



CPT/Inf (2006) 11

**Report to the Polish Government  
on the visit to Poland  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)  
from 4 to 15 October 2004**

The Polish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2006) 12.

Strasbourg, 2 March 2006



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

Strasbourg, 11 April 2005

Dear Mrs Adamiak-Derendarz,

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 Poland drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Poland from 4 to 15 October 2004. The report was adopted by the CPT at its 56<sup>th</sup> meeting, held from 7 to 11 March 2005.

I would draw your attention in particular to paragraph 160 of the report, in which the CPT requests the Polish authorities to provide **within six months** a response setting out the action taken upon its visit report, save for the recommendation in paragraph 14, to which the authorities are requested to provide a response **within one month**. The CPT would ask, in the event of the response being forwarded in Polish, that it be accompanied by an English or French translation. It would be most helpful if the Polish authorities could provide a copy of the response in electronic form.

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

Yours sincerely,

Silvia CASALE  
President of the European Committee for  
the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

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## I. INTRODUCTION

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

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Poland from 4 to 15 October 2004. The visit formed part of the Committee's programme of periodic visits for 2004, and was the third periodic visit to Poland to be carried out by the CPT.<sup>1</sup>

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

- Ingrid LYCKE ELLINGSEN (Head of delegation)
- Aleš BUTALA
- Andres LEHTMETS
- Tatiana RADUCANU

who were supported by Petya NESTOROVA, Head of Unit, and Borys WÓDZ from the CPT's Secretariat.

They were assisted by:

- Eric DURAND, former Head of the Medical Services at Fleury-Mérogis Prison, France (expert)
- Zdenek HÁJEK, lawyer, Czech Republic (expert)
- James McMANUS, Professor of Criminal Justice, Glasgow Caledonian University, United Kingdom (expert)
- Ryszard DRZEWIECKI (interpreter)
- Wanda GADOMSKA-BOUNAKOFF (interpreter)
- Aleksander JAKIMOVICZ (interpreter)
- Aleksandra SOBCZAK (interpreter)
- Artur ZAPALOWSKI (interpreter).

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<sup>1</sup> The first periodic visit took place in June/July 1996 and the second in May 2000. The Committee's reports on these visits, as well as the responses of the Polish authorities, have been made public at the request of the Polish authorities (cf. documents CPT/Inf (98) 13, CPT/Inf (98) 14, CPT/Inf (2002) 9 and CPT/Inf (2002) 10).

**B. Establishments visited**

3. The delegation visited the following places of detention:

Police establishments

- Municipal Police Command, Białystok, ul. Bema 4
- Provincial Police Command, Cracow, ul. Mogilska 109
- 3rd District Police Command, Cracow, ul. Pędzichów 5
- Municipal Police Command, Elbląg, ul. Tysiąclecia 3
- County Police Command, Giżycko, al. 1-go Maja 26
- Municipal Police Command, Olsztyn, ul. Partyzantów 23
- Municipal Police Command, Suwałki, ul. Pułaskiego 26
- Metropolitan Police Command, Warsaw, ul. Nowolipie 2\*
- District Police Command, Warsaw - Bielany, ul. Żeromskiego 7
- District Police Command, Warsaw - Praga Południe, ul. Grenadierów 73/75\* and ul. Umińskiego 22
- District Police Command, Warsaw - Wola, ul. Żytnia 36\*
- Provincial Police Command, Wrocław, ul. Muzealna 2/4\*
- Police Command, Wrocław - Śródmieście, ul. Grunwaldzka 6\*
  
- Police establishment for children in Cracow
- Police establishment for children in Elbląg

Border Guard establishments

- Detention facility at the Kuźnica Białostocka Border Crossing
- Detention facility of the Podlaski Border Guard Unit, Białystok
- Border Guard post in Szudziałowo
- Detention facility of the Warmińsko-Mazurski Border Guard Unit, Kętrzyn
- Detention facilities at Warsaw International Airport\*

Prison establishments

- Cracow Remand Prison and Prison Hospital
- Warsaw-Mokotów Remand Prison and Prison Hospital
- Wołów Prison.

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\* Follow-up visit.

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

4. The delegation held consultations with the competent national authorities and with representatives of international and non-governmental organisations active in areas of concern to the CPT. In addition, numerous meetings were held with officials in charge of the establishments visited. A list of the national authorities and organisations consulted during the visit is set out in Appendix II to this report.

5. As had been the case during the CPT's previous visits to Poland, the level of co-operation received by the delegation, both from the national authorities and from staff at the establishments visited, was excellent. The delegation held fruitful discussions with Mr Andrzej GRZELAK, Secretary of State at the Ministry of Justice, Mr Andrzej BRACHMAŃSKI, Secretary of State at the Ministry of Internal Affairs and Administration, as well as with senior officials of the Ministries of Justice, Internal Affairs and Administration, and Health. The delegation also appreciated the opportunity to meet Mr Andrzej ZOLL, Commissioner for Civil Rights Protection, and members of his Office.

The CPT wishes to express its sincere appreciation for the efforts made by the Committee's liaison officer, Mrs Anna ADAMIAK-DERENDARZ, Prosecutor at the National Prosecutor's Office, to facilitate the delegation's task.

6. The delegation enjoyed immediate access to all the places visited, including ones which had not been notified in advance, and was provided with all the information necessary for the carrying out of its task. It was clear that information on the CPT's mandate had been circulated to all relevant staff.

7. However, the principle of co-operation between State Parties and the CPT, set out in the Convention, is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. Regrettably, the delegation's findings during the visit suggest that such action has not been taken in certain key areas which have given rise to serious concerns in the past. The Committee calls upon the Polish authorities to make genuine efforts to improve the situation in the light of the CPT's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.

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

8. At the end of the visit, the CPT's delegation met senior representatives of the various Ministries and agencies concerned in order to acquaint them with the main facts found during the visit. On this occasion, the delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention.

The immediate observation was made in respect of the use of means of restraint vis-à-vis prisoners. The delegation was very concerned to note that the placement of a prisoner in a security cell was accompanied by the use of additional means of mechanical restraint (i.e. ankle cuffs, body belt or strait jacket, protective helmet), which were applied to him throughout the period spent in the cell (in some cases, for up to 48 hours). The delegation requested the Polish authorities to review the existing procedure and practice for restraining prisoners, with a view to ensuring that the application of mechanical restraints (in addition to placement in a security cell) is greatly reduced and used only in cases where this is strictly required.

The above-mentioned immediate observation was subsequently confirmed in a letter of 21 October 2004 from the Head of the CPT's delegation. The Committee requested the Polish authorities to provide within one month a report on the action taken in the light of this observation. By letter of 17 November 2004, the Polish authorities informed the CPT of the measures taken in response. Those measures will be assessed later in the report.

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

### A. Police and Border Guard establishments

#### 1. Preliminary remarks

9. The legal framework governing the detention of criminal suspects by the police has remained basically unchanged since the 2000 visit (cf. paragraph 10 of CPT/Inf (2002) 9). The maximum time a criminal suspect may spend in police custody is 72 hours. The information gathered by the CPT's delegation during the 2004 visit suggests that this time-limit is generally respected in practice.

10. As regards juveniles, the delegation noted in the police establishments for children visited that they could be held there for periods considerably exceeding the 17 days provided for in the 1982 Juveniles Act (in some cases, for up to three months). This was reportedly due to the lack of places at correctional establishments for children, as a result of which children remained in police custody after the judge's decision for placement in such an establishment. Having in mind that police establishments for children are not adapted for prolonged stays (cf. paragraphs 38-43), **the CPT recommends that the Polish authorities make strenuous efforts to ensure that the legal provisions on the duration of custody in a police establishment for children are respected in practice.**

The delegation was informed during the visit that a new draft Juveniles Code was to be completed by the end of 2004. **The Committee would like to receive information on the progress towards adopting the new Juveniles Code.**

11. Since the 2000 visit, new provisions governing the detention of foreign nationals illegally present in Poland have been adopted. Pursuant to Section 101 of the Aliens Act of 2003, the police or Border Guard may detain foreign nationals for up to 48 hours if there are circumstances justifying their deportation. Under Section 102, the persons concerned may be placed in a guarded centre for foreigners or, if there are grounds to fear that they will not respect the house rules, in a deportation jail. The placement decision is taken by the competent court, on a motion from the Voïvod (i.e. the Governor of the Province), the police or Border Guard. The maximum period of detention is initially set at 90 days, but can be prolonged to up to one year if the deportation order cannot be executed due to the foreign national's fault. The CPT must stress already at this stage that the facilities for holding persons awaiting deportation seen during the 2004 visit did not meet the standards required for such prolonged periods of detention (cf. paragraphs 45-59).

Under the 2003 Act on Granting Protection to Aliens on the Territory of Poland, asylum seekers may also be detained in a guarded centre or in a deportation jail for up to a year, if they have made an application while illegally in Poland or while awaiting deportation.

## 2. Ill-treatment

12. During the third periodic visit to Poland, the majority of the persons met by the CPT's delegation who were, or had recently been, detained by the police indicated that they had been correctly treated, both at the time of their apprehension and during questioning.

Nevertheless, a certain number of allegations were heard of physical ill-treatment by the police at the time of apprehension. The allegations concerned slaps, kicks, punches, blows with a truncheon and tight handcuffing for prolonged periods of time. Further, several persons made allegations concerning the time of questioning by police officers, such as that they had been punched or slapped, threatened with violence or verbally abused. Of particular concern are the allegations made by juvenile detainees – sometimes as young as 14 – of physical ill-treatment and threats in order to obtain confessions.

The delegation also heard some complaints of physical ill-treatment (e.g. kicks, punches, truncheon blows, painful handcuffing) and a threatening or humiliating demeanour by members of the court police in the course of transporting remand prisoners; however, these allegations generally dated back to at least 2 years ago.

As in 2000, no allegations were received of physical ill-treatment by police and Border Guard officers in charge of guarding cells and by staff working in the police establishments for children. However, a small number of allegations were heard of rude behaviour and verbal abuse by certain members of the police and Border Guard staff working in some of the establishments for foreign nationals awaiting deportation.

13. In the light of the information gathered during the visit, **the CPT recommends that the Polish authorities remind police officers, through appropriate means and at regular intervals, that the ill-treatment of detainees (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for their being struck.**

14. During the visit to Cracow Provincial Police Command, the delegation saw, in the duty officer's room, a metal cage measuring approximately 1 m<sup>2</sup> in which a newly arrived detainee was placed naked following a strip search, in full view of whoever was present in the room. Police staff explained that this was a routine procedure during the initial reception formalities. In the Committee's opinion, such arrangements could well be considered as constituting inhuman and degrading treatment. **The CPT recommends that the above-mentioned cage be removed forthwith and, more generally, that the initial reception procedure at Cracow Provincial Police Command be reviewed in order to ensure that it is carried out in a manner respectful of human dignity.**

15. At the outset of the visit, the Secretary of State of the Ministry of Internal Affairs and Administration informed the delegation that there had been many complaints concerning ill-treatment by police officers in the previous four years. All complaints were the subject of an internal police investigation as well as a prosecutor's inquiry; however, none of them had been upheld and no criminal sanctions had been imposed. That said, it emerged from the discussions with the Commissioner for Civil Rights Protection that court proceedings were apparently underway in several cases concerning excessive use of force by police officers.

The delegation also received statistical information concerning all complaints lodged against police staff in 2003 and in the first half of 2004. Unfortunately, it is not possible to ascertain from this information how many complaints have been made in respect of ill-treatment by the police.

In order for the CPT to obtain a full picture of the current situation, **the Committee would like the Polish authorities to supply information, in respect of 2004 and the first half of 2005, on:**

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

16. In two police establishments visited in Warsaw (Bielany and Praga Południe - ul. Grenadierów), the delegation found non-standard issue items (baseball bats, wooden batons, spades, iron bars and a hammer) in offices used by investigative officers. According to the officers present, these items had been confiscated as evidence or were being used during investigative activities. In the report on the 2000 visit (cf. paragraph 13 of CPT/Inf (2002) 9), the CPT recommended that any items held on police premises as evidence be properly labelled and held in a secure and centralised location, and that no other non-standard issue items be held on such premises. In their response to that report, the Polish authorities stated that the Chief Police Commander had ordered that all non-standard issue items "or objects that could suggest infringing rights of persons who participate in proceedings" be removed from police premises. **The CPT calls upon the Polish authorities to ensure that any items held on police premises as evidence are properly labelled and held in a secure and centralised location, and that no other non-standard issue items are held on such premises.**

17. Adequate professional training for law enforcement officials is an essential component of any strategy for the prevention of ill-treatment. In the report on the 2000 visit (cf. paragraph 15 of CPT/Inf (2002) 9), the CPT recommended that initial and ongoing training programmes for law enforcement officials be reviewed so as to ensure that human rights concepts are incorporated into practical training for handling high-risk situations such as the apprehension and interrogation of suspects. Further, the Committee stressed that considerable emphasis should be placed on the acquisition and development of interpersonal communication skills during initial and ongoing training. The response of the Polish authorities to these recommendations was very succinct: it simply stated that the Chief Police Commander had issued an order that more consideration be given to these issues in the framework of police and Border Guard training. **The CPT would like to be provided with detailed information on the content of training programmes for law enforcement officials.**

18. The delegation met a few persons who were or had recently been detained by the police and alleged that their complaints of police ill-treatment had been ignored by prosecutors or judges before whom they had been brought shortly after apprehension. In this context, it is a matter of concern to the CPT that the Polish authorities have taken no action upon the recommendation made in previous visit reports, namely that whenever a person brought before a judge/prosecutor alleges ill-treatment by the police, the judge/prosecutor should immediately request a forensic medical examination, irrespective of whether the person concerned bears visible injuries. Further, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested whenever there are other grounds to believe that the person could have been the victim of ill-treatment. **The CPT calls upon the Polish authorities to take effective steps to ensure that this recommendation is implemented in practice.**

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

19. In previous visit reports, the CPT examined in detail the formal safeguards against ill-treatment which are offered to persons detained by the police and Border Guard in Poland. The Committee has placed particular emphasis on three fundamental rights, namely the right of detained persons to inform a close relative or another third party of their situation, to have access to a lawyer, and to have access to a doctor. As the CPT has stressed repeatedly, these rights should be enjoyed by all categories of persons from the very outset of their deprivation of liberty (i.e. from the moment the persons concerned are obliged to remain with the police). It is equally fundamental that persons detained by the police be informed without delay of their rights, including those mentioned above, in a language they understand.

As regards the legal provisions pertaining to the above-mentioned rights, no changes have taken place since the 2000 visit. It became clear during the 2004 visit that most of the recommendations made by the CPT in the previous visit report and aimed at further strengthening the existing safeguards had not been implemented.

20. As far as the right of notification of custody is concerned, the 2004 visit did not bring to light any particular problems. Practically all detained persons interviewed confirmed that they had been informed of this right either at the time of their physical apprehension or soon afterwards, when the protocol of apprehension was drawn up. However, the fact that notification of custody was performed by police officers and not by the detained person concerned directly resulted in some detainees entertaining doubts as to whether the notification had in fact been made.

**The CPT invites the Polish authorities to take appropriate steps to provide detained persons with feedback on whether it had been possible to notify a close relative or other person of the fact of their detention.**



21. With regards to access to a lawyer, most detained persons interviewed by the delegation indicated that they had received information on their right to contact a lawyer upon apprehension or shortly afterwards. However, it became clear during the visit that, in practice, it was extremely rare for persons in police custody to have a lawyer. By way of example, at the Provincial Police Command in Cracow, a senior police officer indicated that she could not recall a single case of a lawyer coming to meet a person detained at the establishment. The Polish authorities informed the delegation that there was no provision in law for the appointment of an *ex officio* lawyer before the stage of court proceedings. As a result, persons in police custody who were not in a position to pay for legal services were effectively deprived of the right of access to a lawyer.

For as long as there is not an effective system of free legal aid for indigent persons at the stage of police custody, any right of access to a lawyer will remain, in most cases, purely theoretical. **The CPT recommends that a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer be developed as a matter of urgency, and be applicable from the very outset of police custody. If necessary, the relevant legislation should be amended.**

22. In the report on the 2000 visit, the CPT stressed that, to be fully effective as a means of preventing ill-treatment, the right of access to a lawyer must include the right to talk to him in private, and recommended that Section 245, paragraph 1 of the Code of Criminal Procedure (which authorises the officer who apprehended the detainee to be present during meetings with the lawyer) be amended accordingly. The Committee notes with concern that this recommendation has not yet been implemented. Admittedly, the information gathered during the 2004 visit indicates that police officers rarely make use of the power to be present when detainees meet their lawyers; however, the fact that such a possibility exists is unacceptable. Consequently, **the CPT calls upon the Polish authorities to amend Section 245, paragraph 1, of the Code of Criminal Procedure so as to ensure that persons detained by the police have in all cases the right to talk to a lawyer in private.**

23. The delegation paid particular attention to the situation of juveniles in police custody. Polish legislation contains an obligation for the police or Border Guard to immediately inform a parent or guardian of the apprehension of a person under the age of 17 (cf. Section 40 of the Juveniles Act). Further, Section 39 of the Juveniles Act provides for the obligatory presence of a parent, guardian, lawyer or another responsible adult while a juvenile is being questioned.

However, a number of juveniles interviewed by the delegation alleged that they had been questioned and made to sign statements admitting to criminal offences without the benefit of the presence of a trusted person. This state of affairs was confirmed by the Commissioner for Civil Rights Protection, who indicated that his office had received complaints from parents that the police did not respect their duties set out in Sections 39 and 40 of the Juveniles Act. Further, as with adults, the law does not provide for the appointment of an *ex officio* lawyer before the stage of court proceedings.

**The CPT recommends that steps be taken to ensure that juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and/or a trusted person being present and assisting the juvenile. Further, the current legislation should be amended so as to ensure that juveniles have access to *ex officio* legal aid as from the moment of apprehension. In this respect, the Polish authorities should take into account the recent Recommendation Rec (2003) 20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.**

24. In respect of access to a doctor, a new Regulation on medical examination of persons apprehended by the police has been issued by the Minister of the Internal Affairs and Administration on 21 June 2002. According to it, persons in police custody who bear visible injuries or request medical assistance should be taken to the nearest public health centre or seen by a doctor called in by the police. The results of the examination are entered in a specific register kept at each police establishment.

It is regrettable that the Polish authorities have failed to integrate in the above-mentioned regulation the recommendations made by the CPT in the 2000 visit report in respect of access to a doctor. In particular, the right of persons in police custody to be medically examined by a doctor of *their own choice* is still not formally guaranteed and in practice is clearly non-existent. Further, it became apparent during the visit that the confidentiality of medical information was not respected, to the extent that the medical examination of detained persons was conducted in the presence of police officers as a matter of routine. Moreover, the register of medical examinations was kept in the duty officer's room, together with other registers, and could be accessed by police staff.

The medical registers seen by the delegation did record the injuries observed as well as (in some cases) the detained person's account of how they had been sustained. However, no conclusion was drawn by the doctor as to the consistency between the objective medical findings and the allegations made by the person concerned. Further, detained persons were not provided with the medical report drawn up after being examined while in police custody.

25. Consequently, **the CPT must reiterate the recommendations made in the 2000 visit report that:**

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

**The CPT also recommends that the report filled out by doctors concerning injuries observed on persons in police custody contain the doctor's conclusions as to the degree of consistency between any allegations made by the detained person concerned and the objective medical findings.**

26. As for information on rights, the delegation noted at most police and Border Guard establishments visited the presence of apprehension protocols (containing, inter alia, information on the detained person's rights to notify a third party of the fact of his detention, contact a lawyer and be examined by a doctor) in a range of foreign languages. The CPT welcomes this development.

However, a small number of detained persons alleged that they had not been informed of their rights and/or did not understand them. Admittedly, detainees were asked to sign the part concerning rights in the apprehension protocol and received a copy of the protocol; however, the delegation gained the impression that this was done more as a bureaucratic procedure than a way of ensuring that a detained person is in a position to understand his rights fully and therefore to exercise them effectively. **The CPT invites the Polish authorities to take particular care to ensure that detained persons are actually able to understand their rights. It is incumbent on law enforcement officials to ascertain that this is the case.**

27. In the reports on its 1996 and 2000 visits, the CPT recommended that the Polish authorities draw up a code of conduct for interrogations, supplementing the basic rules contained in the Code of Criminal Procedure (cf. paragraph 57 of CPT/Inf (98) 13 and paragraph 57 of CPT/Inf (2002) 9). This recommendation is yet to be implemented. The information gathered during the 2004 visit illustrated the need for such a code. Consequently, **the CPT calls upon the Polish authorities to implement the above-mentioned recommendation without further delay.**

28. The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.

During the visit, senior officials from the Ministry of Internal Affairs and Administration informed the delegation that audio recording of police interviews was a rare practice, used only in the case of very serious crimes. Under Polish law, the person being interrogated had to give consent to the use of such a recording. **In the light of the above considerations, the CPT invites the Polish authorities to persevere in their efforts to introduce electronic recording of police interviews.** Further, **police officers should receive specific training for the conducting of electronically recorded interviews.**

29. As regards the safeguards for foreign nationals detained pursuant to aliens legislation, Section 101 of the Aliens Act stipulates that they have the same rights as those granted to criminal suspects under the provisions of the Code of Criminal Procedure. In addition, they have the right to contact a consular or diplomatic representative. Information on rights was contained in the apprehension protocols seen at the establishments for foreign nationals visited, which were available in a range of languages. That said, **the recommendations made in paragraphs 21 and 25 in respect of safeguards for persons suspected of having committed criminal offences apply *mutatis mutandis* to foreign nationals detained pursuant to aliens legislation. This concerns in particular the right to benefit from *ex officio* legal assistance.**

30. The CPT attaches considerable importance to the manner in which deportation orders concerning foreign nationals are enforced in practice.

The rules applicable to escorted deportations by the police or Border Guard are contained in Order No. 2/95 of the Chief Police Commander of 3 April 1995 on the convoy service by the police and Regulation No. 2 of the Chief Commander of the Border Guard of 23 December 2003. Neither of these acts contains specific provisions concerning the application of means of restraint in the course of deportations. Members of deportation teams with whom the delegation spoke stated that they applied the general rules on the use of force by the police and Border Guard.

In the CPT's opinion, deportation operations (particularly those carried out by air) entail a manifest risk of inhuman and degrading treatment. This risk exists both during preparations for deportation and during the actual operation; it is inherent in the use of a number of individual means/methods of restraint, and is even greater when such means/methods are used in combination. Therefore, **the CPT recommends that detailed instructions be issued on the use of force and/or means of restraint authorised in the context of deportation operations. Such instructions should draw upon the principles set out in the Committee's 13<sup>th</sup> General Report (cf. CPT/Inf (2003) 35).**

#### 4. Conditions of detention

##### a. police cells

31. The delegation visited a number of police establishments in various parts of Poland which were primarily used for the detention of criminal suspects, but could also serve additional purposes, such as detention of foreign nationals awaiting deportation, holding of inebriated persons until they sober up and temporary accommodation of prisoners in transit. As a result, police cells were sometimes being used for periods exceeding 72 hours (e.g. in the case of foreign nationals subject to deportation who, for convoy reasons, could spend 8-9 days in police cells, or persons apprehended on the basis of an outstanding arrest warrant).

In the course of the visit, the delegation received a copy of a Regulation of 21 March 2003 by the Minister of the Interior and Administration concerning the conditions which must be provided in police detention facilities. The regulation stipulates, inter alia, that all police cells should have artificial lighting sufficient to read and write by, be well heated and ventilated, and equipped with a sleeping platform as well as a table and stools fixed to the floor. Detained persons should receive a full set of bedding (mattress, pillow, blanket and sheets) for the night, be provided with food and something to drink in adequate quantities, and be given access to toilet and washing facilities whenever required.

32. In the report on the 2000 visit, the CPT noted that material conditions of detention at the police stations visited at that time were on the whole of a good standard. Unfortunately, the assessment from the visit in 2004 is less positive.

Cells were generally of an adequate size for the number of persons they were designed to hold (e.g. 8 m<sup>2</sup> for two detainees; 12 m<sup>2</sup> for three detainees). All cells seen by the delegation had access to natural light, though in some cases it was rather limited (e.g. at Wrocław Provincial Police Command and Warsaw-Wola District Police Command). Artificial lighting was adequate, with the exception of the cells seen at Olsztyn Municipal Police Command. As for ventilation, it left something to be desired at Olsztyn and Warsaw-Bielany Police Commands. Further, the heating was not working in the detention areas at Suwałki, Warsaw-Bielany and Warsaw-Wola Police Commands and as a result the cells were rather cold (below 17° C).

The cells seen by the delegation were suitably equipped (beds, call-bells, occasionally a table and bench/stools) and at night detainees received mattresses, blankets and pillows. However, at several establishments the cells were in a poor state of repair and/or cleanliness (Cracow and Wrocław Provincial Police Commands; the Police Commands in Olsztyn, Warsaw-Praga Południe (ul. Umińskiego), Warsaw-Wola and Warsaw-Bielany). At Cracow Provincial Police Command, the delegation saw a recently refurbished detention area, with a capacity of 30 beds, which was of a high standard but had not yet been accepted back from the contractors; after its entry into service, it was planned to proceed with the refurbishment of the rest of the detention areas.

33. Cells in some of the establishments visited were equipped with toilets, which, however, were not always partitioned (e.g. at the Metropolitan Police Command in Warsaw). At other establishments, detainees had access to communal sanitary facilities. However, a number of detainees at Cracow Provincial Police Command complained about delays in access to the toilet (the delegation saw buckets for emergency toilet use in some cells). Further, at Białystok Municipal Police Command, detainees were not allowed to go to the toilet at night and resorted to using buckets in the cells. The communal sanitary facilities in the two previously mentioned establishments, as well as at Warsaw-Wola and Warsaw-Bielany District Police Commands, were in a poor state of repair and cleanliness.

Some of the establishments visited had shower facilities; however, at Białystok Municipal Police Command as well as Cracow and Wrocław Provincial Police Commands, these facilities were in a bad state of repair. Further, there were no shower facilities at several of the establishments (e.g. Metropolitan Police Command in Warsaw, the Police Commands in Olsztyn and Warsaw-Praga Południe, ul. Umińskiego).

34. Detained persons were offered food three times a day, including one warm meal. No special provision was made for drinking water, detainees generally having access to tap water. However, at Cracow Provincial Police Command, the delegation heard complaints that tap water was not suitable for drinking, as well as allegations that boiled water was not provided.

35. **The CPT recommends that steps be taken to address the shortcomings described in paragraphs 32 to 34 and, more generally, that material conditions of detention in police cells throughout the country be reviewed, in order to ensure that they are in full conformity with the above-mentioned Regulation of 21 March 2003.**

36. As already mentioned (cf. paragraph 31), police cells could on occasion be used to hold persons for periods exceeding 72 hours. In this connection, the delegation was concerned to note that most of the police establishments visited did not possess areas for outdoor exercise. The few establishments which did have such areas (Białystok and Suwałki Municipal Police Commands, Cracow and Wrocław Provincial Police Commands, Wrocław-Sródmieście and Warsaw-Bielany District Police Commands) did not offer in practice criminal suspects access to them, apparently due to the lack of staff.

**The CPT recommends that efforts be made to offer outdoor exercise on a daily basis to persons held for extended periods (i.e. 24 hours or more) in police cells.**

b. police establishments for children

37. During the visits in 1996 and 2000, the CPT visited a number of police establishments for children and made certain recommendations designed to remedy the shortcomings observed. Unfortunately, the visit in 2004 - during which conditions in two such establishments were examined, in Cracow and Elbląg - demonstrated that many of these recommendations have not yet been implemented.

38. Concerning material conditions at the two establishments, the bedrooms could be considered as adequately sized for their intended occupancy (e.g. 5 beds in a room measuring some 18 m<sup>2</sup> in Cracow; 4 beds in a room measuring 13 m<sup>2</sup> in Elbląg), given that they were being used only for sleeping purposes. The rooms had large windows, adequate artificial lighting and ventilation, and were in a good state of repair and cleanliness.

However, except for beds, the rooms were devoid of any other furniture and offered a rather austere environment. Children were not allowed to keep any personal items. As had been the case in some establishments visited in 1996 and 2000, the delegation observed that detained children had to wear pyjamas and slippers throughout the day. Sports suits and shoes were only provided during outdoor exercise; in this connection, several boys interviewed in Cracow complained that the shoes they had received were of the wrong size.

The communal toilet, washing and shower facilities were clean and in a good state of repair, and the delegation did not hear any complaints about access to them.

39. Food, including one warm meal, was provided three times a day. However, at Cracow the delegation received complaints about an insufficient quantity of food and the lack of anything to drink between meal times.

40. Bearing in mind that detained children could spend lengthy periods of time in police establishments (cf. paragraph 10), the CPT is concerned by the fact that they were offered very little in terms of constructive activities.

Children spent the day in a pleasantly decorated activity room. However, activities were limited to watching TV/video, playing table tennis or board games, drawing, reading books/magazines and talking with staff about various topics of general interest. No form of structured schooling was provided. As to physical education, it consisted essentially of outdoor exercise, which apparently was not offered every day and frequently lasted less than one hour; occasional football or volleyball games were organised. It should be noted that the exercise yard in Elbląg was badly maintained and lacked a shelter against poor weather.

41. As regards health care, notwithstanding previous recommendations made by the CPT, new arrivals were not medically screened and there was no provision for regular visits by a doctor or a nurse. This is of particular concern in the context of the allegations of ill-treatment received (cf. paragraph 12) and the fact that many of the children were socially deprived, had problems with alcohol/drugs or were in a poor state of health.

42. Regarding staff, the Elbląg establishment employed a full-time psychologist, a pedagogue and three officers with a post-graduate degree in resocialisation. The situation was less favourable in Cracow, where only the manager had pedagogical training, the other officers having merely benefited from a one-week introductory course comprising elements of psychology and pedagogy.

43. The detained children had limited possibilities for contact with the outside world. Visits required the approval of the competent prosecutor/court; some of the children interviewed in Cracow had apparently not had permission to receive visits for over a month. Neither of the establishments possessed a proper visiting room and as a result visits took place in unsuitable facilities (in Cracow, in the office of the duty officer; in Elbląg, in the activity room). Further, children had no access to a telephone except in emergency.

44. Action to address the shortcomings referred to above is long overdue. **The CPT recommends that the Polish authorities take the following steps at the police establishments for children in Cracow and Elbląg (as well as in other police establishments for children in Poland, as appropriate):**

- **improve the decoration and equipment of bedrooms, in particular by providing them with storage space for personal items;**
- **supply detained children with appropriate daytime clothes and shoes;**
- **ensure the provision of food in adequate quantity and the availability of drinking water throughout the day;**

- **ensure that detained children are offered at least one hour of outdoor exercise a day; the exercise yard at the police establishment for children in Elbląg should be refurbished and equipped with a shelter against poor weather;**
- **develop the range of constructive activities offered to detained children, with particular emphasis on education;**
- **ensure that all new arrivals are medically screened without delay and that the establishments receive regular visits by a doctor or a nurse;**
- **ensure that staff working at police establishments for children benefit from suitable initial and ongoing training;**
- **improve the possibilities for children to maintain contact with their families; in particular, save in exceptional and duly motivated circumstances, they should be allowed to receive regular visits from their relatives. Further, they should be allowed to make and receive telephone calls.**

c. detention facilities for foreigners awaiting deportation

45. The delegation visited three detention facilities for foreigners awaiting deportation (referred to as deportation jails): two managed by the police, at Suwałki Municipal Police Command and Wrocław Provincial Police Command, and one run by the Border Guard, at Warsaw International Airport. With official capacities of 21 (Suwałki), 22 (Wrocław) and 49 places (Warsaw), at the time of the visit, the deportation jails were accommodating respectively 16, 21 and 49 foreign nationals.

46. The best material conditions of detention were observed at the recently opened (in August 2003) Border Guard deportation jail located at Warsaw International Airport, in a building formerly used by the military. Foreign nationals were accommodated in clean, bright and well ventilated rooms, measuring 12 or 24 m<sup>2</sup>. The equipment consisted of bunk beds with full bedding, tables, chairs, shelves and a call system, all of which were in good condition. However, as the CPT has made clear in the past, **the living space envisaged per male detainee (3 m<sup>2</sup>) is not sufficient and should be aligned with the standard for female detainees (4 m<sup>2</sup>).**

47. Material conditions at the deportation jail of the Municipal Police Command in Suwałki were also adequate. Foreign nationals were held in cells measuring 12 m<sup>2</sup>, each equipped with three beds, as well as a table, stools, lockers and a call bell. The cells were well lit and ventilated. However, at the time of the visit, the central heating was out of order and the whole detention area was rather cold (cf. also paragraph 32).



48. The worst conditions were observed of the deportation jail of the Provincial Police Command in Wrocław. This establishment had already been visited by the CPT in 1996 and was the subject of several recommendations in the report on that visit (cf. paragraphs 36 to 39 of CPT/Inf (98) 13). The delegation was concerned to note that, if anything, the situation had deteriorated. The cells were poorly lit, dilapidated and dirty, the bedding and blankets provided to detainees were often threadbare, and in-cell toilets and sinks were decrepit. The only positive feature was the fact that there was sufficient space per detained person (e.g. two persons in a cell measuring some 12 m<sup>2</sup>; four persons in a cell measuring some 20 m<sup>2</sup>).

49. Cells at the deportation jail in Wrocław were equipped with sanitary annexes, while the Suwałki and Warsaw establishments had communal toilet and washing facilities, access to which was said not to pose any problem. The latter facilities were in a good state of repair, but offered little privacy (i.e. doors at waist height). At all the deportation jails visited, detainees could take a shower once or twice a week. However, the shower facilities in Wrocław were dilapidated.

There were no problems with the provision of personal hygiene items and clothing adapted to the season (the latter being reportedly assured exclusively by NGOs and charities).

Food (including at least one warm meal) was provided three times a day. The delegation received hardly any complaints about its quantity; however, a few foreign nationals interviewed in Warsaw and Wrocław alleged that the available diets did not always make allowance for their religious beliefs.

50. None of the deportation jails visited offered a regime of activities appropriate to the detainees' legal status and adapted to the length of time they could spend in custody (i.e. up to a year).

The situation was arguably the best at the Border Guard deportation jail at Warsaw International Airport, where persons of the same sex could associate freely during the day and some recreational activities were available (e.g. watching TV in the corridor, listening to the radio, reading foreign-language books and magazines provided by airlines, playing board games). However, there was no day/recreation room, despite the presence of an unused facility (originally intended as a kitchen) which could easily be transformed for this purpose.

On a positive note, outdoor exercise was offered on a daily basis for at least one hour (and longer in the summer). There were two exercise yards: a larger one (some 240 m<sup>2</sup>) which was used by women and men who did not represent a security risk, and a smaller one (some 70 m<sup>2</sup>).

51. The offer of activities at the deportation jail in Suwałki was more limited. Except for the daily one-hour outdoor exercise period, foreign nationals remained locked up in their cells. A few foreign-language books and board games were the only means of distraction offered by the establishment. Detainees were allowed to buy journals and TV and radio sets (only battery operated, as there were no sockets inside the cells), but the delegation did not see many such items in the cells. The outdoor exercise yard was very small (some 45 m<sup>2</sup>) and offered only a view of the sky.

52. The regime of activities at the deportation jail in Wrocław had hardly changed since the 1996 visit. The only out-of-cell activity was one hour of outdoor exercise, which allegedly was not offered at weekends. Other than that, foreign nationals languished in their cells with nothing to do: not even books or newspapers were provided. The recommendation made by the CPT after the visit in 1996 that a communal room be set up where detained foreign nationals could engage in recreational activities had not been implemented. Such a state of affairs is totally unacceptable. The two outdoor exercise yards were fairly large but bare and with no shelter against inclement weather.

53. The provision of health care at the deportation jails visited could not be considered as adequate.

None of the establishments possessed its own in-house health-care service. The deportation jail in Wrocław was visited twice weekly by a doctor. The Border Guard facility at Warsaw International Airport received a monthly visit by a nurse, and a doctor from the nearby airport was reportedly available in case of need. As regards the Suwałki deportation jail, it did not receive visits by health-care personnel on a regular basis. It is noteworthy that at all three establishments the delegation heard complaints from foreign nationals about delays in access to a doctor and/or the poor quality of medical care provided.

In the absence of resident health-care staff, prescribed medication was distributed by medically untrained custodial staff. Further, the confidentiality of medical data was not respected: medical information was appended to administrative files, freely accessible to non-medical staff, and custodial staff at the Wrocław deportation jail remained present during medical examinations of detainees.

Pursuant to a Regulation of the Minister of the Interior and Administration of 26 August 2004, all detained foreign nationals should be systematically medically examined upon arrival, as well as monthly in the course of their detention. However, this Regulation was far from being respected; newly-arrived detainees were medically screened only at the Border Guard facility at Warsaw International Airport.

54. The CPT remains concerned about the provision of psychological and psychiatric support to foreign nationals detained pending deportation. During the 2004 visit, the delegation came across some foreign detainees who had psychological problems or exhibited psychiatric symptoms. Moreover, the arrangements for psychiatric care appeared inadequate.

55. In the report on the 2000 visit (cf. paragraph 38 of CPT/Inf (2002) 9), the CPT stressed the importance of careful selection and appropriate training of the staff employed in establishments for detained foreign nationals. The training should include elements such as interpersonal communication, information on the different cultures of the detainees and at least some knowledge of the relevant languages. Further, staff should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

The delegation's observations from the 2004 visit suggest that the situation had hardly changed for the better since the previous visit. Staff assigned to work with foreign nationals in the establishments visited had received little specialised training for the job (essentially limited to basic training in the relevant legislation). The delegation observed that there was little communication between staff and detainees, not least because of language barriers (only a few staff members had notions of Russian and English). It should also be noted that the existing staff complement was insufficient to provide adequate out-of-cell activities to detainees.

56. As for contact with the outside world, the CPT is pleased to note that the restrictive rules on visits for detained foreign nationals have been amended. Under the current provisions, it is the director of the deportation jail who authorises visits. This in principle speeds up the procedure of visit authorisation, and the CPT's delegation observed that it was not a problem for foreign nationals to receive visits at the Warsaw and Suwałki establishments. However, at the deportation jail in Wrocław, some foreign nationals alleged that they had not been allowed to receive visits from relatives or friends for prolonged periods of time.

Foreign detainees were formally entitled to make telephone calls and send letters. However, the delegation observed that in practice the existing provisions were not always respected. For example, at the deportation jail in Wrocław, some foreign nationals complained that they had not been allowed to phone their relatives, despite offering to pay for their calls. There was no telephone in the detention area and the delegation was informed that detainees would be taken to another part of the Provincial Police Command building to use an office phone.

Foreign nationals detained at Suwałki and Warsaw deportation jails had access to a payphone installed in the detention area. That said, detainees without financial means could only make one free phone call on arrival, and were not given free-of-charge envelopes and stamps for private correspondence.

57. The provision of information to foreign detainees varied from one deportation jail to another. At Suwałki and Warsaw International Airport, general information on the internal rules and relevant procedures was available in a range of languages. This was not the case at Wrocław, where the internal rules existed only in Polish.

The major complaint of the foreign nationals detained at the establishments visited was the lack of knowledge of what was happening in their case and how long they would spend in custody.

58. To sum up, none of the detention facilities for foreigners awaiting deportation visited in 2004 possessed the physical environment and human resources required to cater for foreign nationals detained for prolonged periods of time, and to offer a regime appropriate to their legal status. As regards the deportation jails run by the police in particular, they were designed and staffed as holding facilities for criminal suspects detained for short periods of time.

As stressed by the CPT in previous visit reports, persons detained for an extended period under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate for their legal situation, and staffed by suitably-qualified personnel. To apply a closed regime (i.e. lock up in cells for the greater part of the day) to the majority of such persons has no justification and as such is unacceptable. The CPT does not dispute that special precautions might have to be taken vis-à-vis certain foreign nationals detained under aliens legislation (e.g. for disciplinary, health or security reasons). However, there should be a presumption in favour of holding them under an open regime allowing detainees to associate during the day; placement under a closed regime should be exceptional and the reasons therefor recorded in each individual case.

Unfortunately, the recently issued Regulation by the Minister of Internal Affairs and Administration of 26 August 2004 on requirements to be met by guarded centres for foreigners and deportation jails fails to acknowledge the above considerations. Further, the delegation was concerned to note that the plans for the construction of new deportation jails in Białystok and Kętrzyn replicated many of the failings observed in the existing deportation jails. In particular, no provision seems to have been made for the setting up of facilities where detainees can engage in constructive activities; thus it would appear that foreign detainees would be locked up in their cells for up to 23 hours a day.

59. In the light of the above remarks, **the CPT calls upon the Polish authorities to review as a matter of urgency the detention regime of foreign nationals deprived of their liberty under aliens legislation, with a view to enlarging the offer of purposeful activities. In this context, a high priority should be given to the creation of holding facilities specifically designed for the accommodation of foreign nationals detained under aliens legislation.**

Further, **the Committee recommends that steps be taken at the deportation jails in Suwałki, Warsaw International Airport and Wrocław to:**

- **ensure adequate heating in the cells (Suwałki);**
- **restore all cells to a good state of repair (Wrocław);**
- **refurbish the shower facilities (Wrocław) and ensure adequate privacy in the communal toilet and washing facilities (Suwałki and Warsaw International Airport);**
- **take steps to guarantee that foreign nationals can benefit from their entitlement to at least one hour of outdoor exercise per day (Wrocław). Conditions in the outdoor exercise yards should be reviewed (Suwałki and Wrocław);**
- **ensure that all newly-arrived detainees are promptly examined by a doctor or by a nurse reporting to a doctor;**
- **arrange for the daily presence of a person with a nursing qualification;**
- **ensure confidentiality of medical data and examinations;**

- take measures in order to provide professional psychiatric services to foreign nationals detained at deportation jails;
- review the selection and training of custodial staff working with the foreign nationals;
- ensure that the right of foreign nationals to receive visits and make telephone calls is not unreasonably restricted (Wroclaw);
- systematically provide information, in an appropriate range of languages, on the internal rules and other procedures applicable to foreign detainees, and make efforts to ensure that they are duly informed of the state of progress of their cases.

The Polish authorities are also invited to ensure that the specific dietary requirements of foreign nationals are being adequately catered for. Further, consideration should be given to providing detainees with envelopes and stamps.

d. other Border Guard establishments

60. Conditions at the Border Guard establishments visited in Białystok, Kętrzyn, Kuźnica Białostocka<sup>2</sup> and Szudziałowo were generally adequate for the maximum period of detention provided for by the law (i.e. 48 hours as regards persons detained pursuant to aliens legislation and 72 hours in the case of criminal suspects).

The cells seen by the delegation were generally of an acceptable size for their intended occupancy (e.g. some 8 m<sup>2</sup> for a single cell in Kuźnica Białostocka; some 11 m<sup>2</sup> for a double cell in Kętrzyn and Szudziałowo). However, the two cells at the Podlaski Border Guard Unit in Białystok were very small (less than 5 m<sup>2</sup>); **cells of this size should preferably only be used for periods of detention not exceeding a few hours.**

The cells and communal washing and toilet facilities seen were of a good standard, clean and in an acceptable state of repair. Persons detained received full bedding for the night. Food (including at least one warm meal) was offered three times a day, and there were no problems with the supply of drinking water.

61. The CPT's delegation also visited the detention facilities located in the transit area of Warsaw International Airport, used by the Border Guard to hold foreign nationals who had not been allowed to enter the territory of Poland.<sup>3</sup> Such persons were kept at the airport until the next available flight, usually for no longer than 24 hours. However, stays of up to two days had reportedly occurred in the past.

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<sup>2</sup> At the time of the visit, the cells at the establishment were officially not yet in service, due to the necessity to carry out certain modifications in the light of recent regulatory changes.

<sup>3</sup> No persons were detained there at the time of the visit. It should be added that persons with sufficient financial resources were allowed to stay at the airport hotel, located in the transit zone.

The room used for holding such persons measured some 50 m<sup>2</sup> and was equipped with 7 beds (although more beds could be added in case of need), a table and two benches. There was no access to natural light but artificial lighting and ventilation were adequate, and the room was in a good state of repair and cleanliness. The delegation was informed that foreign nationals would receive a mattress, a blanket and sheets for the night. Further, they would be allowed to keep their luggage (except for sharp or otherwise dangerous items).

The sanitary facility adjacent to the room (comprising a shower, a toilet and a washbasin) was clean and in a good condition. As regards food, it was provided by the airlines three times a day. Further, persons with financial resources were allowed to buy extra food; they could also use a payphone and purchase newspapers in the airport terminal. However, no provision was made for outdoor exercise. **The CPT recommends that this shortcoming be remedied.**

In addition to the aforementioned room, the Border Guard had at its disposal three other holding rooms used for periods of detention not exceeding a few hours. The rooms measured between 6 m<sup>2</sup> and 9 m<sup>2</sup> and were designed to accommodate two or three persons each; they were equipped with benches or chairs as well as a call bell. Although deprived of natural light, these rooms had adequate artificial lighting and ventilation and were clean. Persons held there had access to communal toilets and washing facilities, which were likewise clean and well kept.

62. The delegation was informed of plans to open a new detention area for foreign nationals refused entry to Poland after the completion of Terminal 2 in 2006. **The CPT would like to receive more information on this subject.**

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

### **1. Preliminary remarks**

63. The CPT's third periodic visit to Poland included first-time visits to Cracow Remand Prison and Prison Hospital, Warsaw-Mokotów Remand Prison and Prison Hospital, and Wołów Prison.

64. At the outset of the visit, the Director General of the Prison Service reported an ever-worsening level of overcrowding since the Committee's previous visit in 2000. After soaring to over 82,000 in 2003, prisoner numbers had stabilised at around 79,000 (79,417 on 5 October 2004). The maximum official capacity had in the meantime been increased to 69,000, often at the expense of transforming communal areas into prisoner accommodation. The average living space per prisoner had dropped to 2.6 m<sup>2</sup>; this figure does not meet the standard of 3 m<sup>2</sup> of living space per male prisoner provided for in Polish law – a standard which, it should be recalled, is considered too low by the CPT (cf. paragraph 70 of CPT/Inf (98) 13).

Prison overcrowding represented a significant challenge for the Ministry of Justice, which saw itself confronted with the need to introduce new measures to address this problem. In this context, the Ministry was studying the possibility of introducing electronic tagging as an alternative to imprisonment. Further, a new Criminal Code was in the process of being drafted and efforts were being made to develop the system of probation. The delegation was also informed of plans to step up administrative control and improve the training of judges and prosecutors, with a view to promoting the use of alternatives to imprisonment, as well as to amend the legislation to avoid imprisonment of certain groups such as alimony defaulters. Extra money had been allocated to the prison service in the budget for 2005, and there were plans to increase the number of prison places by 10,000 in the next five years.

As previously stressed by the Committee, providing additional accommodation cannot alone offer a lasting solution. Even without any growth in prison numbers, the above-mentioned extra 10,000 prison places would not be sufficient to meet the Polish standard of 3 m<sup>2</sup> per prisoner, let alone to implement the long-standing recommendation of the CPT that this standard be increased to 4 m<sup>2</sup> per prisoner. The only viable way to achieve this standard is to adopt policies designed to limit or moderate the number of persons sent to prison.

In this connection, the CPT must stress the need for a strategy covering both admission to and release from prison to ensure that imprisonment really is the measure of last resort. This implies, in the first place, an emphasis on non-custodial measures in the period before the imposition of a sentence and, in the second place, the adoption of measures which facilitate the reintegration into free society of persons who have been deprived of their liberty.

**The CPT calls upon the Polish authorities to redouble their efforts to combat prison overcrowding and, in so doing, to be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole).**

65. The problem of overcrowding has a direct bearing on the issue of activities for prisoners. In this connection, it should be emphasised that the situation as regards the provision of work, training and education to inmates in the prison establishments visited was far from satisfactory, a problem which apparently exists throughout the Polish prison system.

The unsatisfactory employment situation of prisoners had already been highlighted in the report on the 2000 visit (cf. paragraph 62 of CPT/Inf (2002) 9). During the 2004 visit, in the course of the initial discussions at the Ministry of Justice, the delegation was informed that currently 11,500 prisoners had paid work and an additional 7,500 unpaid work, which together represents some 23% of the country's prison population. With a view to encouraging employment, new legal provisions had been adopted which abolished the tax paid on labour, thereby cutting labour costs. At the same time, it was felt that additional legal changes were needed to stimulate prison employment, in particular re-introducing the VAT exemption for companies employing prisoners as well as their preferential treatment in the area of public procurement.

The delegation was informed at the prisons visited that several initiatives were underway and it would like to give credit to the management for their endeavours to create more jobs for prisoners. However, these initiatives are likely to lead to only a small-scale improvement of the situation unless there is a fundamental change in approach based on the concept of prisoners' work as geared towards rehabilitation and resocialisation rather than towards financial profit.

The CPT was pleased to note that the above-mentioned approach is recognised in the report "Basic problems of the Prison Service", presented by the Polish Prison Service to the Council of Ministers in April 2004, which affirms that "prison companies cannot just work for profit ... as shown by experience, to a much greater extent they have to perform the function of workshops fulfilling the role of education through work rather than operating as market entities".

**The CPT recommends that the Polish authorities strive to increase the provision of purposeful activities for prisoners. In this context, the authorities should seek to introduce further measures aimed at ensuring that both sentenced and remand prisoners are provided with an opportunity to work, in the light of the remarks made above. Efforts should also be made to further develop programmes of education and vocational training in all penitentiary establishments.**

66. The provision of a satisfactory regime of activities for prisoners was also hampered by the shortage of prison staff. The Director General of the Prison Service reported a further drop in the staff-prisoner ratio since the 2000 visit. Whereas prisoner numbers had increased by 50% since 1999, staff numbers had gone up by only 2.5%. One consequence of this was that staff had accumulated a total of 2 million hours of overtime (the equivalent of more than 1,000 extra staff). Such a state of affairs can easily result in high levels of stress in staff and burnout, which are likely to exacerbate the tension inherent in any prison establishment. Given the low staff resources, an emphasis was put on maintaining a good atmosphere, reducing tension and preventing unrest, at the expense of developing resocialisation activities.

**The CPT calls upon the Polish authorities to take urgent steps to improve prison staffing levels.**



## 2. Ill-treatment

67. A few allegations were heard at Wołów Prison of physical ill-treatment (kicks and punches) in the course of prisoners being placed in a security cell (cela zabezpieczająca). Further, the delegation heard a few isolated complaints of physical ill-treatment and verbal abuse of inmates by custodial staff at Warsaw-Mokotów Remand Prison.

That said, most of the prisoners interviewed by the delegation in the three prisons visited indicated that they were being treated by staff in a correct manner. The delegation itself observed that relations between staff and inmates were quite relaxed.

68. At Wołów Prison, the delegation was informed that, in the first nine months of 2004, there had been two complaints by prisoners concerning ill-treatment by staff (one of them involved the use of physical force and the other the application of means of coercion). Both complaints had been rejected as unsubstantiated following internal inquiries.

In order to obtain a nationwide view of the situation concerning the treatment of prisoners by prison staff, **the CPT would like to receive the following information for 2004 and the first half of 2005, in respect of all prisons in Poland:**

- **the number and type of complaints of ill-treatment lodged against prison staff;**
- **an account of disciplinary and/or criminal sanctions imposed following such complaints.**

69. The delegation heard only a few allegations of inter-prisoner violence at Wołów Prison, which tallies with the relatively small number of injuries caused by prisoners to other prisoners which have been officially recorded (5 in 2003 and 7 in the first nine months of 2004). However, it became apparent that a number of prisoners refused to take advantage of the opportunity to go to the gym and/or recreation rooms because of an implicit (or explicit) threat of violence. A number of prisoners interviewed by the delegation spoke of a dominant prison subculture of bullying. The overcrowding observed at the establishment did little to defuse tensions.

**The CPT recommends that the management and staff of Wołów Prison exercise continuing vigilance and make use of all the means at their disposal to counter the negative impact of prison subculture and prevent inter-prisoner violence and intimidation.**

70. More generally, the CPT wishes to stress that ensuring positive staff-inmate relations will depend greatly on having an adequate number of staff present at any given time in detention areas and in facilities used by prisoners for activities. An overall low staff complement will certainly impede the development of positive relations; more generally, this will generate an insecure environment for both staff and prisoners. **In this connection, reference is made to the recommendation in paragraph 66.**

71. The CPT is concerned by the length of time during which means of restraint<sup>4</sup> were being applied to prisoners placed in a security cell (cela zabezpieczająca) at the prisons visited. At Wołów Prison, the delegation noted instances of the simultaneous application of several means of restraint (i.e. ankle cuffs, body belt or straightjacket, protective helmet) for up to 48 hours continuously. At Warsaw-Mokotów Prison, the duration of restraint varied between 24 and 48 hours. At Cracow Remand Prison, means of restraint could also be applied for a considerable period of time (i.e. up to 24 hours).

The excellent records maintained at the three prisons visited showed that “direct means of coercion” were generally not used excessively.<sup>5</sup> A detailed protocol was drawn up in each case, comprising, inter alia, the reasons for the application of restraint, an account of the prisoner’s behaviour during the measure, the prison doctor’s comments and a post-release report. The doctor visited the prisoner as soon as possible after the restraint had been applied in order to certify whether he was fit to be restrained and thereafter as often as necessary, at least every 24 hours, as well as after the removal of the restraint.

The CPT understands that it is necessary on occasion to resort to means of restraint in a prison setting. **However, in the Committee’s view, means of restraint additional to placement in a security cell should rarely need to be applied for more than a few hours, unless there is a medical condition requiring this. The latter cases should be fully under the control of a doctor called upon to assess the need for restraint and not to certify fitness for restraint. Means of restraint should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment.**

72. As already noted (cf. paragraph 8), at the end of the visit, the delegation invoked Article 8, paragraph 5, of the Convention and made an immediate observation, requesting the Polish authorities to review the existing procedure and practice for restraining prisoners, with a view to ensuring that the application of mechanical restraints (in addition to placement in a security cell) is greatly reduced and used only in cases where this is strictly required.

By letter of 17 November 2004, the Director General of the Prison Service recalled that, according to the legal provisions related to the application of “direct means of coercion”, such means cannot be applied for longer than necessary. According to the letter, the Central Board and regional inspectorates of the Prison Service have taken steps in order to uncover violations of the rules and prevent their occurrence in the future. Further, the Ordinance of the Council of Ministers of 2 November 1996 concerning the application of direct means of coercion has been revised, introducing an obligation to inform the regional director each time such means are applied and to equip security cells with television monitors and recording equipment. Moreover, on 26 October 2004, the Director General of the Prison Service instructed all units to introduce video camera recordings of the whole procedure for applying direct means of coercion, including outside security cells. In addition, by letter of 9 November 2004, the Director General of the Prison Service ordered that all prison officers be informed of the observations made by the CPT’s delegation concerning the application of means of coercion to prisoners placed in security cells. Special attention is also said to be paid by visiting penitentiary judges to the use of means of coercion.

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<sup>4</sup> Polish legislation provides for the application of “direct means of coercion” which include the use of physical force, placement in a security cell, the application of handcuffs, ankle cuffs, body belt, straightjacket, protective helmet, as well as the use of truncheons, chemical substances and water cannons.

<sup>5</sup> Since the beginning of 2004, there had been 27 instances of the use of “direct means of coercion” at Wołów Prison, 21 at Warsaw-Mokotów Remand Prison and 10 at Cracow Remand Prison.

The CPT welcomes the above-mentioned steps taken by the Polish authorities. In this context, the Committee wishes to stress the importance of promoting control and restraint techniques which are less dependent on the use of mechanical means of restraint, but rely instead on having sufficient numbers of staff working in teams when there is a need to control a prisoner exhibiting violent or unmanageable behaviour. Training staff in the proper use of manual control and restraint techniques will enable them to maximise the safety of all concerned and protect the dignity of the prisoner involved. **The CPT recommends that the Polish authorities reconsider their approach to controlling and restraining prisoners, in the light of the above remarks.**

### **3. Prisoners classified as “dangerous” (“N” status)**

73. In the report on the 2000 visit, the CPT paid particular attention to the situation of prisoners classified as “dangerous” (cf. paragraphs 68 to 73 of CPT/Inf (2002) 9). Since 2000, the Polish authorities have embarked on the setting up of special units for prisoners classified as “dangerous”, referred to as “N” units. A total of 14 such units, with an overall capacity of 414 places, were in operation at the time of the 2004 visit.

Two of the establishments visited – Warsaw-Mokotów Remand Prison and Wołów Prison – had separate “N” units, while Cracow Remand Prison had ten cells amongst the ordinary prisoner accommodation which had been adapted for “N” status prisoners.

The criteria and procedure for placement in an “N” unit or cell are contained in the Executive Penal Code (cf. Section 88). Allocation to such a unit is carried out by the Penitentiary Commission on the basis of the character of the offence and the degree of threat which the prisoner poses to society and to the safety of the prison. The “N” status of both sentenced and remand prisoners is now reviewed every three months (at the time of the 2000 visit, the frequency of reviews in the case of sentenced prisoners was every six months); the CPT welcomes this change.

74. The “N” unit at Warsaw-Mokotów Remand Prison was opened in February 2004 and is currently the largest one in the country. It was located in a new, purpose-built building on two floors, designed to provide for all the needs of the prisoners within the building with a view to minimising the risk involved in moving them around. Accordingly, the unit had its own family and lawyers’ visiting areas, exercise yards, recreation room, shower room, medical room and disciplinary cell. All areas, including the inside of the cells, were covered by closed-circuit TV.

The unit had 20 cells (eight for three persons, nine for two and three single cells). At the time of the visit, 38 prisoners were being accommodated in the unit (32 on remand and 6 sentenced). Each cell was equipped with beds, fixed table and chairs, cabinets for personal belongings, call bell, television stand, and a partitioned sanitary annexe (toilet and washbasin with hot and cold water). The windows were opaque because of the proximity to the rest of the prison, but ventilation and artificial light were good. Cell furnishings were new and the whole area was in good decorative order.

75. At Wołów Prison, the “N” unit was situated over two floors of a normal wing. It had a total capacity of 31 cells (the majority of which were designed for single use) and was holding 16 prisoners at the time of the visit. The single cells were small (5 m<sup>2</sup>) and very narrow (1.3 m in width). In the CPT’s opinion, such cells are not acceptable for holding persons for lengthy periods of time. **The Committee recommends that the single cells be either enlarged, with a view to ensuring that they measure at least 6 m<sup>2</sup> and that there is 2 m or more between walls, or withdrawn from service.** As for the remainder of the cells, they were designed for double occupancy and were of an adequate size for this purpose (some 8 m<sup>2</sup>).

Reference should also be made to a cage-like structure found in a room used by various categories of staff performing educational or therapeutic functions to interview prisoners. Staff explained that the prisoner to be interviewed was placed within the cage so that the interviewer did not have direct physical contact with him. In the CPT’s opinion, such an approach could be considered as inhuman and degrading for both prisoners and the staff concerned; further, it is doubtful that it can be conducive to the proper performance of educational/therapeutic functions. **The Committee recommends that the Polish authorities put an end to this practice.**

76. There were only two “N” status prisoners at Cracow Remand Prison at the time of the visit. They were being accommodated in single cells (measuring some 7 m<sup>2</sup>), the material conditions of which call for no particular comment.

77. The CPT retains serious misgivings about the regime applied to “N” category prisoners, which was very restrictive.

Out-of-cell time was limited to one hour of outdoor exercise per day (taken either alone or in the company of a cellmate, if any) and a weekly visit of one to two hours to the recreation room (no access to a recreation room was available to “N” status prisoners at Cracow Prison). A weekly shower, two visits and two telephone calls of 10 minutes per month for sentenced prisoners (at the discretion of the prosecutor in the case of remand prisoners) were the only other activities. Contact with staff consisted of periodic interviews with an educator and a psychologist and occasional visits by a chaplain.

Prisoners may be subject to the above-mentioned regime for many years (up to 5 years in the case of several prisoners at Wołów Prison). As stressed in the report on the visit in 2000, any regime which denies appropriate mental and physical stimulation to prisoners is likely to have a detrimental effect on the health of the person concerned and, in particular, can lead to a gradual deterioration of mental faculties and social abilities. Consequently, regardless of the gravity of the offences of which prisoners are accused or have been convicted and/or their presumed dangerousness, efforts must be made to provide them with appropriate stimulation and, in particular, with adequate human contact.

**The CPT calls upon the Polish authorities to review the regime applied to “N” status prisoners, in the light of the above remarks.**

78. The delegation observed that the quarterly reviews of prisoners' "N" status were fully documented, and psychological and psychiatric reports were obtained at regular intervals. However, these reports generally related to the prisoner's fitness for continued confinement under "N" status rather than any assessment of his dangerousness or propensity to act again in an unacceptable way. It appeared that the dominant factors leading to retention of the "N" status were historical ones, like the violent nature of the crime committed (often many years before). Many prisoners interviewed by the delegation considered the periodic review of their status a pure formality and thought that they did not have a realistic chance of moving from the "N" status to another regime.

In the CPT's opinion, the placement of prisoners in an "N" unit for lengthy periods of time is highly dubious. **The Committee recommends that the Polish authorities review current practice with a view to ensuring that "N" status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category.**

79. In the report on the 2000 visit, the CPT had strongly criticised the routine handcuffing of prisoners classified as "dangerous" (cf. paragraph 72 of CPT/Inf (2002) 9). The observations made during the 2004 visits suggest that the approach concerning handcuffing had been reviewed in the right direction. When moving within their unit, "N" status prisoners could be handcuffed at the discretion of a senior officer. All "N" status prisoners were handcuffed when they moved outside the unit for any purpose; however, the hand cuffs were removed in the exercise yards and during visits.

#### **4. Conditions of detention**

##### **a. Cracow Remand Prison**

80. Cracow Remand Prison is a relatively old establishment situated in the centre of town. Built in 1904 as a military garrison, the building became a prison in 1939 and is subject to an on-going renovation plan. Despite its title, the establishment holds a large number of sentenced prisoners and has a hospital catering for all categories of prisoners referred for treatment from the region.<sup>6</sup> On the first day of the visit, the prison block was holding 693 prisoners (for an official capacity of 599) and the hospital 90 prisoners (for an official capacity of 103). The breakdown of the establishment's population into categories was as follows: 453 prisoners on remand (including 4 women and 94 young prisoners), 323 sentenced prisoners (including 8 women and 28 young prisoners) and 7 persons serving administrative sanctions (including 1 woman and 2 young prisoners, one of whom was female).

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<sup>6</sup> In view of its specific medical functions, the prison hospital is considered independently from the prison in the section "Health-care issues" of the report.

*i. material conditions*

81. Prisoner accommodation was provided in a boomerang-shaped building on four levels, each corresponding to a unit (II, III, IV and V). At the outset of the visit, the delegation was informed that the population of the prison had been reduced considerably<sup>7</sup> in the last few years as a matter of policy, with use being made of a second, less secure remand prison in Cracow and sentenced prisoners being transferred to their prison of allocation as quickly as possible.

Nevertheless, the establishment remained overcrowded. Thus cells measuring 6 – 7 m<sup>2</sup> were holding two prisoners, cells measuring 10-11 m<sup>2</sup>, three to four prisoners, and those measuring 21-27 m<sup>2</sup>, eight to twelve prisoners. In a number of cells, the space available per prisoner was less than 2.5 m<sup>2</sup>, occasionally as low as 1.7 m<sup>2</sup> per person (e.g. cell 425, which was holding twelve prisoners in 21 m<sup>2</sup>). This clearly violates the standards provided for in Polish legislation and is even more unacceptable by the CPT's standards.

82. Natural and artificial light in the cells were good, as was the ventilation. The cell equipment consisted of two and/or three-tier bunk beds, a table, stools and shelves. The ceilings were high (some 3.5 m), so the three-tier beds were not as oppressive as might otherwise have been the case. The majority of cells had more beds than inmates (a remnant from the time when the establishment was even more overcrowded) and the top beds were rarely used. The in-cell toilet facilities were partitioned and reasonably clean. Further, all cells had a call bell.

Two of the four floors of the prisoner accommodation block had recently been refurbished and the cells on these floors appeared quite pleasant, despite the overcrowding. The refurbishment had involved, inter alia, the installation of hot water in the cells and there were plans to do the same in the rest of the accommodation.

Separate accommodation was provided to smoking and non-smoking prisoners. This policy, which was observed at all prison establishments visited in 2004 in Poland, is commendable.

83. Young prisoners (up to 21 years of age) usually shared cells with one or more adult prisoners who had been specially selected to give guidance and maintain order. As stressed by the CPT in previous visit reports (cf. paragraph 73 of CPT/Inf (98) 13), the Committee has reservations about this practice, which brings with it the possibility of domination and exploitation. The young prisoner population should be held together in separate accommodation, under the supervision of specifically chosen staff. This would, inter alia, facilitate the provision of a regime adapted to the needs of young persons.

84. All female prisoners were accommodated in the hospital building in two cells (measuring 24 and 32 m<sup>2</sup>). Conditions in these cells were quite adequate.

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There had been 896 prisoners at the end of 2001.

85. Male prisoners were entitled to one shower per week, and female prisoners as often as required. There was a shower room on each floor of the prison block; the shower facilities were clean and in a good state of repair.

Upon admission, all prisoners received a set of personal hygiene items, which were subsequently periodically renewed if the prisoner was destitute. Bed linen was changed once a fortnight and towels every week.

86. The delegation received almost no complaints about the food provided at the prison; that said, interviews with inmates suggested that more consideration could be given to the dietary requirements of different religious groups.

The main prison kitchen had benefited from renovation in 2000 and was well-equipped.

87. **The CPT recommends that steps be taken at Cracow Remand Prison to:**

- **reduce the occupancy rate of the establishment, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner. This will involve:**
  - **removing the third tier of the bunk beds;**
  - **ensuring that not more than one prisoner is accommodated in the establishment's cells measuring 6-7 m<sup>2</sup> (save in exceptional cases when it would be inadvisable for a prisoner to be left alone);**
- **refurbish the remainder of the prisoner accommodation;**
- **discontinue the practice of placing adult and young prisoners in the same cell. Young prisoners should be held in a quite distinct detention facility; the staff assigned to such a unit should be carefully chosen and, more specifically, be persons capable of guiding and motivating young people.**

*ii. programme of activities*

88. All prisoners confirmed that they could take one hour of outdoor exercise per day. There were seven exercise yards which were rather restricted in size (some 50-60 m<sup>2</sup>). The yards were equipped with benches, but had no shelter against inclement weather.

89. The availability of work for prisoners was very limited. A mere 77 prisoners were employed in the area of general prison services, 49 of whom were in paid jobs; the majority of the working prisoners (63) were sentenced.

No educational or training activities were offered to prisoners.

90. As regards other activities, there was an indoor gym where inmates could play basketball, handball and table tennis. The delegation was informed that prisoners were allowed access to the gym once or twice a month for an hour. However, some prisoners claimed that they had hardly ever been in the gym.

Further, there were two recreation rooms, in units IV and V, as well as a “therapy room” in unit II. The rooms in question were equipped with a table tennis table, TV set, a range of books and newspapers, and were pleasantly decorated. The delegation was informed that, due to the overcrowding, the rest of the establishment’s recreation rooms had been converted into prisoner accommodation. Access to the existing rooms varied and some prisoners interviewed by the delegation alleged that they had never been allowed to spend time in them. In this connection, it was noted that the weekly timetable for the use of the recreation rooms did not include remand prisoners from unit III.

The prison also had a library with some 12,000 volumes and a well-equipped recording and broadcasting room. Further, there was a small chapel used by prisoners of different denominations.

91. To sum up, the vast majority of prisoners frequently spent up to 23 hours a day languishing in their cells. As regards young prisoners, they were not provided with any programme of activities suitable for their age. The CPT recognises the difficulties in developing a regime of activities in what was essentially intended to be a remand establishment; however, the almost total lack of constructive activities is unacceptable. As stressed by the Committee in previous visit reports, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association). As regards in particular young prisoners, they should be offered a full programme of educational, recreational and other purposeful activities; physical education should constitute an important part of that programme.

**The CPT recommends that strenuous efforts be made to develop the regime of activities for prisoners at Cracow Remand Prison, in the light of the above considerations. In this connection, steps should be taken to ensure that all prisoners are provided with access on a regular basis to the indoor gym and recreation rooms.**

**Further, the Committee recommends that the outdoor exercise facilities be improved, in the light of the remarks made in paragraph 88.**



*iii. the diagnostic unit*

92. The diagnostic unit at Cracow Remand Prison was set up four years ago and receives sentenced young prisoners from the whole of the region of Cracow. Its main purpose is to assess young prisoners from a psychological point of view and deliver an opinion concerning their allocation to different types of penitentiary establishments.<sup>8</sup> Prisoners who apply for conditional release, have mental disorders or have violated prison discipline may also be transferred to the diagnostic unit. Placement in the unit is subject to the prisoner's informed consent or by order of a penitentiary judge.

93. With an official capacity of 26, the diagnostic unit was holding 33 young prisoners at the time of the visit. The delegation was informed that the average length of stay was 2 to 3 weeks.

The unit comprised five cells, the conditions of which were comparable to those observed in the rest of the prison. The cells were overcrowded (e.g. a cell measuring some 17 m<sup>2</sup> was holding seven inmates) but clean and in a good state of repair. **In this connection, reference is made to the recommendation in paragraph 87.**

94. The unit's staff consisted of two psychologists, two sociologists, an educator and a nurse. Further, a psychiatrist attended the unit twice a week.

During their stay in the unit, young prisoners underwent a series of psychological tests as well as a psychiatric examination and were subject to ongoing observation by the above-mentioned team of specialists. On the basis of that, a programme of social and psychological rehabilitation was drawn up, taking into account the individual characteristics of each prisoner. The prisoners concerned (as well as their families, if appropriate) were involved in the drawing up of these individual programmes.

Young prisoners in the unit had access to a recreation room every other day and to the gym once a month.

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<sup>8</sup> Cf. Section 83 of the Executive Penal Code.

b. Warsaw-Mokotów Remand Prison

95. Despite its name, Warsaw-Mokotów Remand Prison is a multi-purpose establishment for remand and sentenced male prisoners, with a hospital for both male and female prisoners attached to it.<sup>9</sup> It is located in the centre of Warsaw, where it occupies several buildings, for the most part dating back to early 20<sup>th</sup> century. With an official capacity of 951, on the first day of the visit the prison was accommodating 1,061 inmates, including 522 on remand, 532 sentenced and 7 administrative detainees.

i. *material conditions*

96. Prisoner accommodation was provided in four living blocks: Block I for sentenced prisoners, Blocks II and III for remand prisoners, and Block VI for “N” status prisoners. Block I had recently undergone refurbishment. The cells in Blocks II and III, where refurbishment had not yet begun, were in a poor state of repair. As for Block VI, it was a newly-built structure (cf. paragraph 74).

97. At the time of the visit, the prison was operating at 120% of its official capacity (not including the hospital). According to the establishment’s management, the average living space per inmate was approximately 2.5 m<sup>2</sup>.

The worst overcrowding was observed in Unit 1 of Block I, accommodating, inter alia, sentenced prisoners in transit and those already sentenced but with a pending second criminal case. The cells measuring between 9 and 18 m<sup>2</sup> were accommodating between three and twelve prisoners each. Conditions were somewhat better - but still cramped - in the other blocks.

As a result of the overcrowding, ventilation left something to be desired in many of the cells. On the positive side, artificial lighting and access to natural light appeared generally adequate, with the exception of some cells seen in Units 1 and 4 of Block II, where dense iron grilles had been fixed to the cell windows.

98. The cells’ equipment consisted of bunk beds with full bedding, a table, stools, lockers, a call system and a partially or fully screened sanitary annexe. Prisoners were allowed to keep a range of personal items (including TV and radio sets and cassette/CD players) and to decorate their cells with posters and plants.

Some of the cells in Blocks II and III which had previously accommodated “N” status prisoners were fitted with an additional iron grille behind the door. This, in the CPT’s view, is an unnecessarily oppressive arrangement which cannot be justified by the security requirements.

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<sup>9</sup> In view of its specific medical functions, the prison hospital is considered independently from the prison in the section “Health-care issues” of the report.

99. Prisoners were allowed to take at least one shower per week in well-kept shower rooms located at each unit. There were no problems with the provision of personal hygiene items and products to clean the cells. Bed linen was washed every two weeks, and inmates' underwear and towels each week. The central laundry facility, although quite old, was fully operational.

100. Most of the prisoners interviewed by the delegation indicated that they were satisfied with the food provided by the prison; however, a few inmates complained that the diet was rather monotonous.

101. **The CPT recommends that at Warsaw-Mokotów Remand Prison:**

- **strenuous efforts be made to reduce the cell occupancy rates, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner;**
- **the cell refurbishment programme be completed as a matter of priority;**
- **the shortcomings observed as regards the cells' ventilation and access to natural light be remedied;**
- **the iron grilles in the former cells for "N" status prisoners in Blocks II and III be removed at the earliest opportunity.**

*ii. programme of activities*

102. The negative effects of overcrowding at Warsaw-Mokotów Remand Prison were compounded by the shortage of constructive out-of-cell activities for prisoners. For the bulk of the inmate population, the only regular out-of-cell activity was one hour of outdoor exercise per day. The exercise yards measured between 36 m<sup>2</sup> and 84 m<sup>2</sup> and were of an oppressive design (no equipment except for a bench, no shelter against inclement weather).

103. The delegation was informed that work was provided to 270 prisoners (i.e. some 30% of the prison population). This number included 210 prisoners with paid jobs (in the printing shop attached to the prison, the general prison services and the hospital) and 60 prisoners performing voluntary unpaid work. According to the management, there was a long waiting list of prisoners who wanted to work; however, priority was given to inmates with the required skills, a record of good behaviour and alimony dues.

Further, the prison had two schools preparing professionals for the printing industry: a 3-year vocational school and a 4-year technical secondary school. A total of 43 were prisoners attending the schools at the time of the visit (which corresponded to the maximum number of places available). It should be noted that access to education was granted to sentenced prisoners only.

In addition, the establishment occasionally organised cultural and recreational activities, such as inviting actors and musicians, holding sports and artistic competitions, celebrating public and religious holidays. Prisoners also had access to a library with some 30,000 books. Further, the establishment had its own radio broadcasting system with a studio and a programme produced by inmates, as well as a prison newspaper edited by prisoners.

104. Sentenced prisoners in Block I (except for Unit 1) had their cell doors unlocked throughout the day and enjoyed unlimited access to common rooms, where they could watch television, play table tennis and board games, read newspapers and magazines, and use some basic fitness equipment. The CPT commends this approach.

As regards the remainder of the prison population, they could, in principle, use common rooms for 4 to 6 hours per week. However, due to overcrowding, common rooms in some of the units (e.g. Units 3 in Blocks II and III) had been transformed into prisoner accommodation.

105. Special mention deserves to be made of the therapeutic treatment for alcohol and drug addiction (the so-called “Atlantis” programme) offered to 49 sentenced prisoners accommodated in Unit 4 of Block I. The delegation gained a positive impression of this programme. The basic 12-week programme, organised by a team of four psychologists, one sociologist and six educators, followed a strict agenda for each day involving a diverse range of therapeutic activities (therapy classes for anger management, assertiveness training, group and individual psychotherapy, AA meetings, sports).

**106. The CPT recommends that the Polish authorities strive to develop further the programme of activities for prisoners - both remand and sentenced - at Warsaw-Mokotów Remand Prison. In this context, the authorities should seek to make broader use of the approach followed in Block 1. Further, the outdoor exercise facilities should be improved, in the light of the remarks made in paragraph 102.**

c. Wołów Prison

107. Wołów Prison is essentially a closed-type establishment for sentenced male prisoners (first-time serious offenders and recidivists). Built in the 1890s, it covers an area of 13 hectares in the small town of Wołów, some 50 km from the city of Wrocław. With an official capacity of 1,020, on the first day of the visit the establishment was holding 1,352 prisoners, including one young prisoner and 18 foreign national prisoners. The prison comprised a semi-open unit (122 prisoners), a therapeutic unit (56 prisoners) and an “N” unit (16 prisoners). In addition, 18 prisoners were being accommodated in an open-regime unit in the nearby village of Golina, attached to a prison staff training centre.

The situation at the establishment was marked by overcrowding, which had negative repercussions for all other aspects of life. In April 2004, the prison population had peaked at 1,480 inmates, and in May 2004 there had been a mass hunger strike to protest against the addition of an eighth bed to cells designed for five prisoners.

i. *material conditions*

108. The prison was constructed in radial style, with four wings, A, B, C and D, each with four floors. The majority of the cells were designed to hold five prisoners and measured 15-16 m<sup>2</sup> (including a sanitary annexe). However, practically all of them were accommodating six to eight inmates. As a result, the living space in the cells was very restricted. In addition to bunk beds, the cells were equipped with a table, stools, lockers, shelves, and frequently a television and/or radio (owned by the prisoners). All cells had integral sanitation (a toilet and sink, partitioned off with a curtain), a call bell and the internal regulations posted on the wall. Prisoners kept a variety of personal belongings which, given the limited space, were often stored under the beds.

There were also 46 single cells at the prison, 25 of which were on the fourth floor of D wing, for prisoners accommodated on their own at the recommendation of a psychologist or on their own request, and the remainder in the “N” unit. As already mentioned (cf. paragraph 75), the single cells’ dimensions - both in terms of surface area (5 m<sup>2</sup>) and width (1.3 m) - were unacceptable.

On the positive side, cells had generally good natural and artificial light and ventilation, and the delegation observed that the premises on the whole were clean and well-maintained.

109. Prisoners were entitled to take a shower once a week, and those who worked, every day. The central shower room had 16 shower heads, which could not be considered as sufficient for the prison’s population. A number of complaints were heard from prisoners about the restricted time they were apparently allowed in which to wash (some 10 minutes) and the limited frequency of showers. The delegation was informed that a new shower room would be built in 2005.

Some personal hygiene items and cleaning products were provided to prisoners. Bed linen was washed in the prison laundry once a fortnight, and towels once a week. However, prisoners washed and dried their own clothes inside the cells, which only rendered the effects of the overcrowding worse.

110. Most prisoners indicated that the food provided by the prison was acceptable. However, some prisoners complained that it was monotonous or not sufficient, especially for those who had no means to buy additional food.

The kitchen was in a poor state of repair, but the delegation was informed of plans to refurbish and extend it in 2005.

111. **The CPT recommends that steps be taken at Wołów Prison to:**

- **substantially reduce the occupancy rate of the establishment, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner;**
- **enlarge the establishment’s single cells, with a view to ensuring that they measure at least 6 m<sup>2</sup>, and that there is 2 m or more between walls; failing that, the cells in question should be withdrawn from service;**
- **enlarge the shower facilities;**
- **review the laundry arrangements for prisoners’ own clothes;**
- **refurbish the kitchen.**

ii. *programme of activities*

112. All prisoners were entitled to one hour of outdoor exercise per day. The outside exercise areas were numerous and spacious; further, several were equipped with sports equipment and seats to enable prisoners to do more than just wander idly around. However, the yards had no protection against inclement weather, and most of them had a soil surface and could become muddy. In addition, rubbish of various kinds was accumulated in open piles adjacent to the exercise areas, which was a possible health hazard.

113. Only about 22% of the inmates benefited from paid work. 72 prisoners were employed by the "Pomet" metal production company, 19 by the establishment's auxiliary workshops (production of gym mattresses and balls, car repairs, bookbinding, etc.) and 213 in the area of general prison maintenance. In addition, 8 prisoners from the semi-open unit worked in a sheep breeding farm under a newly set-up project ("Black Sheep") and 18 prisoners were employed at the open unit in Golina. Further, three prisoners had unpaid work activity.

Preference in work allocation was given to those who had to pay alimony or who were about to be released. Many prisoners resented the lack of work, which was particularly exasperating for long-term prisoners.

114. The prison had a vocational school with two sections: a basic vocational school, offering two-year courses in carpentry and mechanics, and a technical college with three-year courses for machine mechanics. Prisoners from all over Poland could send applications to the school and, if accepted, were transferred to Wołów Prison. At the time of the visit, 88 prisoners were studying at the basic vocational school and 77 at the technical college. The school employed seventeen teachers and had four well equipped classrooms, a computer room, a school library and two workshops for practical training.

Various other courses were periodically offered to prisoners (welding, wall painting, English and German language). However, there were no such courses in progress at the time of the visit, due to the shortage of funds.

115. As regards other activities, the prison had a variety of communal areas, including a large gymnasium which, in addition to being used for sports games, functioned as a theatre. Access to the gym was on average once every two weeks for two hours, in groups of 20 prisoners. However, some prisoners claimed that they went to the gym less often or did not go there at all (cf. paragraph 69).

There was a library with some 13,000 books, newspapers and three computers to which prisoners had access. Further, there was a chapel (with a capacity of 200 places, used by all denominations and religions) and an internal radio station. Staff made efforts to promote various cultural and recreational activities, such as inviting theatre and music groups, running literary and film clubs, and organising competitions. However, only a few recreation rooms were available in the wings since, similar to what was observed at the other prisons, they had been converted into cellular accommodation to provide for the growing number of inmates. To compensate for the shortage of such rooms, guards sometimes allowed prisoners from one cell to go to another, but this was only possible for 6-7 inmates in each unit at a time.

116. Despite the various activities referred to above, it was commonplace for prisoners who did not work or attend school to spend up to 23 hours a day confined to their cells. The current involvement of only 22% of inmates in work activities and 12% in education is clearly not sufficient. The prison Director was aware of the negative aspects of the lack of constructive activities for prisoners and apparently spent much of his time out in the community seeking work and contracts for the prison. One of the results of these efforts was the above-mentioned scheme for sheep breeding which, however, employed only a small number of prisoners. The Director was also trying to obtain a contract to build social housing, which would employ many more prisoners. The search for work for prisoners was, however, severely hampered by the 30% unemployment rate in the local community.

**The CPT encourages the management of Wołów Prison to continue its efforts to engage more prisoners in work and other purposeful activities (in particular education and vocational training).**

**Further, the Committee recommends that the shortcomings in the exercise yards referred to in paragraph 112 be remedied.**

*iii. the therapeutic unit*

117. The CPT's delegation gained an overall positive impression of the prison's therapeutic unit.

With a capacity of 50 places, at the time of the visit the unit was accommodating 56 prisoners displaying one or more forms of mental disorder. Among them, 29 prisoners were suffering from alcohol dependence and 3 from substance abuse.

Material conditions in the unit were somewhat better than those observed in the rest of the establishment due to the fact that most of the cells were being used within their intended capacity.

118. The unit was staffed by two psychologists (one of whom was head of the unit), an educator and an occupational therapist, as well as prison guards. There had at one time been periodic visits by a psychiatrist, but this practice had stopped and prisoners were being transported for psychiatric consultations to Wrocław. Further, prisoners in need of psychiatric treatment were transferred to the hospital at Wrocław Remand Prison.

119. Each inmate had an individual treatment plan. Fifteen of the prisoners were receiving psychopharmacological medication prescribed and periodically reviewed by a psychiatrist. Different kinds of therapy were provided: individual support therapy, group therapy, psycho-correction, communication and social skills training, relaxation training, treatment for alcohol addiction and occupational therapy (sewing, carpentry, leather work, painting, gardening). Further, prisoners who had difficulties in reading and writing were given lessons.

During the day, inmates could move freely within the unit. There were several rooms where they could engage in various activities: workshops for sewing, carpentry, art and leather work, a fitness room and a common room. Two to three prisoners could be in a workshop at a time for periods of 45 minutes. Further, twice a week prisoners were allowed to go to the gym in small groups. Cultural activities were also organised by the unit's educator.

## 5. Health-care issues

### a. health-care services in the prisons visited

120. The health-care service at Cracow Remand Prison (considered separately from the prison hospital) was staffed by two doctors, a dentist and seven nurses. The prison hospital provided 24-hour medical cover. Further, a number of medical specialists (including psychiatrists from the prison hospital) held surgeries at the prison.

At Warsaw-Mokotów Remand Prison, the general health-care service (excluding the prison hospital) consisted of three doctors, two dentists (one of whom was working full time) and seven nurses. As at Cracow, 24-hour health care was provided by the adjacent prison hospital. Prisoners also had access to medical specialists working at the prison hospital.

To sum up, the provision of health care to prisoners at Cracow and Warsaw-Mokotów Remand Prisons appeared to be generally satisfactory, **though consideration might usefully be given to reinforcing the nursing staff at Warsaw-Mokotów Remand Prison.**

121. The health-care service at Wołów Prison comprised ten full-time staff members: three doctors, a dentist, four nurses, a pharmacist and a medical technician. Further, the prison was visited by a range of medical specialists. A doctor was always present at weekends. However, no health-care staff were present at night.

Many prisoners interviewed by the delegation complained about the quality of health care and/or the attitude of health-care staff. In this context, it should be noted that the responsibilities of the health-care team were not limited to the prisoners; it also provided health care to the prison staff. It is clear that the existing health-care resources at Wołów Prison are not sufficient to cope with such a workload.

**The CPT recommends that steps be taken at Wołów Prison to:**

- **reinforce the health-care team and, in particular, substantially increase the nursing staff resources (as a first step, by the equivalent of at least two full-time nursing posts);**
- **ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the prison's premises, including at night and weekends.**



122. More generally, the CPT has certain reservations about the practice of prison doctors treating both prisoners and prison staff. The resources allocated to the medical care of prisoners are often limited and the sharing of doctors' working time could be to the detriment of the quality of the care provided. If exceptionally required by the particular circumstances of an establishment, a dual responsibility should be accompanied by very specific safeguards guaranteeing an even-handed approach. For example, it should be stipulated beforehand what percentage of the doctors' time is to be devoted to staff. It is also desirable that the two stocks of medication (for prisoners and staff respectively) be kept separate from each other. It might even be envisaged that the doctor has two separate places for consultation. Finally, if an issue - for example an allegation of ill-treatment of a prisoner by a member of staff - could give rise to a potential conflict of interest, the prisoner should be entitled to be examined by a medical doctor who does not care for the prison staff. **The CPT invites the Polish authorities to review the practice observed at Wołów Prison, in the light of the above remarks.**

123. During the 2004 visit, the delegation heard a number of complaints from prisoners concerning possibilities for transfer to hospital facilities outside the prison system for treatment. It appeared that such transfers were in practice rarely authorised and only for persons in the advanced stage of terminal diseases.

**The CPT would like to receive clarification on the possibilities for transferring prisoners to hospital facilities outside the prison system for treatment or consultations.**

124. At the two remand prisons visited in Cracow and Warsaw, newly arrived prisoners were seen by a doctor or a nurse reporting to a doctor in the first 24 hours following their arrival at the prison. The medical reception procedure included screening for tuberculosis (X-ray of the thorax). Other tests (e.g. for HIV) were performed on a voluntary basis. Further, at Cracow Prison, newly arrived prisoners were given a dental check-up; **this is a commendable practice which should be extended to other prison establishments.**

In contrast, there was no systematic examination of newly arrived prisoners at Wołów Prison. Prisoners were informed that a doctor was available and could ask to be examined in case of need. **The CPT recommends that measures be taken to ensure that all newly arrived prisoners at Wołów Prison are seen by a health-care staff member within 24 hours of their arrival.**

125. The confidentiality of medical information was generally respected. Only health-care staff had access to prisoners' medical files. Further, prisoners' medical examinations in principle took place without non-medical prison staff being present.

However, an exception was being made in the case of "N" status prisoners, who were medically examined in the presence of prison guards. The CPT has serious misgivings about this approach. It acknowledges that special security measures may be required during medical examinations in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for prison guards being *systematically* present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a detainee becomes agitated or threatening during a medical examination. **The CPT recommends that the Polish authorities take steps to bring practice in line with the above considerations.**

126. The presence in Polish prisons of a growing proportion of inmates with drug-related problems gives rise to particular difficulties for the prison authorities, both in terms of intoxicant-control and the choice of the appropriate medical and psychological services offered. The CPT considers that such services should be varied, combining medical detoxification, psychological support, life skills, and rehabilitation and substitution programmes for opiate-dependent patients. Further, they should be associated with a prevention policy.

The delegation noted at the establishments visited that very little action (other than traditional prison security) was being taken concerning prevention and as regards the provision of psycho-socio-educational assistance to prisoners with drug-related problems. Methadone substitution programmes were available at Warsaw-Mokotów and Cracow Remand Prisons; however, very few prisoners were being treated with methadone (2 in Warsaw and 3 in Cracow). None of the establishments visited had in place harm prevention measures (e.g. provision of bleach and information about how to sterilise needles).

**The CPT recommends the development and implementation of a comprehensive policy for the provision of care to prisoners with drug-related problems, in the light of the above remarks.**

b. Hospital at Cracow Remand Prison

127. The prison hospital at Cracow Remand Prison had a total capacity of 103 beds distributed among three wards: surgery (18 beds), internal diseases (49 beds) and forensic psychiatry (36 beds). At the time of the visit, 90 prisoners were being accommodated at the hospital.

128. Material conditions in the patients' rooms in the internal medicine and forensic psychiatry wards were on the whole satisfactory. The room occupancy levels were calculated according to the standard of 4 m<sup>2</sup> per patient. The rooms had good access to natural light, artificial lighting and ventilation, and were clean and adequately equipped. That said, the surgical ward (both the patients' rooms and the operating theatre) was in a poor state of repair. The delegation was informed that this ward was due to close for refurbishment at the end of October 2004.

The staffing levels and medical equipment were of a standard expected in a hospital facility.

129. Particular mention should be made of the forensic psychiatry ward, which admitted prisoners undergoing psychiatric observation of up to 6 weeks (which could be prolonged in exceptional cases) as well as prisoners in need of psychiatric treatment. It was staffed by four psychiatrists, two psychologists, six nurses (four of them specialised in psychiatry) and a medical secretary. The treatment included pharmacotherapy, psychotherapy and supportive therapy. Patients had access to a recreation room with a TV set. Further, they were allowed one hour of outdoor exercise per day (depending on their health condition). However, there was no occupational therapy. **The CPT invites the Polish authorities to further develop psycho-social therapeutic activities for patients in the forensic psychiatric ward at the Hospital of Cracow Remand Prison, in particular for those who remain there for extended periods.**

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

c. Hospital at Warsaw-Mokotów Remand Prison

130. The hospital at Warsaw-Mokotów Remand Prison had a total of 155 beds distributed among the following wards: surgery (30 beds), orthopaedics (30 beds), internal diseases (40 beds), forensic psychiatry (51 beds) and intensive care (4 beds). At the time of the visit, 132 prisoners were being accommodated at the hospital.

131. The delegation gained an overall positive impression of the material conditions at the hospital (with the exception of the forensic psychiatry ward). Some of the wards had benefited from recent refurbishment and were well appointed.

As regards staffing levels and medical equipment, they were of an adequate standard.

132. The forensic psychiatry ward performed the same functions as the one at Cracow (cf. paragraph 129). At the time of the visit, 49 of the patients had been admitted for assessment purposes and the remaining two were receiving psychiatric treatment. The delegation was informed that once the assessment had been completed, there could be delays in transferring patients to maximum security hospitals. In fact, 10 of the current patients were awaiting transfer. **The CPT would like to have the comments of the Polish authorities on this matter.**

Living space in the patients' rooms was not satisfactory (e.g. nine prisoners in a room measuring 33 m<sup>2</sup>). Further, the rooms were in a rather poor state of repair and cleanliness and furnished in an austere manner.

The ward was staffed by eight psychiatrists, three psychologists, seven nurses and an EEG specialist. The treatment provided included pharmacotherapy and psychotherapy. As at Cracow, patients were allowed one hour of outdoor exercise per day. However, there were no activities of an organised nature: patients did not even have the benefit of using a recreation room. On a more positive note, patients were allowed to wear their personal clothing.

**The CPT recommends that steps be taken in the forensic psychiatric ward at the hospital of Warsaw-Mokotów Remand Prison to:**

- **introduce a more therapeutic material environment;**
- **develop a broader range of psycho-social therapeutic activities for patients, in particular for those who remain in the ward for extended periods.**

## 6. Other issues related to the CPT's mandate

### a. contact with the outside world

133. The situation as regards the possibilities for prisoners to maintain contact with their families and friends was the same as that observed during the 2000 visit (cf. paragraphs 141 and 142 of CPT/Inf (2002) 9).

The rules and practice applicable to visits, correspondence and access to a telephone for sentenced prisoners could be considered as adequate. In all prisons, the visiting facilities were of a good standard (including rooms for family visits at Wołów Prison).

However, the CPT is concerned by the lack of improvement in the arrangements for remand prisoners. In the report on the 2000 visit, the Committee recommended that the restrictive rules on visits and correspondence as well as the blanket ban on telephone calls for remand prisoners be reviewed. In the course of the 2004 visit, the delegation again observed that the vast majority of remand prisoners in the establishments visited spent long periods of time without being allowed to receive visits from their relatives or to correspond.

134. In their response to the report on the 2000 visit, the Polish authorities stated that the existing rules were necessary to guarantee that a remand prisoner would not force other persons participating in legal proceedings to make false testimony or explanations, or in any other way impede the criminal proceedings. The CPT recognises that on occasion it may be necessary, in the interests of justice, to impose certain restrictions on visits for particular remand prisoners. However, the presumption in the existing rule should be reversed, i.e. visits and correspondence for remand prisoners should in principle be authorised in the same way as in respect of sentenced inmates, and any restrictions should be strictly limited to the requirements of a given case and applied for as short a time as possible. Under no circumstances should visits between a remand prisoner and his/her family be prohibited for a prolonged period. If it is considered that there is an ongoing risk of collusion or other interference with the course of justice, visits should still be authorised but under supervision. This approach should also cover remand prisoners' correspondence with relatives and telephone calls. **The CPT calls upon the Polish authorities to review arrangements concerning contacts with the outside world for remand prisoners, in the light of the above remarks.**

### b. discipline and solitary confinement

135. In the report on the 2000 visit (cf. paragraphs 136 and 137 of CPT/Inf (2002) 9), the CPT concluded that the disciplinary procedure applicable to prisoners could be considered as satisfactory. The observations made by the delegation in the course of the 2004 visit confirm this impression. Inmates in the prisons visited were offered adequate safeguards (in particular, the right to be heard and to appeal against the disciplinary sanction of solitary confinement to the penitentiary judge).

Further, the delegation did not gather any evidence of the excessive use of disciplinary sanctions. In the first nine months of 2004, the sanction of placement in a disciplinary cell had been applied 67 times at Warsaw-Mokotów Remand Prison (however, 12 of these sanctions had been suspended), 20 times at Cracow Remand Prison and 14 times at Wołów Prison.

136. Material conditions in the disciplinary cells could on the whole be considered as adequate. That said, it should be noted that the disciplinary cells at Cracow Remand Prison were rather cold. Further, the disciplinary cells at Warsaw-Mokotów Remand Prison had poor access to natural light. **The CPT recommends that the above-mentioned shortcomings be remedied.**

c. complaints and inspection procedures

137. The complaints procedures appeared to be operating satisfactorily in the prisons visited. Prisoners were generally well informed of the avenues of complaint available and were making use of them.<sup>10</sup> However, it is noteworthy that some inmates at Wołów Prison alleged that prison staff (in particular the educators) responded by withholding privileges if they saw the address of the Office of the Commissioner for Civil Rights Protection on the (sealed) envelope handed out to them. It should be added that there were no “complaints boxes”, where inmates could deposit written complaints in a manner guaranteeing anonymity, in any of the establishments visited. In the light of these remarks, **the CPT recommends that effective steps be taken to preserve the confidential character of complaints and to ensure that the lodging of complaints does not have adverse consequences for prisoners.**

138. Concerning inspection mechanisms, the system in force has remained basically unchanged since the previous visits. Prisons were visited at least once a year by penitentiary judges, who performed a comprehensive overview of all aspects of the establishments’ functioning and drew up detailed inspection reports. The delegation had the opportunity to study the reports on the most recent inspection visits carried out by penitentiary judges to the three prisons visited. The report concerning Cracow Remand Prison in particular contained an express mention of the fact that inmates had been informed in advance of the forthcoming visit by the penitentiary judge and of their right to meet him in private. It was also stated that the judge had visited all the prisoner accommodation areas and spoken to prisoners in conditions of confidentiality; **this is an example of good practice which, in the CPT’s opinion, should be extended to all inspection visits by penitentiary judges in Poland.**

In addition to inspections by penitentiary judges, prisons were visited by the staff of the Office of the Commissioner for Civil Rights Protection and, upon authorisation, by certain NGOs. To sum up, the existing system of inspections seemed quite satisfactory.

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<sup>10</sup> For example, 172 complaints had been registered at Warsaw-Mokotów Remand Prison in 2003 and 236 between 1 January and 1 October 2004. At Cracow Remand Prison, there had been 145 complaints in 2003. As to Wołów Prison, 485 complaints had been registered in the first nine months of 2004. The overwhelming majority of these complaints concerned the material conditions of detention and the quality of prison health care.

### III. RECAPITULATION AND CONCLUSIONS

#### A. Police and Border Guard establishments

139. During the third periodic visit to Poland, the majority of the persons met by the CPT's delegation who were, or had recently been, detained by the police indicated that they had been correctly treated, both at the time of their apprehension and during questioning.

Nevertheless, a certain number of allegations were heard of physical ill-treatment by the police at the time of apprehension (slaps, kicks, punches, blows with a truncheon and tight handcuffing for prolonged periods of time). Further, several persons made allegations concerning the time of questioning by police officers, such as that they had been punched or slapped, threatened with violence or verbally abused. Of particular concern are the allegations made by juvenile detainees – sometimes as young as 14 – of physical ill-treatment and threats in order to obtain confessions.

As in 2000, no allegations were received of physical ill-treatment by police and Border Guard officers in charge of guarding cells and by staff working in the police establishments for children. However, a small number of allegations were heard of rude behaviour and verbal abuse by certain members of the police and Border Guard staff working in some of the establishments for foreign nationals awaiting deportation.

In the light of the information gathered during the visit, the CPT has recommended that the Polish authorities remind police officers, through appropriate means and at regular intervals, that the ill-treatment of detainees (whether of a physical or verbal nature) is not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for their being struck.

140. During the visit to Cracow Provincial Police Command, the delegation saw, in the duty officer's room, a metal cage measuring approximately 1 m<sup>2</sup> in which a newly arrived detainee was placed naked following a strip search, in full view of whoever was present in the room. Apparently, this was a routine procedure. The CPT has recommended that the cage be removed forthwith and that the initial reception procedure at Cracow Provincial Police Command be reviewed in order to ensure that it is carried out in a manner respectful of human dignity.

141. In two police establishments visited in Warsaw, the delegation found non-standard issue items (baseball bats, wooden batons, spades, iron bars and a hammer) in offices used by investigative officers. The CPT has called upon the Polish authorities to ensure that any items held on police premises as evidence be properly labelled and held in a secure and centralised location, and that no other non-standard issue items be held on such premises.

142. The delegation met a few persons who were or had recently been detained by the police and alleged that their complaints of police ill-treatment had been ignored by prosecutors or judges before whom they had been brought shortly after apprehension. The CPT has called upon the Polish authorities to take effective steps to ensure that, whenever a person brought before a judge/prosecutor alleges ill-treatment by the police, the judge/prosecutor immediately requests a forensic medical examination, irrespective of whether the person concerned bears visible injuries.

143. It became clear during the 2004 visit that most of the recommendations made by the CPT in the past and aimed at further strengthening the formal safeguards against ill-treatment offered to persons detained by the police and Border Guard had not been implemented.

In practice, it was extremely rare for persons in police custody to have a lawyer. The CPT has recommended that a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer be developed as a matter of urgency, and be applicable from the very outset of police custody. Further, the Committee has called upon the authorities to amend Section 245, paragraph 1, of the Code of Criminal Procedure so as to ensure that persons detained by the police have in all cases the right to talk to the lawyer in private. The CPT has also recommended that steps be taken to ensure that juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and/or a trusted person being present and assisting the juvenile.

In respect of access to a doctor, it is regrettable that the authorities have failed to integrate in the new Regulation on medical examination of persons apprehended by the police the recommendations made by the CPT in the 2000 visit report. Consequently, the Committee has reiterated those recommendations; in particular, all medical examinations should be conducted out of the hearing and - unless the doctor requests otherwise - out of the sight of police/ Border Guard officers, and the results of every examination should be formally recorded by the doctor and made available to the detainee and his lawyer.

The CPT has also called upon the Polish authorities to implement its long-standing recommendation that a code of conduct for interrogations be drawn up.

144. In the report on the 2000 visit, the CPT noted that material conditions of detention at the police stations visited at that time were on the whole of a good standard. The assessment from the visit in 2004 is less positive. The shortcomings observed at certain of the police establishments visited concerned inadequate artificial lighting, ventilation or heating, poor state of repair and/or cleanliness of the cells and communal sanitary facilities, and lack of shower facilities. The Committee has recommended that steps be taken to address these shortcomings and, more generally, that material conditions of detention in police cells throughout the country be reviewed in order to ensure that they are in full conformity with the Regulation of 21 March 2003 by the Minister of the Interior and Administration. The CPT has also recommended that efforts be made to offer outdoor exercise on a daily basis to persons held for extended periods in police cells.

145. The facts found during the 2004 visit demonstrated that many of the recommendations made by the CPT in the past concerning police establishments for children had not been implemented. Consequently, several of these recommendations have been reiterated, in particular as regards supplying detained children with appropriate daytime clothes and shoes, ensuring that they are offered at least one hour of outdoor exercise a day, developing the range of constructive activities offered to them (with particular emphasis on education), and ensuring that all new arrivals are medically screened without delay.

The delegation noted that children could be held at the establishments visited for periods considerably exceeding the 17 days provided for in the 1982 Juveniles Act. Such establishments are not adapted for prolonged stays; consequently, the CPT has recommended that the authorities make strenuous efforts to ensure that the legal provisions on the duration of custody in a police establishment for children are respected in practice.

146. Turning to detention facilities for foreigners awaiting deportation, material conditions at the recently opened Border Guard deportation jail at Warsaw International Airport were on the whole good. They were also adequate at the deportation jail of the Municipal Police Command in Suwałki, save for the fact that the central heating was out of order. In contrast, conditions at the deportation jail of the Provincial Police Command in Wrocław, which had already been the subject of recommendations after the 1996 visit, still left a lot to be desired. The delegation was concerned to note that, if anything, the situation had deteriorated. The cells were poorly lit, dilapidated and dirty, the bedding and blankets were often threadbare, and in-cell toilets and sinks were decrepit.

None of the deportation jails visited offered a regime of activities appropriate to the detainees' legal status and adapted to the length of time they could spend in custody (i.e. up to a year). Further, the provision of health care as well as psychological and psychiatric support to foreign nationals could not be considered as adequate. Moreover, staff assigned to work with foreign nationals had received little specialised training for the job and there was little communication between staff and detainees, not least because of language barriers.

The CPT has made a series of recommendations designed to remedy the shortcomings observed. In particular, it has called upon the Polish authorities to review as a matter of urgency the detention regime of foreign nationals deprived of their liberty under aliens legislation, with a view to enlarging the offer of purposeful activities. In this context, a high priority should be given to the creation of holding facilities specifically designed for the accommodation of foreign nationals detained under aliens legislation.

147. Conditions at the other Border Guard establishments visited in Białystok, Kętrzyn, Kuźnica Białostocka and Szudziałowo were generally adequate for the maximum period of detention provided for by the law (i.e. 48 hours as regards persons detained pursuant to aliens legislation and 72 hours in the case of criminal suspects). The same could be said of the detention facilities located in the transit area of Warsaw International Airport, used by the Border Guard to hold foreign nationals who had not been allowed to enter the territory of Poland.



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

148. At the outset of the visit, the Director General of the Prison Service reported an ever-worsening level of overcrowding (79,000 prisoners for a maximum official capacity of 69,000), and referred to plans to develop alternatives to imprisonment as well as to increase the number of prison places. The CPT has called upon the Polish authorities to redouble their efforts to combat prison overcrowding and, in so doing, to be guided by the standards developed within the Council of Europe. A strategy is needed covering both admission to and release from prison which ensures that imprisonment really is the measure of last resort.

149. The problem of overcrowding has a direct bearing on the issue of activities for prisoners. The situation as regards the provision of work, training and education to inmates in the prison establishments visited was far from satisfactory, a problem which apparently exists throughout the Polish prison system. The CPT has recommended that the authorities strive to increase the provision of purposeful activities for prisoners and in this context seek to introduce further measures aimed at ensuring that both sentenced and remand prisoners are provided with an opportunity to work.

150. A few allegations were heard at Wołów Prison of physical ill-treatment (kicks and punches) in the course of prisoners being placed in a security cell. Further, the delegation heard a few isolated complaints of physical ill-treatment and verbal abuse of inmates by custodial staff at Warsaw-Mokotów Remand Prison. That said, most of the prisoners interviewed by the delegation in the three prisons visited indicated that they were being treated by staff in a correct manner.

151. The delegation heard a few allegations of inter-prisoner violence at Wołów Prison, and it became apparent that a number of prisoners refused to take advantage of the opportunity to go to the gym and/or recreation rooms because of an implicit (or explicit) threat of violence. The overcrowding observed at the establishment did little to defuse tensions. The CPT has recommended that the management and staff of Wołów Prison exercise continuing vigilance and make use of all the means at their disposal to counter the negative impact of prison subculture and prevent inter-prisoner violence and intimidation.

152. The CPT has expressed concern at the length of time during which means of restraint were being applied to prisoners placed in a security cell at the prisons visited. At Wołów Prison in particular, the delegation noted instances of the simultaneous application of several mechanical means of restraint for up to 48 hours continuously. The Committee understands that it is necessary on occasion to resort to means of restraint in a prison setting. However, in the CPT's view, means of restraint additional to placement in a security cell should rarely need to be applied for more than a few hours, unless there is a medical condition requiring this. The latter cases should be fully under the control of a doctor called upon to assess the need for restraint and not to certify fitness for restraint. Means of restraint should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment.

At the end of the visit, the delegation made an immediate observation, requesting the Polish authorities to review the existing procedure and practice for restraining prisoners. The CPT has welcomed the steps subsequently taken by the authorities aimed at ensuring closer supervision of the use of means of restraint. In this context, the Committee has stressed the importance of promoting control and restraint techniques which are less dependent on the use of mechanical means of restraint, but rely instead on having sufficient numbers of staff working in teams when there is a need to control a prisoner exhibiting violent or unmanageable behaviour.

153. The CPT has paid particular attention to the situation of prisoners classified as “dangerous” (“N” status). The Committee has welcomed the fact that the “N” status of both sentenced and remand prisoners is now reviewed every three months; at the same time, it has recommended that the Polish authorities review current practice with a view to ensuring that “N” status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category. Further, the CPT has called upon the authorities to review the very restrictive regime applied to “N” status prisoners, with a view to providing them with appropriate mental and physical stimulation and adequate human contact.

154. Cracow Remand Prison was overcrowded; in a number of cells, the space available per prisoner was less than 2.5 m<sup>2</sup>, and occasionally as low as 1.7 m<sup>2</sup>. Two of the four floors of the prisoner accommodation block had recently been refurbished and the cells on these floors appeared quite pleasant, despite the overcrowding. The CPT has recommended that steps be taken to reduce the occupancy rate of the establishment, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner, and to refurbish the remainder of the prisoner accommodation.

The Committee has also recommended that the practice of young prisoners sharing cells with one or more adult prisoners be discontinued. Young prisoners should be held in a quite distinct detention facility; the staff assigned to such a unit should be carefully chosen and, more specifically, be persons capable of guiding and motivating young people.

The vast majority of prisoners frequently spent up to 23 hours a day languishing in their cells. As regards young prisoners, they were not provided with any programme of activities suitable for their age. The CPT has recommended that strenuous efforts be made to develop the regime of activities for prisoners at Cracow Remand Prison. As stressed in previous visit reports, the aim should be to ensure that all prisoners, including those on remand, are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association). As regards in particular young prisoners, they should be offered a full programme of educational, recreational and other purposeful activities; physical education should constitute an important part of that programme.

155. At the time of the visit, Warsaw-Mokotów Remand Prison was operating at 120% of its official capacity. The worst overcrowding was observed in Unit 1 of Block I, where up to twelve prisoners were being held in 18 m<sup>2</sup> cells. The CPT has recommended that strenuous efforts be made to reduce cell occupancy rates, as well as to complete the ongoing refurbishment programme as a matter of priority and remedy the shortcomings observed as regards ventilation and access to natural light.

The negative effects of overcrowding were compounded by the shortage of activities for prisoners. For the bulk of the inmate population, the only regular out-of-cell activity was one hour of outdoor exercise per day. On the positive side, sentenced prisoners in Block I (except for Unit 1) had their cell doors unlocked throughout the day and enjoyed unlimited access to common rooms. The CPT has recommended that the authorities strive to develop further the programme of activities for prisoners at the establishment and in this context make broader use of the approach followed in Block 1.

156. The situation at Wołów Prison was also marked by overcrowding, which had negative repercussions for all other aspects of life. The majority of the cells were designed to hold five prisoners and measured 15-16 m<sup>2</sup> (including a sanitary annexe); however, practically all of them were accommodating six to eight inmates. As regards the establishment's single cells (half of which were in the "N" unit), their dimensions - both in terms of surface area (5 m<sup>2</sup>) and width (1.3 m) - were unacceptable. The CPT has recommended that steps be taken to substantially reduce the occupancy rate of the establishment, and to enlarge the single cells; improvements to the shower facilities and kitchen are also required.

Despite efforts made by staff to promote work and other activities for prisoners, at the time of the visit, only 22% of inmates were involved in work activities and 12% in education. The Committee has encouraged the management of Wołów Prison to continue making efforts to engage more prisoners in work and other purposeful activities (in particular education and vocational training).

157. The CPT has also addressed a number of health care issues concerning prisons. In particular, the Committee has recommended that steps be taken at Wołów Prison to substantially increase the nursing staff resources, as well as to ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the prison's premises. The CPT has also recommended that measures be taken to ensure that all newly arrived prisoners at Wołów Prison are seen by a health-care staff member within 24 hours of their arrival. Another recommendation made by the Committee concerns the development and implementation of a comprehensive policy for the provision of care to prisoners with drug-related problems.

At the Hospital at Cracow Remand Prison, material conditions in the patients' rooms in the internal medicine and forensic psychiatry wards were on the whole satisfactory, and the staffing levels and medical equipment were of a standard expected in a hospital facility. The CPT has nevertheless recommended that steps be taken to ensure that an individualised approach is followed as regards patients' clothing in the forensic psychiatry ward; further development of psycho-social therapeutic activities for patients in that ward would also be desirable.

The Committee has recommended that steps be taken at the forensic psychiatric ward at the hospital of Warsaw-Mokotów Remand Prison to introduce a more therapeutic material environment and to develop a broader range of psycho-social therapeutic activities for patients, in particular those who remain there for extended periods.

158. As regards other issues related to the CPT's mandate, the Committee has called upon the Polish authorities to review arrangements concerning contacts with the outside world for remand prisoners. The presumption in the existing rule should be reversed, i.e. visits and correspondence for remand prisoners should in principle be authorised in the same way as in respect of sentenced inmates, and any restrictions should be strictly limited to the requirements of a given case and applied for as short a time as possible. Further, the CPT has recommended that effective steps be taken to preserve the confidential character of prisoners' complaints and to ensure that the lodging of complaints does not have adverse consequences for prisoners.

**C. Action on the CPT's recommendations, comments and requests for information**

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

160. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Polish authorities to provide within **six months** a response providing a full account of action taken to implement the recommendations, save for the recommendation in paragraph 14, to which the authorities are requested to provide a response within **one month**.

The CPT trusts that it will also be possible for the Polish authorities to provide in the above-mentioned response reactions to the comments formulated in this report which are listed in Appendix I as well as replies to the requests for information made.



## **APPENDIX I**

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

#### **A. Police and Border Guard establishments**

##### **Preliminary remarks**

###### recommendations

- the Polish authorities to make strenuous efforts to ensure that the legal provisions on the duration of custody in a police establishment for children are respected in practice (paragraph 10).

###### requests for information

- progress towards adopting the new Juveniles Code (paragraph 10).

##### **Ill-treatment**

###### recommendations

- the Polish authorities to remind police officers, through appropriate means and at regular intervals, that the ill-treatment of detainees (whether of physical or verbal nature) is not acceptable and will be the subject of severe sanctions. Police officers should also be reminded that no more force than is strictly necessary should be used when effecting an apprehension and that, once apprehended persons have been brought under control, there can never be any justification for their being struck (paragraph 13);
- the metal cage seen at Cracow Provincial Police Command to be removed forthwith and, more generally, the initial reception procedure there to be reviewed in order to ensure that it is carried out in a manner respectful of human dignity (paragraph 14);
- the Polish authorities to ensure that any items held on police premises as evidence are properly labelled and held in a secure and centralised location, and that no other non-standard issue items are held on such premises (paragraph 16);
- the Polish authorities to take effective steps to ensure that the recommendation referred to in paragraph 18 is implemented in practice (paragraph 18).

requests for information

- in respect of 2004 and the first half of 2005:
  - the number of complaints of ill-treatment made against police and Border Guard officers and the number of criminal /disciplinary proceedings which were instituted as a result;
  - an account of criminal/disciplinary sanctions imposed following such complaints (paragraph 15);
- detailed information on the content of training programmes for law enforcement officials (paragraph 17).

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

recommendations

- a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer to be developed as a matter of urgency, and to be applicable from the very outset of police custody. If necessary, the relevant legislation should be amended (paragraph 21);
- the Polish authorities to amend Section 245, paragraph 1, of the Code of Criminal Procedure so as to ensure that persons detained by the police have in all cases the right to talk to a lawyer in private (paragraph 22);
- steps to be taken to ensure that juveniles do not make any statements or sign any documents related to the offence of which they are suspected without the benefit of a lawyer and/or a trusted person being present. Further, the current legislation should be amended so as to ensure that juveniles have access to *ex officio* legal aid as from the moment of apprehension. In this respect, the Polish authorities should take into account the recent Recommendation Rec (2003) 20 of the Council of Europe's Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (paragraph 23);
- the right of persons deprived of their liberty by the police to have access to a doctor to include the right - if the persons concerned so wish - to be medically examined by a doctor of their choice (it being understood that an examination by such a doctor may be carried out at the detainee's own expense) (paragraph 25);
- all medical examinations to be conducted out of the hearing and - unless the doctor requests otherwise - out of the sight of police/ Border Guard officers (paragraph 25);
- the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, to be formally recorded by the doctor and made available to the detainee and his lawyer (paragraph 25);

- the report filled out by doctors concerning injuries observed on persons in police custody to contain the doctor's conclusions as to the degree of consistency between any allegations made by the detained person concerned and the objective medical findings (paragraph 25);
- a code of conduct for interrogations to be drawn without further delay (paragraph 27);
- the recommendations made in paragraphs 21 and 25 of the report in respect of safeguards for persons suspected of having committed criminal offences to apply *mutatis mutandis* to foreign nationals detained pursuant to aliens legislation. This concerns in particular the right to benefit from *ex officio* legal assistance (paragraph 29);
- detailed instructions to be issued on the use of force and/or means of restraint authorised in the context of deportation operations. Such instructions should draw upon the principles set out in the Committee's 13<sup>th</sup> General Report (cf. CPT/Inf (2003) 35) (paragraph 30).

#### comments

- the Polish authorities are invited to take appropriate steps to provide detained persons with feedback on whether it had been possible to notify a close relative or other person of the fact of their detention (paragraph 20);
- the Polish authorities are invited to take particular care to ensure that detained persons are actually able to understand their rights. It is incumbent on law enforcement officials to ascertain that this is the case (paragraph 26);
- the Polish authorities are invited to persevere in their efforts to introduce electronic recording of police interviews. Police officers should receive specific training for the conducting of electronically recorded interviews (paragraph 28).

#### **Conditions of detention**

##### recommendations

- steps to be taken to address the shortcomings described in paragraphs 32 to 34 of the report and, more generally, material conditions of detention in police cells throughout the country to be reviewed, in order to ensure that they are in full conformity with the Regulation of 21 March 2003 by the Minister of the Interior and Administration concerning the conditions which must be provided in police detention facilities (paragraph 35);
- efforts to be made to offer outdoor exercise on a daily basis to persons held for extended periods (i.e. 24 hours or more) in police cells (paragraph 36);
- the Polish authorities to take the following steps at the police establishments for children in Cracow and Elbląg (as well as in other police establishments for children in Poland, as appropriate):
  - improve the decoration and equipment of bedrooms, in particular by providing them with storage space for personal items;



- supply detained children with appropriate daytime clothes and shoes;
- ensure the provision of food in adequate quantity and the availability of drinking water throughout the day;
- ensure that detained children are offered at least one hour of outdoor exercise a day; the exercise yard at the police establishment for children in Elbląg should be refurbished and equipped with a shelter against poor weather;
- develop the range of constructive activities offered to detained children, with particular emphasis on education;
- ensure that all new arrivals are medically screened without delay and that the establishments receive regular visits by a doctor or a nurse;
- ensure that staff working at police establishments for children benefit from suitable initial and ongoing training;
- improve the possibilities for children to maintain contact with their families; in particular, save in exceptional and duly motivated circumstances, they should be allowed to receive regular visits from their relatives. Further, they should be allowed to make and receive telephone calls

(paragraph 44);

- the Polish authorities to review as a matter of urgency the detention regime of foreign nationals deprived of their liberty under aliens legislation, with a view to enlarging the offer of purposeful activities. In this context, a high priority should be given to the creation of holding facilities specifically designed for the accommodation of foreign nationals detained under aliens legislation (paragraph 59);
- steps to be taken at the deportation jails in Suwałki, Warsaw International Airport and Wrocław to:
  - ensure adequate heating in the cells (Suwałki);
  - restore all cells to a good state of repair (Wrocław);
  - refurbish the shower facilities (Wrocław) and ensure adequate privacy in the communal toilet and washing facilities (Suwałki and Warsaw International Airport);
  - take steps to guarantee that foreign nationals can benefit from their entitlement to at least one hour of outdoor exercise per day (Wrocław). Conditions in the outdoor exercise yards should be reviewed (Suwalki and Wrocław);
  - ensure that all newly-arrived detainees are promptly examined by a doctor or by a nurse reporting to a doctor;
  - arrange for the daily presence of a person with a nursing qualification;

- ensure confidentiality of medical data and examinations;
  - take measures in order to provide professional psychiatric services to foreign nationals detained at deportation jails;
  - review the selection and training of custodial staff working with the foreign nationals;
  - ensure that the right of foreign nationals to receive visits and make telephone calls is not unreasonably restricted (Wrocław);
  - systematically provide information, in an appropriate range of languages, on the internal rules and other procedures applicable to foreign detainees, and make efforts to ensure that they are duly informed of the state of progress of their cases (paragraph 59);
- the shortcoming referred to in paragraph 61 (absence of outdoor exercise for persons detained in the transit area of Warsaw International Airport) to be remedied (paragraph 61).

#### comments

- the living space per male detainee (3 m<sup>2</sup>) envisaged in the Border Guard deportation jail at Warsaw International Airport is not sufficient and should be aligned with the standard for female detainees (4 m<sup>2</sup>) (paragraph 46);
- the Polish authorities are invited to ensure that specific dietary requirements of foreign nationals are being adequately catered for. Further, consideration should be given to providing detainees with envelopes and stamps (paragraph 59);
- the two cells at the Podlaski Border Guard Unit in Białystok, measuring less than 5 m<sup>2</sup>, should preferably only be used for periods of detention not exceeding a few hours (paragraph 60).

#### requests for information

- more information on plans to open a new detention area for foreign nationals refused entry to Poland after the completion of Terminal 2 of Warsaw International Airport in 2006 (paragraph 62).

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

### **Preliminary remarks**

#### recommendations

- the Polish authorities to redouble their efforts to combat prison overcrowding and, in so doing, to be guided by Recommendation Rec (99) 22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec (2003) 22 on conditional release (parole) (paragraph 64);
- the Polish authorities to strive to increase the provision of purposeful activities for prisoners. In this context, the authorities should seek to introduce further measures aimed at ensuring that both sentenced and remand prisoners are provided with an opportunity to work, in the light of the remarks made in paragraph 65. Efforts should also be made to further develop programmes of education and vocational training in all penitentiary establishments (paragraph 65);
- the Polish authorities to take urgent steps to improve prison staffing levels (paragraphs 66 and 70).

### **Ill-treatment**

#### recommendations

- the management and staff of Wołów Prison to exercise continuing vigilance and make use of all the means at their disposal to counter the negative impact of prison subculture and prevent inter-prisoner violence and intimidation (paragraph 69);
- the Polish authorities to reconsider their approach to controlling and restraining prisoners, in the light of the remarks made in paragraph 72 of the report (paragraph 72).

#### comments

- means of restraint additional to placement in a security cell should rarely need to be applied for more than a few hours, unless there is a medical condition requiring this. The latter cases should be fully under the control of a doctor called upon to assess the need for restraint and not to certify fitness for restraint. Means of restraint should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment (paragraph 71).

#### requests for information

- for 2004 and the first half of 2005, in respect of all prisons in Poland:
  - the number and type of complaints of ill-treatment lodged against prison staff;

- an account of disciplinary and/or criminal sanctions imposed following such complaints (paragraph 68).

### **Prisoners classified as “dangerous” (“N” status)**

#### recommendations

- the single cells in the “N” unit at Wołów Prison to be either enlarged, with a view to ensuring that they measure at least 6 m<sup>2</sup> and that there is 2 m or more between walls, or withdrawn from service (paragraph 75);
- the Polish authorities to put an end to the practice of using a cage-like structure for interviewing “N” status prisoners at Wołów Prison (paragraph 75);
- the Polish authorities to review the regime applied to “N” status prisoners, in the light of the remarks made in paragraph 77 (paragraph 77);
- the Polish authorities to review current practice with a view to ensuring that “N” status is only applied and maintained in relation to prisoners who genuinely require to be placed in such a category (paragraph 78).

### **Conditions of detention**

#### recommendations

- steps to be taken at Cracow Remand Prison to:
  - reduce the occupancy rate of the establishment, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner. This will involve:
    - removing the third tier of the bunk beds;
    - ensuring that not more than one prisoner is accommodated in the establishment’s cells measuring 6-7 m<sup>2</sup> (save in exceptional cases when it would be inadvisable for a prisoner to be left alone);
  - refurbish the remainder of the prisoner accommodation;
  - discontinue the practice of placing adult and young prisoners in the same cell. Young prisoners should be held in a quite distinct detention facility; the staff assigned to such a unit should be carefully chosen and, more specifically, be persons capable of guiding and motivating young people (paragraph 87);

- strenuous efforts to be made to develop the regime of activities for prisoners at Cracow Remand Prison, in the light of the considerations outlined in paragraph 91 of the report. In this connection, steps should be taken to ensure that all prisoners are provided with access on a regular basis to the indoor gym and recreation rooms (paragraph 91);
- the outdoor exercise facilities at Cracow Remand Prison to be improved, in the light of the remarks made in paragraph 88 of the report (paragraph 91);
- the recommendation made in paragraph 87 in respect of reducing the occupancy rate at Cracow Remand Prison applies equally to the diagnostic unit (paragraph 93);
- at Warsaw-Mokotów Remand Prison:
  - strenuous efforts to be made to reduce the cell occupancy rates, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner;
  - the cell refurbishment programme to be completed as a matter of priority;
  - the shortcomings observed as regards the cells' ventilation and access to natural light to be remedied;
  - the iron grilles in the former cells for "N" status prisoners in Blocks II and III to be removed at the earliest opportunity (paragraph 101);
- the Polish authorities to strive to develop further the programme of activities for prisoners - both remand and sentenced - at Warsaw-Mokotów Remand Prison. In this context, the authorities should seek to make broader use of the approach followed in Block 1. Further, the outdoor exercise facilities should be improved, in the light of the remarks made in paragraph 102 of the report (paragraph 106);
- steps to be taken at Wołów Prison to:
  - substantially reduce the occupancy rate of the establishment, the objective being to provide a minimum of 4 m<sup>2</sup> of living space per prisoner;
  - enlarge the establishment's single cells, with a view to ensuring that they measure at least 6 m<sup>2</sup>, and that there is 2 m or more between walls; failing that, the cells in question should be withdrawn from service;
  - enlarge the shower facilities;
  - review the laundry arrangements for prisoners' own clothes;
  - refurbish the kitchen. (paragraph 111);

- the shortcomings in the exercise yards at Wołów Prison, referred to in paragraph 112 of the report, to be remedied (paragraph 116).

#### comments

- the management of Wołów Prison is encouraged to continue its efforts to engage more prisoners in work and other purposeful activities (in particular education and vocational training) (paragraph 116).

#### **Health-care issues**

##### recommendations

- steps to be taken at Wołów Prison to:
  - reinforce the health-care team and, in particular, substantially increase the nursing staff resources (as a first step, by the equivalent of at least two full-time nursing posts);
  - ensure that someone qualified to provide first aid, preferably with a recognised nursing qualification, is always present on the prison's premises, including at night and weekends  
(paragraph 121);
- measures to be taken to ensure that all newly arrived prisoners at Wołów Prison are seen by a health-care staff member within 24 hours of their arrival (paragraph 124);
- steps to be taken to ensure respect of the principle of medical confidentiality during the medical examination of "N" status prisoners, in line with the considerations outlined in paragraph 125 of the report (paragraph 125);
- a comprehensive policy for the provision of care to prisoners with drug-related problems to be developed and implemented, in the light of the remarks made in paragraph 126 of the report (paragraph 126);
- steps to be taken to ensure that an individualised approach is followed as regards patients' clothing in the forensic psychiatry ward of the Hospital at Cracow Remand Prison (paragraph 129);
- steps to be taken in the forensic psychiatric ward at the hospital of Warsaw-Mokotów Remand Prison to:
  - introduce a more therapeutic material environment;
  - develop a broader range of psycho-social therapeutic activities for patients, in particular for those who remain in the ward for extended periods  
(paragraph 132).

comments

- consideration might usefully be given to reinforcing the nursing staff at Warsaw-Mokotów Remand Prison (paragraph 120);
- the Polish authorities are invited to review the practice observed at Wołów Prison of prison doctors treating both prisoners and prison staff, in the light of the remarks made in paragraph 122 of the report (paragraph 122);
- the practice of newly arrived prisoners being given a dental check at Cracow Remand Prison is commendable and should be extended to other prison establishments (paragraph 124);
- the Polish authorities are invited to further develop psycho-social therapeutic activities for patients in the forensic psychiatric ward at the Hospital of Cracow Remand Prison, in particular for those who remain there for extended periods (paragraph 129).

requests for information

- clarification on the possibilities for transferring prisoners to hospital facilities outside the prison system for treatment or consultations (paragraph 123)
- comments of the Polish authorities on the delays in transferring patients from the forensic psychiatric ward of the Hospital at Warsaw-Mokotów Remand Prison to maximum security hospitals (paragraph 132).

**Other issues related to the CPT's mandate**

recommendations

- the Polish authorities to review arrangements concerning contacts with the outside world for remand prisoners, in the light of the remarks made in paragraph 134 of the report (paragraph 134);
- the shortcomings referred to in paragraph 136 of the report, concerning material conditions in the disciplinary cells at Cracow and Warsaw-Mokotów Remand Prisons, to be remedied (paragraph 136);
- effective steps to be taken to preserve the confidential character of prisoners' complaints and to ensure that the lodging of complaints does not have adverse consequences for prisoners (paragraph 137).

comments

- the fact that the penitentiary judge had visited all the prisoner accommodation areas at Cracow Remand Prison, and spoken to prisoners in conditions of confidentiality, is an example of good practice which should be extended to all inspection visits by penitentiary judges in Poland (paragraph 138).

**APPENDIX II**

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

**A. National authorities**

**Ministry of Justice**

Mr Andrzej GRZELAK	Secretary of State
Mrs Ewa WASZKIEWICZ	Head of Supervision over the Execution of Judgments Department
Mrs Ewa ŚWIDERSKA	Head of Establishments for Juveniles Department
Mr Wojciech JODKO	Chief Inspector, Establishments for Juveniles Department
Mr Jan PYRCAK	Director General of the Prison Service
Mrs Marzena KSEL	Head Doctor of the Prison Service
Mr Jerzy CZÓLGOSZEWSKI	Director of the Executive Office of the Prison Service
Mrs Anna ADAMIAK-DERENDARZ	Prosecutor, National Prosecutor's Office, Liaison Officer of the CPT

**Ministry of Interior and Administration**

Mr Andrzej BRACHMAŃSKI	Secretary of State
Mr Janusz ROGACZ	Deputy Director of the Public Security Department
Mr Henryk TOKARSKI	Deputy Chief Commander of the Police
Mr Aleksander BORKOWSKI	Director of the Office of Combating Crime, National Police Headquarters
Mr Tomasz LIPSKI	Director of the Operative and Investigative Directorate, National Border Guard Headquarters



**Ministry of Health**

Mrs Danuta MICHALCZAK  
Mr Michał SOBOLEWSKI  
Mr Wojciech KŁOSIŃSKI

Director of the Minister's Private Office  
Director of the Public Health Department  
Counsellor, Public Health Department

Mr Jacek WCIÓRKA

Regional Consultant in Psychiatry

Mrs Monika PRZYGUCA

Counsellor, European Integration and  
International Co-operation Department

**Office of the Commissioner for Civil Rights Protection**

Mr Andrzej ZOLL  
Mr Jerzy ŚWIĄTKIEWICZ  
Mr Janusz ZAGÓRSKI  
Mrs Małgorzata KIRYLUK

Commissioner for Civil Rights Protection  
Deputy Commissioner for Civil Rights Protection  
Director of the Criminal Executive Law Team  
Chief Specialist, Criminal Law Team

Mr Dariusz ZBROJA  
Mrs Grażyna RDZANEK-PIWOWAR

Deputy Director of the Criminal Law Team  
Director of the Family Law and Protection of the  
Rights of Disabled Persons' Team  
Director of the Health Care Team

Mr Tomasz GELLERT

Mr Bronisław ZOŃ

Director of the Rights of Servicemen, Civil  
Servants and Foreigners Team

Mr Waldemar RYBAK

Chief Specialist, Rights of Servicemen, Civil  
Servants and Foreigners Team

Mr Kazimierz NALASKOWSKI

Deputy Director of the Office of the  
Commissioner for Civil Rights Protection

Mrs Barbara KURACH

Specialist

**B. Non-governmental organisations**

Bractwo Więzienne (Prison Brotherhood)

Caritas

Polish Helsinki Foundation

**C. International organisations**

Office of the UNHCR in Warsaw

