



CPT/Inf (2011) 20

Report

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

from 26 November to 8 December 2009

The Polish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2011) 21.

Strasbourg, 12 July 2011

Certain names have been deleted in accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CONTENTS

COPY OF THE LETTER TRANSMITTING THE CPT'S REPORT	5
I. INTRODUCTION.....	7
A. Dates of the visit and composition of the delegation	7
B. Establishments visited.....	8
C. Consultations held by the delegation and co-operation encountered.....	9
D. Development of a national preventive mechanism	10
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	11
A. Police establishments	11
1. Preliminary remarks.....	11
2. Torture and other forms of ill-treatment	12
3. Investigations into cases of alleged police ill-treatment	13
4. Safeguards	17
5. Conditions of detention in police establishments	20
a. police cells.....	20
b. police establishments for children	22
B. Detention of foreign nationals under aliens legislation.....	24
1. Preliminary remarks.....	24
2. Ill-treatment	25
3. Conditions of detention.....	25
a. material conditions.....	25
b. regime	27
4. Health care.....	28
5. Staff.....	30
6. Safeguards and information for immigration detainees.....	31
a. guarded centres and deportation arrest centres.....	31
b. holding facility in the transit zone of Warsaw International Airport	32
7. Other issues	32

C. Prison establishments	34
1. Preliminary remarks.....	34
2. Ill-treatment.....	37
3. Prisoners classified as "dangerous" ("N" status).....	37
4. Material conditions of detention.....	40
a. Poznań Remand Prison	40
b. Racibórz Prison	41
c. Rawicz Prison.....	42
5. Activities	43
6. The therapeutic units.....	45
7. Health care.....	46
a. situation in the prisons visited.....	46
b. Poznań Prison Hospital	49
<i>i. introduction.....</i>	<i>49</i>
<i>ii. the psychiatric ward</i>	<i>49</i>
8. Other issues	51
a. contact with the outside world.....	51
b. discipline	52
c. security issues.....	54
d. complaints procedures	55
D. Social welfare and psychiatric establishments	56
1. Preliminary remarks.....	56
2. Living conditions.....	57
3. Staff and treatment.....	57
4. Means of restraint	58
5. Safeguards	59
APPENDIX I LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION	63
APPENDIX II LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS.....	79

Copy of the letter transmitting the CPT's report

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Strasbourg, 30 July 2010

Dear Ms Adamiak

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 Polish Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Poland from 26 November to 8 December 2010. The report was adopted by the CPT at its 72nd meeting, held from 5 to 9 July 2010.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Polish 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 Polish authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report as well as replies to the requests for information made.

In respect of the recommendation made in paragraph 43 of the report, the CPT requests the Polish authorities to provide a response **within two months**.

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

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

Yours sincerely

Mauro Palma
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Poland from 26 November to 8 December 2009. The visit formed part of the Committee’s programme of periodic visits for 2009 and was the fourth visit carried out to Poland by the CPT¹.

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

- Andres LEHTMETS, Head of delegation
- Celso DAS NEVES MANATA
- Birgit LIE
- Dajena POLLO
- Tatiana RĂDUCANU.

They were supported by the following members of the CPT’s Secretariat:

- Michael NEURAUTER (Head of Division)
- Isabelle SERVOZ-GALLUCCI

and were assisted by:

- Eric DURAND, medical doctor, France (expert)
- James McMANUS, Professor of Criminal Justice, Glasgow Caledonian University, United Kingdom (expert)
- Andrzej GRZAŃKOWSKI (interpreter)
- Aleksander JAKIMOVICZ (interpreter)
- Rafal ROGOWSKI (interpreter)
- Aleksandra SOBCZAK (interpreter)
- Artur ZAPAŁOWSKI (interpreter).

¹ The first periodic visit took place in June/July 1996, the second in May 2000 and the third in October 2004. All visit reports and related Government responses have been published on the CPT’s website: <http://www.cpt.coe.int/en/states/pol.htm>

B. Establishments visited

3. The delegation visited the following places of detention:

Establishments under the Ministry of Internal Affairs and Administration

- Municipal Police Department, Biała Podlaska
- Municipal Police Department, Jaworzno
- Municipal Police Department, Leszno
- Police Department Nowe Miasto, Poznań
- Police Department Stare Miasto, Poznań
- District Police Department, Racibórz
- District Police Department, Rawicz
- Municipal Police Department, Rybnik

- Police establishment for children, Będzin
- Police establishment for children, Katowice
- Police establishment for children, Poznań

- Border Guard Centre for Foreigners, Biała Podlaska
- Border Guard Deportation Arrest Centre, Biała Podlaska
- Border Guard Centre for Foreigners, Lesznowola*
- Border Guard Deportation Arrest Centre at Warsaw International Airport*
- Holding facilities for foreign nationals at Warsaw International Airport (transit zone)*

Establishments under the Ministry of Justice

- Poznań Remand Prison and Prison Hospital
- Racibórz Prison
- Rawicz Prison

The delegation also paid brief visits to Warsaw-Białoleka and Katowice Remand Prisons in order to interview recently-arrived remand prisoners.

Establishment under the Ministry of Labour and Social Policy

- Bytom Social Care Home for Adults with chronic mental illnesses.

The delegation also paid a brief visit to Lubliniec Psychiatric Hospital, in order to consult certain medical files and to examine the procedures for the use of means of restraint.

* Follow-up visits

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

4. The CPT is grateful for the time devoted to discussions with the delegation by Krzysztof KWIATKOWSKI, Minister of Justice, as well as Igor DZIALUK and Stanisław CHMIELEWSKI, Vice-Ministers of Justice. The delegation also had fruitful consultations with senior officials from the Ministries of Internal Affairs and Administration, Justice, Health, and Labour and Social Policy. Meetings were also held with representatives of the Office of the Commissioner for Civil Rights Protection. Further, the delegation had meetings with representatives of the UNHCR Office in Warsaw and non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations consulted during the visit is set out in Appendix II to this report.

5. The CPT wishes to express its appreciation for the assistance provided to its delegation before, during and after the visit, by the liaison officer appointed by the Polish authorities, Anna ADAMIAK, Prosecutor at the National Prosecutor's Office.

6. The co-operation provided to the CPT's delegation during the visit by both the national authorities and staff at the establishments visited was generally very good. The delegation enjoyed immediate access to all the places visited (including ones not notified in advance), and was able to speak in private with persons deprived of their liberty and, with one exception, was provided with all the information necessary for the carrying out of its task.

The above-mentioned exception concerned the Prosecutor's Office in Cracow, where the delegation was denied access, during the visit, to an investigation file relating to the alleged ill-treatment of a detainee by police officers.

Assessing the effectiveness of action taken by the competent investigatory authorities when ill-treatment may have occurred constitutes an integral part of the CPT's mandate, given the implications that such action has for future conduct by public officials. In order to be able to make such an assessment, it is essential for the CPT to have access to detailed information on the investigations concerned. By virtue of Article 8, paragraph 2 (d), of the Convention, Parties are obliged to provide the Committee with such information. The most straightforward way of meeting this obligation – and the practice followed in other Parties to the Convention – is for the CPT to have access to the relevant files held by the authorities responsible for the investigation.

The CPT welcomes the fact that following the visit, relevant information was provided by the Polish authorities in this respect. Nevertheless, **the CPT trusts that appropriate steps will be taken by the relevant authorities to enable the Committee's delegations to have effective access in future to any criminal investigation files which are related to the alleged ill-treatment of detained persons.**

7. As was already stressed after the previous visit to Poland in 2004, the principle of co-operation between State Parties and the CPT is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this respect, despite certain improvements made since the visit in 2004, the findings from the 2009 visit indicate that the action taken in respect of a number of long-standing recommendations of the CPT fails to meet the Committee's concerns (in particular in the areas of legal safeguards against ill-treatment of persons in police custody, combating overcrowding in prisons, and the treatment of "N" status prisoners).

Decisive steps must be taken to improve the situation in the light of the CPT's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention establishing the Committee.

8. At the end of its visit, the delegation called upon the Polish authorities to take immediate steps to ensure that all children detained by the police for more than 24 hours are able to benefit from at least one hour of outdoor exercise per day. The delegation requested to be provided, within two months, with an account of the measures taken to meet this requirement.

By a letter of 8 February 2010, the Polish authorities informed the Committee of measures taken in response to the delegation's end-of-visit statement. This information will be considered later in the report.

D. Development of a national preventive mechanism

9. The CPT noted that further progress has been made since the 2004 visit as regards the setting up of a national preventive mechanism (NPM), pursuant to Poland's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)². These tasks had been assigned to the Commissioner for Civil Rights Protection in January 2008. The Commissioner published his first report in his capacity as NPM in 2009³. The delegation was informed that these additional functions were not accompanied by an appropriate increase in budgetary resources. **The CPT would like to receive the comments of the Polish authorities on this matter.**

² Entered into force in June 2006 in Poland.

³ The report indicated that between 18 January and 31 December 2008, the representatives of the Commissioner for Civil Rights Protection, while executing the tasks of the NPM, carried out visits to 76 places of detention, including penal institutions, remand centres, cells for detained persons on police premises, police emergency centres for children, emergency detoxification centres, youth care centres, youth socio-therapy centres, juvenile detention centres, juvenile reform schools, military disciplinary detention centres, psychiatric hospitals, guarded centres for foreigners, and deportation centres.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

10. The legal framework governing the detention of criminal suspects by the police has remained basically unchanged since the previous CPT visit carried out in 2004. Persons apprehended by the police must be brought before the court within 48 hours of apprehension with a request for applying temporary arrest. The apprehended person must be released if, within 24 hours from that moment, he/she has not received a copy of the court decision on the request. The information gathered by the CPT's delegation during the 2009 visit suggests that apprehended persons who were not subsequently released were usually transferred to a remand establishment well within the 72 hour period. The only exception concerned persons apprehended on the basis of an outstanding warrant who could spend up to five days in police cells, awaiting transfer to a remand establishment⁴.

11. The legal provisions applicable to the detention of juveniles suspected of criminal offence have also remained unchanged. Such juveniles have to be released from police detention if, within 72 hours, a court decision on the placement in a shelter for juveniles, an appropriate protective educational facility or an appropriate treatment facility has not been issued⁵. However, Polish legislation apparently contains no time limit for the accommodation of juveniles in a police establishment after a court decision has been issued, pending their transfer to another institution.

Compared to the situation observed in 2004, detention periods in police establishments for children were generally shorter⁶. Out of a total of some 1,500 juveniles who had been detained in 2009 in the three police establishments visited, the vast majority were held there for less than 72 hours. This is a welcome development. However, in rare cases, suspected juvenile offenders were detained by the police for much longer periods (up to several weeks and, in one case, two months) before being transferred to a specialised institution for juveniles; this was the case in particular at Będzin and Katowice. The delegation was informed that these delays were caused by great difficulties in finding a place in suitable establishments.

The CPT has noted with interest that the inter-ministerial working group for improving the effectiveness of the execution of court judgments (under the auspices of the Ministry of Justice) has prepared a draft amendment to the Juveniles Act, with a view to remedying the above-mentioned lacuna by introducing an absolute time limit of seven days for the detention in police establishments of suspected juvenile offenders. **The Committee encourages the Polish authorities to take the necessary steps to ensure that the Juveniles Act is amended accordingly.**

⁴ Such cases were not found during the visit, but the review of custody records showed that it happened occasionally.

⁵ Section 40, paragraph 6, of the Juveniles Act.

⁶ It should be noted that the maximum period during which a juvenile who had absconded from an educational facility may be detained in a police establishment had already been reduced from 17 to 5 days since the previous visit.

12. Finally, the delegation noted that a draft Juveniles Code was still under discussion at the time of the visit. **The CPT would like to be informed concerning the state of the debate as regards the adoption of a new Juveniles Code.**

2. Torture and other forms of ill-treatment

13. As was the case in 2004, the majority of the persons met by the delegation who were, or had recently been, detained by the police, indicated that they had been correctly treated, both at the time of their apprehension and during questioning. In addition, no allegations were received of ill-treatment by custodial staff in police establishments for children.

However, the delegation received a number of allegations of excessive use of force by police staff at the time of apprehension (e.g. kicks, punches, tight handcuffing). In addition, several detained persons, including juveniles, made allegations of physical ill-treatment and threats to use violence and/or verbal abuse during questioning, with a view to obtaining confessions or other information. The ill-treatment alleged by two detained persons was of such a severity that it could well be considered as amounting to torture (e.g. blows on the soles of the feet, the infliction of electric shocks on the genitals⁷). In both cases, the alleged ill-treatment was said to have taken place during police questioning.

It should be added that, in a number of cases, the examination of the persons concerned by medical members of the delegation and/or the consultation of medical files, revealed injuries which were fully consistent with the persons' allegations of ill-treatment by the police.

The CPT recommends that police officers throughout Poland be reminded that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be the subject of severe sanctions.

Police officers should also be reminded that no more force than is 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, police officers must be trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend.

14. In January 2009, a new computerised system for collecting and analysing information on complaints against police officers was introduced. The delegation was informed that, with this new database, it was possible to filter all relevant data by category of misconduct, one specific category covering various forms of police ill-treatment (“use of force”, “inhuman or degrading treatment”, “means of coercion”, and “psychological violence or intimidation”). The CPT welcomes this initiative **and would like to know whether the same system will henceforth also be used by the Border Guards.**

⁷ See paragraph 19.

15. In order to obtain a nationwide picture of the situation, **the Committee would like receive the following information, in respect of the period from 1 January 2009 to the present time:**

- **the number of complaints of ill-treatment made against police officers and Border Guard officers and the number of criminal/disciplinary proceedings which have been instituted as a result;**
- **an account of criminal/disciplinary sanctions imposed following such complaints.**

16. The CPT noted with interest that a network of human rights protection officers (“plenipotentiaries”) has recently been created within law enforcement agencies. One such officer has been appointed on a full-time basis at the Police Central Headquarters and in each Provincial Headquarters, as well as at the Border Guard Headquarters. In addition, in every Border Guard Unit, one designated officer performs the functions of human rights officer in addition to his/her normal duties.

The main tasks of human rights officers include, among other things, the promotion of human rights, the monitoring of actions of law enforcement officials, the maintenance of contacts with relevant non-governmental organisations, the organisation of specialised training and the preparation of annual reports.

The CPT would like to receive copies of the most recent annual report of the human rights officers of the police and Border Guards.

3. Investigations into cases of alleged police ill-treatment

17. It is well-established that effective investigations capable of leading to the identification and punishment of those responsible for ill-treatment are essential to give practical meaning to the prohibition of torture and inhuman or degrading treatment or punishment. Failing to meet this requirement will inevitably create a climate of impunity. For an investigation to be “effective”, it must offer, *inter alia*, guarantees of independence, promptness, thoroughness and expeditiousness.

18. In this connection, the delegation reviewed a number of individual cases of remand prisoners who arrived at a prison with visible injuries alleging that these injuries had been caused by police ill-treatment. To make its assessment, the delegation interviewed the prisoners concerned and consulted their medical files and, in some cases, examined extracts from criminal investigation files which were transmitted by the Polish authorities to the CPT by a letter of 25 March 2010 (see, in this regard, the remarks made in paragraph 6). In addition, the delegation had consultations with staff in the establishments visited, as well as with senior prosecutors in Katowice and Krakow.

19. The following two cases⁸ illustrate the nature of the issues which the delegation has identified:

Case 1

On 7 October 2009, K. J. was apprehended in the apartment of his parents in Krakow by eight officers of the Anti-Terrorism Operations Office of Bielsko-Biala Police Headquarters. He claimed that he was repeatedly kicked by several officers, after having been restrained on the floor. Throughout his transportation to a police establishment in Krakow, he was allegedly kicked and beaten by police officers, whilst his head was hooded with a jacket. Upon arrival at the police establishment, the kicking and beating allegedly continued for about one hour, with a view to obtaining from him a confession to a criminal offence. K. J. further claimed that, after he had fallen on the floor, one of the police officers involved in the beatings applied an activated electric stun device to the vicinity of his genitals, for about 30 seconds, thus inflicting severe pain on him. Due to his poor physical condition, he was transferred to the Bielsko-Biala Emergency Medical Service and then, by ambulance, to the Bielsko-Biala Regional Hospital, where X-rays of his thumb, ribs and the spine near the neck, as well as a computer tomography of his head were apparently performed.

On 9 October 2009, K. J. was admitted to Katowice Remand Prison and examined, on the same day, by a prison doctor. According to the individual medical file, the following injuries were observed by the doctor: "Many bruises on the right forearm, left lower leg (upper part) and the right leg". It is also mentioned that K. J. made allegations of police ill-treatment.

On 11 October 2009, K. J. submitted a formal complaint about ill-treatment by police officers to the Director of Katowice Remand Prison, who forwarded the complaint, four days later, to the Appellate Prosecutor's Office in Katowice⁹. On 26 October 2009, the complaint was transmitted, for investigation, to the District Prosecutor's Office in Krakow.

On 14 December 2009, witness statements were taken from K. J.'s parents by the investigating prosecutor, and, on 22 December 2009, K. J. himself was interviewed by the same prosecutor. It is unclear as to when the decision to open a (preliminary) criminal investigation against the police officers involved was taken by the prosecutor (under reference 4 Ds 380/09).

Case 2

On 16 October 2009, T. D. was apprehended by the police whilst travelling together with acquaintances by car at night in the Szamotulski District. During his subsequent transportation in a police van to a police station, he was allegedly hit on his head by a police officer whilst handcuffed. At the police station, he was allegedly punched in the face by a police officer and thus sustained a "black eye". He further claimed that, on several occasions, he had suffered pain caused by very tight handcuffing and that he had been placed naked in a police custody cell. Following his transfer to another police station in Poznan, he was allegedly severely beaten by several police officers (on his head, face and shoulder). During the ensuing questioning, officers allegedly inflicted pain on him by pulling up the handcuffs behind his back and pushing a knee into his back.

⁸ In both cases, the delegation enquired, during the visit, about the state of investigations and requested updated information by a letter of 9 February 2010.

⁹ Before his arrival at the prison, K. J. did not complain to a prosecutor or judge of the alleged ill-treatment.

On 17 October 2009, T. D. was admitted to Wronki Prison where he was examined, on the following day, by a nurse and, on 19 October 2009, by a doctor. According to the prisoner's medical file, the following injuries were observed by the doctor: "Abrasion of the epidermis in the right forehead region and on the right zygomatic arch. Ecchymosis in the region behind the right ear. Ecchymosis in the inner region of the right shoulder. Transversal wound (approximately 1 cm) and abrasion of the epidermis on the left carpus, as well as on the right carpus. Ecchymosis in the region between the shoulder blades. Abrasion of the epidermis on the lateral surfaces of both legs in the malleolus region".

On 19 October 2009, T. D. submitted a formal complaint about ill-treatment by police officers to the Director of the prison. On 23 October 2009, the Director informed the competent penitentiary judge who forwarded the complaint on 3 November 2009 to the Prosecutor's Office in Szamotulach.

On 18 November 2009, T. D. was questioned by a prosecutor, and, on 4 December 2009, a decision was taken by the District Prosecutor in Gniezno to open a preliminary criminal investigation against officers of the Szamotuly Police Headquarters and the Central Investigative Office of Poznan Police Headquarters (under reference 2 Ds 480/09). On 14 January 2010, the police officers involved in the above-mentioned operation were questioned by the investigating prosecutor, and, on 10 February 2010, a forensic medical doctor was requested to provide an assessment of the medical evidence contained in the prison medical file and the allegations made by T. D.. The forensic medical report (dated 22 February 2010) concluded: "These lesions [i.e. those observed by a nurse on 18 October 2009 and a doctor on 19 October 2009 at Wronki Prison] could have arisen under circumstances of overpowering and applying direct coercion, among others in the manner described by T. D. Abrasions of the epidermis in the carpus regions are indicative of traces resulting from the application of handcuffs".

By letter of 25 March 2010, the Polish authorities informed the CPT that the criminal investigations which had been opened in the two above-mentioned cases were still pending. As regards the case of K.J., the authorities further indicated that the competent prosecutor planned to interview the police officers involved and to order a forensic medical report thereafter. In the case of T. D. (Case 2), a decision had been taken on 31 December 2009 to open a disciplinary procedure against the police officers involved, which was still pending.

20. The persons responsible for, and carrying out, investigations into possible ill-treatment by law enforcement officials should be *independent* from those implicated in the events. In this regard, it is a positive feature of the Polish system that all main criminal investigative activities (including the questioning of potential victims, perpetrators and eye witnesses) are usually carried out by public prosecutors themselves.

However, from the consultations which the delegation had with senior police officers in various police establishments visited, it transpired that disciplinary procedures against police officers suspected of having ill-treated detained persons were frequently carried out by police officers from the same establishment. Such a state of affairs is highly questionable. In this connection, the CPT notes with great interest that arrangements were being made by the Polish authorities, in co-operation with the Commissioner for Civil Rights (in his capacity as National Preventive Mechanism), in order to set up a special team within the Commissioner's Office which will in future be entrusted to investigate all complaints about ill-treatment by law enforcement officials. **The Committee would like to receive more detailed information on this matter.**

21. As regards the criteria of *promptness, thoroughness* and *expeditiousness* of investigations, several shortcomings were observed by the delegation.

In some cases, complaints about ill-treatment by law enforcement officials, which had been lodged by detained persons upon admission to a remand prison, reached the competent prosecutor only after a considerable delay. These delays were caused by the prison management, the penitentiary courts or the prosecutors' offices involved. For instance, at Racibórz Prison, the complaint of a remand prisoner¹⁰ was transmitted to the penitentiary judge by the prison director only after 19 days. Further, in the above-mentioned case of T. D. (Case 2), the penitentiary judge apparently informed the competent prosecutor's office only ten days after having received the prisoner's complaint from Wronki Prison. In the case of K. J. (Case 1), the prisoner's complaint remained with the management of Katowice Remand Prison for four days and then with the Appellate Prosecutor's Office in Katowice for another ten days, before it was forwarded, for investigation, to the Prosecutor's Office in Krakow.

It is also noteworthy that, in Case 1, the complainant was interviewed by the investigating prosecutor only two months after having lodged a complaint. Further, even five months after the complaint had been lodged, not a single police officer allegedly involved in the incident had been questioned.

Moreover, there still exists a fundamental flaw in the Polish criminal justice system regarding the collection of medical evidence in the context of investigations into possible cases of ill-treatment by law enforcement officials. According to the prosecutors met by the delegation, forensic medical examinations are usually only commissioned once a formal criminal investigation has been opened, that is several weeks if not months after a complaint has been lodged (see Cases 1 and 2). Inevitably, it is then often too late for a forensic medical examination of the person concerned, and the role of forensic doctors is thus limited to an evaluation of the compatibility of injuries recorded in medical records drawn up elsewhere (e.g. in a remand prison, a hospital or a police establishment) and the allegations made by the complainant¹¹.

In this regard, the CPT must stress that the medical screening upon admission to a prison cannot be a substitute for a prompt forensic medical examination in cases of alleged police ill-treatment.

22. The CPT recommends that the Polish authorities take the necessary steps to ensure that:

- **all complaints lodged by detained persons about alleged ill-treatment by law enforcement officials are promptly transmitted to the competent prosecutor;**
- **in every case when it comes to the attention of a prosecutor that a detained person may have been the victim of ill-treatment by law enforcement officials (even in the absence of an express allegation of ill-treatment), the person concerned is immediately subjected to a forensic medical examination (including, if necessary, by a forensic psychiatrist); such an approach should be followed irrespective of whether the person concerned bears visible injuries;**
- **investigations into cases of possible ill-treatment by law enforcement officials are always carried out promptly, thoroughly and expeditiously.**

Further, **the Committee would like to be informed of the outcome of the criminal and disciplinary proceedings initiated in the two cases referred to in paragraph 19.**

¹⁰ Case of H. L. (reference 3 Ds 611/09).

¹¹ In addition to an assessment of the severity of the recorded injuries.

23. Finally, the CPT wishes to stress that, in the course of the visit, its delegation observed a lack of awareness in various police establishments and prisons visited of the legal obligation under Section 304 of the Code of Criminal Procedure to report to the competent prosecutor all injuries indicative of possible ill-treatment by law enforcement officials. In this regard, **reference is made to the recommendations made in paragraphs 28 and 122.**

4. Safeguards

24. The observations made in the report on the 2004 visit as regards the three fundamental safeguards advocated by the CPT, namely the rights of detained persons to inform a close relative or another third party of their choice of their situation and to have access to a lawyer¹² and a doctor, remain largely valid. The delegation's findings from the 2009 visit suggest that hardly any improvement has been made to the legal framework in relation to these safeguards; moreover, there continues to be a gap between the practice and the legal provisions currently in force.

25. The situation as regards the right of notification of custody was less favourable than had been observed by the CPT in the past. Although the review of apprehension protocols and interviews with detained persons confirmed that they had usually been informed of this right, a number of persons met by the delegation alleged either that their relatives had not been notified, or that they did not know whether notification had been given. In some of the police establishments visited, police officers indicated that there was no legal obligation to provide feedback to detained persons concerning notification of custody.

As noted in the report on the 2004 visit, the fact that notification of custody was performed by police officers and not by the detained person concerned directly resulted in some detainees entertaining doubts as to whether the notification had in fact been made. In their response to that report, the Polish authorities stated that this could be remedied by amending the relevant legal provisions. **The CPT recommends that steps be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention.**

26. Most detained persons met by the delegation stated that they had been informed of their right of access to a lawyer, upon apprehension or shortly afterwards. However, in practice, it remained extremely rare for persons in police custody to benefit from the presence of a lawyer. There is still no provision in Polish law allowing for the appointment of an *ex officio* lawyer before the stage of court proceedings. Persons in police custody who were not in a position to pay for legal services were effectively deprived of the right of access to a lawyer.

It is clear that without a fully fledged legal aid system, the right of access to a lawyer at this stage of the procedure will remain purely theoretical. **The CPT reiterates its recommendation that a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer be developed as a matter of urgency, and be applicable from the very outset of police custody. If necessary, the relevant legislation should be amended.**

¹² Reference is made to the jurisprudence of the European Court of Human Rights in this respect (for example, *Salduz v. Turkey*, No. 36391/02).

27. It transpired during the visit that no amendments had been made to Section 245, paragraph 1, of the Code of Criminal Procedure, which provides for the presence of a police officer during meetings with the lawyer. Not surprisingly, the majority of the persons met during the visit who had benefited from access to a lawyer during police custody, indicated that a police officer was present when they met the lawyer. In certain police establishments visited, police officers indicated that they understood the provision of Section 245, paragraph 1 as an obligation to be present during the meeting. As noted by the CPT in previous reports, this state of affairs can only greatly diminish the effectiveness of the right of access to a lawyer as a safeguard against ill-treatment¹³; and, more generally, it is contrary to the principle of confidentiality of contacts between lawyers and the persons they are assisting. Consequently, **the CPT calls upon the Polish authorities to ensure that persons detained by the police have in all cases the right to talk to a lawyer in private. In this context, Section 245, paragraph 1, of the Code of Criminal Procedure should be amended.**

28. The legal framework surrounding access to a doctor has basically not changed since the visit in 2004. In particular, the right of detained persons to be medically examined by a doctor of their own choice is still not formally guaranteed. On a positive note, the delegation noted that whenever a detained person asked to see a doctor whilst in police custody, the person was either transferred to a hospital or a doctor was called in. That said, medical examinations of detained persons were conducted in the presence of police officers as a matter of routine. The CPT must stress that this practice may well discourage a detained person who has been ill-treated from saying so and, more generally, is contrary to the principle of confidentiality; alternative solutions can and should be found to meet legitimate security requirements.

The medical registers reviewed by the delegation recorded injuries observed as well as, in some cases, the detainee's account of how they had been sustained. However, no conclusion was drawn by the doctor as to the consistency between the objective medical findings and allegations made by the person concerned. In addition, as far as the delegation could ascertain, detainees were not provided with the medical report drawn up after being examined while in police custody. Further, the register of medical examinations was kept in the duty officer's room, together with other registers, and could be accessed by police staff.

The CPT calls upon the Polish authorities to implement the recommendations made in the 2004 visit report with a view to ensuring that:

- **the right of persons deprived of their liberty by the police to have access to a doctor includes the right – if the persons concerned so wish – to be medically examined by a doctor of their choice (it being understood that an examination by such a doctor may be carried out at the detainee's own expense);**
- **all medical examinations are conducted out of the hearing and - unless the doctor requests otherwise - out of the sight of police/ Border Guard officers;**
- **the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, are formally recorded by the doctor and made available to the detainee and his lawyer.**

¹³ Reference is made to the jurisprudence of the European Court of Human Rights in this respect (for example, *Brennan v. United Kingdom*, No. 39846/98, *S. v. Switzerland*, Nos. 12629/87 and 13965/88).

In addition, **if a person examined is found to bear injuries consistent with possible ill-treatment, the relevant prosecutor should be immediately notified and a copy of the report on the injuries forwarded to him.**

The CPT also recommends that information concerning detained persons' health be kept in a manner which ensures respect for medical confidentiality; naturally, health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person, including medication being taken and particular health risks.

29. The delegation noted that computerised recording of information about apprehension/detention was operating in the police stations visited. There was reportedly a project to include medical data, but it had been suspended due to financial constraints. The CPT would like to stress that including medical data into the apprehension/detention electronic data – which can be at the disposal of anyone operating the system – would result in a breach of medical confidentiality. **Reference is made in this respect to the recommendation of paragraph 28 as regards medical confidentiality.**

30. In respect of information on rights, a number of detained persons interviewed alleged that they had not been informed of their rights and/or did not understand them. The apprehension protocol which detained persons were asked to sign contained a section with information on the detainee's rights. However, in several cases, the review of the protocols revealed that up to seven hours had elapsed between the time of arrival at the police establishment and the moment when the written information was given. Further, the practice regarding the transmission of a copy of the protocol to the detainee varied from one police station to another: in some establishments, it was kept by police officers, while in others it was handed over to the detainee upon request.

The CPT recommends that the Polish authorities take steps to ensure that all persons detained by the police are fully informed of their rights. This should involve the provision of clear verbal information at the very outset of deprivation of liberty (i.e. when they were obliged to remain with the police), to be supplemented at the earliest opportunity (that is, immediately upon first entry into the police premises) by the provision of written information on detained persons' rights.

For this purpose, the Committee recommends that the Polish authorities draw up a separate information sheet on the rights of detained persons, which the detainee should be asked to sign and be able to keep with him/her. This form should be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights.

31. The delegation interviewed a detained foreign national who alleged that she had not benefited from the services of an interpreter at any stage of the procedure and clearly had no understanding of her rights and the steps being taken. **The Committee recommends that effective steps be taken to ensure that detained foreign nationals who do not understand Polish are promptly provided with the services of an interpreter and are not requested to sign any statements or other documents without this assistance.** This reinforces the need for written information on the rights of detained persons in foreign languages.

32. The Polish legislation contains an obligation for the police to inform immediately a parent or guardian of the apprehension, and the reason for apprehension, of a juvenile¹⁴. In addition, a juvenile suspected of a criminal offence must have a defence counsel¹⁵, and the legislation provides for the obligatory presence of a parent, guardian, lawyer or other responsible adult while a juvenile is being questioned¹⁶. The delegation's findings during the 2009 visit suggest that juveniles below 17 years of age were questioned in the presence of a parent, a guardian or a trusted person. However, this provision did not apply to those aged 17, who were treated as adults and were questioned and signed statements admitting to criminal offences without having the benefit of the presence of a trusted person.

The CPT recommends that the necessary steps be taken to ensure that all persons under 18 years of age who are detained by the police are treated as juveniles and benefit from the relevant specific safeguards for juveniles.

33. In one police station visited, the delegation found an information sheet specifically related to the rights of juveniles suspected of a criminal offence. While outdated and incomplete, the document could serve as a basis for developing an exhaustive information sheet on the rights of juveniles detained by the police.

The CPT recommends that the Polish authorities develop an up-to-date information sheet on rights for distribution to juveniles detained by the police on suspicion of criminal offences. The information sheet should be easy to understand, and special care should be taken to ensure that the information provided is in fact fully understood¹⁷.

34. In various police establishments visited, custody registers only existed for the recording of persons who were physically placed in a detention cell. No records were kept of instances where a person had been deprived of his/her liberty without being formally detained (e.g. for identification purposes), or where a person had been formally detained and transferred to another establishment without being temporarily held in a detention cell.

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

5. Conditions of detention in police establishments

a. police cells

35. With a few exceptions, the conditions at the police establishments visited were adequate for the period of custody provided by law.

¹⁴ Section 40.4 of the Juveniles Act.

¹⁵ Section 79.1 of the Code of Criminal Procedure.

¹⁶ Section 39 of the Juveniles Act.

¹⁷ Reference is made to Section 15 of 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.

Cells were of a good size (ranging from 8 to 12 m² for two persons, 12 to 18 m² for three persons, and 23 m² for five persons) and adequately equipped (with beds, a table and a bench or stools). At night, detained persons received mattresses, blankets and pillows. Police cells visited had adequate lighting, although access to natural light was limited at some establishments (Jaworzno Municipal Police Department, Poznań Police Department Stare Miasto, Rawicz District Police Department). All cells had a call system, but it was not functioning in every cell at Poznań Police Department Nowe Miasto.

That said, material conditions left much to be desired at Rybnik Municipal Police Department and Racibórz District Police Department. Cells were in a poor state of repair and cleanliness. Particular mention should be made of Rybnik Municipal Police Department, where the cells were poorly ventilated, dirty, smelly and badly maintained – as was the rest of the detention area – which was problematic both for detained persons and for staff. Ventilation was also poor at Biała Podlaska Municipal Police Department and Racibórz District Police Department.

The CPT recommends that material conditions of detention at Rybnik Municipal Police Department, Racibórz District Police Department and Biała Podlaska Municipal Police Department be improved, in the light of the above remarks.

36. Detained persons had ready access to communal toilets in all establishments visited which were in a good state of repair and cleanliness, except for those at Jaworzno Municipal Police Department and Rybnik Municipal Police Department. **This failing should be remedied.**

There were no shower facilities at Biała Podlaska Municipal Police Department, Racibórz District Police Department and Rybnik Municipal Police Department, and at Jaworzno Municipal Police Department, detained persons were not entitled to use the available shower. In addition, not all establishments provided detainees with personal hygiene products.

The CPT recommends that persons in police custody be offered adequate washing facilities, including the possibility to take a shower. Persons detained overnight should also be provided with basic personal hygiene products.

37. Despite the presence of exercise yards at certain establishments (e.g. Poznań Police Department Nowe Miasto, Rawicz District Police Department), the delegation was informed that only persons apprehended on the basis of an outstanding arrest warrant could benefit from outdoor exercise. **The CPT recommends that all persons held for 24 hours or more in police custody be offered, as far as possible, outdoor exercise every day.**

38. Some police cells were equipped with CCTV (e.g. at Leszno Municipal Police Department and Rawicz District Police Department). The CPT has no objection to the use of a closed-circuit video surveillance system for keeping detention areas under surveillance, provided that persons deprived of their liberty are assured of reasonable privacy when using the toilets, wash basins and showers. However, systems of this kind cannot be a substitute for direct contact with custodial staff and may, moreover, breed a deceptive sense of security; **they should not replace the regular inspection of cells by custodial staff.**

b. police establishments for children

39. The delegation visited three police establishments for children, in Będzin, Katowice and Poznań. At the time of the visit, five male juveniles were being held at Będzin (for a capacity of 28 places), one male juvenile at Katowice (for a capacity of 28 places) and one male juvenile at Poznań (for a capacity of 20 places).

40. Material conditions of detention were generally satisfactory in all three establishments visited, in terms of living space and lighting (natural light and ventilation). That said, at Będzin, several detention rooms were in a poor state of repair (for this reason, two rooms had temporarily been withdrawn from service), and the outdoor exercise area on the roof of the establishment was totally dilapidated. The delegation was informed that renovation work would start soon. **The CPT would like to receive updated information on this matter.**

41. At the establishment for children in Poznań, juveniles were provided with sport suits which they wore during the day. However, at Będzin and Katowice, juveniles were obliged to wear pyjamas throughout the day. **The CPT reiterates its long-standing recommendation that the Polish authorities take steps to ensure that juveniles held in police establishments for children are able to wear appropriate daytime clothing (including for outdoor exercise).**

42. In all three establishments visited, activities offered to juveniles could be considered adequate for short stays. All juveniles had access from 9.30 a.m. until 10 p.m. to an activity room, where they could watch TV or video, play table-tennis, use fitness equipment, read, and play various board games. At Katowice, an officer with some pedagogical training also organised group discussions for one hour per day.

43. At Poznań, the one juvenile detained was able to take outdoor exercise on a daily basis. The situation was less favourable in the two other establishments; no outdoor exercise at all was possible at Będzin, and at Katowice it was only possible during the summer months. Such a state of affairs is not acceptable.

During the end-of-visit talks, the delegation expressed concern about this situation and called upon the Polish authorities to take immediate steps to ensure that all juveniles detained by the police for more than 24 hours are able to benefit from at least one hour of outdoor exercise per day.

By letter of 14 February 2010, the Polish authorities provided the following information: “[T]here is currently no legal basis for the functioning in police facilities for children of open areas or squares, where the children could engage in open-air physical activity. (...) Given this situation, work has started at the Ministry of Internal Affairs and Administration to resolve the problem. (...). In draft amendments to the Police Act, it is proposed that a statutory delegation of authority be given to the Minister of Home Affairs and Administration in the following form: “The Minister responsible for home affairs shall determine, by means of a regulation, the conditions that should prevail on the premises of police facilities for children”. Once this amendment has been adopted by the Sejm (Polish Parliament), a corresponding draft regulation will be submitted for consultation. Only in the course of this will it be possible to assess whether providing the conditions for open-air physical recreation for minors in police facilities for children is at all practical”.

For the CPT, the argument that, due to the lack of a legal basis, the police are prevented from allowing detained juveniles to go into the open air is not convincing; the Committee has visited several police establishments for children where outdoor exercise was actually offered to juveniles (albeit not always for one hour per day). Whilst supporting the Polish authorities' initiative to introduce a legal provision regarding outdoor exercise in police establishments, the CPT considers that a solution can and should be found immediately and not only after a time-consuming legislative procedure to amend the existing legal framework.

The CPT calls upon the Polish authorities to take steps to implement, without further delay, its long-standing recommendation that all juveniles detained in police establishments be offered at least one hour of outdoor exercise per day.

B. Detention of foreign nationals under aliens legislation

1. Preliminary remarks

44. The delegation carried out follow-up visits to the Guarded Centre for Foreigners in Lesznowola, the Airport Deportation Arrest Centre¹⁸ in Warsaw and the holding facilities in the transit area of Warsaw International Airport¹⁹, while the Guarded Centre and the Deportation Arrest Centre in Biała Podlaska were visited for the first time.

45. In 2008, the Border Guards became responsible for the management of all detention centres/deportation arrest centres in Poland (including those which had previously been run by the police).

46. The legal framework governing the detention of foreign nationals under aliens legislation remains basically unchanged since the 2004 visit. According to the 2003 Aliens Act²⁰, the police or Border Guard may detain foreign nationals for up to 48 hours if there are circumstances justifying their deportation. They can subsequently be placed in a guarded centre or, if there are grounds to fear that they will not respect the house rules, in a deportation arrest centre. The placement decision is taken by the court. The maximum period of detention is initially set at 90 days, but can be prolonged to up to one year if the deportation order cannot be executed “due to the foreign national's fault”. Under certain circumstances²¹, asylum-seekers may also be detained in a guarded centre/deportation arrest centre for up to one year.

47. At Biała Podlaska, the Guarded Centre (with a capacity of 152 places) and the Deportation Arrest Centre (capacity: 30 places) are located on the same premises and are run by the same management²². At the time of the visit, the guarded centre was accommodating 96 detainees (79 male and 17 female, including three families) and the deportation arrest centre twelve male detainees. Lesznowola Guarded Centre (with a capacity of 131 places) was accommodating 29 detainees²³ (seven male and 22 female, including four families), the Airport Deportation Arrest Centre²⁴ in Warsaw 37 detainees (34 male and three female, for a capacity of 41 places) and the holding facility in the transit area of Warsaw International Airport (with a capacity of 30 places) one male foreign national.

¹⁸ Formally, the Airport Deportation Arrest Centre is subordinated to the management of the Lesznowola Border Guard Centre.

¹⁹ This holding facility was located in Terminal 2 (the holding facility previously visited by the CPT was no longer in use). Foreign nationals were usually held there for less than 24 hours; only in exceptional cases were foreign nationals obliged to stay overnight.

²⁰ Sections 101 and 106.

²¹ See Sections 87 to 89 of the 2003 Act on Granting Protection to Aliens on the Territory of Poland (Aliens Protection Law).

²² On the same premises, there was also an open reception centre for asylum-seekers (of a capacity of 180 places), as a separate administrative entity (only the administrative building and the canteen were jointly used).

²³ Due to the temporary withdrawal from service of the block for male adults, no single men were being held in the guarded centre.

²⁴ At the Airport Deportation Arrest Centre, there were also police custody cells on the ground floor where foreign nationals could be held for up to 48 hours pending their transfer to a designated guarded centre/deportation arrest centre. At the time of the visit, 12 detainees were being held in these cells.

48. As a matter of principle, the CPT has reservations regarding the detention of unaccompanied minors in detention centres for foreigners. Under Polish legislation, unaccompanied minors who have not applied for asylum may be detained in a guarded centre (provided that they are kept in a separate unit where no contacts with adult detainees are possible)²⁵; accompanied minors may be held together with their parents in a guarded centre.

In the CPT's view, the detention of children is rarely justified and can certainly not be motivated solely by the absence of residence status. The Committee welcomes the fact that unaccompanied minors were never held at the Guarded Centres in Biała Podlaska and Lesznowola. **It would be desirable for the same policy to be followed in all guarded centres in Poland.**

More generally, every effort should be made to avoid resorting to the deprivation of liberty of minors in detention centres for foreigners.

2. Ill-treatment

49. The delegation received no allegations of physical ill-treatment of detainees by custodial staff in any of the guarded centres/deportation arrest centres visited.

However, a number of complaints of disrespectful behaviour (including racist remarks) were heard at the Guarded Centre and the Deportation Arrest Centre in Biała Podlaska and the Airport Deportation Arrest Centre in Warsaw. **The CPT recommends that Border Guard officers at Biała Podlaska and the Airport Deportation Arrest Centre be reminded that such behaviour is unacceptable and will be punished accordingly.**

3. Conditions of detention

a. material conditions

50. At the *Guarded Centre and the Deportation Arrest Centre in Biała Podlaska*, material conditions were generally of a very high standard, in terms of state of repair, living space and access to natural light. The unit for families (located on the first floor) was particularly well-equipped (with a library, classroom, activity room with a table tennis table and television set, prayer room, kitchenette, etc.) and pleasantly decorated. The units for female detainees (located on the second floor) and the unit for male detainees (located on the third floor) also comprised communal rooms, which were equipped with a table tennis table, a television set and a DVD player.

That said, in both establishments, the mattresses were far too thin and thus unsuitable for prolonged periods of detention. **The CPT recommends that this deficiency be remedied without delay.**

²⁵ See Section 115, paragraph 3, of the Aliens Act. Unaccompanied minors who have applied for asylum are placed in a foster family or a care/educational institution throughout the procedure. Following the rejection of an asylum application and the issuance of an expulsion order, unaccompanied minors are held in a care/educational institution, pending their removal from the country (Sections 62 and 67 of the Aliens Protection Law).

51. At the *Guarded Centre for Foreigners in Lesznowola*, material conditions were on the whole adequate in the block for families and female detainees, which had undergone some refurbishment (including the sanitary facilities) since the last visit. The block for male detainees had recently been withdrawn from service, due its poor state of repair²⁶.

52. At the *Airport Deportation Arrest Centre in Warsaw*, material conditions remained acceptable, **although some parts of the male detention area were in need of refurbishment** (e.g. paint was peeling off the walls).

53. Material conditions in the new *holding facility in the transit area of Warsaw International Airport* were very good. All rooms²⁷ were equipped with bunk beds, tables and chairs, had good access to natural light, were well ventilated and had a call system. However, it is a matter of concern that foreign nationals who were obliged to stay overnight in the holding facility were not provided with personal hygiene products. **The CPT recommends that this deficiency be remedied.**

54. As regards the *provision of food*, striking differences were observed in the establishments visited. It is noteworthy that, at Biała Podlaska, particular attention was being paid to the nutritional needs of young detainees (for instance, children were given fruit three times a week) as well as to the dietary requirements of foreign nationals. In contrast, a number of complaints were received in the other establishments visited about the quantity and quality of the food provided. At Lesznowola, the delegation noted that scarcely any fruit was given to children. Further, at both Lesznowola and the Airport Deportation Arrest Centre in Warsaw, very little attention was apparently paid to the dietary requirements of foreign nationals.

The management of the establishments visited indicated that the current budgetary allocation for the provision of food (6.70 Zloty, i.e. the equivalent of 1.70 Euros per person per day) was clearly insufficient, but that the Ministry of the Internal affairs and Administration planned to increase the daily food allowance for immigration detainees in the near future.

The CPT recommends that the provision of food in guarded centres/deportation arrest centres be reviewed, in the light of the above remarks.

55. At the Biała Podlaska Deportation Arrest Centre and the Airport Deportation Arrest Centre in Warsaw, several detainees claimed that at night they were, on occasion, compelled to use buckets to comply with the needs of nature, since detention rooms were opened by staff only after a considerable delay. Further, at Biała Podlaska, some detainees complained that they did not have enough warm clothes to go outside in winter. **These matters should be reviewed and, if the complaints are substantiated, the shortcomings in question remedied.**

²⁶ The delegation was informed that, for budgetary reasons, it was uncertain as to whether and when the block for male detainees would be renovated.

²⁷ There was one larger room (with eight bunk beds) and two smaller rooms (one with three, one with four bunk beds).

56. At the Deportation Arrest Centre in Biała Podlaska, video surveillance cameras were installed not only in the corridor, but also in every detention room, allowing Border Guard officers in the duty office to monitor the movement of all foreign nationals on a 24-hour basis.

The CPT acknowledges that in-room video surveillance may be justified for security reasons in individual cases and under exceptional circumstances, provided that there are appropriate safeguards in place (such as regular review of the measure and recording of events in a logbook at regular intervals). However, given the intrusive nature of such constant monitoring, the systematic use inside detention rooms appears to be disproportionate, bearing in mind, in particular, the prolonged detention periods. **The Committee would like to receive the Polish authorities' views on this point.**

b. regime

57. As regards regime activities, the situation varied considerably from one establishment to another.

At *Biała Podlaska*, the delegation gained a particularly favourable impression of the activities organised for children and families²⁸ (various games, handicrafts, sports, music, Polish language courses, etc.). Further, male and female adults could move freely within the detention area and had access to communal rooms, which were equipped with television sets and table tennis tables. All detainees were allowed to spend at least one hour in the open air a day and could also play football or volleyball on a regular basis.

That said, the conditions under which foreign nationals were held in the deportation arrest centre on the ground floor of the establishment were quite simply unacceptable. All detainees remained locked up in their cells for 23 hours a day without being offered any activities (apart from outdoor exercise, which was taken only with their cell mates, and occasional access to the football field); they were also not allowed to have television sets in their cells.

At *Lesznowola*, foreign nationals benefited from an “open door” regime, and detainees were able to go into the open air in the morning and the afternoon, each time for at least two hours. However, apart from outdoor exercise, no sports activities or other recreational activities were organised, nor were there board games available. It is all the more worrying that children were not provided with any activities suited to their age.

The CPT welcomes the fact that at the *Airport Deportation Arrest Centre in Warsaw*, foreign nationals could move freely within their detention area during the day. However, in all other respects, the regime was very limited (no communal room, no television, hardly any board games or reading material). Further, many allegations were received that detainees were often offered only 15 to 30 minutes of outdoor exercise per day.

²⁸ Three educators were employed at the guarded centre.

The CPT recommends that steps be taken to ensure that:

- **all foreign nationals held in the Warsaw Airport Deportation Arrest Centre are offered at least one hour of outdoor exercise per day;**
- **at the Lesznowola Guarded Centre, children are provided with activities suited to their age and that adult detainees are offered a range of purposeful activities;**
- **detainees held at the Biała Podlaska Deportation Arrest Centre are allowed to move freely within the detention area during the day;**
- **all foreign nationals held at the Biała Podlaska Deportation Arrest Centre and the Airport Deportation Arrest Centre in Warsaw have access to television and are provided with board games and reading material (in the most frequently spoken foreign languages).**

4. Health care

58. Compared to the situation in 2004, the provision of health care seems to have significantly improved in all the establishments for foreign nationals visited. In particular, every establishment had its own in-house health-care service (usually provided by a community-based entity, on the basis of a private service contract).

59. As regards health-care staff, a qualified nurse was present from Mondays to Fridays in all the establishments visited (for six hours per day at Biała Podlaska and eight hours per day at Lesznowola and the Airport Deportation Arrest Centre in Warsaw). Further, all establishments were regularly attended by a general practitioner (for three hours five times per week at Biała Podlaska; twice a week for two to four hours at Lesznowola; once a week at the Airport Deportation Arrest Centre in Warsaw²⁹).

That said, it is regrettable that, with the notable exception of Biała Podlaska³⁰, no health-care staff were present at weekends in any of the establishments visited. This also meant that, during weekends, medicines had to be distributed by custodial staff.

60. In all the establishments visited, detainees usually had prompt access to general and specialist health care (including psychiatric care) and were medically screened upon admission. However, there was no systematic screening for transmissible diseases such as tuberculosis.

61. In the CPT's view, deportation operations (particularly those carried out by air) entail a manifest risk of inhuman and degrading treatment, both during preparations for deportation and during the actual operation. In this context, it is also noteworthy that there was no medical screening following a failed deportation attempt by air, unless the foreign nationals concerned displayed visible injuries. Such a state of affairs is not satisfactory.

²⁹ This Centre could also call at any time upon the emergency medical services of the airport.

³⁰ At Biała Podlaska, a nurse was present on Saturdays and Sundays for three hours per day.

62. The CPT welcomes the efforts made at Leznowola to arrange interpretation during medical consultations (including via the telephone). However, it is a matter of serious concern that, in particular at Biała Podlaska, doctors appeared to be very reluctant to call upon the services of a qualified interpreter. The delegation noted that, due to language problems, no medical examinations were performed in several cases, or detainees were not informed of the results of medical examinations/tests performed.

The Committee wishes to stress that for a proper medical examination it is necessary to have an interpreter if the doctor does not speak the language of the detainee concerned (or vice versa). Relying on the services of other detainees is not an adequate alternative.

63. The provision of psychological care to foreign nationals varied from one establishment to another. It is praiseworthy that, at Biała Podlaska, a psychologist was employed on a full-time basis. The situation was less favourable in the other establishments visited. There was no regular presence of a psychologist. Instead, a psychologist at the Border Guard Headquarters in Warsaw was on call and came to the establishment upon request. In practice, however, such visits were organised only infrequently (for instance, at Lesznowola, ten times in 2009).

64. Medical records were generally well kept in all the establishments visited. When foreign nationals arrived in the establishment with injuries, the latter were usually properly recorded. However, in several cases, the medical file contained no information regarding the statements made by the person concerned or the doctor's conclusion.

65. Another problem is the lack of medical confidentiality in several of the establishments visited, despite the specific recommendations made by the Committee in previous visit reports. At Biała Podlaska and the Airport Deportation Arrest Centre in Warsaw, Border Guard officers were often present during medical consultations/examinations³¹, and, at the Airport Deportation Arrest Centre and the holding facility in the transit zone at Warsaw International Airport, medical records were accessible to Border Guard officers (in fact, medical files/reports were attached to the administrative files).

66. The CPT recommends that the Polish authorities take the necessary steps to ensure that in all guarded centres/deportation arrest centres:

- **there is nursing cover by a qualified nurse, not only during the week but also at weekends;**
- **a psychologist is present on a regular basis;**
- **newly-admitted detainees are systematically screened for transmissible diseases (including tuberculosis);**
- **whenever doctors are unable to communicate with detainees during medical examinations/consultations due to language problems, the persons concerned benefit from the services of a qualified interpreter;**

³¹ No officers were apparently present during consultations with the psychiatrist and the psychologist at the Airport Deportation Arrest Centre.

- **the record drawn up after a medical examination of a detainee, whether newly-arrived or not, contains:**
 - (i) **a full account of the objective medical findings based on a thorough examination;**
 - (ii) **a full account of statements made by the detainee concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;**
 - (iii) **the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings;**
- **any foreign national whose deportation is not carried out successfully, due to the resistance from the person concerned, is medically examined upon returning to a Border Guard establishment;**
- **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 the sight of police officers; detainees' files should not be accessible to non-medical staff but should be the responsibility of the doctor.**

5. Staff

67. The CPT has constantly stressed that the staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT attaches considerable importance to the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

68. In all the establishments visited, Border Guard officers had followed a general eight-month training course, but had received hardly any specialised training for working with immigration detainees. The delegation was informed that special inter-cultural training sessions were organised for Border Guard officers twice or three times per year by NGOs; however, in practice, only a few officers had apparently benefited from such training thus far.

The CPT encourages the Polish authorities to provide specialised training to all Border Guard officers working in direct contact with immigration detainees. It would also be desirable for designated officers to receive language training in the most frequently spoken foreign languages.

6. Safeguards and information for immigration detainees

69. Immigration detainees (whether asylum seekers or not) should – in the same way as other categories of persons deprived of their liberty – be entitled, as from the outset of their detention in a police or Border Guard establishment, to inform a person of their choice of their situation and to have access to a lawyer and a medical doctor. In this regard, the remarks and recommendations made in paragraphs 25 to 28 equally apply to foreign nationals detained under aliens legislation.

a. guarded centres and deportation arrest centres

70. In all the guarded centres/deportation arrest centres visited, newly-arrived foreign nationals were informed upon admission of the internal rules. For this purpose, a document setting out the rights and duties of detainees was made available in a variety of languages. In addition, an information note containing information about international organisations and associations providing assistance to immigration detainees was posted in the most frequently spoken languages on the units.

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

At Biała Podlaska, representatives of Caritas came to the establishment every two weeks (on the basis of a special co-operation agreement) to provide legal assistance to detainees, while in all other establishments the legal assistance provided by NGOs was only sporadic.

The delegation was informed that plans were afoot to establish a legal counselling service in guarded centres/deportation arrest centres. **The CPT recommends that the Polish authorities pursue these plans as a matter of priority in order to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals, these services should be provided free of charge.**

Further, **it would be desirable for foreign nationals to receive a written translation in their own language of the conclusions of decisions regarding their detention/expulsion, as well as of information on the modalities and deadlines for appealing against such decisions.**

- b. holding facility in the transit zone of Warsaw International Airport

72. At the holding facility in the transit zone of Warsaw International Airport, foreign nationals were in principle entitled to notify a family member of their situation, to contact a lawyer and to consult a doctor. However, the delegation was informed that foreign nationals were not allowed to meet a lawyer whilst being held in the transit area. Such a state of affairs is not acceptable. **The CPT recommends that the Polish authorities take the necessary measures to ensure that foreign nationals who are held in the holding facility of an international airport and request to meet a lawyer are effectively able to do so.**

73. Specific forms were available in several foreign languages setting out the rights of persons who were denied access to the country. However, the persons concerned were apparently not systematically provided with a copy of the forms.

Further, the recording of placements of foreign nationals in the holding facility was inadequate. In many cases, the existing log book contained no information on the identity of the persons concerned and/or the time during which they were held there.

The CPT recommends that the above-mentioned deficiencies be remedied.

7. Other issues

74. The situation concerning contact with the outside world had improved since the 2004 visit. In all the guarded centres/deportation arrest centres visited, authorisations for visits were usually granted within a few days, and detainees were also allowed to keep their mobile phones³².

Further, upon admission, detainees were entitled to make one free telephone call. Given the fact that many detainees had no financial means to pay for phone cards, **the CPT invites the Polish authorities to consider the possibility of allowing indigent foreign nationals to make at least one telephone call per month free of charge.**

75. The delegation noted that efforts had been made in the establishments visited to accommodate smokers and non-smokers in different rooms. That said, in several establishments, the delegation received complaints from non-smoking detainees about frequent exposure to cigarette smoke within the day-rooms/communal areas. In this regard, **the CPT encourages the management of detention centres for foreigners to provide, as far as possible, areas free from passive smoking (which is known to have negative consequences for health) to all detainees who request this.**

76. At Biała Podlaska, the delegation saw a large arsenal of security devices (including pepper spray, electric body-contact stun devices, and firearms) stored in a secure depot.

77. The CPT has misgivings about the practice observed at Biała Podlaska of custodial officers carrying *pepper spray* within the detention areas³³.

³² Provided that the mobile phones had no integrated camera or voice-recorder.

Given the potentially dangerous effect of this substance, the CPT considers that pepper spray should not form part of the standard equipment of Border Guard officers in detention facilities and should, as a rule, not be used in confined spaces. Whenever recourse is had to pepper sprays, there should be clearly defined safeguards in place. In particular, detainees exposed to pepper spray should be granted immediate access to a medical doctor and should be immediately be supplied with means to reverse the effects effectively and rapidly.

The Committee recommends that the Polish authorities review their policy as regards the use of pepper sprays in Border Guard establishments, in the light of the above remarks. Further, it would like to receive detailed information on the special training Border Guard officers receive during their general training course concerning the use of pepper sprays.

78. Electrical discharge weapons can cause acute pain and lend themselves to misuse. The CPT has serious reservations about the use of such weapons in the setting of a secure detention facility, such as a Guarded Centre for Foreigners. These reservations are particularly strong as regards weapons of the kind found at Biała Podlaska; they were small hand-held stun devices (approximately the size of an electric shaver) which could only be employed through direct contact with the person who is the target³⁴. Properly trained custodial staff will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control.

The Committee notes that, according to the management of the Centre, these devices had thus far never been used against detainees. **The CPT recommends that they be withdrawn from the armoury of the Biała Podlaska Guarded Centre (as well from any other Guarded Centres which have been supplied with such weapons).**

79. *Firearms* were never carried inside the detention area, but appeared to be part of the standard equipment of Border Guard officers when escorting immigration detainees outside the establishment. In this connection, the Committee has serious doubts as to whether the use of potentially lethal force in situations where immigration detainees attempt to escape (without endangering the health or life of another person) can ever be justified. **The CPT would like to receive the Polish authorities' comments on this point.**

80. Finally, at Biała Podlaska, the delegation saw two new specially equipped vehicles (a bus with benches for 30 persons and a separate cabin for one person and a minibus with a four-person cabin) for the transportation of immigration detainees. Both vehicles were of a very good standard, in terms of space, access to natural light and ventilation. That said, it is regrettable that neither vehicle was equipped with any safety devices (such as safety belts or a rigid protection system) to protect detainees in the case of an accident or abrupt braking. **Steps should be taken to ensure that all vehicles of law enforcement agencies which are used for the transportation of detained persons are equipped with appropriate safety devices.**

³³ None of the staff members interviewed by the delegation could recall a single case of having recourse to it.

³⁴ The devices seen at Biała Podlaska have a voltage of 300,000 V and an amperage of 10.0 mA.

C. Prison establishments

1. Preliminary remarks

81. The delegation carried out full visits to Poznań Remand Prison and Prison Hospital, Racibórz Prison and Rawicz Prison. It also paid brief visits to Katowice and Warsaw-Białoleka Remand Prisons with a view to interviewing recently-arrived remand prisoners.

82. At the time of the visit, the prison population stood at around 84,000 people (compared to 79,000 at the time of the previous country's visit carried out by the CPT in 2004). The occupancy rate was 101 %, on the basis of the standard of 3 m² of living space per prisoner provided for in Polish law³⁵.

Overcrowding was observed in all the establishments visited. That said, efforts were being made to reduce the occupancy levels with a view to providing each prisoner with the legal minimum of 3 m² of living space in advance of the deadline of 6 December 2009 set by the Polish Supreme Court³⁶. In certain areas of the prisons visited, the CPT's standard of at least 4 m² of living space per prisoner in a multi-occupancy cell was being met. However, this was not the case for the vast majority of inmates.

According to the Ministry of Justice, the proportion of remand prisoners (11%) had significantly dropped due to an amendment of the Code of Criminal Procedure passed in 2007, requiring the Court of Appeal to be involved in decisions to extend remand custody beyond two years. Other steps had been taken with a view to shortening the length of remand custody (e.g. courts set time limits and granted compensation if these were not met; the work of prosecutors was put under scrutiny by publishing the number of cases running for more than a year/two years, as well as the number of cases where a not-guilty verdict was reached).

Amongst measures to combat prison overcrowding, the delegation was informed that a new law on electronic surveillance had entered into force in September 2009³⁷; it was expected to reduce the prison population by some 7,500. The Ministry of Justice was also planning the creation of a further 17,000 prison places, essentially by refurbishing and expanding existing prisons and the building of a new prison (with a capacity of some 600 places).

83. In the 2004 visit report, the CPT stressed that in order to control overcrowding and achieve the Committee's standard of at least 4 m² of living space per prisoner, the Polish authorities should adopt policies designed to limit or modulate the number of persons sent to prison. This implies, inter alia, an emphasis on non-custodial measures in the period before the imposition of a sentence and, secondly, the adoption of measures which facilitate the reintegration into society of persons who have been deprived of their liberty.

³⁵ A further 40,000 sentenced persons were on a waiting list for prison places.

³⁶ Following a judgment of the Polish Constitutional Court (May 2008) which had held that the serious and chronic nature of prison overcrowding in Poland could in itself be qualified as inhuman and degrading treatment.

³⁷ "Law on the electronic surveillance of persons serving a penalty of imprisonment outside penitentiary facilities".

Whilst acknowledging the measures already taken, **the CPT encourages the Polish authorities to pursue their endeavours to combat prison overcrowding and, in so doing, to be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.**

The CPT also reiterates its recommendation that the Polish authorities revise as soon as possible the norms fixed by legislation for living space per prisoner, ensuring that they provide for at least 4 m² per inmate in multi-occupancy cells.

84. With the notable exception of Rawicz Prison, the situation as regards the provision of organised activities (work, training, education, sports, etc.) to inmates in the prison establishments visited was unsatisfactory. As regards in particular remand prisoners, the almost total lack of activities aggravated the experience of imprisonment and rendered it more punitive than the regime for sentenced persons. Taken together with limited living space, poor material conditions and restrictions on contact with the outside world and association, this produced a regime which was oppressive and stultifying. The Ministry of Justice informed the delegation of certain efforts made to improve the situation as regards the provision of purposeful activities and work in penitentiary facilities³⁸. However, much more remained to be done.

The CPT reiterates its recommendation that the Polish authorities step up their efforts to develop the programmes of activities for sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activity of a varied nature.

85. Pursuant to Polish law, young prisoners can share a cell with one or more adult prisoners who have been specially selected to give guidance. At Poznań Remand Prison, the delegation was informed that the policy was to hold young prisoners separately from adults. At Racibórz Prison, young prisoners were being accommodated separately from adult inmates at the time of the visit, but interviews revealed that, until very recently, some young prisoners had been accommodated with adults. At Rawicz Prison, young prisoners usually shared cells with one specially selected adult prisoner. In such cases, the consent of the adult prisoner was required.

In previous visit reports, the CPT has expressed reservations about the practice of accommodating young prisoners with adults. In the Committee's view, if, exceptionally, young prisoners are held in an institution for adults, they must always be accommodated separately from adults, in a distinct unit specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young. The CPT believes that the risks inherent in young prisoners sharing accommodation with adult prisoners are such that this should not occur.

The CPT recommends that the Polish authorities take the necessary steps in the light of the above remarks.

³⁸ A project of voluntary work by sentenced prisoners in hospices and care homes had been launched in 2008, which involved 60 prisons and a total of 800 prisoners.

86. On 5 November 2009 the Polish Sejm adopted an Act amending the legislation with a view to introducing compulsory pharmacological treatment or psychotherapy of sex offenders in a closed institution or in out-patient conditions. Such treatment can also be ordered after the sentence has been served with a view to preventing repeated commission of the same crime in particular by weakening the perpetrator's perturbed sexual impulse. The CPT notes with great concern that this Act, which entered into force on 8 June 2010, displays a number of serious shortcomings.

According to the Act, compulsory (pharmacological) treatment can be ordered by a court on the basis of the opinions of at least two psychiatrists and an expert sexologist appointed by the court. The possibility for the defendant to request an independent expertise as well as the periodicity of review seem to be absent from the legal provisions.

Further, from the consultations the delegation had during the visit with the relevant authorities, it came to light that there was a lack of clarity concerning the implementation of the new Act, e.g. the officials met by the delegation were not in a position to provide information as regards the guidelines to be developed, the institutions which would accommodate the persons for treatment, the measures which could be applied to persons who do not consent to treatment and the qualifications/training of staff required in this respect. **The CPT would like to receive information on the practical modalities surrounding the entry into force of the new legislation.**

87. 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 Polish authorities revise the relevant legislation regarding the treatment of sex offenders, 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 CPT 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, but be administered to selected individuals based on an individual assessment.

2. Ill-treatment

88. Not a single allegation of physical ill-treatment of prisoners by staff was received at Racibórz and Rawicz Prisons, where inmates indicated that they were being treated by staff in a correct manner. As regards Rawicz Prison in particular, the delegation observed that relations between staff and inmates were positive.

A few isolated allegations of physical ill-treatment (consisting of slaps) and verbal abuse of prisoners by staff were heard at Poznań Remand Prison. Further, in respect of the hospital attached to that prison, the delegation received allegations of occasional rough language by security staff. **The CPT recommends that the management of Poznań Remand Prison deliver to staff the clear message that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions.**

3. Prisoners classified as "dangerous" ("N" status)

89. The 2009 visit provided an opportunity to review the situation of prisoners classified as "dangerous" and the extent to which the recommendations made in the 2004 visit report had been implemented. Poznań and Racibórz Prisons had separate "N" units, while Rawicz Prison had three cells reserved for "N" status prisoners.

90. The "N" unit at Poznań Remand Prison had 12 cells with a capacity of 24 (six single cells of 11 m² each, and six triple cells of 15 m² each) and was holding 16 prisoners at the time of the visit. As regards material conditions, the unit was clean and in a less dilapidated state than the rest of Block A where it was located (see paragraph 97). Cells were equipped with beds, fixed tables and chairs, as well as a telephone, and a call bell system. However, the cells had opaque windows covered by dense wiring, allowing hardly any natural light and fresh air to enter.

All areas, including the inside of the cells, were covered by closed-circuit TV. As for outdoor exercise, it was taken in five small yards of a very oppressive design: surrounded by high walls, topped with metal wiring and covered with plastic panes, not allowing direct access to sunlight.

The "N" unit at Racibórz Prison was accommodating 11 prisoners, for a capacity of 22. The unit was located in a wing opened in 2003, the conditions of which contrasted favourably with the rest of the prison. Single cells measured 9 m² and double cells some 13.5 m². The cells were well equipped. That said, the cell windows were positioned high on the wall, preventing inmates from seeing outside, and inmates complained that ventilation was insufficient, especially in summer. The unit had five exercise yards, a common room (equipped with a running machine, wall bars, and a TV), shower facilities, a medical room, a barber's shop, and a library with some 300 books.

The cells for "N" status prisoners at Rawicz Prison measured 7 m² and were intended for single occupancy; they were well lit and ventilated, and had screened toilets. "N" status prisoners took outdoor exercise in four exercise yards which were bare and without protection against inclement weather. However, the delegation was informed that the yards would soon be renovated.

The CPT recommends that steps be taken to:

- **remedy the deficiencies observed in the cells at Poznań Remand Prison as regards access to natural light and ventilation;**
- **verify the ventilation in the cells at Racibórz Prison;**
- **render the outdoor exercise area at Poznań Remand Prison less oppressive and allow direct access to sunlight;**
- **equip the exercise yards at the three establishments visited with some protection against inclement weather.**

91. The regime applied to "N" category prisoners remained very restrictive, similar to the one described in the report on the 2004 visit³⁹. Out-of-cell time consisted essentially of one hour of outdoor exercise per day (taken either alone or in the company of a cellmate) and access to a recreation room twice weekly at Poznań Remand Prison and Racibórz Prison. Inmates could have their own TV in the cell. They were entitled to a weekly shower, two visits a month, and two phone calls per month for sentenced prisoners (at the prosecutor's discretion for remand prisoners) at Rawicz and Racibórz prisons, and a five-minute-daily phone call for sentenced prisoners at Poznań Remand Prison. Contact with staff was limited to occasional visits by educators, psychologists and a chaplain.

The delegation was informed that in 2008, efforts had been made at Racibórz and Rawicz prisons to offer in-cell work to "N" status prisoners; this was praised by both inmates and staff, but had regrettably been discontinued. At Poznań Remand Prison, individual plans for "N" status prisoners were in the process of being developed, involving regular meetings with an educator and a psychologist; the director, educator, psychologist and head of security had also started to meet regularly to discuss each "N" status case. That said, there appeared to be little or no structurally planned intervention on the part of the staff to attempt to provide appropriate mental and physical stimulation to prisoners.

The CPT remains of the opinion that the regime for "N" status prisoners should be fundamentally reviewed. Solitary confinement or small-group isolation for extended periods is more likely to de-socialise than re-socialise people. There should instead be a structured programme of constructive and preferably out-of-cell activities, and educators and psychologists should be proactive in working with "N" status prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day. As stressed in the report on the visit in 2004, regardless of the gravity of the offences of which prisoners are accused or have been convicted and/or their presumed dangerousness, efforts must be made to provide them with appropriate stimulation and, in particular, with adequate human contact.

The CPT again calls upon the Polish authorities to review the regime applied to "N" status prisoners and to develop individual plans aimed at providing appropriate mental and physical stimulation to prisoners.

Further, immediate steps should be taken to improve the activities available to "N" status prisoners at Rawicz Prison.

³⁹ See paragraph 77 of CPT/Inf (2006) 11.

92. The procedure for allocation and review of "N" status remained unchanged⁴⁰. Despite the presence of regular quarterly reviews, most prisoners remained in "N" status for lengthy periods of time⁴¹. That said, the delegation noted that, at Poznań Remand Prison and Rawicz Prison, a number of prisoners⁴² had been moved off this status in 2008.

The Committee must stress that placement in an "N" unit should not be a purely passive response to the prisoner's attitude and behaviour. Instead, reviews of placement should be objective and meaningful, and form part of a positive process designed to address the prisoner's problems and permit his (re-)integration into the mainstream prison population. In the CPT's opinion, the procedure for allocating a prisoner to "N" status should be refined to ensure that only those who pose an ongoing high risk if accommodated in the mainstream of the prison population are accorded this status. Reviews of "N" status should specify clearly what is to be done to assist the prisoner concerned to move away from the "N" status and provide clear criteria for assessing development. Prisoners should be fully involved in all review processes. **The Committee reiterates its recommendation that the Polish authorities review current practice with a view to ensuring that "N" status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category.**

93. At Poznań Remand Prison and Racibórz Prison, different levels of security measures were applied to "N" status prisoners, based on an individual risk assessment: some were systematically ankle cuffed whenever taken out of their cells, some were only handcuffed, and, at Poznań Remand Prison, some had no security measures applied. All restraints were removed during exercise and visits (however see paragraph 124).

At Poznań Remand Prison and Racibórz Prison, it appeared that all staff interviews with "N" status prisoners were conducted through a cage-like structure in a specific room. As noted in the report on the 2004 visit, such an approach could be considered as degrading both for prisoners and staff. Further, it is not conducive to the development of a good staff/inmate relationship and genuine therapeutic relationship in the case of medical interviews. Rooms should be designed in such a way as to limit security risks. **The CPT calls upon the Polish authorities to put an end to this practice.**

94. The CPT also has serious misgivings about the systematic practice of obliging "N" status prisoners to undergo routine strip-searches whenever entering or leaving their cells. The prisoners concerned had to undress completely, and squat fully naked in view of the guards and any prisoner(s) sharing the cell while all their clothes were examined.

In the CPT's opinion, such a practice could be considered as amounting to degrading treatment. **The Committee recommends that strip-searches only be conducted on the basis of a concrete suspicion and in an appropriate setting and be carried out in a manner respectful of human dignity.**

⁴⁰ See paragraphs 69 of CPT/Inf (2002)9 and 73 of CPT/Inf (2006)11.

⁴¹ Two prisoners at Poznań Remand Prison had been on this status for six years, and one in Racibórz Prison for five years. In Rawicz Prison, the three prisoners were put on "N" status in 2008 and 2009.

⁴² Six at Poznań Remand Prison and four at Rawicz Prison.

4. Material conditions of detention

a. Poznań Remand Prison

95. Despite its name, Poznań Remand Prison is a multi-purpose establishment comprising four units: a main facility located in the centre of Poznań and three external units for sentenced prisoners in open and semi-open conditions⁴³. The delegation focused on the main facility which is composed of a remand prison for men, a semi-open unit for sentenced prisoners, a prison hospital, a diagnostic unit, and an outpatient consultation unit. With an official capacity of 662 places, the main facility was holding 672 inmates at the time of the visit: 408 sentenced prisoners and 264 remand prisoners (including 29 young prisoners⁴⁴ and 16 "N" status prisoners). As regards the prison hospital, it was accommodating 84 patients (81 men and 3 women).

96. The main facility, which dates back to the early 19th century, had undergone major refurbishment in 1979. Prisoners were accommodated in three blocks (A, C and D). With a view to reaching the Polish minimum standard of 3 m² per prisoner, ahead of the deadline of 6 December 2009, some recreation rooms had been converted into cells. This had had the unfortunate secondary effect of further limiting the already impoverished regime of activities provided to prisoners.

97. Conditions varied from one block to another. In Block A, cells were in a poor state of repair (damaged floor surface, broken windows) and cleanliness. Inmates were held in cells for two (measuring 7.5 m²) to fourteen persons (measuring 45.5 m²). The cell equipment consisted of bunk beds, tables, chairs and shelves, which were often dilapidated. Further, many inmates complained of poor ventilation in the summer. In addition, the in-cell toilets (which were usually not equipped with a partition) were dirty and malodorous, and the communal shower facilities were in a poor state of repair. On a more positive note, all cells were equipped with a call system.

Block C was undergoing some renovation (replacing of windows, painting). Cells measured between 8.5 to 11 m² and were usually holding two, and occasionally three, prisoners.

In Blocks A and C, the majority of cells had small windows covered with opaque panes which did not allow the entry of sufficient natural light, and the artificial lighting was dim in the larger cells. In addition, the electricity was switched off during the week from 9 a.m. to 2.30 p.m.

The best conditions were observed in Block D for sentenced prisoners subject to a semi-open type regime. The cells were clean and well ventilated, enjoyed good access to natural and artificial light, and were in a satisfactory state of repair.

98. The delegation received a number of complaints about the food, which was reportedly monotonous, lacking vegetables, fruits and dairy products.

⁴³ On 27 November 2009, the prison was accommodating 1,117 inmates (826 sentenced prisoners and 291 remand prisoners).

⁴⁴ Up to 21 years of age. They were all above 18 save one 17-year-old.

99. **The CPT recommends that steps be taken at Poznań Remand Prison to:**

- **further reduce the cell occupancy rates, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells;**
- **refurbish Block A so as to remedy the deficiencies described in paragraph 97 (including as regards showers and toilets);**
- **remedy the deficiencies observed in Blocks A and C as regards access to natural light and artificial lighting. The design of the cell windows should be reviewed so as to allow inmates to see outside their cells.**

Further, **the Committee invites the Polish authorities to verify the quality of food provided to prisoners, in the light of the above remarks.**

b. Racibórz Prison

100. Racibórz Prison dates back to the mid-19th century and is located in the centre of Racibórz, a small town in upper Silesia. With a capacity of 812, the prison was holding 841 men at the time of the visit (699 sentenced prisoners, 142 on remand, including 10 young prisoners⁴⁵, 11 "N" status prisoners, 7 lifers, and 56 inmates in the therapeutic unit). Most of the sentenced prisoners were repeat offenders. A garment factory is located on the premises of the prison.

The prison was built on the Panopticon design, with four blocks opening off a central circle. Prisoners were accommodated in six blocks (A, B, C, D, E and F⁴⁶). The buildings were outdated, but some refurbishment was underway in Blocks A, B, C and E.

101. In certain cells, the CPT's standard of at least 4 m² of living space per prisoner was being met (e.g. two inmates in a cell of 13.5 m², 13 inmates in a cell of 60 m²). However, this was not the case for the majority of inmates, who lived in cramped conditions (e.g. 3 persons in a cell of some 11 m², 8 in a cell of 24.5 m²); some cells in Block B were accommodating three prisoners in cells measuring less than 9 m².

In all the blocks, cells were clean; however, access to natural light and artificial lighting was insufficient in most cells, as was the ventilation. The situation was aggravated by the fact that electricity was switched off during the week from 9 a.m. to 2.30 p.m. The cell equipment consisted of bunk beds, tables, chairs and shelves, which were often dilapidated. Further, in many cells, the sanitary facilities were only semi-partitioned and in need of repair. On a positive note, all cells were equipped with a call system.

102. The delegation received a number of complaints about the quality and quantity of the food provided, and it noted the absence of fresh fruit in the diet.

⁴⁵ None of them were under 18 at the time of the visit.

⁴⁶ Block F accommodated the "N" unit described in paragraph 90 above.

103. **The CPT recommends that steps be taken at Racibórz Prison to:**

- **further reduce the cell occupancy rates, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells;**
- **remedy the deficiencies observed as regards access to natural light and artificial lighting, and ventilation in the cells;**
- **renovate the in-cell sanitary facilities.**

Further, **the CPT invites the Polish authorities to verify the quality and quantity of food provided to prisoners, in the light of the above remarks.**

c. Rawicz Prison

104. Rawicz Prison was built in 1820 on the site of a monastery in Rawicz, a small town in the region of Greater Poland. With a capacity of 841, the prison was accommodating 843 men at the time of the visit: 788 sentenced prisoners (including 9 lifers), 48 remand prisoners and 7 persons serving administrative sentences. The prisoner population included 43 young prisoners⁴⁷, 3 "N" status prisoners and 210 inmates in the therapeutic unit. Most of the sentenced prisoners were first-time offenders.

The prison occupies an extensive compound comprising three accommodation blocks and a factory (including a carpentry vocational school).

105. Although most prisoners were accommodated in cramped conditions, efforts were being made to reduce the occupancy levels with a view to providing inmates with the legal minimum of 3m². Cells for two inmates measured 7.5 m², and cells for three some 11 m². In certain areas, living space was more generous (e.g. some 17 m² for 2 to 3 inmates, especially in cells holding young prisoners; 4 to 5 inmates in a cell of 20 m²; 10 inmates in a cell of 41 m²).

The best conditions were observed in the semi-open facility (Block B). The cells were adequately furnished, clean, and well lit and ventilated. Block C was undergoing an extensive refurbishment and almost all the cells had already been refurbished, as well as the shower facilities; that said, not all the in-cell toilets had been equipped with a partition. In Block A, which had not benefited from a refurbishment, most cells were in need of repair, and the in-cell sanitary annexes were often dilapidated.

In contrast to Racibórz Prison and Poznań Remand Prison, no complaints were received at Rawicz Prison as regards the provision of food.

106. **The CPT recommends that steps be taken to further reduce the cell occupancy rates at Rawicz Prison, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells. The remainder of the prisoner accommodation should be refurbished, including the in-cell sanitary facilities of Block A. The shortcoming observed as regards the in-cell sanitation in Block C should also be remedied.**

⁴⁷ All were aged over 19, except for one 16-year-old.

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107. In each of the three prisons visited, inmates were entitled to one shower a week. The shower facilities were clean and in an adequate state of repair, except for those in Block A at Poznań Remand Prison (see paragraph 97). Further, prisoners were periodically provided with personal hygiene products.

The CPT invites the Polish authorities to consider increasing the frequency of showers for inmates, in the light of Rule 19.4 of the revised European Prison Rules⁴⁸.

5. Activities

108. At *Poznań Remand Prison*, work was provided mainly to sentenced prisoners held in the semi-open and open units (which were not visited by the delegation). As regards prisoners in the main facility, only those in Block D (i.e. some 40 sentenced inmates held under a semi-open regime) had work, essentially maintenance and cleaning tasks within the prison.

Inmates could have TV and radio in their cells, and had access to a library and a chapel. However, save for short periods spent in the recreation rooms (which were equipped with TV, sometimes a DVD player and table football), remand prisoners and the majority of sentenced inmates were locked in their cells for 23 hours a day. Their only regular activity was one hour of outdoor exercise per day. Block A had five small exercise yards measuring some 12 to 18 m², and Block C and the prison hospital shared six exercise yards of some 25 m². The yards were of an oppressive design (surrounded by high brick walls topped with barbed wire) and had no shelter against inclement weather.

109. At *Racibórz Prison*, the delegation was informed that 270 inmates (i.e. some 32%) had work: 222 inmates performed paid work (in the garment factory and on public works in the municipality) and 48 performed unpaid work (maintenance and cleaning tasks inside the prison). No educational or training activities were offered to prisoners, apart from those in the semi-open unit.

As a rule, prisoners had one hour of outdoor exercise per day. That said, working prisoners in the semi-open unit complained that due to their work, they often missed the time slot for exercise. Remand prisoners took outdoor exercise in four yards of some 50 m² and sentenced prisoners in six yards of some 80 m². The yards contained nothing but a bench (except for one which had a table tennis table) and were not equipped with protection against inclement weather. In addition, as the surface was unpaved, it became waterlogged when it rained.

Each block had one to two small recreation rooms (equipped with tables, sometimes a TV set and a table tennis table). Inmates interviewed by the delegation stated they were rarely given the possibility to go to these rooms and in any event usually did not take advantage of this opportunity as there was not much to do there. It transpired from interviews with inmates that apart from outdoor exercise, inmates who did not work could only access the library and go to the chapel, and that working prisoners in the semi-open unit could not access the library and therefore could not get books.

⁴⁸ 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.

110. At *Rawicz Prison*, the delegation observed that the management was striving to provide work and vocational training to inmates. At the time of the visit, 310 inmates (i.e. some 37 %) had work: 198 inmates had paid jobs (in the auxiliary factory and in cleaning, maintenance and the prison kitchen), and 112 performed unpaid jobs consisting of cleaning and maintenance tasks, and of public works outside the establishment).

In addition, 19 training courses (painting and decorating, computer skills, English language, psychology and sociology, social skills) had been organised in 2009, and a total of 215 prisoners (including remand prisoners) had taken part in them. Some 60 inmates were also following EU-funded vocational training in construction, renovation and welding.

Hobby clubs (chess, modelling, self-education in study groups) were organised in all units and were open to all inmates, including remand prisoners. All blocks had recreation rooms (with table tennis and table football) and exercise rooms. Adult inmates had access to these facilities twice a week and young prisoners three times a week. There was also a large library, a book-binding workshop and a chapel. It is noteworthy that life sentenced prisoners were given the same work, schooling and recreation opportunities as other categories of prisoner.

Outdoor exercise was provided on a daily basis in large yards (400 m²) equipped with benches and with some grass areas, and an even larger one which was used for football matches. That said, the yards were not equipped with any protection against inclement weather. In addition, some prisoners in the semi-open unit complained that they could not always benefit from outdoor exercise because it took place during their working hours.

111. To sum up, at *Rawicz Prison*, the balance of work, education and therapeutic activities offered an excellent menu to address the needs of almost all categories of prisoners. The availability and involvement of educators was praised by the vast majority of inmates interviewed by the delegation. The CPT commends the efforts of the management and staff in this regard.

This contrasted with the situation observed in *Poznań Remand Prison* and *Racibórz Prison*. Due to the shortage of work and other constructive activities, the majority of inmates, including all remand prisoners, spent 23 hours per day in their cells. This very limited regime was further aggravated by the withdrawal of electricity of five-and-a-half hours per day at *Poznań Remand Prison* and *Racibórz Prison*. Overall, there was a need for determined action by the managements at *Poznań Remand Prison* and *Racibórz Prison* to create a more positive and constructive regime.

112. The CPT recommends that strenuous efforts be made to develop the programme of activities for remand and sentenced prisoners at *Poznań Remand Prison* and *Racibórz Prison*. The aim should be to ensure that both categories of prisoners are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature.

Efforts should also be made to ensure that all prisoners, including working prisoners, at *Racibórz* and *Rawicz* prisons can benefit from outdoor exercise. In addition, steps should be taken to enable working prisoners of the semi-open unit of *Racibórz Prison* to borrow books from the library.

113. Although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme. **If the establishments visited were to continue to hold juveniles, the necessary arrangements should be made to enable them to follow a regime appropriate to their age group.**

114. The delegation was informed that the on-going refurbishment process in the three establishments visited would include the prisons' exercise yards. In this respect, **the outdoor exercise yard at Poznań Remand Prison should be enlarged and steps taken to avoid the yards becoming waterlogged at Racibórz Prison when it rains. Further, the yards of each of the three prisons visited should be equipped with shelters against inclement weather.**

6. The therapeutic units

115. Rawicz and Racibórz Prisons had each a therapeutic unit, the one at Rawicz being the largest in the country. With respective capacities of 240 and 52 places, at the time of the visit, the units were accommodating 210 and 56 persons displaying one or more forms of mental disorder, as well as persons suffering from alcohol dependence and substance abuse.

The therapeutic unit at *Rawicz Prison*, located in Block C, was undergoing extensive refurbishment. Material conditions were on the whole satisfactory despite the limited living space in the cells (there were two inmates in cells measuring some 8 m²). However, not all in-cell sanitary facilities were equipped with a partition; **reference is made in this respect to the recommendation made in paragraph 106.**

In contrast, at *Racibórz Prison*, material conditions were far from satisfactory. Some cells were dilapidated and dirty, with poor ventilation and inadequate artificial lighting. Further, certain cells were overcrowded (e.g. three persons in cells measuring 8 m²). **The CPT refers to the recommendations made in paragraph 103 in this respect; moreover, steps should be taken to improve the state of repair and cleanliness of the cells in the therapeutic unit.**

116. The unit at *Rawicz Prison* was staffed by six full-time psychologists, two occupational therapists and five educators. The unit also has a medical room used by the health-care staff of the prison for consultations.

The unit at *Racibórz Prison* was staffed by two psychologists, one occupational therapist and two educators. Two nurses from the health-care unit were assigned to work in the therapeutic unit, but with no involvement in the therapeutic programmes. In addition, the unit benefited from the presence of a part-time psychiatrist.

117. In both units, prisoners were offered a range of therapies and activities⁴⁹. At *Rawicz Prison*, each inmate had an individual treatment plan, and staff made efforts to engage inmates placed in the therapeutic unit in various programmes and activities.

⁴⁹ *Rawicz therapeutic unit*: courses on family matters, motor activation, support group for disadapted prisoners, cognitive and social training for handicapped, dual diagnosis, social skills, job-seeking, AA, drugs anonymous, health diet, illiteracy classes, relaxation, anger management, English for autodidacts, and occupational therapy. Inmates also had access to an indoor gym, gardening activities and, in summer, outdoor volley-ball. At

In contrast, at *Racibórz Prison*, despite the wide range of activities and therapies, there were no individual treatment plans and, more generally, a passive approach was observed towards involving prisoners in individual programmes.

The approach followed at Rawicz Prison consisting of engaging inmates referred to the therapeutic unit in programmes and activities should be adopted at the national level to ensure consistency in developing appropriate programmes.

7. Health care

a. situation in the prisons visited

118. The health-care team at *Poznań Remand Prison* (considered separately from the prison hospital) consisted of four general practitioners (three full-time, one part-time⁵⁰), two dentists (one full-time, one part-time⁵¹) and twelve nurses. The prison hospital provided 24-hour medical cover. Further, prisoners had access to a number of medical specialists from the prison hospital.

At *Racibórz Prison*, the health-care team consisted of two general practitioners (one full-time, one half-time), one full-time dentist, one assistant dentist, one half-time pharmacist and six nurses. One half-time post of general practitioner was vacant. At night and weekends, health care was provided by the emergency services. Further, a number of medical specialists, including a psychiatrist, held surgeries at the prison (half a day once a week for each specialist).

At *Rawicz Prison*, the health-care service comprised four half-time general practitioners, one full-time dentist, one full-time pharmacist and nine nurses. A psychiatrist attended the prison for half a day a week and was on call the rest of the time. Twenty-four hour health-care cover was provided by doctors "on call".

The CPT recommends that steps be taken at Racibórz Prison to fill the vacant post of general practitioner and ensure that someone qualified to provide first aid, preferably a person with a recognised nursing qualification, is always present in the prison. Consideration should also be given to increasing the hours of attendance of the psychiatrist at Racibórz and Rawicz Prisons.

119. The delegation received complaints about delays in having access to health care at *Poznań Remand Prison* and *Racibórz Prison*. In this connection, the medical services at both prisons had established a system of consultations whereby prisoners in a given unit could only have access to the doctor on a specific weekday, except in case of emergency. The CPT considers that prisoners should be able to have access to a doctor at any time, irrespective of the unit in which they are held. The health-care service should be organised in such a way as to enable requests made by prisoners to consult a doctor to be met without undue delay. **The CPT invites the Polish authorities to re-organise the system of medical consultations at Poznań Remand Prison and Racibórz Prison accordingly.**

Racibórz therapeutic unit: courses on family matters, social skills, cognitive and social training for the handicapped, relaxation, health and personal hygiene, occupational therapy for drug-addicted sentenced prisoners, AA, therapy for sex offenders, anger management; inmates also had access to a carpentry workshop, gardening activities, table tennis.

⁵⁰ Equivalent to a 3/4 full-time post.

⁵¹ Equivalent to a 1/5 full-time post.

120. In the 2004 report, the CPT expressed reservations about the practice of prison doctors treating both prisoners and prison staff. The Committee was pleased to note that this practice did not exist in any of the establishments visited.

121. Newly-arrived prisoners were in principle seen by a doctor or a nurse reporting to a doctor within 48 hours following arrival. The medical reception procedure included screening for tuberculosis (X-ray of the thorax). Other tests (e.g. HIV) were performed on a voluntary basis. Further, all newly-arrived prisoners were given a dental check-up within 15 days of arrival. However, at Racibórz Prison, the delegation found that, in certain cases, prisoners had had to wait up to 15 days to be seen by a doctor. In the CPT's view, every newly-arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission; save in exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor. **The CPT recommends that measures be taken to ensure that all newly-arrived prisoners are seen by a member of the health-care team (either a doctor or a fully qualified nurse reporting to a doctor) within 24 hours of their arrival.**

122. Prison health-care services can make a significant contribution to the prevention of ill-treatment by the police, through the systematic recording of injuries observed on newly-arrived prisoners and, if appropriate, the provision of information to the relevant authorities.

In this regard, the delegation noted that none of the establishments visited held a specific register recording injuries observed on newly-arrived prisoners. Such information was entered in the personal medical files. The entries did not contain conclusions as to the consistency between allegations made and the objective medical findings. Further, there was no transmission of information on injuries to the relevant prosecutor, unless the person concerned had lodged a complaint; this state of affairs also constitutes an infringement of Section 304 of the Code of Criminal Procedure.

The CPT recommends that the medical record drawn up after the medical screening of a newly-arrived prisoner should contain: (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings. Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available without delay to the prisoner and his lawyer.

The Committee also recommends that steps be taken to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (whether on arrival or at a later stage of his detention) or which, even in the absence of an allegation, are indicative of ill-treatment, the record is systematically brought to the attention of the relevant prosecutor. Moreover, a "register of traumatic lesions" should be kept by the health-care service of each penitentiary establishment.

123. As regards the confidentiality of medical information, only health-care staff had access to prisoners' medical files. However, it transpired that the medical examinations of prisoners often took place in the presence of prison officers. The CPT has serious misgivings about this approach. It acknowledges that special security measures may be required during medical examinations in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for prison guards being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a detainee becomes agitated or threatening during a medical examination. **The CPT recommends that the Polish authorities take steps to bring practice in line with the above considerations. If necessary, the law should be amended accordingly.**

124. As regards "N" status prisoners, not only were they medically examined in the presence of non-medical prison staff, but they were usually handcuffed, and sometimes ankle-cuffed. The practice of applying means of restraint to prisoners during medical consultations infringes upon the dignity of the prisoners concerned, prohibits the development of a proper doctor-patient relationship and may even be prejudicial to the establishment of objective medical observations. **The CPT calls upon the Polish authorities to abandon the policy of routine application of means of restraint to "N" status prisoners during medical consultations.**

125. Practically no progress had been made as regards the care of inmates with drug-related problems, the services offered to them, or the development of a prevention policy⁵². Methadone substitution programmes were not available in the establishments visited⁵³, with the exception of Poznań Prison Hospital where a few prisoners were being treated with methadone. Further, none of the establishments visited had in place harm-prevention measures (such as, for instance, the provision of bleach and information on how to sterilise needles, needle-exchange programmes or the supply of condoms).

The CPT wishes to stress that the management of drug-addicted prisoners must be varied – combining detoxification, psychological support, socio-educational programmes, rehabilitation and substitution programmes – and linked to a real prevention policy. It goes without saying that health-care staff must play a key role in drawing up, implementing and monitoring the programmes concerned and co-operate closely with the other (psycho-socio-educational) staff involved.

The CPT reiterates the recommendation made in its 2004 visit report that the Polish authorities develop and implement a comprehensive policy for the provision of care to prisoners with drug-related problems.

⁵² See paragraph 126 of CPT/Inf (2006) 11.

⁵³ Those requiring such treatment were systematically referred to outside hospitals.

b. Poznań Prison Hospital

i. *introduction*

126. The prison hospital had a total capacity of 102 beds and comprised, among other things, a ward for internal medicine (with a capacity of 31 beds), one for dermatology (29 beds)⁵⁴, and one for psychiatry (29 beds). At the time of the visit, 84 prisoners (27 remand and 57 sentenced) were being accommodated at the hospital.

127. The patients' rooms had good access to natural light, artificial lighting and ventilation, and were clean and adequately equipped. However, the occupancy rates (e.g. three inmates in a room measuring some 9 m², two inmates in a room measuring some 7.5 m²) resulted in cramped conditions. Reference is made in this respect to paragraph 99.

The hospital was equipped with a recreation room (with TV, table-tennis table, table football, an exercise bike) and an art therapy room, both being accessible to patients from all the wards. However, it transpired from interviews with inmates that they were rarely offered the possibility to use these rooms.

128. The delegation observed that inmates in the dermatology and psychiatric wards were usually dressed around the clock in pyjamas, including when taking outdoor exercise. In this connection, it should be stressed that the practice of continuously dressing ambulant inmates in pyjamas is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process. **The CPT recommends that steps be taken to ensure that an individualised approach is followed as regards inmates' clothing in the hospital wards.**

129. The staffing levels⁵⁵ and medical equipment in the internal medicine and dermatology wards were of a standard expected in a hospital facility.

ii. *the psychiatric ward*

130. The psychiatric ward (including forensic psychiatry) catered for several regions. At the time of the visit, it was accommodating 20 inmates receiving treatment and 4 undergoing assessment. The staff consisted of three psychiatrists, seven nurses, two psychologists, a part-time educator and a part-time occupational therapist⁵⁶. There was also one prison officer assigned to the unit.

⁵⁴ Catering for the entire country.

⁵⁵ Two full-time doctors and seven full-time nurses on each ward seven days a week. There was a doctor on duty at night on weekdays and at weekends the doctor in the adjacent prison was on call.

⁵⁶ Both equivalent to a 1/3 full-time post.

131. The rooms had a barred separation right behind the door, thus reducing even more the living space of patients. Some interviews and medical procedures conducted in the patient's room were carried out through these bars. Such a practice can hardly be described as conducive to a genuine therapeutic relationship and is degrading to both patients and staff. **The CPT recommends that an end be put to this practice.**

Further, **the Committee invites the Polish authorities to provide a more congenial and personalised environment; in particular, the current oppressive design of the patients' rooms should be reviewed with a view to creating an accommodation structure which preserves the dignity of the patient.**

132. The treatment relied primarily on pharmacotherapy. Some occupational therapy was provided in the art therapy room and inmates could also go to the recreation room once or twice a week. Outdoor exercise was in principle provided on a daily basis; however, the delegation came across a female inmate who alleged that she had not had any outdoor exercise since her arrival (some two weeks before).

The CPT recommends that steps be taken in the psychiatric ward at Poznań Prison Hospital to set up individual treatment plans for patients based on a broader range of therapeutic, rehabilitative and recreational activities. This implies the recruitment of an appropriate number of corresponding staff. Moreover, all persons accommodated in a prison psychiatric ward should be offered, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious and secure setting (see also the recommendation in paragraph 114).

133. It became apparent that while interviews with doctors and psychologists usually took place in private, nursing procedures and the distribution of medication were carried out in the presence of a prison officer. There can be no justification for custodial staff being systematically present during medical examinations or therapeutic interventions. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. **In this respect, reference is made to the recommendation in paragraph 123.**

134. The use of means of restraint was governed by the provisions of Article 18 of the Mental Health Act and the Minister of Health's Ordinance of 23 August 1995 on "The methods of application of restraint"⁵⁷. The individual medical files and nurses' log book contained some entries as to resort to mechanical restraint, but it transpired that not all cases were recorded; further, chemical restraint (such as sedatives, antipsychotics, hypnotics and tranquillisers) was not recorded in any document. Seclusion could be resorted to in a specific room – "monitoring cell", of the same design as the other rooms and additionally equipped with CCTV – which could be used both for medical purposes and security issues⁵⁸ ("N" status prisoners).

⁵⁷ According to the law, physical restraint consists of holding, compulsory medication, immobilisation or seclusion. The decision to use physical restraint is made by a doctor, who determines the type of physical restraint to be applied and supervises its implementation. In emergency situations, when a doctor is not available, the decision may be taken by a nurse who must notify the doctor immediately.

⁵⁸ A "N" status prisoner undergoing psychiatric assessment or treatment would be placed in such a cell for example.

135. In the CPT's view, every psychiatric establishment should have a comprehensive, carefully developed, policy on restraint. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. Further, if resort is had to chemical restraint, it should be subjected to the same safeguards as mechanical restraints. In this context, guidelines on the use of restraint should include the following points:

- Any resort to means of restraint should always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his/her approval.
- The use of mechanical restraint in an appropriate manner requires considerable staff resources. For example, when the limbs of a patient are held with straps or belts, a trained member of staff should be continuously present in order to maintain the therapeutic alliance and to provide assistance. Such assistance may include escorting the patient to a toilet facility or helping him/her to drink/consume food. Video surveillance cannot replace such a continuous staff presence.
- Locking up a vulnerable mentally disordered patient alone in a room must be very carefully applied and should only be a measure of last resort and for the shortest possible period; seclusion should not be resorted to due to the lack of alternative strategies, staff and regime provision.
- Every instance of the use of means of restraint – whether physical or chemical – of a patient must be recorded in a specific register established for that purpose, in addition to the individual's file. The entry should include the times 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, and an account of any injuries sustained by the person or staff. This will greatly facilitate both the management of such incidents and oversight into the extent of their occurrence.

The CPT recommends that the Polish authorities take steps to ensure that these principles are applied in the psychiatric ward of Poznań Prison Hospital as well as in all other prison psychiatric wards in Poland.

8. Other issues

- a. contact with the outside world

136. The rules and practice applicable to family visits, correspondence and access to telephone for *sentenced prisoners* were on the whole adequate. That said, **it would be desirable for sentenced prisoners to be entitled to at least one visit per week⁵⁹.**

⁵⁹

Pursuant to the Executive Penal Code, sentenced prisoners are entitled to three visits per month in semi-open regime and two visits per month in the closed-type regime. Visits last one hour.

137. The visiting facilities were very good in all the establishments visited, and especially in Rawicz Prison where efforts had been made to render the visiting rooms as pleasant as possible for both visitors and prisoners. That said, at Poznań Remand Prison, visitors had to spend a long time waiting outside the establishment. Further, at Racibórz Prison, many complaints were received as regards the visiting schedule, which had been changed recently and excluded weekends.

The CPT invites the Polish authorities to introduce a visit booking system at Poznań Remand Prison, and to add at least one weekend day to the schedule of visits at Racibórz Prison.

138. The delegation found that *remand prisoners* could receive visits once or twice a month, which represents a positive development compared to the situation observed in 2004. That said, in the CPT's view, a visiting time of one hour per month is not sufficient to enable persons on remand to maintain appropriate contact with the outside world. **The objective should be to offer a visit every week, of a duration of at least one hour.**

Further, the restrictive rules on correspondence and the total ban on telephone calls for remand prisoners remained unchanged⁶⁰. The CPT recalls that all prisoners, including remand prisoners, should have access to the telephone. Any restrictions on access to the telephone should be strictly limited to the requirements of a given case and applied for as short a time as possible. **The CPT calls upon the Polish authorities to review the arrangements concerning contact with the outside world for remand prisoners, taking into consideration the above remarks and Rules 24.1 and 99 of the European Prison Rules⁶¹.**

b. discipline

139. The disciplinary procedure applicable to prisoners had remained unchanged⁶². In the three establishments visited, the use of disciplinary cells appeared limited. In the first 11 months of 2009, the sanction of placement in a disciplinary cell had been resorted to 9 times at Poznań Remand Prison (for periods never exceeding 14 days), 47 times at Rawicz Prison (usually for 5 to 7 days, occasionally for up to 14 days) and 26 times at Racibórz Prison (mostly for 14 days). The protocols recording such episodes were very well kept and provided detailed accountability.

However, the delegation was unable to ascertain the level of use of disciplinary sanctions other than solitary confinement, due to the absence of a system for recording such sanctions. **The CPT invites the Polish authorities to introduce a system, in each establishment, for recording all types of disciplinary sanctions.**

⁶⁰ See paragraphs 141 and 153 of CPT/Inf (98)13, paragraph 142 of CPT/Inf (2002)9, and paragraphs 133 and 134 of CPT/Inf (2006)11.

⁶¹ Rule 24.1: Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

Rule 99: Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners: *a.* shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners; *b.* may receive additional visits and have additional access to other forms of communication; and *c.* shall have access to books, newspapers and other news media.

⁶² The maximum length of disciplinary solitary confinement is 28 days for sentenced prisoners and 14 days for remand prisoners, non-renewable in both cases. Prisoners have the right to be heard on the subject of the offence with which they are charged and can appeal against the disciplinary sanction of solitary confinement to the penitentiary judge.

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

In this connection, the CPT wishes to stress that disciplinary punishment of prisoners should not involve a prohibition of family contact and that any restrictions on family contact as a punishment should be imposed only where the offence relates to such contact⁶³. **The CPT recommends that the rules governing disciplinary sanctions be revised accordingly.**

141. The cells used for disciplinary punishment at Rawicz Prison were of an adequate size (7 m²) and well-equipped. At Poznań Remand Prison, one cell measured some 4 m², and the other one some 7 m²; the equipment consisted of a bed and a cupboard. At Racibórz Prison, the cells measured some 4 m², and had poor access to natural light. **The CPT recommends that all disciplinary cells measuring less than 6 m² be either enlarged or taken out of service. In addition, access to natural light should be improved in the cells at Racibórz Prison.**

142. Prisoners subject to the sanction of placement in a disciplinary cell were seen prior to their placement by the doctor, whose signature was required to certify whether the prisoner was fit to undergo the punishment. The CPT wishes to stress that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers' Recommendation (2006) 2 on the European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed.

The CPT recommends that existing regulations and practice concerning the role of prison doctors in relation to disciplinary matters be reviewed. In so doing, regard should be had to the European Prison Rules⁶⁴ and the comments made by the CPT in paragraph 53 of its 15th General Report (CPT/Inf (2005) 17).

⁶³ 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.

⁶⁴ Rule 43.3: The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

1st sub-paragraph of paragraph 53 of CPT/Inf (2005) 17 : "One thorny issue in the field of health care in prisons concerns the role of prison doctors in relation to disciplinary matters. Medical practitioners working in prisons act as the personal doctor of prisoners, and ensuring that there is a positive doctor/patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment that might have an adverse effect on their health is scarcely likely to promote that relationship. [...]."

c. security issues

143. The examination of documentation revealed that, in the first 11 months of 2009, very limited use of means of restraint ("direct means of coercion") had been made at Poznań Remand Prison (7 times) and Rawicz Prison (6 times). Records reviewed by the delegation were detailed.

At Racibórz Prison, 29 cases of placement in a security cell were noted during the same period, involving, in four cases, the use of pepper spray as well as handcuffs and truncheons. The delegation was concerned by the case of an inmate with mental problems who had been kept in a security cell on two occasions over two days, with a break of five hours, without being seen by a psychiatrist. His file contained a diagnosis of schizophrenia from some three years previously and a psychologist had spoken to him twice on the first day in the security cell and identified disorderly thought processes and delusional conversations. The video recording of an episode of staff trying to apply a one-piece body belt (handcuffs on a belt) to the inmate while in the security cell revealed that it took them several minutes to find the belt and that, by the time it was applied, the necessity for applying it was dubious.

Further, the application of the belt was not followed by a medical examination (the inmate was not seen by the doctor before he was removed from the cell, i.e. three hours after the belt had been removed). The prisoner concerned was transferred to a psychiatric hospital three days later and remained there.

144. As already stressed in the report on the visit carried out in 2004⁶⁵, while understanding that it can be necessary on rare occasions to resort to means of restraint in a prison setting, the CPT is of the view that means of mechanical restraint in addition to placement in a security cell should rarely need to be applied for more than a few hours, unless there was a medical condition requiring it. Means of mechanical restraint should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options fail satisfactorily to contain those risks. It should never be used as a punishment or to compensate for shortages of trained staff. Further, it should not be used in a non-medical setting when hospitalisation would be a more appropriate intervention; and any resort to immobilisation should be immediately brought to the attention of a doctor in order to assess the need for the measure, as opposed to certifying the individual's fitness for it. In addition, there should be regular refresher courses on control and restraint techniques for staff.

The CPT recommends that steps be taken to review the resort to means of restraint at Racibórz Prison and, if necessary, in other Polish prisons, in the light of the above remarks.

As regards the use of pepper spray, **the remarks and recommendation made in paragraph 77 apply equally to prison establishments.**

145. Material conditions in the security cells could be considered as adequate at Poznań Remand Prison and Racibórz Prison. However, at Rawicz Prison, the security cells measured a mere 4.75m²; **the CPT recommends that the security cells at Rawicz Prison be either enlarged or taken out of service.**

⁶⁵ See paragraph 71 of CPT/Inf (2006) 11.

d. complaints procedures

146. Prisoners at the three establishments visited were well-informed of the avenues of complaints and made use of them⁶⁶. Complaints appeared to be well handled, but the multi-stage system for considering complaints occasionally generated delays in providing answers⁶⁷. Most of the complaints⁶⁸ related to issues which could have been handled locally, but they were addressed to the regional or general directors of the Prison Service. **The CPT would like to receive the comments of the Polish authorities on this matter.**

⁶⁶ There had been 500 complaints at Poznań Remand Prison from January to November 2009, 237 cases at Racibórz Prison and 57 at Rawicz.

⁶⁷ Most complaints were addressed to the regional or general directors of the Prison Service, they were then returned to the establishment concerned, and the answers were sent back to the regional or general Prison Service to be forwarded to the prisoners.

⁶⁸ At Poznań Remand Prison and Racibórz Prison, complaints usually concerned medical care, in particular access to specialist services outside the prison, living conditions, refusal of transfer to a prison nearer home (impossible usually because of overcrowding), food and decisions of the penitentiary commission. At Rawicz, they mostly came from Block C – the therapeutic unit – and many concerned transfers or the “therapeutic” classification.

D. Social welfare and psychiatric establishments

1. Preliminary remarks

147. The delegation visited, for the first time in Poland, a social welfare institution, namely the Social Care Home for Adults with Chronic Mental Illnesses in Bytom (hereinafter: “Bytom Social Care Home”). It also went to Lubliniec Psychiatric Hospital, in order to consult certain medical files and to examine the procedures for the use of means of restraint.

148. The Bytom Social Care Home, which was opened in 1870 as a social welfare institution of a religious order, is located in the centre of the town of Bytom (some 20 km north of Katowice) and comprises three buildings, a small garden and a larger yard. At present, the care home is administered by the Municipality of Bytom (Municipal Centre for Family Affairs), which has recently acquired the ownership. The establishment has an official capacity of 160 places. At the time of the visit, it was accommodating 139 residents (60 men and 79 women) who were suffering from various chronic mental disorders. 32 residents had been placed in the care home upon court order.

149. Admission to a social care home is governed by Sections 38 to 41 of the Mental Health Act:

A person who, due to mental illness or mental retardation, is incapable of self-sufficiently satisfying his basic vital needs, has no possibility to obtain care from others and needs continuous care and nursing services but does not require hospital treatment, may be admitted to a nursing home with his own or his legal representative’s consent (Section 38). If the person referred to in Section 38 or that person’s legal representative does not give consent to the referral to a nursing home, while lack of care possess a risk to that person’s life, a social welfare agency may apply to the guardianship court and file a motion for his referral to a nursing home without that person’s consent (Section 39, paragraph 1). If the person in need of referral to a nursing home, due to his mental state, is incapable of giving his consent, the guardianship court shall adjudicate the referral of such a person to a nursing home (Section 39, paragraph 3).

The above-mentioned procedures and related legal safeguards are examined in paragraphs 160 to 167.

150. At the outset, the CPT wishes to stress that the delegation received no allegations of ill-treatment of residents by staff at the Bytom Social Care Home. On the contrary, the general atmosphere appeared to be relaxed and relations between staff and patients were positive.

2. Living conditions

151. At the Bytom Social Care Home, the entire establishment was undergoing major refurbishment at the time of the visit. The delegation was impressed by the material conditions in the buildings which had already been renovated (Buildings 1 and 2). All bedrooms were of an adequate size (at least 8 m² in single rooms and more than 4 m² per resident in multiple occupancy rooms), had very good access to natural light, and were well equipped and impeccably clean. The rooms also had adjacent sanitary annexes (shower, sink, toilet) of a high standard. Further, all communal rooms/areas were pleasantly decorated.

The CPT understands that the remaining parts of the care home (in particular, Building 3) will be renovated in the near future. **The Committee would like to receive updated information on this matter.**

152. The delegation gained a favourable impression of the activities which were being organised for residents (such as embroidery, drawing, cooking, dancing, outings). Residents also had unrestricted access to the garden area.

However, a number of physically impaired residents were not able to go into the open air every day, due to lack of assistance by staff. **The CPT recommends that steps be taken by the management of the Bytom Social Care Home to ensure that all residents suffering from physical impairments receive the necessary assistance so that they can effectively benefit from at least one hour of outdoor exercise per day (if their state of health permits).**

3. Staff and treatment

153. Staffing levels at the Bytom Social Care Home were generally adequate for the needs of the establishment. The health-care team comprised nine qualified nurses (with an equivalent of seven full-time posts), five qualified nursing assistants, one psychologist, one physiotherapist and three occupational therapists (all working on a full-time basis). In addition, 17 orderlies and three social workers were employed on a full-time basis. Further, the establishment was visited twice a week by a psychiatrist who was also on call outside attendance hours.

There was no general practitioner employed, since all residents were cared for by their family doctor in the outside community.

154. The delegation gained a generally positive impression of the treatment provided to residents at the Bytom Social Care Home. There was good availability of suitable medicines (including “new generation“ neuroleptics such as olanzapine and risperidone). In addition to pharmacotherapy, residents were offered a range of therapeutic activities, such as occupational therapy and physiotherapy, on the basis of individual needs assessments. There were three therapeutic teams (one in each building), who also maintained a register of all therapeutic activities on a daily basis.

4. Means of restraint

155. Health-care staff at the Bytom Social Care Home had at their disposal mechanical means of restraint (straps) to restrain agitated residents⁶⁹. However, the straps had apparently not been used in recent years. Instead, agitated residents were usually transferred to a psychiatric hospital. The delegation was informed that, in practice, such transfers only occurred very rarely.

The main exception constituted a male resident who had repeatedly become severely agitated and violent. Each time, he had been transferred to Lubliniec Psychiatric Hospital, where he had been immobilised, on occasion, for prolonged periods (see paragraph 156).

The only shortcoming found was that the care home had no special register for the use of means of restraint. **The CPT recommends that such a register be established at the Bytom Social Care Home.**

156. The delegation went to Lubliniec Psychiatric Hospital, in order to examine the manner in which the above-mentioned resident had been managed and, on this occasion, also reviewed the restraint procedures generally applied in the hospital. For this purpose, the delegation had talks with medical staff and consulted a number of medical records.

The means of restraint used in the hospital included manual control, immobilisation with straps/belts or a straitjacket, chemical restraint and seclusion.

157. As far as the delegation could ascertain, means of restraint were applied in accordance with Section 18 of the Mental Health Act and the Ordinance of the Minister of Health and Social Assistance of 23 August 1995 on the “Methods of Application of Restraints”. According to the above-mentioned Ordinance, the immobilisation and/or seclusion of a patient must always be ordered by a doctor (or, in emergency situations, by a nurse who has to report to a doctor without delay) and may be applied for a maximum of four hours. If necessary, the doctor – having personally examined the patient – may prolong the immobilisation by further six-hour periods. Every application of restraint must be recorded in the patient's medical file; instances of immobilisation and seclusion also have to be recorded in a special restraint form and reported to the director of the establishment. The condition of an immobilised or secluded person must be checked at least every 15 minutes by the duty nurse, who is required to note down his/her observations on the above-mentioned restraint form.

158. However, the CPT noted with concern that, at Lubliniec Psychiatric Hospital, patients were, on occasion, subjected to means of mechanical restraint for prolonged periods. According to his medical file, the above-mentioned resident/patient had repeatedly been subjected to mechanical restraint for periods of up to twelve days at a time in 2008 and 2009 (with occasional interruptions of a few minutes).

The Committee wishes to stress that the duration of any immobilisation of a patient should be for the shortest possible time (usually minutes or a few hours); to apply mechanical restraints for periods of days at a time cannot have any justification and could well be considered as amounting to ill-treatment.

⁶⁹ There was no seclusion room in the care home.

The CPT recommends that the use of mechanical restraints be reviewed at Lubliniec Psychiatric Hospital, in the light of the above remarks.

159. The CPT also wishes to highlight that the above-mentioned Ordinance, which equally applies to psychiatric hospitals and social welfare institutions, suffers from two flaws. Firstly, it does not contain a requirement that instances of chemical restraint also be recorded in the special restraint form and reported to the director of the establishment. Secondly, it does not provide for a continuous, direct and personal supervision of an immobilised patient/resident by a nearby member of staff, the rule being that patients be checked by a nurse every 15 minutes.

In the CPT's view, every immobilised patient/resident should, at all times, have his/her mental and physical state continuously and directly monitored by an identified member of the health-care staff, who can offer immediate human contact to the person concerned, reduce his/her anxiety, communicate with the individual and rapidly respond, including to the individual's personal needs. Such individualised staff supervision should be performed from within the room or very near the door (within hearing so that personal contact can be established immediately).

The CPT recommends that the above-mentioned Ordinance be amended accordingly.

5. Safeguards

160. The procedure by which involuntary placement in a social welfare establishment is decided should offer guarantees of independence and impartiality as well as of external psychiatric expertise. Further, such placement should cease as soon as it is no longer required by the resident's mental state. Consequently, the need for placement should be reviewed at regular intervals. In addition, the resident himself/herself should be able to request at reasonable intervals that the necessity for placement be reviewed by a judicial authority.

161. Persons may be admitted to a social welfare home at their own request or that of their legal representative/guardian, or by a decision of the competent guardianship court⁷⁰. The delegation was informed that, out of a total of 139 residents, 32 had been admitted to the Bytom Social Care Home by court order, while all the others were classified as voluntary residents.

162. According to Sections 38 and 39 of the Mental Health Act (see paragraph 149), a placement decision by the guardianship court is required whenever a person does not agree to the placement (whilst he/she is in a position to give valid consent) or when a person is incapable of giving valid consent⁷¹. The same rule applies to persons deprived of their legal capacity when consent to the placement is given by the guardian, but the person concerned objects to the placement.

⁷⁰ As a rule, court decisions indicated the type of establishment, whereas the precise institution was decided upon by the Municipality Centre for Family Assistance.

⁷¹ See, however, paragraph 164.

It is also noteworthy that, pursuant to Section 54, paragraph 4, of the Law on Social Assistance, the management of a social care home is under a legal obligation to notify to the competent court (or, in the case of persons under guardianship, to the competent public prosecutor) all residents who refuse to express their consent to the placement or withdraw their consent after having been placed in the establishment.

163. The Mental Health Act contains important safeguards in the context of an involuntary placement procedure before the guardianship court (Sections 42 to 49). In particular, the judge is obliged to hold a court hearing and request an expert opinion of at least one psychiatrist, before issuing a placement order.

164. When examining the individual files of a number of residents, who had been admitted on an involuntary basis, the delegation was struck by the scantiness of placement decisions issued by courts. The majority of the decisions did not contain any reasoning or any information on existing legal remedies.

Whereas other documents contained in the residents' files revealed that an expert opinion by a psychiatrist had usually been sought by the court prior to the placement decision, it remained unclear whether the person to be admitted had also been heard by the judge. **The CPT would like to receive further clarification of this point.**

Further, **the Committee recommends that steps be taken to ensure that all residents who are placed in a social welfare home on an involuntary basis, as well as their guardians, are systematically notified in writing of the court decision and are informed, in writing and verbally, of the reasons for the decision and the avenues/deadlines for lodging an appeal against that decision.**

165. Involuntary placement decisions are issued for an indefinite period. According to Section 41, paragraph 1, of the Mental Health Act, residents (as well as close relatives and, where appropriate, their guardian) are entitled to submit a request for discharge to the competent guardianship court.

That said, Polish legislation does not provide for an automatic review, at regular intervals, by an independent body of the need for a continuation of the placement. **The CPT recommends that such a review procedure be established by amending the relevant legislation.**

166. Further, from the consultations which the delegation held with the management and staff as well as from interviews with residents, it became apparent that a number of residents who had the status of being "voluntary" were actually not or no longer in a position to give a valid consent to their stay in the care home and also had no court-appointed guardian. As a result, they were de facto deprived of their liberty without benefiting from the safeguards provided for by law.

The CPT recommends that steps be taken at the Bytom Social Care Home and, where appropriate, in other social welfare institutions in Poland, to ensure that all residents who are not or no longer able to give a valid consent to their placement, do not have a guardian and are prevented from leaving the establishment, are notified to the competent court.

167. The delegation also observed that staff at the Bytom Social Care Home acted as court-appointed guardians for a number of residents who were deprived of their legal capacity. The very fact that it is also the role of a guardian to defend the rights of an incapacitated person vis-à-vis the hosting social welfare institution may easily lead to a conflict of interest and, eventually, compromise the independence and impartiality of the guardian. Therefore, **the CPT recommends that the Polish authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.**

168. Finally, the CPT attaches considerable importance to social welfare establishments being visited on a regular basis by an independent outside body which is responsible for the inspection of residents' care. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations.

The Bytom Social Care Home was inspected twice a year by a team of inspectors of the Voivodship Office for Social Assistance⁷². Further, the establishment was visited every six months by a judge of the competent guardianship court. According to Section 43 of the Mental Health Act, the visiting judge has the right to supervise the legality of admissions to and the stay in the institution, the respect for residents' rights and the living conditions.

However, from the most recent inspection reports drawn up by visiting judges, it transpired that judges hardly ever took the initiative to talk to residents. **The CPT recommends that guardianship courts be encouraged to adopt a more active approach in this regard.**

⁷² See Sections 126 *et seq.* of the Law on Social Assistance.

APPENDIX I

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

Introduction

comments

- the CPT trusts that appropriate steps will be taken by the relevant authorities to enable the Committee's delegations to have effective access in future to any criminal investigation files which are related to the alleged ill-treatment of detained persons (paragraph 6).

requests for information

- the comments of the Polish authorities on the issue of budgetary resources allocated to the Commissioner for Civil Rights Protection for performing the additional functions of national preventive mechanism (paragraph 9).

Police establishments

Preliminary remarks

comments

- the Polish authorities are encouraged to take the necessary steps to ensure that the Juveniles Act is amended with a view to introducing an absolute time limit of seven days for the detention in police establishments of suspected juvenile offenders (paragraph 11).

requests for information

- the state of the debate as regards the adoption of a new Juveniles Code (paragraph 12).

Torture and other forms of ill-treatment

recommendations

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

- police officers to be trained in preventing and minimising violence in the context of an apprehension. In cases in which the use of force becomes necessary, they need to be able to apply professional techniques which reduce as much as possible any risk of harm to the persons whom they are seeking to apprehend (paragraph 13).

requests for information

- whether the same computerised system for collecting and analysing information on complaints against police officers will also be used by the Border Guards (paragraph 14);
- the following information, in respect of the period from 1 January 2009 to the present time:
 - the number of complaints of ill-treatment made against police officers and Border Guard officers and the number of criminal/disciplinary proceedings which have been instituted as a result;
 - an account of criminal/disciplinary sanctions imposed following such complaints (paragraph 15);
- copies of the most recent annual report of the human rights officers of the police and Border Guards (paragraph 16).

Investigations into cases of alleged police ill-treatment

recommendations

- all complaints lodged by detained persons about alleged ill-treatment by law enforcement officials to be promptly transmitted to the competent prosecutor (paragraph 22);
- in every case when it comes to the attention of a prosecutor that a detained person may have been the victim of ill-treatment by law enforcement officials (even in the absence of an express allegation of ill-treatment), the person concerned to be immediately subjected to a forensic medical examination (including, if necessary, by a forensic psychiatrist); such an approach should be followed irrespective of whether the person concerned bears visible injuries (paragraph 22);
- investigations into cases of possible ill-treatment by law enforcement officials to be always carried out promptly, thoroughly and expeditiously (paragraph 22).

requests for information

- detailed information on the team to be set up within the Office of the Commissioner of Civil Rights in order to investigate all complaints about ill-treatment by law enforcement officials (paragraph 20).;
- the outcome of the criminal and disciplinary proceedings initiated in the two cases referred to in paragraph 19 (paragraph 23).

Safeguards

recommendations

- steps to be taken to ensure that detained persons are provided with feedback on whether it has been possible to notify a close relative or other person of the fact of their detention (paragraph 25);
- a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer to be developed as a matter of urgency, and to be applicable from the very outset of police custody. If necessary, the relevant legislation should be amended (paragraph 26);
- the Polish authorities to ensure that persons detained by the police have in all cases the right to talk to a lawyer in private. In this context, Section 245, paragraph 1, of the Code of Criminal Procedure should be amended (paragraph 27);
- the Polish authorities to implement the recommendations made in the 2004 visit report with a view to ensuring that:
 - the right of persons deprived of their liberty by the police to have access to a doctor includes the right – if the persons concerned so wish – to be medically examined by a doctor of their choice (it being understood that an examination by such a doctor may be carried out at the detainee's own expense);
 - all medical examinations are conducted out of the hearing and – unless the doctor requests otherwise – out of the sight of police/ Border Guard officers;
 - the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, are formally recorded by the doctor and made available to the detainee and his lawyer (paragraph 28);
- if a person examined is found to bear injuries consistent with possible ill-treatment, the relevant prosecutor to be immediately notified and a copy of the report on injuries forwarded to him (paragraph 28);
- information concerning detained persons' health to be kept in a manner which ensures respect for medical confidentiality; health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person, including medication being taken and particular health risks (paragraph 28);
- steps to be taken to ensure that all persons detained by the police are fully informed of their rights. This should involve the provision of clear verbal information at the very outset of deprivation of liberty (i.e. when they were obliged to remain with the police), to be supplemented at the earliest opportunity (that is, immediately upon first entry into the police premises) by provision of written information on detained persons' rights (paragraph 30);

- the Polish authorities to draw up a separate information sheet on the rights of detained persons, which the detainee should be asked to sign and be able to keep with him/her. This form should be available in an appropriate range of languages. This form should be available in an appropriate range of languages. Particular care should be taken to ensure that detained persons are actually able to understand their rights (paragraph 30);
- effective steps to be taken to ensure that detained foreign nationals who do not understand Polish are promptly provided with the services of an interpreter and are not requested to sign any statements or other documents without this assistance (paragraph 31);
- steps to be taken to ensure that all persons under 18 years of age who are detained by the police are treated as juveniles and benefit from the relevant specific safeguards for juveniles (paragraph 32);
- an up-to-date information sheet on rights to be developed for distribution to juveniles detained by the police on suspicion of criminal offences. The information sheet should be easy to understand, and special care should be taken to ensure that the information provided is in fact fully understood (paragraph 33);
- steps to be taken to ensure that a record is made and kept in each police establishment in Poland of every instance of a person being deprived of his/her liberty on the premises of that establishment (paragraph 34).

Conditions of detention in police establishments

recommendations

- material conditions of detainees at Rybnik Municipal Police Department, Racibórz District Police Department and Biała Podlaska Municipal Police Department to be improved, in the light of the remarks in paragraph 35 (paragraph 35);
- the communal toilets at Jaworzno Municipal Police Department and Rybnik Municipal Police Department to be kept in a good state of repair and cleanliness (paragraph 36);
- persons in police custody to be offered adequate washing facilities, including the possibility to take a shower. Persons detained overnight to be provided with basic personal hygiene products (paragraph 36);
- all persons held for 24 hours or more in police custody to be offered, as far as possible, outdoor exercise every day (paragraph 37);
- the Polish authorities to take steps to ensure that juveniles held in police establishments for children are able to wear appropriate daytime clothing (including for outdoor exercise) (paragraph 41);
- the Polish authorities to take steps to implement, without further delay, the CPT's long-standing recommendation that all juveniles detained in police establishments be offered at least one hour of outdoor exercise per day (paragraph 43).

comments

- closed-circuit video surveillance should not replace the regular inspection of cells by custodial staff (paragraph 38).

requests for information

- the state of play regarding the renovation work to be carried out at Będzin Police establishment for children (paragraph 40).

Detention of foreign nationals under aliens legislation

Preliminary remarks

recommendations

- every effort to be made to avoid resorting to the deprivation of liberty of minors in detention centres for foreigners. (paragraph 48).

comments

- it would be desirable for the policy of not holding unaccompanied minors at the Guarded Centres in Biała Podlaska and Lesznowola to be followed in all guarded centres in Poland (paragraph 48).

III-treatment

recommendation

- Border Guard officers at the Guarded Centre and Deportation Arrest Centre in Biała Podlaska and the Airport Deportation Arrest Centre in Warsaw to be reminded that disrespectful behaviour (including racist remarks) is unacceptable and will be punished accordingly (paragraph 49).

Conditions of detention

recommendations

- the mattresses at the Guarded Centre and the Deportation Arrest Centre in Biała Podlaska to be replaced (paragraph 50);
- foreign nationals who are obliged to stay overnight in the holding facility in the transit area of Warsaw International Airport to be provided with personal hygiene products (paragraph 53);
- the provision of food in guarded centres/deportation arrest centres to be reviewed, in the light of the remarks in paragraph 54 (paragraph 54);

- steps to be taken to ensure that:
 - all foreign nationals held in the Warsaw Airport Deportation Arrest Centre are offered at least one hour of outdoor exercise per day;
 - at the Lesznowola Guarded Centre, children are provided with activities suited to their age and adult detainees are offered a range of purposeful activities;
 - detainees held at the Biała Podlaska Deportation Arrest Centre are allowed to move freely within the detention area during the day;
 - all foreign nationals held at the Biała Podlaska Deportation Arrest Centre and the Airport Deportation Arrest Centre in Warsaw have access to television and are provided with board games and reading material (in the most frequently spoken foreign languages)
(paragraph 57).

comments

- some parts of the male detention area at the Airport Deportation Arrest Centre in Warsaw were in need of refurbishment (paragraph 52);
- detainees' access to the toilet at night should be reviewed at the Biała Podlaska Deportation Arrest Centre and the Airport Deportation Arrest Centre in Warsaw and any shortcomings found remedied; the same should be done as regards the provision of warm clothing in winter at the Biała Podlaska Deportation Arrest Centre (paragraph 55).

requests for information

- the Polish authorities' views on the monitoring of detainees on a 24-hour basis within the detention rooms at the Deportation Arrest Centre in Biała Podlaska (paragraph 56).

Health care

recommendations

- the necessary steps to be taken to ensure that in all guarded centres/deportation arrest centres:
 - there is nursing cover by a qualified nurse, not only during the week but also at weekends;
 - a psychologist is present on a regular basis;
 - newly-admitted detainees are systematically screened for transmissible diseases (including tuberculosis);
 - whenever doctors are unable to communicate with detainees during medical examinations/consultations due to language problems, the persons concerned benefit from the services of a qualified interpreter;

- the record drawn up after a medical examination of a detainee, whether newly-arrived or not, contains:
 - (i) a full account of the objective medical findings based on a thorough examination;
 - (ii) a full account of statements made by the detainee concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;
 - (iii) the doctor's conclusions in the light of (i) and (ii). In his/her conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings;
- any foreign national whose deportation is not carried out successfully, due to the resistance from the person concerned, is medically examined upon returning to a Border Guard establishment;
- 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 the sight of police officers; detainees' files should not be accessible to non-medical staff but should be the responsibility of the doctor
(paragraph 66).

Staff

comments

- the Polish authorities are encouraged to provide specialised training to all Border Guard officers working in direct contact with immigration detainees. It would also be desirable for designated officers to receive language training in the most frequently spoken foreign languages (paragraph 68).

Safeguards and information for immigration detainees

recommendations

- the Polish authorities to pursue as a matter of priority the plans to establish a legal counselling service in guarded centres/deportation arrest centres, in order to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals, these services should be provided free of charge (paragraph 71);
- the Polish authorities to take the necessary measures to ensure that foreign nationals who are held in the holding facility of an international airport and request to meet a lawyer are effectively able to do so (paragraph 72);
- the deficiencies observed in the transit zone of Warsaw International Airport as regards the provision of rights' forms and the recording of placement in the holding facility to be remedied (paragraph 73).

comments

- it would be desirable for foreign nationals to receive a written translation in their own language of the conclusions of decisions regarding their detention/expulsion, as well as of information on the modalities and deadlines for appealing against such decisions (paragraph 71).

Other issues

recommendations

- the Polish authorities to review their policy as regards the use of pepper sprays in Border Guard establishments, in the light of the remarks in paragraph 77 (paragraph 77);
- the hand-held stun devices found at the Biała Podlaska Guarded Centre to be withdrawn from the armoury of the Centre (as well from any other Guarded Centres which have been supplied with such weapons), (paragraph 78);
- steps to be taken to ensure that all vehicles of law enforcement agencies which are used for the transportation of detained persons are equipped with appropriate safety devices (paragraph 80).

comments

- the Polish authorities are invited to consider the possibility of allowing indigent foreign nationals to make at least one telephone call per month free of charge (paragraph 74);
- the management of detention centres for foreigners are encouraged to provide, as far as possible, areas free from passive smoking (which is known to have negative consequences for health) to all detainees who request this (paragraph 75).

requests for information

- the Polish authorities' comments on the use of potentially lethal force in situations where immigration detainees attempt to escape (paragraph 79).

Prison establishments

Preliminary remarks

recommendations

- the Polish authorities to revise as soon as possible the norms fixed by legislation for living space per prisoner, ensuring that they provide for at least 4 m² per inmate in multi-occupancy cells (paragraph 83);
- the Polish authorities to step up their efforts to develop the programmes of activities for sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (paragraph 84);
- the Polish authorities to take the necessary steps to separate young prisoners from adults (paragraph 85);
- the Polish authorities to revise the relevant legislation regarding the treatment of sex offenders taking into account the remarks in paragraph 87. 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 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, but be administered to selected individuals based on an individual assessment. (paragraph 87).

comments

- the Polish authorities are encouraged to pursue their endeavours to combat prison overcrowding and, in so doing, to be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (paragraph 83).

requests for information

- the practical modalities surrounding the entry into force of the new legislation concerning compulsory pharmacological treatment of sex offenders (paragraph 86).

III-treatment

recommendations

- the management of Poznań Remand Prison to deliver to staff the clear message that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions (paragraph 88).

Prisoners classified as "dangerous" ("N" status)

recommendations

- steps to be taken to:
 - remedy the deficiencies observed in the cells of the "N" unit at Poznań Remand Prison as regards access to natural light and ventilation;
 - verify the ventilation in the cells of the "N" unit at Racibórz Prison;
 - render the outdoor exercise area at Poznań Remand Prison less oppressive and allow direct access to sunlight;
 - equip the exercise yards at the three establishments visited with some protection against inclement weather (paragraph 90);
- the Polish authorities to review the regime applied to "N" status prisoners and to develop individual plans aimed at providing appropriate mental and physical stimulation to prisoners (paragraph 91);
- immediate steps to be taken to improve the activities available to "N" status prisoners at Rawicz Prison (paragraph 91);
- the Polish authorities to review current practice with a view to ensuring that "N" status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category (paragraph 92);
- the practice at Poznań Remand Prison of conducting staff interviews with "N" status prisoners through a cage-like structure to be stopped (paragraph 93);
- strip-searches to be conducted only on the basis of a concrete suspicion and in an appropriate setting, and to be carried out in a manner respectful of human dignity (paragraph 94).

Material conditions of detention

recommendations

- steps to be taken at Poznań Remand Prison to:
 - further reduce the cell occupancy rates, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells;
 - refurbish Block A so as to remedy the deficiencies described in paragraph 97 (including as regards showers and toilets);
 - improve access to natural light and the artificial lighting in Blocks A and C. The design of the cell windows should be reviewed so as to allow inmates to see outside their cells (paragraph 99);
- steps to be taken at Racibórz Prison to:
 - further reduce the cell occupancy rates, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells;
 - remedy the deficiencies observed as regards access to natural light and artificial lighting and ventilation in the cells;
 - renovate the in-cell sanitary facilities; (paragraph 103);
- steps to be taken, at Rawicz Prison, to further reduce the cell occupancy rates, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells. The remainder of the prisoner accommodation should be refurbished, including the in-cell sanitary facilities of Block A. The in-cell toilets in Block C should be equipped with a partition (paragraph 106).

comments

- the Polish authorities are invited to verify the quality of food provided to inmates at Poznań Remand Prison, in the light of the remarks in paragraph 98 (paragraph 99);
- the Polish authorities are invited to verify the quality and quantity of food provided to prisoners at Racibórz Prison, in the light of the remarks in paragraph 102 (paragraph 103);
- the Polish authorities are invited to consider increasing the frequency of showers for inmates, in the light of Rule 19.4 of the revised European Prison Rules (paragraph 107).

Activities

recommendations

- strenuous efforts to be made to develop the programme of activities for remand and sentenced prisoners at Poznań Remand Prison and Racibórz Prison. The aim should be to ensure that both categories of prisoners are able to spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (paragraph 112);
- efforts to be made to ensure that all prisoners, including working prisoners, at Racibórz and Rawicz prisons can benefit from outdoor exercise (paragraph 112);
- steps to be taken to enable working prisoners of the semi-open unit of Racibórz Prison to borrow books from the library (paragraph 112);
- if the establishments visited were to continue to hold juveniles, the necessary arrangements to be made to enable them to follow a regime appropriate to their age group (paragraph 113);
- the outdoor exercise yard at Poznań Remand Prison to be enlarged and steps to be taken to avoid the yards becoming waterlogged at Racibórz Prison when it rains. Further, the yards of each of the three prisons visited should be equipped with shelters against inclement weather (paragraph 114).

The therapeutic units

recommendations

- steps to be taken to improve the state of repair and cleanliness of the cells in the therapeutic unit at Racibórz Prison (paragraph 115).

comments

- the approach followed at Rawicz Prison, consisting of engaging inmates referred to the therapeutic unit in programmes and activities, should be adopted at the national level to ensure consistency in developing appropriate programmes (paragraph 117).

Health care

recommendations

- steps to be taken at Racibórz Prison to fill the vacant post of general practitioner and ensure that someone qualified to provide first aid, preferably a person with a recognised nursing qualification, is always present in the prison (paragraph 118);
- measures to be taken to ensure that all newly arrived prisoners are seen by a member of the health-care team (either a doctor or a fully qualified nurse reporting to a doctor) within 24 hours of their arrival (paragraph 121);

- the medical record drawn up after the medical screening of a newly-arrived prisoner to contain:
 - (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment),
 - (ii) a full account of objective medical findings based on a thorough examination, and
 - (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings (paragraph 122);
- the results of every examination, including the above-mentioned statements and the doctor's conclusions, to be made available without delay to the prisoner and his lawyer (paragraph 122);
- steps to be taken to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (whether on arrival or at a later stage of his detention) or which, even in the absence of an allegation, are indicative of ill-treatment, the record is systematically brought to the attention of the relevant prosecutor (paragraph 122);
- a "register of traumatic lesions" to be kept by the health-care service of each penitentiary establishment (paragraph 122);
- steps to be taken to bring practice as regards prisoners' medical examinations in line with the considerations in paragraph 123. If necessary, the law should be amended accordingly (paragraph 123);
- the Polish authorities to abandon the policy of routine application of means of restraint to "N" status prisoners during medical consultations (paragraph 124);
- the Polish authorities to develop and implement a comprehensive policy for the provision of care to prisoners with drug-related problems (paragraph 125);
- steps to be taken to ensure that an individualised approach is followed as regards inmates' clothing in the hospital wards at Poznań Prison Hospital (paragraph 128);
- an end to be put to the practice in the psychiatric ward at Poznań Prison Hospital of conducting interviews and medical procedures through bars (paragraph 131);
- steps to be taken in the psychiatric ward at Poznań Prison Hospital to set-up individual treatment plans for patients based on a broader range of therapeutic, rehabilitative and recreational activities. This implies the recruitment of an appropriate number of corresponding staff (paragraph 132);
- all persons accommodated in a prison psychiatric ward to be offered, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious and secure setting (paragraph 132);
- steps to be taken to ensure that the principles concerning means of restraint outlined in paragraph 135 are applied in the psychiatric ward of Poznań Prison Hospital as well as in all other prison psychiatric wards in Poland (paragraph 135).

comments

- consideration should be given to increasing the hours of attendance of the psychiatrist at Racibórz and Rawicz Prisons (paragraph 118);
- the Polish authorities are invited to re-organise the system of medical consultations at Poznań Remand Prison and Racibórz Prison (paragraph 119);
- the Polish authorities are invited to provide a more congenial and personalised environment in the psychiatric ward at Poznań Prison Hospital; in particular, the current oppressive design of the patients rooms should be reviewed with a view to creating an accommodation structure which preserves the dignity of the patient (paragraph 131).

Other issues

recommendations

- the Polish authorities to review the arrangements concerning contact with the outside world for remand prisoners, taking into consideration the remarks in paragraph 138 and Rules 24.1 and 99 of the European Prison Rules (paragraph 138);
- the rules governing disciplinary sanctions to be revised, in the light of the remarks in paragraph 140 (paragraph 140);
- all disciplinary cells measuring less than 6 m² to be either enlarged or taken out of service. In addition, access to natural light should be improved in the cells at Racibórz Prison (paragraph 141);
- existing regulations and practice concerning the role of prison doctors in relation to disciplinary matters to be reviewed. In so doing, regard should be had to the European Prison Rules and the comments made by the CPT in paragraph 53 of its 15th General Report (paragraph 142);
- steps to be taken to review the resort to means of restraint at Racibórz Prison and, if necessary, in other Polish prisons, in the light of the remarks in paragraph 144 (paragraph 144);
- the security cells at Rawicz Prison to be either enlarged or taken out of service (paragraph 145);

comments

- it would be desirable for sentenced prisoners to be entitled to at least one visit per week (paragraph 136);
- the Polish authorities are invited to introduce a visit booking system at Poznań Remand Prison, and to add at least one weekend day to the schedule of visits at Racibórz Prison (paragraph 137);
- the objective should be to offer remand prisoners a visit every week of at least one hour's duration (paragraph 138);

- the Polish authorities are invited to introduce a system in each establishment for recording all types of disciplinary sanctions (paragraph 139);
- the remarks and recommendations made in paragraph 77 concerning the use of pepper spray apply equally to prison establishments (paragraph 144).

requests for information

- the Polish authorities' comments on the delays in providing answers to prisoners' complaints (paragraph 146).

Social welfare and psychiatric establishments

Living conditions

recommendations

- steps to be taken by the management of the Bytom Social Care Home to ensure that all residents suffering from physical impairments receive the necessary assistance so that they can effectively benefit from at least one hour of outdoor exercise per day (if their state of health permits) (paragraph 152).

requests for information

- the state of play as regards the renovation of the Bytom Social Care Home (paragraph 151).

Means of restraint

recommendations

- a register for the use of means of restraint to be established at the Bytom Social Care Home (paragraph 155);
- the use of mechanical restraints to be reviewed at Lubliniec Psychiatric Hospital, in the light of the remarks in paragraph 158 (paragraph 158);
- the Ordinance of the Minister of Health and Social Assistance of 23 August 1995 on the "Methods of Application of Restraints" to be amended, taking into consideration the remarks in paragraph 159 (paragraph 159).

Safeguards

recommendations

- steps to be taken to ensure that all residents who are placed in a social welfare home on an involuntary basis, as well as their guardians, are systematically notified in writing of the court decision and are informed, in writing and verbally, of the reasons for the decision and the avenues/deadlines for lodging an appeal against that decision (paragraph 164);
- the relevant legislation to be amended with a view to establishing an automatic review, at regular intervals, by an independent body of the need for a continuation of involuntary placement (paragraph 165);
- steps to be taken at the Bytom Social Care Home and, where appropriate, in other social welfare institutions in Poland, to ensure that all residents who are not or no longer able to give a valid consent to their placement, do not have a guardian and are prevented from leaving the establishment, are notified to the competent court (paragraph 166);
- the Polish authorities to strive to find alternative solutions which would better guarantee the independence and impartiality of guardians (paragraph 167);
- guardianship courts to be encouraged to adopt a more active approach as regards talking to residents during the inspection of social welfare institutions (paragraph 168).

requests for information

- clarification as to whether persons to be admitted to social welfare homes are heard in person by the judge during involuntary placement procedures (paragraph 164).

APPENDIX II

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

A. National authorities

Ministry of Justice

Mr Krzysztof KWIATKOWSKI	Minister of Justice
Mr Stanisław CHMIELEWSKI	Secretary of State
Mr Igor DZIALUK	Under-secretary of State
Mr Kajetan DUBIEL	Director General of the Prison Service
Mr Leszek MARKUSZEWSKI	Director of the Bureau of Health, Prison Service
Mr Piotr KULA	Department of Execution of Judgements and Probation
Mr Grażyna SRANEK	Legislative Department
Mrs Anna ADAMIAK Prosecutor	Liaison Officer of the CPT

Ministry of Interior and Administration

Mr Piotr STACHAŃCZYK	Under-secretary of State
Mr Andrzej MATEJUK	Inspector general, Police Headquarters
Mr Michał CZESZEJKO-SOCHACKI	Director of the Bureau of Prevention
Mrs Krystyna GĘSIK	Inspection Bureau, Police Headquarters
Mrs Agata FURGAŁA	Deputy Director of the Department of Analysis and Supervision
Mr Marcin WYDRA	Plenipotentiary of Human Rights, Police Headquarters
Mr Tomasz PEST	Deputy Director of the Border Guards
Mr Andrzej JÓŹWIAK	Representative of the Chief of the Department of Human Rights, Border Guards

Ministry of Health

Mr Marek HABER	Undersecretary of State
Mrs Barbara KOZŁOWSKA	Spokesman for Patients' Rights
Mr Wojciech KLOSINŚKI	Deputy Director of the Department of Public Health
Mr Kuba SĘKOWSKI	Head of the Office of Psychiatry and Social Pathology
Mrs Magdalena KOZŁOWSKA	Specialist at the Office of Psychiatry and Social Pathology

Ministry of Labour and Social Policy

Mrs Jolanta ŁUKASIK
Mrs Anna PREKURAT

Head of the Office Welfare Services
Deputy Director of the Department of
Social Assistance and Integration

Office of the Commissioner for Civil Rights Protection

Mr Janusz ZAGÓRSKI
Mrs Ewa DAWIDZIUK

Director of the Criminal Executive Law Department
Acting Deputy Director of the Criminal Executive Law
Department

B. Non-governmental organisations

Association for Legal Intervention
"Klinika 42"
Polish Helsinki Foundation

C. International organisations

Office of the UNHCR in Warsaw