 February of the next calendar year the number of patient complaints against the procedure used in the provision of medical services or related activities which have been reviewed by the provider, divided into justified, partly justified and unjustified; the provider who has not resolved any complaint is relieved of such duty;*
- f) ***to ensure assistance if such duty arises from international treaties by which the Czech Republic is bound; if it is necessary for the fulfilment of the purpose of the visit to the provider, the provider shall ensure access to patients' medical documents only on the basis of anonymization of personal data kept in the medical documents. At the same time, the provider shall ensure to the public protector of rights access to medical documentation of patients only on the basis of anonymization of personal data.***

²⁶⁾ Act No. 435/2004 Coll. on Employment, as amended

²⁷⁾ Act No. 187/2006 Coll. on Sickness Insurance, as amended.

²⁸⁾ Act No. 582/1991 Coll. on the Organization and Implementation of Social Security, as amended.

(3) *The provider is also obliged to inform the public health protection authority which has decided on isolation, quarantine, treatment or medical supervision that the patient who was ordered to be placed in isolation, quarantine, in treatment or under medical supervision*

- a) *has deliberately left the medical establishment providing inpatient medical services;*
- b) *does not attend the provider of outpatient medical services despite being called upon;*
- c) *refuses the provision of medical services provided without consent under this Act or another law.*

(4) *The provider is further obliged to inform the public health protection authority that the patient failed to attend regular vaccination under the Public Health Protection Act.*

(5) *The provider is also obliged to provide to the relevant authorities under other laws without the patient's consent any information learned by the provider in connection with the provision of medical services, which relates to*

- a) *circumstances giving rise to a justified suspicion of mistreatment, abuse or neglect of a patient or other conduct threatening the patient's physical or mental development, health or life;*
- b) *circumstances giving rise to a justified suspicion of another person's participation in suicide or a suicidal attempt,*
- c) *admission of a patient who cannot be identified;*
- d) *admission of a patient who has been poisoned by toxic substances²⁹⁾ and there is a justified suspicion that the source of such substances may threaten other persons;*
- e) *circumstances indicating that the patient is a person who has been declared as wanted.*

This provision shall not affect any notification duty stipulated by other laws.

(6) *The provider is obliged to fulfil other duties stipulated by this Act and by other laws.”*

Treatment of sexual offenders

Recommendation

- **To review the laws on protective treatment from the perspective of the patients' consent with such treatment in the light of remarks stated in paragraph 19 (paragraph 19);**

As regards paragraph 19 of the CPT Report, the MH disagrees with its general allegation that the medical staff forces treatment alternatives upon patients in a psychiatric establishment. On the contrary, all laws which are currently in force in the Czech Republic are based on a free informed consent of the patient with medical interventions that are to be performed. Under the prepared law, castration is a specific medical service which cannot be performed (even now) without the basic prerequisite, which is the patient's request and approval by an independent expert commission. It is not quite evident which impacts of Decree No. 385/2006 Coll. are meant by the Committee in this paragraph of the CPT Report; however, the general object and purpose of this provision of the implementing decree to Act No. 20/1966 Coll. is to stipulate particulars of a correctly maintained medical documentation and the conclusiveness of the procedure applied by the medical staff during provision of medical services to patients. This also applies, of course, to patients undergoing protective therapy.

²⁹⁾ Act No. 356/2003 Coll. on Chemical Substances and Chemical Preparations and on the Amendment to Certain Laws, as amended.

- **To take necessary steps to introduce treatment programmes for sexual offenders undergoing protective therapy at the time of their detention in prison (paragraph 21);**

As agreed with the Minister for Human Rights and National Minorities, the Bill on Specific Health Services has included a provision under which castration may be performed on a patient in detention, in prison, under protective treatment and in security detention only in specially justified cases upon

- a) the patient's written request;
- b) an affirmative opinion of the expert commission; and
- c) the consent of a court.

A copy of the request is a part of medical documentation kept with respect to the patient.

The treatment programme of sexual offenders who have been ordered to undergo protective sexuological treatment has been used in Kuřim Prison for 10 years. The capacity of the ward where such treatment is provided is 54 places. Given the current legislation, where the decision whether to start or not to start the ordered treatment while in prison depends on the convict, such capacity is sufficient. Upon adoption of the Act on Specific Medical Services, which will regulate the provision of protective therapy in medical facilities run by the Prison Service concurrently with imprisonment, the required capacity for provision of protective sexuological treatment will be re-assessed, in accordance with this recommendation, so that such treatment may be undergone concurrently with the prison sentence by all and not only by those agreeing with the treatment.

- **To review administering anti-androgens to patients under protective treatment in the light of remarks stated in paragraph 25 (paragraph 25);**

We have taken due note of CPT's remark. The Czech sexuological school is renowned worldwide, particularly for its achievements in protective sexuological treatment. The Czech Republic has a comprehensive system of care for patients with sexual deviation, which includes, in particular, building the patient's insight into his own problems and ensuring safe forms of further sexual life. The treatment by suppression of libido is not a dominant feature of this therapy.

The issue of information which has to be provided to the patient before any medical intervention is presently regulated by Act No. 20/1966 Coll.

- **To immediately stop using surgical castration in the context of treatment of sexual offenders (paragraph 44).**

As regards paragraph 44, the MH believes that this is a purely professional issue, and does not consider the reasons specified by the Committee in favour of absolute abandonment of castration upon request of the patient – sexual offender - as sufficient and established, particularly with regard to the fact that, as explained above, Act No. 20/1966 Coll. binds the performance of such intervention to strict conditions and the patient's request.

Therapeutic testicular pulpectomies, which may be carried out in the Czech Republic, are performed upon a written request of an adult man, and the establishment of an expert commission is always required for the professional assessment of reasons. Prior to the performance of such intervention, the patient must express his consent with its performance. Castration is considered with respect to men who cannot manage their sexual instincts and are sexually aggressive. Surgical castrations are performed on the basis of other than psychiatric indications (particularly in case of oncological diseases).

Requests for information

- **Impact of Decree No. 385/2006 on Medical Documentation, which came into force as of 1 April 2007, on therapy of patients under protective therapy (paragraph 19);**

It is not quite evident which impacts of Decree No. č. 385/2006 Coll. are meant by the Committee in this paragraph of the CPT Report; however, the general object and purpose of this provision of the implementing decree to Act No. 20/1966 Coll. is to stipulate particulars of a correctly maintained medical documentation and the conclusiveness of the procedure applied by the medical staff during provision of medical services to patients. This also applies, of course, to patients undergoing protective therapy.

- **Plans for location, staffing and capacity of a new establishment for inmates under court detention and details concerning criteria of their placement, regime and legal guarantees (paragraph 20).**

Act No. 128/2008 Coll. of 18 March 2008 on Security Detention and on the Amendment to Certain Related Laws shall come into force as of 1 January 2009.

Imposing security detention is regulated by the Criminal Code. The Court shall order security detention in the case specified in Section 25(2) of the Criminal Code (*“The court may also waive punishment of an offender if he committed an intentional criminal offence punished by the law by imprisonment for more than five years in a state of diminished sanity or in a state caused by a mental illness, and it cannot be expected, with regard to the nature of the mental disease and possibilities of working with the offender, that the ordered protective therapy would provide sufficient protection of society and the court is of the opinion that security detention imposed concurrently by the court upon the offender shall ensure better protection of society than punishment”*), or if the perpetrator of an act which represents otherwise a criminal offence and which would meet the grounds of a particularly serious crime is not criminally liable due to insanity, the offender's staying at liberty is dangerous and it cannot be expected that the ordered protective therapy would lead, with regard to the nature of the mental disease and the possibilities of working with the offender, to sufficient protection of society. The court may order security detention with regard to the perpetrator's personality and his current life and circumstances also in the case that the offender has committed an intentional criminal offence punished by the law by imprisonment for more than five years in a state caused by a mental disorder, his stay at liberty is dangerous to the society and it cannot be expected, with regard to the nature of the mental disorder and possibilities of working with the offender, that protective therapy would lead to sufficient protection of society. Security detention may be ordered by the court separately, while waiving punishment or concurrently with punishment.

Security detention is provided in an institute for security detention with therapeutic, psychological, educational, pedagogic, rehabilitation and activity programmes.

Security detention will last as long as required by the protection of society. The court shall review, at least once every 12 months (or every 6 months in case of adolescents), whether the reasons for such detention still exist.

The court may change security detention to institutional protective therapy if the reasons for which the security detention has been ordered have ceased and the conditions for institutional protective therapy have been fulfilled.

Security detention may be executed only by the method respecting human dignity of the person held in security detention (hereinafter “the inmate”), which is adequate to the inmate's personality and limits the effects of deprivation of freedom; however, this must not endanger protection of the society.

The inmate may not be treated in a manner which can adversely affect his health and it is necessary to use all available special knowledge and to support such attitudes of the inmate that will motivate the inmate (if possible with regard to his health) to decide to submit himself to protective therapy.

Inmates are placed in groups by an expert commission appointed by the director of the institute, which is comprised mostly of specialized staff of the institute. The commission has to include at

least two physicians, one of whom must be a psychiatrist, a psychologist and a lawyer. While placing inmates in groups, the expert commission takes into account mainly their age, the assessment of their health, personal characteristic and prior criminal activity. The content of specific group activities is specified in therapeutic, psychological, educational, pedagogic, rehabilitation and activity programmes which the inmate is obliged to attend. While placing an inmate in a specific programme, the expert commission asks about and takes into account the inmate's opinion. An inmate placed in a programme including provision of medical care is obliged to subordinate himself to such care, with the exception of interventions excluded by the physician with regard to the inmate's medical condition. Therapeutic programmes are carried out in cooperation with a medical establishment. Each programme includes a specifically defined objective of work with the inmate, the inmate treatment methods aiming at the achievement of such objective and the method and frequency of assessment. The programme also specifies the method of providing employment to the inmate, his participation in work therapy, education and other substitute activity. If more than one variant can be considered with respect to an inmate, it is possible to let him choose from among them.

The commission, which is comprised of specialized staff of the institute (hereinafter "the expert commission") prepares every three months of the execution of security detention a comprehensive report on the inmate's progress, assessing effects of the current programmes. The inmate has to be provably acquainted with the comprehensive report. In all its comprehensive reports, the expert commission has to focus on the projection of further development of the inmate with a view of a change of security detention to protective therapy.

The director of the institute, acting in cooperation with the expert commission, monitors the development of each inmate's behaviour, assesses success of the execution of security detention and considers conditions for proposing the change of security detention to protective therapy, or whether the conditions for the inmate's release from security detention have been met. If, based on a proposal of a specialized staff member, the expert commission find out that the reasons for continuation of security detention have ceased, it will prepare a special detailed report to this effect which will be presented to the director of the institute with a recommendation for the inmate's release from security detention, or for a change of security detention to protective therapy. If the director of the institute agrees with the recommendation of the expert commission, he will promptly file a motion for release of the inmate from security detention or for the change of security detention to protective therapy with the district court in whose district the security detention is executed, and will notify thereof the relevant state attorney. If the director of the institute disagrees with the expert commission's recommendation, he will promptly send its report together with his own opinion to the district court in whose district the security detention is executed.

Beginning with 1 January 2009, security detention will be executed in the Security Detention Institute in Brno. The capacity of this institute will be 48 beds. The exact number of worksheet functions of the institute's staff has not been determined yet. Treatment of inmates will be carried out by civil employees holding the posts of detention psychologist, detention therapist, special pedagogue for detention, social worker, detention instructor and psychiatrist. Internal security in the Security Detention Institute will be carried out by members of the Prison Service of the Czech Republic as detention wardens.

Another Security Detention Institute with the capacity of 150 beds is to be established in a facility in Krnovská Street in Opava, which will be reconstructed in the course of 2009. Internal rules of the Security Detention Institute and internal regulations of the Prison Service of the Czech Republic concerning the execution of security detention are currently under preparation.

Ward E of Valdice Prison

Mistreatment

Recommendation

- **To set forth a clear directive regulating the use of pepper spray, which should include at least the following points:**
 - **clear instruction as to when the pepper spray may be used, which should expressly specify that pepper spray may not be used in enclosed premises;**
 - **the right of prisoners exposed to pepper spray effects to immediate access to a physician and provision of alleviating measures;**
 - **information about qualification, specialized training and skills of staff authorized to use pepper spray;**
 - **sufficient mechanism of reports and controls over the use of pepper spray (paragraph 46);**

Czech laws permit the use of a tear-inducing means as a coercive means to judicial and prison guard members (Act No. 555/1992 Coll. on the Prison Services and Judicial Guard of the Czech Republic, as amended), to the police (Act No. 283/1991 Coll. on the Police of the Czech Republic, as amended), to the military police (Act No. 124/1992 Coll. on the Military Police, as amended), to members of the municipal police (Act No. 553/1991 Coll. on Municipal Police, as amended), customs officials (Act No. 13/1993 Coll., the Customs Act, as amended), and to members of the Army and the Castle Guard (Act No. 219/1999 Coll. on Armed Forces of the Czech Republic, as amended). Provisions of these laws do not allow using such means against a pregnant woman, an aged person, a person with evident disability and a person evidently younger than 15 years of age.

According to these laws, the relevant officer decides which of the coercive means to use in accordance with the specific situation to achieve the purpose pursued by the service act. In this respect, he is obliged to ensure that the use of the coercive means is adequate to the purpose of the intervention and does not cause damage which is evidently disproportionate with the nature and danger of the relevant conduct.

The laws do not include any prohibition to use a tear-inducing means in enclosed premises.

The laws stipulate the duty to ensure medical treatment after the use of a coercive means. Medical examination is also an inseparable part of the record on the use of a coercive means. Following the use of a coercive means, the officer who has used it is obliged to promptly draft on a pre-printed form a written record on its use. Circumstances of and reasons for every use of a coercive means are investigated by the first deputy director of the prison. The relevant procedure is set out in the Regulation of the Director General of the Prison Service of the Czech Republic No. 40/2002 on the method of preparation of a record and report on the use of coercive means.

If the convict's allegation stated in the CPT Report were true, it would represent at least a disciplinary offence from the part of Prison Service members who used the pepper spray, because it would be a breach of Act No. 555/1992 Coll. and of the Regulation of the Director General No. 40/2002. However, the investigation did not identify any facts confirming the convict's allegation regarding the use of pepper spray.

The use of coercive means is one of the topics of service training of members of the Prison Service of the Czech Republic No. S 3, which is attended by all its members. To date, the aspects of the use of pepper spray have not been included in the topic no. S 3. In accordance with CPT's recommendation, the aspects of the use of pepper spray will be included in the Regulation of the Director General of the Prison Service of the Czech Republic No. 22/2006 on Service and Professional Training of Members and Civil Employees of the Prison Service of the Czech Republic for 2006 – 2010. The use of pepper spray, which has been until now a mandatory part of the gear carried by supervisory service inspectors and class 2 wardens, will be paid increased attention by the custody and prison section of the Director General of the Prison Service of the Czech Republic.

- **To carry out in Valdice a control of compliance with Regulation No. 82/2006 on Prevention and Early Detection of Violence among Prisoners to ensure its effective implementation. This also applies to the staff's ability to identify perpetrators of violent offences against the other prisoners and to recognize when vulnerable prisoners may seek help by means of acts which are in conflict with the internal rules of the prison (paragraph 49);**

Controls of proper compliance with the Regulation of the Director General of the Prison Service of the Czech Republic No. 82/2006 on Prevention and Early Detection of Violence among the Accused and the Convicts in order to ensure their effective implementation will be made by the General Directorate of the Prison Service of the Czech Republic regularly (at least once a year).

- **Czech authorities have to clearly indicate to all prison officers and managers that placement of a vulnerable prisoner into a cell where he is threatened with physical and/or sexual assault, whether intentionally or because they should know about such risk, represents inhuman and degrading treatment and will be considered as such (paragraph 49).**

The relevant provision in the sense of this CPT's recommendation will be added to the Regulation of the Director General of the Prison Service of the Czech Republic No. 82/2006 on Prevention and Early Detection of Violence among the Accused and the Convicts.

Life prisoners

Recommendation

- **To take as early as possible the necessary steps to amend the Act on Imprisonment and other prison regulations in the light of remarks stated in paragraph 50 for the purpose of gradual integration of prisoners sentenced to life into the rest of the prison population (paragraph 50);**

The draft amendment to the Act on Imprisonment, which introduces the principle of non-segregation of prisoners serving a life sentence (separation from the other convicts based only on the nature of their sentence) in the light of CPT's remarks, will be prepared in 2009; amendments to other regulations based on the Act on Imprisonment will be prepared promptly after the amendment to the Act on Imprisonment will be approved.

- **General overhaul of the regime relating to life prisoners placed in Valdice Prison; the regime should include a programme of activities outside their cell, set up in cooperation with the prisoner, which should be meaningful and diverse (paragraph 55);**

The following activities are offered to prisoners sentenced to life in prison placed in Valdice Prison as a part of the implementation of their treatment programme:

Special guidance:

- pedagogic care for prisoners with long sentences;
- cognitive rational therapy;
- high-risk clients: personality development – problem solving without resorting to conflict, personal counselling.

Educational and teaching activities:

- teaching programmes;
- preparation for release;
- a language course;
- a computer course (beginners, advanced).

Hobbies:

- electronic games;
- table football;
- streetball;
- table tennis;
- fitness exercise;
- work with the book;
- a club of party and logical games;
- a fine arts and model-building club.

As required by the creation of necessary conditions, various activities included in treatment programmes are and will be further expanded in future. Involvement of convicts in offered activities is voluntary; convicts may not be forced to participate in these activities. The minimum treatment programme, which basically includes work activities adequate to the convict's health, is determined for convicts who do not elect any of the offered alternatives of their treatment programme. The number of hours spent by life prisoners daily outside their cells depends to a significant extent on their own wishes. For instance, life prisoners are currently offered eight jobs but only four of them (i.e. 50% of the established capacity) are occupied; the other life prisoners are not interested in taking up a job.

Since CPT's visit in 2006, the offer of educational activities to life prisoners has been expanded by a computer work course for beginners and advanced, with a possibility of obtaining a graduation certificate. Furthermore, a language course has been opened (including the required equipment – a computer, CDs with learning programmes CD, audio). One life prisoner was offered a possibility to complete secondary school – in 2007, he passed the final exam and is currently enrolled in distance bachelor studies of theology at the Global University in Cologne, accredited with the Accrediting Commission of the Distance Education and Training Council.

- **As to the placement system of life prisoners, to set up transparent procedural rules enabling the prisoners to clearly determine which conduct and behaviour is expected from them to be placed in a group with better conditions (paragraph 55).**

In its report, CPT assessed the state existing prior to the effective date of the Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2007 on the Terms and Methods of Treatment of Convicts Placed in Reinforced Structural and Technical Security Wards (i.e. prior to 1 August 2007).

Annex no. 18 to the existing internal rules of the prison – Execution of sentence of life prisoners – sets forth transparent procedural rules regarding placement of convicts in individual permeable internally differentiated groups. New convicts coming to the prison facility for execution of their sentence are placed in the second and not in the third permeable internally differentiated group and may be transferred to the first internally differentiated group usually after two and half years. Motivation factors of each permeable internally differentiated groups are differentiated more clearly. For instance, the number of people who may participate in outdoor exercise and the possibility to extend the period of exercise are different (1st permeable internally differentiated group (PIDG) – up to 8 convicts and a possibility to extend the period for up to 2 hours a day, 2nd PIDG – up to 5 convicts and a possibility to extend the period for up to 1 hour, 3rd PIDG – up to 3 convicts, no extension), watching TV (1st PIDG – up to 10 hours a day), 2nd PIDG – up to 8 hours a day), indoor exercise (1st PIDG – up to 7 hours a week, 2nd PIDG – up to 5 hours a week, 3rd PIDG – up to 3 hours a week), hobbies (1st PIDG up to 6 convicts, up to 5 hours a day, 2nd PIDG up to 4 convicts, up to 3 hours a day, 3rd PIDG up to 2 convicts, up to 2 hours a day), one-off purchase amount (1st PIDG – 800 CZK, 2nd PIDG – 600 CZK, 3rd PIDG – 400 CZK); other differentiated options include the use of PC and the Play Station, cells decoration, etc.

Remarks

- **CPT does not see any justification for systematic prevention of contacts between life prisoners and other prisoners or for limiting their association to only one or two other prisoners (paragraph 55).**

Since 1 August 2007, which was the effective date of the Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2007 on the Terms and Methods of Treatment of Convicts Placed in Reinforced Structural and Technical Security Wards, the contacts of prisoners are no longer limited to one or two other prisoners. Subject to the placement in the permeable internally differentiated group, up to 10 convicts may participate together in an outdoor exercise. Treatment programme activities or hobbies may be attended by prisoner groups depending on the capacity of used premises and individual assessment.

The existing practice has shown that convicts themselves refuse participation in larger groups during outdoor exercise to avoid contacts with other prisoners. In a larger number of smaller groups, it is easier to eliminate personal conflicts between convicts.

Requests for information

- **Reconstruction schedule of exercise premises in ward E of Valdice Prison (paragraph 52).**

Project documents have been prepared with respect to reconstruction of desolate courtyards to be used for outdoor exercise. The Building Office of the Ministry of Justice of the Czech Republic issued on 24 September 2008 a building permit for this construction. The occupancy certificate for this construction is expected to be issued in the first quarter of 2009.

Prisoners under high-security regime

Recommendations

- **To initiate a comprehensive re-assessment with the following objectives:**
 - **to provide a clearer definition of the purpose of ward E (in the form of a mission and vision);**
 - **to set up strategic and operating targets for ward E and to ensure allocation of necessary sources in order to fulfil such newly defined purpose;**
 - **to ensure that all ward E staff identify themselves with the ethos of the ward and are properly trained to work with hardly manageable prisoners (paragraph 57);**

Such re-assessment was made in the Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2007 on the Terms and Methods of Treatment of Convicts Placed in Reinforced Structural and Technical Security Wards. Section 11 of this Regulation stipulates the following: “The purpose of work with convicts is to limit consequences of de-socialization and prisonisation. Therefore, it is necessary to use such forms and methods of activity, including preventive measures, that shall minimize undesirable behavioural manifestations frustrating the purpose of the imprisonment (usually aggressiveness or a serious threat to security principles) and to maintain adequate mental and physical condition allowing conflict-free contact with employees and other persons. The objective is to achieve the purpose of imprisonment, particularly through the implementation of the designated treatment programme as the fundamental form of purposeful and comprehensive work with the convicts, which has to be focused on re-inclusion of the convicts in a standard prison section. This should result in the achievement of changes of attitudes and in positive adaptation to imprisonment and elimination of difficulties which caused the convict to be placed in a reinforced security ward. The key part of the treatment is the participation in specialized guidance activity, which becomes binding on the convict after being familiarized with the purpose and content of such activity. Further treatment should be directed at the provision of the intervention required by the prison staff, use of the prison library, obtaining information from the media, and physical exercise. Working activities include, without limitation, cleaning, simple maintenance work, help in distribution of meals, clothing, etc. within the reinforced security ward. The convicts must be provided upon request with necessary personal consultations with prison specialists.”.

Valdice Prison is in receipt of sources necessary to implement the purpose defined in Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2007. A substantial part of instructors and specialized staff in ward E was replaced in mid-2008. Positive changes related to such staff changes (including replacement of the operating management in ward E) have been witnessed in accordance with CPT's findings and recommendations.

- **To introduce strict procedural guarantees before and upon placement of prisoners in ward E (including a possibility to appeal such placement) and to ensure greater control of such placement by the Deputy Director General. Furthermore, each placement and its purpose should be regularly reviewed every three months from various perspectives (paragraph 58);**

The proposal for placement of convicts in the reinforced security ward, for extension of the period of their placement there or for their transfer is presented by the prison director for review to a commission headed by the Deputy Director General of the Prison Service of the Czech Republic responsible for security and service performance. The reasoning of such proposal must always include all facts substantiating the placement, extension of the placement period or transfer, the level of fulfilment of the treatment programme, the achieved permeable group, a summary of imposed disciplinary punishments and granted disciplinary rewards and other circumstances deserving special merit, particularly whether a change of the permeable group or relocation to another prison have already been initiated or whether a motion for transfer to a stricter prison type has been filed.

In accordance with CPT's recommendation, the possibility of shortening the period for which convicts may be placed in a reinforced security ward from two subsequent evaluation periods to three months will be reviewed.

The internal rules of the prison will clearly define the rules of inclusion into internally differentiated groups within the reinforced security ward.

- **To take steps to provide to prisoners under high-security regime placed in ward E of Valdice Prison a more meaningful regime including a range of various activities in the light of remarks in paragraph 60 (paragraph 60).**

Offered activities of the treatment programme for convicts placed in ward E are continuously expanded and adjusted. If there are appropriate conditions, new activities are created and the content and forms of other activities is adjusted to better correspond to needs and interests of the convicts.

The current range of treatment programme activities to convicts includes 5 special guidance, 3 educational and 7 hobby activities. Support is provided to individual interests of the convicts.

Summary of offered activities:

Special guidance:

- pedagogic care for prisoners with long sentences;
- cognitive rational therapy;
- high-risk clients;
- personality development –problem solving without resorting to conflict;
- personal counselling.

Education:

- teaching programmes;
- preparation for release;
- a language course.

Hobbies:

- table soccer;
- streetball;
- table tennis;
- fitness exercise;
- a gardening club;
- a club of party and logical games;
- a fine arts and model-building club.

Medical examinations

Recommendations

- **To take steps necessary for performing all medical examinations of life prisoners and prisoners under high-security regime outside hearing distance of wardens and if not requested otherwise by the physician, also out of their view (paragraph 61);**

Wardens attend medical examinations of convicts in ward E only if the physician expressly requests the presence of a member of the Prison Service of the Czech Republic in his office. Such member of the Prison Service who is present the physician's office is bound by the obligation of confidentiality, which means that he is forbidden to further disseminate any information learned during the performance of his service. No complaints of convicts in Valdice Prison have been registered in this respect.

- **To take steps necessary for holding psychiatric examinations in appropriate conditions (paragraph 61).**

Psychiatric examinations are held in a room furnished with security bars so that a member of the Prison Service of the Czech Republic need not be present at the examination to guard the physician. According to the psychiatrist, the presence of the security bars has no effect on his work with the convicts and he has not registered any complaint from the part of the convicts.

Other matters

Recommendations

- **Czech authorities should ensure that all staff members assigned for work with life prisoners and prisoners under high-security regime have the necessary skills and are appropriately trained, which also includes the ability to communicate with and to offer assistance to prisoners (paragraph 62);**

This CPT's recommendation is enshrined in the Regulation of the Director General of the Prison Service of the Czech Republic No. 55/2007 on the Terms and Methods of Treatment of Convicts Placed in Reinforced Structural and Technical Security Wards (Section 25). According to this provision, an experienced team of employees with the possibility of replacement of its members shall be established for service or work in the reinforced security ward, with a possibility of its replacement. This team shall include prison service and staff members of a high professional level and adequate experience. An individual educational plan shall be prepared for each team member, with a particular focus on the content of treatment of convicts placed in the reinforced security ward.

A substantial part of instructors and specialized staff in ward E was replaced in mid-2008. Positive changes related to such staff changes (including replacement of the operating management in ward E) have been witnessed in accordance with CPT's findings and recommendations.

- **To review the disciplinary system in ward E of Valdice Prison (paragraph 63);**

As regards the disciplinary system in ward E, the information quoted in CPT's report does not correspond to reality. In accordance with Section 61 of the Act on Imprisonment, members of the Prison Service of the Czech Republic are vested with disciplinary powers under the Regulation of the Director General of the Prison Service of the Czech Republic No. 32/1999. None of staff members in ward E is authorized to order solitary confinement as a disciplinary punishment. Such punishment may be imposed solely by the director of section of execution of sentence (up to 7 days, complaints are resolved by the prison director) and by the prison director (up to 20 days, complaints are resolved by the Director General of the Prison Service).

Only minor violations of duty, order or discipline during the execution of sentence may be resolved in ward E. Complaints against decisions on disciplinary punishment imposed by the instructor are resolved by the special pedagogue. The instructor may only impose the following disciplinary punishments:

- a) a reprimand;
- b) reduction of pocket money by not more than one third for up to one calendar month;
- c) forfeiture of a thing;
- d) placement in a closed ward for up to 7 days, except for the period determined for the fulfilment of tasks designated by the treatment programme;
- e) withdrawal of benefits resulting from prior disciplinary reward granted by the instruction.

Imposing disciplinary punishments (and granting disciplinary rewards) must respect pedagogical principles which, when applied, reinforce the educational effects – the principles of individualization, adequacy, grading, consistency and equity.

Use of disciplinary practices is the object of controls performed in the prison by the General Directorate of the Prison Service of the Czech Republic and by the state attorney from the Regional State Attorney's Office in Hradec Králové, charged with supervision over compliance with the laws in places where detention and prison sentences are executed. Such controls have not identified any gross deficiencies, like exceeding disciplinary powers of members of the Prison Service of the Czech Republic defined in the Director General's Regulation No. 32/1999 or ordering disciplinary punishments which are inadequate to the seriousness of the offence, or insufficient clarification of all facts relevant for imposing a disciplinary punishment.

Disciplinary punishment issues are regulated in detail by the Methodological Sheet of the director of the section of execution of detention and sentence, General Directorate of the Prison Service of the Czech Republic No. 40/2006, setting out details and procedure applied by members of the Prison Service of the Czech Republic in exercising disciplinary powers over the convicts and the accused.

In accordance with CPT's recommendation, the Section of Execution of Detention and Sentence of the General Directorate of the Prison Service of the Czech Republic shall pay greater attention to the disciplinary practice in ward E

- **to grant to prisoners in ward E of Valdice Prison greater leave to decorate their cells (paragraph 65);**

This recommendation will be implemented in respect of life prisoners in connection with the amendment of the Act on Imprisonment, which introduces the principle of non-segregation to prisoners serving a life sentence, and of regulations implementing the Act on Imprisonment (see the response to paragraph 50). As regards the other convicts executing their prison sentence in the reinforced security ward, there is no reason to grant them greater leave to decorate their cells. Partial changes will occur in connection with the amendment of the internal prison rules (see the response to paragraph 58).

- **To promptly introduce visits under more open conditions (e.g. at the table) for all life prisoners; any denial of such visits should be based on an individual risk assessment (paragraph 66);**

Differentiation of visits to life prisoners will be implemented in accordance with the amendment of the Act on Imprisonment, which introduces the principle of non-segregation of prisoners serving a life sentence, and with regulations implementing the Act on Imprisonment (see the response to paragraph 50). In justified cases, visits of close persons are also allowed in the days of work leave and days of rest.

- **To take steps necessary to ensure visits of family members on weekends (paragraph 66).**

In justified cases, visits of close persons are also allowed in the days of work leave and days of rest.

Remarks

- **The top management of Valdice Prison should show a more active approach to the administration of ward E by means of regular visits during which it would talk both to the staff and prisoners (paragraph 62);**

In the next period, the management of Valdice Prison will proceed in accordance with this CPT's remark.

- **CPT believes that the use of handcuffs based only on an individual risk assessment will be preserved (paragraph 64);**

There are currently no reasons for a change of the state which is welcome by CPT.

- **Efforts should be made to improve access of ward E prisoners to telephone (paragraph 66).**

Access to telephone is not restricted in any way by the prison. Prisoners may use the telephone regularly but must have funds to pay for telephone calls.

