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Response

**of the United Nations Interim Administration
Mission in Kosovo (UNMIK) to the report of the
European Committee for the Prevention of Torture
and Inhuman or Degrading Treatment or
Punishment (CPT) on its visit to Kosovo*
from 8 to 15 June 2010**

UNMIK has requested the publication of this response. The report of the CPT on its June 2010 visit to Kosovo is set out in document CPT/Inf (2011) 26.

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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Introduction

The United Nations Interim Administration Mission in Kosovo (UNMIK) is pleased to provide the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Committee) with this response to the Committee's report.

The Committee visited Kosovo¹ from 8 to 15 June 2010. This visit was based on the Agreement of 23 August 2004 between UNMIK 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.

UNMIK wishes to extend its appreciation to the Committee for the visit and the resulting report.

The Committee should note that realities on the ground in Kosovo have effectively removed UNMIK's ability to compile and provide information on implementation of human rights conventions in Kosovo.

Notwithstanding this fact, UNMIK has prepared the following report, which consists of input from the OSCE Mission in Kosovo (OMiK), which forms part of the UNMIK mission structure and the European Union Rule of Law Mission in Kosovo (EULEX) who have consulted with the local Kosovo institutions. Both OMiK and EULEX monitor places of detention in a coordinated way and, consequently, their inputs complement each other.

The Committee should further note that where no response has been provided, UNMIK did not receive information from the relevant competent institutions.

In submitting the document to the Committee, UNMIK underlines that it provides the document only in respect of information pertinent to establishing the actual situation vis-à-vis the implementation of the provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in Kosovo.

UNMIK also has to emphasize that references to certain institutions and laws and the language used in various parts of the information it received do not conform to the status-neutral stance of the United Nations. Where the language used in this report departs from the status-neutral stance of the United Nations in relation to Kosovo, this language should be seen as reflecting only the views of the

¹ 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.

institutions contributing to this report, and not the views of UNMIK, its OSCE component or the United Nations. UNMIK considers these references and language as extraneous and irrelevant to the purposes of the document as well as the spirit in which it is being submitted by UNMIK to the Committee.

Accordingly, UNMIK, in submitting the information contained in this document, does not in any way purport to make any comments on the status of Kosovo. It provides the information on a voluntary basis, in the spirit of cooperation between UNMIK and the Council of Europe, and by extension the Committee, in line with UNMIK's mandate under United Nations Security Council resolution 1244 (1999) and the Agreement of 23 August 2004 between UNMIK 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.

The response follows the structure of Appendix 1 of the Report. The Committee's recommendations, comments and requests for information appear in bold formatting.

A. Police Establishments

Ill-treatment

Paragraph 12

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;

The detainees identified by the committee as alleging abuse at the hands of Kosovo Police were members of the “Vetëvendosje” (“Self-determination”) movement and the arrest was a high-profile incident in Kosovo, widely covered by the local press.

At the time of the incident, EULEX recommended that the Police Inspectorate of Kosovo (the Inspectorate) conduct a disciplinary investigation into the actions of the Kosovo Police that led to the arrests. In August 2010, EULEX was informed by the Kosovo Police that this had been done. However, based on information now available to EULEX, and independently verified by OMiK, no complaints about ill-treatment in relation to this case were in fact received, and instead the Minister of Internal Affairs requested the Acting Chief Executive of the Inspectorate to conduct an “extraordinary inspection”. The findings of this extraordinary inspection as well as recommendations to the Kosovo Police were published in the Police Inspectorate of Kosovo Annual Report for 2010.² This inspection scrutinised police management decisions, the operational plan and control during the arrest process. The inspection report concludes with a list of recommendations for managers within the Kosovo Police.

One of the detainees interviewed by the Committee mentioned the presence of a EULEX monitor at the Police Station, after the detainees were brought in by the Kosovo Police. Based on the preliminary comments made by the Committee following its visit, which suggested an allegation of continued abuse of the detainees by the Kosovo Police in the presence of the EULEX monitor, EULEX

² The full report in English is available at <http://www.ks.gov.net/ipk/ReportsHeaderEng.aspx>, please see Part I, Chapter 5 “Management of the situation by KOSOVO POLICE during the arrestment operation against the leader of the movement Vetëvendosje”, pp. 80-95.

conducted an internal investigation to look into any possibility that an officer of EULEX failed in his/her duty. After review of all available materials, the internal investigations panel concluded that the claims were unsupported by evidence, and that there was no misconduct or failing on the part of the EULEX monitor present.

-results of the review by EULEX of its internal procedures.

EULEX regularly reviews its internal procedures and is establishing standard operating policies which are in compliance with internationally accepted standards and European best practices. On 31 August 2010, as part of an ongoing review process, and specifically taking into account the comments made by the CPT following its visit, revised guidance was prepared for EULEX officers in mentoring counterparts in the Kosovo Police. This revised guidance deals *inter alia* with the proper handling and detention of detainees, including searches, recording of information, detainee's rights, reporting and investigating allegations of mistreatment of detainees, and filling in a pre-prepared checklist to ensure that correct procedures have been followed. This checklist should be filled in by the EULEX monitor and subsequently reviewed by the monitor's supervisor. More information regarding this is available under the response to the comment in paragraph 20.

Paragraph 13

Finally, the CPT recommends that the relevant authorities redouble their efforts to combat ill-treatment by the police. All Kosovo Police 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.

The Ministry of Internal Affairs is aware of the Committee's recommendations. To help ensure proper respect by Kosovo Police Officers for the rights of persons arrested, following the Committee's report, all members of the Kosovo were instructed to undergo a two-day long training on human rights and arrest. To the knowledge of the Ministry of Internal Affairs this has been fully implemented. Kosovo Police has adopted standard operating procedures covering the area of concern.

EULEX monitors conduct random checks on arrested persons to ensure that their rights are respected, and are required to report any incidences of ill-treatment.

EULEX assesses that in general terms, Kosovo Police do follow the standard operating procedures in place, in the areas which are of concern to the Committee.

OMiK reveals that the Kosovo Police General Directorate places great importance on respect of human rights and agrees with the CPT's recommendation that the rights of arrested persons are to be fully respected. The Kosovo Police General Directorate has taken a number of steps to ensure that the Kosovo Police is in compliance with applicable human rights standards.

As defined by the Law on Police,³ Kosovo Police officers are authorised to use force only when strictly necessary and to achieve a legitimate police objective. Kosovo Police officers are required to use force proportionately and rationally. In order to ensure that Kosovo Police officers are in compliance with these requirements for use of force, police officers who use force are obliged to file a use of force report no later than 24 hours after the incident. All instances of use of force are reviewed by the Use of Force Review Board which is composed of three members appointed by the Kosovo Police Deputy General Director for Administration.

The Kosovo Police Training Department provides regular refresher trainings on human rights for Kosovo Police officers that include, training on prohibition of torture and ill-treatment. In 2010, the Training Department organised 10 courses on human rights in which 202 police officers participated. The Kosovo Police Training Department also organises specific training on the management of holding cells. In 2010, two such trainings were organised that included 41 police officers participated. Through these trainings, police officers have been equipped with knowledge to adequately protect human rights of arrested persons.

Furthermore, each station has police officers who are on permanent duty at holding cells. These officers have completed all necessary trainings and have a long experience in managing holding cells.

The Kosovo Police General Directorate welcomes independent monitoring of conditions in holding cells and the rights of arrested persons by international and non-governmental organisations. Organisations such as the OSCE as well as local NGOs (Kosovo Rehabilitation Centre for Torture Victims and Council for Defence of Human Rights and Freedoms) have access to holding cells and regularly inspect them. They also have access to arrested persons whom they can interview in private, out of the sight and hearing of police officers. These independent reports serve as a basis for the Kosovo Police to address the identified shortcomings and improve its human rights compliance.

³ Law on Police No. 03/L-035, 20 February 2008.

Paragraph 14

The Committee reiterates its recommendation that 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.

According to OMiK, the Acting Chief State Prosecutor agrees with the CPT recommendations.

Judges and prosecutors are under the obligation to abide by the law and apply the due diligence principle in preventing, detecting and combating ill-treatment in the course of proceedings. Ill-treatment constitutes a criminal offence under the Criminal Code of Kosovo⁴. According to the above-mentioned provisions and in line with Chapter V of the Kosovo Code of Criminal Procedure⁵ the Prosecutor must act *ex officio* to investigate and prosecute the alleged cases of ill-treatment when there is a *prima facie* case, regardless of whether or not a complaint has been lodged by an individual. Such investigations must include medical examinations whenever necessary, in line with Article 192 of the Kosovo Code of Criminal Procedure⁶.

⁴ See Article 164 "Mistreatment in Exercising Duties" and Article 165 "Torture" of the Provisional Criminal Code, promulgated by UNMIK Regulation No. 2003/25, 6 July 2003, with subsequent amendments. On 27 November 2008, Kosovo promulgated the Law No. 03/L-002 on Supplementation and Amendment of the Provisional Criminal Code of Kosovo, which left the code substantially the same as the 2003 law, though a section on guilty plea agreements was added and the name of the code was changed to Criminal Code of Kosovo.

⁵ Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation No. 2003/26, 6 July 2003, with subsequent amendments. On 27 November 2008, Kosovo promulgated the Law No. 03/L-003 on Amendment and Supplementation of the Kosovo Provisional Code of Criminal Procedure No. 2003/26, which left the code substantially the same as the 2003 law, though a section on guilty plea agreements was added, an article on the length of police-ordered detention was amended, and the name of the code was changed to Kosovo Code of Criminal Procedure.

⁶ *Id.*

An individual may decide not to inform a judge or a prosecutor of ill-treatment to which he or she was subjected, out of fear. However, such an act can never be interpreted as a waiver of the right to be protected against ill-treatment, as it would represent a defeat of the course of justice.

In addition, a complaint mechanism has been put in place for the residents to lodge a complaint by themselves or through a defence lawyer.

Paragraph 15

The CPT recommends that 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 preceding remarks [made in paragraph 15].

EULEX established that the Kosovo Assembly adopted a new law on the Police Inspectorate of Kosovo, which was published on 16 November 2010 in the Official Gazette of Kosovo (No.03./L- 231). [See response under paragraph 17]. The position of Chief-Executive of the Inspectorate is held by Mr. Fitim Shishani who was appointed on 6 May 2011. He succeeds Mr. Enver Rustemi.

Paragraph 16

[...] the CPT would like to 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 Kosovo Police officers and the number of criminal/disciplinary proceedings which have been initiated as a result;

Professional Standards Directorate

According to information received by OMiK, in the period between 1 January 2009 and 25 May 2011, the Professional Standards Directorate (PSD) of the Kosovo Police received 693 citizens' complaints against 951 police employees⁷. The PSD opened internal investigations in 630 cases involving 870 police employees, and 63 preliminary investigations involving 81 police employees. Out of 630 opened cases, 64 cases involving 90 police employees were handled at the local level since they involved minor disciplinary offenses.

⁷ Article 4.1 (1.6) of Law on the Police Inspectorate of Kosovo defines police employees as "all personnel that includes the police officers and the civilian staff of Kosovo Police".

In the same period of time, the PSD completed 419 cases against 560 police employees, as well as 27 cases against 35 police employees at the local level. Preliminary investigations were concluded in 36 cases against 41 police employees.

Currently, 100 cases against 145 police employees have been opened by the PSD. In addition, 36 cases against 54 police employees at the local level have been opened. Preliminary investigations have been opened in 27 cases against 40 police employees. There are 48 pending cases, involving 76 police employees.

Police Inspectorate of Kosovo

According to the statistics of the Inspectorate (Table 1) provided by OMiK, the number of citizens' complaints as well as the number of initiated internal investigation cases has been decreasing from 2007 to 2010. The decrease in the number of received complaints may show an improvement in police performance.

Table 1: Statistic Data (Received Cases) 2007-2010

Complaints	Oct-Dec 2007	%	2008	%	2009	%	2010	%
Citizens' Complaints	122	48.8	789	38.9	782	46.33	590	49.8
Initiation of internal investigation	128	51.2	1235	61.1	906	53.67	595	50.2
Total	250	100	2024	100	1688	100	1185	100

Source: Police Inspectorate of Kosovo

In 2010, out of 1,185 cases, 541 were classified as alleged minor disciplinary offenses, 408 cases were classified as alleged serious violations and 236 cases were classified as unfounded (Table 2). Out of those 408 cases involving alleged serious violations, 76 (18.6%) were related to excessive use of force.

Table 2: Status of cases - 2010

Category	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	TOTAL
Allegations of serious ⁸ disciplinary violations	30	29	32	49	44	36	41	59	35	31	22	408
Allegations of minor disciplinary violations	41	58	58	44	44	57	31	66	43	50	49	541
Unfounded complaints	19	14	24	15	20	21	21	34	25	21	22	236
TOTAL:	90	101	114	108	108	114	93	159	103	102	93	1185

Source: Police Inspectorate of Kosovo

Table 3: Status of cases - 2009

2009		No.	%
Allegations of minor disciplinary violations sent to the Police Internal Investigation Unit		677	40.11
Closed	Unfounded complaints	337	19.96
	Dismissed after investigations	179	10.60
Cases for SPADC ⁹	Completed cases from SPADC	139	8.23
In process	Under investigation	141	8.35
	Pending	215	12.74
Total		1,688	100

Source: Police Inspectorate of Kosovo

According to the statistics provided by the Police Inspectorate of Kosovo to OMiK, in the period 2007-2010, 536 cases were sent to the Senior Police Appointments and Discipline Commission (SPADC) for review. Following the SPADC review, these cases were sent to the Kosovo Police General Director who made a decision in 526 cases, while 10 cases are still pending.

⁸ Out of 408 such cases, 200 cases were closed as unfounded.

⁹ Senior Police Appointments and Discipline Commission.

Completed cases: 2007-2010

Number of completed cases after investigation from the Police Inspectorate of Kosovo that were sent to the SPADC for review	536
Total number of cases reviewed by SPADC	536
Decision by the General Director of the Kosovo Police related to the investigated cases from the Police Inspectorate of Kosovo	526
Pending decisions	10

Source: Police Inspectorate of Kosovo

-an account of criminal/disciplinary sanctions imposed following complaints of police ill-treatment.

Statistics provided to OMiK involving completed cases where the Kosovo Police General Director issued a decision are indicated in the tables below. Statistics, however, are not available according to the type of criminal/disciplinary offence.

Decisions issued by the Kosovo Police General Director – 2011¹⁰

Measure	Number
Termination of employment	33
Demotion in rank	0
Suspension without pay for 60 days	22
Suspension without pay for 50 days	3
Suspension without pay for 40 days	8
Suspension without pay for 30 days	41
30% pay reduction for 2 months	32
20% pay reduction for 2 months	9
30% pay reduction for 1 month	50
20% pay reduction for 1 month	33
Acquittal	53
Annulled decisions	1
Total	285

¹⁰ Information received on 27 May 2011.

Decisions issued by the Kosovo Police General Director - 2010

Measure	Number
Termination of employment	44
Demotion in rank	2
Suspension without pay for 60 days	12
Suspension without pay for 50 days	1
Suspension without pay for 40 days	2
Suspension without pay for 30 days	17
Suspension without pay for 20 days	1
Suspension without pay for 15 days	3
50% pay reduction for 1 month	2
30% pay reduction for 2 months	21
20% pay reduction for 2 months	8
30% pay reduction for 1 month	19
20% pay reduction for 1 month	38
Acquittal	35
Annulled decisions	2
Total	207

Decisions issued by the Kosovo Police General Director - 2009

Measure	Number
Termination of employment	35
Demotion in rank	1
Suspension without pay for 60 days	11
Suspension without pay for 50 days	1
50% pay reduction for 2 months	1
30% pay reduction for 2 months	2
20% pay reduction for 2 months	3
25% pay reduction for 1 month	1
20% pay reduction for 1 month	4
Acquittal	5
Total	64

[Source: Kosovo Police General Directorate]

Paragraph 17

The CPT would like to receive updated information on the progress made in enacting the new draft law on the Police Inspectorate of Kosovo.

The Kosovo Assembly adopted a new law on the Police Inspectorate of Kosovo, which was published on 16 November 2010 in the Official Gazette of Kosovo (No.03./L- 231). The new law assigns broad powers to the Inspectorate in prevention, detection, documentation and investigation of alleged *criminal* offences committed by Kosovo Police employees, regardless of rank and position, on or of duties. the Inspectorate can also investigate alleged *disciplinary* offences of police officers having the highest rank of the senior police management level and senior appointed police positions (Article 2, paragraph 4); "high profile" disciplinary cases; use of lethal force incidents; deaths in police custody; and direct conflict between the police and communities related to racial, ethnic or discriminatory acts. The General Director of the Kosovo Police can be investigated by the Inspectorate, with prior authorization from the Prime Minister, where there is grounded suspicion that the General Director has committed disciplinary violations, as laid down in Article 2, paragraph 5. Further, Article 2, paragraph 6, enables the Inspectorate to receive complaints from citizens; review such complaints and determine whether they shall be handled by the Kosovo Police or by the Inspectorate.

In terms of organizational structure, the Inspectorate is headed by a Chief Executive. Staff shall be divided into investigators, inspectors, support personnel and part-time contracted personnel. In performance of their duties, the investigators have police powers and shall exercise them in accordance with the Constitution, Criminal Code, Criminal Procedure Code, and the Police Inspectorate of Kosovo law, as provided by Article 17 of the applicable law. The investigators are entitled to carry and use weapons as well as force in accordance with the Law on Police, relevant applicable laws and sub-legal acts as foreseen by Article 17, paragraph 3. For investigation purposes, the Inspectorate is authorized to use services of specialized police units, equipment and the buildings of Kosovo Police including but not limited to, forensics, laboratory, and interception devices (Article 17, paragraph 8).

The Police Inspectorate of Kosovo law came into force on 30 November 2010 (15 days after publication) and, according to Article 32, any criminal investigations by the Inspectorate towards police employees was to begin 6 months after entry into force, on 30 May 2011. The intervening period was to be used by the Minister to issue all relevant sub-legal acts for implementation of the law, and to recruit necessary staff and develop existing capacities.

Paragraph 18

[...] 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 and whether detained persons were interviewed in private.

The Police Inspectorate of Kosovo publishes its activity report on the government website (<http://www.ks-gov.net/ipk/>) on an annual basis.

OMiK provided information on the highlights of the seven ordinary and six extraordinary inspections¹¹ concluded in 2009 and 2010.

In 2009, the Inspectorate conducted the following inspections:

Ordinary inspections:

1. Management of detention and arrest (01/June 2009);
2. Management of firearms and ammunitions (02/July 2009);
3. Human Resources Management (03/August 2009);
4. Management of complaints and maintenance of discipline (04/September 2009);
5. Vehicle Fleet Management (05/December 2009);
6. Management of Investigations and Crime Detection (06/December 2009);
7. Facilities Management (07/December 2009).

Extraordinary inspections:

1. Legality of education and training of police officers at University of Sarajevo (2001/ March 2009);
2. Use of police vehicles outside working hours by police officials (02/April 2009);
3. Management of evidence rooms by the Kosovo Police (03/June 2009);
4. Kosovo Police situation management during the protests of Kosovo Serb residents of Korminjane/Korminjan and Ranilug/Ranillug villages (04/August 2009);
5. Kosovo Police situation management in case of damage to EULEX vehicles (05/September 2009);
6. Kosovo Police security situation management during the municipal elections (06/December 2009).

¹¹ (for details please see the Police Inspectorate of Kosovo annual reports for 2009 and 2010 at <http://www.ks.gov.net/ipk/ReportsHeaderEng.aspx>)

In 2010, the Inspectorate conducted four ordinary and four extraordinary inspections:

Ordinary inspections:

1. Traffic management and road safety (01/June 2010);
2. Training management (02/August 2010);
3. Management of criminal files (03/December 2010);
4. Management of files and database of Internal Investigation Unit (04/December 2010).

Extraordinary inspections:

1. Kosovo Police security management during the operation to arrest the leader of Self-determination movement (01/September 2010);
2. General assessment of managerial performance of police stations (02/November 2010);
3. Kosovo Police assistance during the closure of night bars (03/November 2010);
4. Assessment of the level of security measures at police stations for unauthorized personnel (04/December 2010).

Safeguards

Paragraph 20

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.

OMiK established that the Kosovo Police agrees that all arrested persons have the right to notify a family member or another person of their detention from the very outset of their deprivation of liberty. The Kosovo Police General Directorate will continue to work on improving police actions in this field.

Article 214(1) of the Kosovo Criminal Procedure Code¹² (KCPC) requires the Kosovo Police to inform arrested persons of their rights, including the right to notify a family member or another appropriate person of their choice about arrest.

¹² Kosovo Code of Criminal Procedure.

OMiK reported that this right is reiterated in the Kosovo Police Policy and Procedure Manual (PPM), P-4.11 as well as in the Kosovo Police Standard Operating Procedures (SOP) for holding cells dated 26 January 2009 (reference number DRP/DPZH/0011/) and the SOP for border police holding cells dated 7 June 2010 (reference number DA-DPK-003/10).

These documents provide for the right of the detainee to notify a family member or other person of his/her arrest. Police Officers in training receive instruction on this issue whilst at the Police Academy, and a checklist form (last revision 13 November 2007) is to be completed simultaneous to the arrest and registration procedure, which correctly lists the obligations in relation to notification of a family member or other responsible person, or international organisation/diplomatic mission in case of arrest of a foreigner, including specific guidelines and step-by-step procedures which are to be followed. This form is available in Albanian, Serbian and English languages. The shift supervisor or shift leader is required to inspect any arrest reports and check the documents to ensure that they have been filled out correctly and that all procedures have been followed. The shift supervisor is also responsible for checking that the detention log book is up to date. Kosovo Police report that these procedures are being followed.

Kosovo Police receive regular mentoring and advice from EULEX. In conducting this mentoring, EULEX works to standard operating procedures in relation to monitoring of police stations and detention cells, to ensure that rights of individuals deprived of their liberty are protected according to law. The applicable standard operating procedure clearly identifies the rights of detained persons and the duties of EULEX monitors and advisers. The monitors are in possession of checklists which are regularly completed to ensure that all required standards are being met. The checklist, which corresponds to the duties of the Kosovo Police, entails making a record of whether the person in police custody has been:

- informed of the reasons for arrest, in a language they understand;
- advised of the right to remain silent, except for identification information;
- advised of the right to have free translation assistance;
- allowed to speak to legal counsel;
- allowed to contact family or other person;

And whether the EULEX monitor has observed:

- proper use of restraints;
- provision of medical treatment;
- appropriate use of force and completion of proper forms;
- provision of necessities such as food and water
- the notification of legal representative of arrestees under 18 years of age

-any inappropriate activity by Kosovo Police (to be narrated).

This checklist is filled in by the EULEX monitor and reviewed by his/her superior. EULEX has to date, no records of any violations for the arrests actually monitored. Kosovo Police files/records regarding arrests that are made in the absence of EULEX monitors can be checked by EULEX on a regular basis to ensure standards are maintained.

Paragraph 21

[...] 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.

According to OMiK, the Kosovo Police General Directorate agrees with the CPT's recommendation that the right of access to a lawyer is to be enjoyed by all arrested persons from the very outset of their deprivation of liberty. As stipulated by Article 214(1) of the KCPC, the Kosovo Police is required to inform arrested persons of their right to a defence counsel and to have defence counsel provided, if they cannot afford to pay for legal assistance. The Kosovo Police PPM, P-4.11, contains more detailed instructions related to the right to a defence counsel. Additionally, arrested persons are required to sign a form stating that they were informed of their rights, which is an integral part of the custody record. In cases when arrested persons waive their right to a defence counsel, they are required to sign the waiver form, which is also a part of the custody record.

OMiK observed that the Kosovo Police General Directorate will continue to work on improving the effectiveness of the system of assistance by a lawyer during the entire period of police custody. The OMiK and EULEX will continue to monitor systematic issues related to the rights of arrested persons.

Paragraph 22

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 Kosovo Police officers.

OMiK reports that the Kosovo Police officers have been instructed that they should be out of hearing and sight during medical examinations of arrested persons. However, in practice, this is difficult to achieve as medical personnel in most cases demand police presence either in the room where examination takes place or just outside the door due to fear for their safety. In cases when medical personnel requests police presence during examinations, that fact is noted in custody records.

EULEX confirms that the standard practice followed by the Kosovo Police is that a police officer is present during any medical examinations of detainees, for safety reasons, both of the doctor and the public, due to perceived risk of flight.

Paragraph 23

The CPT recommends that steps 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.

OMiK established that the Kosovo Police fully agrees with the CPT recommendation that, whenever persons held in custody are examined by a doctor, the doctor should provide a more detailed report including all injuries and indicating any possible ill-treatment. A copy of the medical report is always included in the custody record.

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.

According to OMiK, the Kosovo Police accepts the recommendation of the CPT. Kosovo Police General Directorate will instruct all shift leaders who maintain custody records to immediately inform the Chief of Operation whenever a medical report contains records of injuries or other medical findings which are indicative of police ill-treatment. The Chief of Operations, through the chain of command, will then take necessary step to ensure that the allegations of ill-treatment are brought to the attention of the relevant authorities.

Paragraph 24

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.

OMiK states that the Kosovo Police General Directorate fully agrees with the CPT recommendation. The current practice requires all police officers to ensure that intoxicated persons are seen by a doctor prior to their placement in holding cells. When such persons are placed in holding cells, they are put under increased supervision to ensure their safety. The Kosovo Police General Directorate will send a memo to remind all police officers of this practice.

Paragraph 25

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 persons concerned on police premises) by the provision of and information sheet (to be available in the 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.

OMiK informs that the Kosovo Police General Directorate agrees with the CPT recommendation that arrested persons are to be fully informed of their rights from the very outset of their deprivation of liberty. Article 212(3) of the KCPC obliges the Kosovo Police to inform arrested persons about their rights orally and in writing. The Kosovo Police PPM further requires that arrested persons are informed orally of their rights immediately after the arrest and to be informed about their rights in writing. The form of notification of rights upon request needs to be signed by the arrested person. This form is an integral part of the custody record and is available on the police intranet in Albanian, English and Serbian. The OMiK will continue to monitor the rights of arrested persons and build capacities of local institutions to monitor places of detention (see end of this report for information on a local detention monitoring mechanism).

Paragraph 26

[...] 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.

Article 219 of the Provisional Criminal Procedural Code of Kosovo obliges the Kosovo Police to keep a single written record of all actions undertaken with respect to an arrested person. These records should be maintained for a period of 10 years. Article 219(3) of the KCPC also maintains that the written record shall be signed by the responsible police officer and countersigned by the arrested person. In line with Article 219(4), the written records have to be made available to the arrested person and his or her defence counsel on their request in a language the arrested person understands.

Kosovo Police informed EULEX that it is the responsibility of the shift supervisor to ensure that custody records are always accurately maintained. OMiK states that the Kosovo Police is continuously working on improving the record keeping, in order to ensure that custody registers and records are properly maintained.

Conditions of detention

Paragraph 27

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 ventilations; preferably, cells should enjoy natural light;

OMiK established that material conditions of detention have been improved since the CPT visit. In particular, cells were completely refurbished at Mitrovicë/Mitrovica North Police Station and re-opened on 25 October 2010. All cells are now equipped with concrete platforms (beds), new mattresses and bedding, new ventilation system and improved artificial lighting. Holding cells in Prishtinë/Priština are currently undergoing extensive refurbishment that includes repair and painting of walls, upgrading of ventilation system and artificial lighting as well as replacement of mattresses and bedding. Following the CPT visit, showers have been fixed and hot running water is now available. Additionally, artificial lighting has been fixed in the police establishments at Prizren, Pejë/Peć and Leposavić/Leposaviq.

Many holding cells still lack adequate natural lighting, i.e. sufficient to read. There are various reasons for poor access to natural light, e.g. it is obstructed by the nearby buildings or trees, the holding cells are placed in the basement, or the windows are too small. The Kosovo Police is aware of this problem and, wherever possible, will try to remedy the shortcomings.

The Kosovo Police has been continuously working to improve material conditions in holding cells. Around 60% of holding cells that have toilets in cells which can accommodate more than one person were screened off in 2010. Plans have been made to screen off the toilets in the remaining cells that can accommodate more than one person in 2011. In 2010, the Kosovo Police also made improvements in several holding cell facilities that mostly concerned installation of new ventilation systems, fixing of sewage systems and replacement of mattresses and bedding.

Other issues

Paragraph 29

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

OMiK established that strip searches are conducted by the Kosovo Police only when absolutely necessary. In order to do a strip search, police officers must have a reasonable suspicion that arrested persons are hiding items that may be evidence of a crime (e.g. narcotics) or items they could use to harm themselves. The Kosovo Police General Directorate will instruct all police stations to record all instances of strip searches. The record will include time and date of the search, name of officer conducting the search, name of officer witnessing the search, detailed justification for such a search and will list items found during the search.

B. Penitentiary establishments

Preliminary remarks

Paragraph 35

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 establishments. The Committee would like to be informed of the outcome of the above-mentioned inquiry and of the action taken as a result thereof.

According to information provided by EULEX, the Kosovo Correction Service accepts that there is corruption present within Dubrava Prison, however does not accept that it reaches the scale presented in the report. Whilst some staff members have admittedly been involved in corruption (specifically, in the provision of contraband), staff members who have been caught have also been dismissed from work and some have faced criminal prosecution.

EULEX deploys personnel to Dubrava prison mainly in order to offer targeted technical assistance to local counterparts through a “monitoring, mentoring and advising” role. EULEX staff working in this area do not exercise executive functions, except under the limited circumstances when EULEX is requested to provide assistance in escorting high-risk prisoners. EULEX staff routinely monitor Block 8 (high risk prisoners) during regular office working hours. EULEX presently has the capacity to monitor other blocks only on an *ad hoc* basis, either to observe cell searches or to spot-check the block’s administration. EULEX concentrates its efforts on mentoring the Kosovo staff at the Main Gate of the prison, in the Security Department and in Block 8. EULEX has donated X-ray machines to the prison and trained Kosovo Correction Service officers on how to properly operate the equipment, resulting in an immediate reduction in the level of contraband entering the prison. EULEX now also works directly with the Special Intervention Unit, monitoring its activities and offering training and advice on best practices.

In terms of the other areas of corruption identified by the Committee (in particular favouritism towards rich or powerful prisoners), EULEX has taken steps to

influence the situation, and has moved its areas of work into the areas where this can best be achieved, such as prisoner population management and social reintegration. In practice, these are the areas of prison management under which prisoners are granted privileges, such as family visits, regime change, leave and transfers. Whilst it remains primarily the responsibility of Kosovo Authorities to reduce corruption within the prison system, EULEX is assisting Kosovo Correction Service by ensuring the proper implementation of laws and regulations through its monitoring, mentoring and advising role.

Paragraph 36

The CPT calls upon the relevant authorities to find a solution to this problem [a number of remand prisoners being kept in detention for years, notably at the Mitrovicë/Mitrovica Detention centre] as a matter of urgency. Such an unacceptable situation cannot be allowed to continue.

The claims made by prisoners to the Committee may have been significantly exaggerated. Statistics available to EULEX show that, as of 28 April 2011, there were only seven remand prisoners detained in Mitrovicë/Mitrovica Detention centre. Of these, one prisoner had been in detention for more than one year (13 months, to be specific). Of the others, six had been in detention for periods ranging from a few days to seven months.

Ill-treatment

Paragraph 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 Mitrovicë/Mitrovica, Prishtinë/Priština and Prizren*. In addition, at the Lipjan/Lipljan Correctional Centre, several female prisoners complained about instances of verbal abuse by prison officers.

The Kosovo Correction Service agrees with the Committee that it is of the utmost importance to uphold and respect the rights of detainees. It strives to ensure that all prisoners are treated in accordance with the internal rules of the institution and the applicable laws in Kosovo. Any allegations of ill-treatment are fairly investigated by the management of the institution and reported to the authorities. However, Kosovo Correction Service reports that no complaints have been

recorded at either the Prizren detention centre or the Prishtinë/Priština detention centre, and it considers that the allegations made by prisoners in relation to ill-treatment are simply not supported by evidence.

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.

Whilst the Kosovo Correction Service takes all allegations of ill-treatment seriously, it strongly feels that these particular allegations are unfounded. Furthermore, it does not accept the suggestion that members of the special intervention group have been "hired" by prisoners to beat up other prisoners. In relation to cell-search operations allegedly conducted at night, Kosovo Correction Service points out that the special intervention group works only until 2000hrs each day, and has never once conducted cell-search operations at night. It also points out that cell-searches are conducted under the watch of EULEX monitors.

In July 2010, the Director of Dubrava Prison agreed to have all cell-searches monitored by EULEX on a daily basis, including after regular working hours and at weekends. Any searches conducted out of working hours will be notified to EULEX in advance. EULEX monitors report that so far, the Special Intervention Unit that is the subject of comments by the CPT has displayed a professional attitude to work, an understanding of the correct procedures and no violations observed, no complaints from prisoners officially recorded, and no record that the Special Intervention Unit has been working at night. EULEX can confirm that there was one incident of excessive use of force by an officer of the Special Intervention Unit, and as a result the officer in question was suspended from duty by his superiors.

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 prisoners 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.

Kosovo Correction Service does not accept the allegations noted by the Committee. It notes that at Dubrava Prison there was only one instance of excessive use of force by an officer of the Special Intervention Unit against a prisoner, which came about after the prisoner first assaulted the officer concerned. This incident resulted in disciplinary measures for the officer, who was suspended for three months.

EULEX followed up on many of the allegations made by prisoners to the CPT in relation to prisoner ill-treatment during its 2010 visit, but could not verify the substance of the claims.

Paragraph 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 light of the above remarks.

Kosovo Correction Service has informed EULEX that any irresponsible and undisciplined officers have been removed from the unit.

The Prison Director at Dubrava Prison rotated two officers of the Special Intervention to other duties. In line with CPT recommendations, EULEX recommended to the Kosovo Authorities that the Special Intervention Unit members be dispersed among the ordinary officers on regular duties, in order to spread their abilities and expertise. This recommendation has not (yet) been accepted by the local authorities who maintain the Special Intervention Unit as a distinct unit. As long as this remains the case, EULEX will continue to monitor its operations.

EULEX observes all routine searches conducted by the Special Intervention Unit, and these searches do not normally occur during lockdown periods. Searches are *occasionally* conducted during lockdown periods, where information suggests that such an operation may lead to the recovery of contraband (for example if a mobile phone is heard ringing). Such *ad hoc* searches do not normally involve the Special Intervention Unit. Furthermore, the system in place regarding the unlocking of prisoner cells during such periods makes it unlikely that cells could be unlocked without leaving verifiable records.

EULEX monitors have not witnessed the use of a balaclava or mask by any officer working at Dubrava Prison.

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.

EULEX has requested the relevant Kosovo authorities to remind all prison and detention centre staff that any form of ill-treatment of prisoners (including verbal abuse) is unacceptable and should be investigated and punished accordingly.

Paragraph 41

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

EULEX established an "Intervention Team" at Dubrava Prison, which actively monitors the activities of the Special Intervention Unit. The Kosovo Correction Service has cooperated fully with this initiative and EULEX is in the process of implementing a programme to monitor, mentor and advise the Special Intervention Unit on the appropriate application of force in line with Kosovo Correction Service strategy.

Paragraph 42

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 light of the above remarks.

Kosovo Correction Service reports that it is currently working on a strategy whereby officers draw up lists of prisoners who are hostile towards each other, and who should not meet. These lists are distributed, and housing of prisoners in different blocks is based upon this information. In some cases there has been a need to transfer prisoners to other centres.

EULEX is working with Kosovo Correction Service in order to provide local counterparts with examples of European best practices, such as the European Prison Rules of the Council of Europe.

Kosovo Correction Service has identified Blocks 3 and 5 as requiring specific attention in relation to disruptive prisoners. These blocks contain a large number

of prisoners who are not yet half way through their sentence, and who enjoy only a “basic” regime. EULEX confirms that the strategy of the Kosovo Correction Service is currently to disperse troublesome prisoners strategically, to disrupt disorderly behaviour.

Kosovo Correction Service and EULEX are working together to enhance the “Security Information Reporting System” and improve information flow throughout Dubrava Prison. Workshops have been held, and since approximately one year ago, a bi-weekly security meeting is held to discuss developments. Kosovo Correction Service is fully cooperating with EULEX in order to monitor the situation.

Conditions of Detention

Paragraph 43

The CPT would like to receive updated information on the implementation of the aforementioned renovation works [at Lipjan/Lipljan Correctional Centre, in particularly the juvenile unit, and Mitrovicë/Mitrovica Detention Centre].

Kosovo Correction Service reports that on 9 February 2011 a complete renovation of Dubrava Prison started. After this, all standards required by the CPT in its 2007 report will be met. Small cells will accommodate only one prisoner, the isolation cell is being built according to European standards and CPT recommendations and shall be at least 9m². The electrical system, water supply, sewerage and heating system are all being upgraded. Cells which have closed toilets will all have ventilation systems to ensure fresh air. Floors and walls will be made of quality building materials and shall meet a high level of hygiene. There will be a separate bathroom for prisoners with special needs, who due to specific reasons (diseases etc) cannot take showers in shared bathrooms together with other prisoners. Kosovo Correction Service would like to upgrade Lipjan Correctional Centre, in particular the juvenile facility, however this is dependent on securing sufficient budget. If the budget is made available, the work will take place in 2011.

The renovation of the Mitrovicë/Mitrovica Detention Centre commenced on 8 February 2011, and completion of this work is expected in June 2011. The renovation will improve living/working conditions for both prisoners and staff. Renovations include:

- complete upgrading of the heating, ventilation and lighting systems;
- painting with “therapeutic paint”

- structural upgrades to cells, including work on bathrooms, windows, doors and fixed furniture;
- upgrades to cells to accommodate sick prisoners;
- upgrades to shower facilities;
- provision of a prisoner kitchen;
- improvements to office space and storage facilities

Paragraph 44

The CPT recommends that these shortcomings [in relation to selected individual issues of access to natural light, ventilation and a working fire alarm system] be remedied.

Kosovo Correction Service accepts that at Prishtinë/Priština detention centre access to natural light is limited. However the ventilation is functional, as is the fire alarm system.

Paragraph 45

Steps should be taken to [provide sanitary towels to be provided to female prisoners at Lipjan/Lipljan Correctional Centre].

The shortage of female sanitary products at Lipjan/Lipljan Correctional Centre (confirmed by EULEX) occurred due to a failure within the Department of Administration/Procurement within the Ministry of Justice at central level, and is not attributable to the Kosovo Correction Service. Goods required by the Ministry and its organs (including the Kosovo Correction Service) are sourced and purchased centrally. Female sanitary products were inexplicably cut from the budget (leading to the situation where they had to be purchased through a limited petty-cash supply); this error has now been rectified, and sanitary towels are now being supplied through the regular budget line.

Paragraph 46

The committee recommends that [the “security cell” (C12) at the Prizren Detention Centre] be withdrawn from service until it is adequately equipped and fitted with a window.

According to information provided to EULEX, Cell C12 is not in use as a “security cell”. It is only being used as a storage room.

Paragraph 49

The CPT recommends 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.

On the basis of a EULEX recommendation, Kosovo Correction Service established a working group in February 2011 to help make improvements. The group, which includes EULEX representatives, meets once or twice a week, and has as its objective identifying problems and making amendments to the Kosovo Correction Service policy on regimes for sentenced prisoners. Clear barriers to progress have been identified, for example, it appears an amendment to the Law on Public Finances would be required to allow state institutions to establish industrial activities (to allow prisoners to make and sell products). There is also a lack of willingness at government level to fund improvements to prisoner activity regimes, and most progress so far has been made possible through donations and activities initiated by foreign governments and non-governmental organisations. There is a lack of information, for example there is no information available on recidivism rates, which makes effectively targeting reintegration programmes difficult.

Some success can be reported, such as the opening of a computer room and library, as well as the ongoing refurbishment of the fitness room at Mitrovicë/Mitrovica Detention Centre. At Lipjan/Lipljan Correction Centre, a computer classroom has been opened, with fifteen computers.

Paragraph 50

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.

Kosovo Correction Service points out that this is a temporary situation, which has occurred due to “overcrowding and impossibility to house top risk prisoners in certain places”.

The Kosovo Correction Service is a relatively new institution, and "top risk" and "high risk" prisoners are difficult to manage, even with international assistance. Most of the "high risk" prisoners are so classified due to the potential threat of escape during transfer. When within prison facilities they pose no such threat and can safely be dispersed. Kosovo Correction Service is currently reviewing the list of all high risk prisoners.

EULEX has monitored the situation regarding such prisoners for approximately one year, and is providing mentoring to local counterparts in working methodology, including re-evaluating the "block supervisors" system. The Special Security Unit (Block 8) should be a prison within a prison, with inmates totally cut-off from the rest of the complex. Dubrava Prison was never designed to house high risk prisoners and redesigning the existing system to meet the new requirements is a complicated task.

Kosovo is in the process of planning a new prison specifically for high-risk prisoners. When this becomes a reality, the operational situation will improve significantly. In the interim, an expansion of the CCTV system in Block 8 is planned, which will increase the security and confidence of staff, who are currently in a vulnerable situation, and will also more effectively monitor the movements of prisoners.

Health Care

Paragraph 51

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.

Kosovo Correction Service has a doctor available at Dubrava Prison on a 24hr basis. The psychiatrist visits the prison at least four times a month, and more frequently if required. The Prison authorities would very much like to have a psychiatrist on a full time basis, however the vacancy has been advertised for 10 consecutive years but no qualified psychiatrist has shown an interest to work full time in Dubrava Prison, probably due to the unfavourable conditions which are available to medical doctors working in prisons. The Prison has however recruited a full time psychologist.

Kosovo Correction Service points out that based on Regulation 2004/34 it has no right to house patients with mental disorders in any of its correctional institutions. Therefore the role of the psychiatrist is to observe the overall mental health of the

prisoners and temporarily to treat persons with mental disorders until a full diagnosis is confirmed. After confirmation of such diagnosis, the prisoner (providing the court makes the order) would be transferred to a psychiatric institution.

Paragraph 54

The Committee recommends that all necessary steps be taken by the relevant authorities to prevent the recurrence of any such situation [a breakdown in the delivery of medical supplies lasting seven months] at Dubrava Prison or in any other penitentiary establishment, including by authorisation to procure medication from local sources if necessary.

The breakdown in the supply chain for medical goods occurred due to the failure of the Procurement Section of the Department of Administration in the Ministry of Justice. A decentralised procurement system which gives more control to the Kosovo Correction Service would be the best solution to prevent a repetition of this unacceptable incident. In the meantime, the immediate situation has improved and Kosovo Correction Service currently has a contract for medical supplies.

Paragraph 57

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 abovementioned 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.**

Kosovo Correction Service reports that newly arrived prisoners (including those transferred from another institution) are examined by a Nurse within 24hrs of arrival, and by a Doctor within 48hrs of arrival. They are screened for diseases such as diabetes, hypertension, tuberculosis, hepatitis as well as sexually transmitted diseases. Habits such as smoking, alcohol and drugs use are also identified and recorded. Anamnesis is taken. No unnecessary lab tests, x-rays or TB screening takes place if there are no anamnestic signs or indications during the physical examination. The Head of Medical Services at Kosovo Correction

Services notes that if it appears upon admission of a new prisoner that he/she has suffered recent ill-treatment this is reported to the head of the detention facility concerned.

Kosovo Correction Service does not accept the CPT claim that subsequent bodily injuries are not properly recorded. Bodily injuries sustained by the prisoner during the period of sentence are recorded in chronological order in the medical file so as to avoid any later tampering. Furthermore, there are separate sheets of paper available in each doctor's desk containing anatomical drawings, where any bodily injuries can be recorded, noting size and other details. Such sheets are incorporated into the medical file of the patient, as a separate document from the one which was recorded upon the patient's admission. During 2009, a total of 97 bodily injuries were recorded. During 2010 a total of 78 bodily injuries were recorded.

Paragraph 58

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.

EULEX is in the process of recruiting an Expert in Penal Administration. Once recruited, EULEX will be in a position to monitor the implementation of such recommendations.

Paragraph 59

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) 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 sight of prison officers.

Kosovo Correction Service policy regarding medical confidentiality is that correctional officers are not present when medical examinations are carried out, unless specifically requested by the doctor.

Paragraph 60

At the Mitrovicë/Mitrovica 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 Mitrovicë/Mitrovica Detention Centre to cease this practice.

The Director of Mitrovicë/Mitrovica Detention Centre changed this practice immediately after the CPT visit. As requested by the Committee, the practice has now ceased.

Other Issues

Paragraph 61

The CPT recommends that the rules governing disciplinary sanctions 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.]

Kosovo Correction Service reports that there has never been a case where a prisoner was prohibited family contact.

EULEX notes the Committee's comments and suggests that there is need to review the existing legislative framework in order to update the prison management practices in Kosovo to meet current international standards and European best practices.

Paragraph 62

The CPT recommends that [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.]

Kosovo Correction Service agrees with the Committee, and states that prisoners have access to reading materials including daily newspapers. They are also allowed correspondence by way of permitted telephone calls and exchange of letters.

Paragraph 63

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.

EULEX is in the process of recruiting an Expert in Penal Administration. Once recruited, EULEX will be in a position to monitor the implementation of such recommendations.

Paragraph 65

Steps should be taken to remedy the shortcoming [that at Prishtinë/Priština Detention Centre there was no register for the recording of disciplinary sanctions.]

Kosovo Correction Service informed EULEX that following the recommendation of the Committee, the Director of Prishtinë/Priština Detention Centre now operates a register for recording of disciplinary sanctions.

Paragraph 66

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

EULEX works with the European Prison Rules, as well as other international standards, in monitoring, mentoring and advising local counterparts. EULEX undertakes to ensure that the Directors of all Prisons and Detention Centres in

Kosovo are aware of the recent change in the European Prison Rules, and the comments made by the Committee in its 15th general report.

Paragraph 69

The CPT recommends that arrangements for visits 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).

In the assessment of Kosovo Correction Service, *detainees* housed in the Prizren Detention Centre receive visits under acceptable conditions. It points out that the glass partitions do not obstruct communication, and provide excellent hearing and viewing possibilities (there are holes in the glass partition). These barriers have contributed significantly to the prevention of contraband entering the centre. *Convicted prisoners* are permitted visits in a separate room with a table, and – depending on behaviour- extended visits are possible. On the basis that *detainee* visits are carried out only with court permission (see response to paragraph 61), Kosovo Correction Service stand ready to implement any recommendation of the court that glass partitions be removed and visits be carried out under the same circumstances as those of convicted prisoners.

EULEX observes that a change in the law giving Prison authorities direct control over the supervision of conditions of detention for prisoners detained on remand would be in line with European best practices.

Paragraph 70

The CPT recommends that urgent steps be taken by the relevant authorities to review the security arrangements at the Mitrovicë/Mitrovica Detention Centre, in light of the preceding remarks [that the centre was at risk of a major security breach from outside].

Kosovo Correction Service informs the Committee that steps were immediately taken to increase the security at the Mitrovicë/Mitrovica Detention Centre. The number of correctional staff was increased. Working together with Kosovo Police and EULEX, contingency measures have been put in place. Kosovo Correction Service Commissioner is looking for ways to further increase the staffing levels at the detention centre.

According to EULEX, there is no simple solution. The physical location of the Mitrovicë/Mitrovica Detention Centre is inherently vulnerable, and in the short term a change is not possible. That aside, the most urgent concern facing the centre is the low staffing level, particularly the uniformed correction staff, who at present levels struggle to maintain a safe and secure environment. Shortfalls in the staffing roster are being filled with civilian staff (in positions where there is no direct contact with the prisoners). Furthermore, external security is weak, and if a security situation escalates in the proximity of the detention centre or the adjacent court house, the physical integrity of the prison could be compromised by outside persons. The Detention Centre Director has requested the Commissioner for additional resources. Some have been provided, however the response has been inadequate. Technical upgrades to the CCTV system are required though the budget for this is limited.

During daylight hours, the Detention Centre Director has been forced to require officers to work extra shifts, and to compensate this overtime by allowing compensatory time off (CTO) to be exercised on the night shift. As a result, staffing levels at night are usually down to four officers. A similar system has been used when officers attend professional trainings.

Low staffing levels at night can be dangerous, and officers are presently relying on the goodwill of prisoners should they need to unlock cells during the night, which is an unadvisable situation.

Paragraph 71

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.

Kosovo Correction Service has no regulation on who should carry pepper spray. 539 staff members of Kosovo Correction Service were trained in the proper procedures for its use, although no certification was made. Following the Committee's recommendations, EULEX will recommend that the Kosovo Correction Service establish a working group on the topic, where the views of the Committee will be discussed.

C. Psychiatric/social welfare establishments

Preliminary remarks

Paragraph 73

The CPT would like to receive more detailed information concerning the new facility (layout, staffing, entry into service, etc.). *(The Forensic Unit at the Psychiatric Clinic of Prishtinë/Priština University Hospital)*

The local Ministry of Health and the Ministry of Justice are currently implementing a joint project to build a new forensic psychiatric clinic at the premises of the Psychiatric Clinic of Prishtinë/Priština University Hospital. The project, valued at € 1,656,870.34, is being funded through the European Commission's Instrument for Pre-Accession Assistance (IPA) 2010 funds. The Terms of Reference have already been prepared for an expert who will prepare tender documentation for the building and the selection procedure has started. It is expected that the European Commission will announce the winner of the contract in autumn 2011. The facility should be fully operational in January 2013.

The Ministry of Finance has been requested to provide funds for additional staff in its 2012 budget plans as the new clinic will require five psychiatrists, 33 nurses, two social workers and one psychologist. The new clinic will have a total of 36 beds; 24 of which are for treatment and 12 for psychiatric assessment. The new facility would be under the authority of the Ministry of Health, while security-related services will be provided by the Ministry of Justice. The staff training, which will start this year, will be partially implemented in co-operation with the University of Basel, Switzerland.

Paragraph 74

The Committee would like to receive more detailed information concerning the new facility (layout, staffing, entry into service, etc.). *(Mitrovicë/Mitrovica Regional Hospital)*

The Regional Hospital in Mitrovicë/Mitrovica is currently not able to build the new facility due the lack of financial resources. However, a project proposal for the new facility has been developed and the exact location of the future facility at the premises of the Regional Hospital has been identified.

Patients'/residents' living conditions

Paragraph 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 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;

The Ministry of Health in Prishtinë/Priština has undertaken steps to ensure that patients accommodated in the Shtime/Štimlje Integration Center for Mental Health are always provided with adequate clothing and footwear. Among other measures taken to rectify the problem, the Ministry of Health aims to improve co-operation with the civil society as well as to include provision of clothes and footwear into the 2012 budget.

- efforts be made in all psychiatric/social welfare establishments visited to offer a more personalised environment to patients/residents.

Efforts are being made by the Ministry of Health in Prishtinë/Priština to ensure that patients/residents in the Shtime/Štimlje Integration Center for Mental Health have a more personalised environment.

The Regional Hospital in Mitrovicë/Mitrovica has also implemented procedures to ensure that health services as well as other services are provided to patients and that the ward is adapted to the patients' needs.

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.

All forensic psychiatric patients at the Psychiatric Clinic of Prishtinë/Priština University Hospital, whose state of health so permits, are offered 30 minutes of outdoor exercise per day with an intention of extending this period to one hour in the future.

Female forensic psychiatric patients at the Psychiatric Clinic of Prishtinë/Priština University Hospital, which is under the administrative authority of the Ministry of Justice, still do not have access to the TV room, reportedly due to security reasons.

Staff and treatment

Paragraph 82

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;

The forensic unit of the Psychiatric Clinic in Prishtinë/Priština still does not have a nurse present throughout the day. A request was made but no permission was given yet by the administrative authorities of the Forensic psychiatry

- 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.

One full time psychiatrist has been employed at the Shtime/Štimlje Integration Centre for Mental Health.

Paragraph 83

The CPT reiterates its recommendation that steps be taken in all psychiatric establishments visited to develop treatment and rehabilitation activities for psychiatric patients.

The Ministry of Health in Prishtinë/Priština has issued an official recommendation to all psychiatric establishments to implement psychosocial rehabilitation activities for psychiatric patients and not focus only on pharmacotherapy. The Ministry of Health has also established a reporting system whereby the Mental Health Unit at the Ministry will receive regular reports on this issue.

Restraint of agitated and/or violent patients/residents

Paragraph 85

The CPT recommends that the use of mechanical restraints at the Psychiatric Unit of Mitrovicë/Mitrovica 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).

The Regional Hospital in Mitrovicë/Mitrovica management ordered the psychiatric ward to adjust the use of mechanical restraints to the medical condition of patients, while appropriate means of mechanical restraints can be used occasionally.

The Ministry of Health in Prishtinë/Priština has reported that mental health policies and domestic law (Strategic Plan for Mental Health 2008 – 2013 and the Law on the Rights and Responsibilities of the Citizens in the Health Care) forbid restraining agitated and/or violent patients except in extremely rare cases.

Paragraph 87

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.

The Regional Hospital in Mitrovicë/Mitrovica has provided special registries detailing the use of mechanical restraints. Every time mechanical restraints are used, the date and time of use will be noted down.

The Ministry of Health in Prishtinë/Priština plans to establish a specific register detailing the eventual use of means of restraint in all in-patient psychiatric departments in Kosovo as well as to establish a regular reporting system on this issue to the Mental Health Unit at the Ministry of Health.

Safeguards

Paragraph 88

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.

See the response to the comments in paragraph 91

Paragraph 89

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.

See the response to the comments in paragraph 91

Paragraph 90

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.

See the response to the comments in paragraph 91

Paragraph 91

The CPT recommends that these precepts be implemented in all psychiatric/social welfare institutions in Kosovo.

The Ministry of Health in Prishtinë/Priština will issue an administrative circular to all in-patient psychiatric departments in Kosovo by 1 June 2011. The administrative circular will contain information on involuntary placement and applicable legislation and will establish a system of regular monitoring.

The administrative circular will also contain the following requests addressed to hospital authorities:

- All patients who are currently subject to an involuntary placement of a civil nature need to be reported to competent courts.
- All offenders who are under assessment or have been declared not to be criminally responsible and are placed for mandatory treatment must be reviewed by a court bi-annually.
- Request for appointment of an independent guardian need to be made to the court for all residents/patients who are unable to consent to their placement.

- Every patient/resident, placed voluntary or involuntary, has the right to refuse – either in person or through their guardian – treatment or any other medical intervention; and the person concerned or his/her guardian has to be systematically informed about the proposed treatment.

Paragraph 92

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.

The Regional Hospital in Mitrovicë/Mitrovica has hired two psychiatrists who will prepare such a brochure, in co-operation with the Head of the Psychiatric Ward. The brochure will contain information on the facility's routine and patients' rights.

The Mental Health Office of the Ministry of Health in Prishtinë/Priština will produce an information brochure setting out the facility's routine and patient's rights, including information on legal assistance, review of placement (and the patient's rights to challenge this), consent to treatment and complaints procedures, by 1 September 2011. The brochure will be issued to all patients on admission, as well as to their families. Patients/residents unable to understand this brochure will receive appropriate assistance.

D. Additional information for the Committee

Support of a sustainable local detention monitoring mechanism

OMiK further reports that on 10 May 2011, the Ombudsperson Institution, the Kosovo Rehabilitation Centre for Torture Victims and the Council for Defense of the Human Rights and Freedoms signed a cooperation agreement on the monitoring of detention premises. The agreement marks the first step towards establishing a transparent, sustainable, and regular local mechanism to monitor these premises, with the aim of preventing possible torture, mistreatment, or punishment. The signatories to the agreement will establish a Joint Task Force to coordinate their activities and issue recommendations on tackling possible shortcomings. From the outset, this initiative has been supported by the OSCE Mission in Kosovo, which in its public report from December 2010 also recommended setting up a locally owned detention monitoring mechanism.