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Report

to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

from 8 to 15 June 2010

UNMIK has requested the publication of this report and of its response. The response of UNMIK is set out in document CPT/Inf (2011) 27.

Strasbourg, 6 October 2011

* All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 3 of the Agreement signed on 23 August 2004 between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Agreement"), a delegation of the CPT carried out a visit to Kosovo from 8 to 15 June 2010.

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

- Timothy DALTON, Head of the delegation
- Haritini DIPLA, 2nd Vice-President of the CPT
- Stefan WEINBERG-KRAKOWSKI.

They were supported by Michael NEURAUTER, Head of Division, and Marco LEIDEKKER of the CPT's Secretariat, and assisted by two experts:

- Timothy HARDING, forensic doctor and psychiatrist, former Director of the University Institute of Forensic Medicine, Geneva, Switzerland
- Michael KELLETT, former Detective Chief Inspector in the Lancashire Constabulary, United Kingdom.

B. Context of the visit and establishments visited

3. The main objective of the visit was to review the measures taken by the relevant authorities to implement the recommendations made by the CPT after the first visit to Kosovo in 2007. In this connection, particular attention was paid to the treatment of persons deprived of their liberty by the police and to conditions of detention in police establishments. The delegation also examined in detail various issues related to prisons and pre-trial detention centres (including health-care services provided to prisoners and the situation of juveniles) as well as psychiatric/social welfare establishments.

4. The delegation visited the following places of deprivation of liberty:

Police establishments

- Leposavić/Leposaviq Police Station
- Mitrovica/Mitrovicë North Police Station
- Pejë/Peć Police Station
- Prishtinë/Priština Police Station No. 1
- Prishtinë/Priština Police Station No. 2
- Prizren Police Station

In addition, the delegation visited the premises of the Special Police Department of EULEX in Prishtinë/Priština.

Penitentiary establishments

- Dubrava Prison
- Lipjan/Lipljan Correctional Centre
- Mitrovica/Mitrovicë Detention Centre
- Prishtinë/Priština Detention Centre
- Prizren Detention Centre

Psychiatric/social welfare establishments

- Psychiatric Unit of Mitrovica/Mitrovicë Regional Hospital
- Psychiatric Clinic of Prishtinë/Priština University Hospital (Forensic Unit)
- Integration Centre for Mental Health, Shtime/Štimlje
- Institution for persons with learning disabilities, Shtime/Štimlje.

C. Consultations held by the delegation and co-operation

5. The degree of co-operation received by the delegation was very good at all levels. As had been the case during the last visit to Kosovo, the delegation enjoyed immediate access to all the places it wished to visit, including those which had not been notified in advance, was provided with the information necessary for carrying out its task, and was able to speak in private with persons deprived of their liberty.

6. In the course of the visit, the delegation had fruitful consultations with Ambassador Lamberto ZANNIER, Special Representative of the Secretary-General of the United Nations in Kosovo, Ambassador Werner ALMHOFER, Head of the OSCE Mission in Kosovo, and Mr Roy REEVE, Deputy Head of the European Union Rule of Law Mission¹ (EULEX), as well as with Mr Haki DEMOLLI, Minister of Justice, Mr Bajram REXHEPI, Minister of Internal Affairs, Mr Nenad RAŠIĆ, Minister of Labour and Social Welfare, and other senior officials of the relevant ministries.

Further, the delegation met Lieutenant General Markus BENTLER, Commander of KFOR, Mr Sami KURTESHI, Ombudsperson of Kosovo, and representatives of various International Organisations and non-governmental organisations.

A list of all authorities, international and non-governmental organisations met by the delegation is set out in Appendix II to this report.

¹ EULEX is a technical mission established under the general framework of United Nations Security Council Resolution 1244, with the mandate to monitor, mentor and advise the Kosovo authorities in the rule of law area, specifically in the police, judiciary and customs areas whilst retaining a number of limited executive powers.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

7. Since the 2007 visit, the legal framework governing the deprivation of liberty by the Kosovo Police (KP) has undergone certain changes. In particular, the maximum duration of police custody has been reduced from 72 to 48 hours²; as regards juveniles, the maximum duration of 24 hours remains unchanged³. Under the Law on the Police, persons may be held in temporary police custody for their own protection⁴ (maximum twelve hours) or for identification purposes⁵ (maximum six hours).

2. Ill-treatment

8. In the course of the visit, the delegation received numerous and consistent allegations of physical ill-treatment by KP officers from persons who were or had recently been taken into custody. The allegations concerned in the main punches, kicks and blows with batons at the time of apprehension, as well as slaps, punches, kicks (including to the genitals⁶), striking the person with hard objects⁷, or squeezing of the hand with a pencil being placed between two fingers, and beating on the soles of the feet⁸ by police officers attempting to obtain confessions during questioning. In some cases, the severity of the alleged ill-treatment was such that it could easily be described as torture.

Overall, it would appear that the situation as regards the treatment of persons deprived of their liberty by the KP has stagnated if not deteriorated since the 2007 visit.

9. In a number of cases, the medical examination of the persons concerned and/or the consultation of medical files by the delegation revealed injuries which, in the view of the delegation's doctors, were fully consistent with the allegations of police ill-treatment made.

² Section 212, paragraph 4, of the Provisional Code of Criminal Procedure of Kosovo (as amended by Law No. 03/L-003 of 6 November 2008).

³ Section 63, paragraph 2, of the Provisional Code of Criminal Procedure of Kosovo.

⁴ Section 20, paragraph 2.

⁵ Section 16, paragraph 3.

⁶ In particular, at Lipjan/Lipljan Police Station.

⁷ For instance, a remand prisoner met by the delegation claimed that he had been beaten by a police officer with the pipe of a vacuum cleaner at Pejë/Peć Police Station. When the delegation subsequently went to that police station, it found a pipe of a vacuum cleaner in the office described by the prisoner concerned.

⁸ In particular, at Mitrovica/Mitrovicë North Police Station.

10. In this connection, the following cases merit particular attention:

When visiting Prishtinë/Priština Police Station No. 1, the delegation met a group of persons who had been arrested by a special intervention group of the KP two days earlier. Several members of that group were interviewed by the delegation separately, and all of them stated that they had been ill-treated by members of that intervention group both at the time of arrest (after they had been brought under control and been handcuffed) as well as on arrival at the police station. It should also be noted that all interviewed persons indicated that they had not been ill-treated by custodial staff at the police station.

One of these persons (Case A) claimed that, at the time of arrest, he was hit with metal batons in the abdomen and genitals by officers of the special intervention group, before being cuffed behind his back. Four officers allegedly continued to kick and punch his head and he was then allegedly struck on the scalp with a metal gas canister. He claimed to have been “half conscious” when arriving at the police station, where he allegedly received more kicks to his body and punches to the face. It was only two hours later that he was transferred to the emergency clinic where his scalp wound was sutured. Medical notes of the emergency clinic mention “cerebral concussion”, a scalp wound of 8cm requiring five stitches, blood loss, contusions to face and presence of blood in the urine. Since arriving in the detention area, he still felt faint on standing and complained of widespread pain. Examination at the time of the interview by a medical member of the delegation revealed a degree of disorientation in time and space, consistent with significant concussion, as well as bandaging to a scalp wound, a 1.5 cm linear laceration on the right side of the bridge of the nose, diffuse bruising, dark blue in colour, on the right side of the head (parieto-temporal region), a diffuse, extensive hematoma (dark blue in colour) over the left rib cage (antero-lateral region: 22 cm x 15 cm) and visible swelling and dark blue colouration of the left side of the scrotum. On both shoulders there was marked diffuse bruising centred by a linear abrasion. On the right shoulder, the bruising was 15 cm long and 1.5 cm wide; on the left shoulder, the bruising was 10 cm long and 1.5 cm wide.

One person (Case B) claimed that he had received punches to his face and kicks to the side of his trunk while on the ground and that he was handcuffed behind his back at the place of arrest. On arrival at the police station, he had allegedly been insulted and slapped on the face by members of the special intervention group, whilst still handcuffed. The person concerned displayed a marked right-sided periorbital hematoma and a contusion measuring 3 cm by 2 cm behind the left ear⁹.

One person (Case C) alleged that, after being handcuffed behind his back, he was laid face down and kicked on his body and abused verbally. On arrival at the police station, he was allegedly led down in handcuffs a short corridor lined on both sides by police officers involved in the arrest. One officer allegedly punched him in the back of his neck. As he doubled over, another officer allegedly gave him a blow on the chest with his knee. The physical examination by a medical member of the delegation showed a hematoma on the left lower eyelid (0.5 cm x 0.75 cm). No other lesions on the face, head or trunk were observed.

⁹ The person declined an examination of his trunk. The record of the emergency clinic mentioned only a periorbital contusion.

11. The CPT considers that the extensive injuries observed in Case A are not consistent with a reasonable use of force to arrest a person, even one who is displaying resistance. The facial injuries observed in Cases B and C were caused by punches or blows to the head and were such as to indicate that excessive use of force had been used. Another serious concern is the delay in treatment (i.e. more than two hours) in Case A for a person suffering blood loss and a head injury causing a significant cerebral concussion (disorientation still present 48 hours after the injuries). A doctor working with EULEX stated that an ambulance was present at the scene of arrest. If that was the case, it is all the more surprising that a person with such extensive injuries had not been taken directly to the emergency clinic before being taken to the police station.

12. It should also be added that the above-mentioned persons claimed that a EULEX monitor had been present when the alleged incident occurred at Prishtinë/Priština Police Station No. 1 and that the monitor had attempted to prevent KP officers from continuing with the beatings, but to no avail.

Relevant information on the above-mentioned cases was communicated by the CPT to EULEX after the visit. By letter of 8 September 2010, EULEX informed the CPT that all these cases had been reported to the Police Inspectorate of Kosovo (via the KP) where they were still being investigated. Further, EULEX indicated that "EULEX Kosovo had requested its Internal Investigation Unit (IIU) to undertake an investigation into possible misconduct (i.e. inaction) by the EULEX staff member present at the police station. This case was closed by the IIU on the grounds that it was unsubstantiated". Moreover, various Mission components had been instructed to review all internal procedures in place for monitoring, mentoring and advising the activities of the Kosovo authorities in dealing with individuals deprived of their liberty.

The CPT wishes to receive the following information concerning the above-mentioned cases:

- **outcome of the investigations conducted by the Police Inspectorate of Kosovo and, where appropriate, the action taken at the criminal/disciplinary level;**
- **results of the review by EULEX of its internal procedures.**

13. Finally, **the CPT recommends that the relevant authorities redouble their efforts to combat ill-treatment by the police. All KP officers (including officers of the criminal police) should be reminded once again that all forms of ill-treatment of detained persons are unacceptable and will be the subject of severe sanctions. They should also be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for hitting them.**

14. The CPT wishes to stress once again the importance of the role of judicial and prosecuting authorities as regards combating ill-treatment by the police. In this regard, it is indeed disturbing that, as during the previous visit, the delegation received a considerable number of allegations from detained persons that they had informed a prosecutor or a judge of instances of ill-treatment by the KP, but that neither the prosecutor nor the judge had taken any action whatsoever in response to that information.

The Committee reiterates its recommendation that appropriate steps be taken to ensure that, whenever an apprehended person brought before a prosecutor or judge alleges ill-treatment by the police, those allegations are recorded in writing, a forensic medical examination is immediately ordered, and the necessary steps are taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor or judge should request a forensic medical examination whenever there are other grounds (e.g. visible injuries; a person's general appearance or demeanour) to believe that ill-treatment may have occurred.

15. One of the most effective means of preventing ill-treatment by police officers lies in the diligent examination by the competent authorities of complaints of ill-treatment; failing to do so will contribute to creating a climate of impunity.

The responsibility for the investigation of allegations of ill-treatment (as well as of other forms of misconduct) by KP officers lies with the Police Inspectorate of Kosovo (PIK), which became fully operational shortly after the 2007 visit. The PIK is independent of the KP and acts under the authority of the Minister of the Interior and the control and supervision of the Chief Executive Officer of the Inspectorate¹⁰.

Consultations which the delegation held with representatives of the PIK revealed a certain number of structural problems. Firstly, the post of Chief Executive Officer had been vacant for more than a year. Secondly, both the PIK and the Senior Appointments and Disciplinary Commission were lacking the necessary resources to cope with an increasing backlog of cases.

The CPT recommends that appropriate steps be taken by the relevant authorities to improve the effectiveness of the system for investigating complaints of police ill-treatment, in the light of the preceding remarks.

16. In order to obtain a more comprehensive picture of the situation, **the CPT would like receive the following information, in respect of the period from 1 January 2009 to the present time:**

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

¹⁰

Where it is established that a police officer has committed a disciplinary offence, the case is referred to the Senior Appointments and Disciplinary Commission within the Ministry of Interior, whose responsibility it is to convene a hearing. In the event of a finding of guilt, the Commission then makes a recommendation to the Director General of Police. It is up to the Director General to impose a disciplinary sanction. If the PIK determines that there is a suspicion of a criminal offence it must refer the matter to the prosecutor who carries out a parallel criminal investigation.

17. The CPT notes that a new draft Law on the Police Inspectorate of Kosovo was pending before the Kosovo Assembly. According to this draft law, the independence of the PIK will be reinforced¹¹ and its competences in criminal investigations extended. **The CPT would like to receive updated information on the progress made in enacting the aforementioned draft law.**

18. The inspection and monitoring of police detention facilities, including through unsupervised interviews with detained persons, by an independent authority can also make an important contribution towards the prevention of ill-treatment of persons held by the police, and more generally, help to improve, if necessary, conditions of detention.

Police detention facilities are visited on a regular basis by various bodies (including the Ombudsperson Institution, the PIK, the OSCE and certain NGOs). **The CPT would like to receive detailed information on all ordinary and extraordinary inspections of police establishments carried out by the Police Inspectorate of Kosovo since January 2009 (objectives, conclusions, etc). The Committee would also like to be informed whether these inspections had been announced or unannounced and whether detained persons were interviewed in private.**

3. Safeguards

19. The CPT welcomes the fact that, according to the relevant legislation¹², the fundamental safeguards against ill-treatment, namely the right of detained persons to notify a family member or another third person of their detention, and the rights to have access to a lawyer and a doctor all apply, in principle, from the very moment a person has been deprived of his/her liberty. However, the information gathered by the delegation revealed a wide gap between law and practice.

20. In particular, as regards the right of notification of custody, the situation generally seems to have deteriorated since the 2007 visit. Indeed, a number of detained persons complained that the police had failed to comply with their request to have a family member notified shortly after their apprehension, and that the notification had been made only towards the end of police custody. These allegations were corroborated by the examination of custody registers and custody records in several of the police stations visited (see paragraph 26).

The CPT recommends that appropriate steps be taken to ensure that the legal requirement of notification of custody is met in practice with respect to all persons deprived of their liberty by the Kosovo Police, from the very outset of their deprivation of liberty.

¹¹ Section 10 of the draft law stipulates inter alia that the “authority of the Minister does not include the operational management of the PIK” and “PIK will not disclose to the Minister [...] information related to its investigations [...]”.

¹² For further details, see paragraphs 22 to 27 of the report on the 2007 visit (CPT/Inf (2009) 3).

21. As in 2007, the delegation received a number of allegations from detained persons that they were not able to contact a lawyer at the outset of their deprivation of liberty, but only at the time when the initial period of questioning with an investigating police officer started (which, in some cases happened several hours after the deprivation of liberty). In several cases, the right of access to a lawyer allegedly only became effective after the person concerned had been questioned. Further, a number of detained persons complained that, despite having asked for an *ex officio* lawyer immediately after apprehension, their first contact with the lawyer took place only at the initial court appearance.

In the light of the above, **the CPT reiterates its recommendation that steps be taken to ensure that the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, from the very outset of their deprivation of liberty.** Further, **appropriate steps should be taken, in consultation with the Bar Association, to ensure the effectiveness of the system of assistance by a lawyer during the entire period of police custody.**

22. As far as the delegation could ascertain, detained persons were generally able to consult a doctor in all the police stations visited (the person was either transferred to a hospital or a doctor was called in)¹³.

That said, medical examinations of detained persons were still conducted in the presence of KP officers as a matter of routine. Such a practice is not acceptable, since it may well discourage a detained person who has been ill-treated from saying so and, more generally, is contrary to the principle of medical confidentiality; alternative solutions can and should be found to meet legitimate security requirements.

The Committee reiterates its recommendation that immediate steps be taken to ensure that all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of KP officers.

23. Further, the examination of medical records in various police establishments revealed that whenever injuries were recorded by a doctor, the description of injuries was not always detailed and the records often contained neither information on the person's account of how the injuries had been sustained nor on the doctor's conclusion as to the consistency between the medical findings and allegations made by the person concerned.

The CPT recommends that steps be taken to ensure that, whenever persons held in police custody are examined by a doctor, the persons' account of the circumstances in which any injuries he/she bears occurred are clearly set out in the medical record with a full description of the lesions. The doctor should also indicate conclusions as to whether lesions observed are or are not consistent with any allegations of ill-treatment.

Further, **the Committee recommends that appropriate steps be taken to ensure that, whenever injuries or other medical findings which are indicative of police ill-treatment are recorded by a doctor, the record is brought to the attention of the relevant authorities.**

¹³ See, however, paragraph 11.

24. At Leposavić/Leposaviq Police Station, the examination of past custody records revealed that persons suffering from severe alcohol intoxication¹⁴ (with a blood alcohol level of more than 2.0 g/litre and, in one case, more than 3.0 g/litre) had been held in the establishment for sobering-up purposes, without ever having been seen by a doctor. The CPT considers that, while it is reasonable to keep persons with moderate levels of inebriation in custody without medical supervision, persons with severe alcohol intoxication should be routinely seen by a doctor and if necessary kept under medical supervision. **The CPT recommends that this precept be implemented in all police establishments in Kosovo.**

25. As regards the provision of information on rights, the situation does not seem to have improved since the 2007 visit. Although detained persons were usually informed of their rights when they arrived at a police station without undue delay¹⁵, it remained a pattern that apprehended persons were often taken to a police station only after they had spent some time at another location with investigators and after they had been questioned. Thus, whether or not a suspect was told of his/her rights and allowed to exercise them from the outset of deprivation of liberty depended on the investigator involved in the case and often appeared to be linked to whether or not a confession was needed. The delegation found clear indications that some investigators did not comply with the requirement to inform detained persons of their rights.

The CPT reiterates its recommendation that appropriate steps be taken to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear oral information at the very outset, and supplemented at the earliest opportunity (that is, immediately upon the arrival of the persons concerned on police premises) by the provision of an information sheet (to be available in appropriate languages) on the rights of detained persons. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights and be allowed to keep a copy of the information sheet.

26. The examination of custody registers and records revealed that the standard of completion varied considerably from one establishment to another.

The situation appeared to be on the whole satisfactory at Prishtinë/Priština Police Station No. 1. The only shortcoming observed there was a lack of detail in the recording of injuries and of cases where detainees arrived at the police station intoxicated with alcohol or drugs. The practice appeared to be that the relevant box was ticked but no explanation of the cause of the injuries or the level of intoxication was recorded. This is potentially problematic, as the injuries may have been inflicted during apprehension or police custody, and the level of intoxication may call for medical treatment or have an impact on whether or not the person concerned is fit to be detained and/or interviewed.

In all other police stations visited, the quality of the record keeping left a lot to be desired. In many cases, officers had failed to record important aspects such as times of interviews and whether or not rights had been notified and whether suspects requested lawyers and/or their families to be informed of their detention. The general lack of attention to these matters suggests that the rights were often not being granted.

¹⁴ In case there was a suspicion, blood alcohol levels were measured by breathalyser.

¹⁵ In most police stations visited, the delegation saw notices on the walls in several languages setting out the rights of detained persons.

The delegation also found evidence that custody records were not being completed in respect of every detained person. For instance, when visiting Leposavić/Leposaviq Police Station, the delegation wished to consult the custody record of a person who had previously been met in one of the detention centres visited. Although one of the KP officers present indicated that she remembered the presence of the aforementioned person in the station, no traces were found in either the custody register or in the archives of the custody records for the relevant period.

In the light of the above, **the CPT recommends that appropriate steps be taken in all police establishments in Kosovo to ensure that:**

- **whenever a person is deprived of his/her liberty by the Kosovo Police, for whatever reason (even for a few hours), this fact is formally recorded without delay;**
- **custody registers and records are always accurately maintained.**

More generally, **the Committee wishes to stress once again that the fundamental safeguards of persons deprived of their liberty by the Kosovo Police would be reinforced if a single and comprehensive custody record was kept for each person detained.**

4. Conditions of detention

27. The CPT is pleased to note that, in most of the police establishments visited, material conditions of detention have improved since the 2007 visit¹⁶. In particular, at the police stations in Pejë/Peć, Leposavić/Leposaviq, Prishtinë/Priština No. 1 and Prizren, detention cells were generally in a good state of repair, and at Pejë/Peć, Prishtinë/Priština No. 1 and Prizren, access to natural light was now adequate in the cells.

That said, a number of deficiencies were observed by the delegation in the establishments visited. For instance, at Mitrovica/Mitrovicë North, cells remained somewhat dilapidated, and both at Leposavić/Leposaviq and Mitrovica/Mitrovicë North, cells only had limited access to natural light. Further, at Leposavić/Leposaviq, Pejë/Peć (some cells only) and Prizren, artificial lighting in the cells was either non-existent or not functioning, and at Leposavić/Leposaviq and Pejë/Peć, toilets inside double-cells were not partitioned. Moreover, at Prishtinë/Priština No. 1, there was no hot running water and some of the showers did not work.

Particular mention should be made of cell no. 4 at Mitrovica/Mitrovicë North Police Station. The cell was severely affected by humidity, and some of the wooden floor boards were totally rotten and could easily be broken off. This could also constitute a security risk for KP officers working in the establishment.

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

- **material conditions of detention are improved in all the police establishments visited, taking into account the above remarks; in particular, it is essential that all cells have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light;**
- **cell no. 4 at Mitrovica/Mitrovicë North Police Station is withdrawn from service until it is completely refurbished.**

¹⁶

As in 2007, custody cells were fitted with clean mattresses and blankets in all police stations visited.

28. At Prishtinë/Priština Police Station No. 1, the delegation saw a bench within the detention area with a metal frame to which four metal rings were fixed. There were no indications of recent use. During an initial visit to the police station, the delegation made a remark that such rings could be seen as a way of handcuffing detainees to a fixed object and that their presence was inappropriate and potentially intimidating (even if never used). During a follow-up visit to the establishment a few days later, the delegation was pleased to see that the rings had been removed.

5. Other issues

a. strip searches during police custody

29. At Prishtinë/Priština Police Station No. 1, the delegation discovered that, save for exceptional circumstances, detained persons (including juveniles) were routinely subjected to a strip search on arrival. The persons concerned were asked to undress and then to squat and cough while a KP officer observed the perineal area¹⁷. No such practice was observed in any of the other police stations visited.

A strip search (and even more so a visual inspection of the perineal area), is a very invasive and potentially degrading measure. To apply it in every case is, in the CPT's view, excessive and unnecessary. Of course, detained persons should always be searched in order to ensure their own safety and the safety of KP officers. However, a strip search should be carried out only when there are reasonable grounds to suspect that a detained person may have hidden on him/her items that may be used to harm him-/herself or others or that may be evidence of a crime and such a search is necessary in order to detect these, an ordinary search being unlikely to result in their discovery. Carrying out such a search should require the authority of a senior officer and should be subject of a written policy, setting out in clear terms the circumstances in which it is permissible to resort to it. Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing. In addition, more than one officer should, as a rule, be present during any strip search as a protection to detained persons and staff alike.

The CPT recommends that the circumstances of and procedures for searching detained persons be revised at Prishtinë/Priština Police Station No. 1 and, where appropriate, in other police establishments in Kosovo, in the light of the preceding remarks.

¹⁷

In the case of a female detainee, the search was performed only by a female KP officer.

b. specific issues related to EULEX

30. In the course of the visit, the delegation went to the premises of the Special Police Department of EULEX. This department does not have designated detention facilities, but detained persons may be held there in secure interview facilities for the purpose of questioning by a EULEX investigator. From the consultation of individual case files, it transpired that the persons concerned generally benefitted from the safeguards referred to in paragraph 19. However, there was no register for recording the presence of detained persons on the department's premises. **The CPT recommends that this shortcoming be remedied.**

31. At the time of the visit, the terms of reference of EULEX did not cover the monitoring of the Police Inspectorate of Kosovo (PIK). The delegation was informed that the latter terms of reference were being revised, with a view to including such monitoring within the responsibilities of EULEX. **The CPT would like to receive updated information on this matter.**

32. In October 2009, a Human Rights Review Panel (HRRP) was established by the European Union, with the task of reviewing alleged human rights violations by EULEX staff in Kosovo in the conduct of their executive mandate. The Panel, which became fully operational in May 2010, is composed of three independent international experts in human rights law (including one international judge deployed in Kosovo). The Panel reviews complaints which are submitted to it and renders a finding as to whether EULEX staff has violated human rights law applicable in Kosovo. Its findings may include non-binding recommendations for remedial action by the Head of Mission.

The CPT would like to receive detailed information on the work performed thus far by the HRRP in relation to complaints about the manner in which persons deprived of their liberty in Kosovo have been treated by EULEX staff.

B. Penitentiary establishments

1. Preliminary remarks

33. The delegation carried out follow-up visits to Dubrava Prison, Lipjan/Lipljan Correctional Centre and the detention centres in Mitrovica/Mitrovicë and Prishtinë/Priština; in addition, it visited for the first time the detention centre in Prizren.

34. *Dubrava Prison* remains the largest prison establishment in Kosovo. With an official capacity¹⁸ of 1,114 places, it was accommodating 807 male prisoners (763 sentenced and 44 on remand) at the time of the visit; 33 prisoners were being held in the prison hospital unit.

Lipjan/Lipljan Correctional Centre continues to serve as the sole detention facility in Kosovo for female and juvenile prisoners (both sentenced and remand). The centre's official capacity had increased from 152 to 160 places. At the time of the visit, it was accommodating 30 female adult prisoners (19 sentenced and 11 on remand) and 56 male juveniles (14 sentenced, 30 on remand and 12 subject to a placement in an educational institution¹⁹), as well as 20 male adult prisoners serving very short sentences.

As was the case in 2007, some of the *detention centres visited* (in particular, at Mitrovica/Mitrovicë and Prizren) were accommodating a considerable number of sentenced prisoners. Most of them had received short terms, but others were serving very long sentences (of up to 20 years). At the time of the visit, Mitrovica/Mitrovicë Detention Centre (capacity: 35 places²⁰) was holding 20 inmates (including 12 sentenced), and Prishtinë/Priština Detention Centre (capacity: 65 places) 57 inmates (all on remand) and Prizren Detention Centre (capacity: 92 places) 71 inmates (including 20 sentenced).

Before setting out the facts found by the delegation in the establishments visited, the CPT wishes to raise two issues which give rise to particular concern.

35. Firstly, in the light of the information gathered during the 2010 visit, the CPT's delegation gained the distinct impression that corruption and favouritism were endemic at Dubrava Prison. It would appear that prisoners who had enough money could easily obtain contraband (such as a mobile phone or drugs) or preferential treatment regarding family visits, temporary leave from the prison for a weekend or medical treatment (to avoid a long wait). The gravity of the situation was underlined by the fact that those engaged in corruption felt able to continue with this activity despite the presence of international monitors.

¹⁸ At the time of the visit, the actual capacity was lower, due to temporary closure of one detention block which was being renovated.

¹⁹ Due to the lack of any appropriate educational establishment in Kosovo, juveniles subject to a placement as an educational measure under Sections 19, 24 or 25 of the Juvenile Justice Code of Kosovo are being held at Lipjan/Lipljan.

²⁰ In 2007, the official capacity of the detention centre still stood at 79 places. Following the recent departure of some two-thirds of the staff, the official capacity was reduced to 50% by withdrawing from service two of the three existing detention units.

In addition to numerous allegations, the delegation witnessed for itself instances of over-familiarity between staff and prisoners at Dubrava, which were indicative of a climate of favouritism. For instance, in one of the offices of the establishment's special intervention group (located outside the main perimeter walls), the delegation observed a prisoner sitting in an armchair, drinking tea and reading the newspaper with members of the special intervention group. All the persons in the room were clearly very familiar with each other and comfortable with the situation.

For the avoidance of doubt, the Committee does not criticise the fact that good relations exist between staff and inmates in custodial settings – far from it. However, there is a very real difference between the situation where good relations are based on mutual respect for rights and obligations of all staff and inmates and one where they are based on favouritism towards a small privileged minority.

It should be added that, in contrast to 2007, a number of complaints of corruption were also heard at the detention centres in Prishtinë/Priština and Prizren.

The frequency and seriousness of the allegation received during the visit is a source of concern, irrespective of whether each and every allegation is well-founded. The CPT wishes to recall that the widespread conviction alone of the existence of a culture of corruption (as well as favouritism) in a place of detention brings in its wake discrimination, violence, insecurity and, ultimately, a total lack of respect for authority.

The CPT calls upon the relevant authorities to take decisive action to combat the phenomena of corruption and favouritism in all penitentiary establishments in Kosovo.

As regards more specifically Dubrava Prison, the Committee recommends that a comprehensive and independent inquiry be conducted into allegations of corruption and favouritism in the establishment. The Committee would like to be informed of the outcome of the above-mentioned inquiry and of the action taken as a result thereof.

36. Secondly, it is a matter of serious concern that a number of remand prisoners had been kept in detention for years (notably at the Mitrovica/Mitrovicë Detention Centre), without any trial hearings taking place. The delegation was informed that the prisoners concerned were “caught” in a conflict between judges of the criminal court at Mitrovica/Mitrovicë and the Kosovo authorities. Reportedly, judges refuse to hold trials until they are allowed to return to the court building where they had worked in the past. Meanwhile, they simply prolong existing detention orders on a regular basis.

The CPT calls upon the relevant authorities to find a solution to this problem as a matter of urgency. Such an unacceptable situation cannot be allowed to continue.

2. Ill-treatment

37. Contrary to the situation found in 2007, some allegations of physical ill-treatment (such as slaps and/or punches to the head or face) by custodial staff were received at the *detention centres in Mitrovica/Mitrovicë, Prishtinë/Priština and Prizren*. In addition, at the Lipjan/Lipljan Correctional Centre, several female prisoners complained about instances of verbal abuse by prison officers.

At *Dubrava Prison*, the delegation once again received many consistent and persistent allegations of physical ill-treatment and/or excessive use of force (slaps, kicks, punches, and blows with batons, etc.) by members of the establishment's special intervention group. Allegedly, such incidents often occurred during cell-search operations at night. The delegation also heard allegations that certain prisoners had "hired" members of the establishment's special intervention group to physically assault other prisoners who were causing them trouble.

Moreover, in contrast to the situation found in 2007, a number of allegations were heard about physical ill-treatment of prisoners by custodial staff at Dubrava Prison. Several prisoners also affirmed to the delegation that they had been warned by prison officers not to complain to (or have any contact with) EULEX monitors.

To sum up, the situation seems to have deteriorated since the 2007 visit both at Dubrava Prison and elsewhere.

38. The CPT recalls that it does not contest the need for distinct units, capable of intervening in penitentiary establishments as a measure of last resort. However, basic precautions must be taken to prevent inappropriate reactions linked to a strong feeling of belonging to an elite force, united by the dangers it has to face. These precautions include firm professional management which is vigilant in detecting misconduct and resolute in punishing it, and a staff rotation policy. It is also essential that great care be taken in the selection, recruitment, training (including stress management and physical training) and equipping of the members of special units, in order to ensure that they are the best suited to dealing appropriately (including through the use of minimum force) with situations of risk.

39. In view of the information gathered by the CPT's delegations in the course of both the 2007 and 2010 visits as regards the manner in which the special intervention unit at Dubrava Prison goes about its business, the CPT cannot but conclude that there is an urgent need for root and branch reform of the entire intervention unit at Dubrava Prison.

Firstly, a strong feeling of belonging to an elite force (see above) has developed among members of the special intervention group. There is a very powerful team spirit as well as a pride being a member of the unit and possessing the skills required. The members of the unit wear distinctive uniforms and have their own badges. They are all fit young men – half of each working day is taken up with physical training and with practising intervention and control and restraint techniques. None of this is in itself undesirable; indeed, it is commendable. However, such a group needs to be managed and led carefully; otherwise it risks becoming a liability, which is what the Committee strongly believes has happened at Dubrava. One of the factors contributing towards this state of affairs is the lack of turnover of personnel²¹.

²¹ The delegation was told by the head of the unit that about half of the 21 members of the unit had been recruited in 2004 and the other half in 2006. Since 2004, only four people had left the unit.

In their response to the report on the 2007 visit²², the authorities argued that the introduction of a rotation policy for members of intervention units would be very difficult from a practical standpoint. However, the Committee considers that such a rotation policy is essential to effectively prevent ill-treatment by members of the special intervention group at Dubrava and that solutions can and should be found to overcome any practical obstacles to this end.

Secondly, the CPT cannot see any legitimate reason for cell searches to be routinely carried out during lockdown periods and often late at night. Such a practice is likely to increase tensions and hence the risk of incidents occurring; further, it precludes any monitoring by EULEX monitors who are not present during those times in the establishment (see, in this regard, also paragraph 41).

Thirdly, it is regrettable that, despite the assurances to the contrary given by the authorities in their response to the 2007 report²³, members of the intervention unit at Dubrava often wear masks during interventions. The CPT has already expressed its misgivings about the wearing of masks as a means of concealment of identity by members of intervention units – or any other prison staff – within the confines of a prison. The Committee does acknowledge that, for operational reasons, the wearing of some form of identity concealment may prove necessary in quite exceptional circumstances. However, in that case, the wearing of clearly visible tags on the uniform with a number or other mark should enable the identification, by name, of the members of staff concerned, at any time by the authorities responsible for the operations and by those tasked with monitoring of interventions, as well as, by number or mark, by prisoners.

40. The CPT recommends that the management, composition and working methods of the special intervention group at Dubrava Prison be reviewed as a matter of urgency, in the light of the above remarks.

Further, the Committee recommends that the management at Dubrava Prison, Lipjan/Lipljan Correctional Centre and the detention centres visited once again remind all their staff that any form of ill-treatment of prisoners (including verbal abuse) is not acceptable and will be punished accordingly.

41. At Dubrava, a team of some 20 international prison officers was deployed in the prison by EULEX on a full-time basis²⁴. Their main task was the mentoring and monitoring of staff in the maximum-security unit (Block 8) and the escorting of maximum-security prisoners outside the establishment. The delegation was informed that EULEX was in the process of transferring the responsibility for monitoring the maximum-security unit to the KCS. At the same time, EULEX officers were increasingly involved in advising the prison management in various other areas (including the management of the establishment's intervention unit). For this purpose, four intervention specialists had been recruited by EULEX.

The CPT encourages the Kosovo Correctional Service and EULEX to further enhance their co-operation, with a view *inter alia* to enabling EULEX officers at Dubrava Prison to monitor directly operations of the establishment's intervention unit.

²² See page 21 of CPT/Inf (2009) 4.

²³ See page 20 of CPT/Inf (2009) 4.

²⁴ EULEX officers were present on the premises of the prison everyday from 8 a.m. until 8 p.m..

42. Unlike in 2007, the delegation also received a number of allegations of inter-prisoner violence at Dubrava Prison (in particular, in Block 5), i.e. fights between prisoners, as well as humiliations of “underclass” prisoners (according to the informal hierarchy system among prisoners). Several prisoners claimed that prison officers did not always intervene promptly to stop such acts and, in some cases, even turned a blind eye to the harassment or beatings of “underclass” prisoners.

The CPT wishes to recall that the prison authorities' duty of care includes the responsibility to protect inmates from other inmates who might wish to cause them harm. Any strategy for solving the problem of intimidation and violence between prisoners, if it is to be effective, requires prison staff to be in a position, including in sufficient numbers, to exercise their authority in an appropriate manner. Consequently, staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary; what is more, prison staffing levels need to be adequate (at night as well as during the daytime). A key component in the management of inter-prisoner relations is the careful assessment, classification and cell allocation of individual prisoners within the population.

Another important tool for preventing inter-prisoner violence lies in the diligent examination by the prison administration of all relevant information regarding alleged inter-prisoner violence which may come to its attention, and, where appropriate, the instigation of proceedings. Prison doctors, as well as nursing staff, also have an important part to play in this context, as they are often the first persons to whom prisoners turn after being ill-treated or threatened by fellow inmates.

The CPT recommends that the management of Dubrava Prison draw up and implement a comprehensive strategy to address the problem of intimidation and inter-prisoner violence, in the light of the above remarks.

3. Conditions of detention

a. material conditions

43. Material conditions of detention had significantly improved since the 2007 visit in most of the establishments visited, and can be described as generally satisfactory. It is particularly noteworthy that overcrowding was not a problem in any of the establishments visited²⁵. At Dubrava, a major renovation programme, which had started several years before, was close to completion. Further, some renovation work was still ongoing at Lipjan/Lipljan Correctional Centre (in particular, in the juvenile unit) and Mitrovica/Mitrovicë Detention Centre. **The CPT would like to receive updated information on the implementation of the aforementioned renovation works.**

44. The situation was less satisfactory at the Prishtinë/Priština Detention Centre where access to natural light and ventilation in certain cells was still poor, and the fire alarm system in this establishment was out of order. Further, at the Prizren Detention Centre, ventilation was insufficient in most of the cells (with temperatures rising to more than 30° C in the summer). **The CPT recommends that these shortcomings be remedied.**

²⁵

Although conditions were rather cramped in some parts of Dubrava Prison, due to the fact that an entire block was temporarily closed for refurbishment.

45. The situation had improved as regards the provision of hygiene products in all the establishments visited. However, at Lipjan/Lipljan, the delegation once again received a number of complaints from female prisoners that they were not provided with sanitary towels. **Steps should be taken to remedy this deficiency.**

46. At the Prizren Detention Centre, the delegation found one “security cell” (C12) which was devoid of any equipment and had no window. According to staff, violent or mentally-ill prisoners were on occasion placed in this cell for up to several days (with a mattress placed on the floor).

The CPT wishes to stress that in its present state the aforementioned cell is unfit for use as accommodation for any prisoner; **the Committee recommends that this cell be withdrawn from service until it is adequately equipped and fitted with a window.**

b. regime

47. The delegation once again gained a very favourable impression of the regime offered to female and juvenile sentenced prisoners at *Lipjan/Lipljan Correctional Centre*. The CPT also acknowledges the efforts made since the 2007 visit in the other establishments visited to provide sentenced prisoners with purposeful out-of-cell activities.

At *Dubrava Prison*, sentenced prisoners could move freely within the detention area during most of the day. In addition to two hours of outdoor exercise per day, they usually had access to sports facilities twice a week. 320 prisoners were offered work (on a part-time basis). In addition, 50 prisoners were enrolled in a secondary school; and small groups of prisoners were able to attend workshops (plumbing, welding, etc.). The delegation was informed that a new project would be implemented as of October 2010 to provide agricultural work opportunities. It should also be added that the regime applied to prisoners in the maximum-security unit (Block 8) remained on the whole satisfactory²⁶.

At the *Mitrovica/Mitrovicë Detention Centre*, sentenced prisoners also had the possibility to move freely within the detention area during the day; they could also go out into the open air and engage in sports activities (football, basketball or volleyball) for 3 ½ hours per day. Six prisoners were offered work on a full-time basis (maintenance, cleaning, etc.). Moreover, one fitness room and one computer room had been refurbished and were scheduled to become operational shortly.

At the *Prizren Detention Centre*, sentenced prisoners could move freely within the detention area and benefit from outdoor exercise during six hours per day. Further, most of them were offered some work (e.g. laundry).

48. Regrettably, the situation had not improved in any of the establishments visited regarding the regime offered to remand prisoners (with the exception of Lipjan/Lipljan Correctional Centre). Apart from daily outdoor exercise (for two to three hours), remand prisoners remained locked up in their cells all day, the only occupation being watching television, reading and playing board games.

²⁶ See paragraphs 66 to 68 of the report on the 2007 visit (CPT/Inf (2009) 3).

49. **The CPT recommends that the relevant authorities redouble their efforts to improve the programme of activities offered to prisoners in the establishments visited and, where appropriate, at other prison establishments in Kosovo.** As has been highlighted by the Committee in the previous visit report, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).

50. The system of security classification of prisoners had changed after the 2007 visit. The delegation was informed that decisions on the security classification of prisoners were no longer taken by courts according the nature of the crime committed, but by the Prisoner Oversight Committee (POC), which was composed of representatives of the KCS, the prison management and EULEX. The POC took its decisions on the basis of individual risk assessments. Classifications were reviewed every six months.

The delegation was also told that all prisoners who were classified as “very high risk” prisoners had to be held in the maximum-security unit at Dubrava Prison (Block 8). However, when visiting the latter establishment, the delegation found out that several prisoners of this category were actually accommodated in other units, mixed with other prisoners who were not classified as “very high risk” prisoners. **The CPT would like to receive the comments of the relevant authorities concerning this discrepancy.**

4. Health care

a. staff and treatment

51. The number of general practitioners (six) and nurses (35) remained adequate for the needs of the inmate population at *Dubrava Prison* (including the prison hospital unit)²⁷; further, medical and nursing staff were present around the clock. In contrast to the 2007 visit, no complaints were received about delays in access to general medical consultations.

That said, it is regrettable that the psychiatric services have not been reinforced at Dubrava. Given the high prevalence of mental disorders in the prison and of problems related to drug addiction, the part-time presence (three times a week) of a psychiatrist is clearly insufficient (despite the personal commitment of the psychiatrist concerned). If it proves impossible to appoint one full-time psychiatrist, a second part-time psychiatrist should be appointed, thus assuring full-time cover. An important role of the psychiatrist should be to advise general duty doctors, who see many psychiatric and drug related problems in their daily work. Further, the delegation received many complaints about long (“interminable”) delays in other specialist consultations requested by general duty doctors, in particular, as regards dental interventions²⁸. At the time of the visit, there was a three- to four-month wait for conservative treatment.

The CPT recommends that the presence of a psychiatrist and dentist at Dubrava Prison be increased to the equivalent of one full-time post each.

²⁷ The prison employed a part-time dentist as well as a number of specialist consultants (cardiology, orthopaedics, pulmonology, radiology/ultrasound, psychiatry, urology, neurology and ophthalmology), most visiting the establishment twice a month.

²⁸ See also paragraph 35.

52. At *Lipjan/Lipljan Correctional Centre* and all the *detention centres visited*, health-care staffing levels and the general health care provided to prisoners remained on the whole satisfactory²⁹. Further, in all these establishments, nursing staff were present on a 24-hour basis (including at weekends).

The CPT noted improvements as regards the provision of specialist care (in particular, dental and psychiatric treatment) in all the detention centres visited. At the *Mitrovica/Mitrovicë Detention Centre*, the provision of psychiatric care was improved through close co-operation with the *Regional Hospital*³⁰. Furthermore, since the last visit, it has become possible for prisoners suffering from more severe mental disorders to be transferred to the psychiatric clinic in *Prishtinë/Priština*.

b. health-care facilities and supply of medication

53. As in 2007, health-care facilities were generally found to be satisfactory in all the penitentiary establishments visited and of a good standard at the prison hospital unit at *Dubrava Prison*. It is also noteworthy that a well-equipped dental chair has been installed at the *Mitrovica/Mitrovicë Detention Centre* (as recommended by the CPT after the 2007 visit).

54. Further, in all the establishments visited, the supply of medication was generally adequate at the time of the visit. However, at *Dubrava Prison*, the delegation learned that, until three weeks before the visit, there had been a shortage of medication for a period of seven months, including five months with no medication of any kind. This meant that prisoners were expected to request their families to send medication prescribed by medical staff. As a result, there were delays in starting treatment, some medication sent was incorrect and inappropriate, and some patients simply went without treatment.

The CPT wishes to emphasise that the prison authorities have an obligation to provide medical supplies, including medication, needed by prisoners. The breakdown in delivery of supplies to *Dubrava* constituted a serious failure in the duty of care at the most basic level. **The Committee recommends that all necessary steps be taken by the relevant authorities to prevent the recurrence of any such situation at *Dubrava Prison* or in any other penitentiary establishment, including by authorisation to procure medication from local sources if necessary.**

²⁹ At *Lipjan/Lipljan Correctional Centre*, the health-care team included a general practitioner (full-time), a psychiatrist (twice a week), a dentist (three times a week), a gynaecologist (once a week), as well as ten nurses. In addition, a part-time psychologist was employed (present three times a week). The *Mitrovica/Mitrovicë Detention Centre* employed one general practitioner (three half-days a week), a psychiatrist (twice a week) and dentist (once a week), as well as four nurses. At the *Prishtinë/Priština Detention Centre*, there were one full-time general practitioner and six nurses and at the *Prizren Detention Centre* one general practitioner (half-time) and six nurses.

³⁰ Two full-time nurses were deployed by the hospital in the detention centre.

c. medical screening

55. The CPT always pays particular attention to the medical screening of newly-arrived prisoners, especially in establishments which constitute points of entry to the prison system. Such screening is essential, particularly to prevent suicides and the spread of transmissible diseases and for recording any injuries in good time.

56. As was the case in 2007, newly-arrived prisoners were usually seen by a nurse and a doctor within 24 hours of admission in all the establishments visited. That said, it is a matter of concern that little progress has been made in the establishments visited towards implementing the specific recommendations made by the Committee in the report on the 2007 visit.

Firstly, with the exception of Dubrava Prison, there was still no systematic physical examination of newly-arrived prisoners in the establishments visited.

Secondly, newly-arrived prisoners were still not systematically screened for transmissible diseases (such as tuberculosis), but only if there was a concrete suspicion.

Thirdly, as regards the recording of injuries, it is in principle a positive development that photographs were being taken and that a new standardised medical form was being used (which also contained an anatomical diagram to indicate the location of injuries). That said, the aforementioned form is not well-adapted to recording recent lesions which might be related to ill-treatment. There is no designated space in which to enter the prisoner's account of the origin of recent injuries or of the consistency of the findings with this account. In practice, no clear description of lesions was usually recorded other than the anatomical site; the nature of the lesion, size, colour, etc. were not indicated, and no distinction was made between old and recent injuries.

57. The CPT recalls that the file drawn up after the examination of a newly-arrived prisoner – whether entering the prison system or in transit – should 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).

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. Upon request, the doctor's conclusions should be made available to the prisoner and his/her lawyer.

The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison. In addition, if the prisoner so requests, the doctor should provide him/her with a certificate describing any injuries observed.

The CPT reiterates its recommendation that steps be taken in all penitentiary establishments in Kosovo to ensure that:

- all newly-arrived prisoners are both physically examined and screened for transmissible diseases;
- the above-mentioned requirements as regards the file to be drawn up after the examination of a newly-arrived prisoner are fully met in practice and that the design of the standardised medical form is revised accordingly.

58. From the consultations which the delegation held with the management of various establishments, it came to light that the procedures followed to report detected injuries on arrival varied from one establishment to another. In several of the establishments visited, the delegation was informed that recorded injuries were usually reported to the Headquarters of the Kosovo Correctional Service (KCS) in Prishtinë/Priština (which might then notify the competent prosecutor). However, at the Prishtinë/Priština Detention Centre, the delegation was informed that no action whatsoever would be taken, in cases of alleged ill-treatment by the police, unless the prisoner concerned explicitly asked for it. At Dubrava Prison, the Director indicated that, in serious cases, he would not only report the case to the KCS Headquarters, but also inform the local police commander if police officers were allegedly involved. **In the CPT's view, the latter practice should be discontinued, since it could jeopardise the effectiveness of a subsequent investigation into police ill-treatment.**

The Committee recommends that steps be taken in all penitentiary establishments in Kosovo to ensure that, whenever injuries or other medical findings which are indicative of ill-treatment by the police (or prison staff) are recorded by a doctor, the record is brought to the attention of the relevant prosecutor.

d. medical confidentiality

59. With the notable except of Lipjan/Lipljan Correctional Centre³¹, it remained the case that medical examinations/consultations were systematically carried out in the presence of prison officers in the penitentiary establishments visited (Such a state of affairs is not acceptable).

The CPT wishes to stress once again that there can be no justification for custodial staff being systematically present during medical examinations/consultations; their presence is detrimental to the establishment of a proper doctor-patient relationship and in the vast majority of cases unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination.

The CPT recommends that immediate steps be taken at Dubrava Prison and all the detention centres visited (and, where appropriate, in other penitentiary establishments in Kosovo) 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.

³¹ Psychiatric consultations at Dubrava Prison and Mitrovica/Mitrovicë Detention Centre were also carried out without the presence of prison officers.

60. At the Mitrovica/Mitrovicë Detention Centre, the delegation observed that medical reports drawn up by the establishment's psychiatrist or the Psychiatric Clinic in Prishtinë/Priština were routinely forwarded to the Director and kept in the individual administrative files of the prisoners concerned. **Steps should be taken at the Mitrovica/Mitrovicë Detention Centre to cease this practice.**

5. Other issues

a. discipline

61. The CPT notes that resort to severe disciplinary sanctions (such as solitary confinement) was rare in all the establishments visited.

That said, the Committee has misgivings about the frequent practice observed in several establishments of courts imposing a ban on visits (except with a lawyer) and telephone calls on remand prisoners as a disciplinary sanction for up to one month. Further, it remained the case that prisoners (sentenced and on remand) subjected to the sanction of solitary confinement were, as a rule, deprived of contact with the outside world (the right to receive visits, to write letters or to make phone calls).

In this connection, the CPT wishes to stress that disciplinary punishment of prisoners should not involve a prohibition of family contact and that any restrictions on family contact as a punishment should be imposed only when the offence relates to such contact³². **The CPT recommends that the rules governing disciplinary sanctions be revised accordingly.**

62. At Dubrava Prison, the delegation was informed that prisoners who were punished with solitary confinement were not allowed to have reading material in the disciplinary cell, although such a right is explicitly provided for by law³³. **Steps should be taken to ensure that the latter legal right is effectively granted to prisoners at Dubrava Prison.**

63. From the consultation of disciplinary registers and files, as well as consultations with prisoners and staff, it transpired that disciplinary procedures were usually carried out in a satisfactory manner in all the establishments visited³⁴. In particular, prisoners were always heard by the disciplinary board before a decision on the matter was taken by the Director. However, although prisoners usually received a copy of the disciplinary decision, they were not always informed about the modalities for lodging an appeal.

The CPT reiterates its recommendation that steps be taken in all penitentiary establishments in Kosovo to ensure that all prisoners receive a copy of any disciplinary decision concerning them, which should inform them of both the reasons for the decision and the avenues for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision.

³² See also Rule 60.4 of the European Prison Rules and Rule 95.6 of the European Rules for juvenile offenders subject to sanctions or measures, as well as the commentaries on these Rules.

³³ Section 119, paragraph 2, of the Law on Execution of Penal Sanctions.

³⁴ See, however, paragraph 64.

64. The CPT has misgivings about the practice observed at the Prishtinë/Priština Detention Centre of placing prisoners in a special cell for a lengthy period, on occasion up to one week, after an alleged offence pending the outcome of the disciplinary procedure. No such practice was observed in any of the other establishments visited.

In the CPT's view, **resort should be had to immediate isolation of a prisoner only when this is absolutely necessary for the maintenance of good order, safety and security, and it should be for the shortest period of time necessary for this purpose. Further, the isolated person should be seen immediately after confinement by a senior staff member and given an opportunity to present his views on the matter.**

65. Further, at the Prishtinë/Priština Detention Centre, there was no register for the recording of disciplinary sanctions. **Steps should be taken to remedy this shortcoming.**

66. As was the case in 2007, prisoners subject to the sanction of placement in a disciplinary cell were seen prior to their placement by the doctor, whose signature was required to certify whether the prisoner was fit to undergo the punishment.

In this connection, the CPT wishes to stress once again that medical practitioners working in prison act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the revised European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed. On the other hand, a prison's health-care service should be very attentive to the situation of prisoners placed in disciplinary cells (or any other prisoner held under conditions of solitary confinement). In this regard, every disciplinary placement should be immediately brought to the attention of the health-care service.

The CPT recommends that the role of prison doctors in relation to disciplinary matters be reviewed, in the light of the above remarks. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2)³⁵ and the comments made by the Committee in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17).

67. With one exception, material conditions in disciplinary cells were acceptable in all the penitentiary establishments visited³⁶. The exception concerned Dubrava Prison, where walls in many disciplinary cells were affected by humidity and/or mould (due to water leakages). **Steps should be taken to remedy this shortcoming.**

³⁵ Rule 43.2 reads: "The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff."

³⁶ At the Mitrovica/Mitrovicë Detention Centre, the sole disciplinary cell measuring less than 4 m² was withdrawn from service after the 2007 visit.

b. contact with the outside world

68. In all the establishments visited, the practice remained on the whole satisfactory regarding prisoners' contact with the outside world. All prisoners could send and receive an unlimited number of letters and could usually make a telephone call (10 to 15 minutes) at least once a week. Further, sentenced prisoners were allowed to receive one one-hour visit every week and one three-hour visit every three months, while remand prisoners were allowed to receive visits of 30 minutes once a week.

That said, the relevant legal provisions applicable to adult prisoners regarding visits³⁷ and access to the telephone³⁸ are far less favourable. **The CPT invites the relevant authorities to take steps to ensure that the latter legal provisions are amended, with a view to bringing the legal entitlements into line with the current practice.** Further, **the Committee considers that remand prisoners should in principle benefit from the same visit entitlement as sentenced prisoners.**

69. Further, it is regrettable that, at the Prizren Detention Centre, remand prisoners could only have closed visits (i.e. with a glass partition). **The CPT recommends that the arrangements for visits be reviewed at the Prizren Detention Centre, so that remand prisoners can, as a rule, also receive visits under open conditions like in other detention centres in Kosovo (i.e. either table visits or in a booth with a removable glass partition).**

c. security-related issues

70. The delegation gained the distinct impression that the Mitrovica/Mitrovicë Detention Centre was at risk of a major security breach from the outside, which could pose a serious risk to the safety of prisoners and staff alike. The Director acknowledged this problem and further indicated that, due to low staffing levels during night shifts, it would be difficult, if not impossible, to transfer a prisoner to the hospital promptly in the event of a medical emergency occurring at night. The Director said that he had been endeavouring to reach an agreement with the local police for support to be provided when needed, but he regretted that no contingency plan had been concluded so far. **The CPT recommends that urgent steps be taken by the relevant authorities to review the security arrangements at the Mitrovica/Mitrovicë Detention Centre, in the light of the preceding remarks.**

³⁷ According to Sections 64, paragraph 1, and 68, paragraph 1, of the Law on the Execution of Sentences, sentenced prisoners are entitled to a visit at least once each month for a minimum of one hour and at least once every three months for a minimum of three hours. As regards remand prisoners, the relevant legislation does not contain a minimum visit entitlement. Section 294, paragraph 1, of the Provisional Code of Criminal Procedure only stipulates that remand prisoners may receive visits "within the limits of the rules of the detention facility" (with the permission of the pre-trial judge and under his or her supervision).

³⁸ The relevant legislation contains no specific entitlements in this regard. Section 62, paragraph 1, of the Law on the Execution of Sentences simply stipulates that a convicted person has the right to give and receive telephone calls.

71. The CPT has misgivings about the practice observed in all the establishments visited of custodial officers carrying pepper spray within the detention areas³⁹.

Given the potentially harmful effect of using this substance, the CPT considers that pepper spray should not form part of the standard equipment of custodial staff and should, as a rule, not be used in confined spaces. Whenever recourse is had to pepper sprays, there should be clearly defined safeguards in place. In particular, detainees exposed to pepper spray should be granted immediate access to a medical doctor and should be supplied immediately with means to reverse the effects effectively and rapidly. **The Committee recommends that the policy as regards the use of pepper sprays be reviewed in all penitentiary establishments in Kosovo, in the light of the above remarks.**

³⁹

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

C. Psychiatric/social welfare establishments

1. Preliminary remarks

72. The delegation carried out follow-up visits to the Psychiatric Clinic of Prishtinë/Priština University Hospital (Forensic Unit), the Psychiatric Unit of Mitrovica/Mitrovicë Regional Hospital, the Shtime/Štimlje Integration Centre for Mental Health and the Institution for persons with learning disabilities in Shtime/Štimlje.

73. The *Forensic Unit at the Psychiatric Clinic of Prishtinë/Priština University Hospital* accommodated both mentally-ill prisoners undergoing psychiatric treatment and criminal suspects subjected to a court-ordered forensic psychiatric assessment of their criminal responsibility. The delegation was told that most of the patients would stay in the forensic unit for a few weeks only. With an official capacity of eight beds, the forensic unit was accommodating six male patients (two prisoners and four criminal suspects under assessment) at the time of the visit. Adjacent to the forensic unit, two female forensic patients were being held in a separate room, guarded by female staff.

The delegation was informed that plans were afoot to construct a stand-alone forensic clinic with 36 beds (12 beds for psychiatric assessment and 24 beds for treatment). **The CPT would like to receive more detailed information concerning this new facility (layout, staffing, entry into service, etc.).**

74. Since the 2007 visit, both the capacity (20 beds) and the layout of the psychiatric unit of *Mitrovica/Mitrovicë Regional Hospital* have remained unchanged. At the time of the 2010 visit, 13 patients (five male and eight female) were being held in the unit. All the patients had been admitted on a voluntary basis. The hospital continued to be exclusively administered by the Ministry of Health of Serbia, and only Serbian law was being applied.

As was the case in 2007, involuntary patients were usually transported as soon as possible to a psychiatric hospital in Belgrade or Niš. Obviously, such transfers were often difficult to handle and frequently involved patients being heavily sedated and tied to a stretcher. The CPT welcomes the plans to construct a new psychiatric unit on the hospital premises, which will include a ward accommodating involuntary patients. **The Committee would like to receive more detailed information concerning this new facility (capacity, layout, staffing, entry into service, etc.).**

75. At the time of the visit, the *Shtime/Štimlje Integration Centre for Mental Health* was accommodating 57 chronic psychiatric patients. The *Institution for persons with learning disabilities in Shtime/Štimlje* had a total of 128 residents of whom 58 were being accommodated on its main site, while 70 residents were living in seven community homes in Shtime/Štimlje and the surrounding area. The latter community homes were not visited by the delegation. In respect of both establishments, a non-admission policy had been in place since the year 2000. Nevertheless, both establishments occasionally admitted new patients/residents.

76. The CPT would like to stress that, unlike in 2007, no allegations or any other indications of ill-treatment of patients/residents by staff, or of violence among patients/residents, were received in any of the establishments visited.

2. Patients'/residents' living conditions

77. Material conditions remained generally satisfactory at the Psychiatric Unit of Mitrovica/Mitrovicë Regional Hospital and the Institution for persons with learning disabilities in Shtime/Štimlje. However, as regards the latter establishment, in the unit for women, some maintenance work was needed (e.g. in many rooms, the lights were not functioning and there was no water supply in the bathroom).

78. At the Shtime/Štimlje Integration Centre for Mental Health, material conditions had considerably improved since the 2007 visit (in particular, as regards the state of repair and the level of hygiene). It is also noteworthy that all patients were provided with clothes and shoes (through donations from various NGOs and other donors). Nevertheless, according to staff, the supply of clothes and footwear to patients still posed problems at times.

79. As for the forensic unit at the Psychiatric Clinic of Prishtinë/Priština University Hospital, it was still in a poor state of repair and remained very austere and prison-like. The CPT wishes to stress once again that such material conditions are hardly conducive to the creation of a therapeutic environment. Moreover, patients accommodated in this unit were not able to benefit from outdoor exercise; it had been discontinued a few months before. The delegation was informed that a new exercise yard for forensic psychiatric patients would be created shortly. On a more positive note, it should be added that a telephone booth had been installed in the unit, and patients could watch television and were regularly provided with newspapers.

The situation of the two female forensic patients gave rise to particular concern. Both patients had been continuously confined to their room, and did not have access either to a television or a telephone. According to staff, the placement of the two women in that room was a temporary arrangement, pending the completion of some renovation work in the psychiatric clinic. The delegation was told that they would soon be transferred back to the female psychiatric unit where they would be able to benefit from the same regime as civil psychiatric patients.

80. Regrettably, in all the establishments visited, patients' rooms remained rather austere; they were poorly decorated and contained no personal belongings.

81. **The CPT recommends that:**

- **maintenance work be carried out in respect of the unit for women at the Shtime/Štimlje Institution for persons with learning disabilities;**
- **steps be taken to ensure that patients accommodated in the Shtime/Štimlje Integration Centre for Mental Health are always provided with adequate clothes and footwear;**
- **efforts be made in all the psychiatric/social welfare establishments visited to offer a more personalised environment to patients/residents.**

Further, **the CPT wishes to receive confirmation that all forensic psychiatric patients at the Psychiatric Clinic of Prishtinë/Priština University Hospital, whose state of health so permits, are now offered at least one hour of outdoor exercise per day. The Committee would also like to be informed about the regime currently applied to female forensic patients at the Psychiatric Clinic of Prishtinë/Priština University Hospital.**

3. Staff and treatment

82. Health-care staffing levels remained adequate in most of the establishments visited.

As regards the forensic unit at the Psychiatric Clinic of Prishtinë/Priština University Hospital, the CPT welcomes the fact that a forensic psychiatrist has been recruited by the hospital on a full-time basis. That said, it is a matter of concern that the presence of nursing staff was still limited to several visits per day and that only uniformed prison officers were present in the forensic unit on a permanent basis (as was the case in 2007).

Further, it is regrettable that the Shtime/Štimlje Integration Centre for Mental Health no longer employs a psychiatrist. In this establishment, psychiatric care was the responsibility of the former director of the centre who continues to perform medical services on a voluntary basis one day a week.

The CPT recommends that steps be taken to ensure that:

- **a nurse is present throughout the day in the forensic unit of the Psychiatric Clinic in Prishtinë/Priština;**
- **psychiatric care at the Shtime/Štimlje Integration Centre for Mental Health is reinforced by the addition of the equivalent of at least one half-time psychiatrist's post.**

83. In all the psychiatric establishments visited, treatment continued to consist mainly of pharmacotherapy, with few other forms of therapy available. None of the establishments visited employed a psychologist and, with the exception of the Institution for persons with learning disabilities in Shtime/Štimlje, no occupational therapy was offered to patients. **The CPT reiterates its recommendation that steps be taken in all psychiatric establishments visited to develop treatment and rehabilitation activities for psychiatric patients.**

4. Restraint of agitated and/or violent patients/residents

84. The CPT recalls that resort to mechanical restraint of patients/residents is only very rarely 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 approval. If, exceptionally, recourse is had to instruments of physical restraint, this should be for the shortest possible period of time (usually only minutes or a few hours); the restraints should be removed at the earliest opportunity. The CPT must emphasise that applying instruments of mechanical restraint to patients for days at a time cannot have any therapeutic justification and, in its view, amounts to ill-treatment. Patients/residents subject to means of mechanical restraint should, at all times, have their mental and physical state continuously and directly monitored by a member of the health-care staff.

85. At the Psychiatric Clinic of Prishtinë/Priština University Hospital (Forensic Unit), the Shtime/Štimlje Integration Centre for Mental Health and the Institution for persons with learning disabilities in Shtime/Štimlje, the delegation was informed that neither mechanical means of restraint nor designated seclusion rooms were used⁴⁰.

⁴⁰ In the forensic unit, the practice of handcuffing agitated patients to the bed had apparently been discontinued after the 2007 visit.

By contrast, the Psychiatric Unit of Mitrovica/Mitrovicë Regional Hospital had a belt available for restraint purposes. However, according to health-care staff, other non-purpose-made means of restraint, such as towels and bandages, were applied as well. The delegation was also told that restraints could on occasion be applied for periods of several days, being solely interrupted for the administration of medicine and the intake of food. Such a state of affairs is not acceptable.

The CPT recommends that the use of mechanical restraints at the Psychiatric Unit of Mitrovica/Mitrovicë Regional Hospital be reviewed, in the light of the remarks made in paragraphs 84 and 85. Further, an immediate end should be put to the practice of applying non-purpose-made means of restraint; if mechanical restraint is temporarily required, appropriate means should be used (e.g. straps).

86. As in 2007, agitated patients/residents were usually brought under control with sedative medication (“chemical restraint”). In this context, the CPT is pleased to note that the policy at the Shtime/Štimlje Integration Centre for Mental Health regarding the use of chemical restraint had apparently been changed after the 2007 visit. Every resort to chemical restraint had to be authorised by the medical doctor beforehand, and nurses were no longer entitled to change the doses of medication prescribed. Similar arrangements were in place in the other establishments visited.

87. Regrettably, none of the establishments visited had a comprehensive central register for the use of means of mechanical and chemical restraint. **The CPT reiterates its recommendation that specific registers detailing the use of means of restraint be established in all the psychiatric/social welfare establishments visited.**

5. Safeguards

88. In the report on the 2007 visit, the CPT expressed its grave concern that the relevant provisions of the 1986 Law on Non-contested Procedures, which contains important safeguards in the context of the involuntary placement of a civil nature of patients in psychiatric establishments, had never been applied in practice.

From consultations with staff at the Psychiatric Clinic of Prishtinë/Priština University Hospital and the Shtime/Štimlje Integration Centre for Mental Health, it became clear that the situation had not changed since the 2007 visit and the above-mentioned legal provisions remained a dead letter. Thus, patients were still being deprived of their liberty, sometimes for years on end, without benefiting from any appropriate safeguards. In practice, the consent form was often signed by a family member if the patient concerned did not consent to his/her placement.

The CPT reiterates its recommendation that urgent steps be taken to ensure that the relevant legal provisions applicable in Kosovo which govern the involuntary placement of patients (as well as the review of such placements) are effectively implemented. To this end, the competent courts should be informed of all persons who are currently the subject of an involuntary placement of a civil nature in any psychiatric establishment in Kosovo.

89. As regards forensic psychiatry, UNMIK Regulation No. 2004/34 on Criminal Proceedings Involving Perpetrators with a Mental Disorder stipulates, *inter alia*, that the placement of offenders who are under assessment or who have been declared not to be criminally responsible and are subject to mandatory treatment must be reviewed by a court at six-monthly intervals.

The information gathered during the visit would suggest that such reviews were still not being carried out (or, at least, not systematically); the delegation observed that a patient had been admitted to Shtime/Štimlje Integration Centre for Mental Health by order of a criminal court on 20 June 2008, but there had been no review of the placement by a court since then. **The CPT reiterates its recommendation that steps be taken by the relevant authorities to ensure that all placements for mandatory treatment are subject to regular review, as provided for by law.**

90. As regards persons deprived of their legal capacity, in comparison to 2007, the situation had improved insofar as most residents/patients at both institutions in Shtime/Štimlje now had a court-appointed guardian.

That said, it is a matter of serious concern that a group of some 54 residents/patients (mainly of Serbian origin) accommodated in the two Shtime/Štimlje establishments still had no guardian appointed by the court, despite their evident inability to consent to their placement and treatment in an informed manner. **The CPT reiterates its recommendation that steps be taken at Shtime/Štimlje and, where appropriate, in other social welfare/psychiatric establishments to ensure that all residents/patients who are unable to consent to their placement are notified to the court with a view to appointing an independent guardian.**

91. Further, in those cases where an independent guardian had been appointed, the guardian was usually not involved in any decisions regarding the medical treatment of the person concerned. For instance, at the Shtime/Štimlje Integration Centre for Mental Health, all female patients in the relevant age category received contraceptive medication without their guardians even being informed.

In this connection, the CPT recalls that every patient/resident, whether voluntary or involuntary, should in principle be given the opportunity to refuse – either in person or through his/her guardian – treatment or any other medical intervention. This also implies that the guardian and the person concerned be provided systematically with relevant information as to the proposed treatment (in conformity with Sections 9 to 15 of the 2004 “Law on the rights and responsibilities of citizens in health care”). **The CPT recommends that these precepts be implemented in all psychiatric/social welfare institutions in Kosovo.**

92. An information brochure for patients/residents and their family containing, *inter alia*, a section on patients’ rights, was still not available in any of the establishments visited. **The CPT reiterates its recommendation that an information brochure, setting out the facility’s routine and patients’ rights – including information on legal assistance, review of placement (and the patient’s right to challenge this), consent to treatment and complaints procedures – be drawn up in all psychiatric/social welfare establishments and issued to all patients on admission, as well as to their families. Patients/residents unable to understand this brochure should receive appropriate assistance.**

D. Concluding remarks and action on the CPT's recommendations, comments and requests for information

93. In the course of the visit, the CPT's delegation observed positive developments in various areas since the 2007 visit. In particular, conditions of detention had improved significantly in most of the police stations, penitentiary establishments and psychiatric/social welfare institutions visited. The same holds also true for the provision of health care in penitentiary establishments.

That said, there are a number of key issues which remain unresolved; they should be addressed as a matter of priority. In this connection, particular reference is made to the persistent problem of ill-treatment by KP officers and prison officers, as well as the phenomena of corruption and favouritism observed at Dubrava Prison and other penitentiary establishments. It is also worrying that psychiatric patients are still being deprived of their liberty without benefitting from the legal safeguards provided for by law.

The delegation had fruitful consultations with all relevant authorities throughout the visit, and the Committee is dedicated to maintaining a constructive dialogue in order to pursue the efforts already made, with a view to protecting and where necessary reinforcing the rights of persons deprived of their liberty in Kosovo.

94. The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I.

As regards its recommendations, the CPT requests that a response be provided **within six months**, giving a full account of action taken to implement them. The CPT trusts that the response will also provide reactions to the comments in this report as well as replies to the requests for information made by the Committee.

APPENDIX I

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

Police establishments

Ill-treatment

recommendations

- the relevant authorities to redouble their efforts to combat ill-treatment by the police. All officers of the Kosovo Police (including officers of the criminal police) should be reminded once again that all forms of ill-treatment of detained persons are unacceptable and will be the subject of severe sanctions. They should also be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can be no justification for hitting them (paragraph 13);
- appropriate steps to be taken to ensure that, whenever an apprehended person brought before a prosecutor or judge alleges ill-treatment by the police, those allegations are recorded in writing, a forensic medical examination is immediately ordered, and the necessary steps are taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor or judge should request a forensic medical examination whenever there are other grounds (e.g. visible injuries; a person's general appearance or demeanour) to believe that ill-treatment may have occurred (paragraph 14);
- appropriate steps to be taken by the relevant authorities to improve the effectiveness of the system for investigating complaints of police ill-treatment, in the light of the remarks made in paragraph 15 (paragraph 15).

requests for information

- the outcome of the investigations conducted by the Police Inspectorate of Kosovo concerning the three persons referred to in paragraph 10 who had been arrested by a special intervention group of the Kosovo Police and were detained at the Prishtinë/Priština Police Station No. 1, and, where appropriate, the action taken at the criminal/disciplinary level (paragraph 12);
- the results of the review by EULEX of all internal procedures in place for monitoring, mentoring and advising the activities of the Kosovo authorities in dealing with individuals deprived of their liberty, as announced by EULEX in its letter of 8 September 2010 to the CPT (paragraph 12);

- the following information, in respect of the period from 1 January 2009 to the present time:
 - the number of complaints of ill-treatment made against officers of the Kosovo Police and the number of criminal/disciplinary proceedings which have been instituted as a result;
 - an account of criminal/disciplinary sanctions imposed following complaints of police ill-treatment (paragraph 16);
- updated information on the progress made in enacting a new Law on the Police Inspectorate of Kosovo (paragraph 17);
- detailed information on all ordinary and extraordinary inspections of police establishments carried out by the Police Inspectorate of Kosovo since January 2009 (objectives, conclusions, etc). Further, information whether these inspections had been announced or unannounced and whether detained persons were interviewed in private (paragraph 18).

Safeguards

recommendations

- appropriate steps to be taken to ensure that the legal requirement of notification of custody is met in practice with respect to all persons deprived of their liberty by the Kosovo Police, from the very outset of their deprivation of liberty (paragraph 20);
- steps to be taken to ensure that the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, from the very outset of their deprivation of liberty (paragraph 21);
- appropriate steps to be taken, in consultation with the Bar Association, to ensure the effectiveness of the system of assistance by a lawyer during the entire period of police custody (paragraph 21);
- immediate steps to be taken to ensure that all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of officers of the Kosovo Police (paragraph 22);
- steps to be taken to ensure that, whenever persons held in police custody are examined by a doctor, the person's account of the circumstances in which any injuries he/she bears occurred are clearly set out in the medical record with a full description of the lesions. The doctor should also indicate conclusions as to whether lesions observed are or are not consistent with any allegations of ill-treatment (paragraph 23);
- appropriate steps to be taken to ensure that, whenever injuries or other medical findings which are indicative of police ill-treatment are recorded by a doctor, the record is brought to the attention of the relevant authorities (paragraph 23);
- steps to be taken in all police establishments in Kosovo to ensure that detained persons with severe alcohol intoxication are routinely seen by a doctor and, if necessary, kept under medical supervision (paragraph 24);

- appropriate steps to be taken to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by the provision of clear oral information at the very outset, and supplemented at the earliest opportunity (that is, immediately upon the arrival of the persons concerned on police premises) by the provision of an information sheet (to be available in appropriate languages) on the rights of detained persons. The persons concerned should be asked to sign a statement attesting that they have been informed of their rights and be allowed to keep a copy of the information sheet (paragraph 25);
- appropriate steps to be taken in all police establishments in Kosovo to ensure that:
 - whenever a person is deprived of his/her liberty by the Kosovo Police, for whatever reason (even for a few hours), this fact is formally recorded without delay;
 - custody registers and records are always accurately maintained (paragraph 26).

comments

- the fundamental safeguards of persons deprived of their liberty by the Kosovo Police would be reinforced if a single and comprehensive custody record was kept for each person detained (paragraph 26).

Conditions of detention

recommendations

- immediate steps to be taken to ensure that:
 - material conditions of detention are improved in all the police establishments visited, taking into account the remarks made in paragraph 27; in particular, it is essential that all cells have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light;
 - cell no. 4 at Mitrovica/Mitrovicë North is withdrawn from service until it is completely refurbished (paragraph 27).

Other issues

recommendations

- the circumstances of and procedures for searching detained persons to be revised at Prishtinë/Priština Police Station No. 1 and, where appropriate, in other police establishments in Kosovo, in the light of the remarks in paragraph 29 (paragraph 29);
- EULEX to set up a register for recording the presence of detained persons on the premises of its Special Police Department (paragraph 30).

requests for information

- updated information on the revision of the terms of reference of EULEX to include the monitoring of the Police Inspectorate of Kosovo within the responsibilities of EULEX (paragraph 31);
- detailed information on the work performed thus far by the Human Rights Review Panel in relation to complaints about the manner in which persons deprived of their liberty in Kosovo have been treated by EULEX staff (paragraph 32).

Penitentiary establishments

Preliminary remarks

recommendations

- the relevant authorities to take decisive action to combat the phenomena of corruption and favouritism in all penitentiary establishments in Kosovo (paragraph 35);
- a comprehensive and independent inquiry to be conducted into allegations of corruption and favouritism at Dubrava Prison (paragraph 35);
- the relevant authorities to find a solution, as a matter of urgency, to the problem of remand prisoners being kept in detention for years (notably at the Mitrovica/Mitrovicë Detention Centre), without any trial hearings taking place (paragraph 36).

requests for information

- the outcome of the inquiry into allegations of corruption and favouritism at Dubrava Prison and information on the action taken as a result thereof (paragraph 35).

Ill-treatment

recommendations

- the management, composition and working methods of the special intervention group at Dubrava Prison to be reviewed as a matter of urgency, in the light of the remarks made in paragraphs 37 to 39 (paragraph 40);
- the management at Dubrava Prison, Lipjan/Lipljan Correctional Centre and the detention centres visited to remind once again all their staff that any form of ill-treatment of prisoners (including verbal abuse) is not acceptable and will be punished accordingly (paragraph 40);
- the management of Dubrava Prison to draw up and implement a comprehensive strategy to address the problem of intimidation and inter-prisoner violence, in the light of the remarks made in paragraph 42 (paragraph 42).

comments

- the CPT encourages the Kosovo Correctional Service and EULEX to further enhance their co-operation, with a view *inter alia* to enabling EULEX officers at Dubrava Prison to monitor directly operations of the establishment's intervention unit (paragraph 41).

Conditions of detention

recommendations

- the shortcomings as regards the material conditions in the Prishtinë/Priština Detention Centre (poor access to natural light and ventilation in certain cells; the fire alarm system out of order) and the Prizren Detention Centre (insufficient ventilation in most of the cells) to be remedied (paragraph 44);
- sanitary towels to be provided to female prisoners at Lipjan/Lipljan Correctional Centre (paragraph 45);
- the "security cell" (C12) at the Prizren Detention Centre to be withdrawn from service until it is adequately equipped and fitted with a window (paragraph 46);
- the relevant authorities to redouble their efforts to improve the programme of activities offered to prisoners in the establishments visited and, where appropriate, at other prison establishments in Kosovo (paragraph 49).

requests for information

- updated information on the implementation of the renovation works carried out at Dubrava Prison, the Lipjan/Lipljan Correctional Centre (in particular, in the juvenile unit) and the Mitrovica/Mitrovicë Detention Centre (paragraph 43);
- comments of the relevant authorities concerning the fact that, at Dubrava Prison, several prisoners who were classified as "very high risk" prisoners were accommodated in units other than the maximum-security unit (Block 8), and mixed with other prisoners who were not classified as "very high risk" prisoners (paragraph 50).

Health-care services

recommendations

- the presence of a psychiatrist and dentist at Dubrava Prison to be increased to the equivalent of one full-time post each (paragraph 51);
- all necessary steps to be taken by the relevant authorities to prevent the recurrence of breakdowns in delivery of medication at Dubrava Prison, or in any other penitentiary establishment, including by authorisation to procure medication from local sources if necessary (paragraph 54);

- steps to be taken in all penitentiary establishments in Kosovo to ensure that:
 - all newly-arrived prisoners are both physically examined and screened for transmissible diseases;
 - the requirements set out in paragraph 57 as regards the file to be drawn up after the examination of a newly-arrived prisoner are fully met in practice and that the design of the standardised medical form is revised accordingly (paragraph 57);
- steps to be taken in all penitentiary establishments in Kosovo to ensure that, whenever injuries or other medical findings which are indicative of ill-treatment by the police (or prison staff) are recorded by a doctor, the record is brought to the attention of the relevant prosecutor (paragraph 58);
- immediate steps to be taken at Dubrava Prison and all the detention centres visited (and, where appropriate, in other penitentiary establishments in Kosovo) 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 (paragraph 59).

comments

- in the CPT's view, the practice at Dubrava Prison of informing not only the Headquarters of the Kosovo Correctional Service but also the local police in cases of alleged ill-treatment by the police should be discontinued, since it could jeopardise the effectiveness of a subsequent investigation into police ill-treatment (paragraph 58);
- steps should be taken at the Mitrovica/Mitrovicë Detention Centre to cease the practice of forwarding medical reports drawn up by the establishment's psychiatrist or the Psychiatric Clinic in Prishtinë/Priština routinely to the Director and of keeping them in the individual administrative files of the prisoners concerned (paragraph 60).

Other issues

recommendations

- the rules governing disciplinary sanctions to be revised in order to ensure that disciplinary punishment of prisoners never involves a prohibition of family contact and that any restrictions on family contact as a punishment are imposed only when the offence relates to such contact (paragraph 61);
- steps to be taken at Dubrava Prison to ensure that the legal right of prisoners in solitary confinement to have access to reading material is effectively guaranteed (paragraph 62);
- steps to be taken in all penitentiary establishments in Kosovo to ensure that all prisoners receive a copy of any disciplinary decision concerning them, which should inform them of both the reasons for the decision and the avenues for lodging an appeal; the prisoners concerned should confirm in writing that they have received a copy of the decision (paragraph 63);

- a register for the recording of disciplinary sanctions to be set up at the Prishtinë/Priština Detention Centre (paragraph 65);
- the role of prison doctors in relation to disciplinary matters to be reviewed, in the light of the remarks made in paragraph 66. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the CPT in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17) (paragraph 66);
- steps to be taken at Dubrava Prison to improve the material conditions in the disciplinary cells which were affected by humidity and/or mould (paragraph 67);
- arrangements for visits to be reviewed at the Prizren Detention Centre, so that remand prisoners can, as a rule, receive visits under open conditions like in other detention centres in Kosovo (i.e. either table visits or in a booth with a removable glass partition (paragraph 69);
- urgent steps to be taken by the relevant authorities to review the security arrangements at the Mitrovica/Mitrovicë Detention Centre, in the light of the remarks made in paragraph 70 (paragraph 70);
- the policy as regards the use of pepper sprays to be reviewed in all penitentiary establishments in Kosovo, in the light of the remarks made in paragraph 71 (paragraph 71).

comments

- resort should be had to immediate isolation of a prisoner, pending the outcome of a disciplinary procedure, only when this is absolutely necessary for the maintenance of good order, safety and security, and it should be for the shortest period of time necessary for this purpose; further, the isolated person should be seen immediately after confinement by a senior staff member and given an opportunity to present his views on the matter (paragraph 64);
- the relevant authorities are invited to take steps to ensure that the legal provisions applicable to adult prisoners regarding visits and access to a telephone are amended, with a view to bringing the legal entitlements into line with the current practice (paragraph 68);
- remand prisoners should in principle benefit from the same visit entitlement as sentenced prisoners (paragraph 68).

Psychiatric/social welfare establishments

Preliminary remarks

requests for information

- detailed information (layout, staffing, entry into service, etc.) concerning the construction of a new forensic clinic at Prishtinë/Priština University Hospital (paragraph 73);
- detailed information (capacity, layout, staffing, entry into service, etc.) concerning the construction of a new psychiatric unit on the premises of Mitrovica/Mitrovicë Regional Hospital (paragraph 74).

Patients'/residents' living conditions

recommendations

- maintenance work to be carried out in respect of the unit for women at the Shtime/Štimlje Institution for persons with learning disabilities;
- steps to be taken to ensure that patients accommodated in the Shtime/Štimlje Integration Centre for Mental Health are always provided with adequate clothes and footwear;
- efforts to be made in all the psychiatric/social welfare establishments visited to offer a more personalised environment to patients/residents (paragraph 81).

requests for information

- confirmation that all forensic psychiatric patients at the Psychiatric Clinic of Prishtinë/Priština University Hospital, whose state of health so permits, are now offered at least one hour of outdoor exercise per day (paragraph 81);
- the regime currently applied to female forensic patients at the Psychiatric Clinic of Prishtinë/Priština University Hospital (paragraph 81).

Staff and treatment

recommendations

- steps to be taken to ensure that:
 - a nurse is present throughout the day in the forensic unit of the Psychiatric Clinic in Prishtinë/Priština;
 - psychiatric care at the Shtime/Štimlje Integration Centre for Mental Health is reinforced by the addition of the equivalent of at least one half-time psychiatrist's post (paragraph 82);
- steps to be taken in all psychiatric establishments visited to develop treatment and rehabilitation activities for psychiatric patients (paragraph 83).

Restraint of agitated and/or violent patients/residents

recommendations

- the use of mechanical restraints at the Psychiatric Unit of Mitrovica/Mitrovicë Regional Hospital to be reviewed, in the light of the remarks made in paragraphs 84 and 85. Further, an immediate end should be put to the practice of applying non-purpose-made means of restraint; if mechanical restraint is temporarily required, appropriate means should be used (e.g. straps) (paragraph 85);
- specific registers detailing the use of means of restraint to be established in all the psychiatric/social welfare establishments visited (paragraph 87).

Safeguards

recommendations

- urgent steps to be taken to ensure that the relevant legal provisions applicable in Kosovo which govern the involuntary placement of patients (as well as the review of such placements) are effectively implemented; to this end, the competent courts should be informed of all persons who are currently the subject of an involuntary placement of a civil nature in any psychiatric establishment in Kosovo (paragraph 88);
- steps to be taken by the relevant authorities to ensure that all placements for mandatory treatment of offenders who have been declared not to be criminally responsible are subject to regular review, as provided for by law (paragraph 89);
- steps to be taken at the Integration Centre for Mental Health and the Institution for persons with learning disabilities in Shtime/Štimlje, and, where appropriate, in other social welfare/psychiatric establishments to ensure that all residents/patients who are unable to consent to their placement are notified to the court with a view to appointing an independent guardian (paragraph 90);
- steps to be taken in all psychiatric/social welfare institutions in Kosovo to ensure that every patient/resident, whether voluntary or involuntary, is in principle given the opportunity to refuse – either in person or through his/her guardian – treatment or any other medical intervention; this also implies that the guardian and the person concerned be provided systematically with relevant information as to the proposed treatment (paragraph 91);
- an information brochure setting out the facility's routine and patients' rights – including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures – to be drawn up in all psychiatric/social welfare establishments visited and issued to all patients on admission, as well as to their families; patients/residents unable to understand this brochure should receive appropriate assistance (paragraph 92).

APPENDIX II

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

UNMIK

Ambassador Lamberto ZANNIER	Special Representative of the Secretary-General of the United Nations in Kosovo (SRSG)
Mr Ernst TSCHOEPKE	Head of the Legal Office
Mr Roque RAYMUNDO	Senior Human Rights Advisor

EULEX

Mr Roy REEVE	Deputy Head of Mission
Mr Udo Karl-Heinz MOELLER	Head of the Police Component
Mr Imre PALLAGI	Head of the Strengthening Department, Police Component
Ms Elizabeth DISHER	Deputy Head of the Organised Crime Department, Police Component
Mr Aake ROGHE	Chief Advisor to Kosovo Police Operations
Mr Paul URBAIN	Police Operations and Planning Cell
Ms Anu MELKKO	Acting Head of the Correctional Unit, Justice Component
Ms Sirpa RAUTIO	Head of the Human Rights and Gender Office
Mr Alexander HUG	Deputy Head of the Human Rights and Gender Office

OSCE Mission in Kosovo

Ambassador Werner ALMHOFER	Head of Mission
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KFOR

Lieutenant General Markus J. BENTLER	Commander of KFOR
Ms Monika LENHARD	Political Advisor

Ministry of Justice

Mr Haki DEMOLLI	Minister
Mr Resmi HOXHA	Director of the Kosovo Correctional Service (KCS)
Dr Valbona BLAKAJ-RAMADANI	Head of the Prison Health Care Department

Ministry of Internal Affairs

Mr Bajram REXHEPI	Minister
Mr Fisnik REXHEPI	Political Advisor to the Minister
Mr Shpend MAXHUNI	Director of Operations of the Kosovo Police
Mr Valdet HOXHA	Director of Investigations, Police Inspectorate of Kosovo

Ministry of Labour and Social Welfare

Mr Nenad RAŠIĆ	Minister
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Other bodies

Mr Sami KURTESHI	Ombudsperson of Kosovo
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Other International Organisations

Office of the European Union Special Representative in Kosovo (EUSR)

United Nations Office of the High Commissioner for Human Rights (OHCHR)

International Committee of the Red Cross (ICRC)

Non-governmental organisations

Council for the Defence of Human Rights and Freedoms

Kosova Rehabilitation Centre for Torture Victims