

Report

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

from 13 to 20 February 2013

The Government of Montenegro has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2014) 17.

Strasbourg, 22 May 2014

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Copy of the letter transmitting the CPT's report

Ms Ana Vukadinović
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Permanent Representative of Montenegro
to the Council of Europe
18 allée Spach
67000 Strasbourg

Strasbourg, 17 July 2013

Dear Madam,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Montenegro drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Montenegro from 13 to 20 February 2013. The report was adopted by the CPT at its 81st meeting, held from 1 to 5 July 2013.

The recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Montenegrin authorities to provide **within six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the authorities to provide, in that response, reactions to the comments formulated in this report as well as replies to the requests for information made. As regards more particularly the requests for information in paragraphs 45 and 66, the Committee would like to receive this information **within three months**.

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

Yours faithfully,

Lətif Hüseynov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Montenegro from 13 to 20 February 2013. The visit formed part of the CPT’s programme of periodic visits for 2013 and was the Committee’s second visit to Montenegro.¹

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

- Haritini DIPLA (Head of the delegation)
- Sean AYLWARD
- Dan DERMENGIU
- Alfred KOÇOBASHI
- Andrés MAGNÚSSON
- Branka ZOBEC HRASTAR.

They were supported by Christian LODA and Elvin ALIYEV of the CPT's Secretariat, and assisted by:

- Cyrille ORIZET, psychiatrist, Georges Pompidou European Hospital, Paris, France (expert)
- Vesna BULATOVIĆ (interpreter)
- Tamara JURLINA (interpreter)
- Vladimir MARJANOVIĆ (interpreter)
- Jelena PRALAS (interpreter)
- Biljana OBRADOVIĆ (interpreter).

¹ The CPT carried out one periodic visit to Montenegro in September 2008. Further, the Committee visited Bar, Budva and Podgorica Police Stations, Spuž Prison Complex and Dobrota Special Psychiatric Hospital in the context of its periodic visit to the State Union of Serbia and Montenegro in September 2004. The reports on the 2004 and 2008 visits as well as the responses of the authorities are available on the CPT’s website (<http://www.cpt.coe.int/en/states/mne.htm>).

B. Establishments visited

3. The delegation visited the following places of detention:

Police establishments

- Bar Police Department
- Danilovgrad Police Station
- Herceg Novi Police Department
- Kotor Police Station
- Nikšić Police Department
- Podgorica Police Department
- Ulcinj Police Station

Prison establishments

- Institution for Sentenced Prisoners (KPD), Podgorica
- Remand Prison, Podgorica

Psychiatric establishments

- Dobrota Special Psychiatric Hospital (forensic psychiatric unit)

Social welfare establishments

- Komanski Most Institution for People with Special Needs.

C. Consultations held by the delegation

4. In the course of the visit, the CPT's delegation held talks with Duško MARKOVIĆ, Deputy Prime Minister and Minister of Justice, Raško KONJEVIĆ, Minister of the Interior, Suad NUMANOVIĆ, Minister for Human and Minority Rights, and Ranka ČARAPIĆ, Supreme State Prosecutor, as well as with senior officials from the Ministries of Justice, Interior, Health, and Labour and Social Welfare. In addition, talks were held with Sučko BAKOVIĆ, Ombudsman, and representatives from the National Preventive Mechanism (NPM).

The delegation also had meetings with non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and organisations with which the delegation held consultations is set out in Appendix II.

D. Co-operation between the CPT and the authorities of Montenegro

5. The co-operation received during the visit by the delegation from the national authorities, as well as from the management and staff at local level, was excellent. The delegation enjoyed rapid access to all establishments it wished to visit, was provided with information requested and documents it wanted to consult, and was able to speak in private with persons deprived of their liberty.

6. The principle of cooperation laid down in Article 3 of the Convention also requires that action be taken to improve the situation in the light of the Committee's recommendations. In this connection, the CPT welcomes the progress made since the 2008 visit at the Komanski Most Institution for People with Special Needs as regards the treatment and living conditions of its residents and activities offered to them. However, the CPT is concerned to note that a number of recommendations made by the Committee after its previous visit have still not been implemented. This relates in particular to the treatment of persons deprived of their liberty by law enforcement agencies. The findings of the delegation indicate that police ill-treatment remains a serious problem and that little action has been taken by the Montenegrin authorities for its eradication.

Having regard to Article 10, paragraph 2, of the Convention², the CPT urges the Montenegrin authorities to take effective action to implement all the recommendations made by the Committee in this report.

² Article 10, paragraph 2, of the Convention reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

E. Immediate observations under Article 8, paragraph 5, of the Convention

7. At the end of the visit the delegation made immediate observations, in pursuance of Article 8, paragraph 5, of the Convention, on three particularly urgent matters.

The first immediate observation concerned the deplorable state of repair and hygiene of the sanitary facilities at Pavilion A of the Institution for Sentenced Prisoners (KPD) at Podgorica. The delegation requested the Montenegrin authorities to renovate the above-mentioned facilities.

The second immediate observation was made in order to relocate a physically disabled inmate met by the delegation at Pavilion A of the KPD, who was permanently confined to his bed and relied on the assistance of a fellow inmate for his toilet and washing needs.

The third immediate observation concerned a mentally-ill prisoner who had been sentenced to compulsory psychiatric treatment in 2007 and who was still being held at the Remand Prison, despite a specific recommendation made by the Committee in the report on its 2008 visit to transfer that prisoner to appropriate medical facilities³.

8. On 8 and 17 May 2013, the Montenegrin authorities provided information on the action taken in respect of these immediate observations. This information will be considered in the relevant parts of this report.

F. National Preventive Mechanism

9. Montenegro ratified the Optional Protocol to the United Nations Convention Against Torture (OPCAT) in March 2009 and designated its Ombudsman as National Preventive Mechanism (NPM) in August 2011 following the entry into force of the Law On Ombudsman⁴. After the formation of the Advisory Body of experts (foreseen by the above-mentioned law as the organ assisting the Ombudsman in carrying out its activities as NPM), a Deputy Ombudsman was specifically appointed for the prevention of torture and two legal advisors within the Ombudsman's office were assigned exclusively to NPM related tasks and activities.

The NPM has already conducted numerous visits to places of deprivation of liberty which have resulted in the publication of two thematic reports on police and psychiatric establishments. NPM staff from the Ombudsman's office, as well as members of the Advisory Body, were conducting an assessment of the Remand Prison at the time of the CPT's visit.

³ See paragraph 68 of CPT/Inf (2010) 3.

⁴ At the time of the ratification of the OPCAT, Montenegro availed itself of the possibility of postponing the setting-up of an NPM for two years.

10. At the outset of the visit to Montenegro, the CPT's delegation held an exchange of views with the Ombudsman and his Deputy on prevention of torture. On that occasion, the CPT's delegation was informed that a distinct section within the Ombudsman's office had been created for NPM related tasks and that three additional legal advisors were being recruited within the same section (giving a total of five).

The CPT has noted the fact that the NPM functions are carried out by a separate unit within the Ombudsman's office, with its own dedicated staff. With reference to paragraph 32 of the Guidelines on national preventive mechanisms adopted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)⁵, **the Committee recommends that consideration be given to creating a specific budget head for the NPM's activities within the overall budget of the Ombudsman's Office. The CPT would also like to be informed of the budgetary means earmarked for the NPM's activities in 2013 and 2014.**

⁵ Which reads as follows: "Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget".

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

11. There have been several significant legislative changes since the CPT's previous visit in 2008. In July 2012, the Law on Internal Affairs was adopted which grants the Minister of Interior full operational responsibility over the Police, including as regards the appointment of the Director of Police (previously a prerogative of the Prime Minister).

Further, pursuant to Article 267 paragraph 1 of the new Code of Criminal Procedure (CCP), which entered into force in June 2010, it is the prosecutor who can order the detention of a criminal suspect for a period of up to 48 hours in a police detention facility. Within this period, the prosecutor can lodge an order to the investigative judge requesting that the suspect be remanded in custody. If the investigative judge refuses the order, the suspect must be released.

When a suspect is apprehended by the police, the prosecutor must be informed "immediately" and the police have 12 hours to either bring the person before the prosecutor or release him/her. If the prosecutor orders the detention of the person concerned, the 48-hour period referred to above commences as from the moment the prosecutor was notified of the apprehension.

12. The police may also, on their own initiative, summon a person for the purpose of collecting information⁶, and if the person concerned does not comply with that summons, he/she can be brought to the relevant police station (if this is specifically provided for in the summons). This procedure of collecting information may last no longer than six hours. The CPT notes in this regard that, according to Article 259, paragraph 3, of the CCP, if the summoned person refuses to provide information, he/she is free to leave the police station.

⁶ Issued pursuant to Article 259 (1) of the CCP and Article 50 of the Law on Internal Affairs. Article 259 of the CCP reads as follows:

(1) In order to gather information about a criminal offence or an offender, the police may summon citizens. The reason for the summoning shall be specified in the summons. A person who fails to appear as summoned may be brought in by force only where cautioned thereof in the summons.

(2) Gathering information from the person may last as long as necessary to get the information needed, but at the longest for six hours.

(3) Information may not be gathered from citizens by using force, or by means of deception or exhaustion, and the police shall respect the personality and dignity of each citizen. If citizens decline to give information they may not be prevented from leaving in which case the rule on the term referred to in paragraph 2 of this Article shall not be applicable.

(4) If a summoned citizen is accompanied to the police premises by an attorney-at-law, the police shall allow the presence of the attorney while gathering information from the citizen.

(5) An official annotation or record of the information provided shall be read to the person who provided the information. This person may raise objections which shall be entered in the official annotation or record by the police. A copy of the official annotation or record on the information provided shall be issued to the citizen upon request.

(6) A citizen may be re-summoned for the purpose of gathering information on the circumstances of another criminal offence or offender, whereas for the purpose of gathering information related to the same criminal offence may be brought in again involuntarily only with the approval of the public prosecutor.

(7) While proceeding in compliance with paragraphs 1 through 6 of this Article, the police may not hear citizens in the capacity of the accused, witness or expert.

Many persons interviewed by the delegation alleged that they had been ill-treated by the police during the above-mentioned procedure of collecting information. Consequently, this procedure must be surrounded by appropriate safeguards, including an effective right of access to a lawyer. In this respect, **the CPT recommends that the written summons includes a specific reference to Article 259, paragraph 4, of the CCP**, which stipulates that if the person concerned arrives with a lawyer, the police shall allow the lawyer to remain.⁷

Further, in order to ensure that persons summoned by the police for the purpose of collecting information are fully aware of their rights, **the CPT recommends that they be expressly informed in the summons, as well as at the very outset of the process of collecting information at the police premises, that they may leave the police station at any time if they do not wish - or no longer wish - to provide information. In addition, a special register should be opened in every police station in which all cases of persons entering the station following a summons are recorded.**

13. The delegation's findings during the visit suggest that the legal time-limits for police custody were generally respected. However, the delegation did come across cases in which there was a difference of several hours between the moment of the actual deprivation of liberty (as recorded by the police in custody registers) and the time subsequently indicated in the detention order issued by the relevant prosecutor.

The CPT recommends that the Montenegrin authorities take steps to ensure that the legal requirement of immediate notification to a prosecutor of any apprehension is complied with in practice, and that any period of detention subsequently ordered by a prosecutor starts as from the moment of that notification.

2. Torture and other forms of ill-treatment

14. As it had been the case during previous visits, the delegation which carried out the 2013 visit to Montenegro received many allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police. The great majority of the allegations referred to ill-treatment inflicted at the time of questioning with a view to extracting a confession or obtaining information. The ill-treatment alleged was in some cases of such severity that it could be considered to amount to torture.

The allegations consisted mainly of slaps, punches, kicks and blows with truncheons or other hard objects to various parts of the body. Some detained persons alleged that electrical discharge weapons had been used to apply shocks to them (primarily on the chest and arms) and several others claimed to have been repeatedly hit with a baseball bat on their chests while wearing a bullet-proof vest or directly on the soles of their feet. At Podgorica Police Department, a bullet-proof vest was found lying on a chair in one office of the crime inspectors section on property-related crimes, where certain persons claimed to have been hit with a baseball bat while wearing such a vest during questioning. Further, several persons gave accounts of threats of recourse to physical force in order to make them confess to a crime or to provide information.

⁷

The delegation found that such information was provided on occasion, but not always.

15. Reference is made, by way of example, to the following cases:

i. a person alleged that following his apprehension on the street in Tuzi on 28 January 2013 by plain clothes police officers, he had been slapped and punched in the face. The person claimed that when he told the prosecutor that his visible injuries were caused by the police, there was no reaction. His medical file at Podgorica Remand Prison contained an entry dated 31 January: "haematoma on the upper left eyelid";

ii. a person alleged that following his apprehension in Podgorica on 27 January 2013, he had been taken to Podgorica Police Department, where a police officer had struck him with the butt of a gun on his neck and other officers had slapped and punched him about the head and upper body. At the time of the visit, the person concerned displayed a 7/4 cm bruising over the left zygomatic and infra-temporal region as well as a 1/0,6 cm bruise over the lateral angle of the left eye (extending on both lids) which were assessed by the delegation's doctor as dating back to the time of police custody and consistent with the alleged physical ill-treatment;

iii. a person alleged that on 12 January 2013, following a summons to appear at Bar Police Station, he was punched and received blows with truncheons to the upper part of his body and was threatened with being strangled by a computer electrical cable by two crime inspectors who wanted him to confess to several burglaries. He was later taken to the Bar District Prosecutor by the same police inspectors who, he stated, warned him not to refer to the use of force inflicted on him. The person in question was part of a group of five remand prisoners charged in the same criminal case and being held separately; each of them was interviewed individually by the delegation and all of them alleged ill-treatment of a similar nature by crime inspectors at Bar Police Station;

iv. a person alleged that after being apprehended on 1 August 2012, he had been punched several times in the face and hit with a baseball bat on his legs, apparently with the view to extracting certain information, by police officers in the crime inspector's office at Ulcinj Police Station. His medical file at Podgorica Remand Prison stated that on admission he was found to bear "various hematomas around both eyes originating from police ill-treatment". A similar entry was found in the dedicated register of traumatic injuries.

v. a person alleged that following his apprehension on the Albanian border and transfer to Ulcinj Police Station on 17 June 2012, he had been subjected to various forms of ill-treatment for almost two days by plain clothes police officers (both in the cell and inspector's office) for the purpose of extracting a confession to a sexual related offence against a tourist. The ill-treatment consisted of slaps and punches to various parts of the body as well as blows with a baseball bat on the chest while wearing a bullet-proof vest. His medical file at Podgorica Remand Prison contained the following entry on 19 June 2012 upon his admission to prison: "3/1cm haematoma around both eyes".

16. The findings of the delegation during the 2013 visit indicate that persons deprived of their liberty still run an appreciable risk of being ill-treated by the police. In other words, the action taken so far by the Montenegrin authorities to stamp out ill-treatment by police officers has not yet been effective. In order to effectively tackle ill-treatment by police officers, it is necessary to have a multi-faceted approach aimed at changing the culture within the police that views ill-treatment as acceptable and ensuring that any allegations of ill-treatment are investigated promptly and thoroughly.

17. As to changing the culture, the CPT has noted that the Montenegrin Police Academy of Danilovgrad has introduced modules on international human rights and police ethics in its basic entry level courses for police officers as well as for in-service training programmes. However, the effect of such training will be undermined if newly graduated police officers receive different messages from experienced officers during their practical training in the field. It is interesting to note in this context that one detained person claimed that junior police officers were present when he was physically ill-treated by more experienced officers in order to show them “*how real policing is done*”.

The CPT calls upon the Montenegrin authorities at the highest level to deliver, at regular intervals, a clear message that all forms of ill-treatment of detained persons whether at the time of apprehension, transportation or during questioning (including at the time of so-called “informative talks”) are illegal, unprofessional and will be punished accordingly. This message should also be delivered throughout the entire period of basic and in-service training of police officers.

18. In response to the report on the 2008 visit, the Montenegrin authorities stated that police officers are obliged to report “to their superiors” about all facts which might indicate recourse to torture and/or inhuman and degrading treatment. However, for the obligation to report ill-treatment to be meaningful in practice, there must be in place a clear reporting line to a distinct authority outside of the police unit concerned as well as a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice. **The CPT recommends the adoption of such whistle-blower protection measures.**

19. In the report on its 2008 visit, the Committee examined in detail the investigations into several allegations of ill-treatment of persons deprived of their liberty and in the light of its findings recommended that immediate steps be taken to ensure that all investigations into cases involving allegations of ill-treatment fully meet the criteria of an “effective” investigation as established through the case-law of the European Court of Human Rights⁸. Regrettably, the response of the Montenegrin authorities to the CPT’s report on the 2008 visit did not provide substantial elements allowing an assessment of whether that recommendation had been implemented.

⁸ These criteria have also been highlighted in the CPT’s 14th General Report; they foresee that an investigation into allegations of ill-treatment should be thorough and comprehensive, prompt and expeditious, independent from those implicated in the events and exposed to public scrutiny.

20. In the course of the 2013 visit, the delegation examined one particular case concerning the alleged beating of X* in November 2008 at Podgorica Police Detention Unit⁹.

X was apprehended by the police on 30 October 2008 following his participation in mass street protests in Podgorica, and transferred to the police detention unit known as “*betonjerka*”. According to different testimonies, an unidentified group of some ten masked police officers from the special intervention unit entered his cell on two occasions (between 31 October and 2 November 2008) and subjected him to kicks, punches and blows with truncheons. He was seen by a doctor following his release from police custody on 5 November 2008 and a combination of 19 heavy and light injuries were recorded on his entire body (and later confirmed by a court appointed forensic expert). The Podgorica District Prosecutor initially launched an investigation on 6 November 2008 and issued an indictment on 1 September 2009 for torture and ill-treatment against six officers who had been on duty with custodial tasks in the detention unit during the period when X was in police custody¹⁰. In the course of the trial at the Podgorica District Court, one of the accused officers stated that the ill-treatment of X had been “*ordered from above*” and that it was inflicted on two occasions by unidentified members of the intervention police. The Podgorica District Prosecutor requested the Director of Police on 15 June 2010, and on two other occasions directly the Prime Minister himself¹¹, to indicate the names of the officers from the intervention police who were on duty on 31 October and 2 November 2008. However, the delegation was informed by the Podgorica District Prosecutor that no reply was ever received to any of those requests. And, as far as the delegation could ascertain, this is where the matter was left.

The Committee also notes that the Internal Control Unit (ICD) of the Police (see also paragraph 33) concluded in March 2009 that none of the police officers involved in the alleged beating of X had overstepped their authority.¹²

Clearly, the above conclusions as well as the unwillingness of the senior officials concerned to provide the prosecution service with information it needed for a criminal investigation is of great concern. At the same time, it can be asked whether the prosecution service had no other means at its disposal to obtain the information in question (e.g. through the issuing of a search warrant). **The CPT would like to receive the detailed comments of the Montenegrin authorities on these points.**

21. The CPT has already expressed its doubts to the Montenegrin authorities concerning the practice of special intervention forces wearing masks when conducting operations in a custodial setting.¹³ It is self-evident that the perpetrators of the physical ill-treatment inflicted upon X could have been identified, had the Montenegrin authorities put in practice the CPT’s recommendation that police intervention forces wear a nametag/identification number on their uniform. These points were also highlighted by the delegation in the course of its preliminary observations at the end of the 2013 visit. **The CPT calls upon the Montenegrin authorities to ensure that the above mentioned recommendation is implemented without delay.**

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

⁹ Currently not in use any longer.

¹⁰ The Podgorica District Court sentenced on 11 February 2013 three of the six accused police officers to seven months imprisonment for assisting in the infliction of heavy bodily injuries to X.

¹¹ As already mentioned in paragraph 11, the Director of Police was until July 2012 solely accountable to the Prime Minister.

¹² According to the public statement of a senior police investigator of the ICD at that time, the ICD had based its assessment solely on interviews with police officials and had not interviewed the alleged victim.

¹³ See paragraph 27 of CPT/Inf (2010) 3.

22. Many persons interviewed by the delegation stated that they had complained about ill-treatment by the police to the prosecutor or to the judge before whom they were brought, but this had met with no response. Apparently, even when a detained person displayed visible injuries, there was usually no follow-up by the prosecutor or judge. Others stated that they were intimidated by the accompanying police officers not to complain to the prosecutor or judge.

The CPT wishes to reiterate that if the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity. Therefore, it is self-evident that prosecutors and judges should take appropriate action when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before prosecutorial or judicial authorities allege ill-treatment, those allegations should be recorded in writing, a forensic medical examination should be immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should adopt a proactive approach; for example, whenever there are other grounds to believe that a person brought before him/her could have been the victim of ill-treatment, a forensic medical examination should be requested.

All these points were made in the report on the 2008 visit, but met with no response from the Montenegrin authorities.

The CPT recommends that the Chief State Prosecutor and the President of the Supreme Court of Montenegro recall firmly, through appropriate channels, that prosecutors and judges should act in accordance with the above principles.

23. At Bar, Danilovgrad, Podgorica and Ulcinj Police Stations and Departments, several unlabelled and non-standard objects such as baseball bats, bullet-proof vests, hammers, strips of electric cable, imitation firearms and knives were found by the delegation in rooms where detained persons had alleged they had been ill-treated, or threatened with ill-treatment, using such objects. In order to dispel speculation about improper conduct on the part of police officers and to remove potential sources of danger to staff and detained persons alike, any non-standard issue objects of this kind should be immediately removed from all police premises where persons might be held or questioned. By letter of 17 May 2013, the Montenegrin authorities affirmed that instructions had been issued to this effect.

The CPT welcomes this development. Further, **it recommends that appropriate steps be taken to ensure that any weapons or other items seized during criminal investigations are entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated store.**

24. The role played by prison health-care services in the prevention of ill-treatment by the police, through the systematic recording of injuries borne by newly-arrived prisoners has already been emphasised by the CPT in both its previous reports on the 2004 and 2008 visits.¹⁴

A register of traumatic injuries had been introduced at Podgorica Remand Prison since July 2012. However, the description of injuries both in the register and in the personal medical files of inmates was superficial; in particular, there was no description of the size, dimensions, colour of hematomas. Further, allegations - if any - were not systematically recorded and, as a consequence, no assessment was made of the consistency between allegations and injuries observed (see also paragraph 59 concerning medical screening upon admission to prison).

In two cases since July 2012, prison doctors at Podgorica Remand Prison had recorded injuries allegedly caused by police ill-treatment in the personal medical files of prisoners but had failed to record these cases in the dedicated register on traumatic injuries. Further, prison doctors still did not notify a prosecutor or other supervisory authority about injuries observed on persons arriving from a police establishment.

25. The CPT recommends the Montenegrin authorities to ensure that all newly-arrived prisoners receive a thorough medical examination and that the record drawn up after that examination contains:

- (i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);**
- (ii) a full account of objective medical findings;**
- (iii) the doctor's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the person concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

Further, the CPT recommends that existing procedures at Podgorica Remand Prison, as well as at Bjelo Polje Prison, be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a newly-arrived prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned.

The Committee also recommends the Montenegrin authorities to offer special training to health-care professionals on the manner in which medical screening of prisoners is to be performed, on the recording of any injuries observed and on the reporting procedure.

¹⁴ As regards more generally medical screening upon admission to prison, see paragraph 59.

3. Safeguards against ill-treatment of persons deprived of their liberty

26. As regards notification of custody, Article 29 of the Constitution entitles persons deprived of liberty to have a person of their choice informed “immediately” of their situation.

Most detained persons interviewed by the delegation confirmed that they had been offered the possibility to notify a third person of their detention shortly after their apprehension. However, a few persons claimed that the notification had been delayed for several hours.

The CPT is pleased to note that the relevant custody register form (“record of a detention of a person deprived of his/her liberty”) now devotes a specific section to the notification of custody to a third party, but the precise timing of the notification was not given. **The CPT recommends that custody registers include a reference to the exact timing of the notification of custody to a third party; further, detained persons should be provided with feedback on whether it has been possible to make the notification.**

27. The CPT is concerned to note that notwithstanding the explicit provision in the Constitution that persons deprived of their liberty have the right to notify a third party immediately of their situation, Article 180 of the CCP states that notification of custody must be given at the latest *within 24 hours* from the moment of deprivation of liberty. **The CPT would like to receive the Montenegrin authorities’ observations on this discrepancy between the provisions of the Constitution and those of the CCP.**

28. The right of persons deprived of their liberty to have access to a lawyer (including of one’s choice) is also guaranteed by the Constitution and Article 12 of the CCP. In particular, Article 261, paragraph 4, of the CCP states that if a detained person’s own lawyer does not appear within four hours, the police and prosecutor will facilitate contact with an *ex officio* counsel.

As regards persons summoned by the police for the purpose of collecting information, Article 259, paragraph 4, stipulates that if the person concerned arrives with a lawyer, the police shall allow the lawyer to remain.

29. The possibility for criminal suspects to contact a lawyer, including of their own choice, was confirmed in the relevant custody registers countersigned by the detained person. In practice, it would appear that most detained persons chose to be assisted by an *ex officio* lawyer. However, many persons met by the delegation stated that they had only met the *ex officio* lawyer for the first time just before the initial hearing in front of the investigative judge.

The CPT recommends that further efforts be invested by the Montenegrin authorities - in consultation with the Bar Association - in order to ensure that *ex officio* lawyers perform their functions in a diligent and, more specifically, timely manner. It is particularly important that the lawyer meets the detained person in private at an early stage of the procedure and is present during questioning of the person concerned.

As regards persons summoned for the purpose of collecting information, reference is made to the first recommendation in paragraph 12.

30. With regard to the right of access to a doctor, Article 25 of the Law on Internal Affairs stipulates that police officers will facilitate medical assistance to the persons requiring it, through referral to a medical institution. The information sheet distributed to detained persons in police establishments also refers to the right of detained persons to request medical care from a doctor (including of one's choice).

The practice observed by the delegation confirmed that those detained persons who requested medical assistance were generally brought to the hospital by the police or were visited by doctors employed by the Ministry of the Interior. Nevertheless, some persons who alleged physical ill-treatment by the police claimed that their requests for medical assistance had been denied, police officers stating that they would receive a medical check-up upon admission to the remand prison.

The CPT notes the adoption of legal provisions (Article 268, paragraph 6, of the CCP) on the possibility for criminal suspects, legal counsel or family members to request a medical examination in front of the State Prosecutor. However, persons may be detained for up to 12 hours before being brought before the prosecutor.

The CPT reiterates once again its recommendation that persons deprived of their liberty by the police be expressly guaranteed the right of access to a doctor (including a doctor of their own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) from the very outset of their deprivation of liberty. The relevant provision should make clear that a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests.

31. As regards information on rights, information sheets in several languages containing reference to all the above-mentioned safeguards against ill-treatment had been introduced. However, several persons interviewed by the delegation claimed that they had either not been provided with the information sheet or had only received it when placed in a detention cell (i.e. after their appearance in front of the State Prosecutor), which might be up to 12 hours after their actual deprivation of liberty. **The CPT calls upon the Montenegrin authorities to take steps to ensure without further delay that all persons detained by the police - for whatever reason - are fully informed of their rights as from the very outset of deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the above-mentioned information sheet.**

4. Monitoring and complaints procedures

32. As already mentioned in paragraph 9, the Montenegrin Ombudsman's office, in its capacity as National Preventive Mechanism, undertakes the monitoring of police detention facilities. Unannounced visits to police detention facilities are carried out once a month and a report with recommendations was published in 2011; and its conclusions were the subject of a debate before Parliament in June 2012.

However, the delegation gained the impression that this monitoring activity mainly focused on the material conditions of police custody. **The Committee trusts that in future the NPM will explore in greater depth the manner in which persons are treated when apprehended and questioned by police officers. This will require, *inter alia*, detailed examination of the application in practice of safeguards against ill-treatment as well as confidential interviews with persons remanded in prison who have recently been in police custody.**

33. The system of police complaints and control procedures in Montenegro has undergone a few changes since the last CPT's 2008 visit. In particular, the Internal Control Department (ICD) of the Police operates, as of July 2012, under the direct authority of the Minister of Interior and is formally autonomous from the Police Directorate. According to Article 16 of the Law on Internal Affairs, citizens can address complaints to the ICD within 30 days of the event and the ICD has to deliver a decision within 30 days which can be appealed to the Minister. The ICD is currently composed of 15 police officers operating nationwide as focal points in different police departments. In parallel citizens can also address complaints about police ill-treatment directly to the prosecutor or to the five-member Parliamentary Council of Civic Control over Police Activities¹⁵.

5. Conditions of detention

34. The conditions of detention in the police cells visited by the CPT's delegation were distinctly better than during the 2008 visit. In particular, renovation work at Bar and Danilovgrad Police Stations had addressed deficiencies highlighted by the CPT in its report on that visit; cells possessed a means of rest with mattresses and blankets, a functioning ventilation system and a call bell.

However, a number of shortcomings remained. At Kotor Police Station, a double occupancy cell measured only some 6 m² and had no access to natural light; at Herceg Novi Police Station, cells were cold and had no access to natural light and only weak artificial lighting; at Ulcinj Police Station, the artificial lighting in all cells was not working, and there was only minimal access to natural light and poor ventilation in the basement cells. Further, in none of the police establishments visited were criminal suspects offered outdoor exercise.

The CPT takes note of the measures taken by the Montenegrin authorities to improve detention conditions in police stations following the 2008 visit. **The Committee recommends that steps be taken to remedy the deficiencies in the police stations referred to above; as for the 6 m² cell at Kotor Police Station, it should only be used for single occupancy. Further, the Committee recommends that the Montenegrin authorities take measures to ensure that all persons held in police custody for 24 hours or more are offered outdoor exercise.**

¹⁵ The members represent the Bar Association, the Medical Chamber, the Association of Lawyers, the Law Faculty of Podgorica University and the NGO sector. They are elected by the Parliament for a period of five years and generally hold monthly sessions.

B. Prisons

1. Preliminary remarks

35. The Sector for the Execution of Criminal Sanctions (ZIKS), previously an autonomous government agency, was brought under the aegis of the Ministry of Justice in 2009. The prison system continues to comprise four establishments: the Institution for Sentenced Prisoners (KPD), the Remand Prison and the Prison for Short Sentences, all located in the Spuž Complex on the northern outskirts of Podgorica, and the Prison of Bjelo Polje. The delegation paid follow-up visits to the KPD and the Remand Prison.

36. The *Institution for Sentenced Prisoners* at Podgorica, the main national prison establishment for prisoners sentenced to more than six months (official capacity 470), was accommodating 729 inmates at the time of the visit (including 19 women and five juveniles). The establishment had closed and semi-open sections.

The Remand Prison, located in an independent three storey building, accommodated 295 remand prisoners at the time of the visit (including five women in a newly constructed dedicated annex) for an overall capacity of 350. Renovation work was on-going on different floors of the building and, as a result, several cells were not in use.

37. In February 2013 the overall prison population of Montenegro stood at 1,324 while the official capacity of the prison estate was 1,070. The CPT noted that the proportion of remand prisoners among the overall population had decreased to 25 percent (from around 60 percent in 2008) as a consequence of the new CCP limiting the period of pre-trial detention to a maximum of one year (previously three). As a result, the problem of overcrowding in the Remand Prison had been alleviated as compared to the situation observed in 2008.

38. Nevertheless, as already indicated, the official capacity of the prison system was being exceeded and overcrowding was observed in parts of both the KPD and the Remand Prison (in the latter mainly due to the ongoing refurbishment works). The Montenegrin authorities informed the delegation at the outset of the visit that, following the 2011 amendments to the Law on the Execution of Criminal Sanctions, a special organisational unit had been created within the Ministry of Justice in charge of the supervision of inmates serving alternative sanctions¹⁶. Further, a probation system was being introduced in the Montenegrin penitentiary system through an EU-funded twinning project.

39. As regards the upgrading of the prison estate, the Montenegrin authorities have decided to construct a prison for long sentences in Podgorica and an additional building at Bjelo Polje Prison. **The CPT would like to receive further details of these plans (capacities of the new establishments, projected entry into service etc.).**

¹⁶ These relate in particular to the supervision of sentenced persons on liberty during release on parole, suspended sentence, suspended sentence with supervision, community-service sentence and other measures stipulated by the law.

40. As already stressed by the CPT in its previous reports to the Montenegrin authorities, providing additional accommodation is unlikely to offer a lasting solution to the problem of prison overcrowding, at least not without adopting, in parallel, policies designed to limit or modulate the number of persons sent to prison. Consequently, the measures referred to in paragraph 38 are steps in the right direction.

The CPT recommends that the Montenegrin authorities pursue their efforts to combat prison overcrowding taking into account the relevant recommendations of the Committee of Ministers of the Council of Europe, in particular Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules. The Committee would like to receive updated information on the impact of the measures being taken to tackle prison overcrowding.

2. Ill-treatment

41. Most of the inmates interviewed by the delegation at the Institution for Sentenced Prisoners and the Remand Prison stated that they had been treated correctly by staff. Nevertheless, some allegations of physical ill-treatment or of verbal abuse of inmates by staff were received at both establishments. The alleged physical ill-treatment consisted of kicks, punches, slaps or blows with truncheons to various parts of the body by prison officers. A few inmates alleged that ill-treatment of the type described above had been inflicted on them several times by prison officers at the Remand Prison for no apparent reason other than the nature of their criminal offence.

One inmate at the Remand Prison alleged that on 27 September 2012, after being reprimanded by a prison officer for placing his feet on a wooden bench in the courtyard, he was taken to the main corridor on the ground floor of the establishment, and subsequently punched several times in the head and body. The inmate in question was later hospitalised at the Podgorica Clinical Centre but the medical documentation related to the incident was not included in his file. After his family had filed a criminal complaint against the prison officer, the prisoner was interviewed by a crime inspector from the Danilovgrad Police Station on the subject of his allegations.

The CPT recommends that a firm message be delivered to staff at both the Institution for Sentenced Prisoners (KPD) and the Remand Prison that physical ill-treatment and verbal abuse of prisoners are not acceptable and will be punished accordingly. Further, the Committee would like to be informed of the outcome of the investigation into the above-mentioned case of alleged ill-treatment at the Remand Prison on 27 September 2012.

42. The information gathered by the delegation indicated that episodes of inter-prisoner violence and intimidation were not infrequent at the Institution for Sentenced Prisoners (KPD). In particular, several inmates in Pavilion C of the KPD stated that they had been victims of racketeering and threats of use of force by a group of inmates from Pavilion C. Family members of inmates had apparently also been threatened. Inmates previously held in Pavillion C also alleged that they had been subjected to similar threats. The recently-appointed Director of the KPD appeared to be determined to tackle inter-prisoner violence, and police criminal investigators from the Danilovgrad Police Station had recently interviewed prisoners who were allegedly victims of intimidation.

43. The Committee wishes to emphasise once again that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The prison authorities must act in a proactive way to prevent violence by inmates against other inmates. In this context it is of paramount importance that the prison authorities be alert to signs of trouble and both resolved and properly trained to intervene when necessary. **The CPT recommends that the Montenegrin authorities invest more efforts in tackling and eradicating inter-prisoner violence and intimidation, with particular emphasis on the Institution for Sentenced Prisoners. In this connection, the Committee would like to be informed of the outcome of the investigation by the police referred to in paragraph 42.**

The delegation was informed that in late 2012 the Sector for the Execution of Criminal Sanctions (ZIKS) had adopted a strategy on inter-prisoner violence. **The CPT would like to receive a copy of the strategy as well as information on the steps taken to implement it.**

3. Conditions of detention

a. Institution for Sentenced Prisoners

44. The 729 inmates accommodated in the KPD at the time of the visit were held in five different pavilions (A, B, C, D, F) and two sections designated for women and juveniles, as well as a semi-open unit.

With the notable exception of Pavilion A, material conditions of detention could be considered as satisfactory in terms of state of repair, hygiene, ventilation and heating in cells. Further, the translucent shutters placed in front of the cells' windows permitted adequate access to natural light. Inmates (including women and juveniles in the newly constructed units) were generally accommodated in cells containing four or six beds (measuring respectively 16 and 25 m²) equipped with a fully partitioned sanitary annexe (including a toilet and a washbasin). Prisoners could access shower rooms on each floor twice a week, and had access throughout the day to a community room (generally measuring around 50 m²) equipped with wooden benches, TV, fridge and cooker. In sum, material conditions in Pavilions B, C, D and F and in the units for women and juveniles were on the whole of a good standard. However, **it would be preferable to reduce the permitted occupancy rates of the 16/25 m² cells so as to offer a minimum of 4 m² of living space per prisoner not counting the area taken up by the sanitary annexe.**

45. Pavilion A, on the other hand, had never been renovated since it was first brought into service in 1956 and offered extremely poor conditions of detention. To begin with, it was severely overcrowded at the time of the visit. The 118 inmates were held in four dormitories accommodating up to 28 inmates in 58 m², with on average less than one meter between the rows of bunk-beds; the presence of electric stoves and wires for drying clothes hanging on them rendered the overall environment even more cramped. The pavilion was in general in a run-down condition and, more specifically, the communal sanitary facilities (washbasins, toilets and showers) were in a deplorable state of repair and hygiene. This prompted the delegation to invoke Article 8, paragraph 5, of the Convention and request the Montenegrin authorities to renovate the sanitary facilities of Pavilion A as a matter of urgency.

In their letter of 17 May 2013, the Montenegrin authorities state that a tender procedure for the renovation work has been announced. **The CPT wishes to receive within three months a full account of the renovation work actually carried out.**

46. The delegation was informed that the planned refurbishment of Pavilion A, which had already been approved, had been indefinitely postponed for lack of financial resources. **The CPT calls upon the Montenegrin authorities to reactivate the plans for the renovation of Pavilion A. Pending the carrying out of that renovation, immediate steps should be taken to reduce as far as possible the occupancy levels in the four existing dormitories, the objective being to meet the minimum standard of 4 m² of living space per prisoner.**

47. The delegation found a physically disabled inmate (with an amputated left arm and paralysis of the lower body) in one improvised cell (formerly used for the storage of bedding) located on the ground floor of Pavilion A. He was permanently confined to his bed and relied on the assistance of a fellow inmate for his toilet and washing needs. The prison doctor had recommended that the inmate be transferred to a specialised institute where he could be better cared for and receive the necessary physiotherapy, but the supervisory judge had decided not to implement that recommendation for resource-related reasons.

The delegation invoked Article 8, paragraph 5, of the Convention and requested the authorities to relocate this prisoner to more suitable accommodation where he could be properly cared for. In their letter of 8 May 2013, the Montenegrin authorities indicate that a wheelchair has been purchased for the inmate. In the CPT's view, this is not sufficient; **it calls upon the Montenegrin authorities to implement the prison doctor's recommendation and transfer the inmate to a specialised institution where he can be better cared for.**

48. As regards activities, inmates confirmed to the delegation that they continued to benefit from an open-door regime during the day with cell doors open until 7 p.m. (9 p.m. during summertime). Further, all prisoners were offered outdoor exercise of two hours per day in various yards in the grounds of the prison. There was also a basketball court and an open-air gym with some weightlifting machines to which inmates had access once a week.

However, at the time of the visit only some 125 of the 522 male inmates placed in the closed section of the KPD had access to a remunerated activity, in one of the four workshops (locksmith, sewing, woodwork and metalwork) producing items for demand-driven commercial purposes or in maintenance work and distribution of food activities. Due to the limited working opportunities and the total lack of vocational and recreational activities, the positive analytical work carried out by the treatment department¹⁷ was not being exploited to its full potential. Several inmates told the delegation that the periodic conversations held with an educator from the treatment department was the only real source of relief from the otherwise impoverished regime to which they were subjected.

49. The situation described above is of serious concern to the Committee. Purposeful activities are of crucial importance for the well-being of any prisoner and as regards more specifically sentenced prisoners, they are essential to render meaningful a term of imprisonment.

The CPT recommends that the Montenegrin authorities increase their efforts to offer constructive and purposeful activities to all sentenced prisoners at the closed section of the KPD and, in particular, provide more work opportunities (preferably of a vocational value). The employment situation in the prison setting should not be exclusively dictated by market forces; an active state policy, based if necessary on special incentives for placing production orders in prisons, should be put in place.

b. Remand Prison

50. Material conditions at the Remand Prison had improved since the CPT's last visit in 2008, in large part as a result of the reduction in the inmate population (295, as compared to 512 in 2008). Moreover, a new female section had been inaugurated (with a capacity of 35 places), two cells had been re-adapted for the accommodation of juvenile remand offenders and the entire third floor of the prison (hosting the Health Care Centre) had been renovated.

Renovation work was still continuing at the time of the delegation's visit and, as a result, conditions of detention varied distinctly from one part of the prison to another. All cells were equipped with beds, a table with chairs, cupboards for storing food and personal items and a semi-partitioned sanitary annexe including a toilet and a washbasin. The renovated double occupancy cells located on the third and second floors (measuring some 10 m²) offered on the whole adequate conditions. However, the larger unrenovated cells were fetid and badly ventilated, with signs of damp on the walls. These cells were also still affected by overcrowding, with eight prisoners sharing 25 m² including the space taken up by the semi-partitioned sanitary annexe. Further, inmates complained about the lack of supply of cleaning products for the maintenance of the cells. These shortcomings were exacerbated by the fact that inmates on remand were spending systematically 23 hours each day locked in their cells.

¹⁷ The organogram of the treatment department of the KPD comprised one head co-ordinating a team of 27 advisors (16 educators, 5 registry officers, 3 social workers, 1 criminologist and 2 psychologists). At the time of the visit, there were five vacancies among the educators.

The CPT recommends the Montenegrin authorities to pursue vigorously the renovation of the Remand Prison. In this context, the minimum standard of 4 m² of living space per prisoner, not counting the area taken up by in-cell sanitary annexes, should be respected and the sanitary annexes should be fully partitioned (i.e. up to the ceiling). Further, steps should be taken to ensure that inmates are regularly provided with cleaning products for the maintenance of their cells.

51. The only regular out-of-cell activity on offer was outdoor exercise for one hour per day, taken in one of the four good-sized courtyards. Two exercise bikes had been made available by the prison administration in two small single readapted cells and could be used for one hour a week by inmates in need of physical rehabilitation. For the rest of the time, prisoners still remained in a state of inactivity in their cells, their only form of distraction being playing board games, reading newspapers and watching TV.

The CPT wishes to stress once again that it is unacceptable to inflict systematically, for months on end, an impoverished regime of the kind described above on remand prisoners, persons who – it should never be overlooked – benefit from the presumption of innocence. The legitimate interests of ongoing investigations can be properly safeguarded without resorting to such a crude approach.

The CPT recommends that the Montenegrin authorities take the necessary steps, including if appropriate of a legislative nature, to offer remand prisoners out-of-cell activities of a purposeful nature; any restrictions on access to such activities for a given prisoner should be based on an individual assessment and be of the shortest possible duration.

c. female prisoners

52. The material conditions of detention of the 24 female prisoners (i.e. five on remand custody and 19 sentenced) accommodated at the Remand Prison and the closed section of the Institution for Sentenced Prisoners were on the whole more favourable than those of their male counterparts. Both female remand and sentenced sections had been recently constructed as separate buildings within the respective prison establishments. Remand female prisoners were accommodated in spacious, well ventilated and lit cells equipped with a fridge, electric plate and TV. The sentenced female prisoners in the closed section of the KPD were held in clean and spacious cells in the recently inaugurated dedicated unit and could use a community room and a separate laundry. All female prisoners had access to showers on a daily basis (and twice for those engaged in work). The facility in the KPD also offered the possibility of adapting cells for pre and post-natal care of inmates, if needed.

53. However, in terms of activities, women on remand generally spent 23 hours confined to their cells. They were not offered any other activity apart from one hour of outdoor exercise per day. **The recommendation made in paragraph 51 applies equally to female remand prisoners.**

Most of the sentenced female prisoners were engaged in a remunerated activity (maintenance work, gardening, laundering and librarian); they also had the possibility of using two tailoring machines which were out of order at the time of the visit. However, there was no possibility for female prisoners to access the workshops, as these were reserved exclusively for the male prisoners and the small number of women meant it was not considered viable to establish a workshop exclusively for them. In the CPT's view such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women. Women deprived of their liberty should enjoy access to meaningful activities (work, training, education and sports) on an equal footing with their male counterparts.

Depending on their classification grade, sentenced female prisoners were also allowed a certain range of privileges such as the permanent use of mobile phones and home leaves of various durations.

The CPT recommends that vocational and recreational activities adapted to the needs and capabilities of female sentenced prisoners be organised on an equal footing with their male counterparts at the KPD as well as in any other establishment holding such inmates.

d. juveniles and young adults

54. The recently inaugurated juvenile section in Pavilion F of the Institution for Sentenced Prisoners was accommodating five young adults at the time of the visit (the youngest being 19)¹⁸. The section, which had a separate entrance from the one for adult sentenced prisoners, consisted of a corridor with six cells (four double occupancy and two accommodating up to six inmates), a large community room and a 2,000 m² dedicated courtyard equipped with sports equipment, benches and shelters for inclement weather. The cells were spacious and in a good state of repair.

However, the inmates complained that they were not allowed to decorate and personalise their accommodation, and the delegation observed itself that the cells were identical in design to those of adult prisoners. The CPT considers that young persons deprived of their liberty should benefit from positive and personalised conditions of detention; in addition to being of an adequate size, well lit and ventilated, juveniles' sleeping and living areas should be properly furnished, well-decorated and offer appropriate visual stimuli.¹⁹ Consequently, **the CPT recommends the Montenegrin authorities to allow juveniles and young adults more scope to personalise and decorate their section in Pavilion F of the KPD.**

¹⁸ On reaching the age of 18, a sentenced prisoner may remain in the juvenile section up to the age of 23.

¹⁹ See paragraph 29 of the 9th General Report CPT/Inf (99) 12.

55. In terms of activities, inmates in the juvenile section were offered three hours of outdoor exercise per day and were engaged in work activities (maintenance and the workshops) together with male convicted prisoners. However, the activities on offer were far from meeting the requirements of Articles 169 and 171 of the new Law on Treatment of Juveniles in Criminal Proceedings²⁰. The care of young persons in custody requires special efforts to reduce the risks of social maladjustment. In light of this, juveniles and young adults, regardless of their period of detention, should be offered a full programme of education, sport, vocational training and other purposeful activities. **The CPT recommends that the Montenegrin authorities develop such a programme for inmates of the juvenile section of the KPD, in accordance with the legislation in force.**

4. Health-care services

56. At the time of the 2013 visit, the Health Care Centre located on the third floor of the Remand Prison remained responsible for the health-care requirements of the inmate population of the Spuž Prison Complex. For financial and operational reasons, previously-announced plans to construct a new Special Prison Hospital (with a capacity of around 100 places) as the main health-care facility for inmates at the national level were now in doubt. **The CPT would like to receive updated information on the status of the Special Prison Hospital project.**

57. The personnel of the Health Care Centre comprised the Head Doctor (a specialist in internal medicine), one full-time general practitioner and 9 nurses.²¹ This is insufficient for an inmate population of more than 1,300. It is noteworthy that given the demands placed on them, the nurses were obliged to work a considerable amount of overtime. There was a full-time dentist at the Health Care Centre and other staff included a dental nurse, one physiotherapy nurse and several technicians (two laboratories, one pharmacy and one radiology). However, psychiatric resources were clearly inadequate; one external psychiatrist was visiting the Prison Complex twice a week on a voluntary basis.

The CPT recommends that the Montenegrin authorities reinforce the staffing levels at the Health Care Centre:

- **by a third doctor (preferably a specialist in internal medicine);**
- **by significantly increasing the number of nursing staff;**
- **by ensuring the presence of psychiatrists to the equivalent of a full-time post.**

Step should also be taken to discontinue the practice of nurses working 24-hour shifts. Such a working schedule will inevitably have negative effects on professional standards and can put at risk the health of inmates.

²⁰ Article 169, paragraph 1, of the Law on Treatment of Juveniles in Criminal Proceedings reads: "During their juvenile detention term, juveniles shall be enabled the following: education, vocational training and qualifying for professions that suit their competence, talents, and their prior school and work experience." Article 171, paragraph 5, of the same law stipulates: "A juvenile serving a juvenile detention term shall have the right to take part in cultural, sports, and other suitable activities".

²¹ In addition, a general practitioner visited Bjelo Polije Prison. Two nurses were present, on 24-hour shifts, at all times in the Remand Prison and the KPD.

58. The level of hygiene in the premises of the Health Care Centre, which included two consultation rooms at the Remand Prison and four consultation rooms in the Institution for Sentenced Prisoners, was adequate. The pharmacies were kept in an orderly manner and appeared to be adequately furnished. However, the Health Care Centre's medical equipment (X-ray machine, ultrasound suite, dental surgery cabinets, physical therapy rehabilitation machines and three electrocardiographs) was outdated and defective. Further, there was no defibrillator at the Health Care Centre.

The CPT recommends that the Health Care Centre be equipped with modern and functional medical equipment necessary for the provision of health-care services to prisoners. Steps should also be taken to ensure that prisoners enjoy access to specialised medical examinations according to their health-care needs.

59. According to law²², medical screening of newly arrived prisoners shall be performed immediately upon their admission. However, the delegation found that in practice it often took place only several days after the time of admission. For example, out of the 26 inmates already admitted to the Remand Prison in the course of 2013, only five had been screened within 24 hours of their admission.

No specific guidelines were in place as regards screening of prisoners for transmissible diseases; testing for such diseases was, as a rule, conducted on a case-by-case basis. **The CPT recommends that such guidelines be adopted and implemented at the level of the Sector for the Execution of Criminal Sanctions (ZIKS).**

Medical screening of newly arrived prisoners is essential, in particular to prevent the spread of transmissible diseases, detect inmates who may constitute a suicide risk and ensure the recording in good time of any injuries. Consequently, every newly admitted prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his/her admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission. The medical screening could also be performed by a fully qualified nurse reporting to a doctor.

The CPT welcomes the fact that following its visit, a new instruction was issued stipulating that newly-arrived prisoners have to be medically examined within 24 hours of their admission.

As regards more specifically screening for and recording of injuries, reference should be made to the recommendations in paragraph 25. **These recommendations apply equally *vis-à-vis* inmates who are medically examined following a violent incident in prison.**

²² See Article 18 of the Rulebook on the Enforcement of Pre-trial Detention.

60. Prisoners requiring specialised care, could be transferred to the Clinical Hospital of Podgorica²³; however, the delegation noted that the number of such transfers had significantly decreased in the course of 2012. While access to ophthalmology and urology care was relatively quick, surgery and orthopaedic care was subject to significant delays. For example, it took 45 days to arrange for specialised treatment (surgery, chemo and radiotherapy) for a female prisoner with a diagnosed thyroid cancer, and four months to arrange surgery for an inmate with a femoral fracture. Another sentenced inmate, for whom a panel of experts had urgently recommended surgery in relation to a chronic bone infection in June 2012, was still waiting for the operation at the time of the delegation's visit.

It appeared to the delegation that the Podgorica Clinical Hospital had no clearly-defined responsibility and certainly no economic incentive to provide prompt and thorough specialised health care to prisoners.

The CPT recommends that the Ministry of Justice together with the Ministry of Health take the necessary steps to ensure that the ZIKS is properly linked to the public health system so that prisoners who need specialist care in a hospital setting receive that care in a timely manner.

61. As regards medical records, including personal files of inmates kept in the main infirmary of the Health Centre in the Remand Prison, the entries in those files were very cursory (with no detail as to the complaint, diagnosis or examination); according to the nurses, this was the result of the understaffing and the extreme workload imposed on them (see paragraph 57). The same applied to the filling of registers on hunger strikes, laboratory investigations, traumatic injuries, X-ray examinations, and logbook on daily activities.

The CPT trusts that the quality of medical recording will improve once the staff resources of the Health Care Centre have been reinforced, as recommended by the Committee (see paragraph 57).

62. As regards confidentiality of medical consultations, according to the internal house rules, custodial staff should only be present during such consultations if this was assessed as necessary by the health-care personnel. However, the delegation found that a prison officer was systematically present in the course of medical examinations of inmates. **The CPT reiterates its recommendation that all medical examinations of prisoners be conducted out of the hearing and – unless the health-care staff member concerned requests otherwise in a particular case – out of the sight of prison officers.**

²³ The Montenegrin authorities informed the delegation that a computerised system of reservation of specialist consultations for inmates at the Podgorica Clinical Hospital would soon be put in place.

63. The confidentiality of medical records was not always respected. The personal medical documentation concerning inmates was at times being shared with the prison director upon his request. Doctors acknowledged that such a practice was well established but appeared not to be aware that they were infringing the rights of their patients (prisoners). Further, the delegation observed that personal medical files of sentenced female prisoners were kept on the shelves of the consultation room of pavilion F of the KPD and were potentially accessible to custodial staff.

The confidentiality of medical documentation should be observed in prisons in the same way as in the community at large. Particular reference should be made to Recommendation R (98) 7 of the Council of Europe's Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison, according to which medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole²⁴. The CPT would like to stress that respect for confidentiality is essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship. **The CPT recommends that the Montenegrin authorities put in place a clear policy for the confidentiality of medical records in prison in light of the above observations.**

64. As regards psychiatric care, it should be recalled that in comparison with the general population, there is a high incidence of psychiatric symptoms among prisoners. Consequently, a doctor qualified in psychiatry should be attached to a prison health-care service and some of the nurses employed there should have had training in this field.

A psychiatrist from the Podgorica civil health-care centre, working on a *pro-bono* basis, attended the Remand Prison and the KPD approximately once a week for a few hours and held consultations with inmates requesting her assistance. This was clearly far from sufficient for the needs of the prison population; at the time of the delegation's visit 39 inmates had requested a consultation with the psychiatrist for her next visit. Further, a total of 17 inmates had been sentenced to a mandatory psychiatric treatment measure in a health-care institution and their needs could not be met in the current conditions at the Spuž Prison Complex.

Inmates with serious psychiatric disturbances were accommodated, as a rule, in a special cell in the Health Care Centre under constant CCTV surveillance.

65. The CPT has already recommended that the presence of a psychiatrist at the Spuž Prison Complex be reinforced (see paragraph 57). **It further recommends that the Montenegrin authorities take the necessary steps to ensure that any prisoner who is assessed to be seriously mentally ill is transferred without delay to a hospital facility which is adequately equipped and possesses appropriately trained staff.**

²⁴

See paragraph 13 of the Appendix to Recommendation No. R (98) 7.

66. One of the 17 prisoners sentenced to a mandatory psychiatric treatment measure had been met by the CPT's delegation at the time of the 2008 visit. Notwithstanding the recommendation made by the Committee²⁵, this prisoner continued to be held in conditions of solitary confinement at the time of the 2013 visit. The prisoner in question was held on his own on the third floor of the Remand Prison in a single cell measuring some 10 m², equipped with basic furniture but without TV and radio. He was permanently locked in the cell save for 30 minutes of outdoor exercise on a daily basis, which he usually took alone and only occasionally with a couple of other inmates. He spent the rest of the day reading magazines and newspapers. One of the delegation's psychiatrists found that this prisoner displayed active psychotic symptoms.

The inmate received regular visits from the psychiatrist, who had repeatedly recommended his transfer to a psychiatric institution. However, the Director of the Dobrota Psychiatric Hospital in Kotor told the delegation that he was opposed to the transfer of the inmate in question to his institution in light of the presence of some relatives of the victims of the prisoner among the staff of the hospital. The Montenegrin authorities had been negotiating the possible transfer of the inmate to Serbia, in light of both his citizenship and criminal record in that country.

The delegation invoked Article 8, paragraph 5, of the Convention and requested that the authorities transfer this prisoner to an appropriate psychiatric facility without further delay. In their letter of 17 May 2013, the Montenegrin authorities indicate that the necessary legal procedures for the transfer of the above-mentioned inmate to a psychiatric institution in Serbia have almost been completed. **The CPT would like to receive confirmation within three months that this transfer has been effected.**

67. As regards prisoners with drug addiction related problems, the Health Care Centre provided substitution therapy to those inmates (i.e. three) who had a previously prescribed therapy before admission. Prisoners with abstinence related disturbances were transferred, if needed, and treated at the Podgorica Clinical Hospital or at Dobrota Psychiatric Hospital. Apart from that, other activities such as a screening for hepatitis C and group sessions for recovery from addiction were in place. However, such initiatives were only covering a limited number of inmates and, in the case of the psychotherapeutic sessions, were not co-ordinated with the Health Care Centre. **The CPT recommends the Montenegrin authorities to put in place a coherent policy on drug addiction-related problems in a prison setting, at the national level.**

68. In terms of external control of health-care provision in prisons, the Ministry of Health does not perform any external oversight of the quality of health services provided. Apart from a general duty of the prison health-care personnel to address periodic activity reports to the Ministry of Health, there does not seem to be any other institutional link with that Ministry. **The CPT recommends that the Montenegrin authorities develop a system of effective quality control by the Ministry of Health of the provision of health care in prisons.**

²⁵ See paragraph 68 of CPT/Inf (2010) 3.

5. Other issues of relevance to the CPT's mandate

a. prison staff

69. For a prison establishment to operate effectively, it must possess a sufficient number of properly trained staff. In this connection, the CPT notes that the ratio of staff to inmates at the Institution for Sentenced Prisoners was very low at the time of the 2013 visit, i.e. 167 prison officers for 729 inmates.²⁶ Moreover, a large proportion of those prison officers were junior staff who had recently been recruited after having followed a four-month induction course.

The CPT recommends that the custodial staff resources at the KPD be reviewed, in the light of the above remarks.

70. The CPT was also concerned to note that in both the Remand Prison and the KPD, prison officers were working 24 hour shifts. As the Committee has already indicated, such a working schedule will inevitably have negative effects on professional standards. **The CPT recommends that the practice of prison officers working 24-hour shifts be discontinued.**

71. The Police Academy in Danilovgrad continued to organise specialised training courses (e.g. on prevention of drug addiction) for the penitentiary staff. However, **it would be desirable to expand the range of courses currently on offer so as to cover themes such as conflict prevention and communication skills as well as dealing with juveniles deprived of their liberty.**

b. means of restraint

72. Means of restraint could be applied in the prison establishments visited, in order to control over-agitated and violent inmates and to prevent the escalation of any incidents, as well as to prevent acts of self-harm²⁷. Registers in both the Remand Prison and the KPD revealed that frequent recourse was made to mechanical restraint of inmates. Such a measure was generally enforced in disciplinary cells and consisted of fixating an inmate with metal ankle- and/or wrist-cuffs to a bed.

It is of particular concern to the CPT that there are currently no written instructions on the use of means of restraint (and in particular mechanical restraint) of an inmate in a prison setting; as a consequence, the placement, recording and supervision of inmates subject to such measure are based on informal procedures.

²⁶ By way of comparison, there were 126 prison officers for 295 inmates at the Remand Prison.

²⁷ Article 61 of the Law on Execution of Criminal Sanctions provides for the use of the following means of restraint or coercion in a prison setting: physical force, fixation, separation, truncheons, water cannons, specially trained dogs, chemical means and firearms.

73. The recourse to mechanical restraint of inmates was more frequent at the Remand Prison (ten cases since 1 July 2012) than at the KPD, where the measure had been applied six times during the same period. In terms of duration, according to the information gathered, inmates at the Remand Prison were frequently fixated for periods of days, and in one case the measure had lasted for 22 days. At the KPD, the delegation found that inmates could be fixated for periods of a few hours up to two days.

In the CPT's opinion, the application of mechanical restraint for periods of days at a time cannot have any justification and amounts to ill-treatment.

74. Interviews with inmates and staff as well as an examination of the relevant documentation indicated that inmates subjected to mechanical restraint were not systematically seen by a doctor, but only upon request of the inmate concerned or custodial staff. As regards the monitoring by staff of inmates to whom mechanical restraint was applied, the delegation was told that there was no need for regular checks since the disciplinary cells in which the measure was enforced were equipped with CCTV.

The delegation also found that inmates whose mental state required their hospitalisation could be mechanically restrained for days in a disciplinary cell. For example, in one recent case, the visiting psychiatrist had requested the Nikšić investigative judge on 23 November 2012 to expedite the transfer of a fixated inmate with suicidal impulses at the Remand Prison to the Dobrota Psychiatric Hospital. The psychiatrist reiterated her request on 27 November and 4 December 2012 but the inmate was only transferred on 6 December.

As for the quality of the recording of measures of mechanical restraint, it varied from establishment to establishment. In particular, at the Remand Prison, the register on means of restraint only indicated the time of the start but not the cessation of its application.

75. The CPT acknowledges that it may exceptionally be necessary to resort to mechanical means of restraint in a prison setting. However, in the Committee's opinion the approach to fixation in prisons should take into consideration the following principles and minimum standards:

- Regarding its appropriate use, mechanical restraint should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail satisfactorily to contain those risks; it should never be used as a punishment or to compensate for shortages of trained staff; it should not be used in a non-medical setting when hospitalisation would be a more appropriate intervention.
- Any resort to mechanical restraint should be immediately brought to the attention of a medical doctor in order to assess whether the mental state of the prisoner concerned requires his/her hospitalisation or whether any other measure is required in the light of the prisoner's medical condition.
- The equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint, and staff must be trained in the use of the equipment. Metal cuffs should never be used.
- The duration of fixation should be for the shortest possible time (usually minutes rather than hours).

- Persons subject to mechanical restraint should receive full information on the reasons for the intervention.
- The management of any establishment which might use mechanical restraint should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved²⁸.
- A special register should be kept to record all cases in which recourse is had to means of restraint; the entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the person who ordered or approved it, and an account of any injuries sustained by the prisoner or staff.
- Further, the person concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint. This discussion should always involve a senior member of the health-care staff or another senior member of staff with appropriate training.

The Committee recommends that the Montenegrin authorities take the necessary steps to ensure that all the principles and minimum safeguards set out above are applied in prison establishments resorting to mechanical restraint, including through the adoption of the necessary regulations and the provision of appropriate training to staff.

c. discipline

76. The most severe disciplinary sanction envisaged by Montenegrin law is placement in a disciplinary cell for a maximum of 15 days in the case of remand prisoners and 30 days for sentenced inmates; in cases where a prisoner commits a disciplinary offence during the period of suspension of a previous disciplinary sanction, the maximum period of solitary confinement as a disciplinary punishment could amount to 45 days. As the Committee has already commented in previous reports, a period of solitary confinement of 30 days, let alone 45, is very high. Solitary confinement can have an extremely damaging effect upon the mental, somatic and social health of those concerned. Consequently, the CPT considers that the maximum possible period of solitary confinement as a punishment should not exceed 14 days for a given offence and should preferably be lower²⁹.

That said, the delegation noted that, in practice, disciplinary sanctions of or exceeding 15 days were rarely enforced in their entirety and were often interrupted following a medical intervention or for reasons of lack of capacity in the disciplinary unit. Further, the delegation gathered no evidence indicating excessive recourse to disciplinary punishment at either of the establishments visited.

²⁸ In particular, an inmate subject to mechanical restraint should have his/her mental and physical state continuously and directly monitored by an identified and suitably trained member of staff who has not been involved in the circumstances which gave rise to the application of the measure. The staff member concerned should offer immediate human contact to the immobilised person, communicate with him/her and rapidly respond to his/her personal needs. Such individualised staff supervision should be performed from within the room or very near the door (within hearing and so that personal contact can be established immediately).

²⁹ See, in this regard, paragraph 56(b) of the 21st General Report on the CPT's activities (CPT/Inf (2011) 28).

Nevertheless, **the CPT recommends that the relevant provisions of the Law on Execution of Criminal Sanctions and the CCP be revised in order to lower the maximum period of solitary confinement for a given disciplinary offence to 14 days. Further, if a prisoner has been sanctioned to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 14-day stage.**

77. As regards the disciplinary procedure, the law provides the inmates concerned with the rights to be informed in writing of the disciplinary charges against them, to an oral hearing before the imposition of a disciplinary sanction, to be assisted by a lawyer and to appeal against any sanction imposed to the Director of the Sector for the Execution of Criminal Sanctions (ZIKS) and subsequently to a court. And these rights appeared to be generally respected in practice.

However, the legislation still does not provide for the right of prisoners to call witnesses on their behalf and to cross-examine evidence given against them. **The CPT recommends that the legislation be amended accordingly.**

78. At both the Remand Prison and the KPD, a doctor was required to certify that an inmate could be placed in solitary confinement as a disciplinary sanction.

Medical practitioners in prisons act as the personal doctors of prisoners and ensuring that there is a positive doctor/patient relationship between them is a major factor in safeguarding the health and well-being of prisoners. As the CPT has repeatedly stressed, the practice of prison doctors certifying that a prisoner is fit to undergo solitary confinement as a punishment is not conducive to promoting that relationship.³⁰ In fact, the Committee considers that medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement in a prison environment. On the other hand, health-care staff should be very attentive to the situation of prisoners placed under solitary confinement and should visit such prisoners on a regular basis, at least once a day, and provide them with prompt medical assistance and treatment as required.³¹

The CPT recommends that the Montenegrin authorities issue clear guidelines about the role of prison doctors in relation to disciplinary matters, in the light of the above remarks.

79. As to the conditions in the disciplinary units, the eight cells of the disciplinary unit at the KPD offered generally satisfactory conditions of detention. Each cell measured around 9 m² including a fully partitioned sanitary annexe, and possessed a bed, mattress and blankets, a table with chair and a call-bell. Access to natural light was ensured through a sizeable window. However, ventilation was poor due to the lack of an air-extraction system and the fact that cell windows were permanently closed. Prisoners could access individual exercise yards (measuring around 20 m²) for one hour a day, but the yards were still not provided with shelter against inclement weather notwithstanding a previous recommendation of the Committee on this subject.

³⁰ See for example the CPT's 21st General Report, CPT/Inf (2011) 28, paragraphs 62 and 63.

³¹ The legislation provides that the prison doctor and the head of shift should pay a daily visit to any prisoner placed in solitary confinement for disciplinary purposes.

Two cells located on the ground floor of the Remand Prison were used for disciplinary purposes, each of which measured 9 m²; they were equipped with a bed, toilet and washbasin but lacked a table and chair. Access to natural light was adequate and artificial lighting and ventilation sufficient. However, both cells were located in the still unrenovated part of the prison, and the walls were damp and flaking. Prisoners placed in disciplinary confinement were offered one hour of outdoor exercise every day in one of the prison yards.

The Committee recommends that steps be taken at the KPD to:

- **improve the ventilation in the disciplinary cells;**
- **install shelters against inclement weather in the exercise yards of the disciplinary unit.**

The Committee also trusts that the material deficiencies observed in the two cells of the Remand Prison used for disciplinary purposes will be remedied in the course of the on-going renovation work in the establishment.

d. contact with the outside world

80. The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world as often as possible; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature.

81. The visit entitlements for prisoners have not changed since the CPT's 2008 visit.

Sentenced prisoners may receive two visits of 60 minutes per month as well as an additional exceptional visit of 30 minutes upon the approval of the director of the establishment. Married sentenced prisoners are also allowed one conjugal visit of four hours per month. According to the 2011 legislation, sentenced juveniles may have four visits per month of 30 minutes.

As regards remand prisoners, whether adults or juveniles, they are permitted a weekly visit of 30 minutes, subject to the authorisation of the competent judge. The CPT was pleased to note that the vast majority of remand prisoners were allowed visits.

Sentenced prisoners could make telephone calls at their expense on a daily basis, in dedicated telephone booths. Remand prisoners could access the telephone 30 minutes per week upon judicial authorisation; as with visits, most remand prisoners had received such authorisation.

82. In the interest of safeguarding their relationships with family and friends, the CPT considers that all categories of prisoners should be entitled to the equivalent of at least one hour of visiting time per week (i.e. four hours per month). Preferably, prisoners should be able to receive a visit every week. **The CPT recommends that the relevant legislation be amended accordingly.**

83. The main visiting facilities were of a good standard at the KPD. The premises were spacious and the arrangement of tables and chairs ensured adequate privacy. In contrast, the flaky walls of the three rooms used for conjugal visits were in need of urgent repainting and the furniture (beds, bedside tables and mattresses) was in a poor state of repair and hygiene; **the CPT recommends that the three rooms be refurbished.**

84. At the Remand Prison, the authorities had recently reconverted one room for the purpose of prisoners meeting, on a monthly basis, with their families and children of less than 14 years of age. Conditions in the room allowed for natural human contact. This is a welcome development.

However, no changes had been made to the rooms devoted to ordinary visits, which remained of a booth-type nature and prevented any type of physical contact with visitors.

The Committee considers that all prisoners should be able to receive visits from their family members under reasonably open conditions; the use of screened visits should be the exception, not the rule, and based exclusively on a security concern of an appreciable nature. **The CPT recommends that the Montenegrin authorities review the visiting arrangements at the Remand Prison, in the light of the above remarks.**

e. complaints and inspection procedures

85. The delegation observed that boxes for addressing complaints to the Ombudsman had been placed in all sections of the Institution for Sentenced Prisoners as well as at the Remand Prison. The Ombudsman told the delegation that complaints were collected on a regular basis by his staff and processed according to their subject matter. However, several prisoners at both establishments complained to the delegation that they had been verbally threatened by custodial staff for inserting written complaints in the boxes.

The Committee recommends that the Montenegrin authorities send a clear message to staff that any intimidatory action against prisoners who address complaints to external bodies will be punished accordingly.

86. As regards inspection procedures, in addition to the Ombudsman in its capacity as National Preventive Mechanism (NPM) (see also paragraph 9), NGOs and investigative judges³² were regularly visiting the establishments at the Spuž Prison Complex. An NGO had recently concluded a memorandum of understanding with the Sector for the Execution of Criminal Sanctions (ZIKS) allowing access for its monitors to all prison establishments, in order to verify the level of implementation of previous recommendations put forward by different bodies such as the Ombudsman and the CPT. The Committee welcomes such initiatives.

³² Investigative judges were visiting exclusively the Remand Prison.

C. Psychiatric establishments

1. Preliminary remarks

87. In the course of the 2013 visit, the CPT's delegation carried out a targeted follow-up visit to Dobrota Special Psychiatric Hospital (which had been visited by the Committee in 2004 and 2008) in order to examine the treatment of forensic psychiatric patients. With an official capacity of 241 beds, the Hospital was accommodating 250 patients at the time of the visit.³³ Of them, 35 were civil involuntary patients, 54 had been subject to compulsory psychiatric treatment by a court under Section 69 of the Criminal Code and four had been transferred from prison as they had developed psychiatric problems.

88. The delegation focused its attention on the *forensic psychiatric unit (FPU)* which was accommodating 22 male patients at the time of the visit (the rest of the forensic patients being distributed in "chronic" wards). The average stay in the FPU lasted about two years.

89. All the patients interviewed by the delegation spoke favourably about the manner in which they were treated by staff, and the atmosphere in the Unit appeared generally tension-free.

2. Living conditions

90. Living conditions in the FPU had remained basically the same as those described in the report on the 2008 visit to the establishment³⁴; they were on the whole of an adequate standard. The delegation also noted that the problem with patients' access to the toilet at night had been resolved by installing a call system in each room to attract the attention of a security guard.

91. However, patients were still not provided with personal lockable space in which to keep their belongings, a situation already criticised in 2008. Further, the lack of any decoration in the patients' rooms and in communal areas, as well as the presence of barred metal gates at the entrance to the rooms, generated an austere and carceral atmosphere. **The CPT recommends that steps be taken at the FPU to remedy these deficiencies, in order to create a more personalised and therapeutic environment.**

92. More generally, the CPT considers that, with its existing structure (e.g. the absence of a secure room), the FPU is not adapted to handle severely agitated and/or potentially violent or dangerous patients (such patients are usually transferred to the Hospital's acute ward until they calm down). Therefore, forensic patients with the most disturbed behaviour are at risk of being refused admission to the FPU and may instead be kept in prison.

³³ According to the Hospital's management, notwithstanding the numbers, the establishment was in fact not overcrowded as some fifteen patients would be on home leave at any given time.

³⁴ See CPT/Inf (2010) 3, paragraph 87.

In this connection, the delegation was informed that the idea of constructing a separate forensic psychiatric institution near Kotor had been abandoned, and plans were apparently now afoot to build such an institution within the perimeter of the Spuž Prison Complex. **The CPT recommends that these plans be accorded a high priority; it would like to receive an update on progress in this respect.**

93. As regards regime, there was an open-door policy inside the Unit³⁵ and patients spent a significant part of the day watching television or playing board games in the common room and smoking in a small fenced yard (which had a shelter against inclement weather) attached to the Unit. Outdoor exercise was offered for two hours per day (one hour in the morning and one hour in the afternoon) in a spacious courtyard where patients could also play basketball. Further, a few patients visited the Hospital's indoor fitness room three times per week (for one hour each time).

3. Treatment and staff

94. Apart from appropriate medication and medical care, treatment for forensic psychiatric patients should involve a wide range of therapeutic, rehabilitative and recreational activities and should be aimed at both controlling the symptoms of the illness and reducing the risk of reoffending. Rehabilitative psycho-social activities should prepare patients for an independent life or return to their families; occupational therapy - as an integral part of the rehabilitation programme - should aim at raising motivation, developing learning and relationship skills, supporting the acquisition of specific competences and improving self-image. It is also desirable to offer the patients education and suitable work.

95. The psychiatric treatment provided to patients at the FPU was, to a large extent, based on pharmacotherapy. There were generally no problems with the supply of medication and, as far as the delegation could ascertain from interviews with patients and consultation of their medical files, the types and dosage of medication prescribed to patients were adequate.

However, the offer of psycho-social rehabilitative activities remained underdeveloped. At the time of the visit, only one-third of the Unit's patients attended occupational therapy sessions (production of carton boxes, souvenirs, etc.), three times per week. For the rest of the patients, psychotherapeutic care was limited to regular meetings with the psychiatrist and a weekly one-hour group therapy with a psychologist (in which apparently few patients showed interest). It should be noted in this context that, despite specific recommendations repeatedly made by the CPT, the Hospital continued to employ only two occupational therapists, three psychologists and three social workers.

³⁵ The rooms were only locked at night.

96. The delegation noted that each patient of the Unit had an individual written treatment plan which had been prepared with the involvement of the patient concerned. It is also noteworthy that training had been provided to nursing staff on how to draw up such plans. However, as already indicated, in practice, the offer of therapeutic and rehabilitative activities - which constitutes a major pillar in the implementation of any individual treatment plan - was extremely limited.

97. The CPT calls upon the Montenegrin authorities to increase the number of patients in the FPU taking part in therapeutic and rehabilitative activities adapted to their needs and to offer a wider range of such activities. This will necessitate a considerable reinforcement in the number of staff qualified to provide such activities.

98. The CPT noted that the health-care staffing levels at the Hospital had remained largely unchanged since the 2008 visit.³⁶ That said, there had been some increase in the number of nurses (83 nurses, as compared to 69 nurses in 2008) and the delegation was told that a further 19 posts were still to be filled. This had also led to a slight increase in the number of nurses attached to the FPU; during the 2013 visit, the Unit employed two to three nurses in the morning shift (i.e. from 7 a.m. till 3 p.m.), as opposed to one or two nurses during the previous visit.

However, on the whole, the nursing presence on the FPU remained at very low levels. For example, every day from 3 p.m. till the following morning and during weekends the Unit was staffed with only one nurse who had to rely on the assistance of two security guards in supervising and addressing the clinical needs of 22 of the most challenging psychiatric patients in Montenegro.

99. As regards the security staff responsible for guarding the FPU, the delegation was informed that a new private security company had been contracted since February 2013 and that training had been provided to new recruits (short courses on enhancing their communication skills with psychiatric patients and employing manual techniques *vis-à-vis* aggressive patients). Two guards were present inside the Unit, both day and night.³⁷

As the CPT has stressed in the past, the presence of uniformed guards inside a psychiatric facility can hardly be seen as contributing to the emergence of a therapeutic environment.

100. The CPT recommends that the Montenegrin authorities take steps, as a matter of urgency, to significantly increase the nursing presence in the FPU. The Committee trusts that this will enable the management of Dobrota Psychiatric Hospital to put an end to the practice of employing security staff inside the FPU.

³⁶ See CPT/Inf (2010) 3, paragraph 95.

³⁷ The only equipment they carried was walkie-talkies.

4. Means of restraint

101. It should be indicated at the outset that, from the consultation of relevant documentation and interviews with patients, no indications were found of excessive resort to means of restraint in the FPU.

Patients could be subjected to immobilisation by means of five-point fixation to a bed with canvas belts (usually applied in combination with chemical restraint) or seclusion. The duration of immobilisation was said to be between two and three hours, and patients were apparently offered a debriefing after having been the subject of a restraint measure. Any resort to such a measure had to be authorised by a psychiatrist in each specific case and was recorded in a comprehensive central register as well as in the patient's file. That said, **the time at which the restraint measure ended was sometimes not indicated in the central register.**

102. As the Unit did not possess any dedicated facility in which means of mechanical restraint could be applied, patients had to be taken to one of the two secure rooms located at the Hospital's admission ward. One of these rooms had a connecting window opening to the nurses' office allowing for direct supervision by staff. However, the second room was located on the other side of the corridor and - according to staff - when used for immobilisation, the door of the room had to be kept open in order for nurses to be able to observe the restrained patient from their office. As a result, the patient concerned could be seen by other patients.

The CPT recommends that steps be taken at Dobrota Psychiatric Hospital to ensure that a restrained patient is not exposed to other patients, unless he/she explicitly expresses a wish to remain in the company of a certain fellow patient.

5. Safeguards

103. The legal provisions governing the procedures for placement and discharge for persons subject to a compulsory treatment order under the criminal legislation have not changed since the CPT's previous visits.³⁸ It is recalled that the relevant legal framework is set out in Sections 69 (custody in a medical institution) and 70 (treatment outside prison) of the Criminal Code. The measure of compulsory psychiatric treatment in custody is imposed by the court for an indefinite duration; the court can however cancel the measure, once it ascertains that the need for such a measure has ceased.

104. From the examination of a number of files, it appeared that court hearings concerning the imposition of compulsory psychiatric treatment usually took place with the participation of the patient and a lawyer (in most cases, appointed *ex officio*). The decision of the court is subject to appeal within eight days.

³⁸ The relevant legal framework was described in paragraph 331 of the report on the CPT's 2004 visit (CPT/Inf (2006) 18).

105. Pursuant to Section 80 of the Law on the Execution of Criminal Sanctions, the medical institution in which a patient subject to a compulsory psychiatric treatment order has been placed is obliged, at least once a year, to inform the court concerned about the state of health of the patient. The delegation gained the impression that, in practice, the Hospital's psychiatric assessment reports suggesting that compulsory treatment should continue did not usually lead to a hearing by the relevant court. And even in those rare cases when a hearing was held, the patient concerned was as a rule not present during the hearing.

The delegation was informed that the regular assessment reports sent by the Hospital to the competent court were prepared exclusively by the establishment's doctors, but that if the patient wished to challenge the Hospital's report (which apparently happened very rarely in practice), an alternative assessment had to be conducted by a forensic expert from another psychiatric institution.

The CPT recommends that the Montenegrin authorities take steps to ensure that patients subject to a compulsory treatment order have the effective right to be heard in person by the judge concerned when the need to continue the compulsory treatment is reviewed. The Committee would also like to receive confirmation (with an indication of the legal basis) that in the context of the review procedure, the patient is entitled to ask for an independent forensic assessment.

106. The CPT understands that there is no legal requirement to obtain consent to treatment from forensic psychiatric patients.³⁹ The court order imposing a compulsory treatment on a patient in a psychiatric establishment is itself considered as authorisation for administering treatment without the patient's consent.

The CPT must stress once again that the admission of a person to a psychiatric establishment on an involuntary basis – *be it in the context of civil or criminal proceedings* – should not be construed as authorising treatment without his/her consent. Every competent patient, whether voluntary or involuntary, should be fully informed about the envisaged treatment and given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. **The Committee recommends that the Montenegrin authorities take the necessary steps to review the relevant legislation in the light of these remarks.**

107. In addition to occasional inspections carried out by relevant bodies of the Ministry of Health, the Hospital was visited by the Ombudsman (twice in the past four years) and some NGOs (once or twice a year). Further, representatives of the Ministry of Justice paid regular visits to the Hospital in order to monitor the execution of court sanctions on compulsory medical measures. However, at the time of the visit, there was no independent outside body carrying out continuous monitoring of patients' care.

³⁹ As regards civil involuntary patients, see Section 17 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons.

The CPT reiterates its recommendation that steps be taken to ensure that visits to Dobrota Psychiatric Hospital (and, as appropriate, to other psychiatric establishments) are carried out, on a regular basis, by a body which is independent of the health authorities.⁴⁰ This body should be authorised, *inter alia*, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations.

108. Forensic patients could, in principle, send complaints to a number of external bodies (such as the Ombudsman, the Ministry of Health, the Ministry of Justice, etc.). Further, a complaints box was available to the patients of the Unit, which was accessible to the members of the Council for the Protection of Mentally Ill Persons. The latter informed the Director of the Hospital about any serious irregularities. However, **the members of the Council are still appointed by the Executive Board of the Hospital upon the Director's proposal and therefore cannot be considered as truly independent.**⁴¹

109. The existing arrangements at the FPU for patients' contact with the outside world appeared to be satisfactory. They could receive family visits and be granted home leave. Further, patients were allowed to use their mobile phones twice a day.

⁴⁰ See also Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities (to which Montenegro is a Party).

⁴¹ See CPT/Inf (2010) 3, paragraph 107.

D. Social welfare establishments

1. Preliminary remarks

110. The CPT's delegation carried out a follow-up visit to the *Komanski Most Institution for People with Special Needs* in order to review progress made towards the implementation of the recommendations made by the Committee after the 2008 visit.⁴²

At the time of the 2013 visit, the Institution was holding 116 residents for an official capacity of 138 places. Resident accommodation was now provided in three separate wards, namely Wards A, B and C, respectively accommodating men (59), women (48) and minors (9).

111. From the outset, it should be stressed that the delegation received no allegations, and did not gather any other evidence, of ill-treatment of residents by staff at the Institution. The atmosphere at the establishment was relaxed and the delegation witnessed that staff had a caring attitude towards residents. Further, although the delegation heard of occasional friction between residents, inter-resident violence did not appear to be a substantial problem.

This constitutes a distinct improvement as compared to the situation observed in 2008.

112. The delegation was informed that there had been only three discharges from the Komanski Most Institution during the past three years (residents returned to their families), mainly due to the lack of appropriate structures in the outside community. It was noted in this connection that there were plans to set up community-based "group homes" for more able residents of the Institution (and that suitable residents had already been selected) in order to prepare them for more independent living. **The CPT would like to receive updated information on this issue.**

2. Living conditions

113. Material conditions in the Komanski Most Institution had been the subject of severe criticism by the CPT in the report on the 2008 visit, as had a number of other matters. The Committee had called upon the Montenegrin authorities to carry out a comprehensive review of the situation at the Institution and to draw up a detailed action plan for reforming the establishment.⁴³

Consequently, the CPT was pleased to note during the current visit that the Institution had undergone a complete refurbishment programme and had transformed into a facility which offered its residents living conditions of a satisfactory standard.

⁴² See CPT/Inf (2010) 3, Section II.D.

⁴³ *Ibid*, paragraph 130.

114. All the residents' rooms had adequate lighting, heating and ventilation and were of a sufficient size for their intended occupancy (e.g. four-bed rooms measuring some 18 m²). They were furnished with beds (with full bedding), bedside cupboards, a table and lockable wardrobes. Further, residents were allowed to keep their personal belongings (television sets, radio/CD players, etc.). The wards had pleasantly decorated activity rooms, equipped with tables, chairs and a television set. However, **most of the residents' rooms in Wards A and B still lacked decoration.**

The level of hygiene, including in the sanitary facilities, was on the whole adequate. Residents' clothes and bed linen were regularly washed in the establishment's laundry. There were also enough waterproof mattresses and disposable pads for incontinent residents as well as special (anti-decubitus) mattresses for bedridden residents. Further, some of the sanitary facilities had been fitted with modern equipment for residents with reduced mobility.

115. The main doors of Wards A and B remained unlocked throughout the day as did the doors of the residents' rooms.⁴⁴ Residents thus had ready access to the establishment's spacious grounds, and indeed many of them seemed to be spending a large part of the day in the park outside. They had been supplied with warm clothing and footwear appropriate for the season. Further, during the summer and winter holidays, one-week trips to resorts were organised for some 20-25 residents.

3. Staff and care of residents

116. Staffing levels at the Komanski Most Institution had been increased compared to the situation in 2008 (75 as opposed to 45 staff members) and included 12 nurses, 20 carers, six defectologists⁴⁵, five occupational therapists, a physiotherapist, a psychologist and a social worker. In addition, as of 15 January 2013, the staff complement had been reinforced by eight university graduates (in psychology, social work, defectology, ergotherapy, etc.) undergoing a nine-month paid internship at the Institution in the framework of a government programme.

117. In each of Wards A and B, one nurse and two carers were present at all times of the day, seven days a week. Further, there were one or two defectologists and one occupational therapist from 7 a.m. till 9 p.m. on weekdays.

In Ward C, a carer was present at all times (a nurse was called from another ward in case of need), and one defectologist was present on weekdays from 7 a.m. till 9 p.m.

In addition, the psychologist, the physiotherapist, the social worker and the chief nurse were in charge of the whole Institution from 7 a.m. to 3 p.m. on weekdays. During weekends, one defectologist and one occupational therapist were on duty for the whole establishment from 8 a.m. till 8 p.m.

⁴⁴ It is noteworthy that some more able residents had keys to their rooms.

⁴⁵ Defectologists were formally in charge of organising structured educational activities; however, in practice, they were also closely involved in the provision of occupational and recreational activities to residents.

The CPT is of the opinion – and this opinion was fully shared by the Institution’s management – that, taking into account the profile of the residents held (many of whom were severely mentally and/or physically disabled), the number of ward-based staff, in particular of nurses and carers, was still insufficient.

118. Psychiatric treatment was provided by a neuropsychiatrist who visited the Institution once a week or on an on-call basis. It appeared that the supply of psychiatric medication did not pose a problem. As regards somatic care, the delegation was informed that, following the resignation of the only visiting general practitioner as of 1 January 2013, a full-time post of GP had been allocated to the Institution, which, however, was still vacant at the time of the visit.

The Institution was also visited on a regular basis by various other medical professionals (a dentist, a specialist in physical medicine and a gynaecologist). Further, the delegation was informed that as of 1 March 2013, there would also be regular visits by an orthopaedist.

That said, the delegation gained the impression that there was clearly scope for reinforcing the provision of specialist care. This was particularly true for ophthalmological consultations. Admittedly, arrangements were in place to organise the transfer of residents to an outside medical establishment. However, in practice, such transfers rarely took place (e.g. five residents in the past three years). It will suffice to mention that during 2012 two residents with impaired vision became totally blind without having been seen by an eye-care specialist.⁴⁶ Such a state of affairs is not acceptable.

As regards dental care, due to the manner in which dental files were kept, the delegation was unable to form a clear idea as to the nature and frequency of consultations by the dentist.

119. The CPT recommends that the Montenegrin authorities review the staffing situation at the Komanski Most Institution in the light of the above remarks. In particular, steps should be taken to:

- **increase substantially the number of nurses and carers;**
- **fill the vacant post of general practitioner without delay (preferably on a full-time and at least half-time basis);**
- **ensure that there are regular consultations by an ophthalmologist.**

Further, the Committee would like to receive confirmation that the Institution now receives regular visits by an orthopaedist. It would also like to be provided with information as regards the number of consultations held by the dentist during the last three months and the exact nature of the treatment provided to residents (e.g. extractions, fillings, dentures, etc.).

⁴⁶ One of them (aged 36) was admitted to the Institution in 1987, and the second resident (aged 46) in 2010. The delegation also learned that another resident (aged 34) with sight impairment had not had a consultation with an ophthalmologist since her admission to the establishment in 1990.

120. Considerable efforts were being made at the Institution to involve residents in rehabilitative and therapeutic activities, including access to occupational therapy. At the time of the visit, about half of the adult residents were involved in such activities or were provided with work.⁴⁷

More specifically, some fifteen residents worked on the Institution's premises (kitchen; laundry; cleaning and gardening duties; etc.). Further, a dozen female residents took part in the embroidery workshop for 2-3 hours per day. Half of them apparently came every day, and some even attended both the morning and afternoon sessions. Some ten male residents took part in the woodwork, painting and packaging workshops for 2-3 hours per day. In the activity rooms of Ward A, some twenty male and ten female residents took part in supervised occupational/educational activities (mainly painting, writing or reading), usually for one to two hours per day.

In addition, the establishment's physiotherapy centre⁴⁸ was attended every day by some ten residents for individual sessions of up to 30 minutes. The delegation was told that some 40 residents were regularly involved in physiotherapy, either in the centre or in their rooms.

121. While welcoming the progress made in this area since 2008, **the CPT recommends the Montenegrin authorities to persevere in their efforts to enhance the programme of educational, occupational and recreational activities for residents. This will, in the first place, require more staff qualified to provide such activities (e.g. defectologists, occupational therapists, physiotherapists, etc.).**

122. The delegation learned that individual rehabilitation plans had been developed by a multidisciplinary team for the Institution's minor residents with the guidance of a consultant from the United Nations Children's Fund (UNICEF). The plans set short-term (such as the development of cognitive and social abilities and the promotion of family contacts) and medium-term objectives (such as placement into a community-based group home or return to the family) and were reviewed every three months. For each objective, the plans indicated the goals to be achieved, the therapeutic means to be used and the staff members responsible.

The delegation was informed that individual rehabilitation plans in a similar format would also be established for the adult residents of the Institution as of March 2013.⁴⁹ In particular, the plans would be prepared with the involvement of the resident concerned and reviewed every six months. **The CPT would like to receive confirmation that the above-mentioned individual rehabilitation plans have been drawn up for every resident of the Institution.**

⁴⁷ Five of the children went to school outside the Institution.

⁴⁸ It was equipped with training instruments such as bicycles and walking supports as well as with ultrasound therapy and electrotherapy devices.

⁴⁹ Staff had already undergone a five-day training course for this purpose, organised by UNICEF.

4. Means of restraint

123. At the outset of the visit, the delegation was informed that the policy was to avoid resorting to means of restraint at the Komanski Most Institution. It appeared from the information available to the Committee and interviews with staff and residents that no means of mechanical restraint had been applied at the Institution since October 2010.⁵⁰

The delegation saw a padded room in Ward B which had been recently set up for medical and other purposes (i.e. in order to calm down a resident in a state of agitation, protect residents at risk of self-harm, etc.). However, a decision had been taken by the management not to place any resident in that room pending the adoption of a written protocol on its use. **The CPT would like to receive a copy of this protocol once adopted.**

5. Safeguards

124. As was the case in 2008, the decision on the placement of residents at the Komanski Most Institution was taken by the relevant Social Welfare Centre (subject to the approval of the Director of the Institution) following a formal request made by the resident's relatives or legal guardian. The placement decision was based on the assessment performed by an expert team of the Centre. As a prerequisite for placement, the person concerned had to be deprived of his/her legal capacity. Discharge from the Institution was also decided by the relevant Social Welfare Centre. Further, the delegation was informed that placement was subject to a review by the relevant Centre at six-month intervals.

125. In the CPT's view, placing legally incompetent persons in a specialised institution based on the request of the guardian must be surrounded by appropriate safeguards. In particular, the persons concerned should have the right to bring proceedings by which the lawfulness of their placement can be decided speedily by a court. It is also crucial that the need for placement be regularly reviewed and that this review afford the same guarantees as those surrounding the placement procedure.

The CPT reiterates its recommendation that the Montenegrin authorities take steps to ensure that:

- **residents of social care institutions have the effective right to bring proceedings to have the lawfulness of their placement decided by a court, that they are duly informed of this right, and that in this context, they enjoy the rights to a lawyer and to be heard by the judge concerned;**
- **the need for continued placement is automatically reviewed by a court at regular intervals or residents themselves are able to request at reasonable intervals that the necessity for continued placement is considered by a judicial authority.**

⁵⁰ This was when a new director was appointed to the Institution.

126. At the time of the visit, some 80 of the Institution's residents had been deprived of their legal capacity by a court, and the procedure of legal incapacitation had been initiated in respect of the remainder of the residents. The deprivation of legal capacity was followed by the appointment, by the relevant Social Welfare Centre, of a guardian; in practice, it was usually a relative or an employee of the Centre. In the CPT's view, a conflict of interest may arise when an employee of a Social Welfare Centre is appointed as the guardian of a resident. **Consequently, such an appointment should be avoided as far as possible.**

127. An information brochure was available for residents and their families/guardians concerning the stay at the Institution. The brochure contained information on the possibilities for residents to lodge complaints with the relevant Social Welfare Centre and the Ministry of Labour and Social Welfare as well as to resort to legal proceedings.

128. The Institution received regular inspection visits by the Ministry of Labour and Social Welfare. Further, a number of visits had been carried out to the establishment by the Ombudsman and NGOs in the past year, during which they had private talks with residents. The CPT welcomes these possibilities and **invites the Montenegrin authorities to ensure that there are regular visits to social care institutions by bodies which are independent of the social welfare authorities and are authorised, *inter alia*, to talk privately with residents, receive directly any complaints which they might have and make any necessary recommendations.**⁵¹

129. The delegation was told that about a quarter of the establishment's residents maintained contacts with their families. It was noted in this connection that the management had been making efforts to encourage families to visit the Institution, including by covering their travel expenses. The Committee welcomes these efforts.

⁵¹ See also Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities.

APPENDIX I

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

National Preventive Mechanism

recommendations

- consideration to be given to creating a specific budget head for the activities of the National Preventive Mechanism (NPM) within the overall budget of the Ombudsman's Office (paragraph 10).

requests for information

- the budgetary means earmarked for the NPM's activities in 2013 and 2014 (paragraph 10).

Police establishments

Preliminary remarks

recommendations

- a written summons issued by the police for the purpose of collecting information to include a specific reference to Article 259, paragraph 4, of the CCP (paragraphs 12 and 29);
- persons summoned by the police for the purpose of collecting information to be expressly informed in the summons, as well as at the very outset of the process of collecting information at the police premises, that they may leave the police station at any time if they do not wish - or no longer wish - to provide information (paragraph 12);
- a special register to be opened in every police station in which all cases of persons entering the station following a summons are recorded (paragraph 12);
- the Montenegrin authorities to take steps to ensure that the legal requirement of immediate notification to a prosecutor of any apprehension is complied with in practice, and that any period of detention subsequently ordered by a prosecutor starts as from the moment of that notification (paragraph 13).

Torture and other forms of ill-treatment

recommendations

- the Montenegrin authorities at the highest level to deliver, at regular intervals, a clear message that all forms of ill-treatment of detained persons whether at the time of apprehension, transportation or during questioning (including at the time of so-called "informative talks") are illegal, unprofessional and will be punished accordingly. This message should also be delivered throughout the entire period of basic and in-service training of police officers (paragraph 17);

- whistle-blower protection measures as described in paragraph 18 to be adopted (paragraph 18);
- the Montenegrin authorities to ensure that the CPT's recommendation that police intervention forces wear a nametag/identification number on their uniform is implemented without delay (paragraph 21);
- the Chief State Prosecutor and the President of the Supreme Court of Montenegro to recall firmly, through appropriate channels, that prosecutors and judges should act in accordance with the principles outlined in paragraph 22 (paragraph 22);
- appropriate steps to be taken to ensure that any weapons or other items seized during criminal investigations are entered in a separate register, properly labelled (identifying the case to which they refer) and kept in a dedicated store (paragraph 23);
- the Montenegrin authorities to ensure that all newly arrived prisoners receive a thorough medical examination by the prison health-care service and that the record drawn up after that examination contains:
 - (i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);
 - (ii) a full account of objective medical findings;
 - (iii) the doctor's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings (paragraph 25);
- recording of the medical examination in cases of traumatic injuries to be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the person concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded (paragraph 25);
- existing procedures at Podgorica Remand Prison, as well as at Bjelo Polje Prison, to be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a newly-arrived prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the competent prosecutor, regardless of the wishes of the person concerned (paragraph 25);
- the Montenegrin authorities to offer special training to health-care professionals on the manner in which medical screening of prisoners is to be performed, on the recording of any injuries observed and on the reporting procedure (paragraph 25).

requests for information

- detailed comments of the Montenegrin authorities on the points made in the fourth subparagraph of paragraph 20 concerning the conduct of the criminal investigation into the alleged ill-treatment of X (paragraph 20).

Safeguards against ill-treatment of persons deprived of their liberty

recommendations

- custody registers to include a reference to the exact timing of the notification of custody to a third party. Further, detained persons should be provided with feedback on whether it has been possible to make the notification (paragraph 26);
- further efforts to be invested - in consultation with the Bar Association - in order to ensure that *ex officio* lawyers perform their functions in a diligent and, more specifically, timely manner. It is particularly important that the lawyer meets the detained person in private at an early stage of the procedure and is present during questioning of the person concerned (paragraph 29);
- persons deprived of their liberty by the police to be expressly guaranteed the right of access to a doctor (including a doctor of their own choice, it being understood that an examination by such a doctor may be carried out at the detained person's own expense) from the very outset of their deprivation of liberty. The relevant provision should make clear that a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests (paragraph 30);
- the Montenegrin authorities to take steps to ensure without further delay that all persons detained by the police - for whatever reason - are fully informed of their rights as from the very outset of deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon arrival at police premises) by provision of the existing information sheet (paragraph 31).

requests for information

- observations on the discrepancy between the provisions of the Constitution and those of the CCP with regard to the notification of custody (paragraph 27).

Monitoring and complaints procedures

comments

- the CPT trusts that in future the NPM will explore in greater depth the manner in which persons are treated when apprehended and questioned by police officers. This will require, *inter alia*, detailed examination of the application in practice of safeguards against ill-treatment as well as confidential interviews with persons remanded in prison who have recently been in police custody (paragraph 32).

Conditions of detention

recommendations

- steps to be taken to remedy the deficiencies at Kotor, Herceg Novi and Ulcinj Police Stations referred to in paragraph 34; as for the 6 m² cell at Kotor Police Station, it should only be used for single occupancy (paragraph 34);
- the Montenegrin authorities to take measures to ensure that all persons held in police custody for 24 hours or more are offered outdoor exercise (paragraph 34).

Prisons

Preliminary remarks

recommendations

- the Montenegrin authorities to pursue their efforts to combat prison overcrowding taking into account the relevant recommendations of the Committee of Ministers of the Council of Europe, in particular Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules (paragraph 40).

requests for information

- details of the plans to construct a prison for long sentences in Podgorica and an additional building at Bjelo Polje Prison (capacities of the new establishments, projected entry into service, etc.) (paragraph 39);
- updated information on the impact of the measures being taken to tackle prison overcrowding (paragraph 40).

Ill-treatment

recommendations

- a firm message to be delivered to staff at both the Institution for Sentenced Prisoners (KPD) and the Remand Prison that physical ill-treatment and verbal abuse of prisoners are not acceptable and will be punished accordingly (paragraph 41);
- the Montenegrin authorities to invest more efforts in tackling and eradicating inter-prisoner violence and intimidation, with particular emphasis on the Institution for Sentenced Prisoners (paragraph 43).

requests for information

- the outcome of the investigation into the case of alleged ill-treatment of a prisoner at the Remand Prison on 27 September 2012 referred to in paragraph 41 (paragraph 41);
- the outcome of the investigation by the police referred to in paragraph 42 in relation to the alleged intimidation of prisoners at the KPD (paragraph 43);
- a copy of the strategy on inter-prisoner violence adopted by the Sector for the Execution of Criminal Sanctions (ZIKS) as well as information on the steps taken to implement it (paragraph 43).

Conditions of detention

recommendations

- the Montenegrin authorities to reactivate the plans for the renovation of Pavilion A of the KPD. Pending the carrying out of that renovation, immediate steps should be taken to reduce as far as possible the occupancy levels in the four existing dormitories, the objective being to meet the minimum standard of 4 m² of living space per prisoner (paragraph 46);
- the Montenegrin authorities to implement the prison doctor's recommendation and transfer the physically disabled inmate referred to in paragraph 47 to a specialised institution where he can be better cared for (paragraph 47);
- the Montenegrin authorities to increase their efforts to offer constructive and purposeful activities to all sentenced prisoners at the closed section of the KPD and, in particular, provide more work opportunities (preferably of a vocational value). The employment situation in the prison setting should not be exclusively dictated by market forces; an active state policy, based if necessary on special incentives for placing production orders in prisons, should be put in place (paragraph 49);
- the Montenegrin authorities to pursue vigorously the renovation of the Remand Prison. In this context, the minimum standard of 4 m² of living space per prisoner, not counting the area taken up by in-cell sanitary annexes, should be respected and the sanitary annexes should be fully partitioned (i.e. up to the ceiling) (paragraph 50);
- steps to be taken to ensure that inmates at the Remand Prison are regularly provided with cleaning products for the maintenance of their cells (paragraph 50);
- the Montenegrin authorities to take the necessary steps, including if appropriate of a legislative nature, to offer remand prisoners out-of-cell activities of a purposeful nature; any restrictions on access to such activities for a given prisoner should be based on an individual assessment and be of the shortest possible duration (paragraphs 51 and 53);
- vocational and recreational activities adapted to the needs and capabilities of female sentenced prisoners to be organised on an equal footing with their male counterparts at the KPD as well as in any other establishment holding such inmates (paragraph 53);

- the Montenegrin authorities to allow juveniles and young adults more scope to personalise and decorate their section in Pavilion F of the KPD (paragraph 54);
- the Montenegrin authorities to develop a full programme of education, sport, vocational training and other purposeful activities for inmates of the juvenile section of the KPD, in accordance with the legislation in force (paragraph 55).

comments

- it would be preferable to reduce the permitted occupancy rates of the 16/25 m² cells at the KPD so as to offer a minimum of 4 m² of living space per prisoner not counting the area taken up by the sanitary annexe (paragraph 44).

requests for information

- a full account of the renovation work actually carried out in Pavilion A of the KPD (paragraph 45).

Health-care services

recommendations

- the Montenegrin authorities to reinforce the staffing levels at the Health Care Centre:
 - by a third doctor (preferably a specialist in internal medicine);
 - by significantly increasing the number of nursing staff;
 - by ensuring the presence of psychiatrists to the equivalent of a full-time post (paragraph 57);
- steps to be taken to discontinue the practice of nurses working 24-hour shifts (paragraph 57);
- the Health Care Centre to be equipped with modern and functional medical equipment necessary for the provision of health-care services to prisoners. Steps should also be taken to ensure that prisoners enjoy access to specialised medical examinations according to their health-care needs (paragraph 58);
- guidelines on the screening of prisoners for transmissible diseases to be adopted and implemented at the level of the Sector for the Execution of Criminal Sanctions (ZIKS) (paragraph 59);
- the recommendations in paragraph 25 concerning screening for and recording of injuries to apply equally vis-à-vis inmates who are medically examined following a violent incident in prison (paragraph 59);
- the Ministry of Justice together with the Ministry of Health to take the necessary steps to ensure that the ZIKS is properly linked to the public health system so that prisoners who need specialist care in a hospital setting receive that care in a timely manner (paragraph 60);

- all medical examinations of prisoners to be conducted out of the hearing and – unless the health-care staff member concerned requests otherwise in a particular case – out of the sight of prison officers (paragraph 62);
- the Montenegrin authorities to put in place a clear policy for the confidentiality of medical records in prison in light of the observations in paragraph 63 (paragraph 63);
- the Montenegrin authorities to take the necessary steps to ensure that any prisoner who is assessed to be seriously mentally ill is transferred without delay to a hospital facility which is adequately equipped and possesses appropriately trained staff (paragraph 65);
- the Montenegrin authorities to put in place a coherent policy on drug addiction-related problems in a prison setting, at the national level (paragraph 67);
- the Montenegrin authorities develop a system of effective quality control by the Ministry of Health of the provision of health care in prisons (paragraph 68).

comments

- the CPT trusts that the quality of medical recording will improve once the staff resources of the Health Care Centre have been reinforced, as recommended by the Committee in paragraph 57 (paragraph 61).

requests for information

- updated information on the status of the Special Prison Hospital project (paragraph 56);
- confirmation that the transfer of the prisoner referred to in paragraph 66 to an appropriate psychiatric facility has been effected (paragraph 66).

Other issues of relevance to the CPT's mandate

recommendations

- the custodial staff resources at the KPD to be reviewed, in the light of the remarks in paragraph 69 (paragraph 69);
- the practice of prison officers working 24-hour shifts to be discontinued (paragraph 70);
- the Montenegrin authorities to take the necessary steps to ensure that all the principles and minimum safeguards set out in paragraph 75 are applied in prison establishments when resorting to mechanical restraint of inmates, including through the adoption of the necessary regulations and the provision of appropriate training to staff (paragraph 75);
- the relevant provisions of the Law on Execution of Criminal Sanctions and the CCP to be revised in order to lower the maximum period of solitary confinement for a given disciplinary offence to 14 days. Further, if a prisoner has been sanctioned to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 14-day stage (paragraph 76);

- the legislation to be amended so as to provide for the right of prisoners to call witnesses on their behalf and to cross-examine evidence given against them during disciplinary proceedings (paragraph 77);
- the Montenegrin authorities to issue clear guidelines about the role of prison doctors in relation to disciplinary matters, in the light of the remarks in paragraph 78 (paragraph 78);
- steps to be taken at the KPD to:
 - improve the ventilation in the disciplinary cells;
 - install shelters against inclement weather in the exercise yards of the disciplinary unit (paragraph 79);
- the legislation to be amended so as to entitle all categories of prisoners to the equivalent of at least one hour of visiting time per week (paragraph 82);
- the three rooms used for conjugal visits at the KPD to be refurbished (paragraph 83);
- the Montenegrin authorities to review the visiting arrangements at the Remand Prison, in the light of the remarks in paragraph 84 (paragraph 84);
- the Montenegrin authorities to send a clear message to prison staff that any intimidatory action against prisoners who address complaints to external bodies will be punished accordingly (paragraph 85).

comments

- it would be desirable to expand the range of specialised training courses for the penitentiary staff so as to cover themes such as conflict prevention and communication skills as well as dealing with juveniles deprived of their liberty (paragraph 71);
- the CPT trusts that the material deficiencies observed in the two cells of the Remand Prison used for disciplinary purposes will be remedied in the course of the on-going renovation work in the establishment (paragraph 79).

Psychiatric establishments

Living conditions

recommendations

- steps to be taken at the forensic psychiatric unit of Dobrota Psychiatric Hospital (FPU) to remedy the deficiencies referred to in paragraph 91, in order to create a more personalised and therapeutic environment (paragraph 91);
- plans to build a separate forensic psychiatric institution within the perimeter of the Spuž Prison Complex to be accorded a high priority (paragraph 92).

requests for information

- an update on progress made in the implementation of the plans to build a separate forensic psychiatric institution (paragraph 92).

Treatment and staff

recommendations

- the Montenegrin authorities to increase the number of patients in the FPU taking part in therapeutic and rehabilitative activities adapted to their needs and to offer a wider range of such activities. This will necessitate a considerable reinforcement in the number of staff qualified to provide such activities (paragraph 97);
- the Montenegrin authorities to take steps, as a matter of urgency, to significantly increase the nursing presence in the FPU (paragraph 100).

comments

- the CPT trusts that increasing the nursing presence in the FPU will enable the management of Dobrota Psychiatric Hospital to put an end to the practice of employing security staff inside the FPU (paragraph 100).

Means of restraint

recommendations

- steps to be taken at Dobrota Psychiatric Hospital to ensure that a restrained patient is not exposed to other patients, unless he/she explicitly expresses a wish to remain in the company of a certain fellow patient (paragraph 102).

comments

- the time at which a restraint measure ended was sometimes not indicated in the central register at the FPU (paragraph 101).

Safeguards

recommendations

- the Montenegrin authorities to take steps to ensure that patients subject to a compulsory psychiatric treatment order have the effective right to be heard in person by the judge concerned when the need to continue the compulsory treatment is reviewed (paragraph 105);
- the Montenegrin authorities to take the necessary steps to review the relevant legislation so as to reflect the principle of a patient's free and informed consent to treatment, in the light of the remarks in paragraph 106 (paragraph 106);
- steps to be taken to ensure that visits to Dobrota Psychiatric Hospital (and, as appropriate, to other psychiatric establishments) are carried out, on a regular basis, by a body which is independent of the health authorities. This body should be authorised, *inter alia*, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations (paragraph 107).

comments

- the members of the Council for the Protection of Mentally Ill Persons at Dobrota Psychiatric Hospital are still appointed by the Executive Board of the Hospital upon the Director's proposal and therefore cannot be considered as truly independent (paragraph 108).

requests for information

- confirmation (with an indication of the legal basis) that in the context of the review of compulsory treatment, the patient is entitled to ask for an independent forensic assessment (paragraph 105).

Social welfare establishments

Preliminary remarks

requests for information

- updated information on the plans to set up community-based "group homes" for more able residents of the Komanski Most Institution (paragraph 112).

Living conditions

comments

- most of the residents' rooms in Wards A and B at the Komanski Most Institution still lacked decoration (paragraph 114).

Staff and care of residents

recommendations

- the Montenegrin authorities to review the staffing situation at the Komanski Most Institution in the light of the remarks in paragraph 118. In particular, steps should be taken to:
 - increase substantially the number of nurses and carers;
 - fill the vacant post of general practitioner without delay (preferably on a full-time and at least half-time basis);
 - ensure that there are regular consultations by an ophthalmologist (paragraph 119);
- the Montenegrin authorities to persevere in their efforts to enhance the programme of educational, occupational and recreational activities for residents at the Komanski Most Institution. This will, in the first place, require more staff qualified to provide such activities (e.g. defectologists, occupational therapists, physiotherapists, etc.) (paragraph 121).

requests for information

- confirmation that the Komanski Most Institution now receives regular visits by an orthopaedist (paragraph 119);
- the number of consultations held by the dentist during the last three months and the exact nature of the treatment provided to residents at the Komanski Most Institution (e.g. extractions, fillings, dentures, etc.) (paragraph 119);
- confirmation that the individual rehabilitation plans referred to in paragraph 122 have been drawn up for every resident of the Komanski Most Institution (paragraph 122).

Means of restraint

requests for information

- a copy of the protocol on the use of the padded room in Ward B at the Komanski Most Institution, once adopted (paragraph 123).

Safeguards

recommendations

- the Montenegrin authorities to take steps to ensure that:
 - residents of social care institutions have the effective right to bring proceedings to have the lawfulness of their placement decided by a court, that they are duly informed of this right, and that in this context, they enjoy the rights to a lawyer and to be heard by the judge concerned;

- the need for continued placement is automatically reviewed by a court at regular intervals or residents themselves are able to request at reasonable intervals that the necessity for continued placement is considered by a judicial authority (paragraph 125).

comments

- appointing an employee of a Social Welfare Centre as the guardian of a resident should be avoided as far as possible (paragraph 126);
- the Montenegrin authorities are invited to ensure that there are regular visits to social care institutions by bodies which are independent of the social welfare authorities and are authorised, *inter alia*, to talk privately with residents, receive directly any complaints which they might have and make any necessary recommendations (paragraph 128).

APPENDIX II

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

A. National authorities

Ministry of the Interior

Raško KONJEVIĆ	Minister
Veselin ŠARANOVIĆ	Head of the Internal Control Department
Đorđije IVANOVIĆ	Head of the Appeal and Oversight Department
Ljubomir ČVOROVIĆ	Co-ordinator for the Control of Legality of Police Affairs
Vojo DRAGOVIĆ	Head of the Duty Operational Centre of the Police Administration
Ljulja ĐONAJ	Analyst at the Police Administration

Ministry of Justice

Duško MARKOVIĆ	Minister
Slavica RABRENOVIĆ	Assistant Minister for the Enforcement of Criminal Sanctions
Miljan PEROVIĆ	Director of the Sector for the Enforcement of Criminal Sanctions (ZIKS)

Ministry of Health

Mensud GRBOVIĆ	Assistant Minister for Health-Care Protection
Aleksandar TOMČUK	Director of the Dobrota Special Psychiatric Hospital

Ministry of Labour and Social Welfare

Goran KUŠEVIJA	Assistant Minister for Social and Child Protection
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Office of the State Prosecutor

Ranka ČARAPIĆ	Chief State Prosecutor
Veselin VUČKOVIĆ	Deputy State Prosecutor
Ljiljana KLIKOVAC	Podgorica District Prosecutor

Office of the Ombudsman

Sučko BAKOVIĆ	Ombudsman
Petar IVEZIĆ	Deputy Ombudsman
Maja MARAŠ	Advisor

B. International organisations

OSCE Mission to Montenegro

C. Non-governmental organisations

Human Rights Action (*Akcija za Ljudska Prava*)