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

**from 16 to 28 September 2004**

The Government of Serbia and Montenegro has requested the publication of this report and of its interim response. The Government's response is set out in document CPT/Inf (2006) 19.

Strasbourg, 18 May 2006



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

Strasbourg, 18 April 2005

Dear Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Government of Serbia and Montenegro drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) following its visit to Serbia and Montenegro from 16 to 28 September 2004. The report was adopted by the CPT at its 56<sup>th</sup> meeting, held from 7 to 11 March 2005.

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 authorities of Serbia and Montenegro:

- i. to provide **within six months** an interim response giving details of how it is intended to implement the recommendations and, as the case may be, providing an account of action already taken (N.B. the Committee has indicated the urgency of certain of its recommendations);
- ii. to provide **within twelve months** a follow-up response providing a full account of action taken to implement the recommendations.

The CPT trusts that it will also be possible for the authorities of Serbia and Montenegro to provide, in the above-mentioned interim response, reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.

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

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

Yours faithfully,

Silvia CASALE  
President of the European Committee for the  
prevention of torture and inhuman  
or degrading treatment or punishment

**Mr Petar LADJEVIĆ**  
Adviser to the Minister  
Ministry of Human and Minority Rights  
Belgrade  
Serbia and Montenegro



## PREFACE

The European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) has considered it appropriate to begin the first of its reports to each State by setting out some of the Committee's salient features. This should prove particularly helpful in differentiating the basis and aims of the CPT from those of another Council of Europe supervisory body within the field of human rights, the European Court of Human Rights.

Unlike the Court, the CPT is not a judicial body empowered to settle legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims *ex post facto*).

The CPT is first and foremost a mechanism designed to **prevent ill-treatment from occurring**, although it may also in special cases intervene after the event.

Consequently, whereas the Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the UN General Assembly).

The CPT's activities are based on the concept of co-operation (Article 3 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment). The CPT's task is not to publicly criticise States, but rather to assist them in finding ways to strengthen the "*cordon sanitaire*" that separates acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following three principles:

- i) that the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- ii) that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- iii) that ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it and ultimately prejudicial to the national authorities in general.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular, it:

- i) examines the general conditions in the establishments visited;
- ii) observes the attitude of law enforcement officials and other staff towards persons deprived of their liberty;
- iii) interviews persons deprived of their liberty in order to understand how they perceive (i) and (ii) and hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard, it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, it recommends measures designed to prevent the possible occurrence of treatment that is contrary to what would reasonably be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions, the CPT has the right to avail itself of legal standards contained not only in the European Convention on Human Rights but also in a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case law of judicial or quasi-judicial bodies acting in the same field, but may use it as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries.

To sum up, the principal differences between the CPT and the European Court of Human Rights are:

- i) the Court has as its primary goal to ascertain whether breaches of the European Convention on Human Rights have occurred. By contrast, the CPT's task is to prevent abuses, whether physical or mental, of persons deprived of their liberty from occurring; it has its eyes on the future rather than the past;
- ii) the Court has substantive treaty provisions to apply and interpret. The CPT is not bound by substantive treaty provisions, although it may refer to a number of treaties, other international instruments and the case law formulated thereunder;
- iii) given the nature of its functions, the Court consists of lawyers specialising in the field of human rights. The CPT consists not only of such lawyers but also of medical doctors, experts in penitentiary questions, criminologists, etc;
- iv) the Court only intervenes after having been petitioned through applications from individuals or States. The CPT intervenes *ex officio* through periodic or ad hoc visits;
- v) the activities of the Court culminate in a legally binding finding as to whether a State has breached its obligations under a treaty. The CPT's findings result in a report, and, if necessary, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to comply with the CPT's recommendations, the Committee may issue a public statement on the matter.

## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Serbia and Montenegro from 16 to 28 September 2004. The visit formed part of the CPT's programme of periodic visits for 2004, and was the first visit to Serbia and Montenegro to be carried out by the Committee.

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

- Mauro PALMA (Head of the delegation)
- Renate KICKER
- Ann-Marie ORLER.

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

- Fabrice KELLENS, Head of Unit
- Edo KORLJAN

and assisted by:

- Dan DERMENGIU, Doctor, Head of Forensic Medicine Department, Medical Faculty "Carol Davila", Bucharest, Romania (expert)
- Zdeněk HÁJEK, Lawyer, former 2nd Vice-President of the CPT, Prague, Czech Republic (expert)
- Pétur HAUSSON, Psychiatrist, former member of the CPT, Head of the psychiatric department at Reykjalundur Rehabilitation Centre, Iceland (expert)
- Clive MEUX, Consultant forensic psychiatrist, Oxford, United Kingdom (expert)
- Danica KRALJEVIĆ (interpreter)
- Zorica NENADOVIĆ-SAVIĆ (interpreter)
- Ksenija NIKČEVIĆ (interpreter)
- Spomenka NINČIĆ-ŠOĆ (interpreter)
- Biljana OBRADOVIĆ-VUJNOVIĆ (interpreter)
- Petrit SARACINI (interpreter).

**B. Establishments visited**

3. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of Defence of Serbia and Montenegro

Penal and Correctional Military Prison, Niš

Military barracks "Bubanjski heroji", Niš

Military barracks "Pantelej", Niš

Establishments under the authority of the Ministry of the Interior of Serbia

29 November Street Police Station, Belgrade

Palilula Police Station, Belgrade

Voždovac Police Station, Belgrade

Vračar Police Station, Belgrade

Zvezdara Police Station, Belgrade

Reception Centre for Foreigners, Padinska Skela

Bujanovac Police Station

Niš Central Police Station

Preševo Police Station

Establishments under the authority of the Ministry of the Interior of Montenegro

Podgorica Police Department

Bar Police Station

Budva Police Station

Establishments under the authority of the Ministry of Justice of Serbia

Belgrade District Prison

Belgrade Prison Hospital

Sremska Mitrovica Penitentiary Reformatory

Establishments under the authority of the Ministry of Justice of Montenegro

Spuž Prison Complex

Establishments under the authority of the Ministry of Health of Serbia

"Laza Lazarević" Psychiatric Hospital

Establishments under the authority of the Ministry of Health of Montenegro

Dobrota Special Psychiatric Hospital, Kotor.

The delegation also carried out a short visit to Belgrade County Prison, to interview foreign nationals detained pursuant to the aliens legislation.

### C. Context of the visit

4. On 28 February 2003, the Republics of Serbia and Montenegro adopted the text of the Constitutional Charter of the State Union of Serbia and Montenegro, restructuring the former Federal Republic of Yugoslavia. The Charter on Human and Minority Rights and Civil Liberties (hereinafter "The Human Rights Charter", Official Gazette of Serbia and Montenegro, No.6/2003) is an integral part of this document. According to these instruments (Article 9(1) of the Constitutional Charter and Article 2(3) of the Human Rights Charter), the two member States regulate, ensure and protect human rights on their territories, while the State Union monitors their implementation and guarantees the protection of human rights if the member States fail to do so. In addition, the Constitutional Charter provides that member States must harmonise all the laws of the State Union and the member States by the end of 2003.

5. At the time of the CPT's visit in September 2004, the legal framework in Serbia and Montenegro was in a state of flux, with approximately 200 draft laws pending before the Parliaments of the State Union and of the two Republics. The Constitutional Charter provides for its direct implementation, thereby overcoming the problem of discrepancies between the existing norms and the Human Rights Charter. Article 64 of the Constitutional Charter also provides that the laws of the Federal Republic of Yugoslavia governing the affairs other than those of Serbia and Montenegro "shall be enforced as the laws of the member states, pending the adoption of the new regulations by the member states [...]". More generally, the State Union of Serbia and Montenegro is bound by the international human rights treaties ratified by its predecessors, the former Socialist Federative Republic of Yugoslavia (SFRY) and the Federal Republic of Yugoslavia (FRY). Those treaties have primacy over the laws of the State Union and its member States.

6. Functions and powers relating to deprivation of liberty have been assigned to the two Republics (with the notable exceptions of detention by military authorities and immigration detainees). At the time of the CPT's visit, each Republic had a separate police, prison, and health-care system, and was applying a different legal framework in those fields. After a series of major armed conflicts in former Yugoslavia, the international involvement in Serbia and Montenegro continued to be substantial in the field of judicial and legal reform, the development of the law enforcement agencies to meet internationally recognised standards, and prison and aliens legislation reform.

7. During the 2004 visit, the CPT's delegation did not visit places of deprivation of liberty in Kosovo.<sup>1</sup>

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<sup>1</sup> Prior to the ratification of the Convention by Serbia and Montenegro, consultations took place with a view to ensuring the application of the Convention throughout the territory of Serbia and Montenegro, including Kosovo (which is currently under interim international administration). The CPT made clear its wish to pursue its mandate in Kosovo; however, the Committee also stressed that it must enjoy there – as elsewhere – all the rights and powers it holds under the Convention, including access to all places of deprivation of liberty. On 30 June 2004, the Committee of Ministers approved the text of an Agreement (cf. <http://www.cpt.coe.int/documents/scg/2004-08-23-eng.htm>) between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Convention, and the Agreement was signed in Pristina on 23 August 2004 by the Head of UNMIK and the Secretary General of the Council of Europe. Under the Agreement, the CPT enjoys access to any place within Kosovo where persons are deprived of their liberty by an authority of UNMIK, under exactly the same conditions as those laid down in the Convention. Before the CPT can commence its activities in Kosovo, similar arrangements of a binding nature must be concluded with the North Atlantic Treaty Organisation (NATO) on the subject of places of detention in Kosovo administered by KFOR. At the time of the finalisation of this report, consultations were underway with NATO on this subject.

**D. Consultations held by the CPT's delegation**

8. In the course of the visit, the delegation held discussions at the State Union level with Mr Rasim LJAJIĆ, Minister for Human and Minority Rights, his deputy Ms Jelena MARKOVIĆ, and Mr Prvoslav DAVINIĆ, Minister of Defence.

The delegation also met numerous officials at the level of the two Republics. In Serbia, it met Mr Zoran STOJKOVIĆ, Minister of Justice, Mr Tomica MILOSAVLJEVIĆ, Minister of Health, Mr Vladimir BOŽOVIĆ, Assistant Minister of the Interior and Inspector General of the Ministry, and Mr Miloš JANKOVIĆ, Head of Department for Execution of Criminal Sanctions in the Ministry of Justice. In Montenegro, the delegation met Mr Dragan DJUROVIĆ, Vice-President of the Government and Minister of the Interior, Mr Željko ŠTURANOVIĆ, Minister of Justice, and Mr Miodrag PAVLIČIĆ, Minister of Health.

9. The CPT also wishes to express its appreciation for the assistance provided before, during and after the visit, by the CPT's liaison officer Mr Petar LADJEVIĆ, from the Ministry of Human and Minority Rights of the State Union of Serbia and Montenegro.

10. A complete list of the authorities and non-governmental organisations with which the delegation held consultations is set out in Appendix II to this report.

**E. Cooperation between the CPT and the authorities of Serbia and Montenegro**

11. The CPT's delegation received very good cooperation at the State Union level, at the governmental level of the two Republics and, with one notable exception in each Republic, at the local level. The establishments visited had been informed in advance by the national authorities of a possible visit by the CPT and had at least some knowledge of its mandate.

12. The first of the above-mentioned exceptions concerns the facilities of the *Serbian Security and Information Agency (BIA) in Niš and Preševo*, where the delegation was refused access<sup>2</sup>. Such a denial of access represents a serious breach of the core provisions of the Convention. The Head of Delegation subsequently met the CPT's liaison officer, requesting that specific information concerning the BIA's mandate and activities, in particular as regards deprivation of liberty, be provided in writing to the delegation during the visit. In his letter dated 24 September 2004, the Director of the BIA informed the delegation that "staff of this Agency had not detained a single person in 2004" and that "they would use the facilities of the Ministry of the Interior for such a purpose". The delegation noted that the Director of the BIA did not exclude the possibility of members of the BIA depriving persons of their liberty. The delegation reminded the national authorities that the CPT's mandate covers all places of deprivation of liberty, including those where "informative talks" are carried out or any other premises used for interrogation purposes, and indicated that the information provided to the delegation prior to its visit did not meet the requirements of Article 8, paragraph 2 (d), of the Convention.

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<sup>2</sup> And this despite the fact that members of the delegation indicated on several occasions during the information seminar on the CPT, organised with the competent authorities in Belgrade in early September 2004, that agencies such as the BIA could fall under the Committee's scrutiny.



13. At the end of the visit, on 28 September 2004, the CPT's delegation requested the authorities of Serbia and Montenegro to provide within one month comprehensive information on the legal basis authorising members of the BIA to deprive persons of their liberty, and of all relevant information relating to deprivation of liberty by the BIA (such as notification of custody, access to a lawyer, maximum length of interrogation). The CPT has taken note of the response given by the authorities in their letter of 16 November 2004, as well as of the concern expressed by the Director of the BIA over the fact that the CPT's delegation was denied access to the premises of the BIA in Niš and Preševo and of the measures proposed to avoid any repetition of such a situation.

14. The second exception concerns the behaviour displayed by some police officers (in particular, the Head of the establishment) during the delegation's visit to *Bar Police Station* in Montenegro. On several occasions, the police officers concerned displayed a blatant lack of cooperation: access to the detention facilities was unnecessarily delayed; access to the adjacent interview and storage rooms was initially refused; the delegation was deliberately and persistently misinformed as regards the number of persons detained in the station; attempts were made to conceal the presence of non-standard and unlabelled objects (such as three baseball bats and a wooden stick) in offices used by police inspectors for interrogations.

15. The CPT trusts that additional efforts will be made with a view to ensuring that all relevant officials, including those working at local level, receive detailed information on the Committee's mandate and their obligations vis-à-vis visiting delegations.

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

16. At the end of the visit, on 28 September 2004, the CPT's delegation held final talks with the authorities of Serbia and Montenegro, in order to acquaint them with the main facts found during the visit. On this occasion, the delegation made two immediate observations in pursuance of Article 8, paragraph 5, of the Convention, which were subsequently confirmed by a letter of the President of the CPT dated 14 October 2004. The authorities were requested to:

- (1) immediately remove the padlocks and chains used for restraining patients at Belgrade Prison Hospital and to inform the CPT within one month of the measures taken to ensure that proper methods for safe restraint are used, when necessary;
- (2) immediately take out of service the disciplinary cells in Unit C at the Spuž Closed Correctional Facility and to inform the CPT within one month of the measures taken to ensure that the disciplinary sanction of cellular confinement is served in appropriate accommodation.

By letters of 16 November 2004 and 4 February 2005, the authorities of Serbia and Montenegro informed the CPT of the measures taken in the response to the above-mentioned observations. These responses will be assessed later in the report (cf. paragraphs 152, 153 and 288).



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

### PART 1: ESTABLISHMENTS UNDER THE AUTHORITY OF THE STATE UNION OF SERBIA AND MONTENEGRO

17. During the 2004 visit, the CPT's delegation visited establishments under the authority of the Ministry of Defence used to deprive persons of their liberty. According to Article 66 of the Constitutional Charter, "the competence of military courts, military prosecutors and military attorneys" should have been transferred to the authorities of the member states. However, the military justice system in respect of criminal matters was apparently still functioning at the time of the visit. **The CPT would like to receive the comments of the authorities on this matter.**

18. The delegation visited the only military prison in Serbia and Montenegro, the Penal and Correctional Military Prison in Niš. It also visited two military detention units in Niš, the "Bubanjski heroji" and "Pantelej" military barracks, where military staff serve disciplinary punishments.

It should be said at the outset that the delegation heard no allegations of ill-treatment of persons detained by the military forces. The atmosphere in the establishments visited was relaxed.

19. *Niš Penal and Correctional Military Prison* accommodates officers and non-commissioned officers (NCO) sentenced for up to two years and remand prisoners for up to six months. The guiding principle is that these officers remained linked with their military profession, to which they would return after their sentences served; longer sentences are served in civilian prisons. Civilians who commit criminal offences against the armed forces might also serve their sentences in this establishment.

At the time of the visit, the prison was accommodating 11 prisoners (3 officers and 8 NCOs) and one conscript on remand. The prison was operating well below its official capacity of 145 places (120 sentenced and 25 remand prisoners). It had also been used to accommodate civilian prisoners detained during the "Operation Saber" (cf. paragraph 36 below); **the CPT would like to be informed of the legal basis for transfers of civilian prisoners to military institutions.**

20. The material conditions were in general far better than those observed in civilian prisons in Serbia and Montenegro (cf. chapters 2B and 3B below). The three officers and the eight NCOs were held in spacious dormitories, which were clean, well-lit (including access to natural light) and well-ventilated. However, in the remand part of the establishment, ventilation and access to natural light were poor, although the artificial lighting was adequate. This section had 9 cells (8 for remand prisoners and one disciplinary cell); all were of an adequate size for the number of persons they were intended to accommodate.

The CPT noted that sentenced inmates enjoyed a low degree of constraint while serving their sentences. They wore their uniforms and worked within Niš Garrison until 2 p.m. Once back in the prison, they were not locked in their dormitories in the afternoon and enjoyed generous out-of-cell time, including participation in various activities (physical education, military courses). Further, their contact with the outside world posed no problem.

21. The regime for remand prisoners was much stricter. According to the Regulations, they were allowed to have outdoor exercise for only two hours per day in a cage-like yard equipped solely with two benches. No other activities were offered, apart from the occasional opportunity to watch TV in a communal room or read out-of-date newspapers. Visits, correspondence and phone calls of such prisoners had to be authorised by the relevant military investigative judge. **The CPT recommends that the authorities develop a proper regime of activities for prisoners held on remand at this establishment.**

22. Medical care was available around the clock at Niš Military Hospital. All newly-arrived prisoners (both sentenced and on remand<sup>3</sup>) were subject to a medical check-up on admission. If there was a need for in-patient treatment, prisoners were transferred to Niš or Belgrade Military Hospitals. In addition, it was possible to organise visits from a psychologist.

However, medical examinations were usually performed in the presence of military police staff. Similarly, medical files were accessible to non-medical staff, as they were an integral part of the individual file. **The CPT recommends that steps be taken to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of custodial staff. The relevant regulation should be amended accordingly.** Moreover, **non-medical staff should not have access to medical files.**

23. Both sentenced and remand prisoners could complain to the persons/bodies authorised by the Ministry of Defence to inspect the military prisons (without the officials of the establishment being present). In addition, the President of the Niš Military Court is required to visit the prison at least once per week.

24. As already indicated, the delegation also visited "*Bubanjski heroji*" and "*Pantelej*" military barracks, where military personnel (officers, soldiers, students of military schools, etc.) serve their disciplinary punishments of military detention. All such punishments can be appealed within three days of the pronouncement of the punishment; the appeal has a suspensive effect.

25. At "Bubanjski heroji" military barracks, the detention area consisted of a single cell, measuring 15 m<sup>2</sup>, and furnished with two bunk beds. It had good access to natural light and ventilation, **but the bedding was poor**. No one was being detained at the time of the visit.

"Pantelej" military barracks had one room measuring approximately 22m<sup>2</sup>, which was furnished with four beds. It provided good material conditions (clean bedding, good access to natural and artificial lighting, central heating, etc.). This detention facility had not been used since 1999.

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<sup>3</sup> Remand prisoners also had the possibility of being examined by a doctor of their choice, at their own expense, in the presence of a military doctor (Article 19, "Regulation on the execution of remand imprisonment for criminal offences under the competency of the military courts", Official Gazette of the Federal Republic of Yugoslavia, No. 11/95).

**PART 2: ESTABLISHMENTS UNDER THE AUTHORITY OF THE REPUBLIC OF SERBIA**

**A. Establishments under the authority of the Ministry of the Interior**

**1. Preliminary remarks**

26. In recent times, the police in Serbia has undergone significant changes and the international community has been closely involved in the monitoring, advising, and training of law enforcement agencies.

The legal framework has also been considerably changed to bring it into line with international and European standards. At the time of the visit, the authorities were in the process of drafting a new Law on the Police and a new Criminal Code. **The CPT would like to receive the texts of these laws, once they are adopted.**

27. The prohibition of torture and other forms of ill-treatment is set out in the Human Rights Charter: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (Article 12) and "the arrested person shall be treated humanely and with respect for his personal dignity. Any violence against the arrested person and the extortion of evidence shall in particular be prohibited" (Article 14). Equally, the Constitution of Serbia prohibits torture (Article 26 (2)).

28. In Serbia, police custody in criminal matters is limited to a maximum of 48 hours; within that period, detainees have to be either brought before a court or released.<sup>4</sup> The police "shall immediately, and at the latest within a term of two hours, render a ruling on provisional confinement and serve it on the confined person" (Article 229 (2) of the Code of Criminal Procedure). Article 229 (3) stipulates that an appeal can be submitted by the person concerned against his/her detention and the investigating judge is bound to decide on the appeal within four hours of its receipt.

Article 226 of the Code of Criminal Procedure also allows police to summon people for questioning as witnesses for up to four hours. If, in the course of questioning, a person becomes a suspect likely to be charged, the investigating judge can grant the police an additional 8 hours of detention for the purpose of gathering evidence.

29. The Serbian Act on Misdemeanours ("Official Gazette" of the Republic of Serbia No. 44/89) permits detention by the police for up to 24 hours in order to establish someone's identity, in a case where the offender does not have a permanent residence.

According to Article 188 of the same Act, a judge may order detention for up to 12 hours of a person brought before him for having committed a petty offence under the influence of alcohol.

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<sup>4</sup> "[...] Any apprehended person shall be brought before the competent court promptly, no longer than within 48 hours. Otherwise, he/she shall be discharged [...]" (Article 15 of the Human Rights Charter).

## 2. Torture and other forms of ill-treatment

30. The CPT delegation heard numerous allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police throughout Serbia. In this context, persons of Roma origin, as well as juveniles, were particularly exposed. Some of the allegations concerned ill-treatment at the time of or immediately following apprehension, whereas others related to ill-treatment during police questioning and, more particularly, during interrogation by officers of the criminal police.

Many detainees interviewed by the delegation alleged that they had been slapped, punched, kicked or beaten with batons during police custody. A certain number of persons interviewed by the delegation alleged that they had been beaten with baseball bats, while forced to wear bullet-proof vests in order to prevent their injuries becoming visible. Some others alleged that they had been handcuffed to a radiator for several hours in painfully contorted positions. A number of allegations received included recent accounts of: beating on the palms of the hands; beating on the soles of the feet (a practice known as "falaka"); placing a plastic bag over the detainee's head to cause temporary asphyxiation; the infliction of electric shocks on different parts of the body, including the genitals; sleep deprivation for prolonged periods; being forced to eat salt without being offered water to drink for the whole day. The ill-treatment alleged was in several cases of such a severity that it could well be considered to amount to torture.

31. In certain of the above cases, the delegation gathered medical evidence which was consistent with the allegations of physical ill-treatment received.

The following examples may be cited:

i) a detainee interviewed at 29 November Street Police Station in Belgrade alleged that he had been handcuffed to a metal locker for six hours and severely beaten by a number of police officers on the previous day.

An examination by a medical member of the delegation revealed multiple recent traumatic injuries consistent with repeated blows with a blunt object:

- a red bruise measuring 1.5 x 1 cm on the right side of the forehead (3cm lateral from the medio-frontal line);
- a red bruise measuring 3 x 1.5 cm on the right temporal area;
- a linear red bruise measuring 1.3 x 0.3 cm on the right sub-orbital area;
- a red bruised area measuring 7 x 2 cm on the left side of the forehead (parallel to the left eyebrow);
- a red bruise measuring 5 x 1 cm on the left cheek (the left mandibular angle);
- a large (25 x 17 cm) red-violet bruised area on the left posterior thorax;
- a linear red bruise 6 x 0.4 cm between the left shoulder blade and the vertebral column.

ii) a detainee interviewed at the same establishment alleged that, the previous day, he had been beaten on the palms of the hands with a rubber baton during his interview by officers of the criminal police. On examination by a medical member of the delegation, his palms and fingers were found to be moderately swollen. In addition, dark bluish-red streak intradermal haemorrhages were observed on the palmar aspect of the distal phalanx of the left index finger.

32. In almost all of the police stations visited in Belgrade, the delegation found baseball bats and other non-standard and unlabelled objects (such as metal bars or wooden sticks) in offices used for interrogation purposes. This lends further credibility to the allegations received that persons deprived of their liberty by the police had been beaten with such objects.

33. The delegation also received a number of allegations of threats and similar forms of inadmissible psychological pressure by police officers (by way of example, several persons recently detained by the police alleged that officers had pointed guns at them in order to extract confessions). It would appear that nationals of other former Yugoslav republics, members of national minorities and Roma were particularly targeted in this context. In addition, Roma detainees were apparently also exposed to racist verbal abuse.

34. The information at the CPT's disposal suggests that persons suspected of a criminal offence run a significant risk of being ill-treated by the police in Serbia at the time of their apprehension and during the first hours of police custody, and that on occasion such persons may be subject to severe ill-treatment (or even torture). The number and severity of allegations of police ill-treatment received and documented by the delegation calls for urgent action by the national authorities; senior officials did not contest that the ill-treatment of persons deprived of their liberty by the police represents a serious problem in Serbia. Constant vigilance will be required if the absolute prohibition of torture and inhuman or degrading treatment is to be upheld.

**The CPT recommends that the relevant national authorities, as well as senior police officers, regularly instruct police officers that ill-treatment will not be tolerated, that all information regarding possible ill-treatment will be investigated and that perpetrators of such treatment will be subjected to severe sanctions. It is particularly important that this be made clear to officers of the criminal police.**

**The CPT also recommends that any non-standard issue objects (such as those described in paragraph 32) be immediately removed from all police premises where persons may be held or questioned. Any such items seized during criminal investigations should be entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated property store.**

35. As regards more specifically the allegations of ill-treatment at the time of apprehension, the CPT fully recognises that the apprehension of a suspect is often a hazardous task, in particular if the person concerned resists and/or the police have reason to believe that the person might be armed and dangerous. The circumstances of an apprehension may be such that injuries are sustained by the person concerned (and possibly also by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when apprehending a suspect. Furthermore, once apprehended persons have been brought under control, there can never be any justification for their being struck.

**The CPT recommends that police officers be reminded of these principles in an appropriate manner.**

36. The delegation received numerous allegations of physical ill-treatment which could be considered to amount to torture relating to "*Operation Saber*", conducted during the state of emergency rule in March and April 2003 (after the assassination of the Prime Minister, Mr Djindjić). It would appear that human rights violations of persons detained by the police were widespread during that period, when police officers were granted more extensive powers and the judicial control of detention was postponed for 30 days. Some of the provisions of the Order declaring the state of emergency were later found unconstitutional and invalidated by the Constitutional Court of Serbia. According to the information provided by senior Serbian officials, a number of criminal cases of alleged ill-treatment by the police during "*Operation Saber*" were pending before the courts. **The CPT would like to receive comprehensive information on the state of the proceedings in the court cases mentioned above.**

In this context, it should be recalled that there can never be any derogation from the prohibition of torture and inhuman or degrading treatment or punishment, not even under a state of emergency (cf. Article 15 of the European Convention on Human Rights, as well as Article 6 of the Human Rights Charter).

37. Later in this report, the CPT will recommend some strengthening of formal safeguards against the ill-treatment of persons detained by the police (see paragraphs 45 to 60). However, it should be emphasised that legal and other technical safeguards - while important - will never be sufficient; the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by police officers. This implies strict selection criteria at the time of recruitment of such staff and the provision of adequate professional training.

38. As regards the latter, the Serbian authorities should seek to integrate human rights concepts into practical professional training for handling high-risk situations, such as the interrogation of criminal suspects. This will prove more effective than separate courses on human rights. Training should be pursued at all levels of the police service, and should be ongoing. It should seek to put across and develop two points: firstly, that all forms of ill-treatment are an affront to the human dignity of both the victim and the perpetrator and, as such, are incompatible with the values enshrined in national legal instruments as well as in international instruments ratified by and binding upon Serbia; secondly, that resort to ill-treatment is a fundamentally-flawed method of obtaining evidence for combating crime. More advanced interrogation and investigation techniques will lead to more reliable results.



Particular attention should be given to training in the art of handling, and more especially of speaking to, persons in police custody, i.e. interpersonal communication skills. The possession of such skills will often enable police officers to defuse situations which might otherwise become violent. Consequently, **the CPT recommends:**

- **that a very high priority be given to professional training for police officers of all ranks and categories, including in modern investigation techniques. Experts not belonging to the police should be involved in this training;**
- **that an aptitude for interpersonal communication be a major factor in the process of recruiting police officers and that, during the training of such officers, considerable emphasis be placed on acquiring and developing interpersonal communication skills.**

39. Another effective means of preventing ill-treatment by police officers lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong dissuasive effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in police custody will quickly come to believe that they can do so with impunity. Disciplinary and criminal proceedings against police officers who ill-treat persons in their custody, initiated by the newly-created institution of the Inspectorate General, represent first steps in the right direction.

In addition to the request already formulated concerning the court cases relating to “Operation Saber” (cf. paragraph 36 above), **the CPT requests the Serbian authorities to supply the following information in respect of 2003 and 2004:**

- **the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings which were initiated as a result;**
- **a detailed account of the specific criminal/disciplinary sanctions imposed following complaints of ill-treatment.**

**The Committee would also like to receive detailed information on police complaints and disciplinary procedures, including as regards the procedural safeguards aimed at ensuring their objectivity.**

40. It is also essential that the competent authorities give due attention to all information regarding possible ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint. In the light of the delegation’s findings, it is clear that public prosecutors and/or relevant judicial authorities should supervise more closely the activities of the police. They should be alert to any signs of ill-treatment and take appropriate action. Moreover, the absence of marks should not be regarded, in itself, as evidence that ill-treatment has not occurred; indeed, if carried out expertly, many forms of ill-treatment leave only ephemeral traces, if any.

The CPT recommends that, whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.

### 3. Conditions of detention

#### a. introduction

41. Custody by the police in Serbia is, in principle, of relatively short duration. Consequently, physical conditions of detention cannot be expected to be as good in police establishments as in other places of detention where persons may be held for lengthy periods. However, certain elementary material requirements should be met.

All police cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy access to natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in police custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

Persons held for extended periods (24 hours or more) should be provided with appropriate personal hygiene items and, as far as possible, be offered outdoor exercise every day.

#### b. situation in the establishments visited

42. Material conditions of detention were of a very poor quality in all police establishments visited in Serbia. The Inspector General of the Ministry of the Interior confirmed to the delegation that this state of affairs prevailed throughout the country.

43. At Bujanovac Police Station, four persons had recently been held together (for 26 hours) in a 2.8 m<sup>2</sup> cell which had no access to natural light, no heating or means of ventilation, and was equipped only with a wooden bench. In the CPT's view, cells of such a size should only be used for very short periods of time (i.e. one or two hours) and never for overnight stays. Further, even cells used to hold persons for a very short period should have adequate lighting, heating and ventilation.

Detention facilities located in the basement of Niš Central Police Station had very poor ventilation, virtually no access to natural light and no heating. Further, persons detained overnight were obliged to spend the night sitting on a wooden bench.

29 November Street Police Station in Belgrade had six cells, each measuring some 6 m<sup>2</sup>. This is of an adequate size for an overnight stay by one person. However, the cells were only equipped with a wooden bench, had insufficient access to natural light, and were poorly ventilated and cold. Further, the sanitary facilities were in a deplorable state of cleanliness.

In none of the police establishments visited were detainees' receiving blankets or mattresses for the night; nor did they receive anything to eat, unless family members/friends brought food to the police station.

It was also apparently not uncommon for criminal suspects (including juveniles) to be held in offices and corridors for up to 24 hours (and, on occasion, even longer), sometimes handcuffed to radiators or other items of furniture for periods of hours.

**44. The CPT recommends that the authorities carry out a full-scale review of arrangements for the holding of criminal suspects on police premises, in the light of the criteria set out in paragraph 41 and the remarks made in paragraph 43.**

**Immediate measures should be taken in order to:**

- **provide persons in police custody with food at appropriate intervals (which implies that budgetary means must exist for providing food to persons not in a position to pay for it themselves), including at least one full meal (i.e. something more substantial than a sandwich) every day;**
- **provide a mattress and blankets to persons kept in custody overnight;**
- **ensure that corridors or offices are not used as ad hoc detention facilities and that persons detained on police premises are not left handcuffed to radiators or items of furniture. Detained persons should be accommodated in rooms/cells designed specifically for that purpose, offering appropriate security conditions.**

#### 4. Safeguards against the ill-treatment of persons deprived of their liberty

##### a. introduction

45. The CPT attaches particular importance to three rights for persons deprived of their liberty by the police:

- the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice;
- the right of access to a lawyer;
- the right of access to a doctor.

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of their deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police). These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons deprived of their liberty (e.g. persons placed in administrative detention, persons detained under the aliens' legislation, etc.). Furthermore, persons detained by the police should be expressly informed, without delay and in a language they understand, of all their rights, including those referred to above.

46. The delegation spent considerable time examining the fundamental safeguards offered to persons deprived of their liberty by the police in Serbia. In principle, the current legislative situation is rather favourable, as the above-mentioned safeguards are provided for in the Code of Criminal Procedure. However, their practical implementation leaves a lot to be desired.

##### b. notification of custody

47. Despite the explicit provisions of Article 14 of the Human Rights Charter ("Everyone who is arrested shall have the right to inform promptly thereof the person of his choosing") and the similar provisions of Article 5 (5) of the Code of Criminal Procedure and Point 19 of the Regulation on police ethics and the manner of conducting police duties of the Ministry of the Interior of Serbia (No. 2537/2003 of 15 April 2003), the CPT's delegation met a certain number of persons (including juveniles) recently detained by the police, who claimed that their right to inform a relative or a third party of their situation had not been granted from the very outset of their deprivation of liberty. It would appear that this right often became effective only during the first formal questioning by a police investigator.

**The CPT recommends that the Serbian authorities take appropriate steps to ensure that the right to notify a close relative/third party of the fact of one's detention is rendered fully effective in practice, as from the very outset of deprivation of liberty.**

48. The CPT recognises that the exercise of the above-mentioned right may have to be made subject to certain exceptions designed to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or of a prosecutor). **The CPT would like to receive detailed information on the present status of Serbian legislation in this regard.**

c. access to a lawyer

49. According to Article 5 (2) of the Code of Criminal Procedure, persons detained by the police have the right "to have a defence counsel of their choice". Similarly, Article 14 of the Human Rights Charter stipulates that "the arrested person shall be informed promptly that he has the right not to make any statements and the right to have a defence lawyer of his own choosing present during the hearing". However, both provisions fail to mention the exact time when this right becomes effective.

The delegation found that many persons apprehended by the police did not have access to a lawyer during the initial period of police custody. Further, several allegations were received that persons in police custody had been beaten when they asked for a lawyer, or that access to a lawyer had been made conditional upon a prior confession. The CPT was particularly concerned to learn that juveniles had alleged that they had been denied access to a lawyer, even though they had specifically requested one.

It should also be noted that persons summoned as witnesses and persons detained under the Misdemeanours Acts do not, at present, enjoy the right of access to a lawyer.

**The CPT recommends that the Serbian authorities take steps to ensure that the right of access to a lawyer for persons in police custody applies as from the very outset of their deprivation of liberty (and not only when they are formally questioned for the first time).**

**As regards juveniles, a lawyer should always be called when they are deprived of their liberty by the police and they should not be required to make any statement or sign any document related to an offence of which they are suspected without the lawyer being present.**

**More generally, anyone who is under a legal obligation to attend and stay at a police establishment (e.g. as a "witness" or a misdemeanour offender) should also be granted the right of access to a lawyer.**

50. For the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for one. Such a system does exist in Serbia, but its implementation left something to be desired. In many cases, lawyers appointed *ex officio* had no contact with the detained person until the first court hearing. It would appear that low fees had a discouraging effect in this respect.

**The CPT recommends that the system of legal aid in Serbia be reviewed, in order to ensure its effectiveness throughout the procedure, including at the initial stage of police custody.**

d. access to a doctor

51. Article 228, paragraph 7, of the Code of Criminal Procedure provides that "a person who is arrested...[shall have the right]... to demand at any time a medical examination by a doctor of their choice, and if such a doctor is unavailable, by a doctor selected by the arresting authority". Similarly, a police officer "guarding a detainee whose condition requires special care has a duty to inform the medical staff if this is necessary to protect the life and health of the inmate in question" and detained persons "should be examined by a doctor of their own choice, when possible" (Points 19 and 20, Regulation on police ethics and the manner of conducting police duties).

Regrettably, it became apparent during the 2004 visit that the right of access to a doctor for persons in police custody was not guaranteed in practice. Numerous detainees claimed that they had been refused access to a doctor while in police custody, despite their alleged need for medical assistance and their repeated requests for such assistance. In addition, the delegation met a number of persons whose health condition obviously required urgent medical attention, which had not been provided.

In the CPT's view, a doctor should be called without delay whenever a person in police custody requests a medical examination; it is not for police officers to filter requests made by a detained person to see a doctor.

**52. The CPT recommends that the right of access to a doctor for persons in police custody be fully implemented in practice, from the very outset of their deprivation of liberty.**

**The CPT further recommends that steps be taken to ensure that:**

- **a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);**
- **all medical examinations are conducted out of the hearing and, unless the doctor concerned expressly requests otherwise in a given case, out of the sight of police staff;**
- **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 detained person and his lawyer.**

e. information on rights

53. According to Article 5 the Code of Criminal Procedure and Articles 14 and 16 of the Human Rights Charter, persons detained by the police in Serbia have the right to be expressly informed, without delay and in language which they understand, of all their fundamental rights (except the right of access to a doctor). However, many of the detainees met by the delegation alleged that they had received no information - not even orally - on this subject.

In order to ensure that persons in police custody are duly informed of all of their rights (including that of access to a doctor), **the CPT recommends that a form setting out those rights in a straightforward manner be systematically given to such persons, at the very outset of their deprivation of liberty. The form should be available in an appropriate range of languages.**

Further, **the detained person should be asked to sign a statement attesting that he has been informed of his rights in a language which he understands.**

f. custody records

54. In all the establishments visited, a variety of registers were kept. The majority of them were poorly maintained, often lacked much of the information they were supposed to record and, on occasion, contained contradictory information. Further, the presence of persons in police custody was not always promptly recorded.

55. **The CPT recommends that steps be taken immediately to ensure that whenever a person is deprived of his liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay.**

Further, **the CPT considers that the fundamental safeguards of persons in police custody would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it** (time of and reason(s) for the deprivation of liberty; when the person arrived at the police station; when informed of rights; signs of injury, health problems, mental disorder etc; when offered food; when interrogated; contacts with and/or visits by next of kin, lawyer, doctor or consular official; when transferred; when brought before a public prosecutor; when remanded in custody or released, etc.). For certain matters (for example, the removal of personal effects, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. **The detained person's lawyer should have access to such a custody record.**

g. conduct of interrogations

56. The art of questioning suspects will always be based to a large extent on experience; nevertheless, the CPT considers that formal guidelines should exist on a number of specific points. The existence of such guidelines will, *inter alia*, help to underpin the lessons taught during police training. The fact that a number of the allegations of physical ill-treatment received related to the stage of police questioning and, more particularly, to interrogation by officers of the criminal police, confirms the pressing need for such guidelines.

The Code of Criminal Procedure has a general provision stipulating that the interrogation must be conducted in a way that "fully respects the personality of the defendant" (Article 89(8)), while the Regulation on police ethics and the manner of conducting police duties stipulates that additional guidelines should regulate in detail the process of interrogation (Point 6). As far as the CPT is aware, no such guidelines have yet been drawn up in Serbia.

**The CPT recommends that the Serbian authorities draw up a code of conduct for police interviews. The code should deal, *inter alia*, with the following: the systematic informing of the detained person of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; place(s) in which interviews may take place; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. The code should also provide for a systematic record to be kept of the times at which interviews start and end, the persons present during each interview, and any request made by the detained person during the interview and whether it was complied with. The position of particularly vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards.**

**As regards juveniles, the CPT recommends that steps be taken to ensure that an adult responsible for the interests of the juvenile (e.g. a relative or guardian) is present when the juvenile concerned is interviewed (cf. also paragraph 49).**

57. In Serbia, prisoners are occasionally returned to police establishments for further questioning. The CPT wishes to stress that, in principle, further questioning by police officers of persons committed to a remand prison should take place in prison rather than on police premises.

**The return of prisoners to police custody - for whatever purpose - should only be sought when it is absolutely unavoidable and be subject to the authorisation of the relevant prosecutor/judge.**



h. complaints and inspection procedures

58. Compliance with legal requirements and professional standards must be supervised by effective systems of control. The situation in all law enforcement establishments must be thoroughly checked at appropriate (and irregular) intervals. Officials carrying out those checks must examine all issues related to the treatment of persons in custody; those issues concern not only material conditions of detention but also questions such as the recording of detention, information on rights and the actual exercise of those rights (in particular the rights of access to a lawyer and to notify a relative of one's custody), and compliance with the rules governing the medical examination of persons in police custody. To explore these different issues in an effective manner will involve interviewing in private persons who are in detention.

59. The CPT's delegation was informed that the Inspectorate General of the Ministry of the Interior makes inspection visits to police establishments. In addition, the prosecuting/judicial authorities and the members of the Serbian Parliament's Commission for Security have the right to visit such establishments. **The CPT would like to receive comprehensive information on the frequency of those visits to police establishments in 2003 and 2004 and, as appropriate, on the action taken following those visits.**

60. The CPT's delegation was also informed that the Serbian authorities were drafting a Law on the Office of the Ombudsman. This institution would *inter alia* be entrusted with inspecting police establishments and dealing with complaints against the police. **The CPT would like to receive a copy of this law, once it is adopted.**

## 5. Reception Centre for Foreigners at Padinska Skela

### a. introduction

61. The legal status of foreigners, including asylum seekers, was still dealt with by the obsolete Movement and Sojourn of Foreigners Act (Official Gazette of SFRY, nos. 56/80, 53/85, 30/89, 26/90, 53/91, "Official Gazette" of FRY 24/94, 28/96).

Serbia and Montenegro is a State Party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The adoption of national legislation consistent with international norms and standards represents one of the accession commitments of this country to the Council of Europe. However, at the time of the visit, this commitment had not yet been met and Serbia and Montenegro remained the only country in the region lacking such legislation. The CPT's delegation was informed that the authorities had created a working group to draft the legislation in question; **the Committee would like to be informed of the progress made in this area.**

62. Asylum seekers who enter Serbia and Montenegro illegally and foreigners apprehended by the police without identification documents are routinely detained. After being screened by the police, the foreigners concerned are sentenced by the municipal courts to up to three weeks imprisonment for illegal entry and presence in the country, in accordance with the Law on Passage of the State Border and Movement in the Border Area (Official Gazette of SFRY No. 34/79, 56/80, 53/82, Official Gazette of FRY 24/94 and 28/96). Such sentences are served in local district prisons (together with offenders sentenced for misdemeanours). Illegal immigrants are afterwards detained in the Reception Centre for Foreigners at Padinska Skela pending their deportation. In accordance with an informal agreement between the national authorities and UNHCR<sup>5</sup>, asylum seekers are also transferred to the Centre, where they stay until the end of the refugee status determination procedure or, in the case of a rejected asylum claim, until a deportation order can be enforced.

63. The Reception Centre for Foreigners at Padinska Skela is a single-storey building, located within the perimeter of Belgrade County Prison, some 20 kilometres from Belgrade. The prison was providing medical care, food, water and electricity to the Centre. The delegation was informed that an agreement regulating the relationship between the two institutions was about to be concluded. **The CPT would like to receive a copy of that agreement, when signed.**

The establishment had been used for detaining foreign nationals since the 1980s. With an official capacity of 120 persons, it was accommodating 10 foreign nationals (including one woman) at the time of the visit. It is noteworthy that the establishment served the whole territory of the State Union, as there was no comparable institution in Montenegro.

Although the average stay in Padinska Skela was 5 days, detained persons could stay up to 6 months and, exceptionally, even longer (no time limit is provided by law for such a placement). Once placed in the centre, it would appear that foreign detainees (including asylum seekers) did not have the possibility of judicial review of their detention (or were ignorant of that possibility).

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<sup>5</sup> The UNHCR conducts the refugee status determination procedure on behalf of the authorities of the State Union, pending the adoption of the relevant legislation and procedures.

64. States have the sovereign right to protect their borders and to introduce measures controlling migration within their jurisdiction. Article 5 (1) (f) of the European Convention on Human Rights expressly permits "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition". However, the exercise of this right must be in accordance with a State's other international obligations, including those of a human rights nature falling under the CPT's mandate.

65. The current situation, in which the authorities routinely resort to administrative detention of foreigners pending deportation, unlimited in time and apparently not subject to judicial review, is clearly not in line with international standards. Deprivation of liberty under aliens legislation should only be resorted to after a careful and individual examination of each case and its continued need should be the subject of periodic reviews. Further, in the same way as any other form of detention, its lawfulness should be open to challenge before a judicial authority.

The fact that asylum seekers are routinely detained by the authorities of Serbia and Montenegro is of particular concern to the CPT<sup>6</sup>. In this context, the CPT recalls Article 31 of the 1951 Geneva Convention on the Status of Refugees which stipulates that: "no penalties shall be imposed on persons seeking international protection coming directly from a country of persecution on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

**The CPT recommends that the authorities take due account of the above remarks when drafting the new legislation referred to in paragraph 61.**

b. ill-treatment

66. No allegations of recent physical ill-treatment were heard at the Reception Centre. Staff/detainee relations were quite relaxed throughout the establishment; this was no doubt due in part to the fact that the staff, which comprised six immigration inspectors and two police officers, had some knowledge of foreign languages (cf., however, paragraph 73).

67. It would be in violation of the obligations flowing from the European Convention on Human Rights for any person to be returned to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment. However, at the time of the visit, persons arriving in Serbia and Montenegro did not have the opportunity to apply for refugee status at land and sea borders, and consequently might be in danger of being forcibly returned to their country of origin or a third country where they would be at risk.

**The CPT would like to receive confirmation that the prohibition of any such return is being complied with under current legislation and practice.**

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<sup>6</sup> Cf. also Recommendation N°1327 (1997) of the Parliamentary Assembly of the Council of Europe on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe, Council of Europe Committee of Ministers' Recommendation (2003) 5 on measures of detention of asylum seekers, as well as the Revised UNHCR Guidelines of 1999 on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers.

c. conditions of detention

68. Material conditions of detention at the Centre left something to be desired, which was scarcely surprising as no major repairs had been carried out in the past 20 years. Inmates were held in men's and women's sections, which were separated by a corridor with a locked entrance. There were seven dormitories in the women's section, which measured 22 m<sup>2</sup>. Five dormitories of the same size and three smaller ones were used for the men's accommodation. Even though the rooms concerned were only used for sleeping purposes, planned occupancy rates (e.g. 10 beds in a 22 m<sup>2</sup> dormitory) were far too high.

All dormitories enjoyed good access to natural light. However, they were sparsely furnished, their state of cleanliness was mediocre, and no personal lockable space was provided. A particular problem was posed by the deplorable state of the toilets and washbasins. The Director of the establishment indicated that painting, disinfection and refurbishment of the sanitary facilities would take place as a matter of priority. These projects should be implemented without further delay.

The dormitory doors were unlocked for much of the day (from 7.00 a.m. to 10.00 p.m., apart from the afternoon's rest, from 2.00 to 5.00 p.m.) and inmates spent most of their time in a large and well-lit communal room, one for men and one for women. However, the CPT is concerned that persons who could spend months at the Centre were not offered a proper programme of activities. They whiled away the day reading a few out-of-date magazines, watching TV (only one set was available in the whole Centre, offering only Serbian channels), occasionally washing a car or gardening, with nothing else to occupy their time.

**69. The CPT recommends that material conditions at the Padinska Skela Reception Centre be improved, in the light of the above remarks. Further, steps should be taken as a matter of priority to provide a better range of activities for foreign nationals held at the Centre; the longer the period for which persons are detained, the more developed should be the activities which are offered to them.**

70. The rules in force at the Centre granted inmates outdoor exercise, which was supposed to take place in a small outdoor area measuring some 120 m<sup>2</sup> and containing a covered patio with separate areas for male and female detainees. However, the delegation noticed on the day of its visit that the doors giving access to the outdoor exercise yard were padlocked. Further, it received allegations that access to outdoor exercise was far from regular. **The CPT recommends that steps be taken to ensure that detainees in the Centre do benefit from at least one hour of outdoor exercise every day.**

71. The majority of foreign nationals interviewed by the delegation indicated that the quantity of food offered was on the whole satisfactory. However, Muslim detainees alleged that their religious requirements and dietary habits were not taken into account and that, more particularly, pork was often on the menu. The delegation's visit to the establishment's kitchen confirmed the above-mentioned allegations. **The CPT recommends that the religious requirements and dietary habits of foreign nationals be taken into account.**

d. health care

72. The establishment did not have its own health-care staff. It relied in this respect on the adjacent prison, whose medical doctor and nurse examined foreign nationals. The prison's dental services were also available. However, no psychiatric/psychological support was guaranteed, and the delegation observed the presence in the Centre of a foreign national - apparently in a paranoid psychotic state - who was in need of such support.

Prison health-care staff interviewed by the delegation expressed their view that the Centre should benefit from its own general practitioner and nurse, who would, *inter alia*, be responsible for distributing medication (at present distributed by non-medical staff, on the doctor's written instructions). They also stressed the need for stronger psychiatric input.

Although current arrangements could be considered as adequate for the very low number of persons held at the Centre at the time of the visit, **the nursing staff resources should be significantly reinforced whenever the Centre operates closer to its official capacity. If this were the case, the authorities might usefully consider the idea of creating a separate health-care service within the establishment, consisting of a general practitioner and nurse. Particular attention should also be paid to the provision of psychiatric/psychological support.**

73. Further, health care staff expressed their frustration at examining patients with whom they had difficulties in communicating, due to language barriers. Foreign nationals indicated with gestures the aching part of their bodies, hoping that the problem would be understood. **The CPT wishes to emphasise that whenever members of the medical and/or nursing staff are unable to make a proper diagnosis because of language problems, they should be able to benefit without delay from the services of a qualified interpreter.**

74. The CPT was very concerned to note that newly-arrived foreign nationals were not systematically seen by the medical team on arrival. Such screening is essential to ensure that any injuries are recorded in good time, as well as in terms of preventive medicine (for example, to counter the spread of transmissible diseases). **The CPT recommends that steps be taken immediately to ensure that all new arrivals at Padinska Skela are systematically medically screened by a doctor, or a fully qualified nurse reporting to a doctor, within 24 hours of their arrival at the establishment.**

Further, at the time of the visit, there were no individual medical files. **The CPT recommends that such a medical file be established for each foreign national detained at the Centre, which should contain diagnostic information, as well as an ongoing record of the evolution of the person's health and of any special examinations he/she has undergone.**

e. information to foreign nationals

75. 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, to inform a person of their choice of their situation and to have access to a lawyer and a medical doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedures applicable to them.

76. The delegation noted that, upon arrival at the Centre, the internal rules were explained orally to the inmates. However, it heard numerous complaints from inmates concerning the lack of information from the immigration authorities about their legal situation and rights (including their right of access to a lawyer, the current stage of the procedure concerning them, the likely length of their detention, etc.). Not surprisingly, inmates often found the legal proceedings to which they were subject extremely difficult to understand.

**The CPT recommends that foreign nationals held at the Centre be systematically provided with a document explaining the procedures applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.**

In addition, **each detainee should be regularly updated on issues concerning his/her future.**

f. contact with the outside world

77. Foreign nationals held at the Centre were entitled to receive visits, and correspondence posed no problems.

78. A pay phone was available at the Centre and phone calls were possible for those detainees who could buy a phone card. **The Committee invites the authorities to explore the possibility of offering assistance to detainees who do not have the means to purchase a phone card.**

Mobile phones were systematically taken away by the authorities on arrival. The CPT wishes to recall that the persons concerned are neither convicted nor suspected of a criminal offence. Bearing this in mind, **the CPT invites the Serbian authorities to reconsider the policy of systematically taking away mobile phones.**

g. discipline/security

79. The only disciplinary sanction applied at the establishment was placement in isolation, for up to 10 days, in one of the isolation cells. Further, disciplinary procedures provided prisoners with the right to be heard on the subject of the offences allegedly committed.

However, there was no right to appeal to a higher authority against this sanction. In addition, there was no separate register for placement in isolation. **The CPT recommends that these shortcomings be rectified.**

h. other issues

80. The Director of the establishment was not in a position of authority vis-à-vis the security staff working there, who belonged to a different police unit. This state of affairs could certainly undermine the effective management of the Centre. **The CPT would like to receive the comments of the authorities on this issue.**

The delegation also noted that police officers were carrying both firearms and batons in a visible manner while performing their custodial duties within the Centre. In the CPT's opinion, to carry a firearm when working in direct contact with detainees potentially places both detainees and staff at risk. Further, to carry batons in a visible manner is clearly not conducive to the development of positive staff-inmate relations. **The CPT recommends that measures be taken to avoid such practices in the future.**

## **B. Establishments under the authority of the Ministry of Justice**

### **1. Preliminary remarks**

81. The prison system in Serbia was undergoing important changes at the time of the visit. The "Law on Execution of Criminal Sanctions" (hereinafter LECS), in force since 1 January 1998 (Official Gazette of the Republic of Serbia, No. 16/97), constituted the main legal instrument with regard to imprisonment. However, certain of its provisions are obsolete (i.e., those dealing with capital punishment) or incompatible with international standards. The authorities were preparing a new law, a draft of which was delivered to the delegation. It would appear that this text represents a step forward (i.e., it introduces the possibility of the judicial protection of prisoners' rights, parliamentary control of the prison system, etc.)<sup>7</sup>. The delegation was also informed that the authorities were preparing legislation establishing a special detention regime for those involved in organised crime. **The CPT would like to be informed of the precise schedule for the adoption of these laws and to receive copies, once they are adopted.**

82. Articles 12 and 14 of LECS foresee four types of prisons: open, semi-open, closed and strictly closed. A single establishment may contain a mixture of different regimes.

The CPT's delegation carried out full visits to Sremska Mitrovica Penitentiary Reformatory, Belgrade District Prison and Belgrade Prison Hospital.

*Sremska Mitrovica Penitentiary Reformatory* is the largest prison establishment in Serbia. Located some 70 kilometres west of Belgrade, it opened in 1895 and has been used as a prison ever since. Its surface extends to 670 hectares, including a variety of agricultural fields. At the time of the visit it was accommodating 1206 inmates, 61 on remand (among them 3 women) and 1145 male sentenced prisoners (of whom 154 were foreign nationals, the establishment being the only prison in Serbia holding foreign detainees sentenced for criminal offences). It has an open, a semi-open and a closed section; the delegation focussed its attention on the closed section, where 721 inmates were held.

*Belgrade District Prison* is a closed-type establishment located within the city centre, built in the early 1950s. At the time of the visit, it was accommodating 720 inmates: 41 were sentenced for up to one year, while the remaining 679 prisoners were being held on remand (including 9 juveniles and 26 female prisoners). The establishment was holding a number of high-profile inmates, including persons accused of war crimes and the assassination of Mr Djindjić. It is spread over three locations - the main establishment, the Special Detention Unit in Ustanička Street and the Palace of Justice cells. The delegation visited the first two locations.

The *Belgrade Prison Hospital* is the only establishment of its kind in Serbia. Located on the two top floors of Belgrade District Prison and on part of the ground floor, its purpose is to accommodate prisoners in need of in-patient somatic and psychiatric care as well as inmates sent for psychiatric assessment. At the time of the visit, it was accommodating 575 inmates, most of them in the psychiatric wards.

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<sup>7</sup> However, see paragraph 129.



## 2. Ill-treatment

83. At *Sremska Mitrovica Penitentiary Reformatory*, the CPT's delegation received a considerable number of allegations of physical ill-treatment by staff. Most of the allegations related to before 2004. Nevertheless, the delegation heard a number of recent allegations of slaps and kicks, as well as of verbal abuse, in particular of persons of Roma origin, foreign prisoners and members of national minorities in Serbia. In addition, a number of inmates alleged to have been formally warned that they would be beaten if caught asleep during the day.

Consultation of the newly-established "register of accidental injuries" showed that, in at least two cases, inmates who alleged that they had been physically ill treated by staff displayed injuries consistent with their allegations. Firstly, an inmate alleged that he was caught while trying to flee the establishment at the very end of July 2004, and received multiple baton blows after he had been brought under control. The above-mentioned register recorded violet bruises (measuring respectively 12 x 4 cm, 15 x 4 cm and 18 x 4 cm) on the left shoulder blade area. Another inmate, who was examined on 14 September 2004 by the establishment's medical doctor after alleging that he had been beaten by the Chief Guard, was found to display two violet bruises (measuring 6 x 3 cm and 4 x 3 cm) on the left shoulder blade, a violet bruise (measuring 5 x 4 cm) in the left popliteal fossa (back of the knee) and an abrasion with blood crust on the anterior middle third of the left leg. Apparently, no action had been taken by the authorities in reaction to these allegations (cf. also paragraph 85).

84. A large majority of the inmates held at *Belgrade District Prison* praised the manner in which they were treated by staff. Nevertheless, several allegations of physical ill-treatment of prisoners by staff (including in the female and juvenile sections) were received. In addition, allegations were heard to the effect that a number of newly-arrived prisoners were physically ill-treated during their first night at the prison.

85. The recent decrease in the number of allegations at both establishments visited coincided with the arrival of new Governors, and the CPT welcomes the fact that several prison officers who committed serious offences relating to ill-treatment had been dismissed. In their letter of 16 November 2004, the authorities stressed their awareness of the existence "of individual cases of physical abuse" and that they "are doing [their] best to eradicate altogether such cases, by initiating appropriate disciplinary procedures".

**In this connection, the CPT recommends that the authorities deliver the clear message to prison officers at Sremska Mitrovica Penitentiary Reformatory and Belgrade District Prison that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions.**

**They should also be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than is strictly necessary and that, once prisoners have been brought under control, there can be no justification for their being struck.**

**Further, the CPT would like to receive updated information on the action taken in relation to the two specific cases mentioned in paragraph 83.**

86. In order to obtain a nationwide view of the situation in prisons, **the CPT would like to receive the following information in respect of 2003 and 2004:**

- **the number of complaints lodged concerning ill-treatment by prison officers and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;**
- **a detailed account of disciplinary and/or criminal sanctions imposed following such complaints.**

87. The CPT's mandate is not limited to ill-treatment of persons deprived of their liberty which is inflicted or authorised by prison staff. It is also very concerned when it discovers a prison culture which is conducive to inter-prisoner intimidation/violence. In this context, the delegation found evidence of a high number of cases of such violence at Sremska Mitrovica, confirmed by different documents (medical records, register of accidental injuries, security logbooks, etc.) and, to a lesser extent, at Belgrade District Prison. In both establishments, medical records quite frequently contained accounts of injuries for which a prisoner could not (or did not want to) reveal their cause; in the CPT's experience, this is frequently a sign of inter-prisoner violence.

88. By way of example, in the already mentioned "register of accidental injuries" at Sremska Mitrovica, some 60 injuries had been recorded by the prison's medical staff since the beginning of 2004.

An entry on 9 January 2004 precisely indicates serious injuries which do not fit the pattern of accidental injuries, but suggest an assault: a violet bruise measuring 3 x 0.5 cm on the upper right eye lid; a violet bruise measuring 4 x 0.5 cm on the lower right eye lid; a violet bruise measuring 20 x 10 cm on the left hip; two parallel, vertical violet bruises measuring 25 x 4 cm on the anterior side of the left thigh; a violet bruise measuring 20 x 10 cm on the postero-lateral side of the left thigh; a violet bruise measuring 13 x 6 cm on the posterior side of the left shank; a violet bruise of 10 cm in diameter on the left knee; a violet bruise measuring 8 x 10 cm on the posterior thorax; a violet-red bruise measuring 8 x 10 cm on the anterior side of the right shoulder.

Another entry concerning a different inmate described pink haematomas in the scapular areas (top of the back) measuring 6 x 3 cm and 4 x 3 cm in the left fossa poplitea and a 2 x 3 cm scratch on the front of the left tibia. This inmate's injuries were ascribed by the doctor to another inmate, although the inmate refused to describe the circumstances of the event. In the most recent entry, relating to a prisoner examined two days before the CPT's visit, the register recorded yellow-brownish bruises under both eyes, both sides of the nose and the left side of the chin, down to the lips, the largest bruise measuring 5 x 3 cm. The inmate concerned also had a laceration and contusion on the right elbow. He claimed that he did not remember the origin of his injuries, but the doctor indicated that they were caused by another inmate.

Several cases of inmates being stabbed and hit with metal objects by co-inmates were also recorded.

89. As far as the delegation could ascertain, no action whatsoever had been taken by the prison authorities in any of these cases. The delegation was informed that a number of prisoners had themselves pressed criminal charges against other inmates, on account of the alleged assaults.

90. The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive manner to prevent violence by inmates against other inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence. **The CPT recommends that the authorities develop a comprehensive strategy aimed at combating the phenomenon of inter-prisoner violence throughout the Serbian prison system.**

91. Prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities. Medical members of the delegation noted that injuries inflicted on prisoners outside the prisons were diligently recorded on their arrival at Sremska Mitrovica Prison. However, there remained room for improvement in the establishments visited.

**The CPT recommends that the file drawn up after the medical examination of a prisoner - whether newly arrived or in transit - contain:**

- i) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment);**
- ii) a full account of objective medical findings based on a thorough examination;**
- iii) the doctor's conclusions in the light of i) and ii).**

**The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison.**

**In his conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; this will enable the relevant authorities and, in particular prosecutors, to properly assess the information set out in the record. In addition, if the prisoner so requests, the doctor should provide him/her with a certificate describing any injuries observed.**

Further, **the CPT recommends that existing procedures be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor and a preliminary investigation is initiated by him.**

92. The reports drawn up after the autopsies of inmates who died in the prisons visited were also found to be very superficial and were missing toxicological and/or histological analysis. **The CPT would like to receive the comments of the authorities on this issue.**

### **3. Material conditions**

#### a. introduction

93. According to Article 58 of the LECS, "accommodation premises for convicts must be sufficiently spacious to provide at least 8m<sup>3</sup> per person, and must be heated and appropriately lit. They must not be humid and ought to have sanitary facilities and other means of hygiene". Notwithstanding this provision, material conditions in all the establishments visited gave rise to concern. In fact, the prison estate as a whole was seriously affected by years of neglect and overcrowding.

94. Several prison establishments were under renovation during the visit, and important repairs were envisaged for a number of others in Serbia. Further, the authorities indicated that they would start a programme of prison construction, with a view to building prisons for juvenile and adult prisoners who committed the most serious crimes, including war crimes. In their letter to the CPT on 16 November 2004, they indicated that "they are trying to address this issue [of overcrowding] by allocating financial funds for the reconstruction and construction of new accommodation facilities... The project for constructing a new wing with a capacity of 450 people has already begun at the correctional institution at Požarevac-Zabela".

The CPT welcomes this development. However, it is unlikely that providing additional accommodation will, in itself, provide a lasting solution to the problem of overcrowding. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, in those countries which enjoy relatively uncrowded prison systems, the existence of policies to limit and/or modulate the number of persons being sent to prison has tended to be an important element in maintaining the prison population at a manageable level.

**The CPT recommends that the authorities take measures to develop and implement a comprehensive policy to combat prison overcrowding, in the light of the above comments and Recommendations R (80) 11, R (92) 17 and R (99) 22 of the Committee of Ministers of the Council of Europe.**

95. As regards more specifically the existing standard of 8 m<sup>3</sup> per prisoner, this does not offer a satisfactory amount of living space. **The CPT therefore recommends that the standard be raised to at least 4 m<sup>2</sup> per prisoner, and that official capacities and occupancy levels of cells and dormitories in Serbian prisons be revised accordingly.**

b. situation in the establishments visited

96. Sremska Mitrovica Penitentiary Reformatory was affected by overcrowding. By way of example, some 84 prisoners were held in each of the six large dormitories (measuring some 290 m<sup>2</sup>) in *Pavilion I*. The dormitories were frequently cleaned, freshly painted and fitted with big windows, allowing ample access to natural light and adequate ventilation. However, the heating system consisted of just one big radiator, and many inmates complained about the low temperature during winter. The toilet facilities located at the end of the dormitories were found to be in a very poor state of repair and cleanliness, and the shower facilities were dilapidated.

The CPT welcomes the information provided by the Serbian authorities in their letter of 16 November 2004 that they will "at the beginning of 2005...start with the improvement and partitioning off the collective rooms in which until now up to 80 people were accommodated. [The authorities] will also provide bathroom installations for every room in Wing I." **The Committee would like to be informed of progress in this respect.**

97. *Pavilion II* was accommodating 84 inmates at the time of the visit. Although material conditions were better than in *Pavilion I*, they still left something to be desired. The 9m<sup>2</sup> cells were equipped with a toilet and washbasin, and artificial lighting was good; however, **access to natural light was barely adequate** (the cells had non-transparent window panes).

The cells were being used to accommodate up to four prisoners; such an occupation rate is too high. **The CPT recommends that no more than two prisoners be accommodated in these cells.**

98. The conditions in the admission department (capacity: 74 prisoners), located in the renovated part of *Pavilion III*, were comparable to those in *Pavilion II*. The prison management indicated that material conditions of stay at *Pavilion I* could not be improved until *Pavilion III* was fully brought back into service. The CPT therefore welcomes the information provided by the authorities in their letter of 16 November 2004, confirming that the necessary funds to complete the renovation of *Pavilion III* had been secured.

Renovation of the prison kitchen, which at the time of the CPT's visit did not meet all sanitary and hygiene criteria, was also underway.

**The CPT would like to be informed of the progress of these renovation works.**

99. The overall state of repair of Belgrade District Prison left a lot to be desired. Despite the fact that attempts at improvement had been made over the years, the architectural shortcomings of the building hampered living and working conditions for both staff and inmates.<sup>8</sup> The neglected accommodation blocks were very damp and the only access to natural light, fresh air and heating was via the corridors. Inmates were obliged to rely on artificial lighting during the day; however, even this was not guaranteed, as power cuts were frequent. The antiquated ventilation system worked only when the supply of electricity permitted and was in any event so noisy that detainees preferred to have it switched off. Many allegations were heard to the effect that winters were very cold (and summers unbearably hot) in this establishment. To sum up, inmates spent their days locked in their cells, deprived of natural light and inhaling stale air.

100. Cells were overcrowded throughout the establishment - by way of example, six inmates were accommodated in cells measuring 15 m<sup>2</sup> and 14 inmates in cells measuring 35m<sup>2</sup>. In the female and juvenile units, 15 m<sup>2</sup> cells were accommodating up to four prisoners. In the CPT's opinion, **15 m<sup>2</sup> cells should not accommodate more than three prisoners, and 35m<sup>2</sup> cells not more than eight.**

101. Conditions of hygiene were unsatisfactory in all the unrenovated parts of the prison. There were two showers at the end of each corridor and one boiler (with a capacity of 80 litres) was supposed to provide sufficient quantities of water for 80-120 inmates. All sanitary facilities visited by the delegation were damp and dilapidated, and a number of them used for storing rubbish. **Urgent measures are required to improve the overall state of hygiene of these areas; in particular, rubbish should never be stored in sanitary facilities.**

102. As for the renovated unit, it also had several deficiencies. Each cell was provided with hot water and its own toilet and shower. However, in some of these cells, authorities had built a large window with bars overlooking the corridor, allowing better ventilation and heating, but restricting inmates' privacy (many of them indicated they felt as if they were in a cage in a zoo). In other cells, the windows were much smaller, and the problem was the reverse, as cells were claustrophobic and not adequately heated and ventilated. **These shortcomings should be avoided in further renovation works.**

103. The establishment's kitchen was situated in the basement, in the vicinity of the sewage and plumbing system, where it could pose a serious health risk. The CPT therefore welcomes the information provided by the authorities in their letter of 16 November 2004 "that the project of relocating the kitchen to adequate facilities has also been completed".

The delegation noted that a professional cook was employed to prepare food, and that fish and fruit were to be found on the menu more frequently at Belgrade District Prison. However, while acknowledging the change in quality, many inmates interviewed indicated that fresh vegetables and dairy products were still not available. **The CPT would like to receive the comments of the authorities on these complaints.**

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<sup>8</sup> The renovation work carried out in the Female Ward at Belgrade Prison Hospital, located in the same building, had remedied these shortcomings.

104. In the CPT's view, only a comprehensive and long-term programme of refurbishment of Belgrade District Prison could address the above-mentioned problems satisfactorily, as certain structural shortcomings of the prison cannot be modified without investing significant funds. **The CPT requests the authorities to provide detailed information on the ongoing renovation and its precise schedule.**

105. The material conditions of stay for the 66 inmates at the Special Unit of Belgrade District Prison were significantly better than in the main building. This unit accommodated different categories of prisoners, including war crimes suspects. Up to four prisoners were accommodated in 21 cells each measuring some 25m<sup>2</sup>; this constitutes satisfactory living space per prisoner. The cells were equipped with beds, a partitioned toilet, chairs and shelves providing storage space. Heating and artificial lighting were good.

However, access to natural light was poor, as the windows were covered with frosted glass; **the CPT recommends that this shortcoming be rectified.**

The delegation also visited the cells in the basement of this unit, which had not been used since 2003. In the CPT's opinion, conditions in this area are such as to render it unfit for use as prisoner accommodation. **The CPT would like to receive confirmation that these cells will not be used in the future to accommodate prisoners.**

106. None of the establishments visited provided the inmates with adequate quantities of essential personal hygiene products or with proper clothing. These could be bought in the prison shops, but many prisoners relied on their families and friends in this regard. The fact that indigent inmates, without family ties, could not obtain such products/clothing was another source of concern. **The CPT recommends that steps be taken to ensure that:**

- **all prisoners have adequate quantities of essential personal hygiene products and are able to take a hot shower at least once a week;**
- **prisoners who are unable to provide their own clothes are supplied with proper clothing by the prison authorities, taking weather conditions into account.**

#### 4. Activities

107. According to Article 76 of the LECS, a sentenced prisoner who is able to work has the right and duty to work. The purpose of this work is to enable him to obtain, maintain and increase his work capacities and professional knowledge. Further, an inmate is entitled to primary and secondary education (Article 97, *ibid*).

108. The delegation noted the variety of work opportunities offered to approximately 700 of the 1206 inmates in different sections of Sremska Mitrovica Penitentiary Reformatory (in woodwork, metalwork, cardboard production, printing and agricultural activities); however, only some 45% (320 out of 721) of the inmates in Pavilions I and II had been offered work. Inmates were unlocked until 19.00 hrs, free to associate together and watch TV in communal rooms. Moreover, there were ample sports opportunities (6 hours of football, volleyball and/or basketball per week).

Educational opportunities were nonexistent, despite the fact that approximately 10% of inmates were illiterate. The school had not been used since riots in 2000 (when it was badly damaged); at the time of the CPT's visit, part of it was used as a library. The establishment's cultural section involved a few inmates who painted and played musical instruments. The establishment did possess a multifunctional theatre, which also served as a cinema.

The CPT's delegation was informed that Sremska Mitrovica electromechanical school, which had offered education/vocational training to a number of inmates in the past, was about to restart its activities. The CPT welcomes this development. **It recommends that measures also be taken to renovate the prison school and to offer educational opportunities, in particular to illiterate prisoners.**

109. The organisation of a genuine regime of activities should also be based on the existence of a *classification system* for prisoners. The delegation noted that such a classification system is in force at Sremska Mitrovica Penitentiary Reformatory; however, it is apparently suffering from a number of deficiencies. On arrival at Sremska Mitrovica, an inmate is sent to the admission department (Pavilion III), for an observation period of up to 30 days. The observation and the subsequent classification are carried out by the classification team, consisting of a psychologist, a social worker, a pedagogue, an employment assistant, a doctor and a psychiatrist. However, many inmates interviewed by the delegation voiced their frustration over the fact that, in practice, the system was not comprehensible, and was subjected to numerous exceptions<sup>9</sup>. Further, many detainees complained that the regular review of their classification level was not properly carried out and that the criteria applied were unclear. To sum up, the system in place was perceived by the majority of prisoners as a source of injustice and possibly corrupt.

**The CPT recommends that the implementation of the classification system for prisoners at Sremska Mitrovica Penitentiary Reformatory be reviewed, in the light of the above comments.**

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<sup>9</sup> By way of example, some prisoners enjoying the lowest level of privileges were frequently granted prolonged family visits, while other inmates, in categories with a more relaxed regime, had such visit requests refused.



110. At Belgrade District Prison, there were hardly any organised activities. Only 7 out of 41 sentenced prisoners had work opportunities (3 in the kitchen and 4 in cardboard production), and a few had cleaning duties. The prison had only two educators, a state of affairs linked to the relatively small number of sentenced prisoners. Although a room had been designated for a prison library, it was not yet in use. Inmates did not have a TV or radio set, and could only read magazines. Their only regular out-of-cell activity was outdoor exercise, as no education or recreation/sport was available.

111. In their letter of 16 November 2004, the authorities indicated that "the past concept of employing the convicts for the purpose of making profit has been abandoned as outdated in favour of engaging convicts in work activities with the purpose of re-educating and re-socialising them. A variety of programmes and activities will be developed in order to employ as many convicts as possible". **The CPT would like to receive detailed information on the envisaged programme of activities for sentenced prisoners at Belgrade District Prison.**

As for the regime offered to remand prisoners, the CPT recognises that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates, poses particular challenges. However, it is not acceptable to leave prisoners to their own devices for months at a time. The aim should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

**The CPT recommends that measures be taken to ensure that all prisoners - including those on remand - do benefit from a regime similar to the one described above. Juveniles should be offered a regime of activities which takes into account their need for physical activity and intellectual stimulation. Further, all prisoners at Belgrade District Prison should be allowed to have at least a radio set.**

112. The requirement that prisoners be allowed at least one hour of outdoor exercise every day is a fundamental safeguard for all prisoners. Outdoor exercise facilities should be sufficiently large to enable prisoners to exert themselves physically and, preferably, should be equipped with a means of shelter from inclement weather.

Outdoor exercise at Sremska Mitrovica Penitentiary Reformatory posed no problem. However, at Belgrade District Prison, including the Special Unit, prisoners were only granted up to 30 minutes of outdoor exercise, five days per week, in three large courtyards, with no shelter. The short duration of the exercise appeared to be caused by insufficient staffing and a number of inmates who, due to the risk of collusion, had to exercise separately. **The CPT recommends that the authorities take immediate steps to ensure that all prisoners at Belgrade District Prison (as well as in other establishments throughout Serbia) are offered at least one hour of outdoor exercise every day, including at week-ends. The authorities should also strive to equip outdoor exercise facilities with a means of shelter from inclement weather.**

113. Particular mention should be made of the arrangements for outdoor exercise for juveniles at Belgrade District Prison. They had to walk in two circles, some 15 metres apart and were only allowed to speak in a low voice within the group to which they belonged. **The CPT recommends that this relic from the penitentiary past be abandoned forthwith.**

## 5. Staff issues

114. Until the beginning of the 1990s, there was a well-functioning training system for prison staff. Regrettably, at the time of the CPT's visit, no regular training was organized. After a year of service, newly recruited staff were obliged to undergo an examination of an almost exclusively theoretical nature, after which they would be confirmed in their posts. This state of affairs is not satisfactory; the proper running of the prison system, including the prevention of ill-treatment, depends for the most part on staff having received proper training. Immediately after the visit, the CPT was informed that the training of prison staff had been resumed. **The CPT recommends that the Serbian authorities give high priority to the development of prison staff training, both initial and ongoing.**

115. Belgrade District Prison faced serious problems with staffing levels in almost all services of the establishment (security, educators, health care, etc.). Its overall staff complement was 300 (including 149 prison officers, who were carrying out up to 70 transfers per day). In addition, a number of high-profile inmates required reinforced security measures. The CPT therefore welcomes the recent trend to increase the number of staff (15 persons had recently been recruited), while waiting for the outcome of the ongoing review of resources by the Ministry of Justice.

The Head of the Department for Execution of Criminal Sanctions informed the CPT's delegation that, in his view, staffing levels in resocialisation and health care services in the Serbian prison system should be doubled, while the number of custodial staff could usefully benefit from a 50% increase.

**The CPT recommends that steps be taken as a matter of urgency to increase the staff complement in the Serbian prison system, in the light of the above remarks.**

## 6. Health care

116. Health care services for persons deprived of their liberty is a subject of direct relevance to the CPT's mandate. An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates.

117. According to Article 353 of the LECS, the work of the prison hospital and health care services in prison is supervised by the Ministry of Health. The Minister of Health informed the delegation that health care services in all prisons in Serbia were inspected by the Ministry of Health's Inspection Unit in 2003 and 2004. **The CPT would like to receive the results of these inspections.**

118. The work of the health care staff in both prisons visited was severely hindered by very low staffing levels. At *Sremska Mitrovica Penitentiary Reformatory*, one medical doctor (present from 07.00-15.00 hrs), assisted by the part-time presence of another doctor for two hours per day, was expected to care for more than 1,200 inmates; he was doing everything he possibly could under adverse circumstances.

Fifteen female nurses and ten medical technicians (male nurses) ensured a 24 hour presence in the establishment and were in charge of the distribution of medication. The establishment also had a full-time dentist, present on weekdays from 07.00 to 15.00 hrs. Specialist care was provided by the Sremska Mitrovica Health Centre, or by Belgrade Prison Hospital; inmates experienced serious delays in obtaining such care. **The CPT recommends that resources in terms of doctors at Sremska Mitrovica be significantly increased; preferably, they should be the equivalent of at least three full-time doctors.**

One prisoner ("medical orderly") had been living in the medical unit for years and assisted nurses in their various tasks (paperwork on medical files, but occasionally also the distribution of medication). **The CPT recommends that steps be taken to ensure that prisoners do not have access to medical files and do not distribute medication.**

119. Health care staffing levels were also insufficient at *Belgrade District Prison*, especially as regards nursing staff. There were two full-time medical doctors, as well as three part-time doctors (a surgeon, neuropsychiatrist and a general practitioner). The services of a full-time dentist and a dental technician were also available. However, the prison had only five male nurses (medical technicians). The CPT therefore welcomes the authorities' decision to hire three additional medical technicians (cf. their letter of 16 November 2004). **The nursing complement should nevertheless be further increased.**

As in Sremska Mitrovica, access to specialist care was significantly delayed. The delegation was informed that the establishment had recently concluded a contract with the Military Academy Hospital in Belgrade for diagnostic measures and therapeutic treatment exceeding the scope of the Prison Hospital. Hopefully, the new arrangement will solve this pressing problem; **the CPT would like to be informed of its practical implementation. The Committee would also like to know if similar arrangements are under consideration for inmates of other establishments.**

120. In comparison with the general population, there is a high incidence of psychiatric symptoms among prisoners. Consequently, a doctor qualified in psychiatry should be attached to the health care service of each prison, and some of the nurses employed there should have had training in this field.

The situation in this respect was of great concern to the CPT. A psychiatrist visited only once (Belgrade District Prison) or twice (Sremska Mitrovica Penitentiary Reformatory) per week, which is clearly insufficient for the numbers of prisoners concerned. Health care staff at Sremska Mitrovica indicated as their main problem the presence of two schizophrenic patients, as well as of a number of patients with post-traumatic-stress disorder. The delegation also observed several inmates accommodated at Belgrade District Prison, including at the Special Detention Unit, who were in need of psychiatric care.

**The CPT recommends that the attendance hours of psychiatrists be significantly increased in both establishments.**

121. As regards health care facilities, *Sremska Mitrovica Penitentiary Reformatory* had an in-patient clinic, with a capacity of 34 patients, in a separate two-storey building. A typical room measured some 15 m<sup>2</sup> and was intended to accommodate four patients. Rooms enjoyed good access to natural light, were clean and well heated. However, the premises were poorly equipped, and badly in need of an X-ray machine.

The health care facility at *Belgrade District Prison* was so small that medical staff had difficulties even to store medical files. In addition, the medical equipment was out of date.

**The CPT recommends that the authorities improve the health care facilities at Sremska Mitrovica Penitentiary Reformatory and Belgrade District Prison, in the light of the above remarks. This should also include the provision of appropriate medical equipment.**

122. According to the Article 51 of the LECS, all newly arrived inmates should be seen by the doctor on admission. Regulations on house rules in district prisons (Article 9) stipulate that "immediately after admission, an inmate shall undergo a medical examination and his/her health condition shall be entered into the medical record, in accordance with law".

While performed promptly in Belgrade District Prison, medical screening on admission was carried out at Sremska Mitrovica only on Mondays for newly-arrived sentenced prisoners, and on Wednesdays for prisoners on remand. That would mean that a newly-arrived prisoner might not be seen by a member of the health-care service for almost one week.

**The CPT recommends that the authorities eliminate the delays in the medical screening of newly-admitted inmates at Sremska Mitrovica Penitentiary Reformatory (implementation of the recommendation in paragraph 118 should make this possible). Save for exceptional circumstances, the screening should be carried out on the day of admission, especially insofar as remand prisoners are concerned. Medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.**

123. Medical members of the delegation also observed that medical examinations on admission at Belgrade District Prison were very superficial. They consisted of a short interview, mostly about previous diseases, measurement of pulse and blood pressure. It is impossible to overemphasise the importance of proper medical screening of newly arrived prisoners, particularly in establishments which constitute points of entry to the prison system, such as Belgrade District Prison. Such screening is essential, in particular to prevent suicides and reduce the risk of the spread of transmissible diseases.

**The CPT recommends that steps be taken to ensure proper medical screening of newly arrived prisoners at Belgrade District Prison (and throughout the prison system), in light of the above remarks (cf. also paragraph 91 above).**

124. As far as the delegation could ascertain, medical confidentiality was generally respected at Belgrade District Prison; prisoners wishing to see a doctor informed prison officers without stating the reasons for their request. The main exception<sup>10</sup> concerned the Special Detention Unit, where a doctor apparently interviewed prisoners through the cell bars in the presence of custodial staff and fellow prisoners.

**The CPT recommends that an end be put to any such practice and that proper and confidential medical examinations be carried out.**

125. Prison officers were systematically present during medical examinations in Sremska Mitrovica; this practice had started after a violent episode during which an inmate had thrown a chair at the prison doctor. The CPT 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 officers being *systematically* present during such examinations; their presence is usually unnecessary from a security standpoint and detrimental for the establishment of a proper doctor/patient relationship. Alternative solutions - such as the installation of a call system - can and should be found to reconcile legitimate security concerns with the principle of medical confidentiality.

**The CPT recommends that steps be taken at Sremska Mitrovica (as well as, if appropriate, in other prison establishments in Serbia) to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers or fellow prisoners.**

126. The delegation was informed that at Belgrade District Prison, HIV positive prisoners were segregated "for their own protection". As a result, prison staff and other inmates knew their medical condition. There is no medical justification for the segregation of prisoners solely on the grounds that they are HIV positive; consequently, **the CPT recommends that an end be put to this practice.** Furthermore, **the serological status of such prisoners should be kept confidential.**

127. To sum up, health care services provided to inmates were generally of a low quality. Staffing levels were insufficient and medical equipment inadequate; further, access to specialist care and the quality of medical treatment offered were problematic. This state of affairs calls for urgent action and concerted efforts on the part of the authorities, particularly bearing in mind the inadequacies of the treatment offered by the Prison Hospital (cf. chapter 11 below). An integrated approach, involving prison health care services, the Prison Hospital, the Prison Administration and the Ministry of Health is badly needed. **The CPT recommends that the authorities develop and implement a comprehensive strategy in order to significantly improve the quality of health care offered to prisoners.**

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<sup>10</sup> A second exception relates to the conditions under which HIV positive prisoners were segregated at Belgrade District Prison. This issue is dealt with separately (cf. paragraph 126).

## **7. Discipline/Solitary confinement**

128. In Serbia, a sentenced inmate may be punished by a reprimand, suspension of privileges and/or commitment to solitary confinement for up to 15 days (30 days if more than one disciplinary offence has been committed).

The CPT noted that inmates facing disciplinary proceedings have the right to be heard. Further, disciplinary sanctions could be appealed (though an appeal has no suspensive effect). To sum up, the disciplinary procedures globally met the CPT's standards.

129. However, the CPT has serious concerns about the potential length of solitary confinement measures on disciplinary grounds. Article 122 of the LECS authorises a maximum period of six months per year.<sup>11</sup> In the CPT's view, the existing maximum period for solitary confinement on disciplinary grounds in relation to a given incident (up to 30 days) is already very high; under no circumstances should such a period of solitary confinement be prolonged without there being an interruption.

**The CPT recommends that appropriate amendments be made to the disciplinary regulations on this point.**

130. The execution of solitary confinement is regulated in detail by the Regulations on the manner and conditions of disciplinary punishments in prisons ("Official Gazette" of the Republic of Serbia, No. 30/78). Prisoners subject to such a measure on disciplinary grounds may only have a shower once a week during the summer, and every two weeks in the winter. Further, clothes, footwear and underwear can not be changed during placement in solitary confinement. In the CPT's view, a lowering of hygiene standards should not be permitted for any reason, not even on account of disciplinary punishments.

**The CPT recommends that arrangements concerning access to a shower and clothing/bedding for prisoners undergoing solitary confinement as a punishment be made the same as those applied to prisoners in general.**

131. Further, despite the requirement that manuals and books should be made available to an inmate placed in solitary confinement throughout the duration of the measure (Article 131 LECS), the Regulations on House Rules in District Prisons stipulate that an inmate could receive books, manuals, paper and pens only "if necessary".

**The CPT recommends that the above Regulations be amended in order to ensure that appropriate reading material is always made available to inmates placed in solitary confinement.**

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<sup>11</sup> The newly drafted LECS contains the same provision.

132. In Serbia, a doctor is obliged to certify that an inmate is fit to undergo punishment prior to a decision on solitary confinement being taken by the prison management. The CPT has serious reservations concerning such an approach. A prison doctor acts as a prisoner's personal doctor. In the interest of safeguarding that doctor/patient relationship, he should not be required to certify that a prisoner is fit to undergo punishment.

A doctor is also obliged to visit every day a prisoner placed in solitary confinement on disciplinary grounds and advise the prison director if the termination or alteration of the punishment is considered necessary for medical reasons. The CPT considers it an essential safeguard that, whenever a prisoner held in solitary confinement, or a prison officer on the prisoner's behalf, requests a medical doctor, such a doctor should be called without a delay with a view to carrying out a medical examination of the prisoner.

**The CPT recommends that the authorities review the relevant regulations and practice, in the light of the above remarks.**

133. The disciplinary cells at Sremska Mitrovica were equipped with only a wooden platform (with a mattress and bedding), a box for personal belongings, a sink and an Asian-type toilet. They should be provided with suitable seating and, preferably, should contain a table. Moreover, access to natural light and artificial lighting were at best mediocre.

At Belgrade District Prison, the cells used for solitary confinement as a punishment measured 6.3m<sup>2</sup> and were equipped with a bed, cabinet, table, chair, Asian-style toilet and a shower. However, they were dark, humid and insufficiently ventilated.

**The CPT recommends that urgent steps be taken to improve material conditions in the cells used for solitary confinement at both establishments, in the light of the above remarks.**

134. The delegation received allegations to the effect that outdoor exercise was occasionally denied to all juveniles at Belgrade District Prison, as a form of collective punishment. In this context, **it should be recalled that: (i) all prisoners without exception - including those undergoing solitary confinement as a punishment - should be allowed at least one hour outdoor exercise every day; (ii) any form of collective punishment is prohibited by the European Prison Rules (Rule 37).**

Further, the delegation noted that "sleeping during the day" was considered a breach of discipline at Sremska Mitrovica Penitentiary Reformatory, despite the fact that such behaviour does not appear in the list of disciplinary offences. **The CPT would like to receive the comments of the authorities on this issue.**

## 8. Means of restraint

135. Various means of restraint are authorised in the Serbian prison system, namely separation ("izdvajanje") from the rest of the prison population, separation and tying, physical force, rubber batons, chemical means, water cannons and firearms (Article 137 of the LECS).

The delegation visited in Pavilion II at Sremska Mitrovica a cell used for separation, and separation with tying, of agitated and/or violent prisoners. It was equipped only with a wooden bench and an Asian-type toilet, and did not enjoy adequate access to natural light. The bench was equipped with metal rings with handcuffs. In the delegation's opinion, the current layout of this cell does not offer proper safety to inmates who would be restrained to the bench.<sup>12</sup>

**The CPT recommends that, in its present state, this cell no longer be used for the restraining of agitated and/or violent prisoners. More appropriate arrangements should be found.**

136. The CPT's delegation also observed that prison guards were carrying their batons in a visible manner, while performing their custodial duties at Sremska Mitrovica. This is clearly not conducive to the development of positive staff-inmate relations. **The CPT recommends that measures be taken to avoid such a practice in the future.**

## 9. Contact with the outside world

137. Article 68 of the LECS provides that a sentenced prisoner is entitled to receive visits from close relatives once a week in an open prison or an open section of a prison, twice a month in a semi-open prison or semi-open section of a prison, and once a month in a closed and strictly closed prison or in such a section of a prison. Sentenced prisoners are also entitled to receive visits from their spouses and children once a week for at least three hours, in a specially designated room. Inmates at Sremska Mitrovica were allowed to receive visits from their spouses and children in decent conditions in a nearby hotel. The CPT welcomes such arrangements.

138. According to Article 150 of the CCP, "with the approval of the investigating judge and under his supervision or the supervision of a person designated by him, the detainee may, in accordance with the good order of the institution, receive visits from his close relatives...Particular visits may be denied if they may be prejudicial to the course of the proceedings...". According to Article 35 of the Regulation on House Rules for imprisonment on remand ("Official Gazette" of the Republic of Serbia, No. 35/99), a remand prisoner could be visited for one hour, but the Regulation is silent on the periodicity of such visits. In practice, many prisoners on remand in Serbia faced significant difficulties in receiving visits.

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<sup>12</sup> By way of example, the current arrangement would not prevent an inmate from hitting the wall with his head.



139. The CPT recognises that on occasion it may be necessary, in the interests of ongoing proceedings, to impose certain restrictions on visits for particular remand prisoners. However, any such restrictions should be strictly limited to the requirements of a given case and applied for as short a time as possible. Under no circumstances should visits between a remand prisoner and his/her family be prohibited for a prolonged period. If it is considered that there is an ongoing risk of collusion, visits should be authorised, but under supervision. **The CPT recommends that the law and regulations be amended in the light of the above remarks; granting visits to remand prisoners should be the norm, the refusal of visits the exception.**

140. Prisoners' access to telephone was not satisfactory in the establishments visited. At Sremska Mitrovica Prison, prisoners had to queue for hours before getting access to a phone; at Belgrade District Prison, only one pay-phone was available for more than 700 detainees. **The CPT invites the authorities to facilitate access to the telephone for both remand and sentenced prisoners, in the light of the above remarks.**

141. Sentenced prisoners had an unlimited right to correspondence (Article 66 of the LECS). However, many prisoners at Sremska Mitrovica complained that their correspondence was read and, on occasion, even stopped by the educators and/or the custodial staff. **The systematic censorship of prisoners' correspondence with their families and friends may well not constitute the best possible use of staff resources.**

Further, it was alleged at Sremska Mitrovica that the content of prisoners' correspondence with families, including spouses, was mockingly commented upon to other inmates and staff. **The CPT recommends that appropriate steps be taken immediately to stop any such practice.**

In Serbia, the investigating judge may forbid remand prisoners to send or receive correspondence if this might be prejudicial to the course of the proceedings. However, such a prohibition can not extend to letters which such a prisoner sends to or receives from domestic parliamentary, judicial and executive authorities, or international courts.

142. Contact of remand prisoners with their lawyers was of particular concern to the CPT, as their meetings were apparently routinely listened to by prison officers in the establishments visited. Article 75, paragraph 2, of the CCP stipulates that the communication between the lawyer and his client "may be supervised only by observation and not by listening". **The CPT recommends that the law be strictly adhered to.**

Paragraph 4 of the same Article provides that if there is are reasonable grounds for assuming that letters between a detainee and his lawyer are being used to organise an escape, to influence or frighten witnesses or to hamper an investigation in some other way, the investigating judge may order that these letters be submitted only after he has examined them. Apparently, the investigating judges concerned were systematically reading all the correspondence between a lawyer and his client and vice versa. The delegation itself observed that the correspondence of inmates with courts and their defence lawyers was handed over to prison officers unsealed (who would transmit those letters to the relevant judges). The current practice is clearly contrary to the principle of confidentiality of contacts between remand prisoners and their lawyers; **the CPT recommends that it be revised without delay.**

## 10. Complaints and inspection procedures

143. According to Article 103 of the LECS, a sentenced prisoner has the right to complain to the prison Governor, who is bound to examine the complaint carefully and to make a ruling. A prisoner who does not receive an answer to his complaint or is not satisfied with the Governor's ruling has also the right to appeal in writing to the Head of the Department for Execution of Criminal Sanctions in the Ministry of Justice, as well as the right to complain to the person authorised to inspect the prison (under conditions guaranteeing confidentiality). In addition, sentenced prisoners have the right to legal aid during complaint procedures. This favourable situation was, however, undermined by several deficiencies: no time limits existed for the Head of the Department for Execution of Criminal Sanctions to reply, no reasoning of decisions was required, complaints were not formally registered, and the legal aid system did not function in practice. **The CPT recommends that the authorities review the complaints procedures currently in place, in the light of the above remarks.**

144. The current LECS (Articles 346-353) also envisages an internal inspection system, carried out on a bi-yearly basis by the Inspection Unit, reporting directly to the Director of the Prison Administration. The authorised personnel of the Inspection Unit is *inter alia* empowered to verify record-keeping, the use of force, the application of disciplinary measures and the exercise of inmates' rights and privileges. However, the CPT shares some of the reservations expressed by the Head of the Department for Execution of Criminal Sanctions relating to the efficiency and objectivity of these procedures.

The CPT attaches particular importance to regular visits to each prison establishment by a fully independent body (eg. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises. **The CPT invites the authorities to consider establishing such a system.**

145. In both establishments visited, inmates complained that they were not provided with information on their rights and duties. The situation of a large number of foreign prisoners at Sremska Mitrovica was of particular concern. **The CPT recommends that an information brochure be supplied to all prisoners upon their arrival in a particular prison, describing in a straightforward manner the main features of the prison's regime, prisoners' rights and duties and complaints procedures, and providing basic legal information. This brochure should be translated into an appropriate range of foreign languages. It would also be desirable that the expressions most commonly used in everyday activities be translated into foreign languages.**

## 11. Belgrade Prison Hospital

### a. introduction

146. Although located on the two top floors and part of the ground floor of Belgrade District Prison, the Correctional Penal Facility "Prison Hospital" in Belgrade is a separate establishment with a nationwide vocation, providing somatic and psychiatric in-patient care for sentenced and remand prisoners from all prisons in Serbia (and occasionally from Montenegro). Naturally, the hospital - which served as a part of Belgrade District Prison until the early 1970s - had a similar design, displaying all the same structural deficiencies (cf. paragraph 99). At the time of the visit, the hospital premises were in an advanced state of dilapidation (except for the recently renovated Female Ward).

147. The hospital's official capacity was 400 beds; at the time of the visit, it was accommodating a total of 575 patients<sup>13</sup>. The vast majority (some 500) of the patients were suffering from mental illnesses or drug/alcohol related problems. Patients were accommodated separately on the basis of both gender and legal status (sentenced or on remand).

The delegation's visit focussed on A Ward (patients undergoing mandatory psychiatric treatment), Ward D 5 (2) (patients with drug/alcohol abuse problems), Wards E (patients with acute psychiatric syndromes) and G (patients under psychiatric assessment), Ward I (internal medicine ward) and the Female Ward.

### b. ill-treatment

148. The CPT's delegation received a few allegations of ill-treatment, in particular of patients being hit - mainly with batons - by custodial staff in 2004. **The CPT recommends that custodial staff be reminded that all forms of ill-treatment are not acceptable and will be the subject of severe sanctions.**

The delegation observed that custodial staff were carrying their batons in a visible manner within the hospital and, in particular, inside the patients' living areas. This is clearly not conducive to the development of positive staff-inmate relations and is also totally at odds with the therapeutic nature of the establishment. **The CPT recommends that steps be taken to avoid such a practice in the future. Further, custodial staff should preferably only enter the patients' living areas when requested to do so by health-care staff.**

149. In addition to minor fights between patients, a number of allegations were received of patients being severely ill-treated by other patients, such as being exploited or physically or sexually abused. This state of affairs appeared in part to be the result of the overcrowding and low staffing levels. **The CPT's recommendation made in paragraph 90 applies with equal force here.**

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<sup>13</sup> Some 1200 patients are admitted to the hospital every year.

150. The delegation also noted with great concern the practice of using padlocks and chains as means of restraining patients in different wards of the establishment. In the CPT's view, such a practice is totally unacceptable and could well be considered to amount to inhuman and degrading treatment (cf. paragraph 152 below).

c. means of restraint

151. All wards<sup>14</sup> visited at the Prison Hospital had special rooms for the use of means of restraint. The delegation found no evidence that the resort to means of restraint was excessive; during the nine months of 2004, there were 63 such cases, as well as six of use of manual force. However, staff shortages prevented proper monitoring of the patients placed under restraint and the recording of such measure was not satisfactory; in particular, the length of time of the application of restraint was frequently not noted.

152. The delegation's main concern related to the fact that staff used thick chains, together with padlocks, to restrain agitated and/or otherwise violent patients, fixating them by one or two wrists to the bed and, when necessary, also by the ankles. As indicated above, such a practice is totally unacceptable. The delegation invoked Article 8, paragraph 5, of the Convention, and requested the authorities to immediately remove from service the padlocks and chains and to inform the CPT within one month of the measures taken to ensure that proper methods for safe restraint are used, when necessary (cf. paragraph 16 above).

In their response, dated 16 November 2004, the authorities informed the CPT that the "patients were restrained with chains only in extreme cases, only when it was not possible to restrain patients with leather belts. Until now, this hospital could not restrain such patients in separate rooms due to the great number of patients. In such cases other psychiatric patients would liberate the patient who was restrained with leather belts which presents a great danger primarily for the restrained patient. Such measure is applied only until drugs take effect". In addition, the authorities stated that "rooms for keeping restrained patients are envisaged in the hospital blocks to be renovated".

153. In her letter of 10 January 2005, the President of the CPT reiterated the request made by the CPT's delegation and asked for confirmation within one month that it had been fully complied with.

In their response, dated 4 February 2005, the authorities indicated that the practice of "chain-tying patients" at Belgrade Prison Hospital has been abandoned. The CPT welcomes this decision and **would like to receive detailed information on the means of restraint currently used in the establishment.**

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<sup>14</sup> Except for Ward A, where patients were fixed to their beds in their own rooms, in full view of other patients.

154. The restraint of patients in psychiatric establishments should be the subject of a clearly-defined policy. This policy should make clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control. Staff should also receive training in both non-physical and manual control techniques vis-à-vis agitated or violent patients. The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injury to patients and staff.

Resort to instruments of physical restraint will only very rarely be justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his or her approval. If, exceptionally, recourse is had to instruments of physical restraint, they should be removed at the earliest opportunity. Doctors should always fix time limits when they authorise the use of such instruments (e.g. two hours); further authorisation by a doctor should be sought for their continued use.

The application of instruments of physical restraint for a period of days cannot have any therapeutic justification. Further, instruments of physical restraint should never be applied, or their application prolonged, as a punishment.

Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, etc.) should be recorded in a specific register established for this purpose (as well as in the patient'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 patients or staff. This will greatly facilitate both the management of such incidents and the oversight of their prevalence.

**155. The CPT recommends that a clearly defined policy on the use of means of restraint be immediately drawn up at Belgrade Prison Hospital and, as appropriate, in other health establishments in Serbia, taking into account the criteria set out in paragraph 154. This policy should be implemented throughout the country, including through specific training sessions. The CPT also invites the authorities to consider using single accommodation when applying means of restraint to patients, in order to avoid this being done in the presence of other patients and visitors (though this should not be to the prejudice of the close supervision required by such patients).**

d. patients' living conditions

156. With the notable exception of the recently renovated Female Ward, material conditions at the Prison Hospital do not even remotely meet standards acceptable for a hospital environment. In the CPT's view, they were directly harmful to the patients' health and wholly unacceptable for those suffering from serious diseases.

By way of example, sixteen patients were placed in room N° 2 in A Ward, measuring some 43 m<sup>2</sup> (i.e. offering barely 2.5 m<sup>2</sup> living space per patient). The state of beds and bedding was lamentable; water was leaking into a number of living areas; windows opened only to corridors and a number of them did not close; many patient areas (and patients) were infested with lice and the incontinent patients were not provided with diapers. Further, the absence of efficient ventilation rendered the atmosphere stifling and numerous complaints were also received indicating that summers were unbearably hot and winters bitterly cold (cf. paragraph 99).

Particular mention should be made of Ward A, as well as of nine isolation cells located on the ground floor which had flooded and blocked toilets. Conditions in those parts of the institution could easily be described as inhuman and degrading.

Cleaning and disinfecting the patients' rooms to meet hospital standards was a very difficult task. The situation was compounded by the total absence of cleaning staff in the patients' areas and the unrealistic expectation that seriously mentally-ill patients would themselves clean their own accommodation without assistance or appropriate cleaning materials<sup>15</sup>. Standards of maintenance and hygiene in the collective sanitary facilities - in-room lavatories and washbasins, showers - were well below the minimum to be expected of a hospital and could be described as appalling.

157. **The CPT recommends that the authorities take immediate measures to ensure that:**

- **occupancy rates in the patient's rooms are reduced;**
- **beds and bedding and other related equipment is kept in a good state of repair and cleanliness;**
- **the sanitary facilities, including toilets and showers, are kept in a satisfactory state of repair and cleanliness;**
- **all patients are offered at least one hot shower per week (and more frequently, when necessary for medical reasons);**
- **diapers are provided to incontinent patients;**
- **the living quarters are kept clean at all times, if necessary by hiring additional cleaning staff.**

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<sup>15</sup> Five professional cleaners were employed at the Prison Hospital. They were required to clean the whole facility, except for the prisoners' living quarters.

158. Their state of health permitting, patients could take daily outdoor exercise six days per week (Sundays excluded) in one of the yards of the Belgrade District Prison (cf. paragraph 112); however, the exercise period was limited to 40 minutes. Patients from the Assessment Ward, located on the ground floor, complained that their outdoor exercise was offered very early in the morning (from 6-7.00 hrs), when they had difficulties getting up, due to the effect of medication taken the night before. Moreover, they alleged that they were offered only a few minutes of outdoor exercise per day. **The CPT's recommendation made in paragraph 112 applies here with equal force. Moreover, patients from the Assessment Ward should be offered outdoor exercise at a more appropriate time of the day.**

159. The CPT's delegation was informed by the Director of the Prison Hospital that a comprehensive programme of renovation and redesign of patients' accommodation, addressing the most serious deficiencies, was about to begin and should be completed in three years. It aimed to bring the conditions in the unrenovated parts of the hospital (starting with A Ward, the worst, but excluding E Ward), in line with the conditions in the renovated Female Ward. The renovation programme should increase the official capacity of the establishment to 570 beds. **The CPT calls upon the authorities to carry out this renovation programme (including of E Ward) as a matter of urgency; it would like to be informed in due course of the progress made in this regard.**

e. treatment of patients

160. Health care staff appeared committed to providing the best possible care to patients under the prevailing adverse conditions; nevertheless, their morale was affected by the heavy workload and low staffing levels (cf. paragraphs 165 to 168 below).

Medical files at the Prison Hospital were generally well kept, with a systematic record of the medical examination on admission and numerous and thorough notes on medical progress.

161. As regards more particularly psychiatric treatment, the delegation was impressed with attempts at multidisciplinary clinical working. However, there were no individual treatment plans and therapy relied mainly on medication. Occupational therapy was only offered to some patients<sup>16</sup> and there was a lack of a proper treatment programme for those with addictive behaviours. As a result, many of the patients spent their days in the very poor conditions of their rooms, without psycho-social therapeutic activities being offered.

**The CPT recommends that the authorities review the level of care offered to prisoners undergoing in-patient psychiatric treatment at the Prison Hospital. Each patient should benefit from an individual treatment plan. Particular efforts should in addition be made to develop psycho-social therapeutic activities and to adapt them to the individual needs of patients.**

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<sup>16</sup> Three workshops (carpentry, electricity and metal work) provided some occupational activities for 2 hours a day to drug addicts. A small art workshop involved eight patients.

162. Although patients could either benefit from consultations by specialists coming to the Prison Hospital or be transferred to outside hospitals for complicated interventions, it appeared that their access to specialist care was often delayed, mainly because of lack of escorts or health care insurance considerations. **The CPT would like to receive the comments of the authorities on this issue.**

163. The CPT is particularly concerned that tuberculosis has re-appeared in the Serbian prison system. Patients with the multi-resistant form of tuberculosis were transferred from their prisons to the Prison Hospital and/or from the Prison Hospital to the specialised TB Clinic in Belgrade.

However, 15 tuberculosis patients were accommodated at the Prison Hospital at the time of the visit in the same overcrowded and unhygienic conditions as other patients (for example, nine TB patients were accommodated in a cell measuring 35 m<sup>2</sup>) in the improvised TB section at the Internal Medicine Ward. In the CPT's view, keeping patients with active pulmonary tuberculosis locked up for practically 24 hours per day in the conditions currently prevailing at Belgrade Prison Hospital diminishes considerably their chances of healing.

The situation might become even more serious, with grave consequences for the health of the population, both inside and outside the prison. This is mainly due to the absence of systematic TB screening on admission in the prison system, severe overcrowding and poor ventilation in the hospital rooms for TB patients at the Prison Hospital, and the mixing of TB patients with other patients.

**The CPT recommends that immediate steps be taken in order to remedy the deficiencies highlighted above. Useful guidelines can be found in relevant international literature, mainly from the World Health Organisation<sup>17</sup>.**

164. The delegation was informed that 26 patients had died in the Prison Hospital in 2003 and the first nine months of 2004. The majority of them (18 patients) died in the totally inappropriate conditions in the wards described above, without benefiting from personal privacy or a special regime. The burden of care and psychological support was born principally by fellow prisoners. Facing death under such conditions could easily be considered as a form of inhuman and degrading treatment. **The CPT would like to receive detailed information on the existing procedures for compassionate release of sick prisoners in the terminal stage of their disease.**

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<sup>17</sup> "Tuberculosis Control in Prisons - Manual for Programme Managers", WHO 2000; "Treatment of Tuberculosis: guidelines for national programmes", WHO 2004.



f. staffing issues

165. Three hundred members of staff (both medical and non medical) were employed at the establishment, which is placed under the authority of the Ministry for Justice. Some 50 new staff were recruited in 2004 (among them five doctors, 15 nurses and a number of social workers and occupational therapists). This is a significant step towards the transformation of this prison-type establishment into a proper health care facility. Another step in this direction was the recent decision to place custodial staff under the Chief Doctor's authority.

166. Medical staff was the equivalent of 30 full-time doctors (including surgeons, TB specialists, psychiatrists, specialists in internal medicine, dentists). They were assisted by a number of different specialists from Belgrade City Hospital (such as ophthalmologists and specialists in ear-nose-throat, orthopaedics, radiology and infectious diseases). Such staffing levels cannot be considered adequate, bearing in mind the variety and the nature of the diseases dealt with and the high turnover of patients. The delegation saw clear indications of excessive workload pressure on the medical staff and the hospital management informed the delegation that there was a particular need for pulmonologists and specialists in infectious diseases. **The CPT recommends that the authorities continue to increase the medical staffing levels at the hospital, in particular as regards pulmonologists and specialists in infectious diseases.**

167. Nursing staff was the equivalent of 45 full-time nurses posts. Their number was clearly insufficient considering the hospital's capacity. They could not devote enough time to offering the necessary support and care for individual patients. By way of example, one medical technician/nurse was expected to care for over 120 patients for the majority of the day on A Ward. This situation invariably resulted in the more able patients having to assist in the care of the less able. The Director of the Prison Hospital clearly indicated the need to employ at least 20 additional nurses/technicians. **The CPT recommends that the number of nursing staff at the hospital be significantly increased, in the light of the above remarks.**

The nurses were generally adequately qualified; however, none of them had received specialised training in psychiatric nursing. **The CPT invites the authorities to provide the nurses working with psychiatric patients with training reflecting the specialised nature of their work.**

168. The presence of health care staff outside normal working hours and during weekends cannot be considered as satisfactory. Until recently, only two nurses had been present at night for the whole hospital. At the time of the visit, the night and weekend duty staff consisted of one doctor for the hospital and one nurse on each of the wards. They were in addition in charge of responding to any medical emergencies in the adjacent Belgrade District Prison. To sum up, the staff on night and week-end duty was expected to care for approximately 1.300 inmates (among them some 500 psychiatric patients). **Implementation of the recommendations made in paragraphs 166 and 167 above should make it possible to address this issue.**

## C. "Laza Lazarević" Psychiatric Hospital

### 1. Preliminary remarks

169. Set up in 1801, "Laza Lazarević" Psychiatric Hospital is the largest psychiatric establishment in Serbia. The hospital is dispersed over two different sites: the first, in Belgrade, is part of a large multiple hospital clinical complex; the second is located in Padinska Skela, some 15 km outside the capital.

170. The Belgrade part of the hospital takes the most agitated and difficult in-patients from other psychiatric establishments in Serbia; however, it does not deal with forensic psychiatric patients undergoing mandatory treatment<sup>18</sup>. The hospital has several in-patient wards (24 hour emergency unit, male and female acute psychosis wards, continuing care ward) and an out-patient day ward.

The Padinska Skela part of the hospital consists of several in-patient wards, including female and male acute psychosis wards, and psychogeriatric and chronic wards. Pre-discharge apartments had also been set up in the administration building; however, they were not open at the time of the visit.

171. "Laza Lazarević" Psychiatric Hospital accommodated a total of some 800 patients (including some 700 in-patients); the two hospital sites each held approximately 400 patients. The delegation paid particular attention to the "locked" wards for male and female patients: Wards K (male acute) and L (female acute) in Belgrade and Ward A (male acute) at Padinska Skela. In the latter establishment, it also visited a psychogeriatric ward (Ward D).

7 to 8000 patients are admitted each year to the hospital, of whom 50 % are new patients. In Belgrade, the average stay was 30 days; in Padinska Skela, which was caring for longer term patients, the average was 60 days.

172. At the outset, it should be clearly stated that the delegation did not receive any allegations of deliberate ill-treatment of patients by staff at "Laza Lazarević" Psychiatric Hospital; the staff appeared to be doing their best, despite low numbers and difficult conditions. The delegation also received very few allegations of inter-patient violence at the hospital, and none of the allegations were particularly serious. The overall atmosphere prevailing at "Laza Lazarević" Psychiatric Hospital at the time of the visit was generally relaxed.

The CPT is, nevertheless, concerned by the significant use of sedation and of means of physical restraint observed at Ward K in the Belgrade part of the establishment (cf. paragraphs 182 and 190).

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<sup>18</sup> Those patients are sent to the Prison Hospital in Belgrade or to Vršac Psychiatric Hospital.

## 2. Patients' living conditions

173. Both parts of "Laza Lazarević" Psychiatric Hospital had globally similar material conditions. The buildings and decor were dilapidated and austere throughout, and there were widespread signs of structural deterioration and faulty drainage. The delegation noted, however, the efforts being made by the management and staff of the hospital to maintain these old buildings and make essential repairs with the limited financial resources available. The delegation was particularly impressed by the efforts made to maintain hygienic conditions at hospital standards in such a difficult environment.

174. *K Ward* - with an official capacity of 32 beds – was accommodating 29 male patients<sup>19</sup> on the day of the visit. The dormitories were clean and well lit and equipped with beds and lockers; the day/dining area was equipped with tables and chairs, and a colour television. However, the dormitories were rather overcrowded (by way of example, 11 beds in 39 m<sup>2</sup>) and the state of the bedding left much to be desired. The sanitary facilities, although clean, required renovation. One bathroom had three Asian-toilets; however, they were not equipped with a door. The second bathroom was totally unfit for use (it had a large hole in the ceiling caused by a leaking drainage pipe).

The conditions in *L Ward* - which was accommodating 37 female patients on the day of the visit (for an official capacity of 39 beds) - were very similar. The dormitories were clean and well lit; however, furniture and bedding left room for improvement. Conditions in the ward were cramped (by way of example, 14 beds in 48 m<sup>2</sup> and 8 beds in 28 m<sup>2</sup>), and the same was true of the day/dining area. Severe structural damages were also observed in the sanitary area; there were only two Asian-toilets - without doors - and one shower for up to 39 patients.

175. The conditions observed at Padinska Skela were not significantly different from those observed in Belgrade, although the dormitories appeared to be less overcrowded.

*Ward A* - with an official capacity of 90 beds - had 65 male patients on the day of the visit<sup>20</sup>; being the only "locked ward" on the site, it was used to accommodate the most disturbed and agitated patients. The dormitories were clean and well-lit; however, the environment was rather austere and impersonal. The state of beds and bedding also left much to be desired. As for the sanitary facilities, they were dilapidated but clean.

*Ward D* - a mixed ward, with an official capacity of 78 beds - was accommodating 48 psychogeriatric patients on the day of the visit. Some of the patients were apparently confused; others were clearly suffering from dementia. The less mobile patients were kept on the ground floor, many of them bed ridden (some in nursing beds, equipped with bed-support on the side). The mobile patients were kept on the first floor. The delegation would like to highlight the efforts made by the staff to keep the psychogeriatric patients in a clean and hygienic environment, despite the financial difficulties. For example, diapers were lacking, and staff were trying to protect the mattresses of incontinent patients with plastic sheets. The sanitary facilities were also in a satisfactory state of hygiene; however, they were dilapidated, with clear indications of structural damage.

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<sup>19</sup> The delegation was informed that K Ward had accommodated up to 38 patients in the recent past.

<sup>20</sup> 83 patients were registered in Ward A, but 18 of them were on therapeutic leave on the day of the visit.

176. Creating a positive therapeutic environment in a psychiatric hospital involves, first of all, providing sufficient living space per patient, as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements. Particular attention should also be given to the decoration of both patients' rooms and recreation areas. Further, sanitary facilities should allow patients some privacy. Similarly, basic hospital equipment enabling staff to provide adequate care (including personal hygiene) to bedridden patients must be made available; the absence of such equipment can lead to wretched conditions.

**The CPT recommends that immediate steps be taken to ensure that the above criteria are fully met at "Laza Lazarević" Psychiatric Hospital. It recommends in particular to:**

- **carry out the necessary structural repairs to ensure that the physical safety of patients and staff is guaranteed at all times;**
- **reduce occupancy levels in the dormitories to an acceptable standard;**
- **offer better conditions, in particular as regards space and decoration, in the day-rooms of the respective wards and give particular attention to the decoration of patients' dormitories;**
- **provide all patients with adequate and clean bedding; more particularly, plastic covered mattresses should be provided, as well as diapers, in sufficient numbers;**
- **regularly provide the psychogeriatric ward with diapers.**

177. The CPT also wishes to make clear its support for the trend observed in several countries towards the closure of large-capacity dormitories in psychiatric establishments. Provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and also a key element of any policy for the psychological and social rehabilitation of patients. Structures of this type also facilitate the allocation of patients to relevant categories for therapeutic purposes. The delegation noted that dormitories were, on average, accommodating 6 to 12 patients. **The CPT recommends that renovation plans for "Laza Lazarević" Psychiatric Hospital envisage smaller accommodation units for patients.**

178. As already indicated, pre-discharge apartments - offering some additional 100 places - had been set up in the administration building at Padinska Skela. However, some four years after completion, there were still not in service, as there was apparently disagreement concerning their possible use. **The CPT recommends that these facilities be brought into service without delay, with a view to reducing the overcrowding observed in certain dormitories and/or to setting up workshops aimed at offering additional occupational activities to patients held at Padinska Skela (cf. paragraph 181 below).**

179. There was no secure outdoor exercise area in Belgrade; consequently, patients accommodated in the “locked wards” were confined in their wards for the duration of their treatment. This state of affairs is not acceptable. At Padinska Skela, access to the gardens was only allowed to stabilised patients or when escort staff was available. **The CPT recommends that steps be taken at both of the hospital’s sites to offer all patients accommodated in the “locked” wards, health permitting, at least one hour of outdoor exercise per day in a reasonably spacious and secure setting, which should also have shelter from inclement weather.**

### 3. Treatment and care

180. Psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient indicating the goals of the treatment, the therapeutic means used and the staff member responsible. The treatment plan should also include regular reviews of the patient’s mental health condition and reviews of the patient’s medication.

It should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work.

181. The vast majority of the patients met in the acute wards (both male and female) at "Laza Lazarević" Psychiatric Hospital suffered from severe psychosis, in an acute phase. Many of them had been admitted to the hospital with the assistance of the police, paramedics or their families. On arrival, the patient was examined by the psychiatrist on duty and a short somatic examination was performed. The main treatment offered to such patients consisted of pharmacotherapy. Although there was evidence of a multidisciplinary team working in the wards visited, opportunities for occupational therapy and occupational therapist’s input to clinical teams was seriously lacking. No individual treatment plans had been established.

**The CPT recommends that an individual treatment plan be established for each patient and that the components of psycho-social rehabilitation be developed, in the light of the above remarks. In particular, opportunities for occupational therapy activities should be significantly increased and recreational/sports activities further developed.**

182. As regards medication, the delegation noted with some concern that considerable numbers of patients in Wards K and L appeared to be significantly sedated. In addition, the delegation was informed that the lack of a consistent supply of certain medicines resulted in some patients’ pharmacotherapy having to be changed without clinical indication (unless their families could provide the necessary medicine).

**The CPT recommends that steps be taken to ensure that a regular supply of appropriate medicines is guaranteed at all times. Moreover, efforts should be made to avoid an over-reliance on pharmacotherapy - particularly sedatives - within the treatment regime.**

183. Each patient at "Laza Lazarević" Psychiatric Hospital had a personal and confidential medical file. The file usually contained long admission notes and ICD-10 was used for diagnostic purposes. Various entries were made regarding contacts with doctors and medication was listed. However, **the written clinical recording of patients' treatment and progress lacked detail, including on the issue of a patient's consent to treatment.**

#### **4. Staff issues**

184. Staff resources in psychiatric establishments should be adequate in terms of numbers, categories of staff (psychiatrists, general practitioners, nurses, psychologists, occupational therapists, social workers, etc.), their experience and training. Deficiencies in staff resources will often seriously undermine attempts to offer adequate psychiatric treatment based on an individualised approach; further, they can lead to high-risk situations for patients, notwithstanding the good intentions and genuine efforts of the staff in service.

In some countries, including Serbia, the CPT has been particularly struck by the lack of qualified psychiatric nurses among staff in psychiatric establishments, and by the shortage of personnel qualified to conduct social therapy activities (in particular, occupational therapists). The development of specialised psychiatric nursing training and a greater emphasis on social therapy would have a considerable impact upon the quality of care.

185. Medical staff at "Laza Lazarević" Psychiatric Hospital consisted of a total of 76 psychiatrists (43 neuropsychiatrists, 25 psychiatrists and 8 residents), a doctor of internal medicine, a gynaecologist, an ophthalmologist and a dentist. They were supported by 9 psychologists, 6 social workers and 5 occupational therapists.

The staff complement as regards psychiatrists is more than satisfactory. Further, as regards somatic care, assistance could be obtained, if required, from the neighbouring Belgrade General Hospital. However, this was not the case as regards other support staff. The number of occupational therapists and of social workers was particularly low for a hospital of such importance. An increase in the number of occupational therapists would lead to the emergence of a therapeutic milieu less centred on drug-based and physical treatments. Equally, an increase in the number of social workers would improve the chances of discharging patients.

**The CPT recommends that steps be taken to significantly reinforce the presence of support staff (e.g. occupational therapists, social workers and psychologists) at the hospital, with a view to increasing the multidisciplinary nature of the treatment provided to the patients.**

186. The nursing staff was composed of 212 nurses. The delegation noted that in practice, the nursing complement allowed only a very limited number of nurses to be present at a given time in each ward. By way of example, two nurses were caring for 32 acute patients in K Ward while two others were caring for 65 patients in A Ward. The nursing presence in D Ward, accommodating 48 psychogeriatric patients, was limited to two nurses. The low numbers of medical technicians/nurses is of particular concern to the CPT. Such staffing levels put both patients and staff at risk and appeared to result in a greater reliance on the use of sedation and physical restraint. They also tend to generate highly stressful working conditions and increase the risk of disproportionate reactions by staff members towards challenging patients.

**The CPT recommends that the relevant authorities carry out an urgent review, on both of the hospitals' sites, of the level of staffing within the respective wards, with a view to reinforcing the presence of qualified nursing staff.**

187. In order to provide effective treatment, staff also need to be fully confident about their safety. The delegation noted with concern that no specific alarm/call system for staff was installed in the acute wards visited. Unsurprisingly, some nurses met in the wards indicated that they felt unprotected in case of incident. **The CPT recommends that the authorities install alarm/call systems (for example, panic beepers/call buttons) for staff working in the acute wards.**

188. The CPT is of the opinion that the setting up of a specific psychiatric nursing qualification would constitute another sign of the importance given to the mental health sector in Serbia. Better staff training for both induction of new staff and continuing professional development should form an integral part of this project. **The CPT would like to receive the comments of the authorities on this issue.**

## **5. Means of restraint**

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

190. At "Laza Lazarević" Psychiatric Hospital, there was an excessive reliance on the use of physical restraint, a practice with which staff were clearly discontent. The delegation observed with concern a significant number of patients tied to their beds with soft restraint (cotton strips) and a certain number of patients tied with leather belts by both ankles, both feet and the chest, particularly on K Ward and, to a lesser extent, on A and L Wards. Such restraint - which could last for up to six hours and/or throughout the night - was always used on the doctor's orders or with his/her immediate approval. By way of example, six of the most recent admissions to K Ward had been restrained on arrival and, approximately twice a month, all five beds in the wards' small intensive care room (18 m<sup>2</sup>) apparently held patients strapped to their beds, sometimes together with other patients from the ward requiring soft restraint.

191. The CPT understands that it may be necessary to restrain highly disturbed patients. However, in its opinion, the current practice of restraining patients at K Ward, sometimes up to five together, using full belting of limbs and chest, in full view of other patients, without staff continuously present in the room, could be considered as amounting to degrading treatment. Further, the recording of such episodes in the individual medical files was quite succinct, there was no central recording at hospital level - a situation which did not allow global monitoring - and, so far as the CPT is aware, no written policy had been drawn up on the subject by the management of the hospital. Staff also indicated to the delegation that no training had ever been given on this issue.

192. As already indicated (cf. paragraph 154), the restraint of patients in psychiatric establishments should be the subject of a clearly-defined policy. **The CPT recommends that such a policy be immediately drawn up at "Laza Lazarević" Psychiatric Hospital and, as appropriate, in other psychiatric establishments in Serbia, taking into account the criteria set out in paragraph 154. This policy should be implemented throughout the country, including through specific training sessions. The CPT also invites the authorities to consider using single accommodation when applying means of restraint to patients, in order to avoid this being done in the presence of other patients and visitors (though this should not be to the prejudice of the close supervision required by such patients).**

193. Soft restraint was also frequently used on Ward D in Padinska Skela, mainly to prevent psychogeriatric patients from falling from their beds or from wandering. Staff indicated in this context that such restraints would be used less if enough staff were available to monitor the patients. Research indicates that the use of means of physical restraint does not necessarily reduce the future risks linked to a fall or to wandering for elderly patients; on the contrary, those risks may be increased.<sup>21</sup> There is also the risk of illness linked to physical restraint.<sup>22</sup> **The CPT invites the authorities to review the use of restraint on Ward D (and in other psychogeriatric wards in Serbia). Specific programmes aimed at reducing such use and finding alternatives should be developed.**

## 6. Safeguards

194. On account of their vulnerability, the mentally ill and mentally disabled warrant much attention in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in a psychiatric establishment should always be surrounded by appropriate safeguards.

195. Almost all patients admitted in the acute wards were brought to the hospital by police officers and/or paramedics, or accompanied by family members (cf. paragraph 181). The vast majority of the patients interviewed by the delegation in those wards indicated without ambiguity that, if authorised to do so, they would leave the establishment forthwith.

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<sup>21</sup> Cf. «Limiter les risques de la contention physique de la personne âgée», dans «Evaluation des pratiques professionnelles dans les établissements de santé», Agence Nationale d'Accréditation et d'Evaluation en Santé, ANAES, Paris, octobre 2000. Many useful references can also be found in the bibliography.

<sup>22</sup> "Deep venous thrombosis and pulmonary embolism following physical restraint", S.B. Laursen, T.N. Jensen, T. Bolwig, N.V. Olsen, Acta Psychiatrica Scandinavica, 2004, pp. 1-4.



196. As far as the CPT is aware, involuntary civil placement in a psychiatric establishment in Serbia is regulated by the Health Care Law of 1992 ("Official Gazette" of the Republic of Serbia, N°17/92), as well as by Section 46 of the Law on non-Contentious Procedure ("Official Gazette" of the Republic of Serbia, nos. 25/82 and 48/88) of 1984. These laws provide a certain number of safeguards as regards the hospitalisation of patients against their will in psychiatric establishments; these safeguards include judicial control. However, it rapidly became clear to the delegation that the practical implementation of the procedures prescribed by law varied considerably from one ward to another. In addition, several interlocutors met by the delegation explained that the relevant courts were not particularly active in this field and that the present situation was in fact uncertain, as new legislation was being drafted<sup>23</sup>.

197. The delegation was informed that, in principle, every new admission at "Laza Lazarević" Psychiatric Hospital had to be notified within 48 hours to the local Municipal Court (Belgrade N° 1 or 2), using a special form, and that within 72 hours a judge and a clerk would come to the hospital to check if the procedure prescribed by law had been followed and take the necessary decision. Apparently, on the occasion of such visits, the judge visited the ward, spoke to the ward's doctor and consulted the medical file of the patient concerned. However, while carrying out this task, the judge was not accompanied by an independent medical advisor and did not hear the patient. Further, the staff at the hospital could not recall a single case in which a patient had been discharged on the judge's decision in the days following admission.

198. A thorough scrutiny of the medical files of all the patients held in *K Ward* revealed the presence of only one court order<sup>24</sup>, dated 17 September 2004. Another file included the entry: "the patient passively accepts hospitalisation". In the 27 remaining files, no indication whatsoever was found concerning the legal status (voluntary or involuntary) of the patients concerned. On *Ward L*, a similar scrutiny revealed that 12 out of the 40 medical files contained a court order<sup>25</sup>. On *Ward A*, the delegation was informed that a judge visited the ward every month, and that in half a day, he/she reviewed all the necessary medical files<sup>26</sup>. However, no written trace of such a review was found in the individual medical files.

199. From the information gathered during the visit, it became clear that the vast majority of the patients held in the "locked" wards visited had been admitted at the hospital against their will (i.e. they physically and/or verbally actively resisted hospitalisation) or had been admitted in such a mental state that they were not able to give a free and informed consent to their hospitalisation and subsequent treatment. It follows that, except for a limited number of such patients, the procedures provided by law had not been respected<sup>27</sup>.

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<sup>23</sup> Final public consultations were organized by the Ministry of Health in Belgrade on this issue on 26 January 2005. A draft Law on the Protection of the Rights of Mental Health Patients was under consideration.

<sup>24</sup> This authorised the holding of the patient concerned for a period of up to three months in the hospital. Any prolongation of the measure had to be decided by the court.

<sup>25</sup> All the court orders were dated 10 September 2004 or later.

<sup>26</sup> This would have implied, at the time of the visit, reviewing more than 80 files in 4 hours.

<sup>27</sup> The following statement from a senior medical member of the staff is also of interest in this context: "The [acute] patients can depart if they so wish. If a patient asks to leave the ward, he is carefully assessed by the doctor in charge, who will counsel the patient and try and persuade him/her to stay. This always succeeds".

Many of the medical and nursing staff were themselves critical about the current situation; consequently, a “medical ethical commission” had been set up within the hospital, to advise and support medical staff on this delicate issue.

**The CPT recommends that immediate measures be taken to ensure the full implementation of the existing legislation and, in particular, that the judicial control of involuntary placement measures taken vis-à-vis psychiatric patients is effective. Meeting this requirement will involve *inter alia* reviewing the cases of all patients currently placed in “locked” wards throughout the country.**

**The CPT also invites the authorities to pay close attention to the standards set out in Section III.F. ("Safeguards in the context of involuntary placement") of the Committee's 8th General Report (cf. CPT/Inf (98) 12, paragraphs 51 to 57) in the course of the preparation of the draft Law on the Protection of the Rights of Mental Patients. The CPT would like to receive a copy of this Law in due course.**

200. In the light of the facts found during the visit, the CPT must also express concern as regards the position taken by the staff concerning consent to treatment. It was clear that the very fact of admission to the hospital was being construed as authorising treatment without the patient's consent. The CPT would like to stress that patients suffering from mental illness/disorders - as any other patients - should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his/her consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment.

**The CPT recommends the authorities to take the above remarks into account when preparing the draft Law on the Protection of the Rights of Mental Patients.**

201. The delegation noted that house rules were hanging on the walls in some of the wards visited. However, **a more reliable system for informing patients of their rights should be established, such as an introductory brochure setting out the establishment's routine and patients' rights. This brochure should be issued to each patient on admission to the hospital, as well as to their families. Any patient unable to understand the brochure should receive appropriate assistance.**

202. As in any place where persons can be deprived of their liberty, an effective complaints procedure is a basic safeguard against ill-treatment in a psychiatric establishment. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee) which is responsible for the inspection of patients' 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 delegation was informed that several initiatives had recently been taken in this field. A "Patients' Ombudsman" had been set up at national level, a "Complaints' Commission" had been established at the hospital<sup>28</sup>, and periodic visits were carried out by specialised teams from the Ministry of Health.

**The CPT would like to receive detailed information on the activities in 2004 of the "Patients' Ombudsman" and the "Complaints' Commission". It would also like to receive a copy of the reports drawn up by the inspection teams of the Ministry of Health on their visits in 2004.**

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<sup>28</sup> It apparently consisted of the members of the "medical ethical commission" and of the hospitals' lawyer.

## D. Recapitulation

### **Establishments under the authority of the Ministry of the Interior**

203. The CPT's delegation heard numerous allegations of deliberate physical ill-treatment of persons deprived of their liberty by *the police* throughout Serbia. Some of the allegations concerned ill-treatment at the time of or immediately following apprehension, whereas others related to ill-treatment during police questioning and, more particularly, during interrogation by officers of the criminal police. Many detainees interviewed by the delegation alleged that they had been slapped, punched, kicked or beaten with batons during police custody. A number of allegations received included recent accounts of beatings on the palms of the hands or soles of the feet, the placing of a plastic bag over the detainee's head to cause temporary asphyxiation, or the infliction of electric shocks on different parts of the body. The ill-treatment alleged was in several cases of such a severity that it could well be considered to amount to torture.

In certain cases, the delegation gathered medical evidence which was consistent with the allegations of physical ill-treatment received. Further, in almost all of the police stations visited in Belgrade, the delegation found baseball bats and similar non-standard and unlabelled objects in offices used for interrogation purposes.

204. The information at the CPT's disposal suggests that persons suspected of a criminal offence run a significant risk of being ill-treated by the police in Serbia at the time of their apprehension and during the first hours in police custody. The number and severity of allegations of police ill-treatment received calls for urgent action by the national authorities. The CPT has recommended that those authorities as well as senior police officers regularly instruct police officers, in particular members of the criminal police, that ill-treatment will not be tolerated, that all information regarding possible ill-treatment will be investigated and that perpetrators of such treatment will be subjected to severe sanctions.

The Committee has also sought information on criminal proceedings in relation to allegations of ill-treatment during "Operation Saber" in 2003, and recalled that there can never be any derogation from the prohibition of torture and inhuman or degrading treatment or punishment, not even under a state of emergency.

205. The best possible guarantee against ill-treatment is for its use to be unequivocally rejected by police officers. This implies strict selection criteria at the time of recruitment of such staff and the provision of adequate professional training. In this connection, the CPT has recommended that a very high priority be given to training for police officers of all ranks and categories, including in modern investigation techniques. In addition, an aptitude for interpersonal communication should be a major factor in the process of recruiting police officers and considerable emphasis should be placed on acquiring and developing interpersonal communication skills.

Another very effective means of preventing ill-treatment lies in the diligent examination by the competent authorities of all information regarding possible ill-treatment which may come to their attention (whether or not that information takes the form of a formal complaint) and, where appropriate, the imposition of a suitable penalty. This will have a very strong dissuasive effect. In this context, the CPT has made detailed recommendations and requests for information.

206. As regards fundamental safeguards against ill-treatment of persons deprived of their liberty by the police (e.g. the right to have the fact of one's detention notified to a close relative or third party; the rights of access to a lawyer and a doctor), at present their practical implementation leaves a lot to be desired; the CPT has made detailed recommendations in this area. The Committee has also emphasised the need to draw up a code of conduct for police interviews, regulating in detail the process of interrogation; this will help to underpin the lessons taught during police training.

207. Conditions of detention were very poor in all police establishments visited in Serbia. The Inspector General of the Ministry of the Interior confirmed that this state of affairs prevailed throughout the country. The CPT has recommended that the authorities carry out a full-scale review of arrangements for the holding of criminal suspects on police premises, in the light of criteria set out by the Committee. Immediate measures should be taken to provide persons in police custody with food at appropriate intervals, to provide those kept in custody overnight with a mattress and blankets, and to ensure that corridors or offices are not used as ad hoc detention facilities.

208. No allegations of recent physical ill-treatment were heard at the *Reception Centre for Foreigners at Padinska Skela*. Staff/detainee relations were quite relaxed throughout the establishment; this was no doubt due in part to the fact that certain staff members had some knowledge of foreign languages.

However, material conditions of detention at the Centre left something to be desired, which was scarcely surprising as no major repairs had been carried out there in the past 20 years. The CPT has recommended that the necessary improvements be made without further delay. Steps should also be taken to provide a better range of activities for foreign nationals held at the Centre.

Various recommendations and comments have been made concerning health-care arrangements at the Centre. Above all, steps must be taken immediately to ensure that new arrivals are systematically medically screened by a doctor, or a fully qualified nurse reporting to a doctor, within 24 hours of their arrival. Particular attention should also be paid to the provision of psychiatric/psychological support.

## **Establishments under the authority of the Ministry of Justice**

209. At both *Sremska Mitrovica Penitentiary Reformatory* and *Belgrade District Prison*, there had been a recent decrease in the number of allegations of physical ill-treatment of prisoners by staff. This positive development coincided with the arrival of new Governors. Nevertheless, some recent allegations of slaps and kicks, as well as of verbal abuse, were received at the establishments. In this connection, the CPT has recommended that the authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions.

210. The CPT's delegation found evidence of a high number of cases of inter-prisoner violence at Sremska Mitrovica and, to a lesser extent, at Belgrade District Prison. In this regard, the Committee has emphasised that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The authorities should develop a comprehensive strategy aimed at combating the phenomenon of inter-prisoner violence throughout the Serbian prison system.

211. Material conditions in all the establishments visited gave rise to concern. In fact, the prison estate as a whole was seriously affected by years of neglect and overcrowding. Several prison establishments were under renovation during the visit, and important repairs were envisaged for a number of others. Further, a programme of prison construction was apparently about to start. Nevertheless, the CPT has emphasised that providing additional accommodation is unlikely, in itself, to provide a lasting solution to current problems; the existence of policies to limit and/or modulate the number of persons being sent to prison is an important element in maintaining a country's prison population at a manageable level. The Committee has recommended that the authorities take measures to devise and implement a comprehensive policy designed to combat prison overcrowding, in the light of the standards developed by the Council of Europe.

212. The issue of activities for prisoners has also been addressed; the CPT is particularly concerned by the current lack of organised activities for remand prisoners. It has stressed that the aim should be to ensure that all prisoners, including those on remand, spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

213. The cornerstone of a humane prison system will always be properly recruited and trained prison staff. Regrettably, at the time of the CPT's visit, no regular training for such staff was organised in Serbia. In addition, Belgrade District Prison faced serious problems with staffing levels and senior officials indicated that similar problems were to be found elsewhere in the prison system. The CPT has recommended that the Serbian authorities give high priority to the development of prison staff training, both initial and ongoing, and that steps be taken as a matter of urgency to increase the staff complement in the Serbian prison system.

214. Health care services provided to inmates were generally of a low quality. Staffing levels were insufficient and medical equipment inadequate; further, access to specialist care and the quality of medical treatment offered were problematic. This state of affairs calls for urgent action and concerted efforts on the part of the authorities; the CPT has recommended that they develop and implement a comprehensive strategy in this area. More specifically, resources in terms of doctors at Sremska Mitrovica should be significantly increased, and the nursing staff at Belgrade District Prison reinforced. A similar recommendation has been made in respect of the presence of psychiatrists in both establishments.

215. A series of recommendations have also been made in respect of discipline, means of restraint, contact with the outside world and complaints and inspection procedures. Specific mention should be made of the recommendation that urgent steps be taken to improve conditions in the cells used for solitary confinement at the Sremska Mitrovica and Belgrade establishments.

216. The CPT's delegation received a few allegations of ill-treatment at *Belgrade Prison Hospital*, in particular of patients being hit - mainly with batons - by custodial staff; these staff members should be reminded that all forms of ill-treatment are unacceptable and will be the subject of severe sanctions. A number of allegations were also received of patients being severely ill-treated by other patients, such as being exploited or physically or sexually abused; reference has already been made to the need for a comprehensive strategy aimed at combating inter-prisoner violence throughout the prison system.

217. At the time of the visit, padlocks and chains were being used as means of restraining patients in different wards of the hospital. Such an approach is totally unacceptable and the CPT has welcomed the subsequent decision of the authorities to abandon this practice. The Committee has also recommended that a detailed policy on the restraint of agitated and/or violent patients be drawn up.

218. Material conditions at the Prison Hospital did not even remotely meet standards acceptable for a hospital environment. In the CPT's view, they were directly harmful to the patients' health and wholly unacceptable for those suffering from serious diseases. A comprehensive programme of renovation and redesign of patients' accommodation, addressing the most serious deficiencies, was about to begin. The CPT has called upon the authorities to carry out this renovation programme as a matter of urgency.

219. Health care staff at the hospital appeared committed to providing the best possible care to patients under the prevailing adverse conditions; nevertheless, their morale was affected by the heavy workload and low staffing levels. Recommendations have been made aimed at reinforcing staff resources.

Certain treatment-related issues have also been raised, in particular the need to review the level of care offered to prisoners undergoing in-patient psychiatric treatment at the Prison Hospital. Each such patient should benefit from an individual treatment plan, and efforts should be made to develop psycho-social therapeutic activities and to adapt them to the individual needs of patients. The CPT has also recommended that immediate steps be taken to remedy deficiencies in the current approach vis-à-vis tuberculosis patients.

### **"Laza Lazarević" Psychiatric Hospital**

220. The CPT's delegation did not receive any allegations of deliberate ill-treatment of patients by staff of the hospital. More generally, the staff appeared to be doing their best, despite low numbers and difficult conditions.

221. As regards living conditions, the buildings and decor were dilapidated and austere, and there were widespread signs of structural deterioration and faulty drainage. The delegation was impressed by the efforts made to maintain hygienic conditions at hospital standards in such a difficult environment. The CPT has identified the criteria for creating a positive therapeutic environment in a psychiatric hospital, and made recommendations in order to meet these criteria at "Laza Lazarević". The Committee has also emphasised the need to establish an individual treatment plan for each patient and to develop the components of psycho-social rehabilitation.

222. The staff complement as regards psychiatrists was more than satisfactory. However, the number of occupational therapists and of social workers was particularly low for a hospital of this importance; steps must be taken to significantly reinforce the presence of these categories of staff at the hospital, with a view to increasing the multidisciplinary nature of the treatment provided to patients. The CPT has also recommended that the presence of qualified nursing staff be reinforced.

223. There was an excessive reliance on the use of physical restraint at the hospital. The CPT has recommended that a clearly defined policy on the use of means of restraint be immediately drawn up at this establishment and, as appropriate, in other psychiatric establishments in Serbia.

In respect of the fundamental safeguards offered to involuntary patients, the CPT has recommended that immediate measures be taken to ensure the full implementation of the existing legislation and, in particular, the effectiveness of the judicial control of involuntary placement measures. The Committee has also highlighted issues to be taken into account in the preparation of new legislation on the rights of mental patients.



**PART 3: ESTABLISHMENTS UNDER THE AUTHORITY OF THE REPUBLIC OF MONTENEGRO**

**A. Establishments under the authority of the Ministry of the Interior**

**1. Preliminary remarks**

224. The general process of reform of the police service in Montenegro was still taking place at the time of the visit. In this context, the Minister of the Interior indicated that the construction of a different relationship between police and citizens (inspired by a so-called "proximity police" model), together with combating organised crime and corruption, were considered top priorities. Some elements of the reform affecting the police activities had, however, already been included in the new Code of Criminal Procedure, which entered into force some six months before the visit (cf. paragraph 226). **The CPT would like to receive in due course a copy of the new laws and regulations reforming the police service.**

225. The prohibition of torture and other forms of ill-treatment is set out in the Human Rights Charter (Articles 12 and 14). Equally, the Constitution of Montenegro explicitly refers to the prohibition of torture, humiliating and degrading treatment or punishment (Article 24). The prohibition of torture has also been included as a specific crime ("Assault and torture", Article 167<sup>29</sup>) in the new Criminal Code, which entered into force on 6 April 2004. The notion of torture is mentioned in several other articles: "Crimes against humanity" (Article 427), "War crimes against civil population" (Article 428), "War crimes against the wounded and ill" (Article 429) and "War crimes against prisoners of war" (Article 430).

226. The new Code of Criminal Procedure (CCP) limits the period of detention in police custody in criminal matters to a maximum of 48 hours (cf. Article 234 (1))<sup>30</sup>. Article 231 of the CCP also provides for the possibility to summon citizens to a police station in order to collect information. Such a procedure may not last for more than four hours. If the police authority, in the course of collecting information, assesses that a summoned citizen may be deemed as a suspect, it is bound immediately to inform him of the criminal offence he is charged with and the grounds for suspicion, and of his right to obtain a defence counsel who shall be present in the course of his further interrogation.

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<sup>29</sup> "(1) Anyone who assaults others or treats them in a manner that is humiliating and degrading shall be sentenced to a fine or imprisonment not exceeding one year;

(2) Anyone who causes great suffering of others with the aim to obtain an information or confession from them or a third party, or to intimidate them or a third party, or to exert pressure on them, or who does it from some other motives grounded on any form of discrimination, shall be sentenced to imprisonment not exceeding three years;

(3) Should the act referred to in paragraph 1 of this Article be committed by a person acting in an official capacity during the performance of his/her duties, that person shall be sentenced to one to five years of imprisonment".

<sup>30</sup> "Exceptionally, the person deprived of liberty pursuant to Article 232, paragraph 1 of this Code, as well as the suspect referred to in Article 231, paragraphs 7 and 8 may be provisionally confined by a police authority for the purpose of collecting information (Article 231, paragraph 1) or interrogation for up to 48 hours from the moment of deprivation of liberty or appearance upon summons".

## 2. Torture and other forms of ill-treatment

227. The delegation received numerous allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police in Montenegro. Most of those allegations related to ill-treatment inflicted at the time of questioning with a view to extracting confessions or gathering other information. In some cases, ill-treatment was said to have been inflicted also at the time of apprehension. On the other hand, hardly any allegations were received of ill-treatment by staff working in detention areas.

The types of ill-treatment alleged included slaps, punches, kicks and blows on various parts of the body with batons, baseball bats and other instruments. In one case, concerning Bar Police Station, the delegation received an allegation of a recent case of "falaka" (beating with a blunt object on the soles of the feet) and of a mock execution (by placing a gun in a detained person's mouth). Further, some detainees alleged that they were beaten while handcuffed and their head covered with a cowl. The ill-treatment was on occasion of such a severity that it could well be considered to amount to torture. Allegations were also received of deprivation of food during the whole period of police custody (up to 48 hours).

Non-standard and unlabelled objects of the kind described above and other suspicious items were found in inspectors' offices in Bar (three baseball bats; a 1,2 m long wooden stick with a metal cover; and a long knife) and Budva (branch cutting instruments) Police Stations. In several cases, the delegation was able to verify that the persons concerned had been held in police establishments during the periods to which the ill-treatment in question had been ascribed; moreover, certain of them provided accurate descriptions of the offices where they had been questioned and correctly identified the officers present.

In a few cases, the delegation gathered supporting medical evidence consistent with the persons' accounts of ill-treatment.

228. In the light of all the information at its disposal, the CPT is led to conclude that persons deprived of their liberty by the police in Montenegro run a significant risk of being ill-treated while in police custody (in particular when being interrogated), and that on occasion this can include severe ill-treatment (or even torture).

**The CPT recommends that the relevant national authorities as well as senior police officers regularly instruct police officers that ill-treatment will not be tolerated, that all information regarding possible ill-treatment will be investigated and that perpetrators of such treatment will be subjected to severe sanctions. It is particularly important that this be made clear to officers of the criminal police.**

**The CPT also recommends that any non-standard issue objects (such as those described in paragraph 227) be immediately removed from all police premises where persons may be held or questioned. Any such items seized during criminal investigations should be entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated property store.**

229. As regards more specifically the allegations of ill-treatment at the time of apprehension, the CPT fully recognises that the apprehension of a suspect is often a hazardous task, in particular if the person concerned resists and/or the police have reason to believe that the person might be armed and dangerous. The circumstances of an apprehension may be such that injuries are sustained by the person concerned (and possibly also by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when apprehending a suspect. Furthermore, once apprehended persons have been brought under control, there can never be any justification for their being struck.

**The CPT recommends that police officers be reminded of these principles in an appropriate manner.**

230. Later in this report, the CPT will recommend a certain number of measures designed to strengthen formal safeguards against the ill-treatment of persons detained by the police (cf. paragraphs 241 to 252); however, it should be emphasised that, although important, legal and technical safeguards alone will never be sufficient. The best possible guarantee against ill-treatment is for its use to be unequivocally rejected by police officers; this implies strict selection criteria at the time of recruitment of police officers and the provision of adequate professional training.

As regards the latter, the Montenegrin authorities should seek to integrate human rights concepts into practical professional training for high-risk situations, such as the apprehension and interrogation of suspects. This will prove more effective than separate courses on human rights. Training should be pursued at all levels of the police service, and should be ongoing. It should seek to put across and develop two points: firstly, that all forms of ill-treatment are an affront to human dignity and, as such, are incompatible with the values enshrined in national legal instruments as well as in many international instruments ratified by and binding upon Montenegro; secondly, that resort to ill-treatment is a fundamentally-flawed method of obtaining evidence for combating crime. More advanced interrogation and investigation techniques will lead to more reliable results.

Particular attention should be given to training in the art of handling, and more especially of speaking to, persons in police custody i.e. interpersonal communication skills. The possession of such skills will often enable officers to defuse situations which might otherwise become violent.

Consequently, **the CPT recommends:**

- **that a very high priority be given to professional training for police officers of all ranks and categories, including in modern investigation techniques. Experts not belonging to the police should be involved in this training;**
- **that an aptitude for interpersonal communication be a major factor in the process of recruiting police officers and that, during the training of such officers, considerable emphasis be placed on acquiring and developing interpersonal communication skills.**

231. The CPT has taken note of the work of the Internal Control Agency of the Ministry of the Interior, which carries out internal investigations within the police service. The Minister of the Interior informed the delegation that in the period from January 2003 to June 2004, the Agency made 1055 disciplinary decisions: 361 police officers received a disciplinary sanction (44 of them were dismissed) and 654 were fined. In the same period, 58 criminal proceedings and 30 misdemeanour proceedings against police officers were opened.

In order for the CPT to obtain a full picture of the current situation, **the Committee would like the Montenegrin authorities to supply the following information, in respect of 2004:**

- **the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings which were initiated as a result;**
- **detailed account of the specific criminal/disciplinary sanctions imposed following complaints of ill-treatment.**

**The CPT would also like to receive detailed information on police complaints and disciplinary procedures, including as regards the procedural safeguards aimed at ensuring their objectivity.**

232. Another very effective means of preventing ill-treatment lies in the diligent examination by the competent authorities of all information regarding possible ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint. In the light of the delegation's findings, it is clear that public prosecutors and/or other relevant judicial authorities should supervise more closely the activities of the police. They should be alert to any signs of ill-treatment and take appropriate action. Moreover, the absence of marks should not be regarded, in itself, as evidence that ill-treatment has not occurred; indeed, if carried out expertly, many forms of ill-treatment leave only ephemeral traces, if any.

**The CPT recommends that, whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.**

233. Prison health-care services can also make a significant contribution to the prevention of ill-treatment by the police, through the systematic recording of injuries borne by newly arrived prisoners and, when appropriate, the provision of information to the relevant authorities. However, the observations made by the CPT's delegation suggest that the procedure as regards the recording of injuries observed upon arrival at Spuž Prison could be improved (cf. paragraph 283). At best, only brief entries concerning injuries observed upon arrival were being made, without any indication of statements made by the prisoner concerning the origin of the injuries.

The CPT recommends that the record drawn up by a prison doctor following a medical examination of a newly arrived prisoner 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;
- (iii) the doctor's conclusions in the light of (i) and (ii).

In his conclusions, the doctor should indicate the degree of consistency between allegations made and the objective medical findings; this will enable the relevant authorities and, in particular prosecutors, to properly assess the information set out in the record. In addition, if the prisoner so requests, the doctor should provide him/her with a certificate describing any injuries observed.

Further, the CPT recommends that existing procedures be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor and a preliminary investigation is initiated by him.

### 3. Conditions of detention

#### a. introduction

234. Custody in police establishments in Montenegro is of relatively short duration (cf. paragraph 226); nevertheless, certain elementary material requirements must be met.

All police holding facilities should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy access to natural light. Further, holding facilities should be equipped with a means of rest (e.g. a fixed chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in custody should be allowed to comply, when necessary, with the needs of nature in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

Persons held for extended periods (24 hours or more) should be provided with appropriate personal hygiene items and, as far as possible, be offered outdoor exercise every day.

b. situation in the establishments visited

235. Material conditions of detention in Montenegrin police establishments gave rise to serious concern. The Minister of the Interior himself indicated to the delegation that the conditions in police detention facilities were unsatisfactory and did not comply with European standards.

236. Bar Police Station had three cells. One cell, situated on the ground floor, offered adequate space (7 m<sup>2</sup>) for individual accommodation and had good access to natural light and ventilation. However, there was no heating and the wooden bench was too narrow (30 cm) to allow a detained person to lie down. Consequently, as presently equipped, it is not suitable for use as overnight accommodation.

The other two cells, each measuring 14 m<sup>2</sup>, were situated in the basement of the police station; they offered very poor conditions of detention. They had no access to natural light and in one of the cells, the artificial lighting was not working. Moreover, ventilation was very poor and access to the nearby sanitary facilities was clearly not guaranteed (the cell floor was stained with faeces and urine). In addition, the cells were not equipped with a call bell, despite their location being quite remote from the police officer on duty. As a result, at the end of the visit, the delegation requested the Montenegrin authorities to stop using the latter cells until such time as the shortcomings observed had been rectified.

237. Budva Police Station had two cells in use at the time of the visit<sup>31</sup>. The cells, situated on the ground floor, were bare, extremely narrow (0,90 m) and very small (2,8 m<sup>2</sup>). Moreover, they had no artificial lighting and for one of them, metal shutters severely reduced access to natural light. In addition, both cells were devoid of call systems. The delegation noted with concern that up to six persons had been detained at a given time in these two cells in recent months and that, on at least one occasion, a detainee had been held in one of the cells for up to 36 hours; this is totally unacceptable. In the CPT's opinion, the above-mentioned cells should not be used until such time as the shortcomings observed had been rectified. Moreover, they should only be used for the temporary holding (for one or two hours) of detained persons; under no circumstances should the cells be used as overnight accommodation, as they are too small for this purpose.

238. Podgorica Police Department was equipped with five cells (used mainly for criminal suspects) and a large collective cell (used in public order situations), all situated in the basement of the building. The cells for criminal suspects offered enough space for individual accommodation (between 4 to 7 m<sup>2</sup>) and were equipped with a concrete bunk, mattresses and blankets. However, their general state of hygiene and cleanliness was poor, as was ventilation. None of the cells was equipped with a call system; however, two police officers were on duty in the detention area.

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<sup>31</sup> Two other cells, situated in the basement, were under renovation.

239. **The CPT recommends that measures be taken to remedy the shortcomings as regards material conditions observed in the cells of the three police stations visited, and to ensure that the use made of the cells complies with the CPT's comments. Moreover, the CPT recommends that the state of cellular accommodation in all police stations in Montenegro be reviewed, having regard to the criteria set out in paragraph 234.**

240. It rapidly became clear from the delegations' findings and from discussions with police staff that food was usually not provided to persons placed in police custody, unless family members/friends brought it to the police station. **The CPT recommends that immediate measures be taken in order to provide persons in custody with food at appropriate intervals (which implies that budgetary means must exist for providing food to persons not in a position to pay for it themselves), including at least one full meal (i.e. something more substantial than a sandwich) every day.**

#### **4. Safeguards against the ill-treatment of persons deprived of their liberty**

##### a. introduction

241. The CPT attaches particular importance to three rights for persons deprived of their liberty by the police:

- the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice,
- the right of access to a lawyer,
- the right of access to a doctor.

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police). These rights should be enjoyed not only by criminal suspects, but also by all other categories of persons deprived of their liberty (e.g. persons placed in administrative detention, persons detained under the aliens' legislation, etc.). Furthermore, persons detained by the police should be expressly informed, without delay and in a language they understand, of all their rights, including those referred to above.

242. The above-mentioned safeguards for persons deprived of their liberty by the police in Montenegro are for the most part provided by law; however, their implementation in practice is far from guaranteed.

b. notification of custody

243. In criminal matters, any suspect has the right to inform his/her family of the fact of his/her detention. This right is contained in Article 5 (2) of the CCP: "At the request of the person detained, the arresting authority must promptly inform close relatives of the detained about his arrest". The same right is offered to a summoned citizen if the police authority, in the course of collecting information, assesses that he/she may be deemed a suspect (cf. paragraph 226). The delegation noted that this right was generally applied in practice. However, a number of detained persons alleged during the visit that they had not requested that their families be notified, because they were unaware that such a right existed. **The CPT recommends that the Montenegrin authorities take appropriate steps to ensure that the right to notify a close relative/third party of the fact of one's detention is rendered fully effective in practice, as from the very outset of deprivation of liberty.**

244. The CPT recognises that the exercise of the above-mentioned right may have to be made subject to certain exceptions designed to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or of a prosecutor). **The CPT would like to receive detailed information on the present status of the Montenegrin legislation in this regard.**

c. access to a lawyer

245. Since the entry into force of the new CCP, access to a lawyer is granted to criminal suspects summoned by the police (Article 231 ((7) (8) and (9)), persons detained ("provisional confinement") by the police (Article 234 (7))<sup>32</sup> or brought before an investigating judge (Article 233 (1)). This right is also set out in Article 5 of the same Code<sup>33</sup> and provision is made for the lawyer to be present during police interrogation. However, numerous remand prisoners met by the delegation at Spuž Prison alleged that, in practice, access to a lawyer had not been provided as from the very outset of deprivation of liberty, such access only being granted after the first police interview.

As the CPT has emphasized on numerous occasions, it is precisely during the first hours of police custody that the risk of ill-treatment is the greatest. Consequently, **the CPT recommends that the Montenegrin authorities take the necessary steps to ensure that the right of access to a lawyer is guaranteed from the very outset of deprivation of liberty, both in law and in practice.**

Further, **this right of access to a lawyer should be enjoyed by anyone who is under a legal obligation to attend a police station.**

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<sup>32</sup> Under this provision, access to a lawyer is given as from the moment the police render a ruling on provisional confinement. Such a ruling has to be taken within a maximum of two hours from the moment the measure of provisional confinement is implemented.

<sup>33</sup> "The detained person must be promptly informed of his right ...to have the defence counsel of his choice. [...]".



246. For the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for one. Such a system does exist in Montenegro, and the information gathered during the visit suggests that it functions in a satisfactory manner. The CPT welcomes this state of affairs.

d. access to a doctor

247. Access to a doctor is not formally provided for during the period of police custody and, in practice, such access is provided only if the police officers consider that there is an emergency or a specific need. Access to a doctor is only formally provided for when a person is brought before an investigating judge (Article 233 (7)).<sup>34</sup>

In view of the above, **the CPT recommends that specific legal provisions be adopted guaranteeing the right of access to a doctor for persons in police custody. Those provisions should *inter alia* stipulate that:**

- **a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);**
- **all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, are to take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers;**
- **the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the detained person and his lawyer.**

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<sup>34</sup> "When a person deprived of liberty is brought before the investigating judge, he or his defence counsel, his family member or a person living with him in an extramarital community, may request from the investigating judge to order a medical examination. The state prosecutor may submit such a request, as well. The investigating judge shall attach a decision on ordering a physician to perform a medical examination along with the record on his interrogation to the investigation files".

e. information on rights

248. Article 5 of the CPP<sup>35</sup> grants persons deprived of their liberty by the police the right to be informed of their situation and their fundamental rights. However, many detained persons interviewed by the delegation alleged that they had not been informed of their rights.

In order to ensure that persons deprived of their liberty by the police are duly informed of all their rights, **the CPT recommends that a form setting out those rights in a straightforward manner be systematically given to all persons in police custody, at the very outset of their deprivation of liberty. The contents of this form should reflect, *inter alia*, the rights referred to in paragraphs 243 to 247. The form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights in a language they understand.**

f. custody records

249. In all the police establishments visited in Montenegro, a variety of registers were kept. The majority of them were very poorly maintained, often lacked much of the information they were supposed to record and, on occasion, contained contradictory information or did not even record the presence of detained persons in the police station visited.

250. **The CPT recommends that steps be taken immediately to ensure that whenever a person is deprived of his liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay.**

Further, **the CPT considers that the fundamental safeguards of persons in police custody would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it** (time of and reason(s) for the arrest; when the person arrived at the police station; when informed of rights; signs of injury, health problems, mental disorder etc; when offered food; when interrogated; contacts with and/or visits by next of kin, lawyer, doctor or consular official; when transferred; when brought before a public prosecutor; when remanded in custody or released, etc.). For certain matters (for example, the removal of personal effects, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. **The detained person's lawyer should have access to such a custody record.**

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<sup>35</sup> "(1)The seizure or detention must be understood by the arrested person to be an arrest, promptly and in his own language or in the language which he understands, and the reasons for the arrest must be communicated. The detained person must be promptly informed of his right to remain silent and to have the defence counsel of his choice. [...]".

g. conduct of interrogations

251. The art of questioning suspects will always be based to a large extent on experience; however, the CPT considers that formal guidelines should exist on a number of specific points. The existence of such guidelines will, *inter alia*, help to underpin the lessons taught during police training. The fact that a number of the allegations of physical ill-treatment received related to the stage of police questioning and, more particularly, to interrogation by officers of the criminal police confirms the pressing need for such guidelines.

The Code of Criminal Procedure has general provisions (Articles 88 and 89) stipulating the manner in which police interrogation should be conducted. These general provisions should be supplemented by a code of conduct for police interrogations, setting out comprehensive practical guidelines for police officers.

**The CPT recommends that the Montenegrin authorities draw up such a code of conduct for police interviews. The code should deal, *inter alia*, with the following: the systematic informing of the detainee as to the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; place(s) in which interviews may take place; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. The code should also provide for a systematic record to be kept of the times at which interviews start and end, the persons present during each interview and any request made by the detainee during the interview and whether it was complied with. The position of particularly vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards.**

**As regards juveniles, the CPT recommends that steps be taken to ensure that an adult responsible for the interests of the juvenile (e.g. a relative or guardian) is present when the juvenile concerned is interviewed.**

h. complaints and inspection procedures

252. Naturally, compliance with legal requirements and professional standards must be supervised by effective monitoring systems. The situation in all law enforcement establishments must be thoroughly checked at appropriate (and irregular) intervals. Officials carrying out those checks must examine all issues related to the treatment of persons in custody; those issues concern not only material conditions of detention but also questions such as the recording of detention, information on rights and the actual exercise of those rights (in particular the rights of access to a lawyer and to notify a relative of one's custody), and compliance with the rules governing the medical examination of persons in police custody. To explore these different issues in an effective manner will involve interviewing in private persons who are in detention.

**The CPT would like to receive detailed information on the bodies/organisations empowered to visit police establishments in Montenegro and to receive a copy of any recent report drawn up at national level on this subject. Further, it would like to know if the Office of the Ombudsman - which was recently set up - is empowered to carry out such visits.**

## **B. Spuž Prison Complex**

### **1. Preliminary remarks**

253. Spuž Prison Complex is the largest prison establishment in Montenegro. It is situated near Podgorica and consists of three different establishments: a Closed Correctional Facility (CCF), a Remand Prison (SRP) and a Prison Hospital. At the SRP, the delegation concentrated on the Female Section and the disciplinary/isolation cells.

254. The prison system in Montenegro is administered by an independent agency (called the “State Administration for the Execution of Penal Sanctions”), a body which is distinct from the Ministry of Justice.

The basic rules governing imprisonment in Montenegro are set out in: the Criminal Code (Chapter III - Sections 32 to 51); the Code of Criminal Procedure (Sections 147 to 159); the Law on the Execution of Sentences (LECS); and the House Rules of the State Administration for the Execution of Penal Sanctions.

255. At the time of the visit, the CCF accommodated some 424 prisoners (for an official capacity of 280 places, i.e. an occupancy rate of 151 %). Built in the 1950's, the CCF is composed of a closed and a semi-open section. The first offers in principle 180 places, divided between Unit A (Admission Unit, kitchen, infirmary, detention area), Unit B (main prisoners' accommodation) and Unit C (high-security/disciplinary cells). The semi-open section has a formal capacity of 100.

The SRP held some 280 detainees at the time of the visit (for an official capacity of 218)<sup>36</sup>. Built in 1968, this four-storey building has been used for detention purposes since 1982. It accommodates criminal suspects waiting to be brought before the investigating judge, pre-trial detainees and prisoners serving a short sentence (less than three months).

256. Spuž Prison Hospital is the only establishment of its kind in Montenegro. Located on the fourth floor of the SRP, it was not yet in service at the time of the visit. Although the construction phase had been completed, financial constraints had apparently prevented the acquisition of the necessary medical equipment and furniture. In the meantime, detainees requiring in-patient treatment were cared for in the CCF and SRP infirmaries. If necessary, they were sent to the local civil hospital.

The Minister of Justice of Montenegro informed the delegation that the opening of the Prison Hospital was at the top of his list of priorities. **The CPT would like to receive updated information on the planned opening of the Prison Hospital (including detailed data as regards the medical and nursing staff complement, the number of beds, the nature of the services it will provide, etc.).**

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<sup>36</sup> The official capacity is normally 320 places; however, it had been temporarily reduced due to renovation work in certain parts of the establishment.

257. The delegation also noted the absence of a closed unit for juveniles in Montenegro. Although it was apparently rare, juveniles have been admitted in the past to the CCF and detained together with adults. There was also no semi-open section for female detainees in the Republic. The delegation was informed that future plans included the setting up of a separate wing for juveniles (which would be located in the premises of the present female unit) and of a new female unit to be located outside the prison compound. **The CPT would like to receive detailed information on the implementation of these plans (envisaged capacity, staff resources, etc.).**

## 2. Ill-treatment

258. The delegation heard no allegations of recent ill-treatment of inmates by prison staff<sup>37</sup>. More generally, a rather relaxed atmosphere was observed throughout the establishment. That said, in the CPT's opinion, the severe lack of staff at the CCF combined with overcrowding was putting both staff and prisoners at risk.

## 3. Staffing and management issues

259. Inadequate staffing levels constitute a major problem throughout the Spuž Prison Complex, and in particular at the CCF. Only four prison officers<sup>38</sup> were in direct contact with some 300 prisoners on a normal day shift. The situation was clearly unacceptable at the high-security unit (Unit C), where prisoners had no contact with the staff for the vast majority of the day (except when food was brought in or when outdoor exercise was taken). It was therefore not surprising that a number of prison officers met by the delegation, as well as prisoners, indicated that they felt that their own security was compromised. The situation was less critical in this regard at the SRP<sup>39</sup>, as prisoners there were not involved in any out-of-cell activities. However, this institution was confronted with a shortage of escort staff.

260. The climate in a prison is largely dependent on the quality and resources of its personnel. Ensuring a positive climate requires a professional team of staff, who must be present in adequate numbers at any given time in detention areas and in facilities used by prisoners for activities. Prison officers should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order. The development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff far more rewarding.

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<sup>37</sup> The delegation was given a list of disciplinary sanctions imposed since 1998 against prison officers for ill-treatment of prisoners. One such incident, always of a minor nature, had been registered on average per year.

<sup>38</sup> 12 other prison officers were occupying posts on the perimeter wall around the CCF or at the gate of Spuž Prison Complex. The total number of prison officers working at the CCF was 102.

<sup>39</sup> The total number of prison officers working at the SRP was 70 (including 14 officers responsible for escorting duties).

There must be enough staff to correctly supervise the activities of prisoners and support each other in the performance of their duties; further, management must be prepared to support staff fully in the exercise of their authority. An overall low staff complement which diminishes the possibilities of direct contact with prisoners will certainly impede the development of positive relations; more generally, it will generate an insecure environment for both staff and prisoners. Where staff complements are inadequate, there is a tendency to resort to significant amounts of overtime in order to maintain a basic level of security and regime delivery in an establishment. This state of affairs can easily result in high levels of stress in staff and their premature burnout, a situation which is likely to exacerbate the tension inherent in any prison environment.

261. The Director of the State Agency acknowledged the dangers inherent in the current shortage of security staff. In his opinion<sup>40</sup>, some 60 additional prison officers were needed to ensure an optimal operation of the prison complex, including the maintenance of the necessary security level throughout the establishment (including regular staff cover in each Unit). **The CPT recommends that the Montenegrin authorities conduct a full review, without delay, of current staffing arrangements in Spuž Prison Complex. The objective should be to ensure that the number of prison officers employed is sufficient to guarantee both staff safety and the physical and mental integrity of inmates.**

262. Similar shortages prevailed as regards other categories of staff working at the CCF, in particular in the "Treatment Department" and the health care service (for the latter, cf. paragraph 280). The Treatment Department was composed of a Head of the Department (a lawyer) and five educators (three of them being defectologists<sup>41</sup> and two psychologists) and a few support staff. The delegation noted that in practice, one educator was taking care of approximately 100 prisoners. As a result, direct contacts between prisoner and educators were rather limited. In the CPT's opinion, such a number of educators for an establishment accommodating some 450 prisoners is insufficient. The Head of the Treatment Department estimated that in order to carry out his task properly, an educator should be responsible for 50 prisoners, at most. **The CPT recommends that the staff complement of the Treatment Department be increased, to ensure more direct contact with inmates and promote development of positive relations.**

263. The very low staffing levels had other side effects, among them poor keeping of prison records (both of individual files and management data). The delegation observed that both the quantity and quality of the information kept in the prison records were deficient. Obtaining even basic information, such as the number and the identity of the prisoners present at a specific time in an establishment, or the number of staff working at a given time in the institution, or information such as the number of placements in solitary confinement/isolation, or the incidents involving the use of force by staff, was far from a straightforward matter.

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<sup>40</sup> This position was confirmed again in the letter sent on 16 November 2004 by the authorities, in response to the delegation's preliminary observations at the end-of-visit talks.

<sup>41</sup> Defectology is an approach to the study and treatment of persons with disabilities. It draws on knowledge from medicine, pedagogy and psychology.

To sum up, the present documentation system does not provide the information necessary for either adequate management or effective external monitoring. **The CPT recommends that a full review be made of the collection and recording of prison data at Spuž Prison Complex and that clear instructions be given to all staff with a view to substantially improving both the quantity and the quality of the information kept.**

264. During its short visit to the SRP, the delegation noted that around 60% of the cells in the remand prison were equipped with a camera and that these cells could be monitored from a central video room. However, the CPT was intrigued to note that, at the time of the visit, the only cells under CCTV surveillance were those of the Female Section. As it was mid-September and rather warm, some female detainees were not fully dressed. The net result was that female prisoners were being deprived of their privacy through video surveillance by male staff members.

If it is considered that, at certain times and for certain reasons, CCTV systems should exist in a prison environment, elementary principles of decency should be followed by the staff in charge; for example, the monitoring of female detainees in their cells should be performed by female members of staff. **The CPT recommends that the necessary measures be taken at the SRP, in the light of the above remarks.**

#### **4. High-security Unit**

265. In every country there will be a certain number of prisoners considered to present a particularly high security risk and hence to require special conditions of detention. The perceived high security risk of such prisoners may result from the nature of the offences they have committed, the manner in which they react to the constraints of life in prison, or their psychological/psychiatric profile. This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT, as the need to take exceptional measures vis-à-vis such prisoners brings with it a greater risk of inhuman treatment.

Prisoners who present a particularly high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. Special efforts should be made to develop a good internal atmosphere within high-security units. The aim should be to build positive relations between staff and prisoners. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security and of staff safety.

The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit as on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in the bubble-like atmosphere of such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.). As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners.

It is axiomatic that prisoners should not be subject to a special security regime for any longer than the risk they present makes necessary. This calls for regular reviews of placement decisions. Such reviews should always be based on the continuous assessment of the individual prisoner by staff specially trained to carry out such assessment. Moreover, prisoners should as far as possible be kept fully informed of the reasons for their placement and, if necessary, its renewal; this will *inter alia* enable them to make effective use of avenues for challenging that measure.

The situation observed at Spuž High-security Unit failed by a considerable margin to meet these criteria.

266. First and foremost, as already indicated (cf. paragraph 259), prison officers were only very exceptionally physically present in the Unit, a state of affairs which is quite paradoxical taking into account the declared or perceived dangerousness of the inmates concerned.

Secondly, the conditions of detention in the Unit left much to be desired, a failing compounded by the fact that placement in the unit could last months or even years (as was the case for most of the 9 inmates detained there at the time of the visit)<sup>42</sup>. There were two distinct sub-units (C1, accommodating five prisoners, and C2, holding four prisoners), composed of a narrow corridor, a living room, a dormitory (some 30 m<sup>2</sup>) and a sanitary annex. The material conditions in the Unit were extremely poor, particularly as regards hygiene. Cockroaches infested the living room and the dormitory, in particular on the shelves used to keep food; the sanitary annex (WC, washbasin and shower) was dilapidated and the toilets were not equipped with a flush system. Further, there were no organised activities at all, apart from daily outdoor exercise.

Thirdly, there was an evident lack of transparency as regards admission to the unit and subsequent reviews (cf. also paragraph 279)<sup>43</sup>.

267. The CPT does not question the necessity for the Montenegrin authorities to hold certain prisoners in high security conditions in their only correctional institution. However, it is axiomatic that high-security risk prisoners require a more incisive and more attentive assessment if the authorities are to both preserve safety within the establishment and avoid any treatment not respectful of human dignity. Material conditions, regime and activities, as well as procedural aspects are crucial in this respect. **The CPT recommends that the authorities take immediate measures to review the situation prevailing at the High-security Unit, taking into account the criteria described above. It would like to receive detailed information on the conclusions of that review, as well as on measures subsequently taken to remedy the deficiencies observed by its delegation.**

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<sup>42</sup> One prisoner had been continuously detained in the Unit since 1997 (apart from a short period during which he was treated in Belgrade Prison Hospital after an episode of self-harm).

<sup>43</sup> Apparently, prisoners in the high-security unit saw their educators three times a year; the delegation was told that on these occasions, the educators only opened the door to the day-room and looked inside, asking whether everything was in order. There was said to be no personal and confidential contact between the prisoner concerned and his educator.



## 5. Material conditions

268. The standard of inmate accommodation is central to the quality of life within a prison. First and foremost, cells should offer sufficient living space for the number of persons held within them, should benefit from good access to natural light and ventilation, and should be equipped with adequate artificial lighting and heating. Sanitary arrangements should be clean and properly separated from the rest of the living space; either a lavatory should be located in cellular accommodation (preferably in an annex) or means should exist to enable prisoners who need to use a lavatory to be released from their cells without undue delay at all times, including at night. It is desirable for running water to be available within cellular accommodation, and prisoners should have adequate access to shower or bathing facilities. Cells should be suitably furnished (bed, table, chair/stool, storage space), all facilities/equipment should be in a good state of repair, and prisoners should be placed in a position to keep their accommodation in an adequate state of cleanliness.

The situation observed by the delegation at the Spuž Prison Complex failed in many respects to meet the above criteria.

269. The Montenegrin authorities themselves indicated in their letter of 16 November that “the facilities of the Institution [...] are over 50 years old and non-functional, very badly equipped and insufficient for the more efficient and successful work of its employees. The worn out state of the accommodation capacities are, in their inadequacy and insufficiency, almost always in the focus of the core objections made by numerous national and international monitors”. They also raised the possibility of building at least one new facility for accommodating sentenced prisoners. **The CPT would like to receive detailed information on the authorities’ plans in this regard.**

270. In this context, the CPT wishes to add that providing additional accommodation is unlikely, in itself, to provide a lasting solution to the problem of overcrowding in the Montenegrin prison system. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, in those countries which enjoy relatively uncrowded prison systems, the existence of policies to limit and/or modulate the number of persons being sent to prison has tended to be an important element in maintaining the prison population at a manageable level.

**The CPT recommends the Montenegrin authorities take measures to develop and implement a comprehensive policy to combat prison overcrowding, in the light of the above comments and Recommendations R (80) 11, R (92) 17 and R (99) 22 of the Committee of Ministers of the Council of Europe.**

271. As regards more specifically the existing standard of 8 m<sup>3</sup> per prisoner<sup>44</sup>, it does not offer a satisfactory amount of living space. **The CPT therefore recommends that the standard be raised to at least 4 m<sup>2</sup> per prisoner, and that official capacities and occupancy levels of cells and dormitories in Montenegrin prisons be revised accordingly.**

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<sup>44</sup> Cf. Rules on the conditions of premises accommodating sentenced prisoners at the CCF.

272. Turning to the precise observations made by the CPT's delegation on the spot, with very few exceptions (e.g. the Unit for Female Prisoners<sup>45</sup>), all dormitories for prisoners at the CCF were seriously affected by overcrowding. For instance, in Unit A, up to 22 inmates were held in dormitory N° 10 (35 m<sup>2</sup>) and up to 26 inmates were placed in another dormitory measuring 55 m<sup>2</sup>. In Unit B1, up to 20 inmates were accommodated in a dormitory measuring some 45 m<sup>2</sup> and, on the other side of the building, up to 24 inmates were held in a dormitory measuring some 50 m<sup>2</sup>. In addition, the dormitories were poorly equipped (old bunk beds; worn out mattresses, blankets and sheets; very few cupboards or other items of furniture). The adjacent dining rooms were also spartanly equipped. All rooms did have good access to natural light; however, artificial lighting was mediocre.

The sanitary annexes (toilets without flush system, washbasins and showers - all in limited numbers) were in a poor state of maintenance and repair, and many of them were simply out of service. Moreover, prisoners indicated to the delegation that they had not been supplied with basic hygiene items, cleaning products for their cells or even bed linen; however, they had been provided with blankets and uniforms.

No heating system was installed in the dormitories and living/dining rooms visited; as a result, many of these areas were humid and damp. Further, the electrical system was a serious health hazard for both staff and prisoners, as it was outdated and badly needed repair. This was particularly the case in sanitary areas.

273. At the SRP, female remand prisoners<sup>46</sup> were accommodated in cramped, dilapidated and unhygienic conditions in a separate unit located at the entrance of the building. Their unit consisted of four cells and four day-rooms, all in a very poor state of repair. The four cells were overcrowded (e.g. 4 prisoners in 9.5 m<sup>2</sup>, 6 in 18 m<sup>2</sup>), and the mattresses and bedding were worn and apparently eaten by mice. Further, there was no heating in the rooms, the walls of which were covered with mould.

274. The CPT has already requested detailed information on the authorities' plans to improve the quality of the prison estate (cf. paragraph 257). In the meantime, **the CPT recommends that immediate measures be taken to:**

- **provide all prisoners with clean mattresses and clean bed linen;**
- **ensure that all prisoners have adequate quantities of essential personal hygiene products and are able to take a hot shower at least once a week;**
- **renew/renovate the electrical and heating systems;**
- **renovate the sanitary facilities.**

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<sup>45</sup> The women's section is situated within the main prison but some distance from the male accommodation units.

<sup>46</sup> As already indicated, the delegation did not carry out a full visit to the SRP. However, it was able to observe that the individual cells for male remand prisoners measured some 9 m<sup>2</sup> and were equipped with a toilet, a washbasin and a WC (equipped with a working flushing system). Collective cells measured some 40 m<sup>2</sup> and accommodated five prisoners. Heating was functional in each cell. To sum up, the material conditions were better than those provided in the CCF.

## 6. Activities

275. The vast majority of the *male sentenced prisoners* at the CCF enjoyed a relatively relaxed regime, benefiting from generous access to the large open grounds around the buildings. However, at the time of the visit, almost no organised activities were offered to such prisoners, even those serving long sentences. Only very few of them had a job within the prison, as the workshops were destroyed by a fire in January 2004<sup>47</sup>. As a result, nearly all prisoners were languishing endlessly in their dormitories or in the grounds outside during the day. This does not constitute a positive prison regime which might encourage prisoners to address their offending behaviour.

276. The *female sentenced prisoners* at the CCF benefited from some - although limited - organised activities. One room had been turned into a workshop for sorting eggs, while another was equipped with a sewing machine. In addition, there was a makeshift gym (with some weight-lifting material belonging to prisoners) and a small library. However, their main grievance related to the absence of any semi-open regime for those women who would legally be in a position to apply for it. As for the *female remand prisoners* at the SRP, they were locked in their cells 23 hours a day, without any activities apart from daily outdoor exercise.

277. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. **The CPT recommends that the authorities take the necessary steps to ensure that all male sentenced prisoners at the CCF have access to an appropriate range of work, educational, sports and recreational activities. A first priority should be to bring the workshops back into service.**

278. As regards the SRP, the CPT recognises that the organisation of activities in remand prisons is not a straightforward matter, in view of the unpredictable turnover of inmates. Further, the imposition of restrictions on certain remand prisoners, in the interests of the pre-trial investigation, is another complicating factor. However, the current policy of "warehousing" remand prisoners is unacceptable. **The CPT recommends that the authorities take steps, as a matter of urgency, to radically improve activities for remand prisoners. The aim should be to ensure that remand prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; sport). The legislative framework governing remand imprisonment should be revised accordingly.**

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<sup>47</sup> The workshops had since then been partially reconstructed, but financial means were lacking to finish the work and re-equip them.

279. The organisation of a genuine regime of activities should also be based on the existence of a classification system for prisoners<sup>48</sup>. The delegation noted that such a classification system was in force at the CCF; however, this system was apparently suffering from a certain number of deficiencies. In particular, direct contact between the prisoner concerned and the staff involved<sup>49</sup> was quite rare and it was therefore not surprising that many prisoners alleged that the system lacked transparency. Indeed, the delegation found that the criteria for such a classification were rather obscure and the consultation of many individual files did not remove uncertainties and ambiguities.

The setting up - and implementing in its entirety - of an objective and transparent system for the classification and allocation of prisoners is a pre-requisite for the organisation of any meaningful regime; furthermore, it is essential for the safe running of an establishment.

**The CPT recommends that the present classification and allocation system be reviewed, in the light of the above comments.**

## **7. Health care**

280. The delegation was positively impressed by the dedication of the health care staff at Spuž Prison Complex. Nevertheless, staff resources were clearly insufficient and required immediate attention from the authorities.

Since 20 August 2003<sup>50</sup>, the medical team consisted only of a Head Doctor (on a full-time post), a visiting psychiatrist (4 to 6 hours per week) and a dentist (three working days per week), and it is noteworthy that the Head Doctor had been on call for the two last years without interruption. Given the size (more than 700 prisoners at the time of the visit) and the complexity of the inmate population at Spuž Prison Complex, the medical team should benefit from the full time attendance of a second medical doctor and from the full time cover of a psychiatrist. The time attendance hours of the dentist should also be increased.

The nursing staff consisted of a Head Technician, another technician employed as the doctors' Personal Assistant, and five technicians (the latter working on 12 hour shifts: three in the morning, one from 3 to 7 p.m. and one during the night). Such a nursing staff complement is not sufficient for a prison accommodating more than 700 prisoners; it should be substantially increased.

**The CPT recommends that immediate steps be taken to reinforce the health care staff at Spuž Prison Complex, in the light of the above remarks<sup>51</sup>.**

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<sup>48</sup> Prisoners were classified from level 1 to 4, the last level being the "high-security regime".

<sup>49</sup> Classification activities were carried out by a team composed of a lawyer, three defectologists and two psychologists. Classification levels (1 to 4) were communicated to the prisoners concerned three times a year.

<sup>50</sup> Before that date, the medical team was composed of two medical doctors (one internal medicine specialist and one general practitioner) and a psychiatrist, all on full time posts.

<sup>51</sup> Of course, the operation of the envisaged prison hospital will require a quite distinct health care team (cf. paragraph 256).

281. At both the CCF and the SRP, nursing staff were supported by prisoners acting as medical orderlies. No doubt, such an approach can have the advantage of providing a certain number of prisoners with a useful job. Nevertheless, **it should be seen as a very last resort and prisoners should never be involved in the distribution of medicines or given access to prisoners' medical files.**

282. Material conditions in the health care facilities were generally satisfactory; however, the medical equipment left much to be desired (by way of example, there was no X-Ray equipment, no EEG, no sterilizer, no refrigerator to keep medication at a controlled temperature). **The CPT trusts that these deficiencies will be remedied when the new Prison Hospital enters into service** (cf. paragraph 256).

283. All prisoners admitted to Spuž Prison Complex were medically screened on arrival. Specific admission forms were filled in; however, the amount of information recorded was rather limited. This seemed also to be the case even when a newly arrived prisoner alleged police ill-treatment prior to his/her incarceration; moreover, such cases were apparently not reported to another authority. These shortcomings have already been discussed (cf. paragraph 233).

284. More generally, the medical and nursing notes kept by the health care team were rather sparse and the patients' files poorly organized. **The CPT would like to stress that a medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.**

285. Health care staff expressed their frustration at examining patients with whom they had difficulties in communicating, due to language barriers. This seemed to be particularly the case for prisoners of Albanian, Romanian and Ukrainian origin. Foreign nationals indicated with gestures the aching part of their bodies, hoping that the problem would be understood. Such a situation might potentially jeopardise the foreign nationals' health. **The CPT wishes to emphasise that whenever members of the medical and/or nursing staff are unable to make a proper diagnosis because of language problems, they should be able to request without delay the services of a qualified interpreter.**

## 8. Discipline/Solitary confinement/Means of restraint

286. Disciplinary measures in the Montenegrin prison system are set out in the 1995 House Rules<sup>52</sup>. According to Article 65 of the Rules, the following disciplinary measures may be applied: a warning (or reprimand), a ban on parcels (up to three months), a confinement measure with the right to work (up to 30 days) and a confinement measure without the right to work. Disciplinary measures can also be pronounced with a suspensive effect for a period of several months. Article 68 sets out the list of persons responsible for the disciplinary procedure: warnings and bans on visits and parcels are proposed by the educator, whereas confinement measures (with or without work) are proposed by the shift commander together with the educator. The final decision is taken by the respective CCF and SRP Directors after the prisoner concerned has been heard. Any disciplinary measure can be appealed within three days before the Director General of the Agency. The prisoner concerned is heard in person by him.

An examination of the disciplinary register kept at the CCF suggested that there had not been an excessive resort to disciplinary in recent years; however, **the register should contain more details, in particular as regards the offences committed and the different elements of the procedure.**

287. The CPT also considered the new draft Rules (June 2004) relating to disciplinary measures. **It invites the authorities to amend them in order to formally guarantee prisoners charged with a disciplinary offence the following rights:**

- **to be informed in writing of the charges against them and to be given sufficient time to prepare their defence;**
- **to call witnesses on their own behalf and to cross-examine evidence given against them;**
- **to be heard in mitigation of punishment, in cases where found guilty by the Director;**
- **to remain seated during adjudications and to have facilities to take notes.**

288. The disciplinary cells at the CCF, located in Unit C, were unfit to serve as human accommodation. They comprised numerous shortcomings: a very limited living space (3.5 m<sup>2</sup>), a "slopping out" procedure (prisoners had to meet the needs of nature in buckets), no heating, no bed, no pillow, often no mattress, and very poor access to natural light. The delegation's opinion was shared by the prison management and the doctor, and the disciplinary cells in Unit C were only rarely used<sup>53</sup>. At the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and requested the authorities to immediately take out of service the disciplinary cells in Unit C and to inform the CPT within one month of the measures taken to ensure that the disciplinary sanction of cellular confinement is served in appropriate accommodation (cf. paragraph 16).

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<sup>52</sup> New House Rules of the State Administration for the Execution of Penal Sanctions, dated June 2004, were about to enter into force.

<sup>53</sup> For confinement purposes, the prison management used several single cells located at the SRP.

In their letter dated 16 November 2004, the authorities informed the CPT that the above cells had been taken out of service and that 10 cells for single accommodation were under renovation at the SRP in order to be used as disciplinary cells. The CPT welcomes this development. **It would like to receive detailed information on the physical characteristics of these cells (size, access to natural light, equipment, etc.).**

289. The delegation also visited the cells used for disciplinary purposes located on each floor of the SRP. The cells on the ground floor measured respectively a mere 3 m<sup>2</sup> and 3,30 m<sup>2</sup>, and the cells on the first and second floors were scarcely larger. Moreover, they were devoid of any equipment (no bed, table or chair; no call system, no artificial lighting), as well as of heating, toilets (prisoners had to comply with their natural needs in buckets) or window panes. In their present state, these cells are also unfit for human accommodation. **The CPT would like to receive confirmation that, following the entry into service of the 10 cells referred to in paragraph 288, these cells are no longer used to accommodate prisoners, whatever the circumstances.**

290. Mention should also be made of outdoor exercise. The requirement that prisoners be allowed at least one hour outdoor exercise every day is widely accepted as a basic safeguard which must apply to *all* detainees, including those undergoing a disciplinary sanction or placed in isolation on security grounds. Apparently, this requirement was not always met at the CCF and the SRP, in particular at weekends. **The CPT recommends that immediate steps be taken to ensure that all prisoners, including those undergoing a confinement measure on disciplinary/security grounds, are offered at least one hour of outdoor exercise per day, including at weekends.**

291. The delegation also examined the conditions under which some six prisoners had been transferred from the CCF to the SRP and placed under solitary confinement on security grounds at their own request. The delegation was satisfied with the conditions under which they were accommodated, except for one prisoner of Serbian origin, who was accommodated in cell D5 on the first floor. This prisoner had apparently been held since July 2004 in a dirty and dilapidated cell, devoid of equipment (such as a chair, table or locker). Moreover, the prisoner concerned alleged that he was not supplied with bed sheets or basic hygiene items. **The CPT recommends that the conditions of accommodation of this prisoner be reviewed as a matter of urgency, in the light of the above comments.**

292. The use of means of restraint/force in the Montenegrin prison system is regulated by Articles 45 to 64 of the “Instruction on the manner of the execution of security measures, arms and other instruments” of 6 March 1997. Article 58 allows in particular handcuffing to prevent suicide and cases of self-harming, whereas Article 59 allows exceptionally hand- and feet-cuffing with the authorisation of a senior prison officer. The regulation further provides that the application of means of restraint shall be recorded in the prisoners’ file.

The delegation noted that means of restraint were only used to prevent suicide or other forms of self-harm, and that they were only applied on very rare occasions and on the doctor's decision. Incidents involving the use of force by prison staff were also not a common occurrence. However, the use of means of restraint and/or force was not sufficiently documented and not recorded in a separate register. In the CPT's opinion, the conscientious recording of every application of these means in a separate register is a fundamental safeguard against possible abuse and, at a more general level, constitutes an essential tool of good management.

**The CPT recommends that every instance of resort to means of restraint/use of force be recorded in a specific register, established for that purpose. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such measures, the type of measure, and an account of any injuries sustained by inmates or staff.**

## 9. Contact with the outside world

293. It is very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.

294. The delegation received few complaints concerning the conditions under which sentenced prisoners accommodated at the CCF could maintain contacts with the outside world. Prisoners were generally satisfied with the rules applicable to *correspondence* and *telephone*. As regards *visits*, the facilities (open table arrangements) were globally satisfactory.

However, the rules applicable as regards the frequency of the visits were not satisfactory: "level 1" prisoners were only allowed a one-hour visit by relatives on a monthly basis; "level 2" prisoners were allowed a one hour visit every two months, "level 3" prisoners every three months and "level 4" prisoners three times a year. This is certainly not sufficient to allow prisoners to maintain good relationships with their families and friends. **The CPT recommends that the visiting entitlement for each category of sentenced prisoners be substantially increased; the objective should be to allow a visit of one hour per week.**

Foreign prisoners (25 at the time of the visit) and prisoners without financial resources were not offered any support (such as a monthly free telephone card) to maintain contacts with their next of kin. **The CPT invites the authorities to develop means to facilitate contacts with the outside world for these categories of prisoners.**

The delegation also noted that the regulations in force did not recognise unmarried partners as relatives, even if the couple concerned lived together and had children. **The CPT invites the authorities to review the regulations in this regard; in the Committee's view, prisoners should be allowed to receive visits from any persons with whom they have had an established relationship prior to admission comparable in significance to that of a family member.**



295. The new rules applicable to remand prisoners allowed a one-hour visit by relatives on a monthly basis. As already indicated above, such an entitlement is not sufficient. **The recommendation made above (cf. paragraph 294) applies equally here.**

Visits took place in a booth-type facility (table divided by a glass panel). Such an arrangement does not facilitate the maintenance of positive relations between prisoners and members of their families. **The CPT therefore recommends the authorities to move to more open visiting arrangements for remand prisoners at the SRP.** Closed visiting arrangements may be necessary in some cases; however, this approach should constitute the exception, not the rule.

## **10. Complaints and inspection procedures**

296. Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to each prison establishment by an independent body (e.g. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises. Such bodies can *inter alia* play an important role in bridging differences that arise between prison management and a given prisoner or prisoners in general.

**The CPT would like to receive detailed information on the avenues of complaint offered to prisoners at Spuž Prison Complex, as well on any independent body carrying out regular visits to the establishment.**

## C. Dobrota Special Psychiatric Hospital

### 1. Preliminary remarks

297. The CPT's delegation examined the living conditions and the treatment of patients at Dobrota Special Psychiatric Hospital. Established in 1953, the hospital is the only psychiatric institution of its kind in Montenegro<sup>54</sup>. It is situated in the hamlet of Dobrota, close to the historic town of Kotor. The establishment consists of several double-storey buildings, dispersed over an attractive setting overlooking Kotor's bay.

298. Dobrota Special Psychiatric Hospital takes the vast majority of the civil psychiatric patients in Montenegro. The delegation was informed that the establishment only exceptionally takes forensic psychiatric patients, as it does not benefit from special security arrangements. The hospital consists of several in-patient wards (emergency/admission ward, male and female acute wards, drug and alcohol ward, male and female chronic/psychogeriatric wards) and of a pilot out-patient unit, installed in a bungalow.

299. The establishment accommodated a total of 240 patients (70 % men/30 % women) at the time of the visit. The delegation paid particular attention to the Emergency/Admission Ward (N° 2), the Male Acute Ward (N° 6) and the Male and Female Chronic Wards (N° 7 & N° 8).

Some 400 to 600 patients are admitted each year to the hospital (with a similar number of discharges). The average stay at the hospital is 3 months; however, some chronic patients would stay in the hospital for life.

### 2. Ill-treatment

300. At the outset, it should be clearly stated that the delegation heard virtually no allegations of deliberate ill-treatment of patients by staff at Dobrota Special Psychiatric Hospital. The staff appeared to be doing their best, despite low numbers and difficult conditions, and the general atmosphere prevailing at the hospital was relaxed.

However, some allegations were received that patients accommodated on Ward 7 (ground-floor) were very occasionally physically threatened (or even hit) with a broomstick or a reinforced rigid black cable by a member of the male technician staff. Such a cable was found by the delegation in the technicians' room on the ground floor of Ward 7<sup>55</sup>. **The CPT recommends that staff at Dobrota Special Psychiatric Hospital be instructed, by appropriate means and at regular intervals, that the ill-treatment of patients will not be tolerated, that all information regarding possible ill-treatment will be investigated, and that perpetrators of such treatment will be subject to severe sanctions.**

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<sup>54</sup> Podgorica and Nikšić General Hospitals have each a 40 bedded psychiatric ward.

<sup>55</sup> The Director informed the delegation that he had already dismissed one male technician on Ward 7 (ground floor) in the past, for similar inappropriate behaviour.

301. In this context, the delegation was extremely concerned to note that nursing staff resources in Ward N° 7 (ground floor) were particularly low; at the time of the visit, only one male technician was in charge of 27 of the most disturbed and dependent patients in the hospital. Significant amounts of overtime<sup>56</sup> were necessary in order to maintain a basic level of security (and regime) in this ward. This situation can clearly result in high levels of stress in staff and their possible burnout, a situation which is likely to exacerbate the tension inherent in such a difficult environment and may be conducive to inappropriate behaviour.

302. The delegation heard a number of allegations from staff and patients of inter-patient violence in Wards N° 7 & 8 (and even witnessed such an incident in Ward N° 8), a situation clearly possible on wards accommodating disturbed patients with few staff and many rooms. The inter-patient violence seemed linked primarily to a lack of sufficient staff presence within the wards, as well as the absence of alternative therapeutic approaches.

303. In the CPT's opinion, such a low level of staff in Wards N° 7 & 8 - and even, in Ward N° 7 (ground floor), outright absence of staff at certain moments of the day - will inevitably put the patients concerned, as well as staff, at risk, in addition to contravening the principle of duty of care; such a state of affairs is totally unacceptable. **The CPT recommends that the authorities urgently review the level of male technician/nursing staff in Wards N° 7 & 8, with a view to reinforcing the presence of qualified staff and ensuring adequate supervision by staff at all times.**

304. At this stage it should be noted that as regards Ward N° 7 (ground floor), the CPT is of the opinion that the negative cumulative effects of the deficiencies observed in material conditions, severe lack of staff and inadequate treatment could well be considered to amount to inhuman and degrading treatment.

### 3. Patients' living conditions

305. Creating a positive therapeutic environment in a psychiatric hospital involves, first of all, providing sufficient living space per patient, as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements. Particular attention should also be given to the decoration of both patients' rooms and recreation areas. Sanitary facilities should also allow patients some privacy. Similarly, basic hospital equipment enabling staff to provide adequate care (including personal hygiene) to bedridden patients must be made available; the absence of such equipment can lead to wretched conditions.

306. The living conditions for the patients accommodated in the *Emergency/Admission Ward*, the *Male* and *Female Acute Wards* and the *Addiction Ward* were globally satisfactory. All of these wards were light, airy and clean. The patients' rooms were equipped in conformity with normal health care standards and the occupancy rates were satisfactory.

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<sup>56</sup> A total of three male technicians were in charge of the ground floor in Ward 7. Only one of them was on duty at any given time. At the time of the visit, the male technician interviewed by the delegation had been on duty for 100 consecutive hours.

307. The living conditions observed in *Ward N° 7* (the so called “social rehabilitation ward”) were in deep contrast with the above. Although they could still be considered broadly acceptable on the first floor, the living conditions observed on the ground floor were totally unacceptable. This part of the building was overcrowded and the living space for patients within the ward was very limited. In addition, no day/dining room was available, although three rooms (a doctors’ office, a defectologists’ office, and a stock room) seemed totally unused. The environment was austere throughout, the atmosphere within the ward gloomy, and the air stale and fetid.

Moreover, the state of the beds and bedding was lamentable (7 patients were incontinent and no diapers and plastic-covered mattresses were available) and the sanitary facilities (one shower and one toilet for nearly 30 patients) were dilapidated and unhygienic. The heating system was totally unsatisfactory (a stove in the middle of the corridor) and many windows lacked panes. To sum up, the living conditions on the ground floor of *Ward N° 7* failed miserably to meet health care standards.

**308. The CPT recommends that immediate measures be taken in order to raise the living conditions on *Ward N° 7* (ground floor) to normal health care standards. More particularly, it recommends that the authorities take steps to:**

- **reduce occupancy levels in the dormitories;**
- **immediately provide all patients with adequate and clean bedding. Plastic covered mattresses should be provided, as well as diapers, in sufficient numbers;**
- **immediately raise the general level of hygiene in the ward, in particular in the sanitary facilities;**
- **ensure adequate heating, when necessary;**
- **give attention to the decoration of the ward, including the patients' dormitories.**

**309. The CPT also recommends that due attention be given to the global renovation of *Ward N° 7*, with particular emphasis on the ground floor. In this context, consideration should be given to converting the large-capacity dormitory into a day/dining room, and the unused rooms described above into patients’ accommodation and/or occupational workshops.**

310. The living conditions in *Ward N° 8* (first and second floors) were slightly better than in *Ward N° 7*, even if they still left a lot to be desired. Although light and airy, the large-capacity dormitories were austere throughout and spartanly equipped. The state of the bedding was not satisfactory, as many patients were bed-ridden and/or incontinent and once again no plastic covered mattresses and diapers were available. Moreover, the dormitories were insufficiently heated in the winter (the heating system had been installed in the corridor) and very hot in the summer (the female unit was located under a flat roof, and the dormitories were equipped with large surface windows). Indigent patients were also seen wandering without appropriate footwear.

**The CPT recommends that measures be taken to ensure that material conditions in Ward N° 8 meet normal health care standards. Immediate steps should be taken to ensure that:**

- **all patients are provided with adequate and clean bedding. More particularly, plastic covered mattresses should be provided, as well as diapers, in sufficient numbers;**
- **better material conditions are offered to patients on the male and female floors, in particular as regards decoration in the patients' dormitories and in the day-rooms;**
- **indigent patients are offered adequate footwear.**

**Consideration should also be given to the installation of heating/air-conditioning systems in the dormitories.**

311. The CPT also wishes to make clear its support for the trend observed in several countries towards the closure of large-capacity dormitories in psychiatric establishments. Provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and also a key element of any policy for the psychological and social rehabilitation of patients. Structures of this type also facilitate the allocation of patients to relevant categories for therapeutic purposes. **The CPT recommends that renovation plans for Ward N° 8 envisage smaller accommodation units for patients.**

312. No secure outdoor exercise yards had been set up in the immediate vicinity of the "locked" wards. Consequently, only a limited number of patients from these wards had daily access to the open air, escorted/monitored by staff. **The CPT recommends that steps be taken at Dobrota Special Psychiatric Hospital to offer all patients accommodated in the "locked" wards, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious and secure setting, which should also have shelter from inclement weather.**

#### 4. Treatment and care

313. Psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient indicating the goals of the treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of regular reviews of the patient's mental health condition and medication.

It should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work.

314. The main treatment offered to patients at the Dobrota hospital consisted of pharmacotherapy and no individual treatment plans appeared to have been established. This being said, a small occupational therapy workshop had been set up on the ground floor of Ward N° 8. It offered some 11 posts for manual activities and an additional carpentry workshop for 3 to 4 patients. The occupational therapist had also been successful in obtaining a foreign donation for a ceramic furnace, which would offer in the near future 20 additional places<sup>57</sup>. The delegation also noted the presence within the hospital's compound of a basket-ball/volley-ball/mini-football pitch; however, it seemed to be rarely used.

**The CPT recommends that individual treatment plans be established for each patient and that the components of psycho-social rehabilitation be developed, in the light of the above comments. In particular, opportunities for occupational therapy activities should be significantly increased and recreational/sports activities further developed.**

315. The delegation noted with some concern a lack of regular supply of certain medication (in particular, Clozapine and Chlorpromazine). This resulted in patients' pharmacotherapy having to be changed without clinical indication (unless their families could provide the necessary medicine). **The CPT recommends that steps be taken to ensure that a regular supply of appropriate medicine is guaranteed at all times.**

316. Each patient at Dobrota Special Psychiatric Hospital had a personal and confidential medical file. This being said, the written clinical recording of patient's treatment and progress was seriously lacking and entries in the clinical notes suggested that patients were sometimes not formally reviewed by a psychiatrist for six months or more. **The CPT recommends that steps be taken at the hospital's managerial level to increase the quality and quantity of the written medical recording, in the light of the above remarks.**

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<sup>57</sup> The occupational therapist estimated that at least one third of the patients would regularly attend occupational activities, if these were provided.

## 5. Staff issues

317. Staff resources should be adequate in terms of numbers, categories of staff (psychiatrists, general practitioners, nurses, psychologists, occupational therapists, social workers, etc.), and experience and training. Deficiencies in staff resources will often seriously undermine attempts to offer adequate psychiatric treatment based on an individualised approach; further, they can lead to high-risk situations for patients, notwithstanding the good intentions and genuine efforts of the staff in service.

In some countries, including Montenegro, the CPT has been particularly struck by the lack of qualified psychiatric nurses among the nursing staff in psychiatric establishments, and by the shortage of personnel qualified to conduct social therapy activities (in particular, occupational therapists). The development of specialised psychiatric nursing training and a greater emphasis on social therapy would have a considerable impact upon the quality of care.

318. Medical staff at Dobrota consisted of a total of 13 psychiatrists (11 psychiatrists/neuropsychiatrists and two residents), as well as three psychologists (including one clinical psychologist) and one dentist. They were supported by two defectologists and three social workers (one of whom was a qualified occupational therapist).

The total number of psychiatrists assigned to the hospital could be considered globally satisfactory (a ratio of 18,5 patients per psychiatrist); however, the delegation observed that their attendance hours were not well distributed among the different wards. By way of example, three psychiatrists were each following 10 patients in the Male Acute Ward, while one psychiatrist was apparently responsible for the entire population of Ward N° 8 (approximately 100 patients). The attendance hours of a psychiatrist in Ward N° 7 (ground floor) was also particularly low (he apparently made short visits to the ward, twice a week). **The CPT recommends that the attendance hours of psychiatrists in Wards 7 and 8 be increased, in the light of the above remarks. Further, the number of support staff (psychologists, occupational therapists and social workers) should be significantly reinforced at the hospital, with a view to increasing the multidisciplinary nature of the treatment provided to patients.**

319. The nursing complement was composed of 64 medical technicians/nurses, of whom 46 worked on shifts<sup>58</sup>. It is noteworthy that 17 nursing posts were vacant at the time of the visit. Such a nursing complement is totally unsatisfactory for a hospital of this size. By way of example, the delegation observed that two nurses were in charge of 50 male patients on Ward N° 8, two other nurses were in charge of the 31 female patients on the same ward, and that one male technician was in charge of some 30 patients on Ward N° 7 (ground floor). This was particularly inadequate, bearing in mind the number of severely dependent and incontinent patients accommodated in those wards. Apart from excessive overtime, such staffing conditions also tend to generate highly stressful working conditions for the staff and increase the risk of disproportionate reactions by staff towards challenging patients (cf. paragraph 300). **The CPT recommends that the relevant authorities carry out an urgent review of the level of nursing staff at the hospital, in the light of the above comments. As a first step, the 17 vacant posts should be filled without delay.**

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<sup>58</sup> This state of affairs was compounded by the fact that many of these staff members, although in a full-time post, were in fact working part-time.

320. As in other health-care services, it is important that the different categories of staff working in a psychiatric unit meet regularly and form a team under the authority of a senior doctor. This will allow day-to-day problems to be identified and discussed, and guidance to be given. The lack of such a possibility could well engender frustration and resentment among staff members.

Although there was some evidence of multidisciplinary team-work in the Emergency/Admission Ward, Male and Female Acute Wards and Addiction Ward, no such evidence was found in Wards N° 7 & 8. More generally, the actual staff complement, in particular as regards nursing and support staff, left little scope for such team-work. **The CPT invites the authorities to further develop multidisciplinary team-work, in parallel with the recommended staff reinforcement.**

321. In this connection, the CPT would like to stress that in order to provide effective treatment, staff also need to be fully confident about their safety. The delegation noted with concern that no specific alarm/call system for staff was installed in the wards visited. Unsurprisingly, some nurses met in the wards indicated that they felt unprotected in case of incident. **The CPT recommends that the authorities install alarm/call systems (for example, panic beepers or call buttons) for nursing staff working in the wards.**

322. The CPT is of the opinion that the setting up of a specific psychiatric nursing qualification would constitute another sign of the importance given to the mental health sector in Montenegro. Better staff training for both induction of new staff and continuing professional development should be made an integral part of this project. **The CPT would like to receive the comments of the authorities on this issue.**

## **6. Means of restraint/Seclusion**

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

324. No evidence of the excessive use of means of restraint was identified at Dobrota Special Psychiatric Hospital. In case of need, nursing staff applied soft restraints (bed linen or bandages) until the patient concerned had calmed down. This was authorised by a doctor and lasted for a few hours, at most. Patient so restrained stayed in their rooms/dormitories, in full view of their fellow patients. Resort to means of restraint was usually - but not always - recorded in the patient's file; there was no central recording. In addition, there appeared to be no written hospital policy for restraint and staff were not trained in restraint techniques.

**The CPT recommends that a clearly defined policy on the use of means of restraint be drawn up at Dobrota Special Psychiatric Hospital (as well as at the psychiatric departments of Podgorica and Nikšić General Hospitals), taking into account the criteria set out in paragraphs 47, 48 and 50 of the CPT's 8<sup>th</sup> General Report (cf. CPT/Inf (98) 12. The implementation of this policy should include specific training sessions.**



Further, the CPT invites the authorities to consider using single accommodation when applying means of restraint to patients, in order to avoid this being done in the presence of other patients and visitors (though this should not be to the prejudice of the close supervision of such patients).

**The acquisition of proper restraint equipment should also be considered.**

325. Soft restraint was also used on Ward N° 8 in Dobrota, in order to prevent psychogeriatric patients from falling from their beds or from wandering. Staff indicated that this measure would be used less if enough staff were available to monitor the patients. Research indicates that the use of means of physical restraints does not necessarily reduce the risks linked to a fall or to wandering for elderly patients; on the contrary, those risks may be increased<sup>59</sup>. There is also the risk of illness linked to physical restraint<sup>60</sup>. **The CPT invites the authorities to review the use of restraint on Ward N) 8 (and in any other psychogeriatric ward in Montenegro). Specific programmes aimed at reducing such use and finding alternatives should be developed.**

326. The delegation was informed during its visit to Ward N° 7 that the barred stairwell between the ground floor and the first floor was sometimes used to segregate a particular patient from others. As far as the delegation could ascertain, this could last for some hours.

**The CPT recommends that if the segregation of a particular patient is considered necessary, this should take place in an appropriate environment and under close monitoring. The use of the barred stairwell between the two floors at Ward N° 7 for this purpose should be definitively discontinued.**

In addition, **any use of seclusion should be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive.** Further, **seclusion should never be used as a punishment.**

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<sup>59</sup> Cf. «Limiter les risques de la contention physique de la personne âgée», dans «Evaluation des pratiques professionnelles dans les établissements de santé», Agence Nationale d'Accréditation et d'Evaluation en Santé, ANAES, Paris, octobre 2000. Many useful references can also be found in the bibliography.

<sup>60</sup> «Deep venous thrombosis and pulmonary embolism following physical restraint», S.B. Laursen, T.N. Jensen, T. Bolwig, N.V. Olsen, Acta Psychiatrica Scandinavica, 2004, pp. 1-4.

## 7. Safeguards

327. On account of their vulnerability, the mentally ill and mentally disabled warrant much attention in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in a psychiatric establishment/special institution should always be surrounded by appropriate safeguards.

328. The vast majority (some 90 %) of the patients admitted to Dobrota Special Psychiatric Hospital were non-forensic patients (so-called “civil patients”). They had been brought in escorted by police officers and/or paramedics, or accompanied by family members; some of them had come to the hospital at their own will. The legal position of civil patients who had - at least initially - been admitted against their will was unclear and the medical and nursing staff were themselves critical about the current situation. The Director indicated that this was a delicate and problematic issue and that, in practice, patients were “persuaded” to stay in the hospital, if this was medically necessary. To sum up, the delegation met during its visit a number of patients subject to *de facto* deprivation of liberty, which had been initiated on the sole discretion of the psychiatrists working in the institution.

329. This state of affairs was a matter of concern for the political authorities, at the highest level. The Minister of Health informed the delegation at the beginning of its visit to Montenegro that he had set up a special commission on 16 June 2004, with a view to preparing a draft “Law on the Protection of Mental Health Patients”. The CPT welcomes this initiative.

**The Committee would like to receive a copy of this Law in due course. It recommends that the authorities take steps to ensure that the draft law is in conformity with the criteria set out by the CPT in its 8th General Report concerning the safeguards to be offered to patients in the context of involuntary placement (cf. paragraphs 51 to 57 of CPT/Inf (98) 12).**

330. At the time of the visit, 28 forensic patients (26 men and 2 women) were being held at the hospital. These patients were distributed between different wards (1 in the Emergency/Admission Ward; 4 in the Addiction Ward; 7 in the “chronic” wards; and 16 in the Male and Female Acute Wards). They benefited from exactly the same living conditions and treatment as any other patients.

331. The legal framework regulating the different forms of mandatory psychiatric treatment is set out in Articles 69 (custody in a medical institution) and 70 (treatment outside prison) of the Criminal Code. The mandatory medical treatment of a drug addict or of an alcoholic are set out in Articles 71 and 72 of the same Code. These security measures are pronounced by the courts. The security measure of mandatory psychiatric treatment in custody is of an indefinite duration (the court can however cancel the measure, once it ascertains that the need for such a measure has ceased), whereas the other forms of security measures are, *ab initio*, limited in time.

332. The delegation was informed that the situation of forensic patients should be reviewed every six months by a Medical Commission composed of three doctors (of whom two psychiatrists working at the hospital) and that its recommendation should be sent to the relevant court. However, it was unclear whether the patient concerned had the possibility to be heard in person by the Medical Commission or to be assisted by a lawyer during the proceedings. Moreover, as far as the delegation could ascertain, the courts were apparently not very active in this domain and many recommendations from the Medical Commission were left unattended or simply not followed. **The CPT would like to receive the comments of the authorities on the latter remark.**

**The CPT would also like to receive comprehensive information on the possibilities offered by law to forensic patients:**

- **to be heard in person by the above Medical Commission;**
- **to be assisted by a lawyer during the proceedings;**
- **to challenge the duration of their custody for mandatory psychiatric treatment directly before a court.**

333. In the light of the facts found during the visit, the CPT must also express concern at the position taken by the staff as regards consent to treatment. It was clear that the very fact of admission to the hospital was being construed as authorising treatment without the patient's consent.

The CPT would like to stress that patients suffering from mental illness/disorders - as any other patients - should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his/her consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment.

**The CPT recommends the authorities to take the above remarks into account when drafting the Law on the Protection of Mental Health Patients.**

334. Information was provided to patients orally by staff concerning the hospital's routine as well as their rights, either on admission or later during their stay in the wards. **This should be supplemented by an introductory brochure setting out the information concerned. This brochure should be issued to each patient on admission to the hospital, as well as to their families. Any patient unable to understand the brochure should receive appropriate assistance.**

335. As in any place where persons can be deprived of their liberty, an effective complaints procedure is a basic safeguard against ill-treatment. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

The delegation was informed that an anonymous complaints box had been installed at the hospital for the patients, **but none of the patients met by the delegation was aware of this fact.**

336. The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (e.g. a judge or supervisory committee) which is responsible for the inspection of patients' 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 delegation was informed that a team of the Ministry of Justice regularly visited the establishment, with a view to monitoring the situation of the forensic patients. However, the situation of civil patients was apparently not monitored by an independent outside body.

**The CPT would like to receive detailed information on the activities carried out in 2004 by the team of inspectors of the Ministry of Justice. Further, it would like to receive the comments of the authorities on the monitoring of civil patients by an independent outside body.**

**D. Recapitulation**

**Establishments under the authority of the Ministry of the Interior**

337. The CPT's delegation received numerous allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police in Montenegro. Most of those allegations related to ill-treatment inflicted at the time of questioning with a view to extracting confessions or gathering other information. On the other hand, hardly any allegations were received of ill-treatment by staff working in detention areas.

The types of ill-treatment alleged included slaps, punches, kicks and blows on various parts of the body with batons, baseball bats and other instruments. Non-standard and unlabelled objects of the kind described above, and other suspicious items, were found in inspectors' offices in Bar and Budva. In a few cases, the delegation gathered supporting medical evidence consistent with the persons' accounts of ill-treatment.

338. In the light of all the information at its disposal, the CPT has concluded that persons deprived of their liberty by the police in Montenegro run a significant risk of being ill-treated while in police custody, in particular when being interrogated. The Committee has recommended that the relevant national authorities as well as senior police officers regularly instruct police officers, in particular members of the criminal police, that ill-treatment will not be tolerated, that all information regarding possible ill-treatment will be investigated and that perpetrators of such treatment will be subjected to severe sanctions.

339. The best possible guarantee against ill-treatment is for its use to be unequivocally rejected by police officers. This implies strict selection criteria at the time of recruitment of such staff and the provision of adequate professional training. In this connection, the CPT has recommended that a very high priority be given to training for police officers of all ranks and categories, including in modern investigation techniques. In addition, an aptitude for interpersonal communication should be a major factor in the process of recruiting police officers and considerable emphasis should be placed on acquiring and developing interpersonal communication skills.

Another very effective means of preventing ill-treatment lies in the diligent examination by the competent authorities of all information regarding possible ill-treatment which may come to their attention (whether or not that information takes the form of a formal complaint) and, where appropriate, the imposition of a suitable penalty. This will have a very strong dissuasive effect. In this context, the CPT has made detailed recommendations and requests for information.

340. Material conditions of detention in Montenegrin police establishments gave rise to serious concern. The Minister of the Interior himself indicated to the delegation that the conditions in police detention facilities were unsatisfactory and did not comply with European standards. The CPT has recommended that the state of cellular accommodation in police stations in Montenegro be reviewed, having regard to the criteria set out by the Committee. Immediate measures should be taken to provide persons in police custody with food at appropriate intervals.

341. As regards fundamental safeguards against ill-treatment of persons deprived of their liberty by the police (e.g. the right to have the fact of one's detention notified to a close relative or third party, the rights of access to a lawyer and a doctor), at present their implementation in practice is far from guaranteed; the CPT has made detailed recommendations in this area. The Committee has also emphasised the need to draw up a code of conduct for police interviews, regulating in detail the process of interrogation; this will help to underpin the lessons taught during police training.

### **Spuž Prison Complex**

342. The delegation heard no allegations of recent ill-treatment of inmates by prison staff. More generally, a rather relaxed atmosphere was observed throughout the establishment. That said, the severe lack of staff at the Closed Correctional Facility (CCF) combined with overcrowding was putting both staff and prisoners at risk.

343. The Director of the State Administration for the Execution of Penal Sanctions acknowledged the dangers inherent in the current shortage of security staff. The CPT has recommended that the Montenegrin authorities conduct a full review, without delay, of current staffing arrangements in Spuž Prison Complex. The objective should be to ensure that the number of prison officers employed is sufficient to guarantee both staff safety and the physical and mental integrity of inmates. The staff complement of the Treatment Department should also be increased.

344. The situation observed at the establishment's High-security Unit failed by a considerable margin to meet the CPT's criteria regarding the regime for prisoners considered to present a particularly high security risk; further, the material conditions in the Unit were extremely poor. The CPT does not question the necessity for the Montenegrin authorities to hold certain prisoners in high security conditions in their only correctional institution; however, high security risk prisoners require a more incisive and more attentive assessment if the authorities are to both preserve safety within the establishment and avoid any treatment not respectful of human dignity. The CPT has recommended that immediate measures be taken to review the current situation in the Unit, in the light of the Committee's remarks.

345. Material conditions at the Spuž Prison Complex failed in many respects to meet the criteria developed by the CPT. The inadequacy of the current facilities was openly acknowledged by the Montenegrin authorities; the Committee has requested detailed information on their plans to improve the situation. In this context, the CPT has recommended that the authorities take measures to devise and implement a comprehensive policy to combat prison overcrowding, in the light of the standards developed by the Council of Europe.

346. As regards activities, the CPT is particularly concerned by the current policy of "warehousing" remand prisoners. The Committee has recommended that the authorities take steps, as a matter of urgency, to radically improve the regime activities for such inmates. The aim should be to ensure that they are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; sport). The legislative framework governing remand imprisonment should be revised accordingly.

347. The delegation was positively impressed by the dedication of the health care staff at Spuž Prison Complex. Nevertheless, staff resources were clearly insufficient and required immediate attention from the authorities. The CPT has recommended that immediate steps be taken to reinforce the health care staff at the establishment.

348. A series of recommendations have also been made in respect of discipline, solitary confinement, means of restraint, contact with the outside world and complaints and inspection procedures. The CPT has welcomed the prompt action taken by the authorities in response to the criticism expressed by its delegation concerning the disciplinary cells at the CCF.

### **Dobrota Special Psychiatric Hospital**

349. The CPT's delegation heard virtually no allegations of deliberate ill-treatment of patients by staff at Dobrota Special Psychiatric Hospital. The staff appeared to be doing their best, despite low numbers and difficult conditions, and the general atmosphere prevailing at the hospital was relaxed.

Nevertheless, the delegation heard a number of allegations from staff and patients of inter-patient violence in Wards N° 7 & 8, a situation clearly possible on wards accommodating disturbed patients with few staff and many rooms. The CPT has recommended that the authorities urgently review the level of male technician/nursing staff in those Wards, with a view to reinforcing the presence of qualified staff and ensuring adequate supervision by staff at all times.

350. The living conditions for the patients accommodated in the *Emergency/Admission Ward*, the *Male* and *Female Acute Wards* and the *Addiction Ward* were globally satisfactory. All of these wards were light, airy and clean. In contrast, the living conditions observed in *Ward N° 7* (the so-called "social rehabilitation ward") failed miserably to meet health care standards, and they also left a lot to be desired in *Ward 8*. The CPT has recommended immediate measures in order to remedy this state of affairs.

351. The main treatment offered to patients at the hospital consisted of pharmacotherapy and no individual treatment plans appeared to have been established. The CPT has recommended that such plans be established for each patient and that the components of psycho-social rehabilitative treatment be developed. In particular, opportunities for occupational therapy activities should be significantly increased and recreational/sports activities further developed.

352. As regards staff resources, the total number of psychiatrists assigned to the hospital could be considered globally satisfactory. However, their attendance hours were not well distributed among the different wards. Moreover, the nursing complement was totally unsatisfactory for a hospital of such importance. The CPT has recommended that the relevant authorities carry out an urgent review of the level of nursing staff at the hospital; as a first step, 17 posts vacant at the time of the visit should be filled without delay.

353. No evidence of the excessive use of means of restraint was identified at Dobrota Special Psychiatric Hospital. The CPT has nevertheless recommended that a clearly defined policy on their use be drawn up at the establishment (as well as at other psychiatric facilities).

In respect of the fundamental safeguards offered to involuntary patients, the present situation leaves a lot to be desired; in particular, the CPT's delegation met a number of patients subject to *de facto* deprivation of liberty, which had been initiated on the sole discretion of the psychiatrists working in the hospital. The CPT has highlighted issues to be taken into account in the preparation of new legislation on the rights of mental patients.



**APPENDIX I**

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

**Part 1: ESTABLISHMENTS UNDER THE AUTHORITY OF THE STATE UNION  
OF SERBIA AND MONTENEGRO**

recommendations

- a proper regime of activities for prisoners held on remand at Niš Penal and Correctional Military Prison to be developed (paragraph 21);
- steps to be taken to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of custodial staff. The relevant regulation should be amended accordingly. Moreover, non-medical staff should not have access to medical files (paragraph 22).

comments

- the bedding in the detention centre at "Bubanjski heroji" military barracks was poor (paragraph 25).

requests for information

- comments of the authorities concerning the functioning of the military justice system (paragraph 17);
- the legal basis for the transfer of civilian prisoners to military institutions (paragraph 19).

**Part 2: ESTABLISHMENTS UNDER THE AUTHORITY OF THE REPUBLIC OF SERBIA**

**A. Establishments under the authority of the Ministry of the Interior**

**Preliminary remarks**

requests for information

- texts of the new Law on the Police and the new Criminal Code (paragraph 26).  
**Torture and other forms of ill-treatment**

recommendations

- the relevant national authorities, as well as senior police officers, to regularly instruct police officers that ill-treatment will not be tolerated, that all information regarding possible ill-treatment will be investigated and that perpetrators of such treatment will be subjected to severe sanctions. It is particularly important that this be made clear to officers of the criminal police (paragraph 34);
- any non-standard issue objects to be immediately removed from all police premises where persons may be held or questioned. Any such items seized during criminal investigations should be entered in a separate register, properly labelled (identifying the case to which they refer) and stored in a dedicated property store (paragraph 34);
- police officers to be reminded that no more force than is strictly necessary should be used when apprehending a suspect and that, once apprehended persons have been brought under control, there can never be any justification for their being struck (paragraph 35);
- a very high priority to be given to professional training for police officers of all ranks and categories, including in modern investigation techniques. Experts not belonging to the police should also be involved in this training. An aptitude for interpersonal communication to be a major factor in the process of recruiting police officers and, during the training of such officers, considerable emphasis to be placed on acquiring and developing interpersonal communication skills (paragraph 38);
- whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (paragraph 40).

#### requests for information

- comprehensive information on the state of proceedings in court cases concerning alleged ill-treatment by the police during "*Operation Saber*" (paragraph 36);
- in respect of 2003 and 2004, the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings which were initiated as a result, and a detailed account of the specific criminal/disciplinary sanctions imposed following complaints of ill-treatment (paragraph 39);
- detailed information on police complaints and disciplinary procedures, including the procedural safeguards aimed at ensuring their objectivity (paragraph 39).

#### **Conditions of detention**

##### recommendations

- the authorities to carry out a full-scale review of arrangements for the holding of criminal suspects on police premises, in the light of the criteria set out in paragraph 41 and the remarks made in paragraph 43 (paragraph 44);
- immediate measures to be taken in order to:
  - provide persons in police custody with food at appropriate intervals (which implies that budgetary means must exist for providing food to persons not in a position to pay for it themselves), including at least one full meal (i.e. something more substantial than a sandwich) every day;
  - provide a mattress and blankets to persons kept in custody overnight;
  - ensure that corridors or offices are not used as ad hoc detention facilities and that persons detained on police premises are not left handcuffed to radiators or items of furniture. Detained persons should be accommodated in rooms/cells designed specifically for that purpose, offering appropriate security conditions (paragraph 44).

#### **Safeguards against ill-treatment of persons deprived of their liberty**

##### recommendations

- the Serbian authorities to take appropriate steps to ensure that the right to notify a close relative/third party of the fact of one's detention is rendered fully effective in practice, as from the very outset of deprivation of liberty (paragraph 47);
- the Serbian authorities to take steps to ensure that the right of access to a lawyer for persons in police custody applies as from the very outset of their deprivation of liberty (and not only when they are formally questioned for the first time) (paragraph 49);

- as regards juveniles, a lawyer to always be called when they are deprived of their liberty by the police. They should not be required to make any statement or sign any document related to an offence of which they are suspected without the lawyer being present (paragraph 49);
- anyone who is under a legal obligation to attend and stay at a police establishment (e.g. as a "witness" or a misdemeanour offender) should also be granted the right of access to a lawyer (paragraph 49);
- the system of legal aid in Serbia to be reviewed, in order to ensure its effectiveness throughout the procedure, including at the initial stage of police custody (paragraph 50);
- the right of access to a doctor for persons in police custody to be fully implemented in practice, from the very outset of their deprivation of liberty (paragraph 52);
- steps to be taken to ensure that:
  - a person taken into police custody has the right to be examined, if he so wishes by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);
  - all medical examinations are conducted out of the hearing and, unless the doctor concerned expressly requests otherwise in a given case, out of the sight of police staff;
  - 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 detained person and his lawyer (paragraph 52);
- a form setting out in a straightforward manner the rights of persons in police custody to be systematically given to such persons, at the very outset of their deprivation of liberty. The form should be available in an appropriate range of languages (paragraph 53);
- the detained person to be asked to sign a statement attesting that he has been informed of his rights in a language which he understands (paragraph 53);
- steps to be taken immediately to ensure that whenever a person is deprived of his liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay (paragraph 55);

- the Serbian authorities to draw up a code of conduct for police interviews. The code should deal, inter alia, with the following: the systematic informing of the detained person of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; place(s) in which interviews may take place; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. The code should also provide for a systematic record to be kept of the times at which interviews start and end, the persons present during each interview and any request made by the detained person during the interview and whether it was complied with. The position of particularly vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards (paragraph 56);
- as regards juveniles, steps to be taken to ensure that an adult responsible for the interests of the juvenile (e.g. a relative or guardian) is present when the juvenile concerned is interviewed (paragraph 56).

#### comments

- the fundamental safeguards of persons in police custody would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it; the detained person's lawyer should have access to such a custody record (paragraph 55);
- the return of prisoners to police custody - for whatever purpose - should only be sought when it is absolutely unavoidable and be subject to the authorisation of the relevant prosecutor/judge (paragraph 57).

#### requests for information

- detailed information on the present status of Serbian legislation regarding exceptions to the right to notify one's custody to a close relative/third party (paragraph 48);
- comprehensive information on the frequency of visits by the Inspectorate General of the Ministry of the Interior, prosecuting/judicial authorities and members of the Serbian Parliament's Commission for Security to police establishments in 2003 and 2004, and, as appropriate, on the action taken following those visits (paragraph 59);
- a copy of the Law on the Office of the Ombudsman, once it is adopted (paragraph 60).

## **Reception Centre for Foreigners at Padinska Skela**

### recommendations

- the authorities to take due account of the remarks made in paragraphs 64 and 65 when drafting the new legislation referred to in paragraph 61 (paragraph 65);
- material conditions at Padinska Skela Reception Centre to be improved, in the light of the remarks made in paragraph 68 (paragraph 69);
- steps to be taken as a matter of priority to provide a better range of activities for foreign nationals held at the Centre; the longer the period for which persons are detained, the more developed should be the activities which are offered to them (paragraph 69);
- steps to be taken to ensure that detainees in the Centre do benefit from at least one hour of outdoor exercise every day (paragraph 70);
- the religious requirements and dietary habits of foreign nationals to be taken into account (paragraph 71);
- steps to be taken immediately to ensure that all new arrivals are systematically medically screened by a doctor, or a fully qualified nurse reporting to a doctor, within 24 hours of their arrival at the establishment (paragraph 74);
- an individual medical file to be established for each foreign national detained at the Centre, which should contain diagnostic information, as well as an ongoing record of the evolution of the person's health and of any special examinations he/she has undergone (paragraph 74);
- foreign nationals held at the Centre to be systematically provided with a document explaining the procedures applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter (paragraph 76);
- each detainee to be regularly updated on issues concerning his/her future (paragraph 76);
- shortcomings concerning the disciplinary procedure (lack of right to appeal to a higher authority against the sanction of isolation and absence of a separate register for placement in isolation) to be rectified (paragraph 79);
- measures to be taken to avoid police officers carrying firearms, or carrying batons in a visible manner, while performing their custodial duties within the Centre (paragraph 80).

comments

- nursing staff resources to be significantly reinforced whenever the Centre operates closer to its official capacity. If this were the case, the authorities might usefully consider the idea of creating a separate health-care service within the establishment, consisting of a general practitioner and nurse. Particular attention should also be paid to the provision of psychiatric/psychological support (paragraph 72);
- whenever members of the medical and/or nursing staff are unable to make a proper diagnosis because of language problems, they should be able to benefit without delay from the services of a qualified interpreter (paragraph 73);
- the authorities are invited to explore the possibility of offering assistance to detainees who do not have the means to purchase a phone card (paragraph 78);
- the Serbian authorities are invited to reconsider the policy of systematically taking away mobile phones (paragraph 78).

requests for information

- information on the progress made in the drafting of legislation relating to the status of foreigners, including asylum seekers (paragraph 61);
- a copy of the agreement regulating the relationship between the Reception Centre for Foreigners and Belgrade County Prison (paragraph 63);
- confirmation that the prohibition of returning a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment, is being complied with under current legislation and practice (paragraph 67);
- comments of the authorities concerning the position of the Director of the establishment in relation to the security staff (paragraph 80).

**B. Establishments under the authority of the Ministry of Justice**

**Preliminary remarks**

requests for information

- information on the precise schedule for the adoption of the revised Law on the Execution of Criminal Sanctions and legislation establishing a special detention regime for those involved in organised crime, and copies of these laws once they are adopted (paragraph 81).

**Ill-treatment**

recommendations

- the authorities to deliver the clear message to prison officers of Sremska Mitrovica Penitentiary Reformatory and Belgrade District Prison that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of severe sanctions. They should also be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than strictly necessary and that, once prisoners have been brought under control, there can be no justification for them being struck (paragraph 85);
- the authorities to develop a comprehensive strategy aimed at combating the phenomenon of inter-prisoner violence throughout the Serbian prison system (paragraph 90);
- the file drawn up after the medical examination of a prisoner - whether newly arrived or in transit - to contain: i) a full account of statements made by the person concerned which are relevant to the medical examination (including the description of his/her state of health and any allegations of ill-treatment); ii) a full account of objective medical findings based on a thorough examination; iii) the doctor's conclusions in the light of i) and ii). The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison. In his conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings. If the prisoner so requests, the doctor should provide him/her with a certificate describing any injuries observed (paragraph 91);
- existing procedures to be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor and a preliminary investigation is initiated by him (paragraph 91).

requests for information

- updated information on the action taken in relation to the two specific cases mentioned in paragraph 83 (paragraph 85);



- in respect of 2003 and 2004: the number of complaints lodged concerning ill-treatment by prison officers and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints; a detailed account of disciplinary and/or criminal sanctions imposed following such complaints (paragraph 86);
- comments of the authorities on the shortcomings observed concerning autopsy reports drawn up after the death of inmates (paragraph 92).

### **Material conditions**

#### recommendations

- the authorities to take measures to develop and implement a comprehensive policy designed to combat prison overcrowding, in the light of the CPT's comments and the standards developed by the Council of Europe (paragraph 94);
- the standard as regards living space to be raised to at least 4 m<sup>2</sup> per prisoner, and official capacities and occupancy levels of cells and dormitories in Serbian prisons to be revised accordingly (paragraph 95);
- no more than two prisoners to be accommodated in the 9m<sup>2</sup> cells of Pavillion II at Sremska Mitrovica Penitentiary Reformatory (paragraph 97);
- access to natural light in cells at the Special Unit of Belgrade District Prison to be improved (paragraph 105);
- steps to be taken to ensure that all prisoners have adequate quantities of essential personal hygiene products and are able to take a hot shower at least once a week, and that prisoners who are unable to provide their own clothes are supplied with proper clothing by the prison authorities, taking weather conditions into account (paragraph 106).

#### comments

- access to natural light was barely adequate in Pavilion II of Sremska Mitrovica Penitentiary Reformatory (paragraph 97);
- at Belgrade District Prison, 15 m<sup>2</sup> cells should not accommodate more than three prisoners, and 35 m<sup>2</sup> cells not more than eight (paragraph 100);
- urgent measures are required to improve the overall state of hygiene of all the non-renovated parts of Belgrade District Prison; in particular, rubbish should never be stored in sanitary facilities (paragraph 101);
- the shortcomings observed in the renovation unit at Belgrade District Prison should be avoided in further renovation works (paragraph 102).

requests for information

- progress concerning improvements to material conditions in Pavilion I at Sremska Mitrovica Penitentiary Reformatory (paragraph 96);
- progress concerning the renovation of the prison kitchen and of Pavilion III at Sremska Mitrovica Penitentiary Reformatory (paragraph 98);
- comments of the authorities concerning complaints that fresh vegetable and dairy products were still not available at Belgrade District Prison (paragraph 103);
- detailed information on the ongoing renovation of Belgrade District Prison and its precise schedule (paragraph 104);
- confirmation that the basement cells at the Special Unit of Belgrade District Prison will not be used in the future to accommodate prisoners (paragraph 105).

**Activities**

recommendations

- measures to be taken to renovate the prison school at Sremska Mitrovica Penitentiary Reformatory and to offer educational opportunities, in particular to illiterate prisoners (paragraph 108);
- the implementation of the classification system for prisoners at Sremska Mitrovica Penitentiary Reformatory to be reviewed, in the light of the comments made in paragraph 109 (paragraph 109);
- measures to be taken to ensure that all prisoners - including those on remand - benefit from a regime similar to the one described in paragraph 111. Juveniles should be offered a regime of activities which takes into account their need for physical activity and intellectual stimulation (paragraph 111);
- all prisoners at Belgrade District Prison to be allowed to have at least a radio set (paragraph 111);
- the authorities to take immediate steps to ensure that all prisoners at Belgrade District Prison (as well as in establishments throughout Serbia) are offered at least one hour of outdoor exercise every day, including at week-ends. The authorities should also strive to equip outdoor exercise facilities with a means of shelter from inclement weather (paragraph 112);
- the current restrictive arrangements for outdoor exercise for juveniles to be abandoned forthwith (paragraph 113).

requests for information

- detailed information on the envisaged programme of activities for sentenced prisoners at Belgrade District Prison (paragraph 111).

**Staff issues**

recommendations

- the Serbian authorities to give high priority to the development of prison staff training, both initial and ongoing (paragraph 114);
- steps to be taken as a matter of urgency to increase the staff complement in the Serbian prison system (paragraph 115).

**Health care**

recommendations

- resources in terms of doctors at Sremska Mitrovica Penitentiary Reformatory to be significantly increased; preferably, they should be the equivalent of at least three full-time doctors (paragraph 118);
- steps to be taken to ensure that medical orderlies do not have access to medical files and do not distribute medication (paragraph 118);
- attendance hours of psychiatrists to be significantly increased in Belgrade District Prison and Sremska Mitrovica Penitentiary Reformatory (paragraph 120);
- the authorities to improve the health care facilities at Sremska Mitrovica Penitentiary Reformatory and Belgrade District Prison: this should include the provision of appropriate medical equipment (paragraph 121);
- the authorities to eliminate the delays in the medical screening of newly-admitted inmates at Sremska Mitrovica Penitentiary Reformatory. Save for exceptional circumstances, the screening should be carried out on the day of admission, especially insofar as remand prisoners are concerned. Medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor (paragraph 122);
- steps to be taken to ensure proper medical screening of newly arrived prisoners at Belgrade District Prison (and throughout the prison system), in the light of the remarks made in paragraph 123 (paragraph 123);

- an end to be put to any practice of interviewing prisoners through cells bars in the presence of custodial staff and fellow prisoners at the Special Detention Unit of Belgrade District Prison; instead, proper and confidential medical examinations should be carried out (paragraph 124);
- steps to be taken at Sremska Mitrovica Penitentiary Reformatory (as well as, if appropriate, in other prison establishments in Serbia) to ensure that all medical examinations of prisoners (whether on arrival or at a later stage) are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers or fellow prisoners (paragraph 125);
- an end to be put to the practice of segregating prisoners solely on the grounds that they are HIV positive, and the serological status of such prisoners to be kept confidential (paragraph 126);
- the authorities to develop and implement a comprehensive strategy in order to significantly improve the quality of health care offered to prisoners (paragraph 127).

#### comments

- the nursing complement of Belgrade District Prison should be further increased (paragraph 119).

#### requests for information

- results of the inspections of prison health care services carried out by the Ministry of Health's Inspection Unit in 2003 and 2004 (paragraph 117);
- confirmation of the practical implementation of the contract with the Military Academy Hospital in Belgrade for diagnostic measures and therapeutic treatment exceeding the scope of the Prison Hospital, and whether similar arrangements are under consideration for inmates of other establishments (paragraph 119).

### **Discipline/solitary confinement**

#### recommendations

- appropriate amendments to be made to the disciplinary regulations concerning the potential length of solitary confinement measures on disciplinary grounds (paragraph 129);
- arrangement concerning access to a shower and clothing/bedding for prisoners undergoing solitary confinement as a punishment to be made the same as those applied to prisoners in general (paragraph 130);

- the Regulations on House rules in District Prisons to be amended in order to ensure that appropriate reading material is always made available to inmates placed in solitary confinement (paragraph 131);
- the authorities to review the relevant regulations and practice concerning the role of a doctor in respect of prisoners undergoing solitary confinement on disciplinary grounds, in the light of the remarks in paragraph 132 (paragraph 132);
- urgent steps to be taken to improve material conditions in the cells used for solitary confinement at Sremska Mitrovica Penitentiary Reformatory and Belgrade District Prison, in the light of the remarks made in paragraph 133 (paragraph 133).

#### comments

- all prisoners without exception - including those undergoing solitary confinement as a punishment - should be allowed at least one hour outdoor exercise every day (paragraph 134);
- any form of collective punishment is prohibited by the European Prison Rules (Rule 37) (paragraph 134).

#### requests for information

- comments from the authorities on the fact that "sleeping during the day" was considered a breach of discipline at Sremska Mitrovica Penitentiary Reformatory, despite not appearing in the list of disciplinary offences (paragraph 134).

#### **Means of restraint**

#### recommendations

- in its present state, the cell in Pavilion II at Sremska Mitrovica used for restraining agitated and/or violent prisoners no longer to be used for this purpose. More appropriate arrangements should be found (paragraph 135);
- measures to be taken to avoid the practice of prison guards carrying their batons in a visible manner while performing their custodial duties at Sremska Mitrovica (paragraph 136).

## **Contact with the outside world**

### recommendations

- the law and regulations to be amended in the light of remarks made in paragraph 139; granting visits to remand prisoners should be the norm, the refusal of visits the exception (paragraph 139);
- appropriate steps to be taken immediately to stop any practice at Sremska Mitrovica of commenting to other inmates and staff on prisoners' correspondence with their families (paragraph 141);
- the relevant legislation (Article 75, paragraph 2, of the CCP) concerning the supervision of communication between remand prisoners and their lawyers to be strictly adhered to (paragraph 142);
- the current practice of investigating judges systematically reading all correspondence between remand prisoners and their lawyers to be revised without delay (paragraph 142).

### comments

- the authorities are invited to facilitate access to the telephone for both remand and sentenced prisoners (paragraph 140);
- systematic censorship of prisoner's correspondence with their families and friends may well not constitute the best possible use of staff resources (paragraph 141).

## **Complaints and inspection procedures**

### recommendations

- the authorities to review the complaints procedures currently in place, in the light of the remarks made in paragraph 143 (paragraph 143);
- an information brochure to be supplied to all prisoners upon their arrival in a particular prison, describing in a straightforward manner the main features of the prison's regime, prisoners' rights and duties and complaints procedures, and providing basic legal information. This brochure should be translated into an appropriate range of foreign languages. It would also be desirable that the expressions most commonly used in everyday activities be translated into foreign languages (paragraph 145).

comments

- the authorities are invited to consider establishing a fully independent visiting body for each prison establishment, possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment's premises (paragraph 144).

**Belgrade Prison Hospital**

recommendations

- custodial staff to be reminded that all forms of ill-treatment are not acceptable and will be the subject of severe sanctions (paragraph 148);
- steps to be taken to avoid the practice of custodial staff carrying their batons in a visible manner within the hospital (paragraph 148);
- the authorities to develop a comprehensive strategy aimed at combating the phenomenon of inter-patient violence at Belgrade Prison Hospital (paragraph 149);
- a clearly defined policy on the use of means of restraint to be immediately drawn up at Belgrade Prison Hospital and, as appropriate, in other health establishments in Serbia, taking into account the criteria set out in paragraph 154. This policy should be implemented throughout the country, including through specific training sessions (paragraph 155);
- immediate measures to be taken to ensure that occupancy rates in the patient's rooms are reduced, that beds and bedding and other related equipment is kept in a good state of repair and cleanliness, that sanitary facilities, including toilets and showers, are kept in a satisfactory state of repair and cleanliness, that all patients are offered at least one hot shower per week (and more frequently, when necessary for medical reasons), that diapers are provided to incontinent patients, and that the hospital premises are kept clean at all times, if necessary by hiring additional cleaning staff (paragraph 157);
- immediate steps to be taken to ensure that all patients at Belgrade Prison Hospital are offered at least one hour of outdoor exercise per day, including at weekends. Moreover, patients from the Assessment Ward should be offered outdoor exercise at a more appropriate time of day (paragraph 158);
- the renovation programme of patients' accommodation (including in E Ward) to be carried out as a matter of urgency (paragraph 159);
- the authorities to review the level of care offered to prisoners undergoing in-patient psychiatric treatment at the Prison Hospital. Each patient should benefit from an individual treatment plan. Particular efforts should in addition be made to develop psycho-social therapeutic activities and to adapt them to the individual needs of patients (paragraph 161);

- immediate steps to be taken in order to remedy the deficiencies highlighted in paragraph 163 concerning tuberculosis patients. Useful guidelines concerning tuberculosis control in prisons can be found in relevant international literature, mainly from the World Health Organisation (paragraph 163);
- the authorities to continue to increase the medical staffing levels at Belgrade Prison Hospital, in particular as regards pulmonologists and specialists in infectious diseases (paragraph 166);
- the number of nursing staff at the hospital to be significantly increased (paragraph 167).

comments

- custodial staff should preferably only enter the patient's living areas when requested to do so by health-care staff (paragraph 148);
- the authorities are invited to consider using single accommodation when applying means of restraint to patients, in order to avoid this being done in the presence of other patients and visitors (though this should not be to the prejudice of the close supervision required by such patients) (paragraph 155);
- the authorities are invited to provide the nurses working with psychiatric patients with training reflecting the specialised nature of their work (paragraph 167);
- implementation of the recommendations made in paragraphs 166 and 167 concerning staffing levels should make it possible to address the issue of the presence of health care staff outside normal working hours and during weekends at Belgrade Prison Hospital (paragraph 168).

requests for information

- detailed information on the means of restraint currently used at Belgrade Prison Hospital (paragraph 153);
- progress made as regards the implementation of the programme of renovation of patients' accommodation at Belgrade Prison Hospital (paragraph 159);
- comments from the authorities concerning delays in access to specialist care (paragraph 162);
- detailed information on the existing procedures for compassionate release of sick prisoners in the terminal stage of their disease (paragraph 164).



**C. Laza Lazarević Psychiatric Hospital ("the hospital")**

**Patients living conditions**

recommendations

- immediate steps to be taken to ensure that the criteria set out in paragraph 176 concerning a positive therapeutic environment are fully met at the hospital. In particular: carry out the necessary structural repairs to ensure that the physical safety of patients and staff is guaranteed at all times; reduce occupancy levels in the dormitories to an acceptable standard; offer better conditions, in particular as regards space and decoration, in the day-rooms of the respective wards and give particular attention to the decoration of patients' dormitories; provide all patients with adequate and clean bedding - more particularly, plastic covered mattresses should be provided, as well as diapers, in sufficient numbers; regularly provide the psychogeriatric ward with diapers (paragraph 176);
- renovation plans for the hospital to envisage smaller accommodation units for patients (paragraph 177);
- the pre-discharge apartments to be brought into service without delay, with a view to reducing the overcrowding observed in certain dormitories and/or to setting up workshops aimed at offering additional occupational activities to patients held at Padinska Skela (paragraph 178);
- steps to be taken at both of the hospital's sites to offer all patients accommodated in the "locked" wards, health permitting, at least one hour of outdoor exercise per day in a reasonably spacious and secure setting, which should also have shelter from inclement weather (paragraph 179).

**Treatment and care**

recommendations

- an individual treatment plan to be established for each patient and the components of psycho-social rehabilitation to be developed, in the light of the remarks made in paragraphs 180 and 181. In particular, opportunities for occupational therapy activities should be significantly increased and recreational/sports activities further developed (paragraph 181);
- steps to be taken to ensure that a regular supply of appropriate medicines is guaranteed at all times (paragraph 182).

comments

- efforts should be made to avoid an over-reliance on pharmacotherapy - particularly sedatives - within the treatment regime (paragraph 182).

- the written clinical recording of patients' treatment and progress lacked details, including on the issue of a patient's consent to treatment (paragraph 183).

### **Staff issues**

#### recommendations

- steps to be taken to significantly reinforce the presence of support staff (e.g. occupational therapists, social workers and psychologists) at the hospital, with a view to increasing the multidisciplinary nature of the treatment provided to the patients (paragraph 185);
- the relevant authorities to carry out an urgent review, on both of the hospitals' sites, of the level of staffing within the respective wards, with a view to reinforcing the presence of qualified nursing staff (paragraph 186);
- the authorities to install alarm/call systems (for example, panic beepers/call buttons) for staff working in the acute wards (paragraph 187).

#### requests for information

- comments of the authorities concerning the setting up of a specific psychiatric nursing qualification (paragraph 188).

### **Means of restraint**

#### recommendations

- a clearly defined policy on the use of means of restraint to be immediately drawn up at the hospital and, as appropriate, in other psychiatric establishments in Serbia, taking into account the criteria set out in paragraph 154. This policy should be implemented throughout the country, including through specific training sessions (paragraph 192).

#### comments

- the authorities are invited to consider using single accommodation when applying means of restraint to patients, in order to avoid this being done in the presence of other patients and visitors (though this should not be to the prejudice of the close supervision required by such patients) (paragraph 192);
- the authorities are invited to review the use of restraint on Ward D (and in other psychogeriatric wards in Serbia). Specific programmes aiming at reducing such use and finding alternatives should be developed (paragraph 193).

## **Safeguards**

### recommendations

- immediate measures to be taken to ensure the full implementation of existing legislation and, in particular, that the judicial control of involuntary placement measures taken vis-à-vis psychiatric patients is effective. Meeting this requirement will involve *inter alia* reviewing the cases of all patients currently placed in “locked” wards throughout the country (paragraph 199);
- the authorities to take into account the remarks made in paragraph 200 concerning consent to treatment when preparing the draft Law on the Protection of the Rights of Mental Patients (paragraph 200).

### comments

- the authorities are invited to pay close attention to the standards set out in Section III. F ("Safeguards in the context of involuntary placement") of the Committee's 8th General Report (cf. CPT/Inf (98) 12, paragraphs 51 to 57) in the course of the preparation of the draft Law on the Protection of the Rights of Mental Patients (paragraph 199);
- a more reliable system for informing patients of their rights should be established, such as an introductory brochure setting out the establishment's routine and patients' rights. This brochure should be issued to each patient on admission to the hospital, as well as to their families. Any patients unable to understand the brochure should receive appropriate assistance (paragraph 201).

### requests for information

- in due course, a copy of the Law on the Protection of the Rights of Mental Patients (paragraph 199);
- detailed information on the activities in 2004 of the “Patients’ Ombudsman” and the “Complaints’ Commission”, and a copy of the reports drawn up by the inspection teams of the Ministry of Health on their visits in 2004 (paragraph 202).

**Part 3: ESTABLISHMENTS UNDER THE AUTHORITY OF THE REPUBLIC OF MONTENEGRO**

**A. Establishments under the authority of the Ministry of the Interior**

**Preliminary remarks**

requests for information

- a copy of the new laws and regulations reforming the police service (paragraph 224).

**Torture and other forms of ill-treatment**

recommendations

- the relevant authorities, as well as senior police officers, to regularly instruct police officers that ill-treatment will not be tolerated, that all information regarding possible ill-treatment will be investigated and that perpetrators of such treatment will be subjected to severe sanctions. It is particularly important that this be made clear to officers of the criminal police (paragraph 228);
- any non-standard issue objects to be immediately removed from all police premises where persons may be held or questioned. Any such items seized during criminal investigations should be entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated property store (paragraph 228);
- police officers to be reminded that no more force than is strictly necessary should be used when apprehending a suspect and that, once apprehended persons have been brought under control, there can never be any justification for their being struck (paragraph 229);
- a very high priority to be given to professional training for police officers of all ranks and categories, including in modern investigation techniques. Experts not belonging to the police should be involved in this training. An aptitude for interpersonal communication to be a major factor in the process of recruiting police officers and, during the training of such officers, considerable emphasis to be placed on acquiring and developing interpersonal communication skills (paragraph 230);

- whenever criminal suspects brought before an investigating judge or public prosecutor at the end of police custody or thereafter allege ill-treatment by the police, the judge or prosecutor to record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge or prosecutor should order a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (paragraph 232);
- the record drawn up by a prison doctor following a medical examination 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; iii) the doctor's conclusions in the light of i) and ii). In his conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings. If the prisoner so requests, the doctor should provide him/her with a certificate describing any injuries observed (paragraph 233);
- existing procedures to be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor and a preliminary investigation is initiated by him (paragraph 233).

#### requests for information

- in respect of 2004, the number of complaints of ill-treatment lodged against police officers and the number of criminal/disciplinary proceedings which were initiated as a result, and a detailed account of the specific criminal/disciplinary sanctions imposed following complaints of ill-treatment (paragraph 231);
- detailed information on police complaints and disciplinary procedures, including the procedural safeguards aimed at ensuring their objectivity (paragraph 231).

#### **Conditions of detention**

##### recommendations

- measures to be taken to remedy shortcomings as regards material conditions observed in the cells of the three police stations visited, and to ensure that the use made of the cells complies with the CPT's comments. Moreover, the state of cellular accommodation in all police stations in Montenegro should be reviewed, having regard to the criteria set out in paragraph 234 (paragraph 239);

- immediate measures to be taken in order to provide persons in custody with food at appropriate intervals (which implies that budgetary means must exist for providing food to persons not in a position to pay for it themselves), including at least one full meal (i.e. something more substantial than a sandwich) every day (paragraph 240).

### **Safeguards against the ill-treatment of persons deprived of their liberty**

#### recommendations

- the Montenegrin authorities to take appropriate steps to ensure that the right to notify a close relative/third party of the fact of one's detention is rendered fully effective in practice, as from the very outset of deprivation of liberty (paragraph 243);
- the Montenegrin authorities to take the necessary steps to ensure that the right of access to a lawyer is guaranteed from the very outset of deprivation of liberty, both in law and in practice (paragraph 245).
- the right of access to a lawyer to be enjoyed by anyone who is under a legal obligation to attend a police station (paragraph 245);
- specific legal provisions to be adopted guaranteeing the right of access to a doctor for persons in police custody. Those provisions should *inter alia* stipulate that: a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense); all medical examinations of persons in police custody, whether carried out on police premises or in a health care facility, are to take place out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police officers; the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the detained person and his lawyer (paragraph 247);
- a form setting out in a straightforward manner the rights of persons in police custody to be systematically given to all such persons at the very outset of their deprivation of liberty. The contents of this form should reflect, *inter alia*, the rights referred to in paragraphs 243 to 247. The form should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights in a language they understand (paragraph 248);
- steps to be taken immediately to ensure that whenever a person is deprived of his liberty by a law enforcement agency, for whatever reason, this fact is recorded without delay (paragraph 250);

- the Montenegrin authorities to draw up a code of conduct for police interviews. The code should deal, inter alia, with the following: the systematic informing of the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; place(s) in which interviews may take place; the questioning of persons who are under the influence of drugs, alcohol or medicine, or who are in a state of shock. The code should also provide for a systematic record to be kept of the times at which interviews start and end, the persons present during each interview and any request made by the detainee during the interview and whether it was complied with. The position of particularly vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be subject to specific safeguards (paragraph 251);
- as regards juveniles, steps to be taken to ensure that an adult responsible for the interests of the juvenile (e.g. a relative or guardian) is present when the juvenile concerned is interviewed (paragraph 251).

#### comments

- the fundamental safeguards of persons in police custody would be reinforced if a single and comprehensive custody record were to be kept for each person detained, in which would be recorded all aspects of his custody and all the action taken in connection with it; the detained person's lawyer should have access to such a custody record (paragraph 250).

#### requests for information

- detailed information on the present status of the Montenegrin legislation concerning exceptions to the right to notify one's custody to a close relative /third party (paragraph 244);
- detailed information on the bodies/organisations empowered to visit police establishments in Montenegro and a copy of any recent report drawn up at national level on this subject. Further, whether the Office of the Ombudsman is empowered to carry out such visits (paragraph 252).

### **B. Spuž Prison Complex**

#### **Preliminary remarks**

#### requests for information

- updated information on the planned opening of the Prison Hospital (including detailed data as regards the medical and nursing staff complement, the number of beds, the nature of the services it will provide, etc.) (paragraph 256);
- detailed information on the implementation of plans to set up a separate wing for juveniles and a new female unit (envisaged capacity, staff resources, etc.) (paragraph 257).

## **Staffing and management issues**

### recommendations

- the Montenegrin authorities to conduct a full review, without delay, of current staffing arrangements in Spuž Prison Complex. The objective should be to ensure that the number of prison officers employed is sufficient to guarantee both staff safety and the physical and mental integrity of inmates (paragraph 261);
- the staff complement of the Treatment Department to be increased, to ensure more direct contact with inmates and promote development of positive relations (paragraph 262);
- a full review to be made of the collection and recording of prison data at Spuž Prison Complex and clear instructions to be given to all staff with a view to substantially improving both the quantity and the quality of the information kept (paragraph 263);
- the necessary measures to be taken at the SRP as regards the monitoring of female detainees in their cells, in the light of the remarks in paragraph 264 (paragraph 264).

## **High-security Unit**

### recommendations

- immediate measures to be taken to review the situation prevailing at the High-security Unit, taking into account the criteria described by the CPT (paragraph 267).

### requests for information

- detailed information on the conclusions of the review of the situation at the High Security Unit, as well as on measures taken to remedy the deficiencies observed by the CPT's delegation (paragraph 267).

## **Material conditions**

### recommendations

- the Montenegrin authorities to take measures to develop and implement a comprehensive policy designed to combat prison overcrowding, in the light of the CPT's comments and the standards developed by the Council of Europe (paragraph 270);
- the standard as regards living space to be raised to at least 4 m<sup>2</sup> per prisoner, and official capacities and occupancy levels of cells and dormitories in Montenegrin prisons to be revised accordingly (paragraph 271);



- immediate measures to be taken to provide all prisoners with clean mattresses and clean bed linen, to ensure that all prisoners have adequate quantities of essential personal hygiene products and are able to take a hot shower at least once a week, to renew/renovate the electrical and heating systems, and to renovate the sanitary facilities (paragraph 274).

#### requests for information

- detailed information on the authorities' plans to build at least one new facility for accommodating sentenced prisoners (paragraph 269).

### **Activities**

#### recommendations

- the authorities to take the necessary steps to ensure that all male sentenced prisoners at the CCF have access to an appropriate range of work, educational, sports and recreational activities. A first priority should be to bring the workshops back into service (paragraph 277);
- the authorities to take steps, as a matter of urgency, to radically improve activities for remand prisoners. The aim should be to ensure that remand prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature (group association activities; work, preferably with vocational value; sport). The legislative framework governing remand imprisonment should be revised accordingly (paragraph 278);
- the present classification and allocation system for prisoners to be reviewed, in the light of the comments made in paragraph 279 (paragraph 279).

### **Health care**

#### recommendations

- immediate steps to be taken to reinforce the health care staff at Spuž Prison Complex (paragraph 280).

#### comments

- using prisoners as medical orderlies should be seen as a very last resort and prisoners should never be involved in the distribution of medicines or given access to prisoners' medical files (paragraph 281);
- the CPT trusts that the deficiencies observed concerning medical equipment will be remedied when the new Prison Hospital enters into service (paragraph 282);

- a medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment (paragraph 284);
- whenever members of the medical and/or nursing staff are unable to make a proper diagnosis because of language problems, they should be able to request without delay the services of a qualified interpreter (paragraph 285).

### **Discipline/Solitary confinement/Means of restraint**

#### recommendations

- immediate steps to be taken to ensure that all prisoners, including those undergoing a confinement measure on disciplinary/security grounds, are offered at least one hour of outdoor exercise per day, including at weekends (paragraph 290);
- the conditions of accommodation of one particular prisoner placed under solitary confinement on security grounds to be reviewed as a matter of urgency (paragraph 291);
- every instance of resort to means of restraint/use of force to be recorded in a specific register, established for that purpose. The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such measures, the type of measure, and an account of any injuries sustained by inmates or staff (paragraph 292).

#### comments

- the disciplinary register at the CCF should contain more details, in particular as regards the offences committed and the different elements of the procedure (paragraph 286);
- the authorities are invited to amend the new draft Rules (June 2004) relating to disciplinary measures in order to formally guarantee prisoners charged with a disciplinary offence the following rights: to be informed in writing of the charges against them and to be given sufficient time to prepare their defence; to call witnesses on their own behalf and to cross-examine evidence given against them; to be heard in mitigation of punishment, in cases where found guilty by the Director; and to remain seated during adjudications and to have facilities to take notes (paragraph 287).

#### requests for information

- the physical characteristics of the 10 cells to be used at the SRP for disciplinary purposes (size, access to natural light, equipment, etc.) (paragraph 288);

- confirmation that, following the entry into service of the 10 cells referred to in paragraph 288, the cells on each floor of the SRP previously used for disciplinary purposes are no longer used to accommodate prisoners, whatever the circumstances (paragraph 289).

### **Contact with the outside world**

#### recommendations

- the visiting entitlement of each category of sentenced prisoners to be substantially increased; the objective should be to allow a visit of one hour per week (paragraph 294);
- the visiting entitlement of remand prisoners to be substantially increased; the objective should be to allow a visit of one hour per week (paragraph 295);
- the authorities to move to more open visiting arrangements for remand prisoners at the SRP (paragraph 295).

#### comments

- the authorities are invited to develop means to facilitate contacts with the outside world for foreign prisoners and prisoners without financial resources (paragraph 294);
- the authorities are invited to review the regulations as regards visits from unmarried partners; in the Committee's view, prisoners should be allowed to receive visits from any persons with whom they have had an established relationship prior to admission comparable in significance to that of a family member (paragraph 294).

### **Complaints and inspection procedures**

#### requests for information

- detailed information on the avenues of complaint offered to prisoners at Spuž Prison Complex, as well as on any independent body carrying out regular visits to the establishment (paragraph 296).

**C. Dobrota Special Psychiatric Hospital ("the hospital")**

**Ill-treatment**

recommendations

- staff at the hospital to be instructed, by appropriate means and at regular intervals, that the ill-treatment of patients will not be tolerated, that all information regarding possible ill-treatment will be investigated, and that perpetrators of such treatment will be subject to severe sanctions (paragraph 300);
- the authorities to urgently review the level of male technician/nursing staff in Wards 7 & 8, with a view to reinforcing the presence of qualified staff and ensuring adequate supervision by staff at all times (paragraph 303).

**Patients' living conditions**

recommendations

- immediate measures to be taken in order to raise the living conditions on Ward N° 7 (ground floor) to normal health care standards. More particularly, steps to be taken to:
  - reduce occupancy levels in the dormitories;
  - immediately provide all patients with adequate and clean bedding. Plastic covered mattresses should be provided, as well as diapers, in sufficient numbers;
  - immediately raise the general level of hygiene in the ward, in particular in the sanitary facilities;
  - ensure adequate heating, when necessary;
  - give attention to the decoration of the ward, including the patients' dormitories (paragraph 308);
- due attention to be given to the global renovation of Ward N° 7, with particular emphasis on the ground floor (paragraph 309);
- measures to be taken to ensure that material conditions in Ward N° 8 meet normal health care standards. Immediate steps should be taken to ensure that:
  - all patients are provided with adequate and clean bedding. More particularly, plastic covered mattresses should be provided, as well as diapers, in sufficient numbers;
  - better material conditions are offered to patients on the male and female floors, in particular as regards decoration in the patients' dormitories and in the day-rooms;
  - indigent patients are offered adequate footwear (paragraph 310);
- renovation plans for Ward N° 8 to envisage smaller accommodation units for patients (paragraph 311);

- steps to be taken to offer all patients accommodated in the “locked” wards, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious and secure setting, which should also have shelter from inclement weather (paragraph 312).

#### comments

- consideration should be given to converting the large-capacity dormitory in Ward N° 7 into a day/dining room, and three unused rooms into patients’ accommodation and/or occupational workshops (paragraph 309);
- consideration should be given to the installation of heating/air-conditioning systems in the dormitories of Ward N° 8 (paragraph 310).

### **Treatment and care**

#### recommendations

- individual treatment plans to be established for each patient and the components of psychosocial rehabilitation to be developed. In particular, opportunities for occupational therapy activities should be significantly increased and recreational/sports activities further developed (paragraph 314);
- steps to be taken to ensure that a regular supply of appropriate medicine is guaranteed at all times (paragraph 315);
- steps to be taken at the hospital's managerial level to increase the quality and quantity of the written medical recording (paragraph 316).

### **Staff issues**

#### recommendations

- attendance hours of psychiatrists in Wards 7 and 8 to be increased. Further, the number of support staff (psychologists, occupational therapists and social workers) to be significantly reinforced at the hospital, with a view to increasing the multidisciplinary nature of the treatment provided to patients (paragraph 318);
- the relevant authorities to carry out an urgent review of the level of nursing staff at the hospital. As a first step, the 17 vacant posts should be filled without delay (paragraph 319);
- the authorities to install alarm/call systems (for example, panic beepers or call buttons) for nursing staff working in the wards (paragraph 321).

comments

- the authorities are invited to further develop multidisciplinary team-work, in parallel with the recommended staff reinforcement (paragraph 320).

requests for information

- comments of the authorities concerning the setting up of a specific psychiatric nursing qualification (paragraph 322).

**Means of restraint/Seclusion**

recommendations

- a clearly defined policy on the use of means of restraint to be drawn up at the hospital (as well as at the psychiatric departments of Podgorica and Nikšić General Hospitals), taking into account the criteria set out in paragraphs 47, 48 and 50 of the CPT's 8<sup>th</sup> General Report (cf. CPT/Inf (98) 12). The implementation of this policy should include specific training sessions (paragraph 324);
- if the segregation of a particular patient is considered necessary, it should take place in an appropriate environment and under close monitoring. The use of the barred stairwell between the two floors at Ward N° 7 for this purpose should be definitively discontinued (paragraph 326);
- any use of seclusion to be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive. Further, seclusion should never be used as a punishment (paragraph 326).

comments

- the authorities are invited to consider using single accommodation when applying means of restraint to patients, in order to avoid this being done in the presence of other patients and visitors (though this should not be to the prejudice of the close supervision of such patients). The acquisition of proper restraint equipment should also be considered (paragraph 324);
- the authorities are invited to review the use of restraint on Ward N 8 (and in any other psychogeriatric ward in Montenegro). Specific programmes aiming at reducing such use and finding alternatives should be developed (paragraph 325).

## **Safeguards**

### recommendations

- the authorities to take steps to ensure that the draft "Law on the Protection of Mental Health Patients" is in conformity with the criteria set out by the CPT in its 8th General Report concerning the safeguards to be offered to patients in the context of involuntary placement (cf. paragraphs 51 to 57 of CPT/Inf (98) 12) (paragraph 329);
- the authorities to take into account the remarks concerning consent to treatment made in paragraph 333 when drafting the Law on the Protection of Mental Health Patients (paragraph 333).

### comments

- the information provided to patients orally should be supplemented by an introductory brochure setting out the information concerned. This brochure should be issued to each patient on admission to the hospital, as well as to their families. Any patient unable to understand the brochure should receive appropriate assistance (paragraph 334);
- none of the patients met by the delegation was aware of the fact that an anonymous complaints box had been installed at the hospital (paragraph 335).

### requests for information

- in due course, a copy of the Law on the Protection of Mental Health Patients (paragraph 329);
- comments of the authorities concerning the lack of follow-up of recommendations from the Medical Commission (paragraph 332);
- comprehensive information on the possibilities offered by law to forensic patients: to be heard in person by the Medical Commission; to be assisted by a lawyer during the proceedings; to challenge the duration of their custody for mandatory psychiatric treatment directly before a court (paragraph 332);
- detailed information on the activities carried out in 2004 by the team of inspectors of the Ministry of Justice (paragraph 336);
- comments of the authorities on the monitoring of civil patients by an independent outside body (paragraph 336).





**APPENDIX II**

**LIST OF THE AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

**A. Authorities of the State Union of Serbia and Montenegro**

**Ministry of Human and Minority Rights**

Rasim LJAJIĆ	Minister
Jelena MARKOVIĆ	Deputy Minister
Petar LADJEVIĆ	Advisor, the CPT's Liaison Officer
Gordana GOVEDARICA	Advisor

**Ministry of Defence**

Prvoslav DAVINIĆ	Minister
Duško DOPUDJA	Colonel, Legal Department
Radovan KORACĆ	Head of Inspection Section, Legal Department
Goran MATIĆ	Expert at the Supreme Military Court, the CPT's Liaison Officer

**B. Authorities of the Republic of Serbia**

**Ministry of the Interior**

Vladimir BOŽOVIĆ	Assistant Minister, Inspector General
Mirko BRBORIĆ	Inspector General's Chief of Staff
Nebojša PANTELIĆ	Captain, the CPT's Liaison Officer

**Ministry of Health**

Tomica MILOSAVLJEVIĆ	Minister
Gordana PODJANIN	Advisor to the Minister, the CPT's Liaison Officer
Dana MIHAILOVIĆ	Head of Health Inspection

**Ministry of Justice**

Zoran STOJKOVIĆ	Minister
Miloš JANKOVIĆ	Head of Department for Execution of Criminal Sanctions
Aleksandra STEFANOVIĆ	Advisor

**C. Authorities of the Republic of Montenegro**

**Ministry of the Interior**

Dragan DJUROVIĆ

Minister of the Interior and Vice-  
President of the Government of  
Montenegro

Bogdan DJUROVIĆ

Head of Operational Centre

**Ministry of Health**

Miodrag PAVLIČIĆ

Minister

Borislav MITRIĆ

Director of Special Psychiatric Hospital  
"Dobrota", the CPT's Liaison Officer

Krsto NIKOLIĆ

Advisor to the Minister

**Ministry of Justice**

Željko ŠTURANOVIĆ

Minister

Nevenka MUGOŠA

Senior Advisor

Vuksan VUKSANOVIĆ

International Co-operation Officer, the  
CPT's Liaison Officer

Milan KRSMANOVIĆ

Officer for Supervision of Enforcement  
of Imprisonment Sanctions

**State Administration for the Execution of Penal Sanctions**

Dragan PAJOVIĆ

Director

**Ministry of Foreign Affairs**

Ivana LEKOVIĆ

Advisor, Multilateral Department

**D. Non-governmental organisations**

Helsinki Committee for Human Rights in Serbia  
Humanitarian Law Centre

