



CPT/Inf (2010) 5

## **Report**

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

**from 15 to 25 February 2009**

The Government of Austria has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2010) 6.

Strasbourg, 11 March 2010



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**Copy of the letter transmitting the CPT's report**

Ambassador Ferdinand Trauttmansdorff  
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Federal Ministry for European and  
International Affairs  
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A - 1014 Vienna

Strasbourg, 27 July 2009

Dear Ambassador

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I enclose herewith the report to the Austrian Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Austria from 15 to 25 February 2009. The report was adopted by the CPT at its 69<sup>th</sup> meeting, held from 6 to 10 July 2009.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Austrian authorities to provide **within six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Austrian authorities to provide, in their response, reactions to the comments formulated in this report as well as replies to the requests for information made.

In respect of the recommendation in paragraph 100 of the report, the CPT requests the Austrian authorities to provide a response **within three months**.

The CPT would ask, in the event of the above-mentioned responses being forwarded in German, that they be accompanied by an English or French translation. It would also be most helpful if the Austrian authorities could provide a copy of the responses in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully

Mauro Palma  
President of the European Committee  
for the prevention of torture and inhuman  
or degrading treatment or punishment



## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Austria from 15 to 25 February 2009. The visit formed part of the CPT’s programme of periodic visits for 2009. It was the fifth visit to Austria to be carried out by the Committee<sup>1</sup>.

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

- Pétur HAUKSSON, 2<sup>nd</sup> Vice-President of the CPT, Head of delegation
- Silvia CASALE
- Gergely FLIEGAUF
- Eugenijus GEFENAS
- Anna ŠABATOVÁ.

They were supported by Michael NEURAUTER, Head of Division, Elvin ALIYEV and Stephanie MEGIES of the CPT’s Secretariat, and assisted by:

- Gérard LAURENCIN, psychiatrist, Head of the Regional Medical and Psychological Service, Toulouse, France (expert)
- Jurgen VAN POECKE, Director of Bruges Prison, Belgium (expert)
- Georg GAIDOSCHICK (interpreter)
- Ingrid KURZ (interpreter)
- Friederike SCHLEGL (interpreter)
- Susanne WATZEK (interpreter)
- Alexander ŽIGO (interpreter).

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<sup>1</sup> The CPT has carried out four other periodic visits to Austria (in 1990, 1994, 1999 and 2004). All visit reports and related Government responses have been published on the Committee’s website: <http://www.cpt.coe.int/en/states/aut.htm>

**B. Establishments visited**

3. The CPT's delegation visited the following places of detention:

Police establishments

- Regional Police Headquarters (*Landespolizeikommando*) for the Tyrol, Hall
- Regional Police Headquarters (Criminal Police Department) for Lower Austria, Vienna-Landstrasser Hauptstrasse
- Police Station (*Polizeiinspektion*) Klagenfurt-Landhaushof
- Police Station Klagenfurt-St. Ruprechter Strasse
- Police Station Linz-Central Railway Station
- Federal Police Directorate (3<sup>rd</sup> district), Vienna-Juchgasse
- Police Station Wiener Neustadt-Burgplatz
  
- Police detention centre (*Polizeianhaltezentrum - PAZ*), Innsbruck
- *PAZ* Klagenfurt
- *PAZ* Vienna-Hernalser Gürtel
- *PAZ* Wiener Neustadt

Prisons

- Gerasdorf Juvenile Prison
- Innsbruck Prison
- Vienna-Josefstadt Prison

In addition, the delegation carried out brief visits to Klagenfurt and Linz Prisons, in order to interview recently-arrived remand prisoners.

Psychiatric/social welfare establishments

- Sigmund Freud Regional Psychiatric Hospital, Graz
- Johannes von Gott Nursing Centre (*Pflegezentrum*) of the Brothers of Mercy (*Barmherzige Brüder*), Kainbach.



**C. Co-operation and consultations held by the delegation**

4. The degree of co-operation received by the delegation, at all levels, was excellent. The CPT is very grateful for the time devoted to discussions with the delegation by Alois STÖGER, Federal Minister of Health, Maria FEKTER, Federal Minister of the Interior, and Claudia BANDION-ORTNER, Federal Minister of Justice. The delegation also had fruitful consultations with senior officials from the Federal Chancellery and the Federal Ministries of European and International Affairs, Health, Justice and the Interior. Further, it held meetings with Professor Gerhart Klaus WIELINGER, Chairperson of the Human Rights Advisory Board (*Menschenrechtsbeirat*), and representatives of the Austrian Bar Association (*Rechtsanwaltskammertag*), the Vienna Office of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations active in areas of concern to the CPT.

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

5. The CPT wishes to express its appreciation of the assistance provided before and during the visit by the CPT's liaison officers, Georg HEINDL and Martin BOTTA from the Federal Ministry of European and International Affairs, and Albert GRASEL from the Federal Ministry of the Interior.

6. As was the case on previous visits, the delegation enjoyed immediate access to all the places it wished to visit (including those not notified in advance), was provided with all the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

7. The principle of co-operation set out in the Convention also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this regard, the CPT wishes to emphasise that its delegation observed improvements in various areas since the 2004 visit. However, there are some issues which remain a matter of serious concern, despite the specific recommendations made by the Committee after previous visits. This holds true in particular for the regime under which foreign nationals were held at the PAZ in Vienna-Hernalser Gürtel and the conditions of detention of remand prisoners.

The CPT calls upon the Austrian authorities to make continued efforts to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.

**D. Immediate observations under Article 8, paragraph 5, of the Convention**

8. At the end-of-visit talks with the Austrian authorities on 25 February 2009, the CPT's delegation made two immediate observations under Article 8, paragraph 5, of the Convention.

The first immediate observation was made in respect of Vienna-Josefstadt Prison, where young prisoners were not granted outdoor exercise every day. The delegation called upon the Austrian authorities to take the necessary measures to ensure that all prisoners at Vienna-Josefstadt Prison are able to benefit from their daily outdoor exercise entitlement.

The second immediate observation was made concerning the provision of outdoor exercise to patients/residents in the two psychiatric/social welfare establishments visited. At the Sigmund Freud Psychiatric Hospital in Graz, many patients in closed units were not able to benefit from daily outdoor exercise, sometimes for prolonged periods (of up to several months). At the Johannes von Gott Nursing Centre in Kainbach, residents in certain closed units were not able to go into the open air every day (sometimes for several days in a row). The delegation called upon the Austrian authorities to take all necessary measures in both establishments to ensure that all patients/residents whose health so permits are offered at least one hour of outdoor exercise per day.

9. The above-mentioned immediate observations were subsequently confirmed in a letter of 23 March 2009 from the Executive Secretary of the CPT, in which the Austrian authorities were requested to provide, within three months, detailed information on the steps taken in response.

By letter of 23 June 2009, the Austrian authorities provided information on various issues raised by the delegation during the final talks, including on the measures taken in response to the above-mentioned immediate observations. These measures will be assessed later in the report.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. Police custody

#### 1. Preliminary remarks

10. Since the CPT's 2004 visit, a major re-organisation of the law enforcement agencies has taken place, in the course of which the police and gendarmerie have been merged into a unified federal police service (*Bundespolizei*).

11. The legislative framework governing the deprivation of liberty of criminal suspects by the police has also undergone significant changes with the entry into force on 1 January 2008 of a number of amendments to the Code of Criminal Procedure (*Strafprozessordnung – StPO*)<sup>2</sup>. These amendments have implications for the rights of detained persons (see, in this regard, paragraphs 20 to 29). That said, the maximum period during which a criminal suspect may be held in police custody before being transferred to a remand prison remains unchanged (48 hours)<sup>3</sup>.

Persons suspected of having committed an administrative offence may be held in police custody for up to 24 hours<sup>4</sup>. If subsequently found guilty by the competent authority, the persons concerned may be subjected to an administrative custodial sanction of up to six weeks<sup>5</sup>, which is served in a police detention centre (*Polizeianhaltezentrum – PAZ*).

Further, persons may be deprived of their liberty under police legislation for their own protection (for instance, persons suffering from a mental disorder, or unaccompanied children)<sup>6</sup>. In such cases, the persons concerned have to be released “without delay” (after relevant facts are established) or handed over “without delay” to an appropriate person or institution.

The legal framework governing the detention of foreign nationals changed considerably in 2005 with the entry into force of a new asylum law and a new aliens police law. Under the Asylum Law<sup>7</sup>, asylum-seekers may be taken into police custody for up to 48 hours (for the purpose of bringing them before the Federal Asylum Agency) or up to 72 hours (if they have absconded from the asylum procedure or have left a reception centre without justified reason). According to Section 39 of the Aliens Police Law, foreign nationals may be held in police custody for up to either 24 or 48 hours (depending on the circumstances stipulated in that provision).

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<sup>2</sup> The amendments were adopted by Parliament in 2004 in the context of a reform of the pre-trial procedure. Criminal investigations are now carried out under the overall supervision of a public prosecutor (instead of an investigating judge).

<sup>3</sup> See Section 4, paragraph 2, of the Constitutional Law on the Protection of Personal Liberty, Section 172, paragraph 3, of the *StPO* and Section 85, paragraph 4, of the Fiscal Criminal Law. Upon admission to a remand prison, the person concerned has to be heard without delay by a judge, and the latter has to decide within the next 48 hours on whether to impose remand detention (Section 174 of the *StPO*).

<sup>4</sup> Section 4, paragraph 5, of the Constitutional Law on the Protection of Personal Liberty and Section 36, paragraph 1, of the Administrative Criminal Code.

<sup>5</sup> Sections 12, paragraph 1, and 16, paragraph 2, of the Administrative Criminal Code.

<sup>6</sup> Section 45 of the Law on the Police (*Sicherheitspolizeigesetz*).

<sup>7</sup> Sections 26 and 27 of the Asylum Law.

In addition, foreign nationals may be detained pending deportation (*Schubhaft*) in a PAZ for up to ten months within a period of two years<sup>8</sup>. Under certain circumstances<sup>9</sup>, asylum seekers may also be held in *Schubhaft*.

## 2. Ill-treatment

12. The vast majority of detained persons met by the delegation indicated that they had been treated correctly whilst in police custody. Further, hardly any allegations of physical ill-treatment of detainees by custodial staff were heard in the PAZ visited; however a number of complaints of disrespectful behaviour (including racist remarks) were received.

The delegation also heard a number of allegations of excessive use of force at the time of apprehension (such as blows or kicks after the person concerned had been brought under control or very tight handcuffing). In addition, several allegations were received – in particular from juveniles – that they had been subjected to physical ill-treatment and/or verbal abuse during police questioning. In two cases, police officers allegedly also threatened to inflict pain on juveniles (“*wir werden dich quälen*”) if they did not confess to a particular criminal offence.

13. The CPT has the impression that, compared to the findings of all previous visits, the overall situation has improved. However, the information gathered during the 2009 visit illustrates the need for the Austrian authorities to remain vigilant and to continue in their efforts to combat police ill-treatment.

**The Committee recommends that police officers throughout Austria be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than that strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them.**

14. The CPT welcomes the fact that major police interventions (such as large-scale raids or the policing of street demonstrations) are usually monitored by members of the visiting commissions of the Human Rights Advisory Board. For this purpose, the chairperson of the relevant visiting commission is informed well in advance by the police (in accordance with a specific internal instruction (*Erlass*) of the Federal Ministry of the Interior<sup>10</sup>).

15. An essential component of any strategy to prevent ill-treatment lies in the diligent examination by the competent authorities of all complaints of ill-treatment brought before them and, where appropriate, the imposition of a suitable penalty; this will have a very strong dissuasive effect and avoid a climate of impunity.

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<sup>8</sup> Sections 76, paragraph 1, and 80, paragraph 4, of the Aliens Police Law.

<sup>9</sup> See Section, 76, paragraph 2, of the Aliens Police Law.

<sup>10</sup> Ref. 51.099/537-II/2/04.

16. In this context, the CPT has been following the case of Mr Bakary J., a foreign national who had been the subject of torture and a mock execution by four police officers on 7 April 2006. The relevant facts are summarised in a decision<sup>11</sup> of the High Administrative Court (*Verwaltungsgerichtshof*) of 18 September 2008. After a failed attempt to deport Mr Bakary J., he was punched and kicked by four police officers during approximately half-an-hour whilst handcuffed, dragged around on the floor, and also threatened to be killed (by making gestures to this end with a mock-up of a hand-grenade). In addition, the team leader drove a police vehicle from behind against the body of Mr Bakary J, while the latter was lying on the floor. As a result of the above-mentioned acts, Mr Bakary J. sustained, among others, complex multiple fractures in the face (including the orbital cavity), a contusion of the fore-head, a strain of the cervical vertebra and bruises on various parts of the body, as well as a post-traumatic stress disorder.

On the basis of the information available, the CPT doubts whether the penalties imposed at the criminal level (suspended sentences of imprisonment of six and eight months) and thus far at the disciplinary level (fines between three and five monthly salaries, without dismissal from service) are sufficiently dissuasive to effectively prevent similar illegal acts in future. In this connection, the Committee has noted that in the above-mentioned ruling, the Higher Administrative Court quashed the decision of the disciplinary appeal commission (*Disziplinaroberkommission*), arguing that, in the light of Article 4, paragraph 2, of the United Nations Convention against Torture and the relevant case-law of the European Court of Human Rights<sup>12</sup>, the disciplinary decisions imposed did not adequately reflect the seriousness of the offences committed. Consequently, the case was referred back to the disciplinary appeal commission with a view to taking a new disciplinary decision accordingly. **The CPT would like to be informed of the outcome of this disciplinary procedure.**

17. More generally, due to the lack of a specific provision on the crime of torture in the Austrian criminal legislation, instances of torture, such as the one referred to above, are prosecuted on the basis of Section 312 of the Penal Code (“Infliction of pain on or neglect of a detained person”). In this regard, the CPT noted that the penalties provided for in that provision (imprisonment of up to two years; up to five years if the offence entails serious bodily harm; a minimum of one year and up to ten years, if the offence entails the death of the victim) appear to be very low.

**The Committee encourages the Austrian authorities to introduce as soon as possible the offence of torture into the Penal Code, in accordance with Austria’s international obligations.**

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<sup>11</sup> Ref. 2007/09/0320.

<sup>12</sup> *Okkali v. Turkey*, application no. 52067/99 of 17 October 2006, and *Ali and Ayse Duran v. Turkey*, application no. 42942/02 of 8 April 2008. In the latter judgement, the Court reiterates its position that “where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance that he or she be suspended from duty during the investigation and the trial and be dismissed if convicted (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004)”.

### 3. Investigations of complaints of police ill-treatment

18. The procedures for the investigation of potential instances of police ill-treatment are regulated by the relevant criminal legislation and various internal instructions (*Erlässe*) of the Federal Ministries of the Interior<sup>13</sup> and Justice<sup>14</sup>. They can be summarised as follows:

Initially, investigations are conducted internally (i.e. within the police and/or the Federal Ministry of the Interior). Whenever a complaint is lodged regarding police ill-treatment or other information comes to light which is indicative of ill-treatment, the Bureau for Internal Affairs<sup>15</sup> (BIA) within the Federal Ministry of the Interior must be informed without delay. It is the responsibility of the BIA to collect evidence and establish the main facts (*Sachverhaltsdarstellung*). Alternatively, this internal inquiry can be conducted by the relevant superior police unit (under the auspices of the BIA). In practice, it is most often the latter police unit which performs the actual investigative work.

The results of the above-mentioned internal enquiry should be communicated “without delay and if possible within 24 hours” in the form of a report (*Anfallsbericht*) to the competent public prosecutor<sup>16</sup>. A copy of the report must be transmitted to the Office of the Human Rights Advisory Board<sup>17</sup>. Prosecutors are instructed to open a preliminary criminal investigation and to carry out any additional investigations which they deem necessary.

19. The CPT wishes to stress that, in order for the investigation of complaints about police ill-treatment to be fully effective, the procedures involved must be, *and be seen to be*, independent and impartial. Further, the investigation work concerned should be entrusted to an agency which is completely independent of the police.

In this connection, the Committee notes that a special working group of the Human Rights Advisory Board has analysed all cases of alleged ill-treatment by the police which were notified to the Prosecution Office in Vienna during 2004 (146 cases in total). In conclusion, the working group stated that “the essential dilemma of the current situation is to be seen in the fact that the expeditious and comprehensive investigation [at the outset by the BIA] is not independent and that the independent investigation [subsequently carried out by a public prosecutor] is not expeditious and comprehensive”<sup>18</sup>.

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<sup>13</sup> Cf. the Internal Instructions (*Erlässe*) BMI-OA 1300/0005-II/1/c/2009 of 9 February 2009, BMI-OA1000/0070-II/1/b/2008 of 8 May 2008 and 85.603/100-BIA/03 of 5 March 2003.

<sup>14</sup> Cf. the Internal Instruction (*Erläss*) 880.014/37-II.3/1999 of 30 September 1999.

<sup>15</sup> The BIA was established in 2001 as a special police department for the fight against corruption and other offences covered by Sections 302 to 313 of the Penal Code. Organisationally, it is attached to Section IV (Service and Control) of the Federal Ministry of the Interior and thus operates outside the “classical” law enforcement hierarchy (i.e. Section II, the Directorate General for Public Security). When performing their tasks, officers of the BIA are independent (*weisungsfrei*) in the sense that – in practice – they do not receive orders from the Director General or the Federal Minister.

<sup>16</sup> In the Austrian criminal justice system, prosecutors are subordinated to the Federal Minister of Justice.

<sup>17</sup> Members of visiting commissions of the Human Rights Advisory Board are entitled to consult investigation files, but do not carry out any investigative work themselves.

<sup>18</sup> *Menschenrechtsbeirat im Bundesministerium für Inneres, “Die Polizei als Täter? Eine Analyse des Umgangs staatlicher Institutionen mit Misshandlungsvorwürfen”*, Neuer Wissenschaftlicher Verlag, 2007, page 20.

The working group further concluded that the current system focussed primarily on a criminal law perspective and that usually no further action was taken by the relevant law enforcement agency once it had been determined that a particular incident did not constitute a criminal offence. In particular, no measures were apparently taken to follow up such cases from a disciplinary and/or management perspective.

Consequently, the Human Rights Advisory Board proposed that a truly independent investigation body be established with the mandate to investigate all alleged instances of police ill-treatment and, if appropriate, to follow up a case from a disciplinary perspective even if the facts as established are not indicative of a criminal offence. In January 2008, a new working group was set up by the Human Rights Advisory Board in order to elaborate, in consultation with representatives of the police authorities and independent experts, a concept for the creation of such a system.

The CPT welcomes this initiative and **invites the Austrian authorities to review the current system of investigating allegations of police ill-treatment, in the light of the above remarks. In this connection, the relevant standards of the Committee, as set out in its 14<sup>th</sup> General Report<sup>19</sup>, should be taken into account.**

#### 4. Procedural safeguards against ill-treatment

##### a. notification of custody

20. The right of detained persons to inform “without undue delay” a relative of their detention is generally provided for in the Constitutional Law on the Protection of Personal Liberty<sup>20</sup>. In respect of criminal suspects, the *StPO*<sup>21</sup> stipulates that the person concerned has the right to inform a relative or another trusted person, as from the outset of his/her apprehension. Similar provisions are also contained in the Administrative Criminal Code<sup>22</sup> and the Law on the Police<sup>23</sup>.

The information gathered during the visit indicates that the above-mentioned provisions were generally respected in practice, although detained persons were not always informed at the outset of their deprivation of liberty that they had the right to contact a relative or another trusted person. In this regard, reference is made to the remarks and recommendation made in paragraph 26.

##### b. access to a lawyer

21. The CPT wishes to recall that the right of access to a lawyer as from the outset of deprivation of liberty is a fundamental safeguard against ill-treatment. The possibility for persons to have rapid access to a lawyer will have a dissuasive effect upon those minded to ill-treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

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<sup>19</sup> See CPT/Inf (2004) 28, paragraphs 25 to 42.

<sup>20</sup> Section 4, paragraph 7.

<sup>21</sup> Section 171, paragraph 3.

<sup>22</sup> Section 36, paragraph 3.

<sup>23</sup> Section 47, paragraph 1.

22. The right of detained persons to contact and meet a lawyer during police custody is formally guaranteed by law, since the entry into force in January 2008 of the 2004 amendments to the *StPO*<sup>24</sup> (see paragraph 11).

However, in the report on the 2004 visit, the CPT had already expressed its concern regarding the fact that, during police custody, police officers could decide to monitor contacts and conversations between a detained person and his/her lawyer (and limit them to the provision of general legal advice)<sup>25</sup> and/or deny the presence of a lawyer during questioning, “in so far as it is considered necessary to prevent the investigation or the gathering of evidence being adversely affected by the lawyer’s presence”<sup>26</sup>.

The CPT acknowledges that the legitimate interests of the police investigation may, exceptionally, justify a delay, for a certain period, in a detained person’s access to a lawyer of his/her choice. However, there can be no reasonable justification for the right to talk to a lawyer in private and to have a lawyer present during questioning being totally denied during the period in question. In such cases, access to another, independent, lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be arranged.

**The CPT reiterates its recommendation that the Austrian authorities take the necessary steps to ensure that the right to talk to a lawyer in private and to have a lawyer present during questioning is never denied to persons deprived of their liberty by the police.**

23. The CPT welcomes the fact that a new system of legal telephone counselling free of charge was introduced in mid-2008 (in co-operation with the Austrian Bar Association) through the hotline of the “*Rechtsanwaltschaftliche Journdienst*”.

However, it is regrettable that many police officers outside Vienna appeared to have received no information and guidance on how to make use of the above-mentioned telephone counselling service. Not surprisingly, in several police establishments visited, not one single detained person had ever availed him/herself of this possibility. According to the Austrian Bar Association, on average, a mere two such calls had been registered per day in the entire country since the introduction of the hotline.

Further, the specific information sheet on the legal counselling by the Bar Association, which has been elaborated by the Federal Ministry of Justice (see paragraph 26), explicitly states that only initial counselling via the telephone is free of charge. Many of those detained persons who had been informed of the existence of the above-mentioned hotline declined to call a lawyer, since they did not have the means to pay for the lawyer to be present during police questioning.

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<sup>24</sup> Section 58, paragraph 1, Section 59, paragraph 1, first sentence, and Section 59, paragraph 2, first sentence, of the *StPO*.

<sup>25</sup> Section 59, paragraph 1, second sentence, and Section 59, paragraph 2, second sentence, of the *StPO*.

<sup>26</sup> Section 164, paragraph 2, second sentence, of the *StPO*.



When discussing this issue with representatives of the Ministries of the Interior and Justice, the delegation was told that, under the current criminal legislation, an *ex officio* lawyer could only be appointed following a court decision, but that, in principle, it was possible for the State to cover, on a subsidiary basis, the costs of the services of a lawyer in the context of police custody if the person concerned was not in the position to pay for them (*Ausfallshaftung*). However, not one single police officer, let alone any of the detained persons met by the delegation, had been aware of such a possibility.

In the light of the above remarks, **the CPT recommends that the Austrian authorities develop a fully-fledged legal aid system in the context of police custody, so as to ensure that persons who are not in a position to pay for a lawyer can effectively benefit, if they so wish, from the assistance of a lawyer throughout their police custody (including during any police questioning).**

24. The CPT noted that, on 30 January 2009, a new internal instruction<sup>27</sup> (*Erlass*) had been issued by the Federal Ministry of the Interior concerning the implementation in practice of the right of access to a lawyer during police custody. The Committee has serious misgiving about certain elements of the above-mentioned internal instruction, which clearly undermine the effectiveness of the right of access to a lawyer.

Firstly, the internal instruction does not oblige police officers to make arrangements to ensure that telephone conversations between detained persons and lawyers on the above-mentioned hotline are held in private. On the contrary, it even states that “the telephone conversation may also be held by the police officer him/herself, if this is required by the circumstances (e.g. language reasons)”. Such a state of affairs is not acceptable. In this regard, reference is made to the recommendation in paragraph 22.

Secondly, the instruction contains the following provision: “According to the internal guidelines of the Austrian Bar Association, a lawyer who is requested to come personally to a police establishment should do so as soon as possible and in any event within three hours. However, it is expressly pointed out that, in the case of an adult detained person, this does not constitute an obligation on the part of the criminal police to delay questioning until the arrival of the lawyer, but rather that the detained person should be subjected to formal questioning without delay in pursuance of Section 172, paragraph 2, first sentence, of the *StPO*”<sup>28</sup>.

In the CPT’s view, the latter provision can easily be (mis)interpreted as encouragement for a criminal police officer to interview a detained person without the presence of a lawyer. **The Committee recommends that steps be taken to ensure that, other than in exceptional circumstances when the matter is urgent, whenever a detained person has made a request to have a lawyer present, police officers delay the beginning of the questioning until the arrival of the lawyer. The above-mentioned internal instruction should be amended accordingly.**

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<sup>27</sup> Ref. BMI-EE1500/0007-II/2/a/2009.

<sup>28</sup> This section reads as follows: “If the criminal police has detained a person at its own initiative, the latter has to be questioned without delay on the merits, the suspicion and the reason for custody”.

c. access to a doctor

25. The delegation received no complaints from detained persons regarding access to a doctor during their stay in a police station. In the information sheet on the rights of detained persons (see paragraph 26) it is also explicitly indicated that every detained person is entitled to a medical examination free of charge and to have another doctor of one's own choice present during that examination (at the expense of the person concerned).

Upon admission to a *PAZ*, every detained person was subjected to a medical screening by a police doctor (*Amtsarzt*). In this regard, reference is made to the remarks and recommendations made in paragraphs 46 to 49, 51 and 52.

d. information on rights

26. The CPT welcomes the fact that an information sheet on the rights of detained persons was available in more than 40 languages in all the police establishments visited. Police officers were able to consult a database of the Federal Ministry of the Interior and print out the form in the required language. In addition, a special information sheet had been introduced regarding the legal counselling service of the Austrian Bar Association (see paragraph 23), although that information sheet was not (yet) in use in several police establishments outside Vienna.

In practice, the manner in which detained persons were informed of their rights varied from one establishment to another. While in some establishments detained persons were promptly informed of their rights (orally and in writing), shortcomings were observed in various other establishments. In particular, oral information was not always provided to detained persons at the very outset of their deprivation of liberty (i.e. when they were obliged to remain with the police). Further, it was not uncommon for the information sheet on the rights of detained persons to be given to detained persons only at the start of formal questioning (and not immediately upon their arrival at the police establishment). In one police station, police officers stated that the information sheet would be given to the persons concerned upon their transfer to a *PAZ*. Further, it would appear that in some establishments detained persons were only given a copy of the information sheet if they explicitly asked for it<sup>29</sup>.

**The CPT recommends that the Austrian authorities take the necessary measures to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear oral information at the very outset, and supplemented at the earliest opportunity (that is, immediately upon their arrival on police premises) by the provision of the above-mentioned information sheet on the rights of detained persons. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights, and they should also be given a copy of the information sheet.**

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<sup>29</sup> In a number of cases, detained persons were allegedly only able to read the text of the form on the computer screen of the interviewing police officer.

27. Before being questioned by the police, detained persons usually received a print-out of the form to be used for the written record of the interview (*Vernehmungsprotokoll*), which set out in detail the procedural rights of criminal suspects in the context of criminal proceedings (including during police questioning).

In this connection, the delegation observed that, in most establishments visited, the pre-set text of the computerised mask used for this purpose included the following phrases: “having been informed of my rights I expressly waive my right to contact a lawyer”, and “having been informed of my rights I expressly waive my right to have a lawyer present during questioning”.

Admittedly, the above-mentioned phrases can in principle be removed from the form by the interviewing police officer at the request of the person concerned. However, in order to prevent any prejudgement, or even abuse, **it would be desirable that the above-mentioned form be formulated in a neutral manner, instead of making the assumption that the person concerned will choose not to contact a lawyer or to request the presence of a lawyer.**

Further, **steps should be taken to ensure that the relevant parts of the above-mentioned form setting out the procedural rights of criminal suspects are signed by the person concerned at the outset of police questioning** (and not after the statement has been taken, as seemed to be the practice in several establishments visited).

- e. specific issues related to juveniles

28. The delegation noted that parents (or other relatives) were usually informed without delay when their child had been taken into custody (in accordance with the relevant legal provisions<sup>30</sup>).

That said, the CPT is very concerned about the fact that many juveniles (some as young as 14 years of age) were subjected to police questioning (sometimes for prolonged periods) and requested to sign statements without the benefit of the presence of either a trusted person or a lawyer, despite the specific recommendation made by the Committee in the report on the 2004 visit. Such a state of affairs is not acceptable. The Committee must stress once again that in order to effectively protect this particular age group, the onus should not be placed on the juvenile to request the presence of a trusted person or a lawyer. Such a presence should be obligatory<sup>31</sup>.

**The CPT calls upon the Austrian authorities to take steps without delay to ensure that detained juveniles are not subjected to police questioning without the benefit of a trusted person and/or a lawyer being present.**

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<sup>30</sup> Section 35, paragraph 4, of the Law on Juvenile Justice (*Jugendgerichtsgesetz – JGG*).

<sup>31</sup> On a positive note, it should be added that, in the case of juveniles and young adults, the police are, as a rule, under a legal obligation to wait for the arrival of the requested lawyer or trusted person, and the presence of a lawyer cannot be denied on the basis of Section 164, paragraph 2, of the *StPO* (see Sections 37, paragraph 1, and 46a, paragraph 2, of the *JGG*).

29. The information sheet provided to persons in police custody contained a special section concerning the rights of juveniles (and young adults). However, as was the case during the 2004 visit, many juveniles met by the delegation indicated that they had not (fully) understood the contents of the above-mentioned information sheet. This is hardly surprising, given the convoluted legal language used.

On the other hand, the CPT noted that specific information sheets in simple language had been elaborated by the child and youth advocates in various *Länder* for juveniles detained by the police. These information sheets, which are also available on the Internet<sup>32</sup>, may well serve as a model of “good practice” for the Austrian police service.

**The CPT reiterates its recommendation that a specific version of the information sheet, setting out the particular position of detained juveniles (and young adults), be developed and given to all such persons taken into custody. This information sheet should be made easy to understand – worded in a straightforward and non-legalistic manner – and should be available in a variety of languages.**

f. custody records

30. In all the police establishments visited, a detention report<sup>33</sup> (*Haftbericht*) was prepared in respect of every person placed in a cell. The same approach was followed in police stations which had no detention area, before the person concerned was transferred to a *PAZ* or another establishment with a detention area.

That said, the delegation observed that, in most of the establishments visited, the precise time at which detained persons had been informed of their rights and when they had contacted a relative or lawyer was often not recorded. **Steps should be taken to remedy these shortcomings.**

31. In various police stations visited which did not have a detention area, there was no custody register recording cases where persons had been deprived of their liberty. Whenever a detained person was subsequently transferred to a *PAZ*, the *Haftbericht* would follow the person concerned and no copy was kept in the establishment, and when a person was held in a police station (for whatever reason) and then released, no record was kept at all.

The delegation was informed that relevant information was entered into a newly-established nationwide database, but in order to retrieve such information in respect of an individual case, it would be necessary to know the name or reference number of the person concerned. As a matter of fact, the police officers were unable to trace the identities of persons who had been held in the police station, the dates of custody, the length of detention, or any other statistical information.

**The CPT recommends that steps be taken to ensure that a record is made and kept in every police establishment in Austria of every instance of a person being deprived of his/her liberty on the premises of that establishment.**

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<sup>32</sup> See, for instance, [http://www.kinderanwalt.at/images/stories/infobleatter/09\\_2jugendstrafverfahren\\_polizei.pdf](http://www.kinderanwalt.at/images/stories/infobleatter/09_2jugendstrafverfahren_polizei.pdf) (Styria).

<sup>33</sup> The standardised forms used for this purpose contain detailed information on detention-related issues in line with the relevant standards of the CPT.

## 5. Inspections of police establishments

32. The CPT has repeatedly stressed that systems for the inspection of police detention facilities by an independent authority are capable of making an important contribution towards the prevention of ill-treatment (in addition, to ensuring satisfactory conditions of detention). To be fully effective, such a body should not only be independent from an organisational standpoint but also be perceived as such.

On this point, the CPT has already expressed its misgivings about various aspects of the functioning of the Human Rights Advisory Board which undermine its independence and effectiveness<sup>34</sup>. Regrettably, the visit brought to light that no concrete steps had been taken to remedy the shortcomings identified in the report on the 2004 visit<sup>35</sup>.

During the end-of-visit talks, the delegation was informed that the Austrian authorities had decided to set up a fully independent monitoring body under the auspices of the Office of Ombudspersons (*Volksanwaltschaft*), which will in future act as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture<sup>36</sup> (OPCAT). **The CPT would like to receive more detailed information on this point.**

## 6. Conditions of detention

33. Conditions of detention in the regional police headquarters and police stations visited were on the whole satisfactory and do not call for any particular comments.

As regards the conditions of detention in *PAZ*, reference is made to the remarks and recommendations made in paragraphs 38 to 44.

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<sup>34</sup> See CPT/Inf (2005) 13, paragraph 20.

<sup>35</sup> See CPT/Inf (2005) 13, paragraph 20.

<sup>36</sup> Austria signed the OPCAT on 25 September 2003, but has not yet ratified it.

**B. Police detention centres (with particular emphasis on detention pending deportation - Schubhaft)**

**1. Preliminary remarks**

34. The delegation carried out follow-up visits to the *PAZ* in Innsbruck, Klagenfurt and Vienna-Hernalser Gürtel, while the *PAZ* in Wiener Neustadt was visited for the first time.

35. At the outset, it should be recalled that *PAZ* accommodate different categories of detainee, namely persons in police custody, administrative detainees and foreign nationals awaiting deportation. In all the establishments visited, the delegation mainly focussed on the last mentioned category.

36. The CPT has repeatedly expressed its misgivings regarding the long-standing practice in Austria of accommodating foreign nationals pending deportation in police establishments which are designed and staffed as holding facilities for criminal and administrative offenders. Clearly, these establishments have neither the material environment nor the human resources to cater adequately for foreign nationals who have applied for asylum or are awaiting deportation, or to offer a detention regime appropriate to the legal status of such persons.

Persons detained under aliens legislation beyond the period of police custody should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate for their legal situation, and staffed by suitably-qualified personnel.

In this connection, the delegation was informed that the construction of a regional detention centre exclusively for foreigners in Leoben (Styria) would begin this year. This is indeed a positive development and a good opportunity to recruit specially trained staff (see paragraph 53).

**The CPT would like to receive detailed information on the new detention centre (rough plan of the establishment, envisaged out-of-cell activities, etc.), as well as a timetable for the full implementation of the above-mentioned construction plan.**

37. Since the 2004 visit, the total number of immigration detainees in all 14 *PAZ* in Austria had significantly decreased. At the time of the 2009 visit, a total of 307 foreign nationals (including 16 adult women and 14 juveniles) were being held in *PAZ*.

At the time of the visit, the *PAZ* in Innsbruck was accommodating 19 detainees (six immigration detainees and 13 administrative detainees; official capacity: 81 places), the *PAZ* in Klagenfurt 34 detainees (11 immigration detainees and 23 administrative detainees; official capacity: 75 places), the *PAZ* in Vienna-Hernalser Gürtel 171 detainees (165 immigration detainees<sup>37</sup> and 6 administrative detainees; official capacity: 299 places) and the *PAZ* in Wiener Neustadt 10 detainees (2 criminal suspects, 4 immigration detainees and 4 administrative detainees; capacity: 10 places).

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<sup>37</sup> This number also included six foreign nationals held in police custody under aliens legislation.

## 2. Conditions of detention

38. As regards the regime of foreign nationals held in *PAZ*, the situation varied from one establishment to another. It is praiseworthy that in the *PAZ* in Innsbruck, Klagenfurt and Wiener Neustadt, the vast majority of foreign nationals benefited from an open-door regime (*offene Station*) during the day. At the *PAZ* in Klagenfurt and Wiener Neustadt, foreign nationals could move freely within the detention area from the morning until 10 p.m., while at the *PAZ* in Innsbruck, cell doors remained open from 8 a.m. until 6 p.m.. In all three establishments, foreign nationals also had unlimited access to communal recreation rooms<sup>38</sup> (with television, table tennis or table football) during the day.

39. In contrast, the conditions under which foreign nationals were being held in the *PAZ* in Vienna-Hernalser Gürtel remain unacceptable. As was the case in 2004, foreign nationals were locked up in their cells for 23 hours every day, their only occupation being reading and playing board games. Access to television or radio, was a “privilege” for those who shared the cell with a detainee who had the financial means to purchase a television/radio set.

The CPT noted that there are concrete plans to introduce in the near future an open door regime in a unit with 45 places on the ground floor of the *PAZ*; reportedly the cell doors will then be open all day and detainees will have access to a common room and a yard.

Clearly, this can only be a first step in the right direction. It is a matter of grave concern that, also in the future, the great majority of foreign nationals detained in the *PAZ* in Vienna-Hernalser Gürtel are still likely to be held in closed conditions. The Committee wishes to stress once again that, for this category of detained person, the presumption should be in favour of an open regime; in principle, everyone should be placed in open conditions, any detainee who demonstrates unsuitability for the open regime being moved from the open units to more closed conditions. This precept also seems to be reflected in Section 5a of the Detention Regulation.

**The CPT calls upon the Austrian authorities to implement an open regime throughout the *PAZ* in Vienna-Hernalser Gürtel without delay, if necessary by dividing the existing detention areas into smaller sections.**

40. Despite the assurances given by the Austrian authorities in their response<sup>39</sup> to the report on the 2004 visit (and by the establishment’s director after the arrival of the delegation) that all foreign nationals at the *PAZ* in Vienna-Hernalser Gürtel would benefit from two hours of outdoor exercise per day, all foreign nationals met by the delegation claimed that they could go outside for at most one hour day per day, and on occasion even less. **The CPT would like to receive the Austrian authorities’ comments on this discrepancy.**

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<sup>38</sup> At the *PAZ* in Innsbruck there was also an indoor sports room.

<sup>39</sup> See CPT/Inf (2005) 14, page 18.

41. At the *PAZ* in Vienna-Hernalser Gürtel, the delegation was informed that, as a matter of policy, the few jobs available (such as cleaning, painting or other basic maintenance work) were only allocated to administrative detainees (who were Austrian nationals). The explanation provided by the establishment's director as to why such jobs could not also be given to immigration detainees ("foreigners are not reliable enough") were not convincing. **The CPT recommends that the Austrian authorities review their policy of allocating work to detainees at the *PAZ* in Vienna-Hernalser Gürtel, with a view to offering work as far as possible also to foreign nationals (in particular, those who have already been detained for prolonged periods and have displayed good behaviour).**

42. In contrast to all the other *PAZ* visited, hardly any reading material was available at the *PAZ* in Klagenfurt. The establishment's library was limited to religious books (such as the Bible and the Koran, in various languages). Whilst acknowledging the efforts made by the NGO representatives (*Schubhaftbetreuer*) to provide foreign nationals with print-outs from the Internet of newspaper articles in the relevant languages, **steps should be taken by the Austrian authorities to ensure that the *PAZ* in Klagenfurt is supplied with a wider range of reading material, in the languages most frequently spoken by immigration detainees.**

43. Material conditions of the detention facilities were generally acceptable in all the *PAZ* visited.

That said, **the detention areas at the *PAZ* in Vienna-Hernalser Gürtel were rather dingy and needed to be spruced up; this could also provide an opportunity to create some additional jobs for detainees** (see paragraph 41).

Further, many complaints were once again received in several of the *PAZ* visited about the lack of personal hygiene products. Upon admission, foreign nationals usually received a basic toiletry kit free of charge. However, additional supplies apparently had to be purchased, which posed a problem for indigent foreign nationals detained for prolonged periods.

**The CPT reiterates its recommendation that the Austrian authorities take steps to ensure that all detainees have adequate supplies of personal hygiene products throughout their stay at the *PAZ* visited and, where appropriate, in other *PAZ* in Austria.**

44. At the *PAZ* in Klagenfurt, the delegation observed that none of the cells were equipped with electric sockets. Consequently, detainees subject to the "closed regime" (see paragraph 38) were not able to have a television set or radio in their cell. **Steps should be taken to remedy this shortcoming.**



### 3. Health care

45. Regrettably, major shortcomings regarding the health-care services were found by the delegation in all the *PAZ* visited.

At the *PAZ* in Vienna-Hernalser Gürtel, the presence of a nurse for two hours per day was clearly insufficient for an establishment of such a capacity. The delegation was informed of plans to introduce 24-hour cover by a qualified nurse. This is a welcome development. **The CPT recommends that its long-standing recommendation on this subject be implemented as a matter of priority.**

As regards the other *PAZ* visited, which usually accommodated much smaller numbers of detainees, **it would be desirable that the current system of delegating nursing functions to police officers with basic first-aid training be discontinued. Instead, regular visits by a qualified nurse should be arranged, the length of time depending on the needs. The nurse could then also be responsible for the distribution of medicines.**

46. In all the establishments visited, newly-arrived detainees were subjected to a medical screening by a police doctor within 24 hours, and no delays were observed regarding access of detainees to general or specialist health care (including psychiatric care).

However, there was no systematic screening for transmissible diseases other than tuberculosis. Further, the delegation heard numerous complaints that medical examinations and/or consultations were brief, superficial and that, in some cases, the doctors and/or medical orderlies displayed a disrespectful attitude towards foreign nationals<sup>40</sup>.

47. Medical records were often very succinct, or (in particular at the *PAZ* in Klagenfurt) even lacking essential information<sup>41</sup>. When foreign nationals arrived in the establishment with injuries, the latter were usually properly recorded. However, in several cases, the medical file contained no information on the statements made by the person concerned or the doctor's conclusions.

48. Doctors appeared to be very reluctant to call upon the services of a professional interpreter. Admittedly, standardised medical questionnaires are now available in more than 50 languages; however, for a proper medical examination to be carried out it may still be necessary to use the services of an interpreter if the doctor does not speak the language of the detainee concerned<sup>42</sup>. Relying on the services of other detainees or on NGO representatives (*Schubhaftbetreuer*) is not an adequate alternative.

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<sup>40</sup> By way of example, at the *PAZ* in Klagenfurt, the delegation itself observed the doctor interviewing a female immigration detainee (in the presence of an officer and while the door to the corridor was open). In spite of the cold outside, the windows were open, and the doctor was standing in front of the woman, without taking off his winter coat. Clearly, the temperature in the room was far too low for a physical examination.

<sup>41</sup> For instance, in the case of one foreign national who had been on hunger strike on several occasions, no mention was made of the hunger strikes in the medical file of the detainee concerned.

<sup>42</sup> This is all the more important for psychiatric consultations.

49. Another problem is the lack of medical confidentiality in all the *PAZ* visited (police officers were usually present during medical consultations/examinations, and medical records were often accessible to police officers), despite the specific recommendations made by the Committee in previous visit reports.

50. The CPT welcomes the general trend observed in most of the establishments visited of no longer placing detainees on hunger strike in a segregation cell. However, such placements still occurred at the *PAZ* in Klagenfurt. Further, at the *PAZ* in Klagenfurt, the care for detainees on hunger strike appeared to be inadequate. In particular, medical supervision was often minimal, and the detainees concerned were not always informed of the possible consequences or risks involved.

51. More generally, the CPT has serious misgivings regarding the dual role of police doctors as treating doctor and public health doctor (*Amtsarzt*) in all *PAZ* in Austria. The potential risk of conflict of interest is evident if it is the duty of a treating doctor also to determine whether a detainee is fit for detention (including in the context of hunger strikes) or even for deportation, and to record and assess injuries which may have been the result of police ill-treatment. Indeed, many foreign nationals met by the delegation stated that they did not trust the police doctor. In order to illustrate the detrimental effects this situation can have, the following cases may serve as examples: several detainees indicated that they had refrained from informing the doctor of injuries they had sustained as a result of ill-treatment by police officers. One detainee met by the delegation said that he had not informed the police doctor of his drug addiction for confidentiality reasons and because of the “possible consequences”.

52. **In the light of the above, the CPT recommends that the Austrian authorities conduct a thorough review of the health-care services in all *PAZ* in Austria. In particular, steps should be taken to ensure that:**

- newly-admitted detainees are systematically offered a screening for transmissible diseases (in addition to an X-ray);
- the record drawn up after a medical examination of a detainee, whether newly-arrived or not, contains:
  - (i) a full account of objective medical findings based on a thorough examination;
  - (ii) a full account of statements made by the detainee concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;
  - (iii) the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings;
- the above-mentioned record is made available to the detainee;

- whenever doctors are unable to communicate with detainees during medical examinations/consultations due to language problems, the persons concerned benefit from the services of a professional interpreter;
- medical confidentiality is observed in the same way as in the outside community; in particular, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of sight of police officers; detainees' files should not be accessible to non-medical staff but should be the responsibility of the doctor.

Further, the Committee recommends that the current system be revised so as to ensure as soon as possible in all PAZ the regular presence of doctors who are independent of the police.

#### 4. Staff

53. Whilst acknowledging the efforts made by the Austrian authorities to provide in-service training seminars on a bi-annual basis, staff working in PAZ had received little specialised training to perform custodial work. The regular presence of NGO representatives (*Schubhaftbetreuer*), who work in PAZ on a contractual basis, is certainly beneficial, but it should not be regarded as a substitute for human contact by staff (as seemed to be the case to a large extent in the PAZ visited). There is also a question of the degree of independence of *Schubhaftbetreuer* who had a role in informing management about potentially problematic individuals or situations.

Given the specific type of work involved, **staff responsible for the custody of immigration detainees (and administrative detainees) should be in a different and separate service from law enforcement officials and receive specialised training (more akin to prison service training). Clearly, additional language training constitutes an essential component.**

54. At the PAZ in Vienna-Hernalser Gürtel, the delegation observed instances where certain administrative detainees were telling immigration detainees what to do and ordering them about as if they were the member of staff on the wing, and staff manifestly tolerated such situations. This is not acceptable. **Appropriate steps should be taken to avoid a repetition of such situations in future.**

## 5. Contacts with the outside world

55. The CPT welcomes the fact that, in 2008, the management of the *PAZ* in Vienna-Hernalser Gürtel decided to double the visit entitlement for immigration detainees from one to two half-hour visits per week<sup>43</sup>. **It would be desirable that the same approach be followed in all other *PAZ* in Austria.**

56. That said, it is regrettable that, in all the *PAZ* visited, foreign nationals were allowed to receive visits from relatives and friends only under closed conditions (i.e. with a glass partition)<sup>44</sup>, despite the specific recommendation made by the Committee after the 2004 visit.

The CPT wishes to stress once again that, for this category of detained person, the presumption should be in favour of open visits. The rule should be that foreign nationals are allowed to have visits under open conditions, and closed visits behind a screen should be limited to exceptional cases. **The Committee reiterates its recommendation that the visiting facilities at the *PAZ* visited and, where appropriate, in other *PAZ* in Austria, be modified, in order to ensure that visits take place, as a rule, under more open conditions.**

57. The frequency of detainees' access to the telephone largely depended on their detention regime. While foreign nationals held in open units could use the telephone every day (provided that they had the money to purchase phone cards), those detainees who were subject to the closed regime at the *PAZ* in Innsbruck and Klagenfurt could make a telephone call only once or twice a week<sup>45</sup>. Such a state of affairs is not satisfactory.

**The CPT invites the Austrian authorities to increase the entitlement to telephone calls for foreign nationals subject to the closed regime at the *PAZ* in Innsbruck and Klagenfurt and, where appropriate, in other *PAZ* in Austria.**

58. At the *PAZ* in Vienna-Hernalser Gürtel, a number of complaints were received about difficulties in making telephone calls, due to the fact that only two telephones were available in the entire establishment. **Steps should be taken to remedy this shortcoming.**

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<sup>43</sup> Section 21, paragraph 2a, of the Detention Regulation (*Anhalteordnung*) stipulates that the frequency and duration of visits for immigration detainees should, as far as possible from an organisational standpoint, exceed the general visit entitlement of one half-hour visit per week.

<sup>44</sup> Open visits could only take place with lawyers and NGO representatives.

<sup>45</sup> At the *PAZ* in Vienna-Hernalser Gürtel, foreign nationals were allowed to make three telephone calls per week.

## **6. Segregation cells**

59. The CPT has serious misgivings about the design of two segregation cells at the *PAZ* in Klagenfurt. In both cells, the rather large windows were fully covered “for security reasons” with metal shutters (in black) so that access to natural light was totally obstructed. The larger cell (equipped with two foam mattresses placed on the floor and a floor toilet) was not even partially partitioned, despite the fact that the cell could be used for two persons at a time. In the smaller cell (equipped with one foam mattress and a floor toilet), walls were painted dark grey, which created an even more oppressive atmosphere.

Further, the delegation noted that detainees placed in a segregation cell were not allowed to take outdoor exercise.

60. The *PAZ* in Wiener Neustadt also had a segregation cell with CCTV, the material conditions of which were on the whole adequate. However, as at the *PAZ* in Klagenfurt, no register was kept in the establishment for the use of the cell.

**61. The CPT recommends that the Austrian authorities take steps to ensure that at the *PAZ* in Klagenfurt:**

- **conditions in the segregation cells are improved, in the light of the above remarks made in paragraph 59;**
- **detained persons placed in segregation cells are guaranteed at least one hour of outdoor exercise per day.**

Further, **the Committee recommends that, at the *PAZ* in Klagenfurt and Wiener Neustadt, a separate register be established for the use of the segregation cells, setting out the full details of the persons held in them: date and time of entering and leaving, grounds for placement, etc.**

## **7. Information and assistance to foreign nationals**

62. In all the *PAZ* visited, newly-arrived foreign nationals were informed upon admission of the internal rules. For this purpose, the full text of the Detention Regulation (*Anhaltordnung*) was made available in a variety of languages. In addition, a short version of the Detention Regulation was posted in the most-frequently spoken languages on the units.

That said, it is a matter of grave concern that the great majority of foreign nationals met by the delegation appeared to be unaware of their legal situation and the procedures applied to them. In particular, many foreign nationals had little or no knowledge about the decisions on their expulsion and subsequent detention, or about the existing legal remedies to challenge such decisions. Consulting a lawyer outside the establishment remained a rather theoretical option, since most foreign nationals had no financial means to pay for a lawyer.

Admittedly, NGO representatives worked as counsellors (*Schubhäftbetreuer*) in all PAZ under a contract with the Federal Ministry of the Interior. However, the assistance provided by them was mainly limited to social matters or “return” issues (if foreign nationals decided to leave Austria on a voluntary basis).

**The CPT recommends that the Austrian authorities take the necessary steps to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals these services should be provided free of charge.**

In addition, steps should be taken to ensure that foreign nationals receive a written translation in their own language of the conclusions (*Spruch*) of decisions of the aliens police, as well as information on the modalities and deadlines to appeal against such decisions (*Rechtsmittelbelehrung*).

## 8. Detention review procedures

63. Immigration detainees are entitled to challenge the lawfulness of their detention before the Independent Administrative Senate<sup>46</sup> (*Unabhängige Verwaltungssenat – UVS*). Decisions on such appeals have to be taken by a single member of the UVS within one week<sup>47</sup>. Before taking a decision, the relevant member of the UVS may hear in person the foreign national concerned. However, as far as the delegation could ascertain, such hearings were in practice carried out only rarely. **In the CPT’s view, immigration detainees who have lodged an appeal against their detention should, as a rule, be heard in person by the UVS. This will also provide an opportunity for them to lodge a complaint in case they have been the subject of police ill-treatment.**

64. According to the relevant legislation<sup>48</sup>, the need for continued detention shall be reviewed *ex officio* by the UVS after six months and, subsequently, every eight weeks. In the CPT’s opinion, an initial waiting period of six months until the first *ex officio* review by the UVS appears to be unreasonably long. **The Committee invites the Austrian authorities to shorten this period.**

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<sup>46</sup> The UVS is a quasi-judicial body composed of officials and judges, which meets the criteria of a “tribunal” under Article 6 of the European Convention of Human Rights.

<sup>47</sup> Section 82 of the Aliens Police Law.

<sup>48</sup> Section 80, paragraph 6, of the Aliens Police Law.

## C. Prisons

### 1. Preliminary remarks

65. The CPT's delegation carried out full visits to Gerasdorf Prison for Juveniles and Innsbruck Prison, and a follow-up visit to Vienna-Josefstadt Prison (where it focussed on the situation of juveniles). In addition, the delegation went to Klagenfurt and Linz Prisons in order to interview newly-arrived remand prisoners and to assess the conditions of detention of juvenile prisoners.

66. *Gerasdorf Juvenile Prison*, opened in 1970, is the only establishment in Austria for male sentenced juveniles and young adults. With an official capacity of 122 places, it was holding 115 sentenced prisoners at the time of the visit, including 31 juveniles (aged between 14 and 18), 77 young adults (aged between 18 and 21) and seven adults (aged between 21 and 27<sup>49</sup>). About 30% of the inmates were foreign nationals.

*Innsbruck Prison* was built in 1967 and is located in a wooded area in the suburbs of the city. The prison comprises several buildings; the main four-storey building underwent major renovation in 2000, which was followed by the construction of new prisoner accommodation buildings. The establishment accommodates remand prisoners and prisoners serving sentences of up to five years. At the time of the visit, it was operating slightly above its official capacity of 473 places, with a total of 495 prisoners (including 24 women<sup>50</sup> and 15 male juveniles), approximately one-third of them on remand. About 35% of the prisoners were foreign nationals, originating from more than 35 different countries.

*Vienna-Josefstadt Prison* had been visited on previous occasions by the CPT, most recently in 2004<sup>51</sup>. With an official capacity of 990, the prison was accommodating 1130 inmates at the time of the visit. Of them, 79 were juveniles (including 4 females).

67. The overall prison population has been on the decline since the 2004 visit to Austria, and stood at a little over 8,000 at the beginning of 2009. At the same time, the official capacity of Austrian prisons has been increased from 8,074 to 8,501 places. The delegation was informed that the reduction of the prison population was the result of various legislative measures that had been taken in the recent past (so-called "*Haftentlastungspaket*"). In particular, the waiting period for conditional release had been reduced from 2/3 to half of the prison term and the possibilities for imposing non-custodial sanctions (such as community service) on fine defaulters had been enhanced. In addition, due to the introduction of stricter rules for the imposition of remand detention, the number of remand prisoners had decreased by 25%.

The CPT welcomes these developments.

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<sup>49</sup> Pursuant to Section 55, paragraph 3, of the *JGG*, placement in a regime for young adults may be extended, in exceptional circumstances, up to the age of 27.

<sup>50</sup> The prison also had a mother-and-child unit (for up to two female prisoners).

<sup>51</sup> See CPT/Inf (2005) 13, paragraphs 84 to 109.

68. The delegation was also informed that a pilot project on electronic surveillance of released prisoners had been introduced in 2008 and that a review of the effectiveness of the system was about to be finalised. **The CPT would like to receive more detailed information on this matter.**

## 2. Ill-treatment

69. No allegations of physical ill-treatment by staff were received in any of the establishments visited. On the contrary, many prisoners underlined the correct attitude and behaviour of the staff towards prisoners.

70. That said, a number of allegations of inter-prisoner violence were received at Innsbruck and Vienna-Josefstadt Prisons.

Addressing the phenomenon of inter-prisoner violence requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. It is also obvious that an effective strategy to tackle inter-prisoner violence requires that prison staff be placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

In general, the delegation gained the impression that efforts were being made in both establishments to prevent incidents of inter-prisoner violence and to react in a prompt and proportionate manner whenever such instances occurred<sup>52</sup>.

However, the efforts made were considerably jeopardised by the absence of staff on the units, especially during the very long night-shifts (see paragraph 71).

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<sup>52</sup> The delegation also noted that prisoners who sustained injuries were immediately referred to medical personnel and, unless these appeared to be related to work or sports activities, the contents of the medical report were systematically communicated to the competent public prosecutor.



### 3. Staff-related issues

71. The CPT must express its serious concerns about the staffing situation observed at *Innsbruck and Vienna-Josefstadt Prisons*. In both establishments, the night-shifts of prison officers started at 2.30 or 3 p.m. on Mondays to Thursdays (and at noon on Fridays and at weekends). Thereafter until the next morning, the prisons were staffed by a small, mobile team of officers, based at a central control office, while all prisoners remained locked up in their cells during these extended night-shifts. Such a shift system and the resultant shortage of staff in the prisoner accommodation areas negatively affected the prisoners' quality of life, and more particularly, the quality and level of activities provided to prisoners and their access to these activities. Moreover, the delegation observed that interaction between staff and inmates in those prisons was reduced to a minimum.

At Vienna-Josefstadt Prison, the CPT noted that, following the 2004 visit, provision had been made for additional staff, with a view to improving the regime for juveniles and young adults. However, subsequent staff cuts had reduced the staffing levels at the time of the 2009 visit to below that observed by the CPT in 2004<sup>53</sup>, while at the same time the total prisoner population had only marginally decreased and the number of juveniles and young adults had even increased by approximately 40 percent. Low prison staffing levels reduce the opportunities for direct contact with prisoners and prevent the development of positive relations; in general, this results in an unsafe environment, for both staff and prisoners.

The CPT would also like to stress that prison staff must be regarded as performing a public service, not an administrative function<sup>54</sup>. It is clear that a real improvement in the regime on offer requires a basic change of approach to prison staffing, so as to provide the main shifts throughout the day (i.e. from breakfast until the evening), with the nightshift starting no earlier than 7 p.m. and preferably at 9 p.m. It also requires a change in approach by staff to their duties on the wings, with an emphasis on interaction with prisoners, rather than on remaining for most of the time in the wing offices. In this context, the CPT considers that the existing shift system, which requires staff to work for 24 hours at a time, is intrinsically flawed and negatively affects professional standards.

**The CPT recommends that the Austrian authorities take measures to change the staff shift system at Innsbruck and Vienna-Josefstadt Prisons, and, where appropriate, in other prisons in Austria, in the light of the above remarks; this will require increasing the overall staffing levels in these prisons.**

72. *Gerasdorf Prison* had a different staff shift system, with staff working from 7 a.m. to 8 p.m. on weekdays and from 8 a.m. to 6 p.m. at weekends. This enabled the prison management to organise a variety of out-of-cell activities which occupied the young prisoners throughout the day (see paragraph 84). The delegation came across many dedicated staff members who demonstrated sensitivity and understanding in their approach towards the age group with whom they were dealing<sup>55</sup>. Reference should also be made to the personal officer scheme (*Patenschaft*)<sup>56</sup>, which appeared to be functioning well.

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<sup>53</sup> At the beginning of 2009, there were 416 staff posts whereas in 2004, the number stood at 460. As regards in particular the juvenile units, the prison management indicated that an additional 20 posts were required for working with the young prisoner population.

<sup>54</sup> See also the European Prison Rules (Rule 8 and Part V).

<sup>55</sup> The delegation also noted that the custodial staff did not wear uniforms during the day.

<sup>56</sup> Each officer was the "personal officer" for five or six young prisoners.

That said, it is regrettable that staffing levels at the prison had been gradually decreasing over the past years, despite the fact that the prisoner population had remained more or less stable<sup>57</sup>. In the Committee's view, this places the remaining staff under increasing pressure when dealing with this challenging category of prisoner and may easily result in high levels of stress in staff, and burnout. In this regard, **the recommendation concerning staffing levels made in paragraph 71 applies equally to Gerasdorf Prison.**

73. The CPT was concerned to learn that, in all the establishments visited, newly recruited custodial staff members who worked with juvenile prisoners no longer received any specialised training for such work. **The Committee recommends that special training be organised for prison officers assigned to work with juvenile prisoners at the establishments visited and, where appropriate, in other prisons in Austria.**

74. Further, the delegation noted that, in all the prisons visited, very few female prison officers were deployed in custodial functions in the detention areas accommodating male prisoners, including in juvenile units. In view of the potential benefits of mixed-gender staffing for the general atmosphere prevailing within prisons, **the CPT invites the Austrian authorities to consider adopting measures to favour the deployment of female staff throughout the Austrian prison system; in particular, mixed-gender staffing should be ensured in sections for juveniles.**

#### 4. Conditions of detention of adult prisoners at Innsbruck Prison

##### a. material conditions

75. Material conditions of detention were on the whole good in the main four-storey building (accommodating adult male prisoners<sup>58</sup>) and even very good in the two newly-constructed buildings A and B of Innsbruck Prison (accommodating in separate units, inter alia, female prisoners and drug-addicted prisoners subject to a placement under Section 22, paragraph 1, of the Penal Code).

The great majority of prisoners were accommodated in multiple-occupancy cells, while some were in single or double cells. Cells offered sufficient living space (e.g. single cells measuring some 8.5 m<sup>2</sup>, double cells some 13.5 m<sup>2</sup>, and cells with five beds some 25 m<sup>2</sup>). All cells were well-equipped<sup>59</sup> and had good access to natural light and artificial lighting as well as adequate ventilation.

Throughout the establishment, the common areas (such as recreation rooms) were generally well-equipped, clean and well-kept. Further, prisoners had frequent access to shower facilities, which were of a good standard, and received sufficient supplies of personal hygiene products.

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<sup>57</sup> The prison director informed the delegation that, since 1997, the complement of prison officers had decreased by 32.

<sup>58</sup> Remand prisoners, short-term sentenced prisoners and prisoners serving longer sentences (of up to five years) were held on different floors.

<sup>59</sup> It is also noteworthy that prisoners were supplied with television sets and were allowed to have various personal items in their cells (e.g. CD-player, coffee machine, plants, posters, musical instruments, etc.).

b. regime

76. At Innsbruck Prison, most of the sentenced prisoners were offered work<sup>60</sup>, vocational training (e.g. carpentry, locksmithing, plumbing, painting, etc.) or some other form of organised activity<sup>61</sup>. For instance, some prisoners attended computer classes, and German language classes were organised for foreign nationals. In addition, about one hundred prisoners were said to be involved in group work with seven trained group counsellors.

That said, the CPT is very concerned by the fact that regime activities for prisoners were heavily circumscribed by staff shortages and the existing staff shift system (see also paragraph 71). The low staff-inmate ratio, coupled with a degree of absenteeism amongst staff, appeared regularly to result in the reduction or temporary suspension of the activities offered to inmates, and the available workshops, sports facilities and rooms for recreation remained underutilised. Further, due to the system of extended night-shifts, all activities were compressed into the short day, with options for work and outdoor exercise – which is a legal requirement – scheduled so as to be mutually exclusive.

77. As regards remand prisoners, the vast majority of them were offered hardly any out-of-cell activities, apart from one hour of outdoor exercise per day and access to the gym or outdoor sports activities twice a week<sup>62</sup>. For the rest of the time, these prisoners remained locked up in their cells, their sole occupations being reading<sup>63</sup>, playing board games or watching television. This is not acceptable.

78. In the light of the above, **the CPT recommends the Austrian authorities to significantly improve the programme of activities offered to prisoners at Innsbruck Prison.** As has been previously highlighted by the Committee, **the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).**

79. Although the outdoor exercise areas were sufficiently spacious, none of them – except for those reserved for female prisoners – were equipped with shelter against inclement weather, nor were they equipped with benches or seats. **Steps should be taken to remedy these shortcomings.**

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<sup>60</sup> At the time of the visit, some 240 prisoners were employed in 17 different types of work.

<sup>61</sup> It should be noted, however, that short-term sentenced prisoners were subjected to almost the same impoverished regime as remand prisoners (see paragraph 77).

<sup>62</sup> Remand prisoners were able to work only in exceptional cases (mainly when a prisoner had specific professional skills required for the maintenance of the establishment).

<sup>63</sup> On a positive note, it should be added that the prison had a library with some 4,000 books, in more than ten different languages.

## 5. Conditions of detention of juveniles in the prisons visited

### a. material conditions

80. Material conditions of detention were on the whole adequate at Gerasdorf Prison, as well as in the units for juveniles in the other prisons visited.

Cells were in a reasonably good state of repair, had good access to natural light and ventilation, were well-equipped (including an intercom system) and fitted with a fully partitioned sanitary annexe (WC and wash-basin). Further, the living space offered to prisoners was generally sufficient<sup>64</sup>.

That said, the delegation noted that, at Linz Prison, several cells measuring a mere 7.5 m<sup>2</sup> (including the sanitary annexe) were equipped with bunk beds and could thus accommodate up to two prisoners (although all such cells were being used for single occupancy at the time of the visit). **The CPT wishes to stress that cells of such a size should be used for single occupancy only.**

81. It is noteworthy that in all the establishments visited (with the exception of Linz Prison), most juveniles had a television set in their cell. At Linz Prison, the delegation received complaints from several juveniles that they were not allowed to bring in their own television set from outside the establishment. Prisoners who wished to watch television in their cell were allegedly obliged to purchase a television set through the prison administration (for more than 200 Euros), which many prisoners could not afford. Although indigent prisoners could in principle rent a television set from the prison (for a monthly fee of some 7 Euros), permission to rent a television set was allegedly hardly ever given. **The Committee would like to receive the Austrian authorities' comments on this point.**

82. In all the establishments visited, juveniles had regular access to a shower (usually twice a week) and received sufficient supplies of personal hygiene items. However, the delegation heard many complaints, in particular from female juveniles, that twice-weekly showers were not sufficient to maintain their personal hygiene. **The CPT invites the Austrian authorities to allow more frequent showers to juvenile prisoners (in particular female juveniles) in all the establishments visited, in the light of Rule 65.3 of the European Rules for juvenile offenders subject to sanctions or measures.**

83. Further, at Gerasdorf and Vienna-Josefstadt Prisons, many juveniles complained about the food provided to them. **Steps should be taken at both establishments to review the provision of food to juveniles, to ensure that the food is adequate for this category of prisoner in terms of both quantity and quality.**

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<sup>64</sup> At Gerasdorf, the vast majority of prisoners were accommodated in single cells which were very small (i.e. some 6.5 m<sup>2</sup> including a sanitary annexe). However, given the fact that prisoners benefited from generous out-of-cell times, the living space can still be considered acceptable.

b. regime

84. The delegation gained a particularly favourable impression of the regime offered to sentenced prisoners at *Gerasdorf Prison*. It appeared that virtually all inmates were able to spend a significant part of the day outside their cells engaged in work or other purposeful activities, including at weekends.

Efforts were made to find a suitable occupation for all prisoners as soon as possible upon admission. For every prisoner who was to stay in the prison for longer than one year, a so-called “prison-stay plan” was drawn up, which was based on an individual assessment of the prisoner’s needs in terms of training/vocation<sup>65</sup>. This plan was prepared with input from a psychologist, a social worker and vocational training staff, and was reviewed on a regular basis.

The prison had a total of fourteen vocational workshops<sup>66</sup>. Other activities included maintenance work, education to secondary-school level<sup>67</sup> and special courses such as computer classes and German for foreign nationals, as well as crafts (e.g. ceramics and handicrafts).

Further, prisoners were frequently engaged in various sports (e.g. football, basketball, volleyball, badminton and athletics) and recreational activities (including group outings). Moreover, group counselling and discussion groups were organised on a regular basis as part of the above-mentioned “prison-stay plan”.

85. It is also praiseworthy that all juveniles held at *Innsbruck Prison*<sup>68</sup> were offered education and/or vocational training during the week. Some of them were provided with work in various workshops (pottery, woodwork, bakery, car mechanics, lock-smith’s, etc.) or within the establishment (maintenance, cleaning). The juveniles could also regularly engage in a variety of indoor and outdoor sports activities and had access to well-equipped recreation rooms.

The extended staff attendance system<sup>69</sup> made it possible to organise more activities for juveniles from Mondays to Thursdays until 5 p.m. (such as general education classes including German, computer classes, and indoor sports), and on Fridays juveniles could have individual counselling with a social worker for about half an hour between midday and 3 p.m.

86. The situation was less satisfactory at *Vienna-Josefstadt Prison*. The establishment did offer, in principle, a range of out-of-cell activities similar to those found at Innsbruck; however, scheduled activities did not always take place.

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<sup>65</sup> Prisoners staying less than one year were usually offered basic maintenance work.

<sup>66</sup> For example, baking, hairdressing, carpentry, electrics, metalwork, car mechanics, etc.

<sup>67</sup> One prisoner went to an evening school for a special vocational examination.

<sup>68</sup> At the time of the visit, the prison’s juvenile unit was accommodating 15 juveniles and 14 young adults (all male).

<sup>69</sup> Since the 2004 visit (see CPT/Inf (2005)13, paragraph 91), attempts have been made by the Austrian authorities to lengthen the duration of activities provided in the afternoons for juveniles held in adult prisons, by increasing the staff cover.

There were a few members of staff present until 5 p.m. or 6 p.m. on each weekday in order to provide a small group of male juveniles with activities in the common room. Each male juvenile could benefit from two to three hours of additional out-of-cell time for one or two days per week, while such additional out-of-cell time was offered to female juveniles only once a week.

Whilst acknowledging the steps taken by the authorities since the 2004 visit to enhance the regime of juvenile prisoners, the CPT considers the improvement made thus far to be minimal. It is a matter of serious concern that on most weekdays at Vienna-Josefstadt, the vast majority of such prisoners were locked up for the “night” early in the afternoon until the following morning.

87. At both *Klagenfurt and Linz Prisons*<sup>70</sup>, all juvenile prisoners were offered a range of purposeful out-of-cell activities (including work and various recreational activities). However, in both establishments, the provision of educational activities for juveniles who did not work appeared to be rather limited (approximately one hour per day at Klagenfurt and two hours twice a week at Linz Prison).

The CPT welcomes the fact that, at Linz Prison, juveniles could remain outside their cells during weekdays from morning until 7 p.m. Regrettably, at Klagenfurt Prison, prisoners were locked up in their cells on weekdays from 3.30 p.m. until the following morning.

88. In all four establishments, out-of-cell activities at weekends were limited to two hours of outdoor exercise per day (at Linz, some additional out-of-cell activities were organised every second weekend).

**89. The CPT calls upon the Austrian authorities to develop the regime for juvenile prisoners at Innsbruck, Klagenfurt and Vienna-Josefstadt Prisons, so as to ensure that such prisoners enjoy during the week out-of-cell activities throughout the day, up until the early evening.**

**Further, the activities offered to juveniles at Klagenfurt, Linz and Vienna-Josefstadt Prisons should be reviewed, in the light of the above remarks. All juvenile prisoners should be engaged in purposeful activities of a varied nature (work, preferably of a vocational value; education; sports; recreation/association, etc.).**

**Immediate steps should be taken at Innsbruck, Klagenfurt, Linz and Vienna-Josefstadt Prisons to provide juvenile prisoners with increased out-of-cell time during weekends;** basically confining such inmates to a cell over the whole of the weekend is not acceptable.

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<sup>70</sup> At the time of the visit, there were seven prisoners in the juvenile unit at Klagenfurt (capacity: 13 places) and seven prisoners in the juvenile unit at Linz Prison (capacity: 14 places).

90. When visiting Vienna-Josefstadt Prison, the delegation found out that juveniles were apparently not always able to enjoy their legal right to outdoor exercise<sup>71</sup> for two hours per day, and that outdoor exercise yards were not fitted with any protection against inclement weather. By way of example, when concluding its visit on a Friday, the delegation noted that outdoor exercise had been cancelled since the previous weekend, due to adverse weather conditions.

During the end-of-visit talks, the delegation made an immediate observation and called upon the Austrian authorities to take the necessary measures to ensure that all prisoners at Vienna-Josefstadt Prison are able to benefit from their daily outdoor exercise entitlement (see paragraph 8).

By letter of 23 June 2009, the Austrian authorities informed the CPT that "...the Ministry of Justice is committed to an improvement of the situation. The architectural structure of the Josefstadt prison however does not allow for providing the courtyard with a roof, wholly or even partially, because the courtyards are too deep and narrow. In order to improve the situation, protective clothes in sufficient quantity and quality will be procured so that a stay outdoors will be made possible also under adverse weather conditions. Thereby, the right of inmates to outdoor stays will be realized as prescribed by the law...".

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91. During the visit, the delegation was informed by the Austrian authorities that there were concrete plans to construct a new institution in Vienna for juveniles deprived of their liberty, which would then allow the juvenile unit at Vienna-Josefstadt to be withdrawn from service. The CPT welcomes this development and **wishes to receive more detailed information (including a timetable) on the implementation of these plans.**

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<sup>71</sup> See Section 43 of the Law on the Execution of Sentences (*Strafvollzugsgesetz - StVG*) and Section 58, paragraph 3, of the JGG.

## 6. Health care

92. Health-care staffing<sup>72</sup> levels can be generally considered adequate at *Vienna-Josefstadt Prison*. As in 2004, there were five full-time doctors, four part-time psychiatrists, six psychologists, a drug therapist and 25 nurses.

In response to a specific recommendation made by the Committee after the 2004 visit, a part-time adolescent psychiatrist had been recruited. However, the contract with the psychiatrist concerned was about to expire in March 2009 and a decision had apparently been taken by the Federal Ministry of Justice to no longer finance the services of such a psychiatrist at the establishment. Given the large number of young prisoners held in this prison, many of whom suffer from psychological and psychiatric problems, **the CPT recommends that steps be taken to maintain the regular presence of a fully qualified specialist in child/adolescent psychiatry at Vienna-Josefstadt Prison.**

93. The health-care staff at *Gerasdorf Prison* consisted of a part-time general practitioner (four hours per week), a part-time adult psychiatrist (15 hours per week), four psychologists and a part-time nurse (20 hours per week). At *Innsbruck Prison*, the health-care team comprised a part-time general practitioner (25 hours per week), a part-time psychiatrist, four psychologists, a psychotherapist and four qualified nurses (three of them working full-time).

In the CPT's view, the surgery hours of the general practitioners were clearly insufficient in both establishments. For example, an establishment of the size of Innsbruck Prison should have at least one doctor on a full-time basis. Not surprisingly, the delegation received a number of complaints at this establishment about delays in having access to the doctor; the doctor herself indicated that she had difficulties in coping with the workload.

It is also worrying that Gerasdorf Prison, which had a psychiatric unit with more than 20 patients (including 10 forensic psychiatric patients), was not attended by a psychiatrist specialised in child/adolescent psychiatry. In addition, the part-time presence of only one qualified nurse at Gerasdorf is far from sufficient.

The CPT also noted with concern that at Innsbruck, since the beginning of 2009, the regular presence of a part-time psychiatrist had been replaced by some ten psychiatrists visiting the establishment according to a rota. This clearly jeopardised the continuity of psychiatric care to prisoners.

Further, at Gerasdorf and Innsbruck Prisons, no qualified health-care staff were present at night and during weekends<sup>73</sup>.

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<sup>72</sup> It is noteworthy that, in all establishments visited, doctors were no longer employed by the Federal Ministry of Justice, but contracted in from the general health service.

<sup>73</sup> At Gerasdorf, also on Tuesdays.



94. **The CPT recommends that the health-care staffing levels at Gerasdorf and Innsbruck Prisons be reviewed as a matter of priority. More specifically, steps should be taken to ensure that:**

- **the hours of attendance of the general practitioner at Gerasdorf Prison are increased, preferably to the equivalent of a half-time post, and that there is the equivalent of at least one full-time general practitioner at Innsbruck Prison;**
- **at least one additional part-time psychiatrist is recruited at Gerasdorf Prison, preferably specialised in child and adolescent psychiatry;**
- **there is continuity of psychiatric care for prisoners at Innsbruck Prison;**
- **the nursing cover at Gerasdorf is significantly increased; this should also enable a nurse to be present on every day of the week, including weekends;**
- **there is cover by a qualified nurse at Innsbruck Prison, not only during the week but also on weekends;**
- **at both Gerasdorf and Innsbruck Prisons, someone competent to provide first aid, preferably with a recognised nursing qualification, is always present on the premises, including at night.**

95. In all three establishments visited, health-care staff were assisted by prison officers who had received basic training as medical orderlies (*Sanitätsbeamte*)<sup>74</sup>. These orderlies were responsible for the distribution of prescribed medicines, had access to medical files and were also usually present during medical consultations. However, in addition to the health-related tasks, they continued to perform their custodial functions.

**The CPT recommends that the Austrian authorities take the necessary measures in all prisons to ensure that medical orderlies cease to carry out custodial functions, with the long-term objective of abolishing the practice of involving prison officers in the performance of health-care duties.** For a prison health-care service to be truly independent, all staff assigned to it must be uniquely aligned to health, both administratively and professionally, which is not the case at present.

96. It is a matter of serious concern that there were no qualified health-care staff taking overall responsibility for the provision of health care at Gerasdorf Prison. In practice, it was one of the orderlies who was in charge of the medical service. **The organisation of health-care services in prison should, as a matter of principle, be entrusted to qualified health-care staff. This responsibility at Gerasdorf Prison might well be given to the general practitioner once he begins to work on a half-time basis.**

97. The health-care facilities were generally of a good standard in the three establishments visited, with the exception of Unit Z4 of the health-care centre of Vienna-Josefstadt Prison where the level of hygiene left much to be desired (infested with cockroaches, etc.). **Steps should be taken to remedy this shortcoming.**

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<sup>74</sup> There were five such orderlies at Gerasdorf, four at Innsbruck and 33 at Vienna-Josefstadt Prison.

98. At Innsbruck and Vienna-Josefstadt Prisons, all newly-arrived prisoners were subjected to a medical screening by a doctor within 24 hours of admission. However, delays of several days (up to a week) were observed at Gerasdorf Prison.

Further, at Innsbruck Prison, the delegation received many complaints from prisoners that initial examinations by the doctor were often very short and perfunctory. The case of a young foreign national gave credence to these complaints. Despite a serious infection of the right palm and a visible injury, no written record of this was made during the medical examination on admission. Only several days after his admission was he transferred to a hospital where he underwent an emergency operation, reportedly thereby narrowly escaping amputation.

In the light of the above, **the CPT recommends that steps be taken at Gerasdorf and Innsbruck Prisons to ensure that newly-arrived prisoners are properly interviewed and physically examined by a medical doctor (or a fully qualified nurse reporting to a doctor) as soon as possible after their admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission.**

99. At Gerasdorf Prison, prisoners' medical records were usually very succinct. A similar situation was found at Innsbruck Prison, where medical files often contained little or no information about physical examinations performed by the doctor. **The CPT recommends that steps be taken in both establishments to ensure that medical records are properly completed and maintained.**

100. The delegation gained a generally favourable impression of psychiatric care provided to prisoners in the psychiatric unit at Gerasdorf Prison. In addition to pharmacotherapy, prisoners benefited from psychotherapeutic treatment programmes. Further, the files of psychiatric patients were well maintained. However, the delegation observed that the only part-time psychiatrist had great difficulties in coping with the existing workload and there was a clear need for additional input (see paragraphs 93 and 94).

Further, the CPT has serious misgivings about the widespread prescription of psychotropic medication<sup>75</sup> for prisoners (including women and juveniles) at Innsbruck Prison. By way of example, the delegation observed that 19 out of the 29 prisoners in the juvenile unit received psychotropic medication every day. In the CPT's view, this seemed to be used as a means of alleviating the effect of the long periods of time spent locked in the cells (see paragraph 77). **The CPT recommends that the Austrian authorities review this situation as a matter of urgency.**

101. The provision of psychological care appeared to be adequate at Gerasdorf Prison.

As regards Innsbruck Prison, a range of individual and group therapeutic activities were organised mainly by external psychologists. However, in practice, it was mostly prisoners under preventive custody (*Massnahmenvollzug*) and drug-addicted prisoners who benefited from such activities, while the professional psychological support for the mainstream prisoner population – including juveniles – appeared to be rather limited. **Steps should be taken to reinforce the psychological services at Innsbruck Prison.**

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<sup>75</sup> Including sedatives such as benzodiazepine.

## 7. Other issues

### a. discipline

102. Prisoners may be subjected to the following disciplinary sanctions: reprimand, withdrawal of privileges, loss of certain rights, a fine, and solitary confinement in an ordinary or disciplinary cell (*Hausarrest*) for up to four weeks (for adult prisoners) and 14 days (for juveniles)<sup>76</sup>.

The delegation observed that, in practice, the periods of solitary confinement imposed as a punishment were in most cases significantly below the maximum allowed for by law, and this as regards both adults and juveniles. Nevertheless, the CPT considers that the maximum possible period of solitary confinement as a punishment for juvenile prisoners is too long. For this age group, placement in a solitary confinement regime is a measure which can easily compromise their physical and/or mental integrity; consequently, resort to such a sanction should be regarded as an exceptional measure and be used only for very short periods.

**The Committee recommends the Austrian authorities to reduce the maximum possible period of solitary confinement as a punishment in respect of juvenile prisoners. Further, whenever juveniles are subject to such a sanction, they should be guaranteed appropriate human contact.**

Further, in the CPT's view, the maximum period of solitary confinement as a punishment for adult prisoners is very high; **under no circumstances should such a period of solitary confinement be prolonged (due to additional disciplinary sanctions) without there being an interruption.**

103. It should be added that prisoners subjected to the sanction of solitary confinement are, as a rule, automatically deprived of contact with the outside world (the right to receive visits, to write letters or to make phone calls).

In this connection, the CPT wishes to stress that disciplinary punishment of prisoners should not involve a prohibition of family contact and that any restrictions on family contact should be imposed only where the offence relates to such contact<sup>77</sup>.

**The CPT recommends that the rules governing disciplinary sanctions be revised accordingly.**

104. The delegation examined the cells used at Gerasdorf and Innsbruck Prisons to accommodate prisoners subject to the sanction of solitary confinement; material conditions of detention in those cells call for no particular comments.

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<sup>76</sup> Section 109 of the *StVG* and Section 58, paragraph 9, of the *JGG*.

<sup>77</sup> See also Rule 60.4 of the European Prison Rules and Rule 95.6 of the European Rules for juvenile offenders subject to sanctions or measures, as well as the commentaries on these Rules.

105. The CPT has misgivings about the practice observed at Vienna-Josefstadt Prison to impose the disciplinary sanction of withdrawal of a television set also in respect of prisoners accommodated in multi-occupancy cells. Thus, even if only one prisoner had committed a disciplinary offence, the disciplinary measure led to a *de facto* collective punishment for all prisoners sharing the same cell. In addition, it appears that such measures were often taken without a formal procedure. **The CPT would like to receive the Austrian authorities' comments on this matter.**

106. From the consultation of disciplinary files at Gerasdorf and Innsbruck Prisons it transpired that, in both establishments, disciplinary procedures were generally carried out in accordance with the relevant legal framework<sup>78</sup>.

That said, the rules to be applied in the context of disciplinary procedures, as set out in Section 116 of the *StVG*, contain a number of deficiencies.

Firstly, the law does not contain an obligation that prisoners facing disciplinary charges be heard in person by the body which takes the decision on whether or not to impose a disciplinary sanction (i.e. the Deputy Governor). In practice, the prisoners concerned were usually questioned only by a (senior) officer who established the facts of the disciplinary offence.

Secondly, prisoners facing disciplinary charges are not guaranteed the right to call witnesses on their own behalf or to cross-examine evidence against them.

Thirdly, prisoners subjected to a disciplinary sanction are not systematically provided with a copy of the disciplinary decision, but only if they explicitly ask for it.

**The CPT recommends that the above-mentioned deficiencies in relation to disciplinary procedures be rectified in all prisons in Austria (if necessary, by amending the relevant legislation).**

107. Further, in accordance with Section 117 of the *StVG*, in all the establishments visited, the prison doctor had to sign an attestation that prisoners subject to the disciplinary sanction of solitary confinement were "fit for punishment", prior to the implementation of the disciplinary decision.

In this connection, the CPT wishes to stress that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers' Recommendation Rec (2006)2 on the European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed. On the other hand, the situation of prisoners placed in disciplinary cells should be regularly examined by health-care staff.

**The CPT recommends that the role of prison doctors in relation to disciplinary matters be reviewed. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 15<sup>th</sup> General Report (see paragraph 53 of CPT/Inf (2005) 17).**

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See also paragraph 102 of the report on the 2004 visit (CPT/Inf (2005) 13).

b. contact with the outside world

108. The legal provisions concerning prisoners' visiting entitlement have remained essentially the same: sentenced prisoners are entitled to one 30-minute visit per week and one 1-hour visit every six weeks<sup>79</sup>, and remand prisoners to two 30-minute visit per week<sup>80</sup>. As regards juveniles, they are allowed a weekly visit of one hour<sup>81</sup>.

The information gathered during the visit indicates that the above-mentioned rules were respected in all the establishments visited. Moreover, the actual visit entitlement was often more favourable than the minimum provided for by law (e.g. sentenced prisoners could receive a one-hour visit every week; juveniles were granted more than one visit per week; etc.). The Committee welcomes this situation.

109. That said, it appeared that remand prisoners held at Innsbruck and Vienna-Josefstadt Prisons could usually receive visits only under closed conditions (i.e. with prisoners and their visitors separated by a glass partition).

The CPT acknowledges that in certain cases it will be justified, for security-related reasons or to protect the legitimate interests of an investigation, to have closed visiting arrangements; however, this approach should constitute the exception, not the rule. **The Committee therefore recommends that the arrangements for visits at Innsbruck and Vienna-Josefstadt Prisons be revised in order to ensure that, as a rule, visits take place under open conditions.**

c. situation of foreign prisoners

110. The delegation noted the high proportion of foreign nationals in the prisons visited, and in particular among the young prisoner population. This obviously gave rise to various problems, in particular that of communication between foreign prisoners and staff. Due to the language barriers, many such prisoners seemed to be disadvantaged as regards access to important services, such as health care, education, and certain activities.

The authorities were making some efforts to address this situation by, *inter alia*, offering German courses to those who did not speak the language. Given the scale of the problem, **the Committee invites the Austrian authorities to introduce language courses also for selected members of staff.**

111. The delegation also heard complaints from foreign inmates that, due to the lack of interpreters, they had great difficulties in communicating with health-care staff. In this connection, **the recommendation made on this subject in paragraph 52 applies to the prison system with equal force.**

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<sup>79</sup> Section 93 of the *StVG*.

<sup>80</sup> Section 188 of the *StPO*.

<sup>81</sup> Section 58, paragraph 7, of the *JGG*.

d. security issues

112. Both Gerasdorf and Innsbruck Prisons had specially-equipped segregation cells (with CCTV cameras), where prisoners could be accommodated as a security measure, usually for short periods.

In both establishments, every placement of a prisoner in a segregation cell was recorded in a special register. However, at Innsbruck Prison, the special forms used for this purpose were not always properly filled out (e.g. no indication of the grounds for segregation, no indication of the time when the measure commenced and ended, etc.). **Steps should be taken to remedy this shortcoming.**

Further, the delegation noted that, at Innsbruck Prison, prisoners placed in a segregation cell were not usually offered any outdoor exercise. **The CPT recommends that measures be taken to ensure that such prisoners benefit from their daily outdoor exercise entitlement.**

113. The delegation observed at Innsbruck Prison that prisoners who were considered to be at risk (e.g. prisoners with suicidal tendencies) were usually placed in segregation cells. The prisoners concerned were monitored via CCTV cameras but did not benefit from adequate human contact. **Steps should be taken to remedy this deficiency.**

114. In all the establishments visited, the delegation was informed that it was still required by the existing regulations that some of the officers on night duty carry firearms<sup>82</sup>. As was the case in 2004, whenever it became necessary to open a cell at night, the officer who directly opened the cell door was unarmed, but there was always an armed prison officer standing some distance away. The CPT has repeatedly emphasised that the carrying of firearms by staff who are in direct contact with prisoners is an undesirable and dangerous practice, which could lead to high-risk situations for both prisoners and staff. In this respect, reference should also be made to Rule 69.1 of the European Prison Rules which states that “[e]xcept in an operational emergency, prison staff shall not carry lethal weapons within the prison perimeter”<sup>83</sup>.

**The CPT recommends that the Austrian authorities review the current policy on the carrying of firearms by prison staff inside detention areas of prisons.**

115. The delegation observed that, at Innsbruck and Vienna-Josefstadt Prisons, custodial officers were carrying truncheons in the full view of inmates (including juveniles). The CPT would like to stress that, in the interest of developing positive relations between staff and inmates, prison staff should never carry truncheons visibly inside detention areas. **The Committee recommends that, if it is considered necessary for prison officers to carry truncheons, the truncheons be hidden from view.**

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<sup>82</sup> See, in this regard, paragraph 109 of the report on the 2004 visit (CPT/Inf (2005) 13).

<sup>83</sup> Indeed, in most Council of Europe States, the carrying of firearms within prison premises is generally prohibited.

116. Further, the CPT has misgivings about the practice observed at Gerasdorf Prison of custodial officers carrying pepper spray within the detention areas<sup>84</sup>. Given the potentially dangerous effect of this substance, **the Committee considers that pepper spray should not form part of the standard equipment of a prison officer and, as a rule, should not be used in confined spaces.**

117. Finally, the CPT has received reports after the 2009 visit that the Austrian authorities plan to reintroduce electric stun devices in prisons. In this connection, the Committee has serious reservations as to the use of such devices in particular in a prison setting. The use of a stun gun can only be justified as a means of last resort in very extreme circumstances where a real and immediate threat to life has arisen. Moreover, only specially selected and trained<sup>85</sup> prison officers should be allowed to use electric stun devices, and all necessary precautions should be taken when such equipment is used. **The CPT would like to receive detailed information on the implementation of the above-mentioned plan.**

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<sup>84</sup> None of the staff members interviewed by the delegation could recall a single case of having recourse to it.

<sup>85</sup> Such training should include instruction in first aid.

## D. Psychiatric and social welfare establishments

### 1. Preliminary remarks

118. The delegation visited the Sigmund Freud Regional Psychiatric Hospital (*Landesnervenklinik*) in Graz and the Johannes von Gott Nursing Centre (*Pflegezentrum*) in Kainbach. It was the first time that the CPT had visited a social welfare institution in Austria.

The **Sigmund Freud Psychiatric Hospital**, which was opened in the late 19<sup>th</sup> century, is the only public psychiatric hospital in Styria and its catchment area covers the whole Land of Styria and the southern part of Burgenland (with a total population of some 1.2 million inhabitants). The hospital has an official capacity of 800 beds and comprises seven units (three general psychiatric units for adults, one unit for children and juveniles, one gerontopsychiatric unit, one unit for drug-addicted patients and one forensic unit<sup>86</sup>). At the time of the visit, it was almost at full capacity, the number of involuntary patients being 120 (including 29 forensic patients).

The **Johannes von Gott Nursing Centre**, which is located in the village of Kainbach (near Graz), is owned and administered by the religious Order of the Brothers of Mercy (*Barmherzige Brüder*) and has the legal status of a (general) hospital and a social welfare home. With an official capacity of 600 places, the nursing centre is one of the largest social welfare institutions in Austria. It is divided into 22 living units<sup>87</sup> (*Wohngruppen*), six of which were closed units (Adalbert, Emmaus, Johannes, Markus, Schutzengel and Vinzenz). At the time of the visit, there were 590 residents (from all over Austria), the great majority of whom were fully or partially deprived of their legal capacity and had a court-appointed guardian (*Sachwalter*).

119. Involuntary admission of civil patients to a psychiatric hospital is governed by the (federal) Law on Involuntary Placement (*Unterbringungsgesetz - UbG*). According to Section 3 of the *UbG*, a person may only be subjected to involuntary placement in a psychiatric hospital, if (1) he/she suffers from a mental illness and his/her health or life or the health or life of others is seriously endangered due to this mental illness and (2) if there are no other alternatives, in particular outside the hospital, for him/her to be adequately medically treated or cared for.

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<sup>86</sup> The majority of forensic patients were subject to a placement order under Section 21, paragraph 1, of the Penal Code (i.e. persons who had been declared not to be criminally responsible for the offence they had committed - *Unterbringung in einer Anstalt für geistig abnorme Rechtsbrecher*). In addition, there were patients under observation pursuant to Section 429, paragraph 4, of the *StPO*; such patients were also accommodated in other wards.

<sup>87</sup> These units are located in various buildings, spread out over an area of more than one square kilometre.



120. Austrian legislation does not provide for a procedure of involuntary placement in a social welfare institution. Admissions to such institutions fall under the scope of Section 284a of the Civil Code (*ABGB*), which stipulates that a disabled person can decide him/herself on his/her domicile (*Wohnort*), in so far as he/she is capable at the time in question of giving valid consent (*einsichts- und urteilsfähig*). This principle applies irrespective of whether the person concerned is deprived of his/her legal capacity (and has a guardian appointed). Only if it is established that a disabled person is not or no longer capable of giving a valid consent can the consent to admission be given instead by a guardian. In addition, the admission has to be confirmed by a court, if it is intended that the person concerned remains in the establishment permanently. However, even if the court has confirmed the admission, Austrian legislation does not allow a person to be transferred to a social welfare institution by force. If the person concerned resists the placement, the only alternative may be the involuntary admission to a psychiatric hospital under the *UbG* (provided that all the criteria set out in paragraph 119 are met).

Once a person is accommodated in a social welfare institution, the Law on the Residence in Welfare Homes (*Heimaufenthaltsgesetz – HeimAufG*) applies<sup>88</sup>. According to this law, a resident who is mentally ill or mentally disabled may be subjected to a measure restricting his/her freedom (*Freiheitsbeschränkung*). A measure falls under the scope of the law when a resident is prevented against or without his/her will from changing his/her location (*Unterbindung der Ortsveränderung*), in particular by mechanical, electronic or chemical means or by threat of subjecting to such means. The key element is the restriction to a specific area, which can be the establishment as a whole, a certain part of it, a single room or a bed. The law also set outs the criteria<sup>89</sup> under which residents may be subjected to such a measure and defines the persons who are entitled to order it<sup>90</sup> as well as the modalities of judicial review. It should also be added that persons who order a measure within the meaning of the *HeimAufG* exercise executive powers under the Austrian Constitution and act as a public authority (*Beleihung*).

121. The above-mentioned procedures and related legal safeguards are examined in paragraphs 145 to 147 and 149 to 152.

122. At the outset, the CPT wishes to stress that the delegation received no allegations of ill-treatment of patients/residents by staff at the Sigmund Psychiatric Hospital and the Johannes von Gott Nursing Centre. On the contrary, in both establishments, the general atmosphere appeared to be relaxed, and relations between staff and patients/residents positive.

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<sup>88</sup> It is also noteworthy that the law applies equally to general hospitals, but not to psychiatric hospitals (Section 2, paragraphs 1 and 2, of the *HeimAufG*).

<sup>89</sup> The criteria are similar to those for involuntary admission to a psychiatric hospital under the *UbG*. Firstly, the resident must be mentally ill or mentally disabled and his/her life or health must be endangered; secondly, the measure must be necessary to prevent this danger and be proportionate; thirdly, there must be no other less intrusive means available (*gelinderes Mittel*) (Section 4 of the *HeimAufG*).

<sup>90</sup> See Section 5 of the *HeimAufG*.

## 2. Living conditions

123. Material conditions varied considerably from one unit to another at the *Sigmund Freud Psychiatric Hospital*. In a number of units, patients' rooms were spacious and well decorated, while in others, they were very austere and impersonal (e.g. Unit 3/3). In addition, some units were cramped, with additional beds (so-called "Notbetten") being added to the existing beds (occasionally, even in activity rooms). At the same time, the delegation observed that certain units were operating below their official capacity and thus had a number of unoccupied beds<sup>91</sup>.

**The CPT recommends that steps be taken to improve material conditions at the Sigmund Freud Psychiatric Hospital, in the light of the above remarks.**

124. At the *Johannes von Gott Nursing Centre*, material conditions were excellent in many units, while certain units were in need of some refurbishment. The CPT understands that there were already concrete plans to refurbish these units in the near future, in the context of an ongoing renovation programme. **The Committee would like to receive updated information on this matter.**

125. The CPT is particularly concerned about the fact that, at the *Sigmund Freud Psychiatric Hospital*, many patients in closed units were not able to benefit from daily outdoor exercise, sometimes for prolonged periods. Some involuntary patients, in particular forensic and geriatric patients, had not been able to go into the open air for several months. Such a state of affairs is unacceptable.

The delegation also observed at the *Johannes von Gott Nursing Centre* that residents in certain closed units did not always benefit from daily outdoor exercise (sometimes for several days in a row).

In both establishments visited, the delegation was told that access to the garden was limited, due to a shortage of staff to accompany the patients/residents and a lack of secure exercise areas.

126. During the end-of-visit talks, the delegation made an immediate observation under Article 8, paragraph 5, of the Convention and called upon the Austrian authorities to take all necessary measures at the Sigmund Freud Psychiatric Hospital and the Johannes von Gott Nursing Centre to ensure that all patients/residents whose health so permitted were offered at least one hour of outdoor exercise per day.

By letter of 23 June 2009, the Austrian authorities provided the following information in relation to the Sigmund Freud Psychiatric Hospital:

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<sup>91</sup> This situation was the result of a strict adherence to the policy of allocating psychiatric patients to units according to their district of residence.

“The hospital *is*<sup>92</sup> already now in a state to fulfil the CPT’s requirement of one hour exercise a day for all patients whose health so permits. In the case of patients from closed units, this requirement is fulfilled either through exercise while accompanied by staff, or through exercise in a secure garden area”.

As regards the Johannes von Gott Nursing Centre, the Austrian authorities indicated in the above-mentioned letter:

“For those four stations which do not have garden access, the amount of outdoor exercise mentioned in the immediate observation (at least 1 hour/day) will be incorporated into the nursing plan. If the exercise is not offered, the reason will have to be given and documented in writing. (...)

Because of prevailing conditions regarding personnel, planning measures are necessary for the two stations [Markus and Vinzenz] without direct garden access.

- In order to initiate individual measures, a prior assessment of possibilities for individual patients from a medical and nursing point of view is necessary. The persons responsible have been charged with conducting this assessment.
- Patients who cannot use the outdoors area for health reasons will be given more possibilities to use the balconies. The management of the stations concerned and the nursing management will cooperate in developing a corresponding plan.
- Patients whose state of health so permits will receive services in the outdoors area. In order to realize this, it is necessary to work out a solution in cooperation of the nursing management and the pedagogic management in order to achieve the best possible care within existing resources. In this context, those services which are already being used by the patients such as organized visiting services, walks in the nursing home area accompanied by nursing staff or specialized pedagogical staff, therapy services which are not rendered at the stations, excursions, and vacations are to be taken into account.”

The CPT welcomes the steps taken by the relevant authorities at both establishments visited; **it would like to receive confirmation that the measures indicated above regarding the Johannes von Gott Nursing Centre have in the meantime been fully implemented.**

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Emphasis added.

### 3. Staff

127. As regards medical staff, the *Sigmund Freud Psychiatric Hospital* employed 48 psychiatrists and 120 other doctors (with an equivalent of 117 full-time medical staff). As far as the delegation could ascertain, this medical team was sufficient for the needs of the establishment.

128. At the *Johannes von Gott Nursing Centre*, the number of general practitioners (six on a full-time basis, including one with specialised training in psychotherapy) appeared to be adequate, in the light of the good access to external specialist and hospital services.

However, the presence of only one full-time psychiatrist was clearly insufficient, bearing in mind also that the majority of residents were on psychotropic medication (see paragraph 141). The delegation was informed that, in 2008, attempts to recruit a second psychiatrist had been unsuccessful, since not a single candidate had applied for the advertised post.

**The CPT recommends that the Austrian authorities redouble their efforts to recruit a second psychiatrist on a full-time basis at the Johannes von Gott Nursing Centre.**

129. The nursing cover was on the whole adequate in both establishments visited.

The *Sigmund Freud Psychiatric Hospital* employed a total of 489 nurses (451 full-time posts) and 205 nursing assistants (189 full-time posts). The delegation noted that in certain units (in particular, those for acute patients), there was one nurse or nursing assistant for each patient. It is also noteworthy that all nurses were certified and had specialised training in psychiatry.

At the *Johannes von Gott Nursing Centre*, there were 66 nurses (70 full-time posts) and 254 nursing assistants (225 full-time posts).

### 4. Treatment

130. The delegation gained a generally positive impression of the treatment provided to patients at the *Sigmund Freud Psychiatric Hospital*. There was good availability of suitable medicines. In addition to pharmacotherapy, patients (including those in acute units) were offered a wide range of therapeutic activities, such as psychotherapy or occupational therapy. Doctors' input was adequate, with individual treatment plans and multidisciplinary work. Further, medical files were detailed and well maintained.

However, it is a matter of concern that patients were on occasion given, without their knowledge, drinks which contained water-soluble psychotropic drugs. **The CPT wishes to stress that every competent patient, whether voluntary or involuntary, should be fully informed about the treatment which it is intended to prescribe and given the opportunity to refuse treatment or any other medical intervention.**

131. At the *Johannes von Gott Nursing Centre*, the overall assessment of the treatment provided to residents was favourable. There was a wide range of therapeutic activities, including psychological behavioural therapy, physical therapy and occupational therapy. Most patients had individualised treatment plans (including for psychological treatment), and there was multidisciplinary team-work. Further, computerised individual medical files were of a good quality, with regular and frequent entries. The same holds true for nursing records.

That said, the delegation noted that the level of therapeutic care varied from one unit to another. By way of example, the care provided in some units such as *Vinzenz*, which accommodated mainly residents in need of acute treatment, was exemplary, **whereas the range and frequency of therapeutic activities could well be improved in some other units (e.g. Schutzengel).**

132. Whenever deaths occurred at the *Johannes von Gott Nursing Centre*, the cases were examined on the spot by the district doctor (i.e. a general practitioner with a private surgery who also performs the duties of a public health doctor). The delegation was informed by medical staff that in a number of cases no autopsy had been performed, although the actual cause of death remained somewhat unclear. Further, the delegation was told that when an autopsy had been carried out, the management of the establishment was usually not informed of the outcome.

**The CPT would like to receive the Austrian authorities' comments on this matter.**

## **5. Means of restraint**

133. In psychiatric/social welfare establishments, the restraint of agitated and/or violent patients/residents may on occasion be necessary. This is an area of particular concern to the CPT, given the potential for abuse and ill-treatment.

### **a. Sigmund Freud Psychiatric Hospital**

134. At the *Sigmund Freud Psychiatric Hospital*, almost 20 net beds were still in use in various units<sup>93</sup>. In addition, recourse was had to three- or five-point fixation<sup>94</sup> (*Fixierung*) and/or chemical restraint.

As far as net beds are concerned, the CPT has repeatedly stressed its misgivings about their use in order to deal with patients in a state of agitation. Various health-care staff at the *Sigmund Freud Psychiatric Hospital* expressed the view that it was preferable to place agitated patients in a net bed, rather than strapping them down with belts or giving high dosages of psychotropic medication. The Committee does not agree that the phasing-out of net beds invariably leads to an increased use of means of mechanical and/or chemical restraint. In fact, the delegation saw several patients in closed net-beds in the hospital who did not seem to be severely agitated and thus would apparently not require to be subjected to *Fixierung* or other means of physical restraint, if released from the net bed.

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<sup>93</sup> The delegation was informed that the *Sigmund Freud Hospital* was one of a few psychiatric hospitals in Austria which still regularly resorted to the use of net beds.

<sup>94</sup> In January 2009, the management decided to no longer allow agitated patients to be restrained with belts within a closed net bed.

It should also be added that more suitable protective means than net beds can be found to ensure the safety of persons with impaired mobility or nocturnal disorders (e.g. disorientation/sleepwalking).

**The CPT reiterates its recommendation that net beds be withdrawn from service as a tool for managing agitated patients/residents in all psychiatric/social welfare establishments in Austria.**

135. The Committee welcomes the fact that, in several units of the Sigmund Freud Psychiatric Hospital, including the gerontopsychiatric unit and the unit for female acute patients, staff were apparently able to cope with even the most challenging patients without resorting to net beds.

That said, it is not acceptable that, in many other units, patients were often placed in a closed net bed or attached to a bed (by three- or five-point *Fixierung*) in full view of other patients. **The CPT wishes to stress that when patients are subjected to means of mechanical restraint, this should as a rule take place out of the sight of other patients.**

136. In the gerontopsychiatric unit, the delegation found a patient attached to his bed, whilst naked<sup>95</sup>. **Such a practice should be ended immediately.**

137. It is also a matter of concern that patients who were placed in a closed net bed or were subjected to *Fixierung* were not adequately monitored. In the CPT's view, there should always be a continuous and direct supervision in the form of a Sitzwache by a member of the health-care staff, who can offer immediate human contact with the patient concerned and reduce his/her anxiety. **The Committee recommends that this precept be implemented at the Sigmund Freud Psychiatric Hospital and, where appropriate, in other psychiatric hospitals and social welfare institutions in Austria.**

138. The delegation observed that many of the existing net beds at the Sigmund Freud Psychiatric Hospital were in fact used as "ordinary" beds for patients who did not require any specific protective measures. Although in such cases, the net beds were kept open on one side, it is clear that the beds created an oppressive atmosphere in the patients' rooms and had an intimidating effect on patients. **The CPT recommends that immediate steps be taken to ensure that every patient at the Sigmund Freud Psychiatric Hospital is provided with a standard hospital bed.**

139. The CPT welcomes the fact that the management of the Sigmund Freud Psychiatric Hospital has recently started to monitor resort to means of restraint, by collecting statistical data on the frequency of their use in various units. **This system should be further developed by creating a central register containing detailed information on each instance of recourse to means of restraint, covering the type of restraint used, the reasons for resorting to it, and the duration of its use. In this register, a record should also be kept of all instances of chemical restraint.**

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Three other patients in the same room were strapped to their beds in pyjamas or underwear.

b. Johannes von Gott Nursing Centre

140. At the Johannes von Gott Nursing Centre, the use of means of physical restraint has significantly decreased in recent years. In particular, no net beds have been used during the last two years (with one brief exception), and means of mechanical restraint (such as fixation to a bed with straps and/or a belt) were reportedly never used. The delegation gained the impression that staff were well-trained in therapeutic approaches, thereby avoiding the use of means of physical restraint.

141. That said, the delegation noted widespread use of full or even very high dosages of psychotropic medication for the purpose of controlling the behaviour of residents, including residents who did not have a psychiatric diagnosis<sup>96</sup>.

The CPT acknowledges that chemical restraint may be helpful and even necessary in certain cases. However, any resort to such kind of restraint should be accompanied by certain safeguards.

In this regard, the delegation noted that instances of chemical restraint were usually not recorded in the central restraint register and not notified to the residents' representative. When this issue was discussed with the psychiatrist of the nursing centre, he indicated that, in his view, the *HeimAufG* was somewhat unclear regarding the use of chemical restraint, since the law did not specify the circumstances under which instances of chemical restraint constituted a measure restricting the freedom of a person within the meaning of Section 3, paragraph 1, of the *HeimAufG*. Therefore, the management of the nursing centre had recently consulted a judge of the competent district court on this matter. The judge had apparently advised the management to notify instances of chemical restraint to the residents' representative only in those cases where the effects of psychotropic drugs were of such a severity that the person concerned was no longer able to "change his/her physical location" (at least for a certain period of time). In other words, even if residents received high dosages of psychoactive medication for the purpose of controlling their behaviour on a more or less daily basis, and that for prolonged periods, the *HeimAufG* would not apply, as long as the residents concerned were capable of moving somehow from one location to another.

In the CPT's view, such a restrictive interpretation of the scope of the *HeimAufG* is highly questionable, since it deprives the residents concerned of important legal safeguards. Most importantly, even severe forms of chemical restraint cannot be challenged before the court (see paragraph 145).

142. On the other hand, the CPT noted that several regional courts in Austria had taken decisions which considerably differ from the opinion expressed by the above-mentioned judge.

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<sup>96</sup> By way of example, a female resident in the Schutzensengel Unit received, on a daily basis, zuklopentixol (Cisordinol) 60 mg, clozapine (Leponex) 300 mg and levomepromazine (Nozinan) 150 mg daily, three different neuroleptics, each in very high doses. A male resident in the same unit, who had the diagnosis "medium grade learning disability", had attacked other residents and a psychologist, and was especially aggressive towards newcomers. He was reported to become more aggressive when manual holding was used, and also when attempts had been made to reduce the prescribed doses. He received every day the neuroleptics levomepromazine 150 mg x 3 and risperidone 4 mg x 2, in addition to depakine 500 mg x 2 (antiepileptic mood stabilizer), and the antidepressants citalopram 60 mg and mirtazapine 30 mg.

By way of example, one court<sup>97</sup> had ruled that “severely sedating means are to be considered a restriction of a person’s freedom [within the meaning of Section 3, paragraph 1, of the *HeimAufG*] even in those cases where they do not entail a total immobilisation of a person, but aim at preventing a person from walking around in a restless manner”.

Another regional court<sup>98</sup> concluded: “If the sedative drug Psychopax is being used for the purpose of reducing a psycho-motoric state of agitation, in order to prevent that a resident endangers him/herself or others by throwing around objects and by physical assaults, the sedation is not only an unavoidable side effect, but the main purpose of the medication. The administration of the medication therefore constitutes a measure restricting the freedom of a person [within the meaning of Section 3, paragraph 1, of the *HeimAufG*]”.

143. Moreover, the CPT considers that at least in those cases where residents receive full dosages of psychoactive medication on an ongoing basis, the general legal provisions regarding “severe medical interventions” (*schwerwiegende medizinische Behandlungen*), as contained in the Civil Code (*ABGB*), apply.

Section 283, paragraph 2, of the *ABGB* stipulates that, whenever disabled persons who are not able to give a valid consent (*einsichts- und urteilsfähig*), they may only be subjected to a severe medical intervention, if the latter has been approved by the guardian and if another doctor, who is independent of the treating doctor, has issued a medical attestation certifying that the disabled person concerned is not capable of giving a valid consent and that the intervention is necessary for the welfare of the person concerned. Further, in all cases where a medical attestation by an independent doctor is not available or the disabled person displays signs (*zu erkennen gibt*) that he/she opposes the intervention, a court decision is required.

As far as the delegation could ascertain, the above-mentioned provision of the *ABGB* and the related safeguards were not being applied at the Johannes von Gott Nursing Centre.

**144. The CPT would like to receive the Austrian authorities’ comments on the remarks made in paragraphs 141 to 143.**

145. The *HeimAufG* contains various important safeguards concerning the use of measures which fall within the scope of Section 3, paragraph 1, of the *HeimAufG* (“means of restraint”):

Firstly, the law determines the persons who are entitled to order such measures. As a rule, decisions are to be taken by the chief doctor, or (in establishments which do not have doctors) by the chief nurse, or (in establishments with neither doctors nor nurses) by the chief educator. Further, whenever such measures are intended to be applied for more than 24 hours, the authorisation of a doctor is required, and means of chemical restraint can only be ordered by a doctor (irrespective of the frequency/duration).

Secondly, all measures under Section 3, paragraph 1, of the *HeimAufG* are subject to judicial review, at the request of the resident concerned, his/her representative or person of confidence, or the director of the institution.

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<sup>97</sup> Regional Court (*Landesgericht*) Steyr, 1 R 194/07h dated 17 July 2007.

<sup>98</sup> Regional Court Ried, 6 R 115/07i dated 3 May 2007.



Thirdly, the management of the institution is under a legal obligation to immediately notify every resort to measures under Section 3, paragraph 1, of the *HeimAufG* to the competent residents representative<sup>99</sup>. Consequently, the residents' representative<sup>100</sup> becomes automatically a legal representative of the person concerned, irrespective of whether or not the latter is already represented by a lawyer or guardian. The residents' representative is entitled to visit the establishment at any time, without prior notice, and has unrestricted access to all relevant medical information about the resident concerned.

Fourthly, the judicial review procedure<sup>101</sup> of the measure applied follows the same rules as the involuntary placement procedure under the *UbG*. In particular, the court is under a legal obligation to consult an independent expert. Further, the court can declare a measure under the *HeimAufG* admissible only for a limited period of time<sup>102</sup>. The resident, his/her representative or a person of confidence may lodge an appeal against the court decision to the appellate court (*Rekursgericht*).

146. From consultations with staff and the residents' representative at the Johannes von Gott Nursing Centre, as well as the examination of individual files, it transpired that the above-mentioned legal requirements were fully met in practice as regards measures which clearly fell within the scope of Section 3, paragraph 1.

147. The delegation gained a favourable impression of the services provided by the residents' representative at the Johannes von Gott Nursing Centre, who appeared to be doing his utmost to defend the interests of residents, despite the limited resources available. As a matter of fact, he had to cover residents not only of the Johannes von Nursing Centre, but also those in 63 other social welfare institutions in Styria. Thus, he could pay a regular visit to the centre only once every 14 days. He also informed the delegation that, due to his heavy workload, he was not in the position to follow up promptly all new notifications of instances where means of restraint were being applied. As a matter of policy, he tried to prioritise his interventions, the aim being to intervene within 24 hours whenever more intrusive ("*körpernahe*") measures were applied.

During the end-of-visit talks, representatives of the Federal Ministry of Justice acknowledged that, throughout Austria, associations employing residents' representatives in Austria were understaffed. Apparently, at the time when the *HeimAufG* entered into force, the amount of work involved for residents' representatives and the financial implications of the newly-established procedures were underestimated. For that reason, the annual budget of the Federal Ministry of Justice for the implementation of the *HeimAufG* had been insufficient in recent years<sup>103</sup>.

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<sup>99</sup> See Section 7, paragraph 1, of the *HeimAufG*. The notification to the residents' representative constitutes a material requirement for the legality of the measure applied.

<sup>100</sup> Formally speaking, it is the association of patients representatives who is the legal representative.

<sup>101</sup> Sections 11 to 19 of the *HeimAufG*. Within seven days, a judge has to come to the establishment and hear the resident concerned (*Erstanhörung*). Within the following 14 days, an oral court hearing (*mündliche Verhandlung*) has to take place, in the presence of the resident, the resident's representative, an independent expert, any person of confidence and the director of the establishment. Both hearings can also be combined.

<sup>102</sup> Up to six months in the case of protective measures which are (regularly) applied on a long-term basis. Upon expiry of the deadline initially set by the court, the latter can prolong the application of a measure for renewable periods of up to one year at a time. For every prolongation, the whole review procedure has to be repeated (preliminary hearing and oral court hearing).

<sup>103</sup> The financing of the system of residents' representatives falls under the exclusive competence of the Federal Ministry of Justice. In total, there are more than 1,500 establishments throughout Austria where the *HeimAufG* applies.

**The CPT recommends that the Austrian authorities carry out a nationwide assessment of the needs of associations employing residents' representatives and adjust the allocation of financial means to them accordingly.**

148. As a final remark of a more general nature, the CPT wishes to express its serious misgivings regarding the legal possibility for means of mechanical restraint to be applied without any involvement of a doctor<sup>104</sup> (for a period of up to 24 hours, in social welfare establishments with no medical staff). In the CPT's view, any resort to such measures should – as a matter of principle – always be expressly ordered by a doctor or immediately be brought to the attention of a doctor. **The Committee recommends that this precept be implemented in practice in all social welfare institutions in Austria.**

## 6. Safeguards

- a. initial placement of a civil nature and discharge procedures

149. The procedure for ordering involuntary placement in a psychiatric hospital should offer guarantees of independence and impartiality as well as of objective medical expertise. Leaving aside emergency cases, the formal decision to place a person in a psychiatric hospital should always be based on the opinion of at least one doctor with qualifications in psychiatry, and preferably two, and the actual placement decision should be taken by a different body from the one that recommended it.

150. The relevant provisions of the *UbG* (Sections 8 to 29) fully reflect these requirements. A person can only be admitted to a psychiatric hospital on an involuntary basis (*Unterbringung ohne Verlangen*), if a police doctor or other public health doctor has examined the person concerned and has certified that the conditions for involuntary placement have been met (see paragraph 119)<sup>105</sup>.

Upon admission to a psychiatric hospital, the person concerned shall be examined separately by two psychiatrists (including one senior psychiatrist). Only if both psychiatrists conclude that the requirements for involuntary placement have been met can the person concerned be kept in the hospital. The senior psychiatrist shall inform the patient as soon as possible of the reasons for the involuntary placement and shall notify without delay the court and the patients' advocate.

Patients' advocates are appointed by the competent court for all involuntary patients within a given district<sup>106</sup>. They become *ex lege* legal representatives of the patients concerned (regardless of whether or not the legal capacity of the patients has been restricted/divested), and they are entrusted with the provision of legal counselling free of charge and the support/representation of involuntary patients during their stay in a psychiatric hospital. In cases where a patient is represented by his/her own lawyer, there is no involvement by a patients' advocate.

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<sup>104</sup> Section 5 of the *HeimAufG*.

<sup>105</sup> In emergency cases (*Gefahr im Verzug*), a person can be taken directly to a psychiatric hospital by the police, without prior examination by a police or other public health doctor.

<sup>106</sup> See Sections 13 to 17 of the *UbG*.

In the context of the judicial placement procedure, a judge shall conduct, within four days of receipt of the notification, an initial hearing (*Erstanhörung*) at the hospital regarding the patient concerned. For this purpose, the court may request the presence of a psychiatrist who is independent of the hospital. If the court concludes that the requirements for involuntary placement have been met, it can declare the placement provisionally admissible until an oral court hearing (*mündliche Verhandlung*) takes place (within 14 days)<sup>107</sup>. The law allows the initial hearing and the oral court hearing to take place at the same time.

During the oral court hearing, the presence of at least one independent psychiatrist is mandatory<sup>108</sup>, who will formulate at the hearing a recommendation as to whether involuntary placement should continue. At the end of the oral court hearing, in the presence of the patient concerned, the judge shall take a decision on the spot on the involuntary placement and determine a time limit for which the placement is valid (a maximum of three months). The judge also has to explain to the patient the reasons for his/her decision. A written court decision shall be issued within eight days and shall be delivered to the patient and his/her representative (a signature is required to confirm receipt). The court decision can be challenged before the appellate court (*Rekursgericht*) by the patient, his/her representative, spouse or first-degree relatives (within 14 days of delivery of the written court decision).

A subsequent prolongation is possible for a period of six months<sup>109</sup>. After one year, the involuntary placement may be extended by renewable periods of one year at a time. In such cases, the court is under a legal obligation to consult two psychiatric experts who have not previously been involved in the procedure.

151. From the examination of individual patients' files, consultations with patients, patients' advocates and medical staff, as well as attendance at several court hearings on the spot by members of the delegation, it transpired that the above-mentioned legal requirements were fully met in practice at the Sigmund Freud Psychiatric Hospital.

The delegation also gained a generally favourable impression of the work of the patients' advocates in the hospital (there were ten advocates sharing seven full-time posts).

152. In one of the open units of the Sigmund Freud Hospital, there was a group of some 15 long-term patients, who were classified as "voluntary" patients, but who were in fact not allowed to leave the hospital. The delegation was informed that these patients were being held there due to a lack of places in appropriate social welfare institutions outside the hospital. Therefore, these patients were *de facto* deprived of their liberty, without benefiting from the legal safeguards applicable to involuntary patients. **The CPT recommends that the legal status of the above-mentioned patients be reviewed, in accordance with the applicable legislation.**

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<sup>107</sup> This decision is not subject to appeal.

<sup>108</sup> If requested by the patient concerned or his/her representative, the court is under a legal obligation to consult a second independent psychiatrist.

<sup>109</sup> For every prolongation of a placement order, the whole procedure has to start from the beginning (i.e. new initial hearing and oral court hearing).

b. safeguards during the stay in psychiatric/social welfare establishments

153. In both establishments visited, patients/residents were informed orally and in writing about the internal rules and the daily routine. In addition, specific information sheets were displayed on notice boards.

154. An effective complaints procedure is a basic safeguard against ill-treatment in psychiatric/social welfare establishments. Specific arrangements should exist enabling patients/residents to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

At the Sigmund Freud Psychiatric Hospital, patients could address themselves to one of the patients' advocates who were present in the hospital every day. Similarly, at the Johannes von Gott Nursing Centre, the residents representative acted as a contact person for complaints by residents<sup>110</sup>.

In addition, in both establishments visited, patients/residents could lodge a complaint with the Ombudsoffice for Patients and Care (*Patienten- und Pflegeombudsschaft*) of the Land of Styria<sup>111</sup>, or to the Office of Ombudspersons (*Volksanwaltschaft*) at federal level.

155. The CPT has repeatedly stressed the importance it attaches to psychiatric/social welfare establishments being visited on a regular basis by an independent outside body responsible for the inspection of patients'/residents' care<sup>112</sup>. In order to be fully effective, such supervision should also include unannounced visits, and the authority concerned should be empowered to interview patients/residents in private and have access to all necessary documentation. Further, the management of all psychiatric/social welfare establishments should be duly informed of the results of any inspections carried out on their premises.

156. Like any other hospital, the Sigmund Freud Psychiatric Hospital is supervised by the regional health authority (*Landessanitätsbehörde*) and can therefore be inspected by the latter authority. However, according to the management of the hospital, no such inspections have been carried out so far. It should also be added that, from an organisational perspective, the regional health authority can hardly be considered to be truly independent of the hospital<sup>113</sup>.

At the Johannes von Gott Nursing Centre, the delegation was informed that the centre was occasionally inspected by officials of the district authority (*Bezirksverwaltungsbehörde*), on behalf of the supervisory regional authority (*Heimaufsicht*).

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<sup>110</sup> According to Section 9, paragraph 3, of the *HeimAufG*, the residents' representative is entitled to forward complaints or other relevant information to the competent external complaints bodies.

<sup>111</sup> The Ombudsman's Office was set up in 2003 on the basis of a specific regional law (*Landesgesetz*) of Styria dated 13 May 2003. According to this law, the ombudsperson is appointed, for a renewable period of five years, by members of the regional government (*Landesregierung*) on the basis of an external competition. Section 3, paragraph 6, of the law stipulates that, in exercising his/her functions, an ombudsperson is independent (*weisungsfrei*). Similar institutions have been established in other Länder in Austria.

<sup>112</sup> Cf., most recently, CPT/Inf (2003) 20, paragraph 150.

<sup>113</sup> The Sigmund Freud Psychiatric Hospital is administered by a private law structure (*Krankenanstaltengesellschaft mit beschränkter Haftung*), which is 100% owned by the Land of Styria.

However, in practice, visits of the *Heimaufsicht* were said to focus mainly on the implementation of hygiene standards and contacts between inspecting officials and residents appeared to be very rare. Further, such visits were always announced in advance.

More generally, the CPT wishes to recall that a number of other social welfare institutions in Styria (and indeed in all Länder in Austria) are owned and directly managed by the relevant regional authorities. In such cases, one and the same authority is responsible for the management and supervision of the social welfare institutions concerned.

**157. The CPT recommends that the Austrian authorities take steps to ensure that all psychiatric/social welfare establishments in Austria are visited on a regular basis by a visiting commission or another independent outside body, taking into account the precepts set out in paragraph 155.**

158. At both establishments visited, the existing arrangements for contact with the outside world were satisfactory. Patients/residents were able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends.



## **APPENDIX I**

### **LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **Police custody**

#### **Ill-treatment**

##### recommendations

- police officers throughout Austria to be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than that strictly necessary is to be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for striking them (paragraph 13).

##### comments

- the CPT encourages the Austrian authorities to introduce as soon as possible the offence of torture into the Penal Code, in accordance with Austria's international obligations (paragraph 17).

##### requests of information

- the outcome of the disciplinary procedure against the police officers involved in the ill-treatment of Mr Bakary J. (paragraph 16).

#### **Investigations of complaints of police ill-treatment**

##### comments

- the Austrian authorities are invited to review the current system of investigating allegations of police ill-treatment, in the light of the remarks made in paragraph 19; in this connection, the relevant standards of the Committee, as set out in its 14<sup>th</sup> General Report<sup>114</sup>, should be taken into account (paragraph 19).

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<sup>114</sup> See CPT/Inf (2004) 28, paragraphs 25 to 42.

## **Procedural safeguards against ill-treatment**

### recommendations

- the Austrian authorities to take the necessary steps to ensure that the right to talk to a lawyer in private and to have a lawyer present during questioning is never denied to persons deprived of their liberty by the police (paragraph 22);
- the Austrian authorities to develop a fully-fledged legal aid system in the context of police custody, so as to ensure that persons who are not in a position to pay for a lawyer can effectively benefit, if they so wish, from the assistance of a lawyer throughout their police custody (including during any questioning by the police) (paragraph 23);
- steps to be taken to ensure that, other than in exceptional circumstances when the matter is urgent, whenever a detained person has made a request to have a lawyer present, police officers delay the beginning of the questioning until the arrival of the lawyer. The internal instruction referred to in paragraph 24 should be amended accordingly (paragraph 24);
- the Austrian authorities to take the necessary measures to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear oral information at the very outset, and supplemented at the earliest opportunity (that is, immediately upon their arrival on police premises) by the provision of the information sheet on the rights of detained persons. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights, and they should also be given a copy of the information sheet (paragraph 26);
- the Austrian authorities to take steps without delay to ensure that detained juveniles are not subjected to police questioning without the benefit of a trusted person and/or a lawyer being present (paragraph 28);
- a specific version of the information sheet, setting out the particular position of detained juveniles (and young adults), to be developed and given to all such persons taken into custody. This information sheet should be made easy to understand – worded in a straightforward and non-legalistic manner – and should be available in a variety of languages (paragraph 29);
- steps to be taken to ensure that a record is made and kept in every police establishment in Austria of every instance of a person being deprived of his/her liberty on the premises of that establishment (paragraph 31).



comments

- it would be desirable for the form received by detained persons before questioning by the police (*Vernehmungsprotokoll*) to be formulated in a neutral manner, instead of making the assumption that the person concerned will choose not to contact a lawyer or to request the presence of a lawyer (paragraph 27);
- steps should be taken to ensure that the relevant parts of the above-mentioned form which set out the procedural rights of criminal suspects are signed by the person concerned at the outset of police questioning (paragraph 27);
- steps should be taken to remedy the shortcomings observed in most of the establishments visited regarding the keeping of detention reports (*Haftberichte*) (paragraph 30).

**Inspections of police establishments**

requests of information

- detailed information on the setting-up of a fully independent monitoring body under the auspices of the Office of Ombudspersons (*Volksanwaltschaft*), which will in future act as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture (OPCAT) (paragraph 32).

**Police detention centres (with particular emphasis on detention pending deportation - Schubhaft)**

**Preliminary remarks**

requests for information

- detailed information on the new detention centre for foreigners in Leoben (rough plan of the establishment, envisaged out-of-cell activities, etc.), as well as a timetable for the full implementation of the construction plan (paragraph 36).

**Conditions of detention**

recommendations

- the Austrian authorities to implement an open regime throughout the *PAZ* in Vienna-Hernalser Gürtel without delay, if necessary by dividing the existing detention areas into smaller sections (paragraph 39);
- the Austrian authorities to review their policy of allocating work to detainees at the *PAZ* in Vienna-Hernalser Gürtel, with a view to offering work as far as possible also to foreign nationals (in particular, those who have already been detained for prolonged periods and have displayed good behaviour) (paragraph 41);
- the Austrian authorities to take steps to ensure that all detainees have adequate supplies of personal hygiene products throughout their stay at the *PAZ* visited and, where appropriate, in other *PAZ* in Austria (paragraph 43).

comments

- steps should be taken by to ensure that the *PAZ* in Klagenfurt is supplied with a wider range of reading material, in the languages most frequently spoken by immigration detainees (paragraph 42);
- the detention areas at the *PAZ* in Vienna-Hernalser Gürtel were rather dingy and needed to be spruced up; this could also provide an opportunity to create some additional jobs for detainees (paragraph 43);
- steps should be taken at the *PAZ* in Klagenfurt to fit cells (in particular, those used for the “closed regime”) with electric sockets (paragraph 44).

requests of information

- comments of the Austrian authorities on the fact that, at the *PAZ* in Vienna-Hernalser Gürtel, all foreign nationals met by the delegation claimed that they could go outside for at most one hour per day (and on occasion even less), despite the assurances given by the Austrian authorities that all foreign nationals in that establishment would benefit from two hours of outdoor exercise per day (paragraph 40).

**Health care**

recommendations

- 24-hour cover by a qualified nurse to be introduced at the *PAZ* in Vienna-Hernalser Gürtel as a matter of priority (paragraph 45);
- the Austrian authorities to conduct a thorough review of the health-care services in all *PAZ* in Austria. In particular, steps should be taken to ensure that:
  - newly-admitted detainees are systematically offered a screening for transmissible diseases (in addition to an X-ray);
  - the record drawn up after a medical examination of a detainee, whether newly-arrived or not, contains:
    - (i) a full account of objective medical findings based on a thorough examination;
    - (ii) a full account of statements made by the detainee concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;
    - (iii) the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings;
  - the above-mentioned record is made available to the detainee;
  - whenever doctors are unable to communicate with detainees during medical examinations/consultations due to language problems, the persons concerned benefit from the services of a professional interpreter;
  - medical confidentiality is observed in the same way as in the outside community; in particular, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of sight of police officers; detainees' files should not be accessible to non-medical staff but should be the responsibility of the doctor (paragraph 52);
- the current system to be revised so as to ensure as soon as possible in all *PAZ* the regular presence of doctors who are independent of the police (paragraph 52).

comments

- it would be desirable that the current system in *PAZ* of delegating nursing functions to police officers with basic first-aid training be discontinued. Instead, regular visits by a qualified nurse should be arranged, the length of time depending on the needs. The nurse could then also be responsible for the distribution of medicines (paragraph 45).

**Staff**

comments

- staff responsible for the custody of immigration detainees (and administrative detainees) should be in a different and separate service from law enforcement officials and receive specialised training (more akin to prison service training). Clearly, additional language training constitutes an essential component (paragraph 53);
- appropriate steps should be taken at the *PAZ* in Vienna-Hernalser Gürtel to avoid a repetition of situations described in paragraph 54 regarding the behaviour of administrative detainees towards immigration detainees (paragraph 54).

**Contacts with the outside world**

recommendations

- the visiting facilities at the *PAZ* visited and, where appropriate, in other *PAZ* in Austria, to be modified, in order to ensure that visits take place, as a rule, under more open conditions (paragraph 56).

comments

- it would be desirable that all *PAZ* in Austria follow the example of the *PAZ* in Vienna-Hernalser Gürtel to double the visit entitlement for immigration detainees from one to two half-hour visits per week (paragraph 55);
- the Austrian authorities are invited to increase the entitlement to telephone calls for foreign nationals subject to the closed regime at the *PAZ* in Innsbruck and Klagenfurt and, where appropriate, in other *PAZ* in Austria (paragraph 57);
- steps should be taken to increase the number of telephones at the *PAZ* in Vienna-Hernalser Gürtel (paragraph 58).

## **Segregation cells**

### recommendations

- the Austrian authorities to take steps to ensure that at the *PAZ* in Klagenfurt:
  - conditions in the segregation cells are improved, in the light of the above remarks made in paragraph 59;
  - detained persons placed in segregation cells are guaranteed at least one hour of outdoor exercise per day (paragraph 61);
- a separate register to be established for the use of the segregation cells at the *PAZ* in Klagenfurt and Wiener Neustadt, setting out the full details of the persons held in them: date and time of entering and leaving, grounds for placement, etc. (paragraph 61).

## **Information and assistance to foreign nationals**

### recommendations

- the Austrian authorities to take the necessary steps to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals these services should be provided free of charge (paragraph 62);
- steps to be taken to ensure that foreign nationals receive a written translation in their own language of the conclusions (*Spruch*) of decisions of the aliens police, as well as information on the modalities and deadlines to appeal against such decisions (*Rechtsmittelbelehrung*) (paragraph 62).

## **Detention review procedures**

### comments

- in the CPT's view, immigration detainees who have lodged an appeal against their detention should, as a rule, be heard in person by the Independent Administrative Senate (*UVS*). This will also provide an opportunity for them to lodge a complaint in case they have been the subject of police ill-treatment (paragraph 63);
- the Austrian authorities are invited to shorten the waiting period until the first *ex officio* review by the *UVS* of any prolonged detention pending deportation (paragraph 63).

## **Prisons**

### **Preliminary remarks**

#### requests for information

- detailed information on the pilot project on electronic surveillance of released prisoners referred to in paragraph 68 (paragraph 68).

### **Staff-related issues**

#### recommendations

- the Austrian authorities to take measures to change the staff shift system at Innsbruck and Vienna-Josefstadt Prisons, and, where appropriate, in other prisons in Austria, in the light of the remarks made in paragraph 71; this will require increasing the overall staffing levels in these prisons (paragraph 71);
- the overall staffing levels at Gerasdorf Prison to be increased (paragraph 72);
- special training to be organised for prison officers assigned to work with juvenile prisoners at the establishments visited and, where appropriate, in other prisons in Austria (paragraph 73).

#### comments

- the Austrian authorities are invited to consider adopting measures to favour the deployment of female staff throughout the Austrian prison system; in particular, mixed-gender staffing should be ensured in sections for juveniles (paragraph 74).

### **Conditions of detention of adult prisoners at Innsbruck Prison**

#### recommendations

- the Austrian authorities to significantly improve the programme of activities offered to prisoners at Innsbruck Prison; the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association) (paragraph 78).

comments

- steps should be taken to equip the outdoor exercise areas at Innsbruck Prison with shelter against inclement weather as well as with benches or seats (paragraph 79).

**Conditions of detention of juveniles in the prisons visited**

recommendations

- the Austrian authorities to develop the regime for juvenile prisoners at Innsbruck, Klagenfurt and Vienna-Josefstadt Prisons, so as to ensure that such prisoners enjoy during the week out-of-cell activities throughout the day, up until the early evening (paragraph 89);
- the activities offered to juveniles at Klagenfurt, Linz and Vienna-Josefstadt Prisons to be reviewed, in the light of the remarks made in paragraphs 86 to 88. All juvenile prisoners should be engaged in purposeful activities of a varied nature (work, preferably of a vocational value; education; sports; recreation/association, etc.) (paragraph 89);
- immediate steps to be taken at Innsbruck, Klagenfurt, Linz and Vienna-Josefstadt Prisons to provide juvenile prisoners with increased out-of-cell time during weekends (paragraph 89).

comments

- cells measuring 7.5 m<sup>2</sup> should be used for single occupancy only (paragraph 80);
- the Austrian authorities are invited to allow more frequent showers to juvenile prisoners (in particular female juveniles) in all the establishments visited, in the light of Rule 65.3 of the European Rules for juvenile offenders subject to sanctions or measures (paragraph 82);
- steps should be taken at Gerasdorf and Vienna-Josefstadt Prisons to review the provision of food to juveniles, to ensure that the food is adequate for this category of prisoner in terms of both quantity and quality (paragraph 83).

requests for information

- comments of the Austrian authorities on the allegations received from juveniles at Linz Prison regarding difficulties in having access to television sets (paragraph 81);
- detailed information (including a timetable) on the implementation of the plans to construct a new institution in Vienna for juveniles deprived of their liberty (paragraph 91).

## **Health care**

### recommendations

- steps to be taken to maintain the regular presence of a fully qualified specialist in child/adolescent psychiatry at Vienna-Josefstadt Prison (paragraph 92);
- the health-care staffing levels at Gerasdorf and Innsbruck Prisons to be reviewed as a matter of priority. More specifically, steps should be taken to ensure that:
  - the hours of attendance of the general practitioner at Gerasdorf Prison are increased, preferably to the equivalent of a half-time post, and that there is the equivalent of at least one full-time general practitioner at Innsbruck Prison;
  - at least one additional part-time psychiatrist is recruited at Gerasdorf Prison, preferably specialised in child and adolescent psychiatry;
  - there is continuity of psychiatric care for prisoners at Innsbruck Prison;
  - the nursing cover at Gerasdorf is significantly increased; this should also enable a nurse to be present on every day of the week, including weekends;
  - there is cover by a qualified nurse at Innsbruck Prison, not only during the week but also on weekends;
  - at both Gerasdorf and Innsbruck Prisons, someone competent to provide first aid, preferably with a recognised nursing qualification, is always present on the premises, including at night(paragraph 94);
- the Austrian authorities to take the necessary measures in all prisons to ensure that medical orderlies cease to carry out custodial functions, with the long-term objective of abolishing the practice of involving prison officers in the performance of health-care duties (paragraph 95);
- steps to be taken at Gerasdorf and Innsbruck Prisons to ensure that newly-arrived prisoners are properly interviewed and physically examined by a medical doctor (or a fully qualified nurse reporting to a doctor) as soon as possible after their admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission (paragraph 98);
- steps to be taken at Gerasdorf and Innsbruck Prisons to ensure that medical records are properly completed and maintained (paragraph 99);
- the Austrian authorities to review, as a matter of urgency, the situation as regards the widespread prescription of psychotropic medication for prisoners at Innsbruck Prison (paragraph 100).



### comments

- the organisation of health-care services in prison should, as a matter of principle, be entrusted to qualified health-care staff. This responsibility at Gerasdorf Prison might well be given to the general practitioner once he begins to work on a half-time basis (paragraph 96);
- steps should be taken to improve the level of hygiene in Unit Z4 of the health-care centre at Vienna-Josefstadt Prison (paragraph 97);
- steps should be taken to reinforce the psychological services at Innsbruck Prison (paragraph 101).

### **Other issues**

### recommendations

- the Austrian authorities to reduce the maximum possible period of solitary confinement as a punishment in respect of juvenile prisoners. Further, whenever juveniles are subject to such a sanction, they should be guaranteed appropriate human contact (paragraph 102);
- the rules governing disciplinary sanctions to be revised so as to ensure that disciplinary punishment of prisoners does not involve a prohibition of family contact and that any restrictions on family contact are imposed only where the offence relates to such contact (paragraph 103);
- the deficiencies in relation to disciplinary procedures described in paragraph 106 to be rectified in all prisons in Austria (if necessary, by amending the relevant legislation) (paragraph 106);
- the role of prison doctors in relation to disciplinary matters to be reviewed. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the CPT in its 15<sup>th</sup> General Report (see paragraph 53 of CPT/Inf (2005) 17) (paragraph 107);
- the arrangements for visits at Innsbruck and Vienna-Josefstadt Prisons to be revised in order to ensure that, as a rule, visits take place under open conditions (paragraph 109);
- steps to be taken to ensure that whenever doctors are unable to communicate with prisoners during medical examinations/consultations due to language problems, the persons concerned benefit from the services of a professional interpreter (paragraph 111);
- measures to be taken at Innsbruck Prison to ensure that prisoners placed in a segregation cell benefit from their daily outdoor exercise entitlement (paragraph 112);
- the Austrian authorities to review the current policy on the carrying of firearms by prison staff inside detention areas of prisons (paragraph 114);

- if it is considered necessary for prison officers to carry truncheons, the truncheons to be hidden from view (paragraph 115).

comments

- under no circumstances should the maximum period of solitary confinement as a punishment for adult prisoners be prolonged (due to additional disciplinary sanctions) without there being an interruption (paragraph 102);
- the Austrian authorities are invited to introduce language courses for selected members of prison staff (paragraph 110);
- steps should be taken at Innsbruck Prison to ensure that the special forms for recording placements of prisoners in a segregation cell are always properly filled out (paragraph 112);
- steps should be taken at Innsbruck Prison to ensure that prisoners who are considered to be at risk (e.g. prisoners with suicidal tendencies) and are placed in a segregation cell benefit from adequate human contact (in addition to CCTV monitoring) (paragraph 113);
- pepper spray should not form part of the standard equipment of a prison officer and, as a rule, should not be used in confined spaces (paragraph 116).

requests for information

- comments of the Austrian authorities on the practice observed at Vienna-Josefstadt Prison of imposing the disciplinary sanction of withdrawal of a television set also in respect of prisoners accommodated in multi-occupancy cells and that often without a formal procedure (paragraph 105);
- detailed information on the implementation of the Austrian authorities' plan to reintroduce electric stun devices in prisons (paragraph 117).

## **Psychiatric and social welfare establishments**

### **Living conditions**

#### recommendations

- steps to be taken to improve material conditions at the Sigmund Freud Psychiatric Hospital, in the light of the remarks made in paragraph 123 (paragraph 123).

#### requests for information

- updated information on the plan to refurbish certain units of the Johannes von Gott Nursing Centre (paragraph 124);
- confirmation that the measures indicated in the Austrian authorities' letter of 23 June 2009 regarding the Johannes von Gott Nursing Centre have been fully implemented (paragraph 126).

### **Staff**

#### recommendations

- the Austrian authorities to redouble their efforts to recruit a second psychiatrist on a full-time basis at the Johannes von Gott Nursing Centre (paragraph 128).

### **Treatment**

#### comments

- every competent patient, whether voluntary or involuntary, should be fully informed about the treatment which it is intended to prescribe and given the opportunity to refuse treatment or any other medical intervention (paragraph 130);
- the range and frequency of therapeutic activities could well be improved in some of the units at the Johannes von Gott Nursing Centre (e.g. Schutzensengel) (paragraph 131).

#### requests for information

- comments of the Austrian authorities on the information received by the delegation at the Johannes von Gott Nursing Centre that no autopsy had been performed in a number of death cases, even though the actual cause of death remained somewhat unclear, and that, in those cases when an autopsy had been carried out, the management of the establishment was usually not informed of the outcome (paragraph 132).

## **Means of restraint**

### recommendations

- net beds to be withdrawn from service as a tool for managing agitated patients/residents in all psychiatric/social welfare establishments in Austria (paragraph 134);
- the practice of attaching a patient to his/her bed, whilst naked to be ended immediately (paragraph 136);
- at the Sigmund Freud Psychiatric Hospital and, where appropriate, in other psychiatric hospitals and social welfare institutions in Austria, patients subjected to *Fixierung* should always be under a continuous and direct supervision in the form of a *Sitzwache* by a member of the health-care staff, who can offer immediate human contact with the patient concerned and reduce his/her anxiety (paragraph 137);
- immediate steps to be taken to ensure that every patient at the Sigmund Freud Psychiatric Hospital is provided with a standard hospital bed (paragraph 138);
- the Austrian authorities to carry out a nationwide assessment of the needs of associations employing residents' representatives and to adjust the allocation of financial means to them accordingly (paragraph 147);
- in all social welfare institutions in Austria, any resort to means of mechanical restraint should – as a matter of principle – always be expressly ordered by a doctor or be immediately brought to the attention of a doctor (paragraph 148).

### comments

- when patients are subjected to means of mechanical restraint, this should as a rule take place out of the sight of other patients (paragraph 135);
- the recently-introduced system of monitoring resort to means of restraint at the Sigmund Freud Psychiatric Hospital should be further developed by creating a central register containing detailed information on each instance of recourse to means of restraint, covering the type of restraint used, the reasons for resorting to it, and the duration of its use. In this register, a record should also be kept of all instances of chemical restraint (paragraph 139).

### requests for information

- comments of the Austrian authorities on the remarks made in paragraphs 141 to 143 concerning chemical restraint (paragraph 144).

## **Safeguards**

### recommendations

- the legal status of some 15 long-term patients of the Sigmund Freud Psychiatric Hospital referred to in paragraph 152 to be reviewed, in accordance with the applicable legislation (paragraph 152);
- the Austrian authorities to take steps to ensure that all psychiatric/social welfare establishments in Austria are visited on a regular basis by a visiting commission or another independent outside body, taking into account the precepts set out in paragraph 155 (paragraph 155).



**APPENDIX II**

**LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. National authorities**

**Federal Chancellery**

Georg LIENBACHER Director General, Constitutional Service

Brigitte OHMS Head of Unit

**Federal Ministry of European and International Affairs**

Ferdinand TRAUTTMANSDORFF Ambassador, Legal Advisor

Engelbert THEUERMANN Head of Human Rights Department

Georg HEINDL Deputy Head of Human Rights Department

Martin BOTTA Human Rights Department

**Ministry of Justice**

Claudia BANDION-ORTNER Federal Minister of Justice

Wolfgang BOGENBERGER Director General

Georg KATHREIN Director General

Franz PLÖCHL Director General

Barbara GÖTH-FLEMMICH Head of Department

Robert JIROVSKY Head of Department

Wolfgang MORAVEC Head of Department

Christian PILNACEK Head of Department

Maria WAIS Head of Department

Karl DREXLER Head of Department

Peter PRECHTL Deputy Director

Josef BOSINA	Head of Staff Section “Penal System”
Karin DOTTER-SCHILLER	Deputy Head of Staff Section “Penal System”
Irene KÖCK	Staff Section “Penal System”
Georg STAWA	Department Pr. 3
Bernhard WERATSCHNIG	Department II.3

**Ministry of Interior**

Maria FEKTER	Federal Minister of the Interior
Herbert ANDERL	Director General ( <i>Generaldirektor für öffentliche Sicherheit</i> )
Mathias VOGL	Director General, Legal Affairs
Hilbert KARL	Head of Department
Berndt KÖRNER	Head of Department
Robert STRONDL	Head of Department
Walter GROSINGER	Head of Division
Walter RUSCHER	Department III/4
Albert GRASEL	Department II/1
Prof. Gerhart Klaus WIELINGER	Chairperson of the Human Rights Advisory Board ( <i>Menschenrechtsbeirat</i> )
Johanna ETEME	Head of the Office of the Human Rights Advisory Board

**Ministry of Health**

Alois STÖGER	Federal Minister of Health
Gerhard AIGNER	Head of Division
Sylvia FÜSZL	Head of Department



**B. Professional associations**

Austrian Bar Association (*Rechtsanwaltskammertag*)

**C. International Organisations**

Office of the United Nations High Commissioner for Refugees (UNHCR) in Vienna

**D. Non-governmental organisations**

Dachverband "Lebenswelt Heim"

Diakonie Österreich

SOS Mitmensch

Verein Menschenrechte Österreich

Verein für Sachwalterschaft und Patientenadvokatur.