



CPT/Inf (2009) 4

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

from 21 to 29 March 2007

UNMIK has requested the publication of this response. The report of the CPT on its March 2007 visit to Kosovo is set out in document CPT/Inf (2009) 3.

Strasbourg, 20 January 2009

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



**Response of the United Nations Interim Administration Mission
in Kosovo to the Report of the European Committee for the
Prevention of Torture and Inhuman or Degrading Treatment or
Punishment on its visit to Kosovo from 21 to 29 March 2007**

Table of Contents

INTRODUCTION.....	5
ESTABLISHMENTS UNDER THE AUTHORITY OF THE LOCAL MINISTRY OF INTERNAL AFFAIRS.....	6
A. Police custody.....	6
Ill-treatment	6
Safeguards	13
Conditions of detention	16
Other issues	17
ESTABLISHMENTS UNDER THE AUTHORITY OF THE LOCAL MINISTRY OF JUSTICE	18
B. Penitentiary establishments	18
Ill-treatment	18
Material conditions of detention.....	22
Regime.....	25
Health care.....	30
Other issues	33
ESTABLISHMENTS UNDER THE AUTHORITY OF THE LOCAL MINISTRY OF HEALTH AND THE LOCAL MINISTRY OF LABOUR AND SOCIAL WELFARE .	35
C. Psychiatric/social welfare establishments.....	35
Preliminary remarks	35
Ill-treatment	35
Patients'/residents' living conditions	36
Staff	38
Treatment.....	38
Restraint of agitated and/or violent patients/residents.....	39
Safeguards	40

Introduction

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

The Committee visited Kosovo from 21 to 29 March 2007. This visit was based on the Agreement of 23 August 2004 between UNMIK and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

UNMIK wishes to thank the Committee for the visit and the resulting report. UNMIK as well as the relevant Kosovo Ministries have considered the Committee's findings with great seriousness and appreciate the recommendations for improvement.

The response to the Committee's report has been prepared with significant input from the local Ministries of Justice, the Interior and Health.

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

Establishments under the authority of the local Ministry of Internal Affairs

A. Police custody

Ill-treatment

Paragraph 13

The Committee recommends that a formal statement emanating from the highest competent political authority be delivered to all KPS officers (including to officers of the criminal police), reminding them that they should be respectful of the rights of persons in their custody and that the ill-treatment of such persons will be the subject of severe sanctions. They should also be reminded that no more force than is strictly necessary is to be used when apprehending a person;

The local Ministry for Internal Affairs, which is aware of the Committee's recommendations, agrees that the rights of arrested and detained persons are to be strictly respected. In this regard, steps have been taken to ensure that the Kosovo Police is in compliance with applicable human rights standards.

In July 2007, a team of Kosovo Police officers was assembled, working under the operational department of the Kosovo Police, in order to identify problems and deficiencies in police stations and holding centres in all regions of Kosovo and bring them to the attention of the Kosovo Police management.

Further and in accordance with the Committee's report, in October 2007 all regional Kosovo Police Commanders received a directive informing them of the Committee's recommendations and of the actions that need to be taken in order to tackle the identified problems.

With regard to the detained person who informed the Committee that he had suffered ill-treatment by a police officer at the Deçan/Deçane Police Station (paragraph 11), the operational department of the Kosovo Police has carefully examined these allegations.

The findings so far indicate that the specific incident referred to in the Committee's Report of mistreatment at Deçan/Deçani police station could not be verified without further information. According to the Kosovo Police, there is no record of a declaration from a detained person complaining about the described ill-treatment. Interviews with 60 Kosovo Police officers were conducted and none of the interviewed officers was able to recall such an incident. There was no declaration submitted by the international police officer who allegedly intervened to allow medical treatment and no medical intervention has been registered. Finally, no further information substantiating these allegations could be found.

Considering the lack of evidence, as well as the lack of knowledge about the time when this incident allegedly happened and the name of the detained person, it is not possible to assess this case conclusively. If the Committee has further information on this case, the Kosovo Police would like to receive it in order to investigate these allegations further.

Regarding the use of force by Kosovo Police officers, the local Ministry of Internal Affairs is very much aware of the importance of respecting the principle of proportionality and necessity – one of the reasons why it attributes great significance to the Committee’s report.

As a rule, Kosovo Police officers may only use necessary and proportionate force during arrests and detention procedures, in compliance with the applicable law. In this respect, the Kosovo Police management places great emphasis on the prevention of unprofessional and unlawful conduct by police officers against detained persons and persons subject to police procedures. The tools against such conduct are provided by the existing legislative framework: the applicable law regarding police provides for severe sanctions to be taken against police officers disrespecting the rights of persons in their custody.

Additionally, the local Ministry of Internal Affairs together with the Kosovo Police management assist in formulating secondary legislation and operating procedures. Among draft legislation currently being finalized is the Major and Minor Offenses Administrative Law. This draft legislation is intended to strengthen sanctions imposed against Kosovo Police officers who use force unnecessarily and/or in a disproportionate manner¹. Such actions will in future become major offenses, and the legislation will also enable the Office of the Prosecutor to press criminal charges against Kosovo Police officers.

The adequate use of force and the observation of fundamental human rights during police procedures are essential parts in the comprehensive trainings provided to Kosovo Police officers. Basic institutional trainings include classes on human rights and new Kosovo Police staff members are required to pass a human rights test before they can take up their duties. Human rights classes are also provided to Kosovo Police officers in all on-going institutional trainings.

In September 2008, a project “Training of Trainers” took place in the Kosovo Centre for Public Safety Education and Development. The aim was to train professional instructors on human rights, police code of ethics and use of force, who would then provide trainings to Kosovo Police officers in the six regions of Kosovo by the end of 2008.²

Additionally, within the framework of continuing education, the Kosovo Police management also accepts offers from other institutions and organisations to provide human rights courses for Kosovo Police officers, provided the topics are not already covered by internal trainings and are within the scope of work of the Kosovo Police.

Special attention has been given to Kosovo Police officers who are on permanent duty at holding centres. After a recommendation from the UNMIK Police Committee for the Prevention of Torture Unit,³ special trainings to Kosovo Police officers who are only serving in holding centres were provided in November 2007. These trainings, provided by the Kosovo Police Service Training Department, served to increase the knowledge on the various aspects of the arrest and detention process and to professionalise the approach of Kosovo Police officers to in-processing and maintaining international standards during the detention process.

¹ Article 164 of the UNMIK Regulation No. 2003/25 on the Provisional Criminal Code of Kosovo, 6 July 2003, addresses mistreatments while exercising duties.

² The trainings were provided upon the advice of the OSCE Mission in Kosovo.

³ The UNMIK Police Committee for the Prevention of Torture Unit was created within the UNMIK Police Inspection Unit in July 2007 to inspect police holding cells and provide recommendations for improvement of conditions in those cells. This unit was established on an ad hoc basis and was dissolved after three months. One of its recommendations was to provide special trainings to police officers serving only in holding centres.

In summary, the combination of existing legislative framework and regular training courses serves to continuously remind Kosovo Police staff of the importance to respect the rights of persons in their custody.

The local Ministry of Internal Affairs emphasizes that permissions have been issued to non-governmental organisations, which grant them unimpeded access to police stations, including holding cells, for monitoring purposes. This independent monitoring by Kosovo's civil society further supports the Kosovo Police's compliance with applicable laws and human rights standards.

Paragraph 13

The Committee recommends that appropriate steps be taken to ensure that persons who may have been victims of ill-treatment by police officers are effectively able to lodge a formal complaint;

A system to lodge formal complaints is in place and functioning. The Kosovo Police Service Policy and Procedure Manual (Policy and Procedure Manual) details the procedures available and provides that complaints of citizens or arrested persons against the Kosovo Police are to be investigated, regardless of whether the complaint is received in written or verbal form.⁴

The above-mentioned draft Major and Minor Offenses Administrative legislation also provides for the necessity to receive citizens' complaints. Under this law, it is a major offense to destroy or change a complaint; both acts will be sanctioned accordingly.

The right to complain is fully established in the applicable law relating to police. The legislation provides that all citizens have the right to file complaints against police officers of all ranks, as well as against civil servants working with the Kosovo Police.

Since the visit of the Committee, all police stations have been equipped in areas accessible to the public with posters that outline the process of filing a formal complaint,

The Investigation Department of the Police Inspectorate of Kosovo started operating in October 2007. The Investigation Department initiates internal investigations against Kosovo Police staff and investigates citizens' complaints on serious disciplinary violations. The case files prepared by the Investigation Department include recommendations and are sent for review to the Senior Police Appointments and Discipline Committee.

As such, the complaint procedure ensures that every citizen can lodge a formal complaint against the Kosovo Police, which will be thoroughly investigated by the relevant authorities.

⁴ 2007 Kosovo Police Service Policy and Procedure Manual, Policy number 4-20.

Paragraph 14

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

Further, the Committee recommends that appropriate steps be taken to ensure that prosecutors/judges conduct proceedings in such a way that the persons concerned have a real opportunity to make a statement about the manner in which they have been treated.

Judges and prosecutors are under the obligation to abide by the law and to apply the principle of due diligence during all proceedings. Ill-treatment constitutes a criminal offense under the Provisional Criminal Code.⁵ In this respect, investigations have to be initiated by the prosecutor regardless whether a respective complaint was lodged or not if sufficient grounds are present indicating any form of ill-treatment. Such investigations also include medical examinations wherever it is called for.⁶

If a person decides not to inform the judge or prosecutor of ill-treatment he or she might have sustained, it does not imply a waiver of this right. In addition, any allegation of ill-treatment can also be processed through a citizen's complaint or by the defendant's lawyer.

Paragraph 16

The Committee would like to receive an account of all complaints of police ill-treatment received by the Police Inspectorate of Kosovo in 2007 and the outcome of the relevant disciplinary and/or criminal proceedings (allegations, brief descriptions of the findings of the relevant court or body, verdict, sentence/sanction imposed);

Since 1 October 2007 until the 30 July 2008, the Investigation Department of the Police Inspectorate of Kosovo received 1519 cases, either in form of citizens' complaints or internal investigations against Kosovo Police staff.

Within the three months from 1 October 2007 until 31 December 2007, the Police Inspectorate of Kosovo received a total of 250 cases, out of which 122 were citizens' complaints on misconduct by Kosovo Police officers and 128 initiations for internal investigations (see table 1).

⁵ Article 164, Mistreatment in Exercising Duties, UNMIK Regulation No. 2003/25 on the Provisional Criminal Code of Kosovo, 6 July 2003.

⁶ Article 220 para. 1, UNMIK Regulation No. 2003/26 on the Provisional Criminal Procedure Code of Kosovo, 6 July 2003.

Table Nr.1. Statistical data on Police Inspectorate of Kosovo cases

Cases received by the Police Inspectorate of Kosovo from 01.10.07-31.12.07	
Citizens' complaints	122
Initiation of internal investigation	128
Total cases:	250
Cases conducted by the Police Inspectorate of Kosovo	
Cases under Police Inspectorate of Kosovo investigation	40
Cases under preliminary investigation	72
Rejected cases	43
Cases referred to the Directorate for Professional Standards	95
Most frequent charges	
Misconduct	46
Use of force	30
Non-respect of break times	13
Criminal acts	10
Corruption	6

The Police Inspectorate of Kosovo received 30 complaints alleging illicit use of force. Of these complaints, 17 were rejected as they lacked merits or the investigation revealed no grounds. Six cases were referred back to the Directorate for Professional Standards, as the incidents happened before 1 October 2007. Six cases have been investigated by the Police Inspectorate of Kosovo and the recommended sanctions need to be confirmed by the Senior Police Appointments and Discipline Committee.

The first case involved five Kosovo Police officers who mistreated one citizen during his arrest and then again while he was seated in the police car. The Police Inspectorate of Kosovo recommended to suspend without payment one officer for 60 days, two police officers for 30 days and to fine two police officers with a 20 per cent deduction from one monthly salary.

Two other cases involved allegations of disproportionate use of force by Kosovo Police officers in exercise of their duties in Ferizaj/Uroševac and in Prishtinë/Priština. In both cases, the Police Inspectorate of Kosovo recommended suspension without payment for 60 days.

In a fourth case, the Police Inspectorate of Kosovo recommended suspension without payment for 30 days against a Kosovo Police officer using disproportionate force during an arrest in Deçan/Dečane.

The fifth case involved one police officer, charged for bodily injury committed off duty. The police officer has been suspended without payment until the end of the criminal investigations.

The last case concerns a lieutenant in the police station of Vushtrri/Vučitrn, who allegedly mistreated a suspect after his arrest. The Police Inspectorate of Kosovo initially recommended suspension without payment for 60 days. Since the same lieutenant is already suspended for other allegations, the Police Inspectorate of Kosovo has recommended his dismissal from the Kosovo Police.

To date, the Investigation Department of the Police Inspectorate of Kosovo has closed 70 cases and one hearing session is pending at the Senior Police Appointments and Discipline Committee. Due to the evolving political situation in Kosovo, the Senior Police Appointments and Discipline Committee has not yet become operational. However, it is foreseen that the Committee will assume its duties in the course of 2008.

Paragraph 18

The Committee would like to receive detailed information on any ordinary or extraordinary inspections carried out by the Police Inspectorate of Kosovo since April 2007 (objectives, conclusions, etc.);

From April 2007 until the end of the year, the Police Inspectorate of Kosovo carried out seven ordinary inspections.⁷ Inspections were performed in the following fields:

- Budget and Finance Management;
- Career Management;
- Road Traffic Management;
- Vehicle Fleet Management;
- Buildings Management; and
- Arrest and Detention.

An extraordinary inspection was carried out regarding the conduct of the Kosovo Police during the civil disturbances on 10 February 2007, the Kosovo Police's compliance with UNMIK Regulation 2005/54 On the Framework and Guiding Principles of the Kosovo Police Service of 20 December 2005, and the management of the Kosovo Police Forensic Laboratory. Detailed information on the extraordinary inspections is available in the above-mentioned Annual Report 2007.

The extraordinary inspection on 10 February 2007 aimed to assess the work of Kosovo Police Senior Officers who were responsible for the Kosovo Police officers on duty on "Mother Teresa" street during the riots on that date. In particular, the Police Inspectorate of Kosovo assessed the management of Kosovo Police officers by their supervisors, the planning that was done prior to the event with regard to command and control, as well as lessons learned.

For this inspection, information was retrieved from different sources, such as interviews with Kosovo Police officers of all ranks as well as from recorded video material. The inspection established that Kosovo Police officers were not equipped with the necessary tools to face the disturbances, such as gas masks, tear gas canisters or water cannons. Kosovo Police officers were also not equipped with shotguns firing rubber bullets, such as the ones which according to the forensic investigation caused the death of two persons. UNMIK Police Units were the only units equipped with tear gas canisters as well as shotguns and corresponding rubber bullets.

⁷

For detailed information on the ordinary inspections carried out since the beginning of 2007 please refer to the Police Inspectorate of Kosovo's Annual Report 2007, annexed to this response.

Further, the Police Inspectorate of Kosovo inspection confirmed that the Kosovo Police Regional Operational Support Units had not received appropriate training enabling them to deal with riots. In some regions, the Regional Operational Support Units had received the “Danish” training model for civil disturbances. In other regions, such as Pejë/Peć, Regional Operational Support Units had been trained according to the Italian Carabinieri model, which proved to be particularly successful in dealing with civil riots and controlling crowds. Following Police Inspectorate of Kosovo recommendations, the Kosovo Police Special Units are now receiving training according to the Italian Carabinieri model.

The Police Inspectorate of Kosovo was also authorized to observe the UNMIK investigation into the death of two local civilians during the 10 February 2007 events. The UNMIK Task Force leading the investigation confirmed that both men died as a direct result of the use of rubber bullets fired to disperse the crowds. An autopsy was conducted by a team of international and Kosovo experts. The bullets recovered from the bodies of the victims were classified as “RB1” bullets. The Task Force established that during the demonstration on 10 February 2007, RB1 bullets were only used by one team, comprising nine police officers, from the Romanian Formed Police Unit.

Paragraph 20

The Committee would like to be informed of the concrete measures taken by the relevant authorities in the light of the investigations referred to in paragraphs 19 and 20, with a view to preventing similar incidents from occurring in the future.

In light of the investigations into the February events, UNMIK’s Police Commissioner issued an instruction to all Formed Police Units directing them not to use rubber bullets in public order events and to make sure that rubber bullets are withdrawn from their armouries.

The Police Inspectorate of Kosovo inspection into the conduct of Kosovo Police officers during the 10 February 2007 events demonstrated that the lack of co-ordination between the different police units, and lack of appropriate equipment made it difficult for Regional Operational Support Unit to efficiently carry out their duties. These problems have been solved. Currently, all Kosovo Police Special Units receive the same training, based on the Italian Carabinieri model.

The recommendations of the Police Inspectorate of Kosovo inspection further helped the Kosovo Police to manage demonstrations which took place after 10 February 2007, and prevented similar incidents.

From the UNMIK Police perspective, the lessons learned during the events of 10 February 2007 served to improve co-ordination within the respective forces on the ground. Specifically, communication between the Kosovo Police, the Formed Police Units and KFOR has been strengthened. Further, UNMIK Police improved the Kosovo Police working standards by dispensing unified training, enabling them to efficiently deal with riots and crowd control.

Safeguards

Paragraph 26

The Committee recommends that steps be taken to ensure that the right of access to a lawyer is enjoyed by all persons obliged to remain with the police, as from the very outset of their deprivation of liberty;

The local Ministry of Internal Affairs, which is aware of the Committee's recommendations, agrees on the importance to ensure access to a lawyer from the outset of a person's deprivation of liberty as a fundamental safeguard against ill-treatment.

In this regard, the applicable law ensures the right of an arrested person to receive assistance of a defence counsel of his or her choice as well as to be informed of this right.⁸ This is detailed in the Policy and Procedure Manual, which provides for an arrested person to be verbally informed upon arrest by the police officer of the right to receive assistance by a defence counsel. Additionally, upon arrival at a Kosovo Police station, the arrested person is also informed about his or her rights in written form when he or she receives and signs the form "Rights of the Arrested Person". The signed form is attached to the person's case file. In accordance with the Provisional Criminal Procedure Code of Kosovo⁹ and the Policy and Procedure Manual, an arrested person is also to be informed of the right to a defence counsel free of charge, if the person cannot afford to pay for legal assistance.¹⁰

Only in special cases are authorities allowed to interview an arrested person before the defence counsel has arrived. Such special cases are based on reasonable grounds for concluding that information obtained from the arrested person could enable another person's life to be saved. According to the Policy and Procedure Manual, "such an interview shall only be conducted with a view to obtaining that information. Even in such cases, the rights of an arrested person shall not be prejudiced and, on arrival, the defence counsel shall be granted prompt access to the arrested person."

Further, in exceptional cases, the right to the assistance of defence counsel for up to 24 hours from the time of arrest may be delayed under the Provisional Criminal Procedure Code of Kosovo "where the arrested person is suspected of terrorism or organized crime and the prosecutor or the competent investigating judge determines that the delay is required by the exceptional needs of the investigation of the case. The prosecutor or the competent investigating judge may, prior to the expiration of the first period of delay of up to 24 hours, determine that an additional delay of 24 hours is required by the exceptional needs of the investigation of the case."¹¹

All police station commanders have been informed by the instructions sent out in October 2007 about the necessity to respect the arrested person's right to legal assistance. With the introduction of the form "Rights of the Arrested Person" as well as the application of the Policy and Procedure Manual, the necessary steps have been taken to ensure that this right is respected.

⁸ Article 12, UNMIK Regulation No. 2003/26 On the Provisional Criminal Procedure Code of Kosovo, 6 July 2003.

⁹ UNMIK Regulation No. 2003/26.

¹⁰ UNMIK Regulation No. 2001/28 On the Rights of Persons Arrested by Law Enforcement Authorities, 11 October 2001, Kosovo Police Service Policy and Procedure Manual 2007, Policy Number 4-11.

¹¹ Paragraph 3.7, UNMIK Regulation No. 2001/28, On the Rights of Persons Arrested by Law Enforcement Authorities, 11 October 2001.

Paragraph 27

The Committee recommends that steps be taken in all police establishments to ensure that all medical examinations of detainees are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of police officers;

The local Ministry of Internal Affairs agrees that all medical examinations should take place in an atmosphere of confidentiality. This is outlined in the Standard Operating Procedure “Holding Centres”¹² which deal with treatment of detainees and adheres to the principle of confidentiality.

Paragraph 29

The Committee recommends that steps be taken to ensure that all persons detained by the police – for whatever reason – are fully informed of their fundamental rights (including the right of access to a doctor) as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police). This should be ensured by provision of clear information given verbally at the very outset of custody, and supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a sheet in writing, setting out the rights of detained persons in a straightforward manner. This sheet should be available in an appropriate range of languages. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights;

Since the visit of the Committee delegation, the situation with regard to informing detained persons about their fundamental rights has been significantly improved. Upon arrest, a person is verbally informed about their rights. These rights are reiterated in written in the form “Rights of the Arrested Person”, available in Albanian, Serbian and English, which the arrested person receives and signs upon arrival at the holding centre.

The “Rights of the Arrested Person” form includes the following:

- List of rights in an official language known to the detainee;
- The right to legal assistance;
- The right to request medical examination by a doctor of his or her choice; and
- The right to notify family members.

Arrested persons of foreign origin have the right to notify and communicate with the liaison office or diplomatic mission of their country, or to notify and communicate with a representative of a competent international organization, in cases of the detainee being a refugee.

Paragraph 33

The Committee recommends that, at every police station in Kosovo, a single and comprehensive custody record to be opened in respect of each detained person;

The local Ministry of Internal Affairs as well as the Kosovo Police management have put great emphasis on the adequate opening and keeping of custody records. Considerable improvements have been achieved in this regard and since October 2007 all police stations in Kosovo use the same forms for custody records.

¹² Kosovo Police Service Department for Public Peace and Order, *Standard Operating Procedures, DRP/DPZH/0278/07*, 2007.

The Standard Operation Procedure “Holding Cells” amendment, provides for the following three standardized forms to be placed in the detainee’s file upon admittance in the holding centre:

- Rights of the arrested person;
- Decision for the arrested person; and
- Decision for the release of the arrested person.

These forms are available on the Kosovo Police Intranet in Albanian, Serbian and English and all Kosovo Police officers have been trained on how to correctly fill out these forms.

Further, steps to be taken to ensure that:

- **the custody record is sent with the detainee when he/she is transferred to another police station, with a copy being kept at the original police station;**

The regional holding centres report every morning to regional police stations on detained persons. Further, the Kosovo Police management has followed the recommendation of the Committee with regard to the transfer of custody records. In case of a detained person being transferred, the custody record is sent with the person and a copy is being kept at the police station.

- **the requirement to open a custody record applies from the moment a detainee arrives at a police station (i.e. even during the first six hours of detention, prior to the prosecutor authorising detention for up to 72 hours);**

As a rule, custody records are now opened upon arrival of the person at the police station.

With regard to Prishtinë/Priština Police Station No. 2, this station is not equipped with holding cells. Therefore, persons arrested by the crime squad located at station No. 2, which only deals with serious crimes, are taken to Police Station No. 1 for registration and detention. All custody records are placed in Police Station No. 1. Detainees are taken for interviews only, maximum two hours at a time, to Police Station No. 2. Records detailing date and time of interviews are also stored in Police Station No. 1.

The Kosovo Police management is aware that this situation should be improved. Therefore, a new renovation and building project foresees that every holding centre will also be equipped with interview rooms.

- **the requirement to open a custody record applies even in police stations without detention facilities but where suspects are first held for the purpose of being interviewed.**

The Kosovo Police management is aware that holding persons for up to six hours in police stations that are not adequately equipped for this purpose raises a certain number of concerns, mainly to respect the requirement of immediately opening a custody record for the arrested person. Police stations which have no room for holding cells have been identified and steps will be taken to transfer arrested persons directly to stations with sufficient capacities.

Paragraph 28

The Committee recommends that steps be taken to guarantee the confidentiality of medical data in all police establishments;

The local Ministry of Internal Affairs agrees that the confidentiality of medical data needs to be ensured. However, the Ministry deems that medical data is handled with the necessary care. All medical records are placed within the persons' detention/custody file, which remains confidential. Only the data base officer of the police station has access to these files. This is a secure and efficient method of keeping records.

Paragraph 30

The Committee recommends that steps be taken to put an end to the practice of interviewing suspects as "witnesses" without informing them of their rights;

The local Ministry of Internal Affairs notes that the Police Inspectorate of Kosovo did not encounter this problem during its inspections, nor did it receive complaints in this regard. Nonetheless, the Kosovo Police management will remain attentive to this issue in order to prevent any violations of the applicable law.

Paragraph 31

The longer-term objective should be to conduct interviews, as a rule, only at police stations with detention facilities.

The Kosovo Police internal inspection unit, as well as the UNMIK Committee on the Prevention of Torture Unit noted the necessity for adequate interview rooms. This recommendation has been integrated in the general renovation and building project, implemented by United Nations Office for Project Services.

This project specifically provides for the building of adequate interview rooms in every holding centre. Emphasis will be placed on the adequate security, size, lighting and ventilation of these rooms.

Conditions of detention

Paragraph 37

The Committee recommends that steps be taken without delay to ensure that the material conditions of detention are significantly improved in the police stations visited (and, if necessary, in other police detention facilities in Kosovo), in particular, as regards access to natural light, ventilation and hygiene;

Since the visit of the Committee, the majority of the holding cells in Kosovo Police stations have been improved with regards to hygienic conditions. For a period of three months, the UNMIK Committee on the Prevention of Torture Unit conducted daily visits along with members of the Kosovo Police to randomly chosen Kosovo Police stations. The UNMIK Unit, which was dissolved after it fulfilled its task, found and documented improvements with regard to material conditions of holding cells, interview rooms, unification of documents, medical services and meals. Some stations were found to be in need of improvement in maintaining standard hygienic conditions and were included in the renovation project.

Specifically, in Police Station in Shtime/Štimlje, a new holding cell has been constructed. After the installation of closed-circuit television cameras it will soon become operational.

Also, in the Gjilan/Gnjilane Police Station, holding cells were found to be too small to detain arrested persons. Currently, a new building is being constructed, which will serve as a police station and holding centre.

Paragraph 37

Further, the Committee recommends that authorities develop a detailed plan to progressively refurbish all police detention facilities in Kosovo.

An evaluation of 28 police holding centers, that was undertaken from July to November 2007, assessed the need for improvement and a renovation and building project was drafted with the following objectives:

- a. Construction of five holding centers;
- b. Renovation of 15 existing holding centers;
- c. Elimination of minor deficiencies in already renovated holding centers; and
- d. Providing equipment to permanent staff at holding centers, especially at holding centers receiving high numbers of arrested persons, with adequate modern means to detain high-risk detainees

This project has been approved in April 2008 and calls for tender have already been published. Building permissions have been obtained for holding centers in Gjilan/Gnjilane, Podujevë/Podujevo, Lipjan/Lipljan, Viti/Vitina and Obiliq/Obilić. The implementation of this project will be carried out by United Nations Office for Project Services.

Paragraph 35

In the Committee's view, cells measuring some 2.5 m² (such as those found at Deçan/Dečane Police Station) should only be used for temporary holding purposes, for no longer than a few hours, and should never be used as overnight accommodation.

After the Committee's visit, the holding cells at the police station in Deçane/Dečane have been closed and are no longer in use.

Other issues

Paragraph 38

In the Committee's view, resort to handcuffing detainees to fixed objects is not acceptable if such means are applied for a prolonged period or in full view of others. Further, there can be no justification for the use of handcuffs while a suspect is being interviewed. More generally, handcuffs should not be used as a substitute for proper holding facilities.

Handcuffing detainees to fixed objects is a punishable practice and not tolerated by the Kosovo Police management, this and the proper use of handcuffs are regulated under the Policy and Procedure Manual.¹³

¹³ 2007 Kosovo Police Service Policy and Procedure Manual, Policy number 4-19.

Paragraph 39

The Committee would like to receive the comments of UNMIK regarding the display of political symbols observed by the delegation at Prishtinë/Priština Police Station No. 1.

The UNMIK Committee on the Prevention of Torture Unit noted the locations where political symbols or literature were found and the Kosovo Police supervisory staff were notified that these symbols or literature were to be removed.

UNMIK has been informed by the local Ministry of Internal Affairs that these political symbols have been removed from the Prishtinë/Priština Police Station No. 1.

Establishments under the authority of the local Ministry of Justice

B. Penitentiary establishments

Ill-treatment

Paragraph 42

The Committee recommends that the management at Dubrava Prison, Lipjan/Lipljan Correctional Centre and Prishtinë/Priština Detention Centre remind their staff that all forms of ill-treatment of prisoners (including verbal abuse) are not acceptable and will be punished accordingly;

The local Ministry of Justice and the Kosovo Correctional Service, which are aware of the Committee's recommendations, agree that it is of utmost importance to uphold and respect the rights of detainees and prisoners. In this respect, a written instruction has been issued in 2007 to the Directors of all correctional facilities reminding them that ill-treatment of detained or imprisoned persons is unacceptable, in accordance with the Law on Execution of Penal Sanctions,¹⁴ and the Standard Operating Procedure No. 6.2 "Use of Force", and that such conduct will be sanctioned.

Further, within the scope of institutional trainings for Kosovo Correctional Service staff, classes on human rights, rights of prisoners, rules against ill-treatment and specifically on the European Prison Rules are mandatory. Each year, between 120 and 180 employees of the Kosovo Correctional Service are provided with training in the Kosovo Centre for Public Safety Education and Development.

In this respect, with the existing legislation, the standard operational procedures as well as the obligatory training curricula in place, a clear message is being communicated to all Kosovo Correctional Service staff that ill-treatment of detained persons is not acceptable and will be sanctioned accordingly.

¹⁴ UNMIK Regulation 2004/46 on the Law on Execution of Penal Sanctions, 2005.

Paragraph 44

The Committee recommends that an independent inquiry be carried out into the incident referred to in paragraph 44, regarding the alleged ill-treatment/excessive use of force by members of the Intervention Unit at Dubrava Prison and, if necessary, appropriate sanctions to be imposed at all levels;

With regard to the case described under paragraph 44, the Kosovo Correctional Service took these allegations very seriously and two investigations were carried out: one by the Central Directorate, the second by the Ombudsperson Institution of Kosovo. Both investigations concluded that the Intervention Unit did not resort to ill-treatment or excessive use of force.

On 22 February 2007, a scuffle occurred between two prisoners, which was seen by the Director of Dubrava Prison as well as by the Head of Security. The Intervention Unit was asked to assist in separating the two inmates. The prisoner who had been attacked was sent to the prison hospital for medical treatment. As a disciplinary measure, the attacking prisoner was placed for 15 days in isolation.

After a thorough investigation, based on interviews with witnesses and involved parties, neither the Ombudsperson nor the Central Directorate established conclusively that the allegations of ill-treatment or excessive use of force were founded.

As a general rule and according to Standard Operation Procedure No. 6.2 "Use of Force", all incidents of use of force are reviewed at the prison and headquarters. In cases of excessive use of force, an internal investigation is opened, and depending on the case, possibly an external investigation.

Paragraph 50

The Committee recommends that immediate steps be taken at Dubrava Prison and Lipjan/Lipljan Correctional Centre to ensure that, whenever allegations of ill-treatment emerge following an intervention by the Intervention Unit, an internal investigation is immediately carried out (without prejudice to any inquiries to be carried out by administrative and/or judicial authorities). Further, detailed intervention reports should be drawn up by the team leaders concerned, after each intervention;

From the outset, the Kosovo Correctional Service would like to note that following an incident where force has been used or restraint equipment applied, all involved staff members have to submit a declaration/observation report. According to Standard Operating Procedure No. 6.2 "Use of Force", the following documents have to be completed and collected by the senior supervisor after any such incident:

- Use of Force report;
- Declaration/observation report from each staff member involved; and
- Offense report, where applicable.

All incidents involving the use of force are reviewed on both levels, at the prison and at the headquarters. The Kosovo Correctional Service Commissioner and the Director of the Prison may order an investigation into the incidents if the facts require doing so.

With regard to the case described under paragraph 46, the Kosovo Correctional Service management made efforts to find evidence substantiating the allegations. With regard to the juvenile who allegedly sustained a fracture of his arm, no entry could be found in the medical records of Correctional Centre Lipjan/Lipljan, nor was there any indication found regarding a transfer to the hospital in Pristinë/Priština. A broken arm could not have gone unnoticed and treatment would have been mandatory in such case.

In light of the missing evidence, the lack of knowledge about the names of the juveniles and the lack of medical records, the Kosovo Correctional Service management can only conclude that this incident did not happen as it was related to the Committee delegation. The Kosovo Correctional Service regrets that these allegations could not be thoroughly investigated but invites the Committee to share any further information it might have obtained, in order to adequately assess this case.

The Kosovo Correctional Service makes all necessary efforts in order to prevent ill-treatment and to create a lawful environment within correctional facilities. In this task, the Kosovo Correctional Service is supported by the UNMIK Department of Justice/Penal Management Division which has the mandate to visit, monitor and advise. Every week, the Penal Management Division is performing monitoring visits in order to spread good practices within the institutions and give recommendations to the Kosovo Correctional Service management.

Paragraph 51

The Committee recommends that all members of the Intervention Units at Dubrava Prison and Lipjan/Lipljan Correctional Centre be reminded that any force used against prisoners during interventions must be limited to what is strictly necessary and that, as soon as recalcitrant prisoners have been brought under control, there can be no justification for them being struck;

The Kosovo Correctional Service would like to point out that Intervention Units have to observe, as other Kosovo Correctional Service staff, Standard Operating Procedure Nr. 6.2 “Use of Force”, and additionally, Standard Operating Procedure “Intervention Unit”, based on the Law on Execution of Penal Sanctions.¹⁵

It is in the nature of their duties, that members of Intervention Units may face situations where force has to be used. During interventions, the Units may use control and restraint techniques as a response to a prisoner’s violent or aggressive behaviour. For this purpose, Intervention Units are specifically trained to use force in a proportionate manner and they are reminded during these trainings of the absolute prohibition to resort to ill-treatment or abuse of prisoners.

Paragraph 52

The Committee recommends that steps be taken by the relevant authorities to ensure that the precepts set out in paragraph 52 are implemented in practice in all penitentiary establishments in Kosovo.

The Kosovo Correctional Service was very concerned to hear about the allegations of members of Intervention Units wearing balaclavas, which are not part of the regular uniform. Therefore, general instructions were sent to all Directors in October 2007, reminding Kosovo Correctional Service staff that no masks are to be worn under any circumstances.

¹⁵ Articles 123 and 124, UNMIK Regulation No 2004/46 on the Law on Execution of Penal Sanctions, 2005,.

Paragraph 47

The Committee wishes to stress that every prisoner in respect of whom force has been used should be entitled to be examined immediately by a doctor and, if necessary, receive treatment;

The local Ministry of Justice and the Kosovo Correctional Service would like to point out that use of force against inmates is taken seriously. Adequate proceedings are in place to ensure that any violent incident is properly recorded.

The Standard Operating Procedure No. 6.2 "Use of Force" provides that after incidents involving use of force or application of means of restraint, the prisoner is to be examined as soon as possible by a medical doctor. The results of the examination and any follow-up required are to be documented in the Use of Force report.

The record of a violent incident is not considered complete until the prisoner has been seen by a medical doctor and all reports have been accurately drafted.

Paragraph 50

The Committee invites the relevant authorities to introduce a rotation policy for members of prison intervention units;

More generally, it is essential that great care be taken with the selection, recruitment, training (including stress management), physical training and equipping of the members of special units, in order to ensure that they are the best suited to dealing appropriately (i.e. using minimum force) with situations of risk.

While the concept of introducing a rotation policy for members of prison intervention units is appreciated, in the particular circumstances existing in Kosovo this may not be feasible. Members of these Units are internally recruited and have to fulfil certain conditions regarding their age and fitness. Recruitment is done on a voluntary basis as the duties of these units are more dangerous than within the regular service. Therefore, only a few Kosovo Correctional Service staff members are willing to join the Units. This limits the choice of available staff and it would be challenging, under these circumstances, to introduce a rotation policy until these circumstances change.

That being said, members of the Intervention Units receive specialised trainings and are certified. The certificates have to be renewed every three years, an obligation which serves to maintain high professional standards within these Units, in compliance with international law.

Apart from the initial basic training, Intervention Units are trained on a regular basis; every three months practical training in tactics is taking place inside special premises in Dubrava Prison. Each detention facility also has an internal instructor who provides theoretical lectures for the Intervention Units.

As part of institutional training, stress management classes are provided to the entire Kosovo Correctional Service staff, including Intervention Units. Occasionally and in addition to in-service trainings, non-governmental organisations are also providing stress management classes.

Material conditions of detention

Paragraph 54

The Committee recommends that steps be taken without delay to renovate the blocks at Dubrava Prison which have not yet benefited from such work. Efforts should also be made to reduce occupancy levels in those cells which are currently overcrowded; the aim should be to provide at least 4 m² of living space per prisoner in multi-occupancy cells and 9 m² of living space in single cells;

The Kosovo Correctional Service agrees that Dubrava Prison needs refurbishment. As the facility is big in size, renovations have been undertaken every year since 1999. In this regard, the majority of the blocks have already been refurbished. The work on Blocks number 5 and 7 has been completed in 2008. The renovation of Block 8 has fallen behind schedule but the renovation is on-going.

Other auxiliary facilities, such as the recreational area and the storage room have been refurbished. The cattle farm outside the entry gate is under construction, as well as facilities for visitors.

In general, Kosovo's detention facilities do not suffer from overcrowding. The situation in 2007 was temporary because of the renovation of Detention Centre Pejë/Peć, which was re-opened in October 2008. The prison management is attentive to provide inmates with sufficient living space and, during renovations, tried to limit the problem of overcrowding as much as possible.

Paragraph 57

The Committee recommends that appropriate steps be taken by the relevant authorities in the juvenile and female units at Lipjan/Lipljan Correctional Centre to remedy the shortcomings described in paragraph 57;

The Kosovo Correctional Service agrees that the detention facilities need to be refurbished and maintained. For this purpose, directors of the facilities can submit requests for renovations to the existing planning programme. These projects, if approved, are implemented the following year.

Regarding the overcrowding at the time of the visit of the Committee delegation, this was a temporary problem. In general, the female units are not occupied to their full capacity and do not suffer from overcrowding.

The provision of sanitary towels, sufficient in quantity and quality, to female inmates is a matter of human dignity. The Kosovo Correctional Service agrees that the situation had to be changed and the Commissioner of the Kosovo Correctional Service issued a directive to the Director of the institution to ensure that sanitary towels are provided free of charge.

Paragraph 59

The Committee recommends that appropriate steps be taken by the relevant authorities to remedy the shortcomings observed in the detention centres visited (as described in paragraph 58). In particular, steps should be taken to ensure that:

- at Mitrovica/Mitrovicë and Gjilan/Gnjilane Detention Centres, cells measuring between five and six square metres are used for single occupancy only;**

The local Ministry of Justice and the Kosovo Correctional Service are constantly undertaking efforts to improve conditions in Gjilan/Gnjilane Detention Centre.

On the one hand, renovations have been ongoing, including the refurbishment of the reception room and reparation of the central heating system. The sports room has been fully equipped and is now at the disposal of inmates and staff.

On the other hand, planning work has already been commissioned in connection with the building of a new detention centre in Gjilan/Gnjilane. This new building will significantly reduce the issues encountered in the current detention centre.

With regard to personal hygiene products, at the time of the Committee's visit, various suppliers delivered the penitentiary institutions. Some of the institutions were inefficiently or irregularly supplied. This problem has been solved with a generic contract. Currently, all institutions receive goods from the same supplier. This ensures that all inmates receive a standard package, including soap, toothpaste, razors, comb and shampoo, on a regular basis. The prison shops offer alternative brands to inmates who prefer to buy their own hygiene products.

The Detention Centre in Mitrovicë /Mitrovica has been renovated. Currently, due to the political situation in the north of Kosovo, most detainees have been transferred to other detention centres and there are only few detainees left in Mitrovica/Mitrovicë. In this regard, the problem of overcrowding the delegation has observed during its visit is not existent anymore.

- at Pejë/Peć and Prishtinë/Priština Detention Centres, all cells have adequate access to natural light.**

The Pejë/Peć Detention Centre has been entirely refurbished and fulfils applicable standards.

Two buildings in the proximity of the Detention Centre as well as eight acres of land have been purchased. A needs assessment for vocational training will be undertaken in order to establish two workshops in these buildings. With this pilot project, the Kosovo Correctional Service intends to examine the feasibility of providing vocational training for pre-trial detainees.

The Prishtinë/Priština Detention Centre has been renovated several times, and all windows and doors have been replaced. However, given the institution's physical limitations, possibilities for improvement are restricted.

A feasibility study has been undertaken and planning work has been commissioned in connection to the building of a new high security prison, funded by the European Union.

After completion of this new project, more space will be available and the Prishtinë/Priština Detention Centre will be handed over to the Kosovo Police, to be used as a holding centre.

Paragraphs 54 and 59

The Committee wishes to recall that the aim should be to provide in all penitentiary establishments at least 4 m² of living space per prisoner in multi-occupancy cells and 9 m² of living space in single cells.

As noted above, prison overcrowding is, in general, not a problem in Kosovo. This problem may occur temporarily during renovations or during the winter season. However, it is not a systemic problem and inmates are provided with sufficient living space, in compliance with international standards.

Paragraph 55

The Committee would like to be informed in detail on the outcome of the night-time evacuation drill referred to in paragraph 55, as well as on any measures subsequently taken at Dubrava Prison.

At the outset, the Kosovo Correctional Service would like to highlight, that all correctional institutions have emergency and evacuation plans for specific cases, such as earthquakes, fires and flooding.

With regard to the night-time evacuation drill in Dubrava Prison, such a drill could not be carried out, due to security reasons. Drills in correctional institutions are disrupting the routine, and need to be implemented under controlled conditions. Carrying them out during night-time would increase the risk of escape or violent incidents.

The keys are centralised in a safe place at night. However, in case of an emergency in one block, an emergency key for this block can be quickly secured in the neighbouring block. Each block has six emergency exits in order to secure an efficient and quick evacuation. These emergency exits as well as fire fighting equipment are systematically checked and tested.

Further, in each shift, within every correctional facility, designated officers handle all emergency procedures. These officers have been trained by fire fighters in the Kosovo Centre for Public Safety, Education and Development and they have also received training in providing first aid.

Regime

Paragraph 61

The Committee recommends that steps be taken to significantly expand the activities and training available to the inmates of Dubrava Prison. Special attention should be given to setting up individualised treatment plans for prisoners and to the regime for those serving long sentences;

The local Ministry of Justice agrees that purposeful activities and vocational trainings are essential to facilitate the rehabilitation of prisoners. Considerable efforts have been undertaken to provide prisoners with adequate training and work opportunities. Nonetheless, these efforts are being challenged by lack of means. The implementation of one workshop costs between 12,000 and 15,000 Euro. The number of workshops is therefore limited by the budget.

Currently the relevant rules in place do not provide for the possibility to sell items produced in prisons. However, the local Ministry of Justice as well as the Kosovo Correctional Service are making efforts in order to enable the selling of goods made by Dubrava's prisoners for the purpose of covering the costs for vocational trainings.

Despite these challenges, in 2007, 51 prisoners participated in training courses on word processing and spreadsheet software, 17 prisoners completed a course for financial accountants, 10 prisoners received professional training for machinist - welder as well as 10 prisoners for plumber.

To facilitate the planning of purposeful activities, a panel for employment and vocational training has been established in Dubrava Prison.

Paragraph 64

The Committee recommends that the authorities deliver a clear message to staff at Dubrava Prison, both in supervisory posts and at a lower level, that abusing their position by accepting or demanding rewards from prisoners is not acceptable and that any acts of this kind will be the subject of severe sanctions. This message should be reiterated regularly and in an appropriate manner;

The local Ministry of Justice is very concerned about favouritism and corruption within correctional institutions and is making efforts to tackle the problem. According to the Committee's recommendations, the Commissioner of the Kosovo Correctional Service issued an instruction to the institutions' management, reminding them that the classification of prisoners as well as the determination of their regime has to be done according to the applicable rules and regulations.

Corruption, but especially nepotism, is difficult to prove. However, the Kosovo Correctional Service has taken the necessary consequences in proven cases; in 2007, four officers were discharged from their duties and two others received a warning over allegations of corruption.

Further, the Kosovo Correctional Service staff is systematically reminded during trainings and monthly meetings that corruption and nepotism is unacceptable and will be sanctioned accordingly.

Paragraph 65

The Committee recommends that clear and transparent rules and criteria be drawn up at Dubrava Prison, in particular for detention regimes and the distribution of prisoners. Further, prisoners should be informed of these rules and criteria through appropriate channels;

The Kosovo Correctional Service has drawn up criteria for prisoner regimes as well as for sentence planning. These criteria are set out in the internal order manual of each correctional institution.

At Dubrava Prison, all prisoners are informed about the rules and criteria by the social workers, the correctional staff or the management of the institution.

With regard to the decision-making process, two panels have been established: one panel determines a prisoner's regime, the other is responsible for sentence planning, privileges and home leave. These panels take their decisions independently and give recommendations to the prison's Director. If the Director disagrees with the panel's recommendation, he is under the obligation to inform the Commissioner of the Kosovo Correctional Service of his reasons. This system ensures transparency and reduces possibilities for favouritism or corruption.

Paragraph 68

The Committee recommends that steps be taken at Dubrava Prison to develop within Block 1 a programme of activities inspired by the principles set out in paragraphs 67 and 68;

The local Ministry of Justice and the Kosovo Correctional Service agree that high security prisoners have to be provided with activities, facilitating their re-integration into society. However, due to the fact that the workshops and the school are outside the security perimeter, this category of prisoners cannot attend trainings. These problems will be solved with the building of a new high security prison.

Therefore, the management implements a relaxed detention regime within the perimeters of Block 1. The inmates are allowed significantly more activity time than is provided by law. They have a football field, tennis tables and a gym at their disposal. Inmates can also take care of the block's garden and grow their own vegetables.

The Ministry is aware that conditions can be improved and it is foreseen that within the new high security prison, inmates will be able to benefit from vocational training and schooling.

Paragraph 71 and 81

The Committee recommends that the security classification system in penitentiary establishments in Kosovo be reviewed, in the light of the remarks made in paragraphs 69 and 71;

Since the beginning of 2008, the Prisoner Oversight Committee has been under the responsibility of the Kosovo Correctional Service with UNMIK Penal Management Division monitoring its activities. In order to supervise the functioning of the Prisoner Oversight Committee, the Commissioner of the Kosovo Correctional Service has issued a directive to receive monthly working plans as well as reports on the monthly reviews on the categorisation of prisoners.

Currently, there are 19 prisoners classified under security level "A". In 2007, four prisoners were downgraded and since the beginning of 2008, one prisoner has been downgraded.

With regard to the appeal of the Prisoner Oversight Committee's decisions, security considerations are rendering such an action unfeasible for security level "A" prisoners. A prisoner classified under this security level can not be informed about the intelligence that led to this decision.

For prisoners classified under security level "E" (risk of escape), these considerations are not applicable and appeal is possible.

Paragraphs 73 and 81

The Committee recommends that the authorities put an end to the policy of systematic "cell rotation" at Dubrava Prison and in the detention centres visited, in the light of the remarks made in paragraph 73;

The Kosovo Correctional Service disagrees that cell rotation negatively affects the prisoners' mental state and no such evidence could be established. Cell rotation is currently implemented every 28 days and the Kosovo Correctional Service is satisfied that this measure ensures security in the best possible way under the current circumstances.

Dubrava Prison has not been built for high security prisoners. Block 1 has only small capacity and cell rotation has proved to be an effective prevention measure and an improvement to security.

Paragraphs 75 and 80

The Committee recommends that steps be taken to significantly expand the activities and training available to female prisoners at Lipjan/Lipljan Correctional Centre and inmates at all detention centres visited, and, if appropriate, at other detention centres in Kosovo. Special attention should be given to setting up individualised treatment plans for inmates and to the regime for those serving long sentences (paragraphs 75 and 80);

The Kosovo Correctional Service is systematically making efforts in order to expand the available activities for prisoners.

Within correctional institutions, there are three different detainee regimes. Each inmate is given an individualised treatment plan, detailing his or her regime, established by the institutions' professional staff, such as social workers, physicians, and, if necessary, psychologists.

In the Correctional Centre Lipjan/Lipljan, the Kosovo Correctional Service will open, in co-operation with the United Nations Children Fund's Vocational Training Centre with three new courses for cooks, bakers and pizzeria. Trainers for these courses have already been trained. These workshops will be open for convicted women and juveniles.

Currently, the Correctional Centre Lipjan/Lipljan already offers vocational training for plumbers, electricians, constructors and tailoring/seamstress. Inmates can also participate in theatre and singing classes. A room for handicraft activities is at the disposal of the inmates and a new sports field has been built.

However, the Ministry is undertaking efforts to create a legislative framework which allows for selling of goods produced in Dubrava Prison.

With regard to activities in detention centres, the possibilities are limited. Prisoners serving their sentence in detention centres are employed in areas essential for the maintenance of the detention centre, such as the kitchen, the parking lot, hygiene maintenance and laundry services. Sentences for prisoners serving their time in detention centres may not exceed three months, according to the Law on Execution of Penal Sanctions¹⁶.

In general, detention centres are not designed to provide work for detainees. The right to work for pre-trial detainees is also not foreseen in the law. The Kosovo Correctional Service is aware that detainees may stay in a detention centre over a long period of time and is therefore providing them with opportunities to do sports, play board games, read and watch TV.

Paragraph 80

The Committee recommends that as a first step, the authorities explore the possibility of keeping cell-doors open during part of the day in the detention centres visited;

The Kosovo Correctional Service would like to note that the practice of keeping cell-doors open in detention centres is rarely to be found. Such practice would depend on the risk level and behaviour of detainees and would have to be re-assessed periodically.

Paragraph 78

The Committee recommends that a viable, alternative, solution regarding activities be found as a matter of priority for prisoners serving long prison terms at Mitrovica/Mitrovicë Detention Centre.

An administrative building has been built at the Mitrovicë /Mitrovica Detention Centre, which will house the institution's administration. The current offices will then be used for workshops and trainings.

However, given the current political situation, building activities have come to a halt in Mitrovica/Mitrovicë. The initial plan will be implemented as soon as this situation is resolved.

Paragraph 62

The time has come for the management at Dubrava Prison to make efforts to more closely comply with the prisoner distribution and classification principles which it itself has advocated.

The Kosovo Correctional Service takes great care to apply generally accepted principles of distribution and classification of prisoners. At Dubrava Prison, three panels decide on the regime, employment and sentence planning of the prisoners. This mechanism ensures that prisoners receive an individualised treatment plan.

Block 8, where the Committee delegation spoke to prisoners serving sentences varying in length as well as to prisoners of different ages, is the induction block. When prisoners arrive in Dubrava Prison, they are placed for the first month in Block 8, until the panel has reached a decision regarding their regime. Once an individualised treatment plan has been established, classification and distribution of prisoners comply with the applicable standards.

¹⁶ Article 11, UNMIK Regulation No. 2004/46 on the Law on Execution of Penal Sanctions, 2005.

Paragraph 72

The Committee would like to receive the comments of UNMIK on the delegation's observation that, at Dubrava Prison, security level "E" classifications were not reviewed every 28 days (contrary to the regulations in force) and that no avenue of appeal for challenging such decisions was apparently available to the prisoners;

The classification of prisoners into security level "E" is done by the Director of Dubrava Prison based on credible information or evidence of means for escape. Every month the Director is under the obligation to conduct a review of this classification. This review system is now functioning and, according to the Kosovo Police Service Deputy Commissioner, there is a possibility for prisoners to appeal to the Director's decision. However, no formal appellate procedure has been established yet.

Paragraph 74

The Committee would like to receive the comments of UNMIK on the remarks made by the Committee regarding the presence of international police officers in Block 1 at Dubrava Prison (paragraph 74);

With the assumption of responsibility for certain areas relating to penal management from the UNMIK Department of Justice to the local Ministry of Justice, certain of UNMIK's responsibilities within the UNMIK Penal Management Division have been assumed by the Kosovo Correctional Service. Currently, international staff have a monitoring and advisory role. It was as part of this monitoring capacity that international police officers were for a short time present in Dubrava Prison. The presence of international police officers in Block 1 has ended some time ago.

Paragraph 76

The Committee would like to be informed on the concrete steps taken thus far at Lipjan/Lipljan Correctional Centre to provide specialised training to staff dealing with juveniles.

The Kosovo Correctional Service is undertaking efforts to provide the necessary specialised training to staff dealing with juveniles. In Kosovo, it is currently difficult to find adequate trainers for such courses. Therefore, at the beginning of 2007, two social workers and one correctional officer were sent abroad for specialised training. In 2008, the Head of Juvenile Programs and the Senior Supervisor, both working in the Correctional Centre Lipjan/Lipljan, have received training in the Czech Republic.

Additionally, a quarter of the basic institutional training for Kosovo Correctional Service officers discusses appropriate treatment of juveniles within the penal system.

Currently, negotiations are on-going between the local Ministries of Justice and Education about the school system in both Correctional Centres Dubrava and Lipjan/Lipljan. The aim is to engage sufficient teachers and enable these institutions to offer primary school in Dubrava and secondary school in Lipjan/Lipljan. This measure would also increase the number of staff specialised in dealing with juveniles.

Health care

Paragraph 84

The Committee recommends that immediate steps be taken at Mitrovica/Mitrovicë and Pejë/Peć Detention Centres to remedy the lack of dental chairs and other equipment;

The Detention Centre Mitrovicë /Mitrovica has been equipped with a dental chair, including all necessary equipment in January 2008. The dentist, working full time, can now offer all necessary services.

Given the proximity of Detention Centre Pejë/Peć to Dubrava Prison, the inmates are sent to Dubrava for dental treatments.

Paragraph 85

The Committee recommends that steps be taken at Dubrava Prison to ensure that any request for a medical consultation made by a prisoner is forwarded without undue delay to the health-care service and that consultations are organised in all the blocks on working days (and not just twice a week);

The Kosovo Correctional Service is making all necessary efforts in order to ensure sufficient and adequate medical services in all correctional institutions.

In Dubrava Prison, the administrative procedure for medical consultations is as described in the Committee's report. However, it is the exclusive responsibility of medical personnel to screen the requests. The Director is only informed if there is a need to transfer an inmate to a hospital outside the institution.

Every block is visited twice a week for medical care. Additionally, a nurse is visiting every block three times a day during working days, in order to dispense medicaments. The nurse also receives the list with the names of the inmates requesting medical consultation and establishes priorities. Emergencies are, of course, treated immediately.

Paragraph 87

The Committee recommends that the presence of a psychiatrist at Dubrava Prison be increased to the equivalent of one full-time post;

According to UNMIK Regulation 2004/34, persons suffering from mental disorders are not to be placed in correctional institutions.¹⁷ They receive adequate treatment in civilian health care establishments. A psychiatrist is at the disposal of inmates in detention centres in cases of temporary mental disorders.

One psychiatrist visits Dubrava Prison three times a week and remains on call for the remaining days. Currently, there is no psychiatrist for Detention Centre Pejë/Peć. A vacancy has been opened and published two years in a row, however there were no interested applicants. The Kosovo Correctional Service is still seeking to fill this vacancy and will continue to publish the position.

¹⁷

UNMIK Regulation No. 2004/34 on Criminal Proceedings involving perpetrators with a mental disorder, 24 August 2004.

An UNMIK Penal Management Division Psychiatrist (international staff member) is located at Dubrava Prison as a monitor and adviser and is available for consultation on a daily basis.

Paragraph 89

The Committee recommends that the relevant authorities redouble their efforts to ensure that, at all detention centres visited, prisoners can receive adequate dental care;

All detention centres are providing necessary dental care for inmates within a reasonable period of time. Treatment provided includes extractions, fillings and even functional prosthesis. Only requests for cosmetic treatment are denied.

Paragraph 92

The Committee recommends that steps be taken in all penitentiary establishments in Kosovo to ensure that the precepts set out in paragraph 92 regarding medical screening of newly-arrived prisoners and the recording of injuries are fully implemented in practice;

After the visit of the Committee delegation and based on its recommendations, medical screening and recording of injuries have been significantly improved. Currently, a medical file is opened for every incoming prisoner within the first 24 hours, comprising the results of a thorough medical examination. If the person has bruises, those are recorded and photographed.

The same procedure is followed after any violent incident. Everything is recorded in the prisoner's medical file. Since July 2007, every correctional institution also keeps a special file where injuries are recorded.

Medical records are available upon request to a detainee, his or her lawyer and family.

Paragraph 92

The Committee recommends that existing procedures be reviewed in order to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant prosecutor;

In cases of alleged ill-treatment, the medical staff reports to the management of the institution and to the Central Directorate, which initiates investigations and notifies the police. It is then in the hands of the police to notify the prosecutor.

Paragraph 92

Steps should be taken to ensure that newly-arrived prisoners are screened for transmissible diseases;

The Kosovo Correctional Service agrees with the Committee on the importance to prevent the spreading of transmissible diseases within correctional institutions. Therefore, newly arrived prisoners are tested for transmissible diseases if there is a suspicion, based on the clinical examination, that the person carries one. As provided by the law, tests can only be conducted if the person gives his or her consent.

Paragraph 95

The Committee recommends that the management of Dubrava Prison and of all detention centres in Kosovo be instructed that all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the sight of prison officers, unless the doctor concerned requests otherwise in a particular case.

The local Ministry of Justice and the Kosovo Correctional Service agree that medical examinations have to take place under conditions that foster trust between the inmate and the medical staff. Therefore, it is a general rule in correctional institutions, that medical examinations are conducted out of sight of prison officers, unless otherwise requested by the medical staff in special cases.

Paragraph 85

The Committee would like to recall that non-medical staff should not seek to screen requests for medical consultations;

All decisions regarding requests for medical consultations by inmates are taken by the medical staff. The only role Kosovo Correctional Service officers have in the administrative procedure, is to receive the requests and communicate them to the medical services.

Paragraph 93

It would be desirable that a specific register for recording injuries observed on prisoners upon admission or sustained in prison be set up in all penitentiary establishments;

This register exists since 1 July 2007. Additionally, injuries are also recorded in the inmates' medical file.

Paragraph 96

It would be desirable for basic information about transmissible diseases (such as tuberculosis, AIDS and hepatitis) to be systematically given by health-care staff to prisoners in written form (e.g. leaflets), in a language they understand.

The Global Fund is currently funding and implementing the Tuberculosis Project in Kosovo's detention centres and prisons. This project includes staff training, treatment of tuberculosis and better identification of the disease.

The Global Fund also provided staff training on HIV/AIDS and a new project is in planning stage. This project will include research, training, treatment, testing, as well as the dissemination of leaflets and other information material on HIV/AIDS.

Currently, prisoners are offered condoms, donated by the United Nations Children Fund, free of charge in the hospital area prior to going on home leave.

Paragraph 86

The Committee would like to receive the comments of UNMIK on the delegation's observation at Dubrava Prison that in certain cases there had been considerable delays in hospitalising prisoners, particularly for surgery;

Civil hospitals are under the authority of the local Ministry of Health and the Kosovo Correctional Service co-ordinates with the Ministry where prisoners need to be hospitalised. Generally, such co-operation has been good and the Kosovo Correctional Service has not recorded delays in hospitalisation in emergency cases.

For non-urgent cases, minor delays can occur, depending on the capacity of the local hospitals. In these cases, where delays have taken place, there is no record of negative medical consequences. In this respect the Kosovo Correctional Service notes, that some requests for surgeries from inmates are related to non-urgent problems which pre-existed their detention. While in prison, the inmates can make a request for surgery, which is recorded and treated, depending upon the priority of the patient's condition and the capacity of local hospitals.

Paragraph 90

The Committee would like to receive the comments of UNMIK on the reported difficulties in transferring inmates in need of psychiatric care from Mitrovica/Mitrovicë Detention Centre to the Regional Hospital in northern Mitrovica/Mitrovicë.

Currently, the difficult political situation in Mitrovicë/Mitrovica has resulted in operational difficulties for institutions including movement of inmates. UNMIK Penal Management Division is the main interlocutor facilitating communication between north Mitrovicë/Mitrovica Detention Centre and the Kosovo Correctional Service, and advises the Director of Mitrovicë/Mitrovica Detention Centre. UNMIK facilitates the transferring of inmates to the hospital in north Mitrovicë/Mitrovic with which it has established an understanding. In addition, an international doctor is available on a daily basis.

With regard to psychiatric care, UNMIK Penal Management Division visits the Detention Centre once a week with an international psychiatrist.

Other issues

Paragraph 97

The Committee recommends that the precepts that contacts with the family should never be totally prohibited as punishment and that restrictions on contacts with the outside world should only be imposed for the shortest possible time and should, as a rule, not be applied to juvenile prisoners, to be implemented in all penitentiary establishments in Kosovo;

The Kosovo Correctional Service is aware of the importance of family relations in the context of rehabilitation and reintegration of prisoners into society. Therefore, family contacts are not prohibited but rather encouraged. Professional staff in the correctional institutions support prisoners in keeping contact and maintaining good relations with their families. On admittance, prisoners are informed of the means of communication with the outside world at their disposition.

Paragraph 98

The Committee recommends that steps be taken to ensure that all prisoners subjected to a disciplinary punishment are granted a formal right to lodge an appeal;

According to a standard operating procedure, all prisoners have the right to appeal disciplinary measures, this includes a procedure which ensures that the appellant receives a written response.

Paragraph 99

The Committee recommends that steps be taken in all penitentiary establishments visited to ensure that all prisoners:

- are given a hearing in disciplinary proceedings;**

According to the Committee's recommendation, steps have been taken to ensure that a hearing is organised before the imposition of a disciplinary measure.

- receive a copy of the disciplinary decision, informing them about the reasons for the decision and the avenues for lodging an appeal. The prisoners concerned should confirm in writing that they have received a copy of the decision;**

The prisoners are provided with a written decision detailing the infraction, informing them about the disciplinary measure and his or her right to appeal the decision.

Paragraph 100

The Committee recommends that the existing legal arrangements and practice concerning the role of prison doctors in relation to disciplinary matters be reviewed. In so doing, regard should be had to the Revised European Prison Rules and the comments made by the Committee in paragraph 53 of its 15th General Report (Committee/Inf (2005) 17).

Medical doctors are not involved anymore in the decisions on the imposition of disciplinary measures. However, they visit prisoners placed in solitary confinement every day and can advise against the continuation of the measure, if necessary.

Paragraph 101

The Committee must stress that by virtue of its size alone, the disciplinary cell at Mitrovica/Mitrovicë Detention Centre is not fit for overnight accommodation. An alternative solution should be found for prisoners subjected to solitary confinement.

This cell has been immediately closed after the visit of the delegation.

Establishments under the authority of the local Ministry of Health and the local Ministry of Labour and Social Welfare

C. Psychiatric/social welfare establishments

Preliminary remarks

Paragraph 105

The Committee requests UNMIK to make every effort possible to facilitate the implementation in practice of the recommendations and comments made in paragraphs 111, 112, 123, 127, 131 to 133, 136, 138 and 139 in respect of the Unit for Psychiatry and Neurology of Mitrovica/Mitrovicë Regional Hospital.

The area of health care is a transferred area of competence falling under the responsibility of the local Ministry of Health, in which UNMIK has had limited involvement. However, due to the difficult political situation in north Mitrovicë/Mitrovica, the Ministry also has in the past had limited involvement in health care establishments based in this region. These health care establishments are mainly funded from Serbian government grants and are managed by Kosovo Serbs living there.

Ill-treatment

Paragraph 106

The Committee recommends that staff at the Institution for persons with mental disabilities at Shtime/Štimlje be reminded that all forms of ill-treatment of residents are not acceptable and will be the subject of sanctions;

The local Ministry of Health is making all necessary efforts to improve the services provided at the Special Institute in Shtime/Štimlje. Until June 2008, structural problems as well as an inefficient management were cause for concern and provided poor guidance for the staff. Therefore, the Institute has undergone restructuring and, since June 2008, a new management has taken on responsibility. Regular weekly meetings with the staff have been introduced to foster awareness of appropriate treatment and to remind the staff that ill-treatment is absolutely prohibited.

The Ministry paid a visit to the Institute in September 2008 in order to assess the situation. Through discussions with members of the staff as well as with patients, these positive developments have been confirmed and no incidents of ill-treatment were reported.

In order to support the medical staff and orderlies in their daily work, trainings will be organised. Institutional training, using the capacities of Shtime/Štimlje as well as of the Mental Health Centre in Ferizaj/Uroševac will be implemented in the course of this year. The local Ministry of Health has also accepted offers from non-governmental organisations to provide trainings, which will be held in 2009.

In a further effort to combat ill-treatment, the Ministry asked a non-governmental organisation to visit the Special Institute in Shtime/Štimlje and to provide the Ministry with a report comprising comments and recommendations as to the necessary improvements.

Paragraph 107

The Committee recommends that staff at Shtime/Štimlje “Special Institute” employ all means at their disposal to prevent inter-patient/resident violence and intimidation; in order to tackle this problem, staff should be alert to signs of trouble and both determined and properly trained to intervene when necessary.

The Ministry is aware that training is an essential aspect of the staff’s professional development. However, severe budgetary constraints were an impediment to the implementation of systematic institutional trainings.

Since the new management for the Integration Centre for Mental Health has taken up its duties, the budget was re-allocated and institutional trainings should start in the second half of 2008. Under the responsibility of the new director, the medical staff has already been alerted to detect signs of potential problems. These topics will also be discussed during the trainings which will cover all aspects of the staff’s daily work, including prevention of inter-patient/resident violence.

The local Ministry of Labour and Social Welfare is providing members of the staff with needs-based professional trainings covering all aspects of their daily work. These trainings are implemented either by the Ministry itself, or in co-operation with non-governmental organisations.

Patients’/residents’ living conditions

Paragraph 110

The Committee recommends that the authorities pursue their efforts as a matter of priority to ensure that all patients held in the forensic unit of the Psychiatric Clinic in Prishtinë/Priština are offered, if their state of health so permits, at least one hour of outdoor exercise every day;

At the outset, the local Ministry of Health would like to note that the forensic unit of the Psychiatric Clinic in Prishtinë/Priština is part of the Psychiatric Department A (general psychiatry for male patients). Department A is under the shared responsibility of the local Ministry of Health and the local Ministry of Justice. While the management lies in the hands of the medical staff, security is ensured by the Kosovo Correctional Service.

After discussions between the Ministries of Health and Justice, a system of fresh air exercise has been established. Patients held in the forensic unit are now offered one hour of outdoor exercise every day. For security reasons, patients are accompanied by guards during this time.

Currently, the local Ministry of Health is finalising a project, which provides for the improvement of living conditions within the Psychiatric Clinic as well as for staff training. This project will receive funding from the Swiss government.

Further, in co-operation with the local Ministry of Justice, the building of a new forensic psychiatric institute is in planning and the project is currently awaiting approval.

Paragraph 116

The Committee recommends that additional steps be taken as a matter of priority to improve the living conditions for patients at the Integration Centre for Mental Health at Shtime/Štimlje, in the light of the remarks made in paragraphs 115 and 116.

The local Ministry of Health agrees on the need to improve living conditions at the Integration Centre for Mental Health and ensured that this institution is provided with its own budget. A special budget line will be approved with the 2009 Budget. Nonetheless, some improvements have already been achieved since the visit of the delegation.

Sufficient funds were secured to ensure heating during the winter and call for tenders have been issued for the purchase of generators. The food supply has also been improved and efforts have been undertaken to raise the level of hygiene.

The Ministry will issue a tender for the refurbishment of the Integration Centre for Mental Health in the second half of 2008. Due to budgetary constraints, the tender will only cover renovations inside the buildings. A call for tender covering the refurbishments of the remaining premises will be issued in 2009.

Paragraph 113

Steps should be taken to offer a more personalised environment to residents in the Institution for persons with mental disabilities at Shtime/Štimlje.

The local Ministry of Labour and Social Welfare agrees that a personalised environment is an important element contributing to the residents' well-being. Therefore, the Ministry would like to note that efforts are being made to transfer residents of the Special Institute to community-based homes, which offer better living conditions. Currently there are seven community-based homes: Five homes for adult persons with mental disabilities, and two for mentally disabled and abandoned children.

Community-based homes have the capacity to lodge ten persons each, and 11 staff members are providing for the residents in each home. The staff performs daily activities together with the residents, similar to those performed within a family. This approach has proved to be successful for the residents' integration and generated a general improvement in their well-being.

The transfer of residents has reduced their number in Shtime/Štimlje to 60. The local Ministry of Labour and Social Welfare continues to actively seek new possibilities for the remaining residents, be it through the building of new community-based homes or through family reunions, where possible.

Staff

Paragraph 118

The Committee recommends that steps be taken to ensure the regular attendance of a member of health-care staff in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština;

The local Ministry of Health agrees that the situation with regard to staff presence in the forensic unit needs to be improved. In Kosovo, it is currently difficult to find qualified staff in the field of mental health and to attract psychiatrists to the forensic unit. Nonetheless, doctors and nurses working for the Psychiatric Clinic are available to the forensic unit 24 hours per day in case of need, in addition to the regular presence of medical staff which the Committee delegation observed during its visit.

Paragraph 120

The Committee recommends that steps be taken by the relevant authorities to ensure that in the Integration Centre for Mental Health at Shtime/Štimlje:

- **the psychiatric care is increased by having an equivalent of at least one full-time psychiatrist's post;**

Since the visit of the delegation, the situation has improved: one psychiatrist from the Mental Health Centre Ferizaj/Uroševac has been employed on a part-time basis. In combination with a second psychiatrist working on a part-time basis, psychiatric care has been increased to the equivalent of one full-time psychiatrist's post.

- **the number of nursing staff and orderlies is increased.**

Currently, the budgetary constraints do not allow for an increase in the number of nurses and orderlies. However, efforts are being undertaken, in order to improve this situation. For 2009, 40 additional staff members have been requested for the Integration Centre for Mental Health.

Treatment

Paragraph 123

The Committee recommends that steps be taken in all psychiatric establishments visited, in particular at Shtime/Štimlje "Special Institute", to develop treatment and rehabilitative activities for psychiatric patients/residents, which would also allow a reduction in the use of psychotropic medication.

The local Ministry of Health agrees that treatment and rehabilitative activities would benefit psychiatric patients. However, the recurrent problem with regard to the lack of qualified staff significantly hinders an improvement of the treatment administered at the Special Institute.

Elementary conditions, such as a sufficient number of psychiatrists, allowing for the development of therapeutic and recreational activities, are currently not met. Further, budgetary constraints are still an impediment to the organisation of adequate staff training.

Nonetheless, a decrease in the administration of psychotropic medication has been noted since the new management has taken up its duties in June 2008.

In other psychiatric establishments, such as the Psychiatric Clinic at Prishtinë/Priština University Hospital, disposing of an adequate number of staff, modern treatment, such as group therapies and rehabilitative activities, is already available.

Restraint of agitated and/or violent patients/residents

Paragraph 125

The Committee recommends that an end be put to the practice of handcuffing agitated patients to their bed in the forensic unit at the Psychiatric Clinic in Prishtinë/Priština; if mechanical restraint is temporarily required, appropriate alternative means should be used (e.g. straps);

The practice of handcuffing agitated patients to their beds has been prohibited after the visit of the delegation. Incidents involving residents of the forensic unit are managed by the medical staff, in close co-operation with the Kosovo Correctional Service. Staff members have been trained to approach an agitated or violent patient and keep the situation under control until medication takes effect. Further trainings will be provided to the medical staff for this purpose.

After every incident, the involved staff member drafts an incident report to ensure transparency and a follow-up, if necessary.

Paragraph 126

The Committee recommends that nursing staff in the Integration Centre for Mental Health at Shtime/Štimlje be instructed that the administration of chemical restraint should always be ordered by a doctor;

The local Ministry of Health agrees that the administration of medicaments falls under the responsibility of a doctor. In this respect, after the visit of the delegation, the medical staff has been instructed that the prescription of chemical restraints are always to be ordered by a doctor, according to the law and administrative regulations.¹⁸

Paragraph 127

The Committee recommends that specific registers detailing the use of means of restraint to be established in all psychiatric establishments visited.

According to the applicable Health Law,¹⁹ each health institution has to maintain registers. In this respect, there is a specific register for incidents involving means of restraint in all psychiatric establishments. The use of means of restraint is also reported in the patient's file.

¹⁸ Administrative Instruction "Health" Nr. 01/2003, "Unique job description of health professionals" MoH/2006.

¹⁹ Chapter XI, Articles 62, 63 and 64, UNMIK Regulation No. 2004/31 on the Promulgation of the Kosovo Health Law, 20 August 2004, "Health Information System".

Safeguards

Paragraph 131

The Committee recommends that steps be taken without delay to ensure that the relevant legal provisions applicable in Kosovo which govern the involuntary placement of patients are effectively implemented. To this end, the competent courts should be informed of all persons who are currently being held in any of the psychiatric establishments visited on an involuntary basis;

Each patient admitted involuntarily to a psychiatric establishment is registered in a specific register. His file contains his medical history as well as an account of all examination results. Within three days of his or her admittance, this register is sent to the respective court. According to the law, three medical experts then submit an expert opinion on the patient's health to the court.

This procedure is respected, as no patient can be admitted to a psychiatric establishment without giving consent, unless it is ordered by a court.

Paragraph 132

The Committee recommends that steps be taken at Shtime/Štimlje “Special Institute” and, if appropriate, in other social welfare/psychiatric establishments in Kosovo, to ensure that all residents/patients who were presumed to be unable to consent to their placement are notified to the competent court;

The admittance of a patient to Shtime/Štimlje “Special Institute” without the patient's consent can only take place pursuant to a court order. Such court order can only be issued where the court is informed of the patient's condition and the requested treatment to which the patient's consent is required.

Prior to the court order being issued, the Ministry of Health has an internal procedure whereby a patient is assigned either a social worker or a family member as guardian. Due to problems in tracing family members and issues of freedom of movement, not all patients, especially Kosovo Serbs have been assigned a guardian.

Where persons have been admitted to the Special Institute on the basis of the court order, the period of stay is limited to six weeks. The patient's condition is medically reviewed periodically and family members can request the patient's removal from the Institute.

Recently, the Ministry of Health has advised the Director of the Special Institute to inform the courts of all registered patients who have been placed there without their consent in order to review their placement.

The Ministry of Health has started a cooperation with the Ombudsperson Institute over the latter's supervision of persons in psychiatric establishments.

Paragraph 133

The Committee recommends that steps be taken by the relevant authorities to ensure that, in the context of court proceedings to deprive a resident/patient of his/her legal capacity and to appoint a guardian, the persons concerned are:

- **granted the right to be heard in person by the court;**
- **given a copy of the court decision;**
- **informed in writing and verbally of the possibility and modalities to lodge an appeal against the court decision;**

Further, the Committee recommends that steps be taken to ensure that the need for placement in a psychiatric/social welfare institution of persons under guardianship is reviewed at regular intervals by an appropriate authority;

The local Ministry of Health agrees on these proceedings, especially since they are prescribed by the law. Therefore, the Ministry will make all necessary efforts to ensure that the applicable law including the Yugoslav Law on Non-Contested Procedure (1986) is implemented.

Paragraph 135

The Committee recommends that steps be taken by the relevant authorities to ensure that all placements for mandatory treatment are subject to regular review, as provided for by law;

The local Ministry of Health will undertake the task to ensure that the safeguards provided by the law are fully respected.

Paragraph 136

The Committee recommends that steps be taken at all psychiatric/social welfare establishments visited to ensure that all patients/residents (as well as their families) are provided on admission with an introductory brochure setting out the establishment's routine and their rights;

All patients/residents receive leaflets informing them of their rights as well as of the applicable procedures within the establishments. Furthermore, posters are visibly placed in all establishments, detailing the patients'/residents' rights.

Paragraph 138

The Committee recommends that steps be taken at all psychiatric/social welfare establishments visited to ensure that all patients/residents, including those placed there on an involuntary basis, are given the opportunity to refuse – either in person or through their guardian – treatment or any other medical intervention, in the light of the remarks made in paragraphs 137 and 138;

The local Ministry of Health places great importance on the respect of a patient's right to be informed about his or her condition, the proposed treatment, as well as to refuse any kind of medical intervention.

As stipulated in the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System²⁰, all patients, including those who have been placed involuntarily, have the right to refuse treatment. Only in specific cases of danger to life, and according to the law, treatment may be imposed.

Paragraph 139

The Committee recommends that at all psychiatric/social welfare establishments visited, patients/residents be informed in the introductory leaflet/brochure issued upon admission of their right, as well as of the modalities, to lodge complaints;

All patients/residents are informed orally, and also through leaflets, about their rights and the services provided within the institution. The list of rights on the leaflets include the right to lodge complaints.

Paragraph 140

The Committee recommends that the system of Boards of Visitors be re-activated and the boards to be provided with adequate resources to enable them to carry out their tasks effectively.

Further, the Committee invites the authorities to establish a visiting mechanism similar to the Boards of Visitors for social welfare establishments.

The Board of Visitors was a mechanism financed by the local Ministry of Labour and Social Welfare. As such, the Board came under increased criticism from civil society who doubted its independence. Finally, in 2005 the decision was taken to stop financing the Board's work.

Currently, the local Ministry of Labour and Social Welfare is making efforts to revive the Board of Visitors, but has not yet found a donor to ensure the financing of its work.

Nonetheless, psychiatric establishments are open for visit to non-governmental organisations and the Ombudsperson Institution .

Paragraph 134

The Committee would like to receive comments of UNMIK regarding the difficulties experienced by the management at Shtime/Štimlje “Special Institute” in arranging the transfer of a group of some 20 patients/residents of Serbian origin held in the establishment to appropriate care institutions in Serbia proper.

The patients/residents of Serbian origin represent a special challenge partly due to the political sensitivities involved. After assessing their situation, the local Ministry of Health came to the conclusion that they had been left in Kosovo, as their families did not want to take responsibility for them.

The International Committee of the Red Cross has been informed on the presence of this group but currently, it is not possible to bring them back to Serbia.

These patients/residents receive adequate treatment and their cases are periodically re-assessed.

²⁰

UNMIK Regulation No. 2004/47 on the promulgation of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System adopted by the Assembly of Kosovo, 19 November 2004.