

## **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 22 September to 1 October 2014**

The Austrian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2015) 35.

Strasbourg, 6 November 2015

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

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Strasbourg, 30 April 2015

Dear Ms Nguyen,

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 22 September to 1 October 2014. The report was adopted by the CPT at its 86<sup>th</sup> meeting, held from 3 to 6 March 2015.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold type in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, 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 and requests for information formulated in this report.

The CPT would ask, in the event of the response being forwarded in German, that it be accompanied by an English or French translation.

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

Yours sincerely,

Mykola Gnatovskyy  
President of the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

## EXECUTIVE SUMMARY

During its periodic visit to Austria, the CPT's delegation reviewed the measures taken by the Austrian authorities in response to various recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and the conditions under which irregular migrants were held in police detention centres. The delegation also examined various issues related to prisons, including the situation of juvenile prisoners and inmates subjected to court-ordered forensic placement (*Massnahmenvollzug*). In addition, it carried out a targeted visit to a psychiatric hospital in order to examine the use of means of restraint (*freiheitsbeschränkende Massnahmen*).

Throughout the visit, the delegation received very good co-operation from both the national authorities and staff at the establishments visited. However, at Otto Wagner Psychiatric Hospital, the delegation repeatedly faced major obstacles to gaining access to medical files and interviewing patients in private.

### *Police custody*

As was the case during the 2009 visit, the vast majority of detained persons interviewed by the delegation indicated that they had been treated correctly whilst in police custody. However, the delegation did receive several allegations of excessive use of force at the time of apprehension (such as kicks and/or punches after the person concerned had been brought under control); some allegations of excessive use of force by police officers were also received from psychiatric patients who had been transferred against their will to Otto Wagner Psychiatric Hospital. Further, a few allegations were received from detained persons that they had been subjected to physical ill-treatment or threats during police questioning.

The CPT stresses the need for the Austrian authorities to remain vigilant and to pursue their efforts to prevent police ill-treatment. In particular, it recommends that police officers throughout Austria be reminded, at regular intervals, that all forms of ill-treatment of persons deprived of their liberty are not acceptable and that no more force than is strictly necessary should be used when carrying out an apprehension. The CPT also recalls that 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. In this connection, the Committee expresses some doubts as to whether investigations carried out by investigators of the Federal Bureau of Anti-Corruption (BAK) – and even more so those carried out by criminal police officers of the regional police headquarters – against other police officers can be seen to be fully independent and impartial.

As regards the implementation in practice of the fundamental safeguards against ill-treatment (namely the right to have the fact of one's detention notified to a relative or another trusted person and the rights of access to a lawyer and to a doctor), the report gives a generally positive assessment. Nevertheless, the CPT expresses concern about the fact that certain long-standing recommendations regarding fundamental safeguards have still not been implemented. In particular, it is not acceptable that many juveniles (some as young as 14 years of age) are still subjected to police questioning and are requested to sign statements without the benefit of having either a lawyer or a trusted person present. Further, the situation had not improved as regards access to a lawyer for detained persons who could not afford to pay for a lawyer themselves. It remained the case that such persons could have a telephone conversation with a lawyer free of charge through the 24-hour hotline of the Bar Association, but could not usually benefit from the presence of a lawyer during police questioning.

In this regard, the CPT emphasises once again that allowing detained persons to benefit from the presence of a lawyer during police questioning is an important safeguard against ill-treatment; this safeguard should be available to all detained persons, irrespective of their financial situation. The Committee also reiterates previous recommendations aimed at guaranteeing the confidentiality of conversations between detained persons and their lawyers and ensuring that the right of detained persons to have a lawyer present during police questioning is never denied.

#### *Detention of foreign nationals under aliens legislation*

In the course of the visit, the CPT's delegation visited the new Detention Centre in Vordernberg and carried out a follow-up visit to the police detention centre (PAZ) at Vienna-Hernalser Gürtel, in order to review the situation of foreign nationals held in detention pending deportation (*Schubhaft*). In neither establishment did the delegation receive any allegations of ill-treatment by staff. On the contrary, all foreign nationals interviewed by the delegation spoke favourably about the manner in which they were treated by both custodial police officers and private security staff.

The CPT's delegation was very much impressed by the high standard of detention conditions at the Vordernberg Detention Centre for Foreigners, both in terms of material conditions and activities offered to foreign nationals. In particular, foreign nationals could move freely within their living unit throughout the day. Further, the Centre employed several caretakers (*Betreuer*) who organised a comprehensive activity programme (including sports activities, language classes, computer training and handicrafts).

The CPT welcomes the fact that the number of immigration detainees in the PAZ Hernalser Gürtel had drastically decreased since the 2009 visit and that foreign nationals were usually being held in the PAZ for short or even very short periods only. However, as in 2009, the majority of foreign nationals were being held under the closed regime in which regular out-of-cell activities were mostly limited to one hour of outdoor exercise per day. The CPT urges the Austrian authorities to ensure that, at the PAZ Hernalser Gürtel, the placement of foreign nationals in the open regime becomes the rule and the closed regime the exception.

The delegation gained a generally favourable impression of the health-care services at the Vordernberg Detention Centre. It is particularly praiseworthy that a qualified nurse was present around the clock and that inmates benefited from the daily presence of a psychologist. Further, the CPT welcomes the fact that, at the Vordernberg Detention Centre, the roles and tasks of treating doctor and public health doctor (*Amtsarzt*) have been separated and recommends that the same approach be followed at Vienna Hernalser Gürtel as well as in all other PAZ in Austria. The Committee also recommends that the current system of delegating nursing functions to police officers be discontinued (as has been done at the Vordernberg Detention Centre). In both establishments visited, newly-arrived foreign nationals were subjected to medical screening by a doctor within 24 hours. However, despite the specific recommendations made by the Committee after previous visits, there was no systematic screening for transmissible diseases other than tuberculosis and medical confidentiality was not respected (as police officers were usually present during medical examinations of inmates and had access to medical records).

In both establishments, interpreters were called in whenever needed. In addition, doctors could resort to a recently established telephone interpretation service with a pool of qualified interpreters. Further, newly-arrived foreign nationals were provided upon admission with information on the internal rules and the applicable procedures. In addition, foreign nationals benefited from the daily presence of various NGOs which provided legal counselling and social services.

The CPT also gained a positive impression of the existing arrangements at the Vordernberg Detention Centre for immigration detainees' contact with the outside world. However, despite the specific recommendation made after previous visits, foreign nationals held at the PAZ Hernalser Gürtel were still only allowed to receive closed visits. The Committee calls upon the Austrian authorities to ensure that foreign nationals are, as a rule, allowed to have visits under open conditions and that closed visits behind a screen are limited to exceptional cases.

### *Prisons*

The CPT welcomes the initiatives taken by the Austrian authorities in recent years to ensure that the overall prison population is kept within manageable levels. In particular, reference should be made to a system of house arrest of prisoners under electronic surveillance (introduced in 2010). It is also praiseworthy that the authorities have started to carry out a comprehensive reform of the detention of juveniles with a view to reducing resort to imprisonment to a strict minimum. Several pilot projects have been launched to this end, as a result of which the number of juveniles in prisons had significantly decreased in recent years (from 5% to 1% of the total prison population).

That said, it is a matter of serious concern that, despite a specific recommendation made after the 2009 visit, major staff shortages were once again observed in the prisons visited, which inevitably had a negative impact on prisoners' access to out-of-cell activities. It also remained the case that the "night shift" of prison officers started at around 3 p.m. (and even at noon on Fridays and weekends), with the result that most prisoners remained locked up in their cells until the following morning. Whilst acknowledging the efforts being made by the Austrian authorities to recruit additional staff, the CPT calls upon the authorities to carry out a complete overhaul of the staffing situation in Austrian prisons.

The CPT's delegation received hardly any allegations of physical ill-treatment of prisoners by staff in the prisons visited; indeed, the majority of the inmates interviewed spoke positively about the manner in which they were treated by custodial staff. Further, the information gathered during the visit suggested that inter-prisoner violence did not constitute a major problem in any of the establishments visited.

Material conditions of detention were on the whole satisfactory in all the prisons visited. It is also positive that the majority of adult sentenced prisoners in the establishments visited were provided with work and were offered a range of other organised out-of-cell activities (in this regard, the situation was particularly favourable at Graz-Karlau Prison). However, the regime for adult remand prisoners was not acceptable; for the vast majority of them, the only daily out-of-cell activity was an hour of outdoor exercise.

As regards juveniles, the delegation observed significant improvements at Vienna-Josefstadt Prison compared to the situation found in 2009. Indeed, all juveniles were offered a structured programme of purposeful activities and were thus able to spend most of the day outside their cells. The CPT also welcomes the efforts made at Graz-Jakomini Prison to provide the few juvenile prisoners with educational and vocational activities. However, it is a matter of concern that on most days of the week (including at weekends) juveniles held in this prison were locked up in their cells as of 3.30 p.m. until the following morning.

As regards health care, the CPT expresses serious concern about the almost total lack of medical confidentiality in all the establishments visited. In particular, it remained the case that, in every prison, various health-related tasks which are normally reserved for qualified nurses, were performed by prison officers with only basic health-care training (*Sanitätsbeamte*). These officers were usually present during medical consultations, had access to medical documentation and were

responsible for the distribution of prescribed medicines. At the same time, they continued to perform custodial functions. The CPT emphasises that this practice should be abolished as it is in breach of the principle of medical confidentiality and compromises the perception of the professional independence of prison health-care staff.

Further, the CPT formulates a number of specific recommendations regarding various other prison-related issues, such as prisoners' contact with the outside world, discipline and security. In particular, the Committee recommends that pepper spray no longer form part of the standard equipment of custodial staff and that the Austrian authorities reconsider their policy regarding the carrying of firearms by prison staff inside detention areas.

#### *Situation of persons subjected to a court-ordered measure of forensic placement at Stein Prison*

Material conditions in the two units for *Massnahmenvollzug* were adequate in terms of repair but not suitable for accommodating persons in need of therapy and assistance. In particular, they lacked appropriate facilities for therapeutic activities. As regards activities, a more relaxed regime was offered to inmates in Unit T2 where some inmates were accommodated in a residential sub-unit (*Wohngruppenvollzug*) with single- and double-occupancy cells. In contrast, the regime applied to inmates in Unit 1 (mostly inmates who did not work or participate in therapeutic activities) was far too restrictive. In the CPT's view, it is not acceptable that inmates were usually locked up alone in their cell every day from Mondays to Thursdays from 10.30 a.m. to 1.30 p.m. and from 2.30 p.m. until the following morning; from Fridays to Sundays, the "night lock-up" even started at noon.

Whilst acknowledging the efforts made by the Austrian authorities to provide inmates with work or other occupational activities, the CPT considers that the existing arrangements in terms of psychological treatment were far from satisfactory, and it is a matter of grave concern that a psychiatrist was present for only nine hours per week, and that for the whole prison with a population of more than 700 inmates.

The CPT fully concurs with the views expressed by various interlocutors that Stein Prison, like any other "ordinary" prison, is not suited to the implementation of a meaningful *Massnahmenvollzug* in which persons suffering from a mental disorder are offered, according to their needs, medical, psychiatric, psychotherapeutic, psycho-hygienic and educational care, as required under the relevant legislation. The Committee recommends that, in the context of the ongoing reform of the *Massnahmenvollzug*, a comprehensive concept for motivation and individualised treatment be drawn up for all inmates and that special training of custodial staff and multi-disciplinary teamwork be introduced.

#### *Psychiatric establishments*

During its visit to the Otto Wagner Psychiatric Hospital, the delegation received no allegations of physical ill-treatment of patients by staff. Further, the CPT welcomes the ban on the use of net beds in psychiatric and social welfare institutions which has recently been introduced by the Federal Ministry of Health (with effect from 1 July 2015). That said, it is a matter of concern that a number of specific recommendations made by the Committee after previous visits regarding the use of means of restraint (*freiheitsbeschränkende Massnahmen*) had not been implemented at the Otto Wagner Hospital. In particular, the hospital had no central restraint register and there was usually no permanent and direct supervision of persons under mechanical restraint (*Fixierung*) in the form of a *Sitzwache*. Further, it remained the case that patients were sometimes subjected to mechanical restraint or placed in a net bed in full view of other patients, and that patients were occasionally restrained whilst naked. The CPT recommends that an immediate end be put to such practices.



## 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 periodic visit to Austria from 22 September to 1 October 2014. It was the Committee’s sixth periodic visit to the Austria.<sup>1</sup>

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

- Wolfgang HEINZ, Head of delegation
- Esther MAROGG
- Ivona TODOROVSKA
- Anton VAN KALMTHOUT
- Hans WOLFF.

They were supported by Jeroen SCHOKKENBROEK, Executive Secretary of the CPT, Michael NEURAUTER, Head of Division, and Elvin ALIYEV of the Committee’s Secretariat, and assisted by:

- Veronica PIMENOFF, psychiatrist, former Head of Department at Helsinki University Psychiatric Hospital, Finland (expert)
- Vincent THEIS, Director of Luxembourg Prison, Luxembourg (expert)
- Georg GAIDOSCHIK (interpreter)
- Alexander ŽIGO (interpreter).

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<sup>1</sup>

The CPT previously carried out periodic visits to Austria in 1990, 1994, 1999, 2004 and 2009. 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

- Feldkirch Police Station
- Krems an der Donau District Police Station
- Leibnitz Police Station
- Vienna-Fuhrmannsgasse District Police Station
  
- Graz Police Detention Centre (*Polizeianhaltezentrum* - PAZ)
- Vienna-Hernalser Gürtel PAZ
- Vordernberg Detention Centre for Foreigners

### Prisons

- Feldkirch Prison
- Graz-Karlau Prison
- Graz-Jakomini Prison
- Stein Prison (Units for involuntary forensic placement – *Massnahmenvollzug*)
- Vienna-Josefstadt Prison

### Psychiatric establishments

- Otto Wagner Psychiatric Hospital and Nursing Centre, Vienna.

## **C. Consultations held by the delegation and co-operation encountered**

4. In the course of the visit, the CPT's delegation had consultations with Wolfgang BRANDSTETTER, Federal Minister of Justice, and Konrad KOGLER, Director General for Public Security of the Federal Ministry of the Interior, as well as with senior officials from the two aforementioned Ministries, the Federal Ministry of Health, the Federal Ministry of Labour, Social Affairs and Consumer Protection, the Federal Ministry for Europe, Integration and Foreign Affairs and the Provincial Government of Vienna.

The delegation also met Andreas WIESELTHALER, Director of the Federal Bureau of Anti-Corruption, in order to discuss the procedures for investigations into complaints of police ill-treatment. In addition, meetings were held with members of the Austrian Ombudsman Board (*Volksanwaltschaft*), Gertrude BRINEK (Chairperson) and Günther KRÄUTER, in their capacity as National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention against Torture (OPCAT), as well as with representatives of the Human Rights Advisory Board (*Menschenrechtsbeirat*) and various non-governmental organisations.

A list of all federal and *Länder* authorities, other bodies and non-governmental organisations met by the delegation is set out in the Appendix to this report.

5. Throughout the visit, the delegation received very good co-operation from both the national authorities and staff at the establishments visited. With one exception, it enjoyed rapid access to all the places visited (including those which had not been notified in advance), was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty.

The CPT also wishes to express its appreciation for the assistance provided before, during and after the visit by its liaison officer, Ms Ulrike NGUYEN, from the Federal Ministry for Europe, Integration and Foreign Affairs.

6. The above-mentioned exception concerns the Otto Wagner Psychiatric Hospital where the delegation repeatedly faced major obstacles and sometimes also an uncooperative attitude by staff. Upon arrival at the hospital, the delegation was told by the hospital management that it was allowed to speak with patients only with the explicit consent of the treating psychiatrist. It became apparent that, shortly before the visit, the management board had issued an internal instruction<sup>2</sup> to all medical and nursing staff informing them of this restriction. In the same instruction, staff had also been instructed not to provide medical data concerning patients to members of the delegation and to allow interviews with patients only with the approval of a psychiatrist.

According to the management, these instructions reflected the position of the legal service of the hospital management group (*Krankenhausverbund*) of the City of Vienna which is the owner (*Träger*) of the hospital. Following consultations between the delegation and the management, these unacceptable restrictions were withdrawn. However, the management subsequently failed to inform the staff of the various wards of this change of position. As a result, in all the wards visited, the delegation encountered significant delays in interviewing patients in private and in having access to medical files.

Further, at the beginning of its visit to the hospital, the delegation requested the management to provide as soon as possible a list of all patients who were being held in the hospital on an involuntary basis (i.e. civil and forensic patients). Notwithstanding that, it only received a list of civil involuntary patients and that only in the late afternoon (i.e. more than seven hours later).<sup>3</sup> Although the management indicated that the list of forensic patients would be available the following day, the delegation never received such a list.<sup>4</sup> It is also a matter of concern that, on several occasions, the delegation was provided with written information which subsequently proved to be inaccurate or incomplete (e.g. as regards the number of net beds available and in use at the time of the visit).

The above-mentioned instances constitute a flagrant failure of co-operation on the part of the hospital management and staff (see also paragraph 121). **The CPT trusts that appropriate steps will be taken by the relevant federal and *Länder* authorities to prevent a re-occurrence of such instances during future CPT visits to psychiatric hospitals in Vienna.**

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<sup>2</sup> By circular e-mail dated 19 September 2014 which was co-signed by the Deputy Medical Director and the Director of the Nursing Service.

<sup>3</sup> The hospital management did not have a central register of all (involuntary) patients.

<sup>4</sup> Due to the delays repeatedly encountered during the visit, part of the delegation had to return to the hospital the following day.

7. Moreover, in several of the establishments visited (in particular at Stein Prison and Vienna-Hernalser Gürtel Police Detention Centre), it became apparent that steps were being taken by staff to collect the names of all the detained persons interviewed by the delegation, with a view to transmitting them to the Ministries concerned.<sup>5</sup>

During consultations with the management in both establishments as well as during the end-of-visit talks with representatives of the Ministries of Justice and the Interior, the delegation stressed that such practices were not acceptable as they were likely to compromise the confidential nature of the CPT's work.<sup>6</sup> The delegation's interlocutors affirmed to the delegation that the initiatives taken by staff resulted from a misunderstanding and that no (further) names would be collected, nor reported to the Ministries. As regards Stein Prison, this explanation was reiterated by the Austrian authorities in their letter of 28 January 2015.

**The CPT trusts that the Ministries of Justice and the Interior will take the necessary measures to prevent a repetition of the above-mentioned practices during future visits to prisons and police detention centres (PAZ).**

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<sup>5</sup> Similarly, from the consultation of relevant documentation at Stein Prison, it transpired that the management had previously drawn up (and transmitted to the Federal Ministry of Justice) reports on visits by the relevant visiting commission of the NPM, which also contained lists of the inmates interviewed by the commission.

<sup>6</sup> In its 24<sup>th</sup> General Report (page 23), the CPT also stressed that the adoption of a rule prohibiting the management and staff of establishments from recording the names of persons interviewed by the Committee constitutes a useful tool to prevent any instances of intimidation (or retaliatory action).

#### D. General issues

8. Since the last visit of the CPT in Austria in 2009, the system of monitoring of places of detention has undergone major changes. In December 2012, Austria ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which had been signed in September 2003. Already prior to the ratification, in January 2012, the Austrian Parliament had adopted the OPCAT Implementation Act and designated the Austrian Ombudsman Board (*Volksanwaltschaft*) as National Preventive Mechanism (NPM). With effect from 1 July 2012, the six regional monitoring commissions (*Besuchskommissionen*) of the Human Rights Advisory Board (*Menschenrechtsbeirat*) at the Federal Ministry of the Interior were integrated into the NPM structure of the Austrian Ombudsman Board, while the Human Rights Advisory Board<sup>7</sup> became affiliated to the Ombudsman Board as a consultative body.<sup>8</sup>

The Ombudsman Board employs 90 staff (approximately half of whom have a legal background), and the monitoring commissions are composed of 48 members (lawyers, doctors, psychologists and social workers) who perform their duties as a secondary function. The budget for the work of the monitoring commissions (and the Human Rights Advisory Board) is approximately 1.5 million Euros. In 2013, the monitoring commissions carried out a total of some 400 (mostly unannounced) visits to places of detention (including 89 police establishments, 52 prisons, 63 psychiatric establishments and 106 social welfare institutions).<sup>9</sup>

The CPT welcomes these developments.

9. It is also praiseworthy that major police interventions (such as large-scale raids or the policing of mass demonstrations and deportations) continued to be monitored by members of the monitoring commissions of the Austrian Ombudsman Board, on the basis of specific legal provisions.<sup>10</sup> According to an internal instruction (*Erläss*) of the Federal Ministry of the Interior, the police are obliged to inform the Office of the Ombudsman Board beforehand of such interventions.<sup>11</sup> The latter instruction also stipulates that the Office of the Ombudsman Board shall be informed of every death, suicide and suicide attempt in police detention facilities as well as of every allegation of police ill-treatment.

That said, no such reporting procedure exists regarding allegations of ill-treatment by staff in prisons and other types of detention place. With a view to further enhancing the role of the Austrian Ombudsman Board in the prevention of ill-treatment, **the CPT invites the Austrian authorities to extend the above-mentioned reporting procedure to prisons and other places of detention.**

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<sup>7</sup> The Human Rights Advisory Board is composed of representatives of various federal and *Länder* authorities and civil society.

<sup>8</sup> For further information, see <http://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring>. The Ombudsman Board also acts as designated monitoring body under the United Nations Convention on the Rights of Persons with Disabilities.

<sup>9</sup> For further details, see the 2013 Annual Report which was published under [http://volksanwaltschaft.gv.at/downloads/144k2/Austria\\_AOB\\_Annual%20Report\\_2013\\_EN.pdf](http://volksanwaltschaft.gv.at/downloads/144k2/Austria_AOB_Annual%20Report_2013_EN.pdf)

<sup>10</sup> Article 148a, paragraph 3, of the Federal Constitutional Law and Section 11, paragraph 1, of the Law on the Ombudsman Board.

<sup>11</sup> Under reference BMI-LR1600/0053-II/10/a/2013.

10. Further, the CPT welcomes the fact that, following an amendment (new Section 312a)<sup>12</sup> to the Penal Code (*Strafgesetzbuch* - StGB), which entered into force on 1 January 2013, the crime of torture has been incorporated into Austrian criminal legislation, as advocated by the Committee in the report on the 2009 visit. According to this new provision, acts of torture are punishable by one to ten years of imprisonment and, if the torture has led to the death of the person concerned, by life imprisonment.<sup>13</sup>

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<sup>12</sup> Section 312a reads as follows: (1) A person who acts in an official capacity (*Amtsträger*) within the meaning of Section 74 (1) (4a) StGB or a person who acts at the instigation or with the explicit or tacit consent of a person acting in an official capacity, inflicts on another person severe physical or mental pain or harm, in order to obtain from that person or a third person a statement or confession or in order to punish that person or a third person for offences actually or presumably committed or in order to intimidate or put under pressure that person or a third person or inflicts on a person severe physical or mental pain or harm on the grounds of discrimination, shall be punished with imprisonment from one to ten years.

(2) In the event that the offence entails severe bodily harm with permanent damage (within the meaning of Section 85), the perpetrator shall be punished by imprisonment from five to 15 years, and if the offence leads to the death of the victim, by imprisonment from ten to 20 years or by life imprisonment.

(3) *Amtsträger* within the meaning of this provision are also persons who de facto act in an official capacity in the absence or collapse of State institutions.

<sup>13</sup> In cases of ill-treatment, Section 312 StGB (infliction of pain upon a detained person or neglect of a detained person) and 313 StGB (commission of criminal acts by abusing a public function) may also apply.

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

### A. Police custody

#### 1. Preliminary remarks

11. One of the main objectives of the visit was to examine the treatment and conditions of detention of persons deprived of their liberty by the police. For this purpose, the delegation visited several police stations and police detention centres (*Polizeianhaltezentren* – PAZ) in different parts of Austria and interviewed a considerable number of persons who were or had recently been held in police custody. As regards the situation in PAZ, reference is made to Section B.

12. The legal framework governing the deprivation of liberty of persons by the police has remained on the whole unchanged since the 2009 visit.

It is recalled that criminal suspects may be held in police custody before being transferred to a remand prison for a maximum period of 48 hours.<sup>14</sup>

Persons suspected of having committed an administrative offence may be held in police custody for up to 24 hours.<sup>15</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>16</sup> which is served in a PAZ.

Persons may also be deprived of their liberty under police legislation for their own protection (for instance, persons suffering from a mental disorder, or unaccompanied children).<sup>17</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.

Further, depending on the circumstances defined in Section 39 of the Aliens Police Law, foreign nationals may be held in police custody under aliens legislation for a maximum period of 24, 48, 72 or 120 hours. 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).<sup>18</sup> In addition, foreign nationals may be detained pending deportation (*Schubhaft*) in a PAZ for up to ten months within a period of 18 months (see Section B).<sup>19</sup> Under certain circumstances,<sup>20</sup> asylum-seekers may also be held in *Schubhaft*.

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<sup>14</sup> See Section 4, paragraph 2, of the Constitutional Law on the Protection of Personal Liberty, Section 172, paragraph 3, of the Criminal Procedure Code (*Strafprozessordnung* - 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>15</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>16</sup> Sections 12, paragraph 1, and 16, paragraph 2, of the Administrative Criminal Code.

<sup>17</sup> Section 45 of the Law on the Police (*Sicherheitspolizeigesetz*) and Section 9 of the Law on Involuntary Placement (*Unterbringungsgesetz*).

<sup>18</sup> Sections 26 and 27 of the Asylum Law.

<sup>19</sup> Sections 76, paragraph 1, and 80, paragraph 4, of the Aliens Police Law.

<sup>20</sup> See Section 76, paragraph 2, of the Aliens Police Law.

## 2. Ill-treatment

13. As was the case during the 2009 visit, the vast majority of detained persons interviewed by the delegation indicated that they had been treated correctly whilst in police custody.

However, the delegation did receive several allegations of excessive use of force at the time of apprehension (such as kicks and/or punches after the person concerned had been brought under control); some allegations of excessive use of force by police officers were also received from psychiatric patients who had been transferred against their will to Otto Wagner Hospital.

Further, a few allegations were received from detained persons that they had been subjected to physical ill-treatment or threats during police questioning.

14. Overall, the information gathered during the visit suggests that the positive trend observed during the most recent visits is maintained. Notwithstanding that, the CPT wishes to stress the need for the Austrian authorities to remain vigilant and to pursue their efforts to prevent police ill-treatment.

**To this end, the CPT reiterates its recommendation that police officers throughout Austria be reminded, at regular intervals, that all forms of ill-treatment of persons deprived of their liberty are not acceptable and will be punished accordingly. 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.**

**Further, the CPT would like to be informed of the training which is provided to police officers in order to deal in an appropriate manner with persons suffering from a mental disorder.**

15. The CPT is particularly concerned by the fact that several of the detained persons interviewed by the delegation who made allegations of police ill-treatment also indicated that they had informed their lawyer (private or appointed *ex officio*) about the ill-treatment but that the latter had advised them not to lodge a formal complaint, due to potential repercussions in their criminal case. It goes without saying that such a “legal culture”, if persistent on a larger scale, is likely to foster a climate of impunity.

**The CPT encourages the Austrian authorities take appropriate steps – in consultation with the Bar Association (*Rechtsanwaltskammer*) – to promote, in the context of initial and continuous training, a culture where it is regarded as unprofessional not to pursue allegations of police ill-treatment.**



16. The CPT recalls that 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. In this regard, the Committee has also repeatedly stressed 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.<sup>21</sup>

17. Since the 2009 visit, the legal framework governing the handling of complaints about police ill-treatment has undergone a number of changes.

In particular, with the entry into force on 1 January 2010 of the new Law on the Setting-up and the Organisation of the Federal Bureau for the Prevention and Fight against Corruption (so-called “Bureau of Anti-Corruption” - BAK), the BAK took up its functions and replaced the former Bureau of Internal Affairs (BIA) as special criminal investigative body within the Federal Ministry of the Interior.<sup>22</sup> The BAK is organisationally located outside the Directorate General for Public Security and directly subordinated to the Head of the Department for Service and Control (*Sektion IV*) of the Ministry. The Director is appointed by the Federal Minister of the Interior (upon consultation with the Presidents of the Constitutional Court and the Supreme Court). Complaints about the work of the BAK can be lodged with the Commission for Legal Protection (*Rechtsschutzkommission*) which has been created within the Ministry as independent (*weisungsfrei*) oversight body.

Section 4, paragraph 1, of the above-mentioned Law contains a detailed list of offences (such as corruption, abuse of a public function and similar acts) for which the BAK is competent (items 1 to 13). Torture and ill-treatment are not mentioned in this catalogue, but the BAK may carry out criminal investigations into such cases under item 15 of the aforementioned section which covers “other criminal offences committed by officials of the Federal Ministry” if it is requested to do so by a court or a public prosecutor.<sup>23</sup>

18. Further, the Federal Ministry of the Interior has issued several new internal instructions (*Erlässe*). By instruction<sup>24</sup> dated 13 June 2013, all police services have been instructed to report to the BAK “immediately” all allegations of ill-treatment (as well as all instances of the use of firearms) which have resulted in severe bodily harm or the death of the person(s) concerned and to report all other alleged cases of ill-treatment to the BAK “as far as possible within 24 hours”. In addition, according to an instruction<sup>25</sup> by the Federal Ministry of the Interior dated 2 May 2013, all alleged cases of police ill-treatment must be reported to the Ombudsman Board (see paragraph 9). Another instruction<sup>26</sup> on the handling of complaints was issued by the Federal Ministry of the Interior on 1 August 2014 which reminds police officers of their obligations under the above-mentioned instructions.

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<sup>21</sup> See paragraphs 15 to 19 of the report on the 2009 visit (CPT/Inf (2010) 5).

<sup>22</sup> On the basis of the Law on the Setting-up and Organisation of the BAK (adopted in August 2009).

<sup>23</sup> Under item 14 of the same section, the BAK may also be requested by a court or public prosecutor’s office to carry out criminal investigations into allegations of police ill-treatment, if the officer concerned is also suspected of having committed an offence under items 1 to 13.

<sup>24</sup> BMI-OA1300/0017-IV/BAK/2013.

<sup>25</sup> BI-LR1600/0053-II/10/a/2013.

<sup>26</sup> BMI-OA1300/0068-II/1/c/2014.

It should also be added that, by internal instruction<sup>27</sup> dated 6 November 2009, the Federal Ministry of Justice instructed the management of all prisons to report allegations of police ill-treatment without delay to the public prosecutor.

19. According to the relevant provision of the StPO,<sup>28</sup> every regional office of criminal investigation (*Landeskriminalamt*) – or in Vienna the Bureau for Special Investigation – as well as the BAK are under a legal obligation to report allegations of police ill-treatment to the public prosecutor (in the form of a *Anfallsbericht*) without delay and in any event no later than within 24 hours. Subsequently, criminal investigations into alleged cases of police ill-treatment are carried out by officers of the regional office of criminal investigation (or the BAK) under the supervision of a prosecutor who has the power to instruct police investigators and, if deemed appropriate, to carry out certain investigative actions or the entire investigation him/herself.

20. In the course of the visit, the delegation had consultations with the Director of the BAK who provided detailed information on the work of the BAK. In total, the BAK has 136 staff (including 68 who perform operational duties) and all investigators are active police officers who have been temporarily seconded to the BAK from other police services. He also informed the delegation that, since its creation, the BAK had carried out criminal investigations into alleged police ill-treatment only in exceptional cases, in particular when the police officer(s) concerned was/were also suspected of offences for which the BAK had primary competence (in 2010, eleven out of 434 cases; in 2011, five out of 365 cases; in 2012, five out of 357 cases; in 2013, three out of 364 cases; during first half of 2014, four out of 210 cases). In turn, most cases of criminal investigations into alleged police ill-treatment were said to be carried out by criminal police officers of the relevant regional police headquarters.

21. Further, at the beginning of the visit, the delegation received statistics from the Austrian authorities about the total number of complaints of police ill-treatment and the outcome of investigations into these complaints. During the period 2010 to 2013, a total of 1394 of complaints about torture or ill-treatment by police officers have been lodged in Austria. Investigations into these complaints resulted in two convictions and two acquittals, while all other cases had been closed (apart from 23 cases which were pending in the courts). Moreover, in not one single case have administrative or disciplinary sanctions been imposed on the police officers concerned.

22. The delegation did not consult individual investigation files to examine the action taken by prosecutors, the BAK and regional offices of criminal investigation respectively. Notwithstanding that, on the basis of the information gathered by the delegation during the visit and the relevant case-law of the European Court of Human Rights, the CPT has some doubts as to whether investigations carried out by investigators of the BAK – and even more so those carried out by criminal police officers of the regional police headquarters – against other police officers can be seen to be fully independent and impartial.

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<sup>27</sup> BMJ-L880.014/0010-II 3/2009.

<sup>28</sup> Section 100, paragraph 2.

In this regard, the Committee would like to draw the Austrian authorities' attention to two judgments of the European Court of Human Rights (*Kummer v. the Czech Republic*<sup>29</sup> and *Eremiášová and Pechová v. the Czech Republic*<sup>30</sup>) in which the Court had found a violation of Article 3 of the European Convention of Human Rights in its procedural aspect in cases of alleged police ill-treatment.

In *Kummer v. the Czech Republic*, the Court ruled *inter alia* the following:

“85. Regarding the question of the independence of the Police Inspectorate, the Court notes that it was still a unit of the Ministry of the Interior. Yet, unlike the Supervision Department considered by the Court in *Eremiášová and Pechová*, cited above, the head of the Police Inspectorate was appointed by, and responsible to, the Government and not to the Minister of the Interior. While the Court agrees that this aspect increased the independence of the Police Inspectorate vis-à-vis the police, the Court does not consider that this sole difference can justify reaching a different conclusion from the one reached in the case of *Eremiášová and Pechová*.

86. The Court must also take into account that members of the Police Inspectorate remained police officers who had been called to perform duties in the Ministry of the Interior. This fact alone considerably undermined their independence vis-à-vis the police. In the Court's view, such an arrangement did not present an appearance of independence and did not guarantee public confidence in the State's monopoly on the use of force (see *Eremiášová and Pechová*, cited above, § 154, and *Ramsahai and Others*, cited above, § 325).

87. The Court notes that in this case the investigation by the Police Inspectorate was supervised by the prosecutor. However, while the prosecutor was independent from the police, his merely supervisory role was not sufficient to make the police investigation comply with the requirement of independence (compare with *Ramsahai and Others*, cited above, §§ 342-346, which concerned an investigation under the direct responsibility of the public prosecution service).

88. Accordingly, the Court considers that the investigation in the present case did not comply with the requirements of an effective investigation under Article 3 of the Convention and that there has been a violation of that provision in its procedural aspect as well.”

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

23. Further, in order to obtain an up-to-date picture of the situation regarding the treatment of persons detained by the police, **the Committee would like to receive the following information, in respect of the period from 1 January 2014 to the present time:**

- (a) the number of complaints of ill-treatment made against police officers and the number of criminal/disciplinary proceedings which have been instituted as a result;**
- (b) the number of criminal/disciplinary proceedings which have been instituted *ex officio* (i.e. without a formal complaint) into possible ill-treatment by police officers officials;**
- (c) the outcome of the proceedings referred to in (a) and (b), including an account of criminal/disciplinary sanctions imposed on the police officers concerned.**

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<sup>29</sup> Judgment of 25 July 2013, application no. 32133/11.

<sup>30</sup> Judgment of 16 February 2012, application no. 23944/04.

### 3. Safeguards against ill-treatment

24. Overall, the delegation gained a positive impression of the implementation in practice of the fundamental safeguards against ill-treatment (namely the right to have the fact of one's detention notified to a relative or another trusted person and the rights of access to a lawyer and to a doctor). The information gathered during the visit also suggests that detained persons usually received the relevant information sheet on the rights of detained persons<sup>31</sup> and (in criminal cases) the special form on the legal counselling service through the 24-hour hotline of the Bar Association (so-called *Rechtsanwaltschaftliche Journaldienst*) although the recording of the implementation of the above-mentioned safeguards was sometimes deficient (see paragraph 30).

25. That said, the CPT is concerned by the fact that certain long-standing recommendations regarding fundamental safeguards have still not been implemented.

In particular, it remains the case that many juveniles (some as young as 14 years of age) were subjected to police questioning and requested to sign statements without the benefit of the presence of either a lawyer or a trusted person. Such a state of affairs is not acceptable.

Whilst acknowledging the existence of certain additional safeguards for juveniles (e.g. mandatory notification of parents,<sup>32</sup> entitlement to have a trusted person or lawyer present during questioning<sup>33</sup>), the Committee wishes to 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.*

**The CPT once again 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 lawyer and ideally a trusted person being present.**

26. Moreover, as was the case during previous visits, many juveniles interviewed by the delegation indicated that they had not (fully) understood the contents of the standard information sheet on the rights of detained persons which they had been given and the receipt of which they had to acknowledge by signature.

In the CPT's view, this does not come as a surprise at all, given the length (three full pages in A4 format) and the convoluted and legalistic language used, which is not easy to understand even for adults who do not have a legal background.

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<sup>31</sup> Separate information sheets were available for criminal suspects, persons in administrative detention and foreign nationals taken into custody under aliens legislation.

<sup>32</sup> Section 35, paragraph 4, of the Law on Juvenile Justice (*Jugendgerichtsgesetz - JGG*).

<sup>33</sup> According to Section 37, paragraph 2, JGG, a "trusted person" may be the juvenile's legal representative, parents, relatives, a teacher or staff of the youth welfare or probation services. Further, 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, StPO (see Sections 37, paragraph 1, and 46a, paragraph 2, JGG).

In their response to the report on the 2009 visit, the Austrian authorities acknowledged that they “are aware of the problems regarding the lack of intelligibility of the information sheets due to the use of legal terminology. An adequate balance between the intellectual comprehension of the written information of the persons it is addressed to (juvenile suspects find it harder to understand the legal terms than adults) and the requirement to provide correct and complete information has to be found. In doing so, it has to be borne in mind that simplification of the wording in an official information sheet is sometimes limited as too many simplifications could lead to imprecise and eventually also misleading or even incorrect (incomplete) information. In the currently used information sheet an attempt was made to choose understandable wording which is based, in all material aspects, on the provisions of the law.”

The CPT’s acknowledges the endeavours of the Austrian authorities to elaborate an information sheet which is comprehensive and precise from a legal standpoint. However, when looking at the existing wording of the information sheet, the risk of juveniles not grasping certain legal details appears to be secondary compared to the risk of not understanding at all crucial elements of it.

If the Austrian authorities consider it essential, for legal reasons, to provide juveniles with a very long and rather legalistic information sheet, juveniles should be provided with an *additional information sheet which is very short, simple and drafted in a straightforward manner*. In this connection, the Austrian authorities should also take into account the Recommendation Rec(2003)20 of the Council of Europe’s Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.<sup>34</sup>

**The CPT reiterates its recommendation that a specific version of the information sheet, setting out the particular position of detained juveniles, be developed in the light of the above remarks and given to them without delay upon arrival at a police establishment. The information sheet should be available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension.**

27. Further, the situation had not improved as regards access to a lawyer for detained persons who could not afford to pay for a lawyer themselves. It remained the case that such persons could have a telephone conversation with a lawyer free of charge through the 24-hour hotline of the Bar Association, but could not usually benefit from the presence of a lawyer during police questioning. The specific information sheet which was in use at the time of the visit explicitly mentioned in bold that (only) the initial counselling by a lawyer over the telephone was free of charge. As was the case in 2009, several persons interviewed by the delegation considered it to be pointless to make use of the hotline, since they had no money to pay for the presence of the lawyer during police questioning.

In this regard, the CPT wishes to emphasise once again that allowing detained persons to benefit from the presence of a lawyer during police questioning is an important safeguard against ill-treatment; this safeguard should be available to all detained persons, irrespective of their financial situation.

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<sup>34</sup> See in particular Section 15: “Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult...”

By letter of 28 January 2015, the Austrian authorities informed the CPT that “[i]n principle, the lawyer services [which go beyond the initial telephone counselling] are charged to the accused at an hourly rate of EUR 100,--, plus VAT, but once legal aid is granted, the State takes over the costs on a preliminary basis”.

It is indeed positive that the additional services of lawyers of the Bar Association (such as their presence during police questioning) may be covered by the State for as long as the person concerned remains indigent. However, the visit brought to light that neither detained persons nor police officers met by the delegation were aware of any such possibility.

**The CPT recommends that the Austrian authorities take the necessary steps – in consultation with the Bar Association – to ensure that indigent persons can effectively benefit from the presence of a lawyer free of charge throughout their police custody, including during police questioning. To this end, the text of the specific information sheet on the hotline of the Bar Association should be amended accordingly.**

28. In the report on the 2009 visit, the CPT expressed its serious misgivings about certain elements of the internal instruction (*Erlass*) of the Federal Ministry of the Interior on legal telephone counselling which was in force at that time and formulated specific recommendations in this regard.<sup>35</sup> That said, the CPT notes with concern that these recommendations have not been taken into account in the new internal instruction which was issued by the Federal Ministry of the Interior on 20 September 2012.<sup>36</sup>

In particular, it remains the case that the new 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, the instruction still stipulates 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)”. It should also be added that a number of persons interviewed by the delegation who had made use of the possibility to call the hotline (or a private lawyer) claimed that they were obliged to talk to the lawyer in the presence of a police officer.

Further, the following provision was maintained in the new instruction: “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, StPO”. The CPT wishes to stress again that 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.

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<sup>35</sup> See paragraphs 22 and 24 of CPT/Inf (2010) 5.

<sup>36</sup> BMI-EE1500/0102-II/2/a/2012.

**The CPT reiterates its recommendation that the Austrian authorities take steps to ensure that:**

- **detained persons are able to communicate on a confidential basis with their lawyer (from the hotline or a private one);**
- **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 of the Federal Ministry of the Interior should be amended accordingly.**

29. In the reports on the 2004 and 2009 visits, the CPT 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>37</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>38</sup>

It remained somewhat unclear as to how often the above-mentioned restrictions had been applied in practice, since the Austrian authorities were not in a position to provide any statistical data in this regard.

As a matter of principle, the CPT wishes to stress once again that 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. The Committee 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, 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.**

30. In most of the police establishments visited, custody registers were generally well-kept.

That said, in some establishments (in particular Leibnitz Police Station and Vienna-Fuhrmannsgasse District Police Station), the delegation observed that, on several occasions, the relevant forms of the standardised detention report (*Haftbericht*) had been incomplete. For instance, the time of apprehension or arrival at the police station was missing; omission of signatures as to whether the person concerned had been informed of his/her rights; etc.). **The CPT recommends that police officers at Leibnitz Police Station and Vienna-Fuhrmannsgasse District Police Station be reminded to diligently maintain custody records.**

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<sup>37</sup> Section 59, paragraphs 1 and 2, StPO.

<sup>38</sup> Section 164, paragraph 2, StPO.

31. Further, in several police stations visited, the delegation was informed that whenever a person was deprived of his/her liberty (for whatever reason) and then released, no record was kept at all. **The CPT reiterates its recommendation 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.**

#### **4. Conditions of detention**

32. Conditions of detention in police stations were on the whole satisfactory, bearing in mind that detained persons were usually held in police custody for short periods only.

That said, at Vienna-Fuhrmannsgasse District Police Station, the ventilation system did not function in one of the two custody cells. Further, at Krems an der Donau District Police Station and Leibniz Police Station, persons held overnight were only provided with a very thin mattress. **The CPT recommends that the aforementioned shortcomings be remedied.**



## **B. Detention of foreign nationals under aliens legislation**

### **1. Preliminary remarks**

33. One of the objectives of the visit was to review the situation of foreign nationals held in detention pending deportation (*Schubhaft*). For this purpose, the delegation visited the new Detention Centre in Vordernberg and carried out a follow-up visit to the police detention centre (PAZ) at Vienna-Hernalser Gürtel.<sup>39</sup> At the time of the visit, both establishments were accommodating the vast majority of foreign nationals who were being detained under aliens legislation in Austria (53 out of 66).

34. The Vordernberg Detention Centre for Foreigners, which is located in a quite remote village of the same name in Styria (some 70 km north-west of Graz), was opened on 1 March 2014 on the basis of a service contract between the Federal Ministry of the Interior and the municipality of Vordernberg. While the overall responsibility remains with the Provincial Police Headquarters of Styria, all services related to the running of the Centre (including the provision of health care) have been outsourced to a private company (on the basis of a contract between the company and the municipality of Vordernberg). As a rule, the centre only accommodates foreign nationals (from all over Austria) who have previously been held in a PAZ.<sup>40</sup>

The detention centre has an official capacity of 200 places. At the time of the visit, it was accommodating 25 foreign nationals (all male; no juveniles), most of whom had arrived at the centre two to four weeks earlier (in one case six weeks).

35. At the PAZ in Vienna-Hernalser Gürtel (like in all other PAZ in Austria), the number of immigration detainees had significantly decreased in recent years. With a theoretical official capacity<sup>41</sup> of 299 places (including 48 places in the open regime unit on the ground floor), the PAZ was accommodating 28 foreign nationals (all male, no juveniles) as well as 13 persons who were serving a sanction of administrative detention in a separate detention area. Due to consistently low occupancy levels, some parts of the detention centre had temporarily been taken out of service. The delegation was informed that plans were afoot to restructure the entire establishment.

According to staff, the turnover in the PAZ was very high due to the fact that many immigration detainees from other PAZ in Austria were held at Hernalser Gürtel in “transit” prior to their deportation by air from Vienna International Airport. Most foreign nationals present at the time of the visit had been held in the centre for no more than a few weeks, the longest stay being two months in one case.

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<sup>39</sup> The PAZ Hernalser Gürtel has previously been visited by the CPT several times, most recently in 2009 (see paragraphs 34 to 64 of CPT/Inf (2010) 5).

<sup>40</sup> Exceptionally, the centre may also accommodate foreign nationals who are taken into police custody under aliens legislation (e.g. foreign nationals who have been apprehended on a train after having crossed the border illegally).

<sup>41</sup> At the time of the 2009 visit, the number of immigration detainees stood at 165.

## 2. Ill-treatment

36. In neither of the two establishments did the delegation receive any allegations of ill-treatment by staff. On the contrary, all foreign nationals interviewed by the delegation spoke favourably about the manner in which they were treated by both custodial police officers and private security staff.

## 3. Conditions of detention

37. The delegation was very much impressed by the high standard of detention conditions at the Vordernberg Detention Centre for Foreigners, both in terms of material conditions and activities offered to foreign nationals.

The Centre has eight living units (including one for women, one for juveniles and one for families), each of which comprised several well-equipped multiple-occupancy rooms, a large dining area with sofas, a kitchenette and a balcony. In particular the unit for families had an apartment-like design with access to a large terrace. In addition, there are a number of activity rooms (for table tennis, table football, gymnastics, television/DVD, etc.), a library with seven computers and a multi-confessional prayer room.

Throughout the day, foreign nationals could move freely within their living unit, the rooms being locked only at night (from 9.30 pm to 7.15 am). Contacts with inmates from other units were usually possible during sports activities. Moreover, inmates were provided with a range of board games.

The Centre employed several caretakers (*Betreuer*) who organised a comprehensive activity programme every day from 10.30 am until noon and from 3.30 pm until 5 pm. Depending on the demands, the following activities were offered:

- outdoor/indoor sports activities: football or table tennis/table football (1 ½ hours, four times a week), basketball/volleyball (1 ½ hours, four times a week), fitness/dancing (1 ½ hours, four times a week);
- language classes in German and English (at least once a week for 1 ½ hours);
- computer training: several sessions per week;
- handicrafts and painting: several sessions per week.

38. In the PAZ Hernalser Gürtel, material conditions were generally acceptable, both in the open and the closed detention units; all foreign nationals were accommodated in multi-occupancy cells (with four, six or eight beds).

That said, some of the sanitary facilities in the open regime unit were found to be in a poor state of repair and in appalling conditions of hygiene.

By letter of 28 January 2015, the Austrian authorities informed the CPT that steps had been taken immediately after the visit to clean the above-mentioned sanitary facilities. **Steps should also be taken to refurbish these facilities.**

39. The CPT welcomes the fact that the number of immigration detainees in the PAZ Hernalser Gürtel had drastically decreased since the last visit and that foreign nationals were usually being held in the PAZ for short or even very short periods only.

However, it still seemed to be the case that only a small number of the foreign nationals who had been held in the PAZ for more than seven days were being placed in the open unit (six out of 17);<sup>42</sup> thus, the great majority of foreign nationals were being held under the closed regime in which regular out-of-cell activities were mostly limited to one hour of outdoor exercise per day (see below). As has been repeatedly stressed by the CPT, the placement of foreign nationals in the open regime should be the rule and the closed regime the exception. **The Committee urges the Austrian authorities to review the detention regime at the PAZ Hernalser Gürtel accordingly.**

40. Foreign nationals held in the open regime unit could move freely within the detention unit during the day (from 7 am until 5 pm) and had unrestricted access to an adjacent outdoor exercise yard. In addition, there were several communal rooms where inmates could play table tennis and table football. One foreign national was offered unpaid work as an orderly (*Hausarbeiter*).

In contrast, the regime applied to foreign nationals in the closed unit remained impoverished. Apart from one or occasionally two hours of outdoor exercise in a separate yard (with basketball equipment), inmates were locked up in their cells all day, their only occupation being reading, playing board games or watching television.<sup>43</sup> This is not acceptable.

**The CPT reiterates its recommendation that the Austrian authorities take steps to ensure that foreign nationals exceptionally subjected to the closed regime are offered a wider range of out-of-cell activities.**

41. Further, it is a matter of concern that both outdoor exercise yards at the PAZ Hernalser Gürtel were not equipped with any shelter against inclement weather. **Steps should be taken to remedy this shortcoming.**

#### **4. Health care**

42. The delegation gained a generally favourable impression of the health-care services at the Vordernberg Detention Centre. The medical staff comprised four part-time general practitioners,<sup>44</sup> one of which was present the whole day each work day (while one was on call outside normal working hours), and a psychiatrist who was employed for three days per week. It is praiseworthy that a qualified nurse was present around the clock and that the Centre benefited from the daily presence of a psychologist. In case of need, foreign nationals could be transferred to the nearby district hospital in Leoben.

In addition, the Centre was attended by a police doctor (*Amtsarzt*) on a daily basis, and the medical unit also employed two police officers working as medical orderlies (*Sanitätsbeamte*).

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<sup>42</sup> According to Section 5a, paragraph 2, of the Detention Regulation (*Anhalteordnung*), detention pending deportation shall be implemented in an open unit, immediately or following an observation period, unless there are medical or security reasons (e.g. violent behaviour) to the contrary.

<sup>43</sup> Also in the closed unit one foreign national was offered unpaid work.

<sup>44</sup> One doctor was specialised in oto-rhino-laryngology, one in pulmonology and one in paediatrics.

It is particularly noteworthy that the roles and tasks of the police doctor and other doctors have been separated (see, in this regard, paragraph 47).

43. At the PAZ Vienna Hernalser Gürtel, the health-care staff included a police doctor<sup>45</sup> (present every work day from 7 am until 1 pm and on call during the weekend) and several uniformed police officers with basic first-aid training who had been assigned to the medical unit as orderlies (*Sanitätsbeamte*) and ensured a 24-hour presence (with two officers usually being present during the day). In addition, a psychiatrist from the association Dialog was present from Monday to Friday for three hours per day.

It is a matter of concern that, contrary to the situation found in 2009, the PAZ Hernalser Gürtel no longer employed a (part-time) nurse. In practice, the orderlies carried out the work which would normally be performed by a nurse (e.g. handing out and collecting a standardised questionnaire (*Anamnesebogen*) in the context of initial medical screening, preparation and distribution of prescribed medicines, measuring blood pressure, etc.).

**The CPT recommends that the current system of delegating nursing functions to police officers be discontinued (as has been done at the Vordernberg Detention Centre). 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.**

44. In both establishments visited, newly-arrived foreign nationals were subjected to medical screening by a doctor within 24 hours, on the basis of the above-mentioned questionnaire (which was available in 42 languages).

However, despite the specific recommendation made after previous visits, there was no systematic screening for transmissible diseases other than tuberculosis (X-rays were performed once a week).

Further, whenever foreign nationals arrived with visible injuries, the latter were recorded, together with the statements made by the foreign national concerned, but doctors never wrote down any conclusions regarding the consistency between the person's statement and the medical findings. Actually, the relevant form (Part III of the Detention Report) does not contain any specific section for this purpose.

It should also be added that, at the PAZ Hernalser Gürtel, the police doctor indicated to the delegation that he did not know whether and to where injuries and related allegations of police ill-treatment would have to be reported.

45. Regrettably, despite the specific recommendations made by the Committee in previous visit reports, the situation has not improved since the 2009 visit as regards medical confidentiality. At the PAZ Hernalser Gürtel and the Vordernberg Detention Centre, police officers were usually present during medical consultations/examinations. Further, in particular at Hernalser Gürtel, medical records were accessible to police officers.

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<sup>45</sup> The police doctor was also responsible for the provision of health care at the PAZ Rossauer Lände.

46. In the light of the above, the CPT reiterates its recommendation that the Austrian authorities conduct a thorough review of the health-care services in all PAZ in Austria as well as at Vordernberg Detention Centre. 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) an account of statements made by the person concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her, (iii) the doctor's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings. In addition, the results of every examination, including the above-mentioned statements and the doctor's observations, should be made available to the detainee and his/her lawyer;
- whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of the allegations, are indicative of ill-treatment), the information be immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned.
- 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.

47. In the report on the 2009 visit, the CPT expressed its misgivings about the dual role of police doctors as treating doctor and public health doctor (*Amtsarzt*) in all the 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. In this regard, it is a welcome development that, at the Detention Centre in Vordernberg, the roles of treating doctor and public health doctor have now been separated; **the CPT recommends that the same approach be followed at Vienna Hernalser Gürtel as well as in all other PAZ in Austria.**

## 5. Other issues

48. In both establishments visited, interpreters were called in whenever needed. In addition, doctors could resort a recently-established telephone interpretation service with a pool of qualified interpreters (for various languages). At Vordernberg Detention Centre, steps have also been taken to introduce interpretation through video conference. It is also noteworthy that at Vordernberg members of staff spoke various foreign languages (including English, French, Russian and Chinese).

The CPT welcomes these developments.

49. The Committee also gained a positive impression of the existing arrangements at the Vordernberg Detention Centre for immigration detainees' contact with the outside world. Inmates could receive visits twice a week, without any specific time limit, in a pleasantly decorated room with tables and chairs. There were also five booths for closed visits (i.e. with a glass partition), which, according to staff, had never been used since the opening of the Centre. It is particularly noteworthy that foreign nationals were offered the possibility to call their family once a week for ten minutes free of charge and that they were allowed to use their mobile phone in a designated room.

At the PAZ Hernalser Gürtel, foreign nationals were offered two visits of half-an-hour per week, and they could make telephone calls every day (including one call free of charge per week).

That said, it is a matter of concern that, despite the specific recommendation made by the Committee after previous visits, it remained the case that foreign nationals were only allowed to receive closed visits. The CPT has repeatedly stressed that 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 calls upon the Austrian authorities to modify the arrangements for visits at the PAZ Hernalser Gürtel accordingly.**

Further, in contrast to Vordernberg, foreign nationals held at the PAZ Hernalser Gürtel were allowed to use their mobile phone only in exceptional cases. **The CPT invites the Austrian authorities to take steps to ensure that the practice established in the Vordernberg Detention Centre regarding the use of mobile phones is also followed at the PAZ Hernalser Gürtel.**

50. At the PAZ Hernalser Gürtel and at Vordernberg Detention Centre, newly-arrived foreign nationals were provided upon admission with information on the internal rules and the applicable procedures. For this purpose, comprehensive brochures were available in more than 25 languages.

Further, in both establishments visited, foreign nationals benefited from the daily presence of various NGOs who provided legal counselling and social services.

It is also noteworthy that, at Vordernberg Detention Centre, steps were being taken to introduce information terminals (so-called "Infomat") where foreign nationals can consult relevant information with an individual pin code.

51. As regards the employment of private security staff at Vordernberg Detention Centre, the delegation was informed that, in accordance with the relevant legal provisions, private staff performed their duties under the supervision of police office officers and were not allowed to use physical force vis-à-vis inmates (except in cases of self-defence). The delegation was further told that all private staff had followed a training programme of more than 300 hours (including in crisis intervention, de-escalation, first aid, human rights, etc.). It is also noteworthy that the “uniform” of private staff consisted of blue jeans and a blue polo shirt (cf. paragraph 135).

That said, all security staff were carrying pepper spray canisters. In this regard, **reference is made to the remarks and recommendation made in paragraph 98.**

52. According to Section 24 of the Detention Regulation, foreign nationals who have violated the internal rules may be subjected to the disciplinary sanction of solitary confinement for up to three days. The decision must be taken by the officer-in-charge (*Kommandant*) after having heard the person concerned. The relevant internal instructions (*Dienstanweisungen*) on the implementation of the Detention Regulation issued by the Regional Police Headquarters of Vienna and Styria respectively also stipulate that disciplinary decisions have to be reasoned and documented.

From the consultation of relevant documents, it transpired that only in rare cases were foreign nationals subjected to the sanction of solitary confinement. That said, the inmates concerned were apparently not always heard in person by the officer-in-charge before the imposition of the sanction. In addition, the persons concerned did not usually receive a copy of the decision.

**The CPT recommends that the Austrian authorities take steps to ensure that, in all PAZ in Austria as well as at Vordernberg Detention Centre, foreign nationals who are subjected to the disciplinary sanction of solitary confinement are systematically heard in person and receive a copy of the decision (with information on the reasons for the decision as well as on the modalities for lodging an appeal).**

## C. Prisons

### 1. Preliminary remarks

53. The CPT's delegation carried out full visits to Feldkirch, Graz-Karlau and Graz-Jakomini Prisons<sup>46</sup> as well as targeted visits to Stein and Vienna-Josefstadt Prisons. At Stein, the delegation focused on the units for involuntary forensic placement (see Section D), while at Vienna-Josefstadt, it examined in particular the regime for adult remand prisoners and the situation of juveniles.

54. *Feldkirch Prison* was built in 1904 and is located in a five-storey building in the city centre, adjacent to the Regional Court. With an official capacity of 121 places, it was accommodating 129 inmates (all adults) at the time of the visit, including five women. Although operating primarily as a remand establishment, some 45% of prisoners were serving a sentence (as a rule, of up to 18 months).

*Graz-Karlau Prison* started operating as a prison in 1803; the establishment's oldest part – originally a castle – dates back to the 16<sup>th</sup> century. At the time of the visit, the prison was holding 459 inmates (all sentenced male adults), for an official capacity of 450 places. The prisoner population included 69 life-sentenced prisoners as well as 74 persons subjected to a court-ordered measure of involuntary forensic placement, who were accommodated separately from other prisoners.

*Graz-Jakomini Prison* was opened in 1895. The prisoner accommodation is provided in the main three-storey building dating from the late 19<sup>th</sup> century and two other buildings which are of recent construction. With an official capacity of 443 places, the prison was holding 434 inmates at the time of the visit (including 25 women<sup>47</sup> and five male juveniles), approximately one-third of them on remand.

*Vienna-Josefstadt Prison* has previously been visited by the CPT several times, most recently in 2009.<sup>48</sup> It remains the largest prison establishment in Austria with an official capacity of 990 places. At the time of the visit, the prison was accommodating some 1,200 prisoners (most of whom were on remand), including 21 juveniles (of whom one was a female<sup>49</sup>).

55. Since the CPT's last visit in 2009, the official capacity of the Austrian prison estate has been increased from 8,501 to 8,635 places. At the same time, the overall prison population has increased by some 10% and stood at approximately 8,800 at the time of the 2014 visit. These figures would suggest that there is currently no major problem of overcrowding in the Austrian prison system. Nevertheless, as can be seen from the figures in paragraph 54, most of the prison establishments visited by the CPT in 2014 operated above their official capacity, which led to cramped detention conditions in certain parts of some of the establishments visited (see, for example, paragraph 65).

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<sup>46</sup> These three prisons were visited by the Committee for the first time. These establishments also comprised detached units which were not visited by the delegation.

<sup>47</sup> The women's section also comprised a spacious and well-equipped mother-and-child unit.

<sup>48</sup> See CPT/Inf (2010) 5.

<sup>49</sup> The female juvenile was being held in the women's unit and was sharing a cell with a young adult.



56. The CPT welcomes various initiatives which have been taken by the Austrian authorities in recent years to ensure that the overall prison population is kept within manageable levels. In particular, reference should be made to a system of house arrest of prisoners under electronic surveillance which was introduced in September 2010. It transpires from the information provided by the authorities that the number of persons benefiting from this measure has been increasing slowly but steadily (i.e. from an average of 227 prisoners in 2013 to 249 in 2014), the vast majority of them being sentenced prisoners. It was also stated that it was intended to apply electronic surveillance more extensively among the remand population as well.<sup>50</sup>

57. Further, it is praiseworthy that the Austrian authorities have started to carry out an overhaul of the detention of juveniles with a view to reducing resort to imprisonment to a strict minimum. To this end, a number of pilot projects have been launched.

The delegation was told that a number of juveniles remanded in custody had been placed in so-called “supervised homes” (*Wohngruppen*) in Vienna, which were managed by private associations with the active involvement of social workers, psychologists and educators. In this context, juveniles may also be subjected to electronic surveillance. In addition, a programme called “Social Network Conference” had recently been introduced in co-operation with the Probation Service and relevant youth welfare authorities, with a view to avoiding imprisonment of juvenile offenders (both sentenced and on remand). In the context of this programme, juvenile offenders benefit from individual counselling with the participation of a social worker, various persons who are part of the juvenile’s social network (such as family members, friends and teachers) as well as of the victims.

The delegation was informed that, as a result of the aforementioned measures, the number of juveniles in prisons had significantly decreased in recent years (from 5% to 1% of the total prison population; i.e. 96 juveniles at the time of the visit, a third of them on remand).

58. As regards Vienna-Josefstadt Prison (the only remand establishment for juveniles in Vienna), the delegation was informed by the Minister of Justice that arrangements had been made to ensure that as of 1 January 2015 all newly-arrived juvenile remand prisoners would undergo an assessment within two weeks as to whether they were suitable to be placed in one of four existing “supervised homes”. If the outcome was negative, the juvenile concerned would be transferred to Gerasdorf Juvenile Prison. According to the Minister, the objective was to no longer accommodate juveniles at Vienna-Josefstadt Prison for more than two weeks. The CPT welcomes this development; **it would like to receive updated information on this matter.**

59. The staffing situation in Austrian prisons was the subject of severe criticism in the report on the CPT’s 2009 visit.<sup>51</sup> Regrettably, the 2014 visit revealed that no progress had been made in this respect. Once again, staff shortages – notably of those in charge of the custody of inmates – were observed in all the prisons visited, which inevitably had a negative impact, *inter alia*, on prisoners’ access to out-of-cell activities (see, in this regard, paragraph 68). The situation was further exacerbated by the existing staff shift system: it was still the case that the “night shift” of prison officers usually started at around 3 p.m. (and even at noon on Fridays and weekends), with the result that most prisoners remained locked up in their cells until the following morning. Such a state of affairs is unacceptable.

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<sup>50</sup> Until the time of the visit, only some 30 remand prisoners had benefited from house arrest under electronic surveillance.

<sup>51</sup> See CPT/Inf (2010) 5, paragraph 71.

By letter of 28 January 2015, the Austrian authorities informed the Committee that an additional 100 posts of prison officer and 55 posts of civilian staff had been allocated to the prison administration, which would be filled in the following one and a half years. This is certainly a step in the right direction. However, additional, more rigorous, measures are required in order to render the situation satisfactory.

The CPT wishes to stress again that prison staff must be regarded as performing a public service, not an administrative function (see also Rules 8 and 71 to 91 of the European Prison Rules<sup>52</sup>). Indeed, a real improvement in the regime on offer to prisoners can be achieved with 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 night shift starting no earlier than 7 p.m., and preferably later.

**The CPT calls upon the Austrian authorities to carry out a complete overhaul of the staffing situation in the prisons visited and, where appropriate, in other prisons in Austria, in the light of the above remarks.**

## 2. Ill-treatment

60. The CPT's delegation received hardly any allegations of physical ill-treatment of prisoners by staff in the prisons visited. Indeed, the majority of the inmates interviewed gave a positive assessment of their treatment by custodial staff, and the delegation observed that relations between staff and prisoners were generally relaxed.

That said, at Feldkirch and Graz-Karlau Prisons, a number of accounts of verbal abuse (including of a racist nature) of inmates by prison officers were received. **The CPT recommends that the management of these prisons be instructed to remind their staff that verbal abuse of prisoners is not acceptable and will be sanctioned accordingly.**

61. The delegation was informed that a criminal investigation had been launched against one prison officer at Graz-Karlau Prison, who is suspected of having beaten an agitated inmate after the latter had been brought under control by members of the establishment's intervention team in July 2014. It is noteworthy that the investigation was triggered by a report filed by another officer who had witnessed the incident. **The CPT would like to be informed, in due course, of the outcome of the criminal proceedings in relation to this case and any action subsequently taken (including at the disciplinary level).**

62. It appeared from the information gathered during the visit that inter-prisoner violence did not constitute a major problem in any of the establishments visited, although some allegations of this kind were received from inmates. The delegation gained the impression that efforts were being made by staff to prevent instances of inter-prisoner violence (e.g. by identifying potential perpetrators of violence) and that prison officers generally intervened in a timely and appropriate manner when they were confronted with such instances. Further, suspected cases of inter-prisoner violence were well documented by prison staff and were systematically reported to the prosecutor's office.

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<sup>52</sup> Rule 8, in particular, reads as follows: "Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners."

63. As regards more specifically Vienna-Josefstadt Prison, the delegation was informed that after a series of violent incidents (including a case of rape) among juveniles in recent years, the authorities had adopted various measures to prevent inter-prisoner violence in the establishment. In particular, a rule had been introduced of not accommodating more than two juveniles per cell,<sup>53</sup> and steps had been taken to ensure the permanent presence of a prison officer in juvenile units also at night-time and to provide specialised training to staff working with juveniles (see also footnote 63). As a result, the aforementioned measures seem to have led to a reduction of instances of inter-prisoner violence at Vienna-Josefstadt Prison.

### 3. Conditions of detention of the general prison population

#### a. material conditions

64. Material conditions of detention were on the whole satisfactory in all the prisons visited in terms of state of repair and hygiene, cell equipment, ventilation, access to natural light, and living space (see, however, paragraph 65).<sup>54</sup>

That said, at Graz-Karlau Prison, most of the cells in units A, B and C in the main building did not benefit from sufficient access to natural light, due to the size and location of the cell windows.

By letter of 28 January 2015, the Austrian authorities informed the CPT that “the prison management [of Graz-Karlau Prison] has already made measurements and commissioned a feasibility study. There are plans to enlarge the windows in the areas mentioned to provide sufficient incidence of natural light into the cells.” **The CPT would like to be informed of the implementation of these plans.**

65. At Feldkirch Prison, the double cells located on the ground floor measured some 9.3 m<sup>2</sup>. However, most of the floor space in those cells was taken up by the in-cell toilet (measuring some 1.4 m<sup>2</sup>) and other cell equipment (such as a bunk bed, a table, chairs, lockers, etc.), leaving hardly any space inside the cell to move around. **In the CPT’s view, the aforementioned cells should preferably be used to accommodate only one prisoner.**

66. Moreover, numerous complaints were heard from non-working prisoners at Feldkirch Prison that, unlike working inmates who had access to a shower every day, they were entitled to shower only once a week, which was not sufficient to maintain their personal hygiene. **The CPT recommends that steps be taken at Feldkirch Prison to increase the frequency of non-working prisoners’ access to a shower, taking into account Rule 19.4 of the European Prison Rules.**<sup>55</sup>

<sup>53</sup> To this effect, Internal instruction (*Erlass*) BMJ-VD41704/0009-VD 2/2013 was sent by the Prison Administration (*Vollzugsdirektion*) to the Director of Josefstadt Prison on 28 June 2013. The instruction also contains a reminder that the age and level of development must be taken into account when deciding on the placement of juveniles in a cell.

<sup>54</sup> By way of example, at Feldkirch Prison, most double cells measured some 14 m<sup>2</sup>, and cells with four beds between 17 and 19 m<sup>2</sup>; at Graz-Karlau Prison, single cells measured between 8 and 9 m<sup>2</sup>, and cells with four beds some 40 m<sup>2</sup>; at Graz-Jakomini Prison, cells with three and four beds measured, respectively, some 16 and 19 m<sup>2</sup>.

<sup>55</sup> Rule 19.4 reads as follows: “Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.”

b. regime

67. As regards sentenced prisoners, the delegation gained a generally positive impression of the regime activities on offer at *Graz-Karlau Prison*. Work was provided to some 70% of the prison population (including all life-sentenced prisoners), either in workshops or in the establishment's general services (e.g. cleaning, kitchen, laundry, etc.).<sup>56</sup> The prison had a total of 21 well-equipped workshops (e.g. carpentry, metalwork, plumbing, printing, car maintenance, etc.) in which vocational training courses were also organised every weekday for some 40 inmates. Further, some 25 prisoners participated in crafts, art or music courses held two or three times per week. Efforts were also being made to engage as many prisoners as possible in various recreational and sports activities (such as weightlifting, football, table tennis, chess, yoga) which took place several times a week.

At *Graz-Jakomini Prison*, the great majority of sentenced prisoners (i.e. some 200) were employed in a number of workshops or performed domestic duties within the establishment. Further, some 20 of them attended literacy or German language courses and some 35 were allowed to work outside the prison during the day. It is also noteworthy that sentenced prisoners had frequent access to various sports and recreational activities.

Similarly, the majority of the sentenced prisoners at *Feldkirch and Vienna-Josefstadt Prisons* were provided with work and were offered other organised out-of-cell activities (sports, art, music, German language classes, etc.).

68. However, it is a matter of concern that, due to the existing (low) staff complement and staff attendance system, the working day in all the prisons visited ended early in the afternoon (i.e. at around 2.30 p.m. on weekdays, and even earlier on Fridays), limited activities being available for the rest of the day. Moreover, during weekends, when the night shift of prison officers started at noon, hardly any activities were offered to prisoners except for outdoor exercise.<sup>57</sup>

Indeed, the management of the prisons visited acknowledged that the limited number of staff at their disposal was a major obstacle in developing out-of-cell activities for prisoners. The delegation noted that in particular at *Graz-Karlau* and *Graz-Jakomini Prisons*, the available workshops and other facilities were largely underused due to understaffing; in the former prison, some workshops even had to be closed down. Further, the delegation noted that the existing facilities for sports and other organised activities at *Feldkirch* and *Vienna-Josefstadt Prisons* were clearly insufficient for the number of inmates held.

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<sup>56</sup> Under Section 44 of the Law on the Execution of Sentences (*Strafvollzugsgesetz - StVG*), sentenced prisoners are obliged to work. The delegation was informed that sentenced prisoners who were not given the possibility to work received a monthly allowance of 35 Euro.

<sup>57</sup> In this respect, the situation found at *Graz-Karlau Prison* was arguably the most advantageous: the out-of-cell time during weekends consisted of a daily two-hour outdoor exercise period as well as one-hour sport sessions available to a limited number of prisoners.

69. The regime for remand prisoners at Feldkirch, Graz-Jakomini (including for women) and Vienna-Josefstadt Prisons was extremely poor; only very few of them had possibilities to work or to participate in vocational training. As for sports and recreational activities, the offer generally consisted of one or at best two 90-minute sessions per week. Consequently, for the vast majority of remand prisoners, the only daily out-of-cell activity was an hour of outdoor exercise (which was itself not always offered on a regular basis; see paragraph 71); for the rest of the time, they were locked up in their cells and left to their own devices, and that usually for months on end. Such a state of affairs is not acceptable.

70. **The CPT reiterates its recommendation that the Austrian authorities redouble their efforts to improve the programme of activities offered to prisoners at Feldkirch, Graz-Karlau, Graz-Jakomini and Vienna-Josefstadt Prisons, in the light of the above remarks. In particular, steps should be taken to ensure longer hours for out-of-cell activities for prisoners, including on Fridays and weekends.** As repeatedly stressed by the Committee in the past, 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).

71. Despite the assurances given to the contrary by the Austrian authorities after the 2009 visit, it appeared to be common practice at Vienna-Josefstadt Prison and in the other prisons visited<sup>58</sup> that inmates (including juveniles) were not allowed to take outdoor exercise on rainy days. It should be noted in this connection that in none of the establishments visited were the outdoor exercise yards fitted with any form of protection against inclement weather.

By letter of 28 January 2015, the Austrian authorities informed the CPT that “disposable rain suits were purchased by the Vienna-Josefstadt Prison Management, which have already been successfully tested in the Feldkirch Prison.” **The CPT wishes to receive confirmation that inmates in all the prisons visited and, as appropriate, in other Austrian prisons are now offered outdoor exercise every day, including in inclement weather.**

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<sup>58</sup> The only exception was Feldkirch Prison where every inmate received a raincoat upon arrival.

#### 4. Conditions of detention of juvenile prisoners

72. In the course of the visit, the delegation paid particular attention to the situation of juvenile prisoners at Vienna-Josefstadt and Graz-Jakomini Prisons.

As already indicated, at the time of the visit, *Vienna-Josefstadt Prison* was accommodating 21 juveniles (nine sentenced<sup>59</sup> and twelve on remand); this constitutes a significant contrast to the situation found in 2009 when the establishment was holding 79 juveniles.

The juvenile unit at *Graz-Jakomini Prison* had a capacity of 33 places and was accommodating two sentenced and three remand prisoners at the time of the visit.<sup>60</sup>

73. The material conditions under which juveniles were being held were satisfactory at Vienna-Josefstadt Prison,<sup>61</sup> and of a good standard at Graz-Jakomini Prison. A standard cell in the juvenile unit at Graz-Jakomini Prison measured some 17 m<sup>2</sup> and contained two or three beds, a fully-partitioned toilet, a television set, a fridge and an intercom call system.<sup>62</sup>

74. As regards regime, the CPT notes that an internal instruction (*Erlass*) was issued by the Prison Administration in December 2014, which sets out minimum requirements for activities to be offered to juveniles.<sup>63</sup>

75. At *Vienna-Josefstadt Prison*, the delegation observed significant improvements regarding the regime for juveniles compared to the situation found in 2009. Indeed, at the time of the 2014 visit, all juveniles were offered a structured programme of purposeful activities and were thus able to spend most of the day outside their cells.

The delegation noted that the vast majority of the juveniles attended general education or computer classes, vocational training or occupational activities every morning during the week, for four to five hours per day.<sup>64</sup> Further, cells were open until 5.30 p.m. on weekdays, and in the afternoon (usually between 1.30 and 5 p.m.) juveniles had access to a courtyard for up to two hours (where they could play football a few times a week) as well as to a recreation room equipped with board games. It is also noteworthy that a psychologist was assigned to work with the juveniles, holding both individual and group sessions every weekday.

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<sup>59</sup> All sentenced juveniles had been held in the establishment for a maximum of a few months.

<sup>60</sup> The unit was also holding five young adults (i.e. aged between 18 and 22).

<sup>61</sup> For a detailed description, see CPT/Inf (2005) 13, paragraphs 85 and 86.

<sup>62</sup> There were two larger cells (each containing six beds and measuring some 35 m<sup>2</sup>) which were also equipped with a table tennis table.

<sup>63</sup> The instruction (BMJ-VD41704/0009-VD 2/2013), *inter alia*, specifies that, as a rule, the regime of juveniles should be a relaxed one (*gelockerter Vollzug*) and that there must be a treatment plan (*Vollzugsplan*) for every juvenile. Further, in juvenile units of adult prisons, a member of staff must be present in the unit on one weekend day and cell doors must be kept open for at least three hours on that day. Juvenile prisoners must be offered computer courses and activities to enhance their social skills (cooking, hygiene, healthy nutrition, etc.). Moreover, at least once a week, juveniles must be offered supervised leisure activities of a pedagogical nature and sentenced juveniles must benefit from escorted group outings.

<sup>64</sup> More specifically, three juveniles attended general education classes, four received vocational training (in cooking, arts, metalwork), three participated in computer courses and four attended occupational therapy sessions. Further, three juveniles were involved in domestic duties (e.g. cleaning, food distribution, etc.).

As already mentioned, the Austrian authorities have decided that they will no longer hold juvenile prisoners at Vienna-Josefstadt Prison beyond an initial assessment period of a maximum of two weeks. In this regard, **reference is made to the remarks and request for information made in paragraph 58.**

76. The CPT welcomes the efforts made at *Graz-Jakomini Prison* to provide the few juvenile prisoners with educational and vocational activities. The general education classes took place in the morning from Mondays to Thursdays for up to three hours and were attended by all the juveniles. In the afternoon, they usually took their daily outdoor exercise of up to two hours and played board games. Further, the juveniles had access to the prison's indoor gym every Friday for 1½ hours. At weekends, they were engaged in pottery and woodwork in the unit's common room.

However, this favourable situation was marred by the fact that on most days of the week (including at weekends) juveniles were locked up in their cells as of 3.30 p.m. until the following morning.<sup>65</sup>

In the light of the above, **the CPT recommends that the Austrian authorities pursue their efforts to further develop the programme of activities offered to juvenile prisoners at Graz-Jakomini Prison so as to ensure that such prisoners enjoy out-of-cell activities throughout the day during the week, until the early evening.**

## 5. Health care

77. The delegation conducted a full evaluation of the health-care services at Feldkirch, Graz-Karlau and Graz-Jakomini Prisons. It also examined certain health-care related issues at Vienna-Josefstadt Prison, in particular as regards medical screening and recording of injuries.

78. Health care provided to inmates at Feldkirch, Graz-Karlau and Graz-Jakomini Prisons was satisfactory in many respects. That said, the CPT is very concerned by the almost total lack of medical confidentiality in all the establishments visited. In particular, it remained the case that, in every prison, various health-related tasks which are normally reserved for qualified nurses, were performed by medical orderlies, i.e. prison officers with only basic health-care training (*Sanitätsbeamte*). These orderlies were usually present during medical consultations, had access to medical documentation (including the electronic database) and were responsible for the distribution of prescribed medicines. At the same time, they continued to perform custodial functions. As stressed by the CPT in the past, this practice is in breach of the principle of medical confidentiality and compromises the perception of the professional independence of prison health-care staff.

It is also a matter of concern that, with some exceptions,<sup>66</sup> no nurse was present in any of the above-mentioned prisons at night and at weekends.<sup>67</sup>

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<sup>65</sup> The only exception to this rule was Tuesdays when the lock-up time was 6.30 p.m.

<sup>66</sup> A nurse was present at Graz-Karlau Prison on Saturday mornings.

<sup>67</sup> Feldkirch Prison employed one full-time nurse, and the delegation was told that the recruitment of an additional nurse on a part-time basis (50%) was underway. Further, there were five part-time nurses (working 1.5 full-time equivalent) at Graz-Karlau Prison and two full-time nurses at Graz-Jakomini Prison.

**The CPT recommends that the Austrian authorities initiate a process of abolishing the practice of involving prison officers in the performance of health-care duties in all prisons in Austria. This will invariably entail an increase in nursing staff resources.**

Further, the Committee recommends that immediate steps be taken to ensure that:

- **medical orderlies cease to carry out custodial functions in all prisons;**
- **a nurse is present at Feldkirch, Graz-Karlau and Graz-Jakomini Prisons at weekends (at least on a part-time basis).**

79. As regards medical staff, at *Feldkirch Prison*, a visiting general practitioner was present twice a week for a total of eight hours and a psychiatrist once a week for four hours. In addition, a dentist visited the establishment once or twice a week, for four hours each time.

At *Graz-Karlau Prison*, there were two part-time general practitioners working a total of 26 hours per week and a part-time psychiatrist working 27 hours per week.<sup>68</sup> The prison was also attended by a dentist (up to ten hours per week) as well as by a number of other specialists (e.g. ophthalmologist, orthopaedist, otolaryngologist, dermatologist, etc.) on a monthly basis.

At *Graz-Jakomini Prison*, the medical staff comprised a full-time general practitioner and a part-time (15%) psychiatrist. Further, as at Graz-Karlau, regular visits were organised by outside specialists (including a dentist).

In the CPT's view, the surgery hours of the general practitioners at Feldkirch and Graz-Karlau Prisons were not sufficient.<sup>69</sup> For example, the latter establishment – given the size of its inmate population – should have the equivalent of at least one full-time general practitioner. As for the presence of a psychiatrist, it should be increased at Feldkirch and Graz-Jakomini Prisons.

**The CPT recommends that the Austrian authorities review the presence of general practitioners and psychiatrists at Feldkirch, Graz-Karlau and Graz-Jakomini Prisons, in the light of the above remarks.**

80. The health-care facilities were generally of a good standard in all the establishments visited. It is also noteworthy that a system of electronic medical files was in place in every prison. That said, it appeared to be difficult for doctors to extract relevant information from the system in order to have a more general overview of the health situation of the inmate population (e.g. epidemiological overview of blood-borne viral infections). **The CPT invites the Austrian authorities to further develop this system in the light of the preceding remarks.**

81. At Feldkirch Prison, a very large number of prisoners (more than 70%) were receiving pharmacological treatment. It should be noted that this proportion was nearly twice as high as that at Graz-Karlau or Graz-Jakomini Prisons. The delegation was unable to find any indication of abnormally high levels of morbidity among the prisoner population at Feldkirch that would justify this rather unusual situation. **The CPT would like to receive the observations of the Austrian authorities on this matter.**

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<sup>68</sup> The prison also had two visiting psychiatrists who mainly worked with prisoners subjected to a court-ordered measure of involuntary forensic placement.

<sup>69</sup> It is not surprising that the general practitioners in these two prisons were overwhelmed by requests for medical attention and usually had to see ten or even more inmates per hour.



82. In all the establishments visited, procedures for medical screening on admission were on the whole satisfactory. Newly-arrived prisoners were usually examined within 24 hours of admission by a doctor (or a nurse reporting to a doctor). In addition, screening for various transmissible diseases (such as tuberculosis, hepatitis C, HIV, etc.) was offered in a systematic manner.

However, at Feldkirch Prison, the initial medical examination of newly-arrived prisoners was far from comprehensive (i.e. no proper physical examination and no systematic testing for transmissible diseases).

As regards recording of the injuries observed on newly-arrived prisoners, such recording was done on a special form, which contained a description of the injuries as well as information regarding the causes of the injuries according to the doctor and the inmate concerned; "body charts" for marking the injuries were also used for this purpose. However, the doctors did not usually note down any observations regarding the consistency between the injuries observed and the statements made by the prisoner concerned.

**The CPT recommends that the Austrian authorities take the necessary steps (including through the issuance of instructions and the provision of regular training to relevant staff) to ensure that in all the establishments visited as well as in other prisons in Austria:**

- **all newly-arrived prisoners are subject to a comprehensive medical examination, including screening for transmissible diseases, by a doctor (or a fully qualified nurse reporting to a doctor) within 24 hours of their admission;**
- **the record drawn up after the medical examination of a prisoner (on admission and during imprisonment) contains: i) a full account of objective medical findings based on a thorough examination, ii) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), and iii) the doctor's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. In addition, the results of every examination, including the above-mentioned statements and the doctor's observations, should be made available to the prisoner and his/her lawyer.**

83. As far as the delegation could ascertain, recorded injuries and allegations of ill-treatment were diligently and promptly reported to the relevant prosecutor (see also paragraph 18).

84. Finally, each of the prisons visited was accommodating a certain number of inmates with a drug addiction. As a rule, such inmates were offered opiate substitution therapy (methadone, buprenorphine, etc.) and could benefit from professional psychological support. Further, various preventive measures were being taken against the spread of transmissible diseases, such as counselling for new arrivals with addiction problems and providing prisoners with free access to condoms.

That said, none of the prisons visited had in place a needle-exchange programme (whereas, as acknowledged by staff, used syringes and needles were regularly found within the establishments). Given the existence of needle-exchange programmes in the outside community, **the CPT encourages the Austrian authorities to introduce such programmes in the prison system.**

## 6. Other issues

### a. contact with the outside world

85. Adult remand prisoners are, in principle, allowed two half-hour visits per week.<sup>70</sup> However, according to the law, visits to remand prisoners, as well as their telephone contacts, are subject to authorisation by the relevant prosecutor or judge.

The CPT considers that remand prisoners should be entitled to receive visits and make telephone calls as a matter of principle, rather than subject to authorisation by a prosecutor or judge. This precept is also set out in the European Prison Rules.<sup>71</sup> Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation and be applied for a specified period of time. If it is considered that there is an ongoing risk of collusion, particular visits or phone calls can always be supervised/monitored. **The CPT recommends that the rules governing remand prisoners' access to the outside world be revised, in the light of these remarks.**

86. It is also a matter of concern that, with some exceptions,<sup>72</sup> remand prisoners (including juveniles) in the establishments visited could usually only receive closed visits (i.e. through a glass partition).

The CPT accepts that, in exceptional cases, it may be justified, for security-related reasons, to prevent physical contact between prisoners and their visitors. However, open visits should be the rule and closed visits the exception. **The Committee recommends that remand prisoners be, as a rule, able to receive visits from their family members without physical separation; visits with a partition should be the exception and applied in individual cases where there is a clear security concern.**

87. In accordance with the relevant legislation, adult sentenced prisoners could receive at least one half-hour visit every week and one 1-hour visit every six weeks.<sup>73</sup>

The CPT wishes to emphasise that contacts with the outside world, in particular visits from families and other relatives, are of crucial importance in the context of social rehabilitation of prisoners. The Committee is therefore of the view that all prisoners should be entitled to a visit of at least one hour every week (which is currently the case with remand prisoners). **The CPT recommends that the Austrian authorities take the necessary steps to ensure that this precept is effectively implemented in respect of all sentenced prisoners.**

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<sup>70</sup> Juvenile prisoners are allowed a weekly visit of at least one hour, regardless of their legal status (Section 58 of the JGG).

<sup>71</sup> See Rules 24.1 and 99 of the European Prison Rules as well as the commentaries on these Rules.

<sup>72</sup> For example, at Feldkirch Prison, many remand prisoners had table visits every second week.

<sup>73</sup> Section 93 of the StVG.

88. At Graz-Karlau Prison, nearly all inmates received their weekly visits under open conditions (i.e. around a table). In addition, prisoners could be granted conjugal visits of up to 14 hours. In this connection, the delegation was impressed by the high quality of the establishment's brand new visiting facility (for both table and conjugal visits). Further, it appeared that sentenced prisoners at Feldkirch and Graz-Jakomini Prisons could receive most of their visits under open conditions.

89. In the three establishments visited, sentenced prisoners could make an unlimited number of telephone calls, provided that they had the means to pay for the communication costs.<sup>74</sup> However, the CPT was puzzled to note that the law entitles sentenced prisoners to make phone calls only "for justified reasons".<sup>75</sup> Moreover, the uniform House Rules issued by the Federal Ministry of Justice even state that those reasons must be substantiated by the prisoner concerned. **The CPT would like to receive the observations of the Austrian authorities on this matter.**

b. situation of foreign prisoners

90. Each of the prisons visited was accommodating high numbers of inmates of foreign nationality. In general, it appeared that the majority of them were well integrated into the mainstream prison population. Nevertheless, many foreign nationals referred to difficulties in communicating with staff due to language barriers. This seemed to be the case in particular vis-à-vis health-care staff. The CPT noted with concern that although telephone interpretation services were in principle available, these services were not widely used and it was apparently not uncommon to use fellow inmates as interpreters during medical consultations. **Steps should be taken to put an end to such practice.**

91. The delegation was informed that, as of 1 October 2014, a video-interpretation service for health-care purposes would be introduced as a pilot project at Vienna-Josefstadt Prison. **The CPT would like to receive updated information on this matter.**

c. discipline

92. The types and range of possible disciplinary sanctions were described in the report on the 2009 visit and remain unchanged. It is recalled that the most severe disciplinary sanction is solitary confinement (in an ordinary or disciplinary cell) for up to four weeks for adult prisoners and for up to two weeks for juveniles.<sup>76</sup>

93. The delegation gathered no evidence indicating excessive recourse to the sanction of solitary confinement in any of the establishments visited. Further, as was the case in 2009, the delegation found that the periods of disciplinary solitary confinement were usually significantly below the maximum provided for by law. For example, as regards juveniles, it appeared that solitary confinement was as a rule imposed for periods not exceeding seven days.

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<sup>74</sup> At Graz-Karlau Prison, inmates whose families lived abroad were given the possibility to have an audio- or video-chat via the Internet once a month.

<sup>75</sup> See Section 96 StPO.

<sup>76</sup> The other disciplinary sanctions are reprimand, withdrawal of privileges, loss of certain rights and a fine (Section 109 StVG and Section 58, paragraph 9, JGG).

Nevertheless, the CPT recalls that any form of isolation of juveniles is a measure that can compromise their physical and/or mental well-being and should therefore be applied only as a means of last resort. Consequently, the Committee regards the maximum possible period of solitary confinement of two weeks as being too long for this age group. In the CPT's view, solitary confinement as a disciplinary measure should only be imposed on juveniles for very short periods and under no circumstances for more than three days. Further, whenever juveniles are subject to solitary confinement, they must be guaranteed appropriate human contact throughout the duration of the measure.<sup>77</sup>

The CPT also considers that the maximum possible period of solitary confinement of four weeks for adult prisoners is excessive. Given the potentially very damaging effects of solitary confinement on the mental, somatic and social health of those concerned, this period should be no more than 14 days for a given offence, and preferably lower.<sup>78</sup>

**The Committee recommends that the relevant legislation be revised in the light of the above remarks.**

94. Further, it is a matter of concern that, despite a specific recommendation made by the CPT after the 2009 visit, the sanction of solitary confinement still, as a rule, entails a total prohibition on contact with the outside world (except with a lawyer). **The CPT reiterates its recommendation that the relevant legal provisions be revised so as to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contacts and that any restrictions on family contacts as a form of punishment are applied only when the offence relates to such contacts.**<sup>79</sup>

95. As far as the delegation could ascertain, in all the prisons visited, disciplinary procedures were carried out in accordance with the relevant legal framework.<sup>80</sup>

However, despite a specific recommendation made by the CPT in the report on the 2009 visit, the legislation in force still did not require 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 Governor or one of his/her deputies). Further, it remained the case that the prisoners concerned were not systematically provided with a copy of the disciplinary decision (unless they explicitly asked for it) and were usually only informed orally of the possibility to lodge an appeal.

**The CPT reiterates its recommendation that the Austrian authorities take steps (including, if necessary, of a legislative nature) to ensure that prisoners facing disciplinary charges:**

- **have the right to be heard by the person who takes the decision;**
- **receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. In this context, inmates having difficulties in understanding the German language should be provided with the necessary assistance.**

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<sup>77</sup> See paragraph 128 of the 24<sup>th</sup> General Report on the CPT's activities.

<sup>78</sup> See paragraph 56(b) of the 21<sup>st</sup> General Report on the CPT's activities.

<sup>79</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.

<sup>80</sup> Section 116 StVG.

96. Material conditions in the disciplinary cells at Graz-Karlau and Graz-Jakomini Prisons were generally adequate. It is noteworthy that, at Feldkirch Prison, there was no dedicated punishment cell and the sanction of solitary confinement was implemented in ordinary accommodation cells.

d. security issues

97. Regrettably, despite the specific recommendation repeatedly made by the CPT,<sup>81</sup> it remained the case in all the establishments visited that, during night shifts, at least one officer carried a firearm inside the detention area and that an armed officer was present whenever a cell door was opened by another officer (as required by the regulations).

The Committee must stress once again 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. Indeed, in most Council of Europe States, the carrying of firearms within prison premises is generally prohibited. **The CPT reiterates its recommendation that the Austrian authorities review the current policy on the carrying of firearms by prison staff inside detention areas.**

98. The CPT is concerned that it continued to be widespread practice for prison officers to carry pepper spray canisters within detention areas. Given the potentially dangerous effect of this substance, **the Committee recommends that steps be taken to ensure that pepper spray does not form part of the standard equipment of custodial staff and that it is never used in confined spaces.**

e. complaints procedures

99. In all the prisons visited, newly arrived inmates received a copy of the internal rules of the establishment as well as an information leaflet (available in about twenty languages) setting out the prisoner's basic rights, including the right to complain.

That said, the above-mentioned leaflet lacked information about the avenues of complaint available to prisoners within and outside the prison system. Moreover, with the notable exception of Feldkirch Prison, no comprehensive complaints management system was in place in any of the establishments visited. In particular, no specific complaints register was kept (be it paper-based or electronic) and no internal statistics were compiled of complaints submitted.

**The CPT recommends that steps be taken to remedy the above-mentioned deficiencies. In particular, all prisoners should be provided with precise written information on the avenues of complaint available to them, both within and outside the prison system.**

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<sup>81</sup> See, most recently, paragraph 114 of the report on the 2009 visit (CPT/Inf (2010) 5).

## **D. Situation of persons subjected to a court-ordered measure of forensic placement**

### **1. Preliminary remarks**

100. As already mentioned, the delegation carried out a targeted visit to Stein Prison, in order to examine the situation of persons who were subjected to a court-ordered measure of forensic placement (*Massnahmenvollzug*).

101. Stein Prison has two separate units for this category of inmate (Units T1 and T2), with a combined capacity of 106 places. At the time of the visit, 108 inmates were being held in the establishment. With the exception of one inmate who was subject to the measure of “placement in an institution for drug-addicted offenders” (*Anstalt für entwöhnungsbedürftige Rechtsbrecher*) under Section 22 StGB,<sup>82</sup> all inmates were subject to the measure of “placement in an institution for mentally abnormal offenders” (*Anstalt für geistig abnorme Rechtsbrecher*) under Section 21, paragraph 2, StGB<sup>83</sup> (including eleven who had been sentenced to life imprisonment),<sup>84</sup> 59 inmates were still simultaneously serving their sentence, while 49 inmates had completed their sentence and remained in detention solely on the basis of the court-ordered measure.

102. According to the relevant provisions of the Law on the Execution of Sentences (*Strafvollzugsgesetz*)<sup>85</sup>, the aim of a placement measure under Section 21, paragraph 2, is to prevent inmates from committing further criminal offences under the influence of their “mental or spiritual abnormality” (*geistige oder seelische Abartigkeit*). The involuntary placement should improve the mental condition of inmates to the degree that reoffending would no longer be expected and that they would be able to lead a law-abiding life in society. For this purpose, inmates shall be provided, according to their needs, with medical, psychiatric, psychotherapeutic, psycho-hygienic and educational care.

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<sup>82</sup> Such placement concerns drug-addicted persons who have committed a criminal offence in a state of intoxication and who are placed in a special unit for treatment purposes for a maximum period of two years.

<sup>83</sup> This provision authorises the placement of a person who has committed an offence and who, while he or she cannot be considered criminally irresponsible, was under the influence of a serious psychiatric or psychological abnormality at the time the offence was committed. Such placement is construed as both punishment and treatment and is of indefinite duration (subject to an annual judicial review, see paragraph 117).

<sup>84</sup> The delegation was informed that, at the time of the visit, no person in Austria was subject to forensic placement under Section 23 StGB (i.e. recidivists who are criminally fully responsible for the crime(s) they have committed and who are considered to be danger to society; the maximum period for such detention is ten years and cannot be renewed).

<sup>85</sup> Sections 164, paragraph 1, and 166, paragraph 1.

## 2. Conditions of detention, staff and treatment

103. Material conditions in the two units for *Massnahmenvollzug* were adequate in terms of repair but not suitable for accommodating persons in need of therapy and assistance. In particular, they lacked appropriate facilities for therapeutic activities.

Further, in Unit T1, nine large garbage bins took up a considerable amount of space in the corridor. In their letter of 28 January 2015, the Austrian authorities informed the Committee that separate garbage disposal areas would be created as soon as possible in all units.

104. As regards activities, a more relaxed regime was offered to inmates in Unit T2 where some inmates were accommodated in a residential sub-unit (*Wohngruppenvollzug*) with single- and double-occupancy cells. In contrast, the regime applied to inmates in Unit 1 (mostly inmates who did not work or participate in therapeutic activities) was far too restrictive. In the CPT's view, it is not acceptable that inmates were usually locked up alone in their cell every day from Mondays to Thursdays from 10.30 a.m. to 1.30 p.m. and from 2.30 p.m. until the following morning; from Fridays to Sundays, the "night lock-up" even started at noon.

105. The CPT appreciates the efforts made by the Austrian authorities to provide inmates with work or other occupational activities. At the time of the visit, some 60 inmates were employed in a workshop (woodwork, plumbing, cleaning, laundry, bookbinding, etc.) and 17 participated in occupational therapy on a daily basis.

Further, the Committee acknowledges the challenges the management of the prison is faced with when dealing with particularly difficult inmates who are not able or not willing to engage themselves in therapeutic or other organised activities. At the time of the visit, 18 out of 108 inmates were not participating in any individual or group activity.

106. As regards staff, two psychologists (one working full-time and the other normally 33 hours/week; the latter was on prolonged sick-leave at the time of the visit), two full-time social-workers and one full-time occupational therapist were employed exclusively on the Units for *Massnahmenvollzug*; in addition, 15 external therapists were contracted on a part-time basis for individual consultations. Moreover, eight prison officers were assigned to Units T1 and T2 (one officer was usually present in each unit during the day). In this connection, it is regrettable that only three of the eight prison officers had followed a special training programme for work in *Massnahmenvollzug* and that none of the prison officer was offered any specialised continuous training.

107. In the CPT's view, it is positive that inmates' contacts with a psychologist had been increased in recent times. The delegation was informed that, following a decision taken by the prison administration several months before, all inmates had to be seen regularly by a psychologist, although the interpretation of the term "regular" left a wide margin of discretion.

However, the existing arrangements in terms of psychological treatment were far from satisfactory and insufficient to meet the requirements defined in the relevant legislation (see paragraph 102). At the time of the visit, 53 persons were being offered individual therapy (if needed also in English, Turkish or Greek), and eleven took part in group therapy (e.g. one closed group for rapists (one year), one closed group for paedophiles (one year), one closed anti-aggression group; one semi-open addiction group).

108. Further, the CPT is very concerned about the very limited psychiatric cover. It is totally insufficient for a psychiatrist to be present for nine hours per week, and that for the whole prison with a population of more than 700 inmates.

In their letter of 28 January 2015, the Austrian authorities indicated that, despite continuous efforts, it had not yet been possible to fill the vacant full-time post of a psychiatrist. **The CPT urges the Austrian authorities to strive to ensure the presence of a psychiatrist on a full-time basis as a matter of priority.**

109. At the end of the visit, the shortcomings described above were brought to the attention of the Minister of Justice who indicated that he was fully aware of many of the structural deficiencies criticised by the delegation. He said that he himself and his Ministry were determined to embark on a complete overhaul of the *Massnahmenvollzug* throughout Austria and that, for that purpose, a multi-disciplinary working group had recently been established.<sup>86</sup> One of the plans under discussion was to progressively close down units for *Massnahmenvollzug* in “ordinary” prisons and to create new specialised establishments within or even outside the prison system.

The CPT welcomes these initiatives and fully concurs with the views expressed by various interlocutors that Stein Prison, like any other “ordinary” prison, is not suited to the implementation of a meaningful *Massnahmenvollzug* in which persons suffering from a mental disorder are offered, according to their needs, medical, psychiatric, psychotherapeutic, psycho-hygienic and educational care, as required under the relevant legislation.

110. **The CPT recommends that the Austrian authorities review the current system of *Massnahmenvollzug*, in the light of the remarks made in paragraphs 103 to 109. In this context, a comprehensive concept for motivation and individualised treatment should be drawn up for all inmates. In addition, special training of custodial staff and multi-disciplinary teamwork should be introduced.**

**The Committee would like to be informed of the progress made in the ongoing reform of the *Massnahmenvollzug* in Austria and receive a copy of the final report of the above-mentioned working group.**

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<sup>86</sup> Several months before the visit, a forensic psychiatrist had been commissioned by the prison administration to interview all inmates in *Massnahmenvollzug* at Stein Prison and to prepare a needs assessment report.



111. From interviews with several inmates who had committed sexual offences and the consultation of their medical files, it transpired that, during September 2014, the inmates concerned had been approached by the establishment's psychiatrist with a view to proposing that they commence anti-androgen treatment by means of Cyproterone acetate (CPA) injections (so-called "chemical castration"). The inmates concerned consistently claimed that this initiative of the psychiatrist had come as a total surprise to them and that they felt that they had been put under pressure to accept this proposal. Some of the inmates had allegedly been told that this change of treatment had been ordered by an "outside authority" but the identity of that person had not been revealed to them. In the case of one inmate who had benefited from a relaxation of the regime (*Lockerung*) but had refused to undergo the anti-androgen treatment, the *Lockerung* had been withdrawn; others had allegedly been advised that there would be no *Lockerung* until they started the treatment (the implicit message being that there would then be no realistic prospect of being released in the foreseeable future). Two inmates had started their anti-androgen treatment on 18 and 25 September 2014 respectively.

According to entries in the medical files, all inmates concerned had been given information with explanations about the possible adverse effects of the treatment as well as a form to sign that they were willing to start the treatment or that they declined the treatment. Those who had still not consented to the treatment had apparently been given a deadline of two weeks (which was still pending at the time of the visit) to make up their minds.

112. In the light of the information gathered during the visit, the CPT has serious doubts as to whether all inmates concerned were placed in a position to give free and informed consent to anti-androgen treatment. Further, the CPT is very concerned by the fact that the administration of anti-androgen treatment was apparently not based on any individual assessment regarding the indication of such treatment and that no arrangements had been made to accompany the libido-suppressing treatment with psychotherapeutic treatment.

The Committee also wishes to stress that, given the potentially severe and/or distressing somatic side effects, it is essential that there be a thorough individual somatic examination and risk assessment before starting any treatment, as well as a thorough follow-up taking into account the individual risk factors. However, none of the interviewed inmates selected for anti-androgen treatment had been offered a somatic examination (including the necessary laboratory tests), nor had any follow-up programme been introduced.

113. As a matter of principle, the CPT considers that anti-androgen treatment should always be based on a thorough individual psychiatric and medical assessment and that such treatment should be given on a purely voluntary basis. As should be the case before starting any medical treatment, the free and informed written consent of the person concerned should be obtained prior to the commencement of anti-androgen treatment, it being understood that the consent can be withdrawn at any time; in addition, such persons should be given a detailed explanation (including in writing) of the purpose and possible adverse effects of the treatment concerned, as well as the consequences of refusal to undergo such treatment, and no person should be put under pressure to accept anti-androgen treatment.

The CPT recommends that the Austrian authorities take the necessary measures to revise the procedures for the use of anti-androgen treatment at Stein Prison and, where appropriate, in other prisons and psychiatric establishments, taking into account the above remarks. In this respect, a comprehensive and detailed procedure should be elaborated including the following additional safeguards:

- inclusion and exclusion criteria for such treatment;
- medical examinations before, during and after treatment;
- access to outside consultation, including an independent second opinion; and
- regular evaluation of the treatment by an independent medical authority.

The Committee also wishes to stress that the administration of anti-androgens should be combined with psychotherapy and other forms of counselling in order to further reduce the risk of re-offending. Further, anti-androgen treatment should not be a general condition for the release of sex offenders (or the granting of *Lockerungen*), but be administered to selected individuals based on an individual assessment.

114. Further, the CPT is concerned about the specific situation of several other inmates in *Massnahmenvollzug* which also raises a number of issues of a more general nature.

Firstly, the delegation met two inmates who had been assessed as being unable to take part in work or any other activity and were accommodated in another wing of the prison. One of the persons (Mr J.S.) was not oriented in time and unaware of his situation. According to his file, he was classified as person in need of care ("*Pflegefall*") and repeated attempts in recent years to transfer him to a social welfare institution had been unsuccessful. The other person (Mr W.U.) also appeared not to be oriented about his situation. He indicated that, throughout the year, he would stay alone in his cell all day, the only interruption being a daily walk of one hour in the open air. Such a state of affairs is not acceptable.

**The CPT recommends that the Austrian authorities take the necessary measures to find a suitable care institution which can cater for the specific needs of the two above-mentioned inmates.**

Further, the Committee would like to be informed of the total number of persons in *Massnahmenvollzug* at Stein Prison, as well as in other prisons in Austria, who are not able to benefit from any therapeutic activity and of the plans for inmates who are assessed as suffering from a neurodevelopmental or neurocognitive disorder or a severe somatic disease or ailment connected with old age.

115. Secondly, the delegation encountered two inmates of Romanian nationality (one being illiterate) who did not speak any German and were thus not able to take part in any therapeutic activity. According to the management, proceedings had previously been initiated by the prison administration to arrange for their transfer to Romania. However, due to major legal obstacles (related to their status of a person being subjected to *Massnahmenvollzug*), the outcome of these proceedings appeared to be uncertain. **The CPT would like to receive updated information on this matter.**

116. Thirdly, the delegation met one inmate who indicated that she was transgender. She stated that she was allowed to wear women's clothes inside her cell when the door was closed, although when she was in the company of others she had to wear men's clothes. She said that she had come out as a woman two years before and had not had any trouble with other inmates. She had now stopped therapy as her therapist had allegedly refused to discuss her gender identity issue. She said that she wanted to have a legal gender reassignment, hormone therapy and gender reassignment surgery, but had been told that she could not start cyproterone acetate and oestrogen treatment in prison, and that surgical and legal reassignment would be completely out of the question. This statement was confirmed by staff.

The CPT notes that gender reassignment procedures such as hormone treatment, surgery and psychological support are available to transgender persons in Austria. In addition, there are procedures in place for changing the name and sex of a transgender person on identity cards and other official documents. In the CPT's view, persons deprived of their liberty should not be excluded from benefiting from these treatments and legal procedures provided for by law for transgender persons in Austria.

**The Committee recommends that the Austrian authorities take the necessary steps to ensure that transgender persons in prisons (and, where appropriate, in other closed institutions) have access to assessment and treatment of their gender identity issue and, if they so wish, to the existing legal procedures of gender reassignment. Further, policies to combat discrimination and exclusion faced by transgender persons in closed institutions should be drawn up and implemented.**

### 3. Review procedures

117. According to the relevant legal provisions,<sup>87</sup> the necessity for involuntary placement under Section 21, paragraph 2, StGB must be reviewed by the competent court *ex officio* at least once a year, and, in this connection, the person concerned must be heard by the judge at least once every two years. Inmates are also entitled to submit a request for discharge outside the mandatory review procedures.

From the consultation of a number of individual files, it transpired that the above-mentioned requirements were respected in practice. The delegation was informed that external experts were usually involved in the review procedure every two to three years (and upon request by the person concerned).

118. That said, it is regrettable that it has become an established practice of the competent court to hear all inmates concerned only every two years. In the CPT's view, the rule should be that such a hearing takes place every year.

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<sup>87</sup> See Section 25 StGB and Section 167 of the StVG. Measures under Section 22 StGB must be reviewed by the court at least every six months.

Further, although indigent inmates may in principle submit to the court, prior to the review procedure, a request for free legal aid, it appears that, in numerous cases, this right remained purely theoretical. Indeed, a number of inmates met by the delegation indicated that they were not aware of such a possibility. Further, the delegation was informed that it was not uncommon for judges to reject requests for legal aid on substantive grounds and that, on occasion, court hearings were announced by the court at such short notice that it was *de facto* too late to arrange for the presence of an *ex officio* lawyer.

**The CPT recommends that the Austrian authorities take the necessary measures to ensure that inmates in *Massnahmenvollzug* at Stein Prison and, where appropriate, in other prisons (and psychiatric establishments) in Austria:**

- **are systematically heard in person by the court during every review procedure;**
- **always benefit from the assistance of a lawyer during judicial review procedures if they cannot afford to pay for a lawyer themselves.**

## **E. Psychiatric establishments**

119. The delegation carried out a targeted visit to the Socio-medical Centre Baumgartner Höhe - Otto Wagner Hospital and Nursing Centre (hereinafter: "Otto Wagner Hospital")<sup>88</sup> in order to review the situation of persons subjected to means of restraint (*freiheitsbeschränkende Massnahmen*). For this purpose, it interviewed a number of psychiatric patients who were or had been subjected to such measures, held consultations with staff and examined relevant documentation.

120. The hospital had previously been visited by the CPT in 1999. At the time of the 2014 visit, the hospital was accommodating a total of 96 involuntary patients (including eight in the Forensic Ward in Pavilion 23/2<sup>89</sup>). The delegation was informed that, in the context of an ongoing restructuring of the public hospital sector in Vienna, the entire hospital would be closed down by 2020, and that the existing psychiatric in- and outpatient services were being progressively transferred to other locations. **The CPT would like to receive updated information on these plans.**

121. As already indicated in paragraph 6, the delegation repeatedly encountered major obstacles during the visit, so that it was not in a position to explore certain issues fully.

122. On a positive note, the CPT wishes to stress from the outset that its delegation received no allegations – and did not find any other indications – of physical ill-treatment of patients by staff.

123. Further, the CPT welcomes the fact that the Management Board of the Otto Wagner Hospital has issued comprehensive and detailed guidelines (standard operating procedures - SOP) regarding the use of means of restraint. According to these SOP, agitated and/or violent patients may be subjected to the following measures: manual control, four- or five-point fixation (*Fixierung*), placement in a psychiatric intensive care bed (*psychiatrisches Intensivbett* – so-called "net bed") and seclusion. Resort to chemical restraint was not mentioned as a potential means of restraint (see paragraph 124).

That said, from the consultations which the delegation held with staff in different pavilions, it transpired that many members of the health-care staff were not aware of the contents of the above-mentioned SOP. **Steps should be taken remedy this shortcoming.**

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<sup>88</sup> The Nursing Centre where persons may be deprived of their liberty under the Law on the Residence in Welfare Homes (*Heimaufenthaltsgesetz*) is administratively a separate institution; it was not visited by the delegation.

<sup>89</sup> The delegation was told that most of the patients were remand prisoners undergoing psychiatric assessment under Section 429, paragraph 4, StPO; in addition, there were persons who were considered not be criminally responsible for the crime they had committed and who were placed in the hospital under Section 21, paragraph 1, StGB, as well as prisoners who had developed a mental illness during their imprisonment.

124. Unfortunately, the delegation was not in a position to obtain a clear overview of the frequency and duration of the use of restraint measures, as the hospital did not have a central restraint register, despite the specific recommendation made by the Committee after previous visits. It should also be added that none of the pavilions visited by the delegation had a restraint register. The management did not express any interest in gaining an overview of the frequency and duration of the use of the restraint measures. Not surprisingly, it had no knowledge of whether the incidence of means of restraint had increased or decreased since the involvement of a private security company in 2008 (see paragraph 135).

The use of means of restraint was registered in the patient's medical file and, in accordance with the relevant legislation, a completed form was sent by fax to the office of patients' advocates (*Patientenanzwaltschaft*). However, despite the specific recommendation previously made by the CPT, the forcible administration of sedative medication (chemical restraint) was not recorded as a means of restraint and patients' advocates were thus not informed of any recourse to such restraint.

The CPT does not share the argument put forward by doctors at the Otto Wagner Hospital that chemical restraint always constitutes a therapeutic intervention as part of psychiatric treatment and thus cannot be considered to be a restraint measure as such. The Committee wishes to stress again that, as a matter of principle, agitated/violent patients subjected to chemical restraint should benefit from the same safeguards as patients who are subjected to other types of restraint.

**The CPT reiterates its recommendation that steps be taken by the relevant authorities to ensure that a central restraint register is established at the Otto Wagner Hospital and, where appropriate, in other psychiatric establishments in Austria. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; staff who participated in the application of the measure; and an account of any injuries sustained by patients or staff.** Systematic recording of all instances of restraint in that register – in addition to the recording in the patient's personal medical file – will greatly facilitate the management of such instances, the oversight into the extent of their occurrence.

**Further, the Committee recommends once again that, in the above-mentioned restraint register, a record be kept of all instances of chemical restraint; these instances should also be notified to the relevant office of patients' advocates.**

125. As regards the use of net beds, the CPT welcomes the ban which was introduced by the Federal Ministry of Health (in consultation with the Federal Ministry of Justice) by means of an internal instruction<sup>90</sup> (*Erlass*) dated 22 July 2014. According to this instruction, it is expected that all necessary transitional measures will be completed by 1 July 2015 so that net beds are no longer used after that date. The aforementioned instruction is addressed to all provincial governors (*Landeshauptmänner*) and explicitly covers not only psychiatric hospitals but also social welfare institutions.

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<sup>90</sup> BMG-93330/0002-II/A/4/2014.

That said, both the management and staff of the Otto Wagner Hospital expressed their concerns about this policy decision. During the end-of-visit talks, the delegation emphasised that a number of accompanying measures were needed in order to avoid a future situation in which net beds are simply substituted by an increased use of mechanical restraint (*Fixierungen*). It also stressed that, as far as possible, alternative solutions should be found and that, to this end, the existing staffing levels would inevitably have to be reviewed.

The delegation was informed that a working group had been set up by the hospital owner (*Krankenhausträger*) in order to look into the above-mentioned implications of the abolition of net beds.

126. Further, by letter dated 28 January 2015, the Austrian authorities informed the CPT that “the Austrian Society of Psychiatry and Psychotherapy was requested by the Federal Ministry of Health to give specific practical proposals of alternative solutions in order to prevent an increased usage of mechanical restraint. The Austrian Society of Psychiatry and Psychotherapy has adopted a detailed recommendation with some suggested prevention measures. (...) This recommendation was brought to the attention of the Austrian Federal States (“*Bundesländer*”). In this context another thing worth mentioning is that the Austrian Society of Psychiatry and Psychotherapy will initiate a new project for the development of clinical guidelines.”

In its conclusion, the Austrian Society of Psychiatry and Psychotherapy recommended the following measures:

- increase of structural resources (in terms of staff and infrastructure);
- enhanced specialised training (e.g. de-escalation techniques, administration of adequate medication);
- initiation of a broad and fact-based discussion (including with representatives of the patients and relatives involved);
- elaboration and implementation of nationwide guidelines;
- setting up of a highly differentiated data collection system as well as of an appropriate and binding set of benchmarks.

The CPT welcomes these initiatives; **it would like to receive – in due course – detailed information on the measures taken at the Otto Wagner Hospital and, where appropriate, in other psychiatric and social welfare establishments in Austria in the context of the abolition of net beds. Further, the Committee would like to be informed of the progress made to develop nationwide guidelines on the use of means of restraint; it would also like to receive a copy of the guidelines once they are finalised.**

127. At the Otto Wagner Hospital, decisions on the use of means of restraint were always taken by a doctor. Further, the delegation gained the impression that patients were usually not subjected to mechanical restraint for prolonged periods. However, as already mentioned earlier, the delegation could not obtain a full picture on this matter.

128. On the basis of the information gathered during the visit, it is clear that a number of recommendations made by the CPT after previous visits had not been implemented at the Otto Wagner Hospital.<sup>91</sup> In particular, with the notable exception of the Forensic Ward, there was usually no permanent and direct supervision of persons under mechanical restraint in the form of a *Sitzwache*. In the CPT's view, it is not sufficient to rely solely on CCTV supervision. Several patients who had been subjected to mechanical restraint complained to the delegation that they had not been able to reach a call bell whilst being under restraint.

129. Further, it remained the case that patients were sometimes subjected to mechanical restraint or placed in a net bed in full view of other patients. Several patients interviewed by the delegation stated that they had felt extremely embarrassed and helpless during the restraint whilst sharing the room with a fellow patient walking around and also other patients entering the room. It is all the more worrying and in fact unacceptable that, at the time of the visit, a juvenile was even restrained with belts on a ward for adults, and this in full view of an adult roommate; worse still, medical staff seemed to have no intention to stop this practice (see also paragraph 134).

130. In addition, contrary to the hospital's internal guidelines (SOP), patients were apparently not systematically provided with information on the reasons for the resort to a restraint measure, and usually no debriefing was performed with patients after the termination of the restraint. The delegation was somewhat puzzled by the explanation by a senior psychiatrist that treating doctors would normally carry out such a debriefing when the patient was about to be discharged from the hospital.

131. **The CPT reiterates its recommendation that steps be taken by the relevant authorities to ensure that all patients/residents who are subjected to *Fixierung* at the Otto Wagner Psychiatric Hospital as well as in all other psychiatric establishments and social welfare institutions in Austria are:**

- **continuously and directly supervised 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 and provide prompt assistance. Such assistance may include escorting the patient to a toilet facility or, in the exceptional case where the measure of restraint cannot be brought to an end after a very short time, helping him/her to drink water and/or consume food;**
- **accommodated out of the sight of persons other than staff;**
- **provided with full information on the reasons for the intervention and benefit from a debriefing with the treating doctor once the means of restraint have been removed.** For the patient, such a debriefing is an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour. For the doctor, this will provide an opportunity to explain the rationale behind the measure, and thus reduce the psychological stress of the experience as well as restore the doctor-patient relationship.

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<sup>91</sup> See paragraphs 134 to 139 of the report on the 2009 visit (CPT/Inf (2010) 5).



132. The CPT is concerned about the allegations received by its delegation that patients had on occasion been subjected to *Fixierung* whilst naked, which was subsequently confirmed by staff. In the CPT's view, such a practice could easily be considered to be degrading for the patients concerned. It is also bewildering that patients subjected to *Fixierung* were on occasion additionally placed in a net bed. Further, on the Forensic Ward, five open net beds were constantly used as "ordinary" beds for patients who did not require any protective measures. **Immediate steps should be taken to put an end to such practices at the Otto Wagner Hospital.**

133. The internal guidelines of the Otto Wagner Hospital on the use of means of restraint (dated September 2009), *inter alia* stipulate that, in the context of the use of means of restraint, various medical/diagnostic/therapeutic measures (such as the taking of blood or infusions), as well as feeding, have to be ensured "if necessary even against the will of the patient concerned".

Treatment should not be interrupted while a patient is under restraint. However, in the CPT's view, patients who are subjected to means of restraint should benefit from the same safeguards against therapeutic interventions of an involuntary nature as other patients (as set out in Section 37 of the Law on Involuntary Placement).

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

134. In the CPT's view, it is not appropriate to accommodate juvenile patients together with adults. The delegation was informed by the hospital management that the ward for adolescent psychiatry in Vienna (which is not attached to the Otto Wagner Hospital) did not have sufficient capacity to accommodate all juvenile psychiatric patients in need of in-patient care. Thus, juveniles were on occasion placed on a ward for adult patients in the Otto Wagner Hospital. According to reports received during the visit, such practices also occurred in various other psychiatric hospitals, not only in Vienna but also in other parts of Austria. It is particularly worrying that juveniles can be placed on forensic wards with adults (when they are subject to a court-ordered measure under Section 21, paragraph 1, StGB or to a provisional placement under Section 429 StPO).

**The CPT urges the Austrian authorities to strive to find alternative solutions to avoid in the future the placement of juvenile psychiatric patients together with adult patients in (forensic) psychiatric establishments throughout Austria.**

135. Since 2008, the Otto Wagner Hospital has relied on the permanent presence of security staff, on the basis of a private law contract between the hospital owner and a private security company.<sup>92</sup>

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<sup>92</sup> The delegation was informed that a total of four staff were usually present on the entire premises of the Sociomedical Centre Baumgartner Höhe during the day and in the evening, and two at night and on weekends; two of the staff were permanently present on the Forensic Ward from 7 a.m. to 10 p.m. and one from 10 p.m. to 7 a.m.

On 16 April 2014, the hospital management board issued revised SOP on the co-operation between medical staff and the private security service. According these instructions, the task of the private security staff is to assist health-care staff of the hospital through their presence as well as through verbal intervention and, if necessary, through physical intervention and thus to protect staff, patients and visiting relatives. At the request and under the guidance of medical staff, security staff may also be involved in the use of means of mechanical restraint (such as *Fixierung* or placement in a net bed), carry out body searches of newly-admitted patients and be present during the distribution of medicines by nursing staff, prevent involuntary patients from leaving the hospital and take them back to the ward.

The delegation was told by the management that, since the introduction of private security staff, the number of violent acts of patients towards staff had significantly decreased.<sup>93</sup> In January 2015, the CPT was informed by the Austrian authorities that, in the course of 2014, private security staff had been involved in a total of 1,475 placements in a net bed and 990 instances of *Fixierung*.

According to the general manager of the security company, whom the delegation met during the visit, all security staff had followed a one-week induction course and subsequently participated in a training session on de-escalation and the use of force for two days per year. Apart from protective gloves, security staff were not equipped with any special means.

That said, the CPT has misgivings about the routine practice of security staff being dressed in black uniforms, which is in striking contrast to the situation observed at the Vordernberg Detention Centre (see paragraph 51). Actually, a number of patients interviewed by the delegation complained about the intimidating demeanour of the staff. **The Committee invites the Austrian authorities to introduce a less intimidating dress code for private security staff at the Otto Wagner Hospital.**

136. The CPT notes that, by decision<sup>94</sup> (*Beschluss*) dated 17 September 2014, the Austrian Supreme Court declared the holding (manual control) of an agitated patient by private security staff prior to the application by nursing staff of four-point restraint to be unlawful, due to the lack of a proper legal basis and the lack of adequate certified training of the security staff.

**The Committee would like to be informed of the action taken by the management of the Otto Wagner Hospital in the light of the aforementioned court decision.**

137. The delegation was also informed that, when in exceptional cases private security staff were not able to cope with a particularly violent patient, medical staff would request the special intervention group of the police (so-called WEGA<sup>95</sup>) to intervene. **The CPT would like to receive detailed information on the interventions of police officers regarding psychiatric patients at the Otto Wagner Hospital since January 2013.**

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<sup>93</sup> No statistical data had been collected by the management on this issue.

<sup>94</sup> Under reference 7 Ob 119/14x.

<sup>95</sup> “*Wiener Einsatzgruppe Alarmabteilung*”.

138. The CPT wishes to recall that particular attention should always be paid to the somatic health of patients being admitted to a psychiatric hospital. It is important that newly-admitted patients benefit from medical screening on the day of their arrival by a doctor or a qualified nurse reporting to a doctor. This initial screening will inter alia ensure that any injuries which the patient may display when entering the hospital are recorded in good time. Further, there should, as soon as possible, be a thorough examination of the somatic health condition of new arrivals by a doctor.

As far as the delegation could ascertain, newly-admitted psychiatric patients were usually subjected to a prompt somatic medical examination by a doctor and allegations of police ill-treatment and injuries were routinely reported to the relevant public prosecutor's office. However, from the consultation of a number of individual files it transpired that such examinations had not always been done in a thorough manner, which means that injuries sustained from police ill-treatment may easily have remained undetected.

**The CPT recommends that existing procedures be reviewed at the Otto Wagner Hospital as well as in all other psychiatric hospitals in Austria in order to ensure that all newly-admitted patients are subjected to a thorough medical screening on arrival for injuries and urgent somatic needs by a doctor and that the medical findings are properly recorded.**

139. In the report on the 2009 visit,<sup>96</sup> the CPT described the work of the nationwide system of patients' advocates (*Patientenadvokatschaft*) who are deployed in every psychiatric hospital in Austria and who provide patients with legal counselling free of charge and support/represent them during their stay in the hospital. It is recalled that, according to the relevant provisions of the Law on Involuntary Placement,<sup>97</sup> patients' advocates become *ex lege* legal representatives of all involuntary psychiatric civil patients during the placement procedure, as well as (with the consent of the patient concerned) in the context of the use of means of restraint and involuntary treatment measures. In particular, patients' advocates are entitled to consult medical files of involuntary patients and have the right to challenge the admissibility of instances of means of restraint and/or involuntary treatment before a court. For this purpose, they have to be immediately informed of every such case.

In the CPT's view, it is regrettable that the system of legal representation by patients' advocates only applies to civil involuntary patients but not to patients who are placed in a psychiatric hospital on the basis of a court-ordered measure of forensic placement (*Massnahmenvollzug*) under Section 21, paragraph 1, StGB.

**The Committee encourages the Austrian authorities to take the necessary steps – including at the legislative level – to ensure that the mandate of patients' advocates also covers forensic psychiatric patients.**

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<sup>96</sup> See paragraph 149 of CPT/Inf (2010) 5.

<sup>97</sup> Sections 13 to 16.

**APPENDIX**

**List of the federal and *Länder* authorities,  
other bodies and non-governmental organisations met by the delegation**

**A. Federal authorities**

**Federal Ministry of Justice**

Wolfgang BRANDSTETTER	Federal Minister of Justice
Christian PILNACEK	Director General (Penal Law)
Georg KATHREIN	Director General (Civil Law)
Christian MANQUET	Head of Department (Penal Law)
Peter PRECHTL	Head of the Prison Service
Karin DOTTER-SCHILLER	Deputy Head of Department (Directorate for Prison Service)
Wolfgang MORAVEC	Directorate for Prison Service
Franz MACHEINER	Directorate for Prison Service (Health Care Department)
Gabriele STÖGER-KRAUSGRUBER	Directorate for Prison Service, Dentist-in-chief
Peter BARTH	Head of Department I/1
Maria WAIS	Head of Department I/7
Terezia STUHL	Department I/1 and I/7

**Federal Ministry of the Interior**

Konrad KOGLER	Director General for Public Security
Manfred ZIRNSACK	Head of Department II/1, Organization, Service Affairs, Analysis
Katharina WÖRTHER	Unit for Coercive Measures of Immigration Police
Walter RUSCHER	Human Rights Coordinator
Albert GRASEL	Department for Organization, Service Affairs, Analysis

Matthias KLAUS Head of Group/Division II/A

Johanna ETEME Head of Department III/10

Eva-Caroline PFLEGER Head of Unit II/3/c

Federal Bureau of Anti-Corruption (BAK)

Andreas WIESELTHALER Director

**Federal Ministry of Health**

Gerhard AIGNER Director General of Legal Affairs

Ulrike WINDISCHHOFER Deputy Director General of Legal Affairs

Johanna SCHOPPER Head of the Department for legal affairs, drugs and addictive substances, new psychoactive substances

Sylvia FÜSZL Head of the Department for pharmaceutical products, pharmacies, hospitals, communicable diseases

Martin TATSCHER Department for pharmaceutical products, pharmacies, hospitals, communicable diseases

Irene HAGER-RUHS Department II/A/2

Wolfgang HEISSENBERGER Department II/A/4

**Federal Ministry of Labour, Social Affairs and Consumer Protection**

Hansjörg HOFER Deputy Director General and Head of Division for inclusion of persons with disabilities

**Federal Ministry for Europe, Integration and Foreign Affairs**

Gerhard DOUJAK Head of Department, Human Rights Department

Ulrike NGUYEN Head of Unit I.7.b, Human Rights Department (CPT's liaison officer)

**B. Länder authorities**

**Provincial Government of Vienna**

Elisabeth AULEHLA	Association of Viennese Hospitals, Director of Legal Affairs
Shams ASADI	Human Rights Coordinator

**C. Other bodies**

**Austrian Ombudsman Board (National Preventive Mechanism)**

Gertrude BRINEK	Chair of the Austrian Ombudsman Board
Günther KRÄUTER	Member of the Austrian Ombudsman Board
Peter KASTNER	Deputy Chief of Private Office
Markus HUBER	Deputy Chief of Private Office
Claudia MARIK	Legal expert
Thomas SPERLICH	Legal expert
Reinhard KLAUSHOFER	Head of the Visiting Commission No. 2
Franjo SCHRUIFF	Head of the Visiting Commission No. 6
Walter SUNTINGER	Member of the Visiting Commission No. 4
Victoria SCHMID	Head of the Department of International Affairs
Clarissa MILLWISCH	Department of International Affairs

**D. Non-governmental organisations**

Academic Council on the United Nations Systems

Ludwig Boltzmann Institute of Human Rights

Verein Menschenrechte Österreich

VertretungsNetz