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

from 3 to 10 October 2005

The Norwegian Government has requested the publication of this response. The report of the CPT on its October 2005 visit to Norway is set out in document CPT/Inf (2006) 14.

Strasbourg, 4 October 2006

Response of the Norwegian authorities to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Norway from 3 to 10 October 2005

The Norwegian authorities are pleased to note that the CPT found the cooperation of the Norwegian authorities with the delegation to be exemplary in all respects. We welcome the fact that the delegation felt they received excellent co-operation from the directors and staff of the establishments visited, and that it was evident that these establishments had been notified of the Committee's visit and were properly informed of its mandate and powers.

A. Police establishments

General remarks by the Director of Public Prosecutions

The Director of Public Prosecutions is pleased to note that the CPT has not found reason for substantial criticism in any area within the prosecution authority's scope of responsibility. The Director will follow up on the CPT's recommendations by issuing a revised circular on custody on remand, in which all of the points of concern raised in the report will be addressed, by the end of 2006. The issuing of the new circular has been delayed until the coming into force of amendments to the Criminal Procedure Act (section 183: detention of arrested persons), and new administrative regulations dealing with the appointment of defence counsel for detained persons and the use of custody in police establishments on 1 July 2006. An English translation of the new circular will be sent to the CPT upon request.

The new circular will instruct the regional public prosecutors to ensure that Police Districts observe the directives. The Director will also discuss the new circular at his regular meetings with the heads of the regional prosecution services and chiefs of police throughout 2007, to ensure that public and police prosecutors, and police officers at all levels, are made aware of the directives and correct procedures. The concerns raised and recommendations made by the CPT in its report will of course also be highlighted.

8. The CPT would like to be informed of the entry into force of Section 183 CPA and to receive in due course a copy of its implementing regulations.

Section 183 of the Criminal Procedure Act entered into force on 1 July 2006. A copy of its implementing regulations is enclosed.

10. The CPT comments that the objective should be to put an end, except in exceptional circumstances, to the practice of accommodating remand prisoners in police establishments.

The use of police establishments to accommodate remand prisoners is almost always due either to a lack of space in ordinary prisons or to an impractically long distance between the court where the proceedings are taking place and the nearest prison. The general principle is that police establishments should only be used where no alternative is available and it is absolutely necessary in the interests of the proper and efficient conduct of proceedings.

On 29 June 2006, the Norwegian Supreme Court ruled that housing a defendant in a police establishment for two nights during court proceedings did not constitute a breach of relevant domestic legislation or Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to a fair trial). This was a case where the distance between the court and the nearest prison necessitated the use of a police establishment. The circumstances in this case were, however, somewhat special.

Norway's new regulations on the use of police holding cells which entered into force on 1 July 2006, take into account the provisions of section 183 of the Criminal Procedure Act, which states that where a prosecuting authority wishes to detain an arrested person, it must apply to a District Court for an order for remand in custody as soon as possible and not later than the third day after arrest.

The Regulations cover all detained persons, whether apprehended under the Criminal Procedure Act or under the Police Act, and contain provisions on the right to inform a next of kin, the rights of access to a lawyer and to a doctor, and the right to a mattress and a blanket.

Section 3-1 of the Regulations states that inmates must be transferred from police cells to prison no later than on the second day following arrest. Transfer is therefore no longer linked to when the inmate is brought before a District Court. This is intended to prevent inmates spending excessive periods in police arrest.

Where an inmate is transferred later than the second day following arrest, the reason for the delay must be documented in the journal.

Chapter 4 of the Regulations contains rules on the supervision of police arrest facilities. Under section 4-1, the relevant chief of police is responsible for local supervision and inspection, and section 4-2 establishes a new supervisory board consisting of the National Police Directorate and the local public prosecutor, which is responsible for ensuring that police arrest facilities comply with all relevant regulations.

The chief of police is required to make annual reports to the board, and the board is to prepare a report for the Director General of Public Prosecutions, the local public prosecutor, the National Police Directorate and the local chief of police after each of its inspections.

13. The CPT would like to receive, as soon as they are completed, copies of both the final report by the Special Investigation Unit and the final autopsy report.

Translated copies of the final report by the Special Investigation Unit and the final autopsy report were forwarded to the CPT by the Ministry of Justice and the Police on 14 September 2006. Additional copies are enclosed.

The chief of police in Agder Police District has prepared a report on this tragic event for the National Police Directorate. The report states that the Police District now uses this case as an aid in educating and training police officers that deal with remand prisoners and others detained in police arrest facilities. A translated copy of the report will be sent to the CPT upon request.

14. The CPT would like to receive comments on the complaints received that police officers place handcuffs on the wrists or ankles of persons having to be escorted from home to a psychiatric clinic, even where they put up no resistance.

Section 3-2, third paragraph, of the National Directive for police practice (The police instructions) permits the use of handcuffs and similar restraining devices on persons guilty of using or threatening to use violence if there is a risk of escape, or where there is a danger of self-harm. Restraints may not be used “automatically” – each situation must be considered individually.

Psychiatric patients are the responsibility of the appropriate health authority, and not of the police. However, the police are obliged to become involved where the health authorities request assistance with psychiatric patients considered to be violent. In these circumstances, the police are involved only as experts on coercion. Cases where anxious or threatened family members and neighbours call the police, and the police find the individual in question to be in evident need of psychiatric treatment, are less frequent.

Thus, the involvement of the police is most often due to difficult and unpredictable behaviour on the part of the patient. Use of restraints is allowed, and indeed indicated, in such situations. In other words, the police usually become involved only because there is a need to physically restrain the individual in question. Nevertheless, police officers are required to exercise discretion when dealing with psychiatric patients and, as stated above, must assess, preferably in consultation with health personnel, whether the use of restraints is appropriate in the specific circumstances of each case.

16. The CPT recommends that the necessary steps are taken to ensure the strict application, in all police establishments, of paragraph VII.1.a of Circular No. 5/2002 issued by the Director of Public Prosecutions on 15 November 2002, regarding the right to inform a close relative or a third party of one's deprivation of liberty.

In its report, the CPT states in relation to paragraph VII.1.a of the circular that some of the detained persons interviewed, “...had apparently not had the possibility of having a close relative or a third party notified”. The information in the report is insufficient to establish whether the instances referred to by the CPT constitute breaches of the regulations set out in the Circular. As the CPT knows, notification may be omitted when there is reason to believe that it could seriously interfere with the investigation, cf. section 182, subsection 2, of the Criminal Procedure Act and paragraph VII.1.b of the Circular.

The Director has not received any complaints from remand prisoners regarding denial of the right to notify relatives or a third party of their arrest in recent years. However, the Director will take steps to ensure that the police strictly observe the regulations’ provisions on this right. The regulations will be clarified and highlighted in the revised Circular, and the Director will instruct regional public prosecutors to ensure that police districts comply with the regulations. Moreover, these directives will be discussed and clarification will be given where required during the Director’s regular meetings with regional public prosecutors and chiefs of police in 2007.

17. The CPT recommends that Circular No. 5/2002 is revised in order to guarantee expressly that any decision to defer, as an exceptional measure, the exercise of the right to inform a close relative or a third party of one's deprivation of liberty, is subject to the approval of a senior police officer or a prosecutor and strictly limited in time.

The revised Circular will emphasize that all decisions to defer the exercise of the right to inform a close relative or a third party of one's detention are subject to the approval of a public prosecutor within the police. It has been common practice in the police districts for many years that these decisions have been taken by public prosecutors, and not by police officers. Further, the Director of Public Prosecutions will issue instructions stating that all decisions to defer the exercise of the right must be re-evaluated the next day.

An assessment of whether more detailed guidelines on the circumstances in which detainees can be denied permission to notify others of their arrest, are required, will be carried out in connection with the issuing of the revised Circular. The duration of a ban on notification will, of course, depend on how long there is reason to believe that releasing such information would seriously interfere with the investigation.

18. The CPT recommends that the necessary steps be taken to ensure that all persons held by the police, irrespective of the reason for their apprehension, are expressly guaranteed the right to notify a close relative or a third party of their choice of their situation, from the very outset of their deprivation of liberty.

The new regulations on the use of police holding cells apply to all persons held by the police, irrespective of the reason for their apprehension.

Section 2-4 in the regulations provides that notification of close relatives, lawyers, and consulates/embassies must take place in accordance with applicable rules, any special agreements with consulates/embassies, and the circular letter issued by the Director General of Public Prosecutions.

20. The CPT recommends that Norwegian authorities ensure that the right of access to a lawyer, as defined in paragraph 20:

- **is formally granted to everyone deprived of their liberty by the law enforcement authorities (including those apprehended under the Police Act) from the very outset of their deprivation of liberty, and**
- **is made fully effective in practice**

All persons charged are entitled to the assistance of a defence counsel of their own choice at every stage of the case, cf. section 94 of the Criminal Procedure Act. A charged person must be assigned defence counsel (at public expense) once it becomes clear that he/she will not be released within 24 hours of arrest, cf. amendments to section 98 of the Criminal Procedure Act (in force as of 1 July 2006). New administrative regulations containing detailed provisions on the appointment of defence counsel for detainees also came into force on 1 July 2006. Section 2-4 of the new regulations on the use of police holding cells refers to these statutes and regulations on the right to defence counsel. The right of those apprehended under the Police Act to contact a lawyer is regulated by section 9-2 of the amended police instructions.

The National Police Directorate will, as the CPT has recommended, prepare guidelines to ensure that the right of access to a lawyer of those detained under the Police Act is respected.

The majority of those apprehended under the Police Act are drunk or otherwise intoxicated, and are kept in the police cells to ensure their own safety and that of others, and not because they have committed criminal acts. Under section 8 of the Police Act, individuals can be held for a maximum of four hours in respect of certain offences. These are: disturbing the peace; disturbing public order in a public place; failing to comply with police orders to leave a public place when there is public disorder or disorder is imminent; refusing to state one's identity; and being found at or near a place where a crime is presumed to have been committed immediately beforehand. There is no established procedure for calling or providing a lawyer in these situations, but the detainee may of course request one.

Paragraph VII.2.a of Circular No. 5/2002, which was issued by the Director General of Public Prosecutions on 15 November 2002, reads as follows:

“When a wish to notify a lawyer has been indicated, it should under normal circumstances be complied with as soon as possible and at the latest within two hours after the detainee has reached the police station. If the detainee arrives after 22.00 hours, notification will normally not be necessary until the following morning”.

The new legislation and regulations on a detainee's right to defence counsel will be strictly observed by police districts and public prosecutors. The Director General of Public Prosecutions is involved in planning an evaluation of the new rules' effect, which is to take place after they have been in use for a year.

The fact that the Director General has not received any complaints from detainees or defence counsel on this issue in recent years indicates that police districts have followed the instructions in the Circular. The new Circular will contain not only the amendments that have to be made pursuant to the new legislation and regulations, but also clarification and amplification of the existing guidelines.

Shortly after the CPT's visit to Norway the Director General of Public Prosecutions sent a letter (dated 1 December 2005) to all regional public prosecutors and chiefs of police, giving a strict reminder of the provisions of paragraph VII.2 of the Circular.

23. The CPT recommends that express reference is made to the principle requiring that any medical examination of a person in police custody should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a specific case - out of the sight of the police.

Section 2-3 of the new regulations on the use of police holding cells provides that medical examination of persons in police custody must be conducted out of the hearing and sight of the police, if requested.

The CPT recommends that the necessary steps be taken to ensure that the guidelines set out in Circular G-67/2000 of the Ministry of Justice and the Police are strictly applied in all police establishments.

The National Police Directorate will prepare instructions to supplement the new regulations on the use of police holding cells, to ensure that the guidelines are strictly applied in all police establishments.

24. The CPT recommends that the necessary steps be taken to ensure that all persons detained by the police (including those apprehended under the Police Act) are informed in writing of their rights, at the very outset of their deprivation of liberty. Furthermore, the persons concerned should sign a statement attesting that they have been informed of their rights in a language which they understand.

All persons apprehended under the Criminal Procedure Act are given an information booklet on the rights of detained persons. This is required to be documented in the journal.

After having received the CPT's preliminary statement in November 2005, the National Police Directorate issued a letter to all police districts. The letter referred to the preliminary statement and drew attention to the three fundamental safeguards that apply to all persons who are detained: the right to inform a close relative, the right to have access to a lawyer, and the right to have access to a doctor. The letter made it clear that these safeguards also apply to those apprehended under the Police Act.

The booklet previously given to persons arrested under the Criminal Procedure Act will be updated to cover all detainees, regardless of the reason for detention, and all detainees will be given a copy.

The Norwegian authorities do not believe that it is appropriate to introduce a practice where detainees sign a statement attesting that they have been informed of their rights. Many detainees, and especially those detained under the Police Act, are in an intoxicated condition or mental state which renders them unable to make a binding statement. Their condition may also affect their ability to comprehend a statement or written information on their rights, regardless of the language in which it is given. Consequently, any statement signed by a person in these circumstances is not necessarily proof that they were able to understand their rights during the few hours they spent in detention, cf. sections 8 and 9 of the Police Act.

Although detainees are not asked to sign a statement attesting that they have been informed of their rights in a language which they understand, the information booklet is available in 14 different languages, including English, French, Spanish, Arabic, and Russian.

Section 2-4 of the new regulations on the use of police holding cells states that translation must be provided so far as it is necessary if the detainee is a foreign national.

25. The CPT requests information on the outcome of the work aimed at the introduction of sound and video recording of police interviews.

The working group on the recording of police interviews delivered its report in October 2005. It produced a list of necessary equipment for use in interrogation and examination of suspects and witness in criminal proceedings, and a cost estimate for a general roll-out. The National Police Computing and Material Service is now working on purchasing and installing audio and video recording equipment in all police districts and some special agencies. Roll-out has already been completed in some of the largest districts, and the entire process is expected to be concluded in the course of 2007.

26. The CPT requests information on whether the Special Investigation Unit still has on its permanent staff persons "on leave" from their posts in the police.

At the moment, no permanent staff of the Special Investigation Unit are "on leave" from their posts in the police.

It may in future be necessary to recruit persons "on leave" from their posts in the police. Qualified candidates will in most cases be recruited from the police, and they normally wish to be "on leave" for a period they are assigned to the Unit.

29. The CPT recommends that immediate steps to be taken to ensure that:

- **all persons obliged to stay overnight in a police establishment receive a mattress and clean blankets, without needing to ask;**
- **all persons held in a police establishment are given food at normal mealtimes, including a full meal (i.e. something more substantial than a sandwich) at least once a day.**

On 5 December 2005, the National Police Directorate sent a letter to all police districts, in which it made the districts aware that material conditions have to be adequate and that detainees must be given food at appropriate times, and blankets when they spend the night in police custody.

Section 2-6 of the new regulations on the use of police holding cells provides that all persons staying overnight in a police establishment must be given a mattress and clean blankets.

30. The CPT recommends that the metal ring, or any similar device, fixed to the wall beside the bed in some police cells be removed.

The metal rings fastened to the walls of cells at Trondheim police station have been used to prevent aggressive/mentally disordered prisoners from injuring themselves. Sør-Trøndelag police district is now cooperating more closely with Trondheim municipality and the health services to make alternative arrangements for prisoners who suffer from drug addiction and/or mental disorders. This has led to a decrease in the number of detainees requiring extraordinary security in cells. As a result, the rings are becoming redundant and will be removed.

31. The CPT requests information on whether the building works at Oslo Police District Headquarters include an outdoor exercise area for detained persons.

Work on a new wing at Oslo Police District Headquarters is well under way. The wing includes three designated recreation areas: two on the first floor, and one on the second floor. The largest of these measures 60 square meters and has an open roof. The other two measure 16 square meters each and have fresh air and a limited view through slits. There is also a large room that can be used as a recreational facility in the rare event of all wings being fully occupied.

General comment on the new regulations for detention centres

The Ministry of Justice and the Police, together with the Ministry of Labour and Inclusion, is proposing general changes to the regulations for detention centres. The proposed new regulations largely adopt the CPT's recommendations. Furthermore, the proposals are based on "UNHCR revised Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers (February 1999)."

The new regulations will be put before the Norwegian parliament in the 2006 autumn session. An English version of the new regulations will be sent to the CPT once they are formally adopted.

33. The CPT comments that the Norwegian authorities are invited to reduce the occupancy rate in the bedrooms of the male section.

The occupancy rate in the bedrooms of the male section was reduced from eight occupants to six immediately after the CPT's visit in October 2005.

Due to the opening of a new wing for male inhabitants in May 2006, this number can now be reduced from six to four men per room. In the Transit Unit's new wing, rooms are shared by two long-term detainees.

The CPT comments that there were no lockable wardrobes or tables and chairs in the men's bedrooms.

Wardrobes, tables, pictures, and chairs have been purchased, and these will be distributed during 2006.

34. The CPT recommends that the necessary steps be taken to ensure that all persons held at the Centre (including persons in the "security" section) are able to take at least one hour of outdoor exercise a day.

Inhabitants of all wings (A, B and C (the security section)) can exercise outdoors almost all day, from 08:00 to 22:00. Those held in the Transit Unit are allowed at least one hour of outdoor exercise per day.

35. The CPT comments that the Norwegian authorities are invited to pursue their efforts to extend the activities offered to long-term detainees at the Centre. In this respect, measures should be taken (upkeep of equipment, presence of staff) to ensure regular access to the facilities already in existence, in particular the sports rooms.

The detention centre is to be extended due to the increase in the number of long-term detainees. The Transit Unit intends to lease an additional building from the airport authorities, so that it can offer sports activities, a library, internet facilities, and a small shop.

In addition, the Centre's grounds are to be extended, enabling the detainees to play outdoor soccer, badminton, and basketball.

It has been proposed that staff levels be increased to ensure that these activities are available on a regular basis.

The new activities area and building will be operational by the spring of 2007.

36. The CPT requests information on whether the persons employed by the private security firm also receive appropriate training.

The private security firm, G4S, instructs its employees in first aid, fire drills and fire safety, communication skills, and conflict reduction. In addition, staff are instructed in aspects of immigration, administrative, and international law. Themes such as potential conflict areas, religion and cultural differences are covered.

It has now been decided that all security staff working at the Centre must be public employees.

37. The CPT recommends that steps be taken to ensure that the foreign nationals held at the Centre receive appropriate psychological and/or psychiatric services, preferably by having a psychologist and/or a psychiatrist regularly available for consultation at the Centre.

The medical team now includes a part-time psychologist. The initial consultation will be with the doctor on duty, who will decide whether to refer the patient to the psychologist.

38. The CPT has recommended that at least one part-time nurse's post be created. The nursing staff could, for instance, conduct the initial medical interview with new arrivals (which should be systematic), manage the medical records, assemble the requests for consultations (inside and outside the Centre), and prepare medicines and ensure their distribution.

Transit Unit staff are required to ask detainees whether they need to see a doctor when they arrive at the Centre. If a visit to a doctor is necessary, the doctor on duty is notified. Detainees are also permitted to see a doctor if they decide at some later point that they wish to do so.

If a member of staff notices that a detainee is suffering physical or mental distress or is deemed as a long-term detainee, the member of staff is obliged to report this to the shift supervisor and doctor on duty. The doctor on duty manages consultation requests and patient records, conducts initial medical interviews, and prepares medicines for distribution. Accordingly, the medical team at the Transit Unit believes that a nurse's post is unnecessary.

40. The CPT recommends that the Norwegian authorities extend the practice of performing a medical examination before deportation to all deportation operations by air. Furthermore, all persons who have been the subject of an abortive deportation operation should undergo a medical examination as soon as they are returned to detention.

The Transit Unit medical team conducts individual medical examinations in connection with deportations when this is deemed necessary. The medical staff sees no reason why a healthy detainee who wishes to travel voluntarily should undergo a new examination.

Deportations fall into different categories. These include voluntary, without escort, refused permission to enter the Kingdom and expelled at the border, partly escorted under the Schengen Convention, escorted to final destination as part of an administrative agreement, ordered escorted by airline carrier, escorted due to physical or mental condition, and forced deportation. Where detainees fall into the latter two categories, a review is carried out as to determine whether an individual medical consultation and “fit to fly” certificate are required.

Detainees who are the subject of abortive deportations and who are returned to detention are given a new medical examination.

The CPT requests detailed information on the applicable regulations and practice as regards the administration of medicines to persons subject to a deportation order.

Some of the detainees are on medication prior to their arrival at Trandum Centre. Their medication is reviewed by the doctor on duty and generally continued.

Some detainees start taking medication after consultation at the Centre. Common conditions include indigestion, musculoskeletal pain, and insomnia.

Normal Norwegian guidelines are followed when prescribing medication.

On rare occasions, a single-dose medication with a short-term calming effect may be used. This is reserved for special situations where the detainee is extremely violent towards himself or others. Detainees are transferred to the local psychiatric hospital when situations cannot be resolved at the Centre.

41. The CPT comments that in their present state, the two “bare” cells in the “security” section are unsuitable for detention of any kind.

During the CPT visit in October 2005, the security section was undergoing refurbishment. The section now has ten one-man rooms with windows, ventilation, heating, artificial light, and a call system. Use of the two bare cells was discontinued on 12 May 2006.

The two bare cells will be rebuilt into a room for smokers.

45. The CPT recommends that the instructions relating to the “security” section of the Centre be revised, in the light of the remarks made in paragraphs 34 and 44. It would, *inter alia*, be advisable for the instructions to distinguish clearly the different types of placement in use (voluntary or involuntary isolation, isolation for health reasons, isolation as a disciplinary measure) and the related procedures and guarantees; in particular, it would be unacceptable for a person placed in the “security” section to be denied access to his lawyer. These instructions - translated into an appropriate range of languages - should be at the disposal of the foreign nationals held at the Centre.

Revised instructions for the security section were sent to the security section in March 2006.

A project group from the Ministry of Justice and the Police is preparing formal instructions and regulations for the Centre, and the security section in particular.

The instructions and protocols sent out in March 2006 distinguish between the different types of placement, and set out related procedures and guarantees. These instructions will be formalised by the project group mentioned above.

It has not been standard practice at the Transit Unit to deny detainees access to their lawyers. The incident in question resulted from an incorrect translation into Danish. This error has now been corrected.

The Transit Unit will produce translations of the new instructions.

The CPT recommends that a specific register be kept in the “security” section, containing information on the identity of the person placed in isolation, grounds for the measure, date and time the measure began and ended, means of restraint (if used), the authority which took the decision, and the precise location where the detainee was placed.

The Transit Unit will keep a register as recommended.

The CPT requests detailed information on the policy and practice regarding the use of wrist and ankle strips inside the “security” section (protocol/instructions, as well as statistics for 2005).

The use of wrist and ankle strips is an enforcement measure. Only employees with police authority may employ such measures. Enforcement measures are regulated by the Police Act, police regulations and relevant instructions.

Employees with police authority have the following primary duties:

- To protect and save lives.
- To prevent criminal acts.
- To protect property.

Wrist and ankle strips are only used in the security wing in the most extreme cases, involving e.g. self-inflicted injuries and/or exceptionally violent behaviour towards staff or other detainees. Once the situation is under control, the strips are removed. In cases where the detainee has broken the law, local police arrest and remove the detainee from the Centre, and criminal proceedings are initiated.

If the detainee continues to injure him/herself, strips may need to be used again. In such cases, the doctor on duty is informed and asked to conduct a medical examination to assess whether the detainee should be transferred to hospital or a psychiatric facility.

The private security firm may not employ enforcement measures at the Centre, but staff can defend themselves or others from attack. The decision to use strips depends on the urgency and seriousness of the situation. The officer on duty is held responsible for all use of such measures.

Before any enforcement measures are used, alternatives such as (repeated) warnings have to be considered. The strips are removed once the situation is under control in the security section. The officer on duty or one of his staff must document the incident in the watch journal.

The officer on duty or the officer responsible for using strips is required to write a report on the incident. The report must contain the date and time of the incident, the names of the detainee and staff members involved, the reason for using straps, how long they were used for, and in which room the detainee was put after the incident.

In addition, the officer on duty must inform the policeman on call, the detainee's the investigator responsible for the detainee's case, and the headquarters of the National Police Immigration Service (PU) by telephone, e-mail, or fax.

In cases involving self-inflicted injuries, the doctor on call and the police lawyer on duty are notified. The original report is copied and distributed to the Unit Inspector, his/her next-in-command, and the Centre's security advisor. The original report is then added to the detainee's file, along with any other written documents relating to the incident. The file is archived after release, deportation, or transfer.

If the detainee's behaviour or condition improves, he/she may be released from any other measure employed and returned to his/her original wing. This must also be recorded in the watch journal. If necessary, the doctor on call will examine and evaluate the detainee to ascertain whether he/she needs to be transferred to a hospital or other institution.

Strips were used twice in the security section in 2005, once in connection with self-inflicted injury, and once in connection with deportation.

B. Prisons

50. The CPT requests detailed information on the extent of inter-prisoner violence in Norwegian prisons, and specifically at Trondheim Prison, as well as on the strategies applied to address this phenomenon.

No general statistics are kept on inter-prisoner violence in the Norwegian Correctional Service. Based on relatively close contact between prisoners and employees in Norwegian prisons, the Ministry of Justice and the Police is of the view that this issue is sufficiently under control. However, the need for statistics on the prevalence of this type of incident will be taken into consideration when a new computer system is introduced for the Correctional Services. In addition, research will be carried out on prisoners' safety and security, and necessary improvements will be made.

As regards Trondheim Prison, two cases of inter-prisoner violence were recorded in 2005, and one case by July 2006. All of these cases were severe enough to warrant reporting them to the police for further investigation and possible criminal proceedings.

52. The CPT comments that the Criminal Procedure Act should stipulate an absolute upper limit on the duration of solitary confinement of remand prisoners by court order.

An absolute upper limit on the duration of solitary confinement for remand prisoners was considered during discussions on the amendments to the Criminal Procedure Act. The Ministry of Justice and the Police found that longer periods of isolation could be necessary in exceptional cases, and therefore chose not to impose an absolute upper limit. This view was endorsed by the Norwegian parliament. (Cf. discussions in the bill to the Parliament: Ot.prp.nr. 66 (2001-2002), page 54.) Longer periods of isolation are particularly likely in cases involving transnational crime, or cases otherwise involving investigation abroad, where there is a danger of interference with evidence.

In cases involving less serious crimes (acts punishable by imprisonment for a term not exceeding six years), a person remanded in custody may not be kept continuously isolated for more than six weeks, cf. section 186a of the Criminal Procedure Act. If a person is charged with two or more criminal acts that together are punishable by imprisonment for a term exceeding six years, and strong considerations make it necessary, the person may be kept isolated for more than six weeks.

In cases involving serious crime (acts punishable by imprisonment for a term exceeding six years), a person remanded in custody may not be kept continuously isolated for more than 12 weeks, unless strong considerations make it necessary. Persons under 18 years of age may under no circumstances be kept continuously isolated for more than eight weeks.

It is a general principle that long periods of isolation should be avoided. Section 186a clearly states that longer periods of isolation can only be imposed in exceptional cases, and only where serious crimes are involved.

The legal framework for remand in custody generally, and the imposition of restrictions during the period of custody in particular, has been substantially amended in recent years. Section 186a entered into force on 1 October 2002. The Ministry of Justice and the Police will monitor its application. Actual practice will be evaluated as part of future reviews of the Criminal Procedure Act.

53. The CPT recommends that, during each periodic review by the court of the necessity to maintain remand in custody, there should be a reconsideration of whether the restrictions imposed upon a remand prisoner should be maintained.

Section 187a of the Criminal Procedure Act provides that a person remanded in custody must be released as soon as the court or the prosecuting authority finds that the grounds for remand in custody no longer apply, or when relevant time limits have expired.

Section 185 provides that the prosecuting authority, when applying for extended custody, must state when the investigation is expected to be completed, and give a brief account of the investigations carried out since the previous court hearing and any remaining investigations.

Section 170a states that a coercive measure may only be used when there is sufficient reason for doing so. The coercive measure may not be used when it would be a disproportionate intervention in view of the nature of the case and other circumstances.

Accordingly, the court or prosecuting authority must always consider whether the conditions for using coercive measures continue to be met.

54. The CPT recommends that the Norwegian authorities ensure the strict application of Circular No. 5/2002 issued by the Director of Public Prosecutions on 15 November 2002. It would be particularly advisable to issue a firm reminder to the prosecutors and members of the police concerned that it is inadmissible to apply or to maintain restrictions for the purpose of pressuring a person remanded in custody to co-operate in the police investigation.

Paragraph IV.1 of Circular No. 5/2002 states that restrictions may, "...only be used to prevent destruction of evidence". Restrictions may not be requested by the prosecution authorities for any other purposes, including for the purpose of pressuring a person remanded in custody to cooperate with a police investigation. Breach of this rule will be regarded as dereliction of duty, and may be punished under sections 324 or 325 of the Penal Code.

Although all public prosecutors are well aware of this rule, it will be highlighted in the revised Circular. Furthermore, the Director of Public Prosecutions will order regional public prosecutors to monitor whether police districts are applying these rules as a part of their periodical inspections.

Many efforts have been made in recent years to boost the efficiency of the police service and public prosecution authorities, and these are beginning to bear fruit. Investigation times have been substantially reduced in many areas. More efficient investigations often mean less time in custody for suspects, and shorter periods spent subject to restrictions. The courts control whether police prosecutors' requests for restrictions are justified.

56. The CPT recommends that the Norwegian authorities pursue their efforts to provide activities and appropriate human contact for remand prisoners held in solitary confinement and/or under restrictions.

The Norwegian Correctional Services always aim to provide activities and appropriate human contact for as many remand prisoners held in solitary confinement and/or under restrictions as possible. The central correctional authority regularly raises this issue in its administrative dialogue with the correctional services, to ensure a continued focus on it at all levels. Based on the regions' qualifications the central correctional authority imposes limits on the number of remand prisoners that can be held in solitary confinement and/or under restrictions without additional activities being provided. No region exceeded its limit in 2005, and the report for the first third of 2006 shows that only the eastern region has not provided activities for more than the minimum number of prisoners. Nevertheless, the correctional services aim to increase the number of remand prisoners offered activities.

59. The CPT recommends that immediate steps be taken to ensure that female inmates at Trondheim Prison enjoy unrestricted access to the lavatory at all times, day or night; ideally, they should have the use of in-cell toilet facilities which are partitioned off.

Trondheim Prison will reorganise its staff, and ensure that female inmates who do not have an in-cell toilet have access to a toilet when needed.

All newly built or planned cells will have a partitioned-off toilet.

60. The CPT comments that the sports room in the women's unit at Trondheim Prison had no ventilation system.

Inspections of the women's unit (building A) have confirmed that the exercise room has air supply ducts. Extraction ducts are located in the adjoining storeroom.

The CPT has misgivings about the outdoor exercise areas at the very high security unit of Ringerike Prison.

The CPT's description of this area does not correspond with the actual exercise area at Ringerike Prison's very high security unit. It seems that the CPT is describing the open-air facilities at building A. These are used by those who not are allowed to use the common open-air area (i.e. inmates subject to solitary confinement or subject to court-ordered restrictions).

The very high security unit's open-air area measures 100 square meters, and contains various pieces of exercise equipment. The governor of Ringerike Prison agrees that there is room for improvement, and has therefore carried out an impact assessment on enlarging the area by 275 square meters. The correctional services will give priority to this improvement.

66. The CPT recommends that measures be taken at Ringerike and Trondheim Prisons to ensure that all prisoners (sentenced or on remand, male or female) spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature.

Trondheim Prison plans to set up a separate activity section, with the intention of offering a greater number of prisoners individually-tailored activities, such as educational and work programmes, as well as milieu therapy. The activity section will work on improving the range of activities on offer and on increasing the amount of human contact had by prisoners who are subject to isolation or other restrictions.

Starting in the autumn of 2006, those responsible for the activities section will conduct an evaluation of all its activities, with a view to making any necessary improvements to reach the objective of tailored offers to all prisoners.

Conditions for prisoners subject to isolation or other restrictions have not been satisfactory at Ringerike Prison. Inmates in these categories have been offered an average of three hours of activities per weekday. This is at least partly due to the pressure put on the prison both by occupancy levels of close to 100 per cent and difficulties in recruiting qualified staff.

Ringerike Prison's plans to improve the current situation include more visits to the sports facility, activity groups, and better library facilities. Efforts are being made to provide more relevant study courses for the inmates, and the number of staff in the unit will be increased. In addition, Ringerike prison is looking at possibilities for creating additional common recreational areas.

67. The CPT recommends that the programme of activities at the very high security unit of Ringerike Prison be reviewed, in the light of the comments in paragraph 67 and the principles set out by the CPT in this area (cf. 11th General Report, CPT/Inf (2001) 16, paragraph 32).

Ringerike Prison has the only very high security unit in Norway. The level of security presents significant challenges in relation to the kinds of benefits and activities that can be offered to the inmates housed there. The presence of appropriate programmes and activities are equally or even more important in the very high security unit than in ordinary units. Time spent together with the prison staff or with external personnel like teachers and milieu therapists must indeed be considered a valuable activity counteracting isolation.

Four new prison staff and two new milieu therapists have been engaged at Ringerike in 2006.

68. The delegation went to Stavanger Prison with a view to meeting twelve remand prisoners subject to special security measures. It appears from the observations made by the delegation that the accumulation of very long periods of isolation and the restrictions previously applied, together with the special security measures described above, had had a highly adverse effect on the physical and mental health of several of the prisoners. Given these circumstances, the delegation was concerned to hear repeated allegations that access to medical and psychological/psychiatric care had been delayed or, on occasion, denied. The CPT would like to receive the comments of the Norwegian authorities on this issue, as well as detailed information on the legal basis for such special security measures.

There are a number of topics referred to in this paragraph in the final report, and it is found advantageous for a more comprehensive understanding to divide the answers into subsections.

Before the start of court proceedings in Stavanger

Isolation was used extensively during the investigative stage of the NOKAS case, primarily due to its size and severity. All of the prosecution's applications for isolation were made in accordance with the Criminal Procedure Act and examined by the court, and the detainees involved were legally represented at the hearings. Although some of the defendants were isolated for long periods, isolation was suspended in cases where the individuals' health became a documented and more relevant issue. The court did not suspend or reject any application from the police for further isolation.

Once all of the defendants were being held in Stavanger Prison

Before the start of proceedings in Stavanger District Court in September 2005, the defendants were gathered at Stavanger Prison, having previously been housed in various prisons around Norway. The court decided to uphold a regime of isolation for most of the defendants. The court took into consideration that few of the defendants had made statements of any substance, and took the view that contact among the defendants could influence their statements and other evidence to be given at trial. Isolation was suspended once each of the defendants had given his statement to the court, and the defendants were eventually allowed to have contact again.

Safety issues – general remarks

The police identified a number of safety issues that had to be taken into consideration during the investigative phase, pre-trial custody, and the court proceedings. A special task group was established to monitor and assess these issues, including possible threats by and against the defendants as a group or as individuals.

Stavanger Prison was represented in the task group, which met with increasing frequency during the court proceedings. The police were given responsibility for the perimeters and areas outside the prison gates, while the prison authorities were responsible for the areas inside the perimeter and departure/entry procedures. The police were informed of the interior safety measures and did not object to these.

Medical issues

The transfer from other prisons to Stavanger was at the same time followed by an exchange of any medical "history" concerning the defendant from these prisons to Stavanger Prison. Such information was confidential and only available to medical personnel. The task group prepared contingency plans for the event of any defendant needing medical help in the prison, while being transported, or at court. An agreement was made with Stavanger University Hospital and the Stavanger Medical Emergency Unit to facilitate any required demands for medical support. The Norwegian Correctional Services are not aware of any complaints by the defendants about lack of access to medical staff/personnel during the court proceedings.

Remand prisoners enjoy a very good health service at Stavanger Prison. All remand prisoners are kept under thorough surveillance by health staff, who are trained to be alert to both physical and psychological/psychiatric problems. The prison's medical staff was increased by one nurse at the time of these proceedings, and a psychiatric nurse and an emergency nurse were available every day when the NOKAS defendants returned from court.

However, all remand prisoners in this specific case had restrictions according to court order while they were in detention. Thus, they were not allowed to have contact with each other due to investigative reasons. Accordingly, Stavanger prison had to comply with the court's decision.

Safety and security issues - legal aspects

Safety measures are part of the criteria that have to be considered when imposing any use of force or deprivation on people, from the police or court system. The safety measures were under continual review both before and during the court proceedings. The court considered whether the imposed measures were proportionate, in accordance with the provisions of the Police Act and the Criminal Procedure Act. The police also took the principle of proportionality into account when making the logistical preparations, such as transport, arrangements in the court building, etc.

The police (and prison authorities) are also legally responsible for the safety of employees, and the police have a duty to protect the public from danger. They therefore have to balance the rights of the defendants and the possible effects that coercive measures could have on the defendant, against the duty and need to protect the public by preventing a violent crime.

Safety and security measures inside Stavanger Prison

A full strip-search before departure for and after return from court is a normal procedure in high-security prisons. The searches are carried out in cells especially prepared for this purpose. In this particular case, the defendants underwent the procedure every day during the legal proceedings, which lasted about three months. Strip-searches are not limited to remand prisoners – all inmates undergo them when leaving the prison grounds. The legal basis for this practice is found in section 28 of the Execution of Sentences Act and section 3-25 of the regulations to the Act.

It is correct that the defendants were randomly moved between cells. This was done for security reasons, and was considered appropriate in this specific case. One particular reason for cell rotation was to enable cell searches. The legal basis for such control is section 28 of the Execution of sentences Act and section 3-25 in the Regulations to this act.

Safety issues – the transport phases

Transportation to and from the prison and court buildings were considered to be the most vulnerable phases as they had to be performed in heavy rush-hour traffic and took up to 30 minutes each way. The transport vans were the most modern in the Norwegian Police at that time, with individual cells for the defendants. Based on the threat assessments, and the observed behaviour of the defendants while being transported, hand and ankle cuffs were considered to be necessary.

69. The CPT recommends that the Norwegian authorities carry out a survey on the phenomenon of absenteeism among custodial staff at Ringerike and Trondheim Prisons (and, if deemed necessary, throughout the whole prison system). The CPT would like to receive a copy of the survey on the phenomenon of absenteeism among custodial staff when available.

In view of the CPT's report it is necessary to clarify the levels of absenteeism among custodial staff at Trondheim and Ringerike prisons. Trondheim Prison does not keep statistics that can corroborate whether the overall level of absenteeism is 16 per cent. However, absence due to illness is recorded, and the level lies between 11 and 12 per cent.

Ringerike Prison informed the CPT that the level of absenteeism among custodial staff was approximately 40 per cent. This figure, however, included not only those absent due to illness, but also all custodial staff not participating in their ordinary custodial duties. For instance this figure includes those on vacation, those attending courses, meetings, or training programmes those doing union work, and staff involved in the general operation of the prison. As regards absence due purely to illness, the figure for 2005 is 11.76 per cent. Building A had a somewhat higher level of absence due to illness, at approximately 15 per cent.

Both prisons have stated that they try to fill as many such vacancies as possible by hiring temporary employees and authorising overtime. This is necessary to ensure that the actual workforce is close to what is stipulated beforehand.

The central correctional authority and its subordinate units are focusing on reducing the level of absence due to illness. The northern and southern regions have therefore been instructed to prepare reports on what they have done and what they propose to do to achieve a reduction. Moreover, the central correctional authority will instruct all regions that have prisons with a level of absence due to illness above 13 per cent to explain why this is so.

Trondheim Prison:

In the autumn of 2005/winter 2006, Trondheim Prison kept detailed records of absence due to illness, with a particular focus on personnel working shifts. The absence figures were divided into categories: short-term absence; absence due to sick children; and long-term absence. They also collected statistics for each employee divided among the same categories. In addition, the prison conducted two working environment surveys that focused particularly on absence due to illness.

These investigations showed that short-term absence is high, and that it is often related to stressful shifts (especially night shifts). The overall resource situation at Trondheim Prison was assessed during the summer of 2006.

Trondheim Prison will be reorganised with effect from 1 September 2006. One aspect of the reorganisation will be to give individual managers greater responsibility for following up on absence due to illness, and short-term absence in particular. To the extent that resources allow, special arrangements will be made for employees who cannot work an ordinary shift system. Each section will have its own working environment group, which will focus on absence due to illness. Trondheim Prison already cooperates closely with the health services.

During the first half of 2007, Trondheim Prison is engaging an organization and staff adviser, who amongst other things will work out a more comprehensive plan for following up on absence due to illness (and especially short-term absence).

Ringerike Prison:

Ringerike Prison has implemented various measures aimed at reducing absence due to illness:

- A post has been created for a full-time HSE (health, safety, and working environment) adviser.
- Regular meetings between management and the unions on the work environment have been introduced.
- A programme of individual follow-up with absent staff has been launched.

The southern region has also put absence due to illness on the agenda for the regional working environment committee (RAMU), which is working on a report on how the rate of absence due to illness can be lowered. RAMU will consider the report in October, and discuss different measures to lower the absence rate, especially in units where it is too high.

70. The CPT comments that the Norwegian authorities are invited to reconsider the minimum level of staffing at night at Ila, Ringerike and Trondheim Prisons.

The central correctional authority asked the relevant regions to reconsider minimum night staffing levels at Trondheim, Ringerike, and Ila prisons, especially in view of the overall security of the prisons. All three regions have stated that the security needs of the prisons are being met. All of the prisons have good fire prevention and fire fighting equipment, each cell is a fireproof unit, and the prisons have good communication links with local fire, police, and health departments, to ensure rapid on-site assistance in emergencies.

All cells in Ringerike Prison have an in-cell toilet, and Trondheim Prison has stated that all prisoners in cells without toilets have access to a toilet whenever needed.

The Norwegian authorities therefore see no reason to increase minimum night staffing levels. The situation will, however, be kept under regular review.

72. The CPT comments that Ringerike and Trondheim Prisons should each benefit from a half-time medical doctor's post. The CPT comments that the nursing team at Trondheim Prison should be reinforced to the level of three full-time nursing posts.

The Norwegian Board of Health in Buskerud (Ringerike Prison) and Sør-Trøndelag (Trondheim Prison) are continuously following up health care in the two prisons with the responsible local authorities. Norway does not set quotas for the number of positions or other resources, but the responsible authorities, in this case the local authorities of the municipalities where the prisons are located, are required to provide services that comply with the standard of care set out in the relevant laws and regulations. Fundamentally, this standard of care requires that the health services are in accordance with responsible services and the patient is entitled to receive "required health care" cf. The Patients Rights Act 2-1.

Staff levels in Trondheim Prison have been strengthened since the CPT's inspection. There are now four full-time nurses, and the physiotherapy position has been upgraded to full-time position. The team of doctors has also been strengthened – three doctors share a part-time (40 per cent) position.

In Ringerike prison there is no change in the amount of medical doctor resources. The local authority continues to fund a part-time (40 per cent) position. The county medical officer agrees with the CPT that the provision of health care services is inadequate, and is currently working to ensure that the local authorities meet their obligations to the prison population.

Because of the increased morbidity and other vulnerability of the prison population, the two mentioned Norwegian Board of Health bodies regard the provision of prison health care as a service with a high degree of risk of being inadequate. They both continuously monitor the situation through audits of services, discussions with appropriate authorities etc., to ensure that health care in prisons meet the standards required by law.

73. The CPT recommends that immediate steps be taken at Ila, Ringerike and Trondheim Prisons to ensure that every newly-admitted prisoner - whether sentenced or on remand - is properly interviewed and physically examined by a medical doctor as soon as possible after admission; save in exceptional circumstances, the interview/examination should be carried out on the day of admission. Such medical screening could also be performed by a fully qualified nurse reporting to a doctor; however, this should not unduly delay the interview with the doctor.

In 2004 the Norwegian health authorities published "Guidelines for health care to prisoners". These guidelines describe the procedure for interview and examination by a nurse and doctor as soon as possible after admission. Examination by a doctor may in practice be delayed, as many Norwegian prisons are so small that they only have health personnel available for a few hours every week.

Nurses in Norway all have three years of education, and are therefore fully qualified to interview the prisoners. In addition many prison nurses are educated as psychiatric nurses.

Medical examination depends on the consent of the prisoner, and it may happen that some prisoners refuse examination. In cases where there is a need for urgent medical examination, the emergency ward is called for. Norwegian health authorities find the practice described above satisfactory.

75. The CPT recommends that the provision of psychological/psychiatric services at Ila, Ringerike and Trondheim Prisons be substantially increased. In particular, immediate measures should be taken to ensure regular visits by a psychiatrist to Trondheim Prison.

The Ministry of Health and Care Services has emphasized the importance of strengthening the psychiatric services in the national action plan for mental health. As part of the plan is substantial more psychologists and psychiatrists are now educated.

The five regional health authorities have the responsibility to provide sufficient mental health care in prisons. In 2005 all five health regions in Norway were instructed by the Ministry of Health and Care Services to make sure that an agreement on co-operation was established between local hospital trusts and municipalities hosting prisons in order to provide services from psychologists and psychiatrists inside the prisons. The health authorities continuously follow this up.

76. The CPT recommends that the Norwegian authorities take steps to ensure that prisoners suffering from a mental illness are transferred when necessary to an appropriate hospital establishment.

The Norwegian health authorities are very concerned about prisoners suffering from mental illness and what type of care/treatment they need to be given. There is a professional evaluation on whether proper treatment in many cases can be given to prisoners as outpatients rather than inpatients (cf. paragraph 75 above). This issue is also continuously followed up.

77. The CPT recommends that the services of a qualified interpreter be made available without delay, whenever members of the medical and/or nursing staff at Trondheim Prison are unable to make a proper diagnosis due to language problems.

The “Guidelines for health care to prisoners” emphasise the importance of qualified interpreters as an aid in understanding patients. The Ministry of Health and Care Services will continue to implement the guidelines concerning this issue among the prison health staff.

The CPT would like to receive the comments of the Norwegian authorities on the complaints from foreign prisoners at Trondheim Prison indicating that they had to request special prison leave to obtain access to outpatient specialised care.

If a prisoner is in need of specialist health services, the common practice in Norway is that the prisoner is granted either a leave of absence or escorted leave to obtain such care. This practice applies both to foreign and to Norwegian prisoners. Foreign prisoners do not need to make a special application.

78. The CPT recommends that measures be taken to guarantee that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers.

Neither the prison staff nor the health care staff at Ringerike Prison can recall that there has ever been a situation as described in the report, where a doctor had to examine a patient while a member of prison staff overheard the conversation.

At the very high security unit, examination by and conversations with the doctor must take place in the unit itself, in the presence of two members of the health care staff. Prison staff are required to wait outside the examination room.

However, members of the prison staff are required to be present when a medical examination has to take place outside the very high security unit. In view of the rarity of such situations, and the great security risks involved, the Norwegian authorities see little reason to amend the present rules. They are, however, aware of the need for confidentiality, and will seek to keep the number of external medical examinations to a minimum.

79. The CPT would like to receive a copy of the second autopsy report concerning the female prisoner who died on 8 September 2005 at St Olavs Hospital, two days after having been transferred there from Trondheim Prison.

A translated copy of the second autopsy report was forwarded to the CPT by the Ministry of Justice and the Police on 17 August 2006. An additional copy of the autopsy report is enclosed.

85. The CPT recommends that the policy on and practice of the use of restraint be reviewed at Trondheim Prison, in the light of the criteria set out in paragraph 85. Further, the forms used at Ila Prison to register the use of security cells/the restraining bed should be scrupulously completed.

Section 38 of the Execution of Sentences Act and the related regulations contain strict guidelines and procedures for employing coercive measures.

Essentially, these provide that the Correctional Services must use coercive measures only where strictly necessary, and only if less forceful measures have been attempted or are obviously inadequate. Coercive measures are to be used cautiously, so that no-one is unnecessarily injured or made to suffer. Wherever possible, a medical opinion must be obtained and taken into account when considering whether to use a security cell or a restraining bed. The Correctional Services must constantly assess whether grounds for maintaining the measure exist. There are also strict rules on when the use of security cells and restraining beds has to be reported to the regional and central levels of the Correctional Services for a decision on whether the measure is to be maintained or discontinued. All Norwegian prisons, including Trondheim Prison, are expected to comply fully with these rules and procedures.

The use of security cells and restraining beds is closely documented. The documentation consists of a written decision to use a given measure and a protocol for continuous registrations of activity. The register is kept until the measure is discontinued. The register entries are automatically reported to the regional level of the Correctional Services.

Concrete action will be taken to address the CPT's concerns regarding lack of routines and defined practice for the completion of registration forms at Ila Prison.

Until now, it has been common practice at Trondheim Prison to store a copy of the decision to use coercive measures on the individual prisoner's file, which is kept in the prison archives. Trondheim Prison has noted the CPT's call for a general record to be kept of all instances where coercive measures have been used against prisoners, and will establish an archive for this purpose.

The CPT recommends that practical training sessions on the use of restraint be organised for prison staff throughout the Norwegian prison system.

The Correctional Service of Norway Staff Academy gives all prison officers basic training in the use of coercive measures. Furthermore, the guidelines to the Execution of Sentences Act provide that all prison staff are to receive practical training in the use of coercive measures at least once a year.

86. The CPT recommends that measures be taken to offer foreign prisoners at Ila Prison interpretation arrangements similar to those in place at Ringerike Prison.

There are difficulties in controlling phone calls made by prisoners speaking foreign languages. Interpreters are scarce, and the costs of employing them high. However, immediate efforts will be made to find more flexible and effective solutions for Ila Prison than the routines that are in place today. One solution may be telephone conferencing, which would remove the necessity for the interpreter to be physically present at the prison.

The Correctional Services have recently initiated a process to identify the extent to which interpretation services are needed in Norwegian prisons. Once this process has been completed and the results have been examined, concrete proposals on how the situation can be improved will be considered.

87. The CPT recommends that steps be taken immediately to ensure that female personnel are never present during full body searches of male prisoners at Ringerike Prison.

Norwegian rules and guidelines stipulate that a prison officer of the same sex as the prisoner should carry out obligatory full body searches. If a prison officer of the opposite sex has to carry out the search, the guidelines stipulate that an additional staff member must be present during the search.

The local rule at Ringerike Prison is that two members of the prison staff should always be present during body searches. Furthermore, the general rule is that they must be of the same gender as the prisoner.

However, male and female staff numbers at Ringerike Prison are almost even. Consequently, cases where one member of the staff is a female officer are practically unavoidable. Where a female member of staff is present during a full body search, the local instructions require her either to leave the room or to turn away while the prisoner is fully naked, i.e. no prisoner is to be observed naked by a female prison officer.

The local rules and practice at Ringerike Prison comply with section 3.31 of the guidelines to the Execution of Sentences Act. However, it must also be emphasised that all prison officers are required to avoid participating in a full body search of a prisoner of the opposite sex wherever possible.

C. Psychiatric establishments

92. The CPT comments that the decision as to whether a person should be placed under compulsory mental health care (or should be subject to an observation period) should always remain exclusively in the hands of a qualified psychiatrist (and preferably two).

Norwegian psychologists are trained in physiology, endocrinology, and psychiatric diagnostics, and psychologists with clinical experience are considered competent to diagnose mental illness. Under Norwegian law, psychologists with clinical experience have the same authority to carry out this type of assessment as psychiatrists.

Section 3-3 of the Mental Health Care Act (MHCA) sets out the conditions for imposing compulsory mental health care. An English translation of extracts from the Act is enclosed.

The Mental Health Care Act limits examination and treatment of persons suffering from mental illness, and the nursing and care that they require, to specialised health services. Somatic sickness and somatic health care are regulated by other legal provisions. Compulsory mental health care may only be imposed in cases of mental illness. To ensure that this rule is observed, the person in question has to be examined by a physician before an application for compulsory mental health care is made. (Cf. section 3-4 of the Mental Health Care Act.)

Moreover the “responsible mental health professional” has to make sure that the patient receives medical examination before the decision is made. Reference is made to section 3-8 of the Mental Health Care Act cf. section 1-4.

94. The CPT recommends that at least one member of each Control Commission be a qualified psychiatrist, independent of the institution under scrutiny.

In deciding whether a person should remain subject to compulsory mental health care, the supervisory commission (Control Commission) has to decide whether the person has a ‘serious mental disorder’. This term is not a psychiatric diagnosis, but a legal standard that has been defined in various judgments of the Supreme Court. Where the supervisory commission decides that the person has a serious mental disorder, its next task is to decide whether one of the supplementary conditions for compulsory mental health care is fulfilled.

Another important task of the supervisory commission is to ensure that patients who are subject to a compulsory mental health care order are not deprived of their freedom of movement and self-determination to a greater extent than necessary. The relevant legislation requires the supervisory commission to include a physician, but does not require him/her to be a psychiatrist, as it is assumed that he/she will draw on his/her general medical experience when considering the recommendations of the examining psychiatrist.

Norway’s system of supervisory commissions has existed since 1848. It has never been a requirement that one of the members has to be a psychiatrist.

Courts, however, do seek professional psychiatric expertise when dealing with questions concerning compulsory mental health care.

95. The CPT requests information on whether patients have the right to challenge an involuntary placement decision directly in the courts, without having exhausted the remedy provided for by the Control Commission.

Section 7-1 of the Mental Health Care Act provides:

“Administrative decisions of the supervisory commission in cases concerning further examination, the application or the maintenance of compulsory mental health care pursuant to sections 3-8 and 3-9 may be brought before the court by the patient or his or her closest relative pursuant to the provisions of chapter 33 of the Civil Procedure Act of 13 August 1915. The same applies to the supervisory commission’s administrative decisions regarding transfer to in-patient care in an institution, cf. Sections 4-10 and 5-4.”

Chapter 33 of the Civil Procedure Act sets out a quicker procedure for these cases than in normal civil cases. The court is required to speed up the proceedings as much as possible, and the main hearing can start without the normal preparatory procedures being observed, cf. section 478.

According to section 475 of the Civil Procedure Act patients do not have the right to challenge an involuntary placement decision directly in the courts until they have exhausted the remedy provided for by the supervisory commission.

An involuntary placement decision may be appealed to the supervisory commission under section 3-8 of the Mental Health Care Act. Section 6-4 of the Mental Health Care Act provides that the supervisory commission has to follow certain special procedural rules before it can decide on such cases. These procedural rules are much like the procedural rules in an ordinary district or city court.

The supervisory commission has to make its decision within two weeks of the appeal being submitted. If this deadline cannot be met, the reason why must be given in the decision. Ordinary district and city courts are not able to make such quick decisions.

Thus, this system provides the patient with a quicker process than what an ordinary civil case in accordance with the provisions of the Civil Procedure Act would entail. At the same time the patient is guaranteed the legal safeguards he or she would have before Norwegian courts, as well as the professional evaluation and expertise provided by the members of the supervisory commission.

Under section 1-7 of the Mental Health Care Act, the patient is entitled to the assistance of a lawyer or other agent in connection with appeals to the supervisory commission or the chief county medical officer against administrative decisions pursuant to the Mental Health Care Act. Furthermore, section 1-7 paragraph 3, provides that in connection with cases concerning the application, maintenance or termination of compulsory mental health care, and cases concerning transfers, the patient is entitled to a lawyer pursuant to the Act of 13 June 1980 No. 35 relating to free legal aid.

103. The CPT would like to receive the comments of the Norwegian authorities on the information given to patients about the security levels.

The Act of 2 July 1999 no. 63 relating to Patients' Rights (The Patients' Rights Act) contains provisions on patients' rights to information (section 3-2) and participation (section 3-1). If a patient is of the opinion that these provisions have been breached, he/she can complain to the county medical officer (sections 7-1 and 7-2).

Section 1-5 of the Mental Health Care Act states that the Act relating to the Rights of Patients shall apply insofar as appropriate. Chapter 4 of the Act relating to the rights of patients applies only where the Mental Health Care Act so provides.

104. The CPT requests more information on the procedure for a transfer from a voluntary to a compulsory placement status.

Amendments to the Mental Health Care Act were adopted on 8 June 2006, and they will enter into force on 1 January 2007. The amendments will not affect the general prohibition on changing a patient's placement status from voluntary to compulsory, but they do introduce some exceptions.

The new section 3-4 allows a patient's placement status to be changed where he/she poses an obvious and serious risk to life and health (either his/her own, or that of others).

The ordinary conditions and application procedures for compulsory mental health care orders have to be followed in such cases.

107. The CPT requests information on the conclusions of the review regarding the treatment offered to a patient to whom instruments of physical restraint had been applied for approximately 30 days out of 40, and information on any measures taken to avoid the repetition of such a case.

Detailed information on the review of the treatment offered to the patient in question is enclosed.

As described in the enclosures, this was an extraordinary case. It is difficult to explain why the combination of clozapine and lithium eventually took effect, when it had not done so previously.

The Ministry of Health and Care Services has been informed by the psychiatric hospital in Brøset that it strictly controls the use of means of restraint. This case does not give reason to take special measures in general, for example by making new procedures for treatment.

108. The CPT recommends that all measures of "shielding", whatever their duration, be recorded in writing.

The Health Personnel Act requires that measures such as shielding be documented in the affected patient's journal. The Ministry of Health and Care Services has recently suggested that shielding also be registered in a minute book. This rule will probably become operative from 1 January 2007.

The Mental Health Care Act requires a written decision only when shielding lasts for more than 48 hours. A written decision gives the patient the right to make a formal complaint about the use of the measure.

Since “shielding” may be very radical towards the patient, the Ministry of Health and Care Services has recently issued regulations that require a written decision to be made at an earlier stage, generally when shielding is used for more than 24 hours. In the most extreme cases, a written decision is required when the measure is used for more than 12 hours. Relevant considerations include the extent to which the patient’s freedom of movement and right to self-determination are restricted (for example where access to certain media is limited). These regulations will come into force on 1 January 2007.

Shielding is used frequently, and in many hospitals. The Ministry of Health and Care Services is of the opinion that not all instances of shielding need to be regulated by law and recorded in a written decision. If a written decision were to be required every time shielding was used, resources would have to be shifted from clinical work to administrative tasks. There is also a risk that a “shielding” could be prolonged because of the existence of a written decision. The Ministry of Health and Care Services considers that the new regulations ensure that patients’ legal rights are properly safeguarded.

The CPT comments that patients should not be subjected to successive measures of “shielding” without any interruption.

Under the Mental Health Care Act, shielding can continue for up to 21 days before a new written decision is required. This period will be reduced to 14 days from 1 January 2007. A new decision can be take effect directly after the previous one. The person who makes the decision (i.e. the psychiatrist/psychologist) must always consider whether the advantages of shielding outweigh the disadvantages. A relevant consideration would be, for example, the patient’s need of stimuli deprivation (e.g. from other patients or television). The general rule is that all restrictions must be limited to what is strictly necessary.

109. The CPT recommends that the Norwegian authorities take the necessary steps to ensure that the legal status of “voluntary” patients subject to restraint is regulated accordingly.

The Ministry of Health and Care Services considers the Mental Health Care Act’s provisions on restraint for voluntary patients comply with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The measures provided for in the Mental Health Care Act (cf. section 4-5: contact with the outside world; section 4-6: inspection of rooms and possessions and bodily searches; and section 4-7: seizure) can only be applied when the purpose is to prevent illegal or disorderly activity in the institution or actions that may be dangerous to others.

Administrative decisions regarding restraint for voluntary patients must be recorded without undue delay. The patient or his or her closest relative may appeal the decision to the supervisory commission.

Norway has 55 supervisory commissions. The supervisory commissions were evaluated in 2005 by the Ministry of Health and Care Services. The evaluation showed that the supervisory commissions often put restraint for patients on the agenda on their own initiative.

110. The CPT recommends that introductory brochures - setting out the establishment's routine as well as patients' rights and possible restrictions on these rights - be drawn up and issued to all patients admitted involuntarily to a psychiatric establishment in Norway, as well as to their families. Any patient unable to understand the brochure should receive appropriate assistance.

In January 2006, the Ministry of Health and Care Services, in cooperation with the patient organisation "Mental Health", published a brochure on the legal rights of patients in mental health care institutions. The brochure is called "Legal safeguards on involuntary admission".

The brochure is being translated into 10 languages. It is currently available in Norwegian and English on www.shdir.no.

The brochure describes the purpose and role of the supervisory commissions, and sets out the rights of patients and their closest relatives. It also explains which decisions can be appealed and where. The brochure has been distributed to all of Norway's mental health care institutions.

Brøset psychiatric hospital has published a separate introductory brochure for patients and their closest relatives. It too describes the role and purpose of the supervisory commissions.

The CPT has called for a brochure that sets out institutions' routines, presumably meaning house rules and general information about the institution, such as the number of wards and patients, and the number and categories of staff. The Norwegian authorities assume that individual institutions explain house rules and routines to patients upon arrival, but will consider whether special brochures are needed.

111. The CPT requests detailed information on the nature of the "reasonable limitations" on contact with the outside world referred to in Section 4 (5) (3) MHCA.

The Mental Health Care Act provides that patients' communication with, inter alia, the supervisory commission, the patients' Ombudsman, and his/her lawyer cannot be restricted other than by "reasonable limitations" imposed by house rules.

This means that restrictions cannot be given on communication with the mentioned persons/institutions to a larger extent than what is decided in the house rules. Restrictions on communication with the instances mentioned cannot be imposed on a patient based on arguments of his/her treatment, relations or matter of welfare (Preparatory work of the law: bill to the Parliament: Ot. prp. nr 11 1998-99 s. 114).

Examples of such restrictions given in the house rules are rules about the times for meals and when to be quiet at night in the common rooms (Ot. prp. nr. 11 1998-1999 s. 100). If a patient wants to call his or her lawyer in the middle of the night, the institution has the right to refuse this according to the same rules.

112. The CPT recommends that the Norwegian authorities reconsider the value of the systematic presence of health-care staff during visits. One possible solution would be for visits to remain within the sight, but not the hearing, of staff, thus enabling the patients to establish a certain degree of privacy in their contacts with their relatives.

The Ministry of Health and Care Services agrees with the CPT in the evaluation of Brøset hospital's routines during visits (health care staff is systematically present). Accordingly, the hospital will be made aware of the CPT's comments, and will be requested to consider the required guarding and alertness in each case.

113. The CPT requests information on any developments as regards plans to transfer the hospital and merge it with the psychiatric ward of a neighbouring general hospital (and in particular of the material conditions and treatment offered to patients after the transfer, staffing levels, etc.).

The Ministry of Health and Care Services will follow this up.

114. The CPT would like to receive a copy of the amendments to the Mental Health Care Act, once they are adopted.

A translated version of the amendments adopted on 8 June 2006 will be forwarded to the CPT as soon as it is available.